GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

No. R. **2020**

LEGAL AID SOUTH AFRICA ACT, 2014: AMENDMENT OF REGULATIONS

The Minister of Justice and Correctional Services has, under section 23(1) of the Legal Aid South Africa Act, 2014 (Act No. 39 of 2014), after receipt of recommendations of the Board of Directors of Legal Aid South Africa, made the regulations in the Schedule.

SCHEDULE

Definitions

1. In this Schedule, "the Regulations" means the regulations published by Government Notice No. R. 745 of 26 July 2017, as amended by Government Notice No. R. 498 of 29 March 2019.

Amendment of regulation 9 of the Regulations

2. Regulation 9 of the Regulations is hereby amended by—

(*a*) the substitution in subregulation (1) for the words preceding paragraph (*a*) of the following:

"(1) Legal Aid South Africa may grant legal aid to a litigant in any civil matter, with or without a waiting period, where—"; and

(*b*) the addition of the following subregulation after subregulation (5):

"(6) In the event that a waiting period referred in subregulation (1) is applied, Legal Aid South Africa must prioritise civil matters which have a significant impact on client's lives, including, but not limited to, the following matters:

(*a*) Civil proceedings involving children;

(*b*) evictions;

(*c*) social security matters;

(*d*) educational matters: and

(*e*) income related matters, such as employment or dismissals, pension and related funds and maintenance.".

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Amendment of regulation 11 of the Regulations

3. Regulation 11 of the Regulations is hereby amended by the substitution for subregulation (3) of the following subregulation:

"(3) Subject to the provisions of regulation 23(8), legal aid may not be granted for any action that can be brought in a small claims court in terms of the Small Claims Courts Act, 1984 (Act No. 61 of 1984): Provided that Legal Aid South Africa may grant legal aid for a claim that does not exceed the monetary jurisdiction of the small claims court by more than 50 percent.".

Amendment of regulation 13 of the Regulations

4. Regulation 13 of the Regulations is hereby amended by—

(*a*) the substitution for subregulation (1) of the following subregulation:

"(1) In a maintenance case in terms of the Maintenance Act, 1998 (Act No. 99 of 1998), a domestic violence case in terms of the Domestic Violence Act, 1998 (Act No. 116 of 1998), or a matter brought in terms of the Protection from Harassment Act, 2011 (Act No. 17 of 2011), Legal Aid South Africa may grant legal aid to a legal aid applicant for an initial consultation to advise him or her on his or her rights, the procedure he or she can follow and his or her prospects of success.";

(*b*) the substitution for subregulation (2) of the following subregulation:

"(2) Legal aid may be granted for legal representation in a court hearing for matters referred to in subregulation (1), if—

(*a*) in the opinion of Legal Aid South Africa, the legal aid applicant's claim or defence has good prospects of success; and

(*b*) the opposing party is represented by a legal practitioner or is a legal practitioner; or

(*c*) the legal aid applicant is over 60 years of age or disabled.".

Amendment of regulation 14 of the Regulations

5. Regulation 14 of the Regulations is hereby amended by the substitution for paragraph (*c*) of subregulation (1) of the following paragraph:

"(*c*) assistance to enforce an award by the Commission for Conciliation, Mediation and Arbitration established in terms of the Labour Relations Act, 1995, where the Commission for Conciliation, Mediation and Arbitration has already instructed a sheriff at its own cost and a sheriff has been unable to successfully execute, except where there is no prospect of recovery.".

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Amendment of regulation 15 of the Regulations

6. Regulation 15 of the Regulations is hereby amended by—

(*a*) the deletion in subregulation (2) of paragraph (*b*); and

(*b*) by the substitution in subregulation (2) for the full stop at the end of paragraph *(c)* of the expression "; and"; and

(*c*) the insertion in subregulation (2) after paragraph (*c*) of the following paragraph:

"(*d*) a divorce action where there is—

(i) no allegation of domestic abuse;

(ii) no minor, disabled or intellectually challenged children;

(iii) no immovable property as part of the joint estate;

(iv) no pension interest as part of the joint assets; or

(v) any other substantial benefit in the joint estate.".

Amendment of regulation 23 of the Regulations

7. Regulation 23 of the Regulations is hereby amended by the substitution for subregulation (8) of the following subregulation:

"(8) Legal aid may be granted to a child for a monetary claim that falls within the small claims court monetary jurisdiction where it is required to protect the best interests of that child and if substantial injustice would otherwise result.".

Amendment of regulation 27 of the regulations

8. Regulation 27 of the Regulations is hereby amended by the addition of the following subregulation after subregulation (6):

"(7) The amounts contemplated in subregulations (2), (3), (4), (5) and (6) will increase annually on 1 April with the Consumer Price Index, as projected by the Minister of Finance, rounded off to the next 100.".

Amendment of regulation 31 of the Regulations

9. Regulation 31 of the Regulations is hereby amended by—

(*a*) the substitution for subregulation (1) of the following subregulation:

"(1) If a legal aid applicant does not qualify for legal aid in terms of the means test, Legal Aid South Africa may provide partially subsidised legal aid and require from the legal aid applicant to contribute to the cost of the legal aid.";

(*b*) by the substitution in subregulation (2) for the full stop at the end of paragraph *(c)* of the expression "; and"; and

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(c) the insertion in subregulation (2) after paragraph (*c*) of the following paragraph:

"(*d*) whether the requirements of regulation 9(1) are met, in civil matters.".

Amendment of regulation 32 of the Regulations

10. Regulation 32 of the Regulations is hereby amended by—

(*a*) the substitution in subregulation (1) for paragraphs (*b*) and (*c*) of the following paragraphs:

"(*b*) cessation of the criminal trial;

(*c*) the accused is convicted and sentenced to direct imprisonment; or"; and

(*b*) the insertion after paragraph (*c*) of the following paragraph:

"(*d*) the finalisation of a civil matter,".

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