

ACT 542**LEGAL AID SCHEME ACT, 1997**

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ACT 542**LEGAL AID SCHEME ACT, 1997¹**

AN ACT to re-enact the Legal Aid Scheme Law, 1987 (P.N.D.C.L. 184) to ensure the effective operation of the Scheme; to bring the provisions in respect of the Scheme in consonance with the Constitution and to provide for related matters.

*Establishment of Legal Aid Scheme***1. Establishment of Legal Aid Scheme**

There is established by this Act the Legal Aid Scheme.

2. Persons entitled to legal aid

(1) For the purposes of enforcing a provision of the Constitution, a person is entitled to legal aid in connection with the proceedings relating to the Constitution if that person has reasonable grounds for taking, defending, prosecuting or being a party to the proceedings.

(2) A person is entitled to legal aid

- (a) if that person earns the Government minimum wage or less and desires legal representation in
 - (i) a criminal matter; or
 - (ii) a civil matter relating to landlord and tenant, insurance, inheritance with particular reference to the Intestate Succession Act, 1985², maintenance of children and any other civil matters as prescribed by Parliament; or
- (b) if in the opinion of the Board that person requires legal aid.

(3) For the purposes of this Act, legal aid consists of representation by a lawyer, including the assistance given by a lawyer, in the steps preliminary or incidental to proceedings or arriving at or giving effect to a compromise to avoid or to bring an end to proceedings.

3. Legal Aid Board

Subject to this Act the Scheme shall be administered by the Legal Aid Board.

1. This Act was assented to on 31st December, 1997 and notified in the *Gazette* on 31st December, 1997.
2. P.N.D.C.L. 111

4. Composition of Board

(1) *The Board consists of*

- (a) one Justice or a retired Justice of the Superior Court of Judicature as the chairman of the Board,
- (b) the Attorney-General or the representative of the Attorney-General,
- (c) one representative of the General Legal Council,
- (d) the Director of Legal Aid,
- (e) one representative of the Ghana Bar Association,
- (f) the Director of Legal Education,
- (g) the Controller and Accountant-General or the representative of the Accountant-General,
- (h) four other persons, one of whom is the Director of the Department of Social Welfare or the representative and one female lawyer, and
- (i) one representative of the Inspector-General of Police.

(2) The members of the Board shall be appointed by the President acting in consultation with the Council of State.

5. Functions of the Board

The Board is responsible for

- (a) developing a comprehensive legal aid programme and policy to be carried out throughout the country,
- (b) supervising the general administration of the legal aid programme, and
- (c) approving the selection of lawyers for participation in the legal aid programme without prejudice to the right of an applicant to have a lawyer of the applicants own choice.

6. Tenure of members of the Board

(1) The members of the Board shall hold office for three years and are eligible for re-appointment.

(2) A member of the Board may resign from office in writing addressed to the President through the Minister.

(3) Where the office of a member of the Board becomes vacant before the expiration of the term or if for any other reason that member is unable to perform the functions of office, the Minister shall notify the President who shall, acting in consultation with the Council of State appoint another person to complete the unexpired term of office.

(4) A person appointed to complete the unexpired term of a member may after serving the unexpired term be appointed a member of the Board.

7. Allowances for members

Members of the Board shall be paid the allowances determined by the Minister in consultation with the Minister responsible for Finance.

8. Meetings of the Board

(1) The Board shall meet at least once every three months for the despatch of business at the times and at the places determined by the chairman.

(2) The chairman shall on the request of not less than one-third of the membership convene a special meeting of the Board.

(3) The quorum at a meeting of the Board is six members.

(4) The chairman shall preside at the meetings of the Board and in the absence of the chairman a member of the Board elected by the members present from among their number shall preside.

(5) Questions before the Board shall be decided by a simple majority of members present and voting.

(6) The chairman shall have a casting vote.

(7) The validity of the proceeding of the Board shall not be affected by a vacancy among its members or by a defect in the appointment or qualification of a member.

(8) A member of the Board who is absent from three consecutive meetings of the Board without sufficient cause ceases to be a member.

(9) Except as otherwise provided in this Act, the Board shall regulate the procedure for the conduct of its meetings.

9. Committees of the Board

The Board may for the performance of its functions appoint committees of the Board comprised of members of the Board or non-members or both and may assign to them any of its functions as it may determine except that a committee composed entirely of non-members may only advise the Board.

*Regional Legal Aid Committees***10. Regional Committees continued in existence**

(1) There shall be established in each Region, a regional legal aid committee.

(2) A regional legal aid committee is answerable to the Board.

11. Composition of regional committees

(1) A regional legal aid committee shall consist of

(a) one Justice or a retired Justice of the Superior Court of Judicature in the Region as the chairman of the Committee,

(b) one representative of the Attorney-General in the Region,

(c) three nominees of the General Legal Council,

(d) two representatives of the Ghana Bar Association in the Region,

(e) a social worker nominated by the Department of Social Welfare in the region, and

(f) one representative of the Controller and Accountant-General in the Region.

(2) The members of a regional committee shall be appointed by the Board.

12. Functions of regional committees

A regional committee is responsible for

- (a) the general administration of the Scheme in the Region;
- (b) approving the selection of legal practitioners for participation in the Scheme in the Region on behalf of the Board; and
- (c) any other matters relating to the Scheme in the Region that the Board may determine.

13. Tenure of members of regional committees and allowances

(1) The members of a regional committee shall hold office for three years and are eligible for re-appointment.

(2) There shall be paid to the members of a regional committee the allowances determined by the Minister in consultation with the Minister responsible for Finance.

14. Meetings of regional committees

The provisions of section 8 on meetings of the Board are applicable to the meetings of a regional committee except that the quorum for a meeting of a regional committee shall be three, including the chairman or in the absence of the chairman the member acting as chairman.

15. Selection committee

(1) A regional committee shall appoint a selection committee consisting of any three members of the regional committee at least one of whom is a lawyer.

(2) The selection committee is responsible for considering and approving applications for legal aid.

Administration

16. Director of legal aid

(1) The Scheme shall have a Director who shall be appointed by the President in accordance with article 195 of the Constitution.

(2) The Director shall hold office on the terms and conditions specified in the letter of appointment.

(3) Subject to the general directions of the Board, the Director is responsible for the efficient management of the Scheme.

17. Functions of Director

Without limiting the scope of subsection (3) of section 16 the Director is responsible for

- (a) the day-to-day operation of the Scheme;
- (b) the supervision of the legal personnel and any other staff of the Scheme;

- (c) co-ordinating the operation of the Scheme nationwide to ensure uniformity;
- (d) initiating proposals for the formulation of policies by the Board; and
- (e) executing decisions of the Board.

18. Assistant directors

There shall be appointed by the President in accordance with article 195 of the Constitution an assistant director for each regional committee.

19. Functions of an assistant director

- (1) *An assistant director is responsible for*
 - (a) the day-to-day operation of the Scheme in the Region,
 - (b) co-ordinating the operation of the Scheme within the Region, and
 - (c) executing decisions of the Board and the regional committee within the Region.
- (2) An assistant director shall be the secretary to the regional committee.

20. Secretary to the Board and other staff

(1) The Scheme shall have an officer to be designated as secretary to the Board who shall perform the functions of keeping accurate records of proceedings and decisions of the Board and perform any other functions directed by the Board or the Director.

(2) The President may acting in accordance with article 195 of the Constitution appoint for the Scheme, any other staff required by the Board for the effective implementation of the Scheme.

21. Delegation of power of appointment

The President may in accordance with article 195 (2) of the Constitution delegate the power of appointment of public officers under this Act.

22. Legal personnel of Scheme

- (1) The legal personnel of the Scheme shall consist of selected legal practitioners.
- (2) The National Service Board shall assign to the Board a number of lawyers liable to do national service as the Board may request.
- (3) The Bar Association of each Region shall, with the approval of the General Council of the Bar, select legal practitioners who shall, subject to the approval of the Board, make their services available to the Scheme.
- (4) A legal practitioner selected under this section shall be paid the remuneration determined by the Board.

23. Transfer of public officers

(1) Public officers may be transferred or seconded to the Scheme or may otherwise be required to give assistance to the Scheme.

(2) The Board shall provide the facilities that are necessary for the proper and efficient conduct of the Scheme.

*General and Financial Provisions***24. Application for legal aid**

(1) An applicant for legal aid shall complete the application form determined by the Board.

(2) The application shall be subject to the approval of the selection committee appointed under section 15.

(3) Subsections (1) and (2) shall not apply where the applicant has been indicted for an offence punishable by death or life imprisonment.

(4) An applicant whose application is disapproved by the selection committee may appeal to the regional committee and where the applicant is not satisfied with the decision of the regional committee, the applicant may appeal to the Board.

(5) There shall be paid in respect of an application the fee determined by the Board.

25. Expenses of applicant

(1) An applicant whose application is approved shall be exempted from paying the prescribed fee in respect of the filing of relevant court documents and the cost of preparing appeal records.

(2) The Board may instruct the Director to pay on behalf of the applicant all or any of the expenses related to the case of the applicant as the Board may determine.

(3) Where an award is made in favour of the applicant, the Board may recover from the applicant any of the expenses incurred on behalf of the applicant as determined by the Board.

26. Funds of the Scheme

(1) The Funds for the operation of the Scheme include

- (a) money provided by Parliament,
- (b) donations,
- (c) gifts, and
- (d) fees paid by applicants.

(2) The Board shall appoint a financial committee consisting of any three members of the Board who shall be responsible for the allocation and monitoring of the funds of the Scheme.

27. Financial committee of regional committee

A regional committee shall appoint a financial committee consisting of any three members of the regional committee who shall be responsible for the allocation and monitoring of the funds within the Region.

28. Budget

The Board shall submit to the Minister responsible for Finance through the Minister detailed estimates of the budget for the Scheme for the ensuing year.

29. Accounts and audit

(1) The Board shall keep books of account and proper records in relation to them in the form approved by the Auditor-General.

(2) The account books and records of the Scheme shall, within three months after the end of each financial year, be audited by the Auditor-General and a report on the audit shall be submitted to the Board.

(3) The financial year of the Scheme shall be the same as the financial year of the Government.

30. Half yearly reports

The secretary to a regional committee shall submit to the Director a half yearly report on the operation of the Scheme in the Region.

31. Annual report

(1) The Board shall after the expiration of each financial year but within six months after the end of the year, submit to the Minister an annual report covering the activities and the operations of the Scheme for the year to which the report relates.

(2) The annual report submitted under subsection (1) shall include the report of the Auditor-General.

(3) The Minister shall within two months after the receipt of the annual report submit the report to Parliament with a statement that the Minister considers necessary.

(4) The Board shall also submit to the Minister any other report the Minister may in writing request.

32. Ministerial responsibility

The Attorney-General and Minister for Justice shall have ministerial responsibility for the Scheme.

33. Regulations

The Minister may by legislative instrument make Regulations for the full implementation of the provisions of this Act.

34. Interpretation

In this Act, unless the context otherwise requires,

“**Auditor-General**” includes an auditor appointed by the Attorney-General;

“**Director**” means Director of Legal Aid;

“**Minister**” means the Attorney-General and Minister for Justice;

“**Region**” means a Region of Ghana;

“**regional committee**” means a regional legal aid committee established pursuant to section 10;

“**Scheme**” means the Legal Aid Scheme established by section 1.

35. Repeals and saving

- (1) The following enactments are repealed:
 - Legal Aid Scheme Law, 1987 (P.N.D.C.L. 184); and
 - Legal Aid Scheme (Amendment) Law, 1988 (P.N.D.C.L. 200).
 - (2) Despite the repeal of the enactments specified in subsection (1),
 - (a) Regulations or any other instrument made under any of those enactments and in force immediately before the coming into force of this Act shall continue in force until amended or revoked under this Act;
 - (b) an appointment made under any of the repealed enactments and valid on the coming into force of this Act shall remain valid as if made under the corresponding provision of this Act until terminated or otherwise dealt with under this Act;
 - (c) a committee appointed under the repealed legislation and in existence immediately before the coming into force of this Act shall continue as if appointed under this Act;
 - (d) a case being handled by the Scheme in existence immediately before the coming into force of this Act which is not concluded under the repealed enactments shall continue and be concluded by the Scheme established under this Act;
 - (e) an asset, a right or property held on behalf of the Scheme in existence immediately before the coming into force of this Act shall be transferred to the Scheme established under this Act;
 - (f) an obligation and a liability subsisting against the Scheme immediately before the coming into force of this Act shall on the commencement of this Act subsist against the Scheme.
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