

STATES OF JERSEY



DRAFT ACCESS TO JUSTICE (JERSEY) LAW 201- (P.23/2019): AMENDMENT

Lodged au Greffe on 16th April 2019
by the Chairmen's Committee

STATES GREFFE

PAGE 42, ARTICLE 4(4) –

In Article 4 –

- (a) in paragraph (4), for “to contrary” substitute –
 | “to the contrary”;
- (b) in paragraph (4), for “may, in exceptional circumstances, provide legal aid to any person where the interests of justice requires it.” substitute –
 | “may provide legal aid to any person where the interests of justice require it.”;
- (c) after paragraph (4), insert the following –
 | “(5) The Magistrate may, in relation to the appearance of any person in the Magistrate’s Court, make a request to the Judicial Greffier that the Judicial Greffier provide legal aid under paragraph (4) to the person with respect to that appearance or any related proceeding.”.

PAGE 47, ARTICLE 7(12) –

In Article 7(12), for “this Article from and a reference” substitute –

| “this Article, and a reference”.

CHAIRMEN’S COMMITTEE

REPORT

The Chairmen's Committee has lodged this amendment on behalf of the Legal Aid Review Panel. The Review Panel has undertaken a detailed review of the Draft Access to Justice (Jersey) Law 201- ([P.23/2019](#)) and will publish a report prior to the debate on 30th April 2019.

The purpose of this amendment is to provide a statutory ability for the Magistrate to request that legal aid is provided to someone where it is in the interests of justice to do so. In evidence provided to the Panel, the Magistrate raised concerns about the absence of a "safety net" for some cases that come before the court, if there is not a discretion to grant Legal Aid.

As part of its work, the Review Panel held public Hearings with the Bailiff, the Magistrate, the Law Society and the Chief Minister. In the Hearing with the Magistrate, she spoke of the importance of a safety net for people (for example vulnerable adults) who may not qualify for legal aid but are not capable of representing themselves –

"But when people are getting themselves into a real fix about a case and they really are not understanding some very basic points if, at that point, the magistrate could say: "We really think you need some representation here beyond that which a duty advocate can give." If there were a discretion for the magistrate to refer the matter to legal aid and say: "I am asking for this person to be granted legal aid because without that I do not think this person can receive a fair trial", I think that would be an important safeguard that could perhaps be worked into the law."¹

Under the current legal aid scheme, there is some discretion for the Bâtonnier to grant legal aid to people who would otherwise not qualify. However, under the draft legal aid scheme appended to P.23/2019, this discretion would be removed.

P.23/2019 also repeals a section of the Magistrate's Court (Miscellaneous Provisions) (Jersey) Law 1949 which provided the Magistrate with the ability to grant legal aid in certain limited circumstances.²

The amendment would also provide the Judicial Greffier wider discretion to grant legal aid where it is in the interests of justice to do so (either directly or on request of the Magistrate), by removing the condition that he or she may only do so in "exceptional circumstances".

The amendment also corrects 2 typographical errors in the draft Law that were identified during the Panel's work.

Financial and manpower implications

There are no additional financial or manpower implications for the States arising from the adoption of this amendment.

¹ Public Hearing with the Magistrate, 5th April 2019

² Article 23 of the [Magistrates Court \(Miscellaneous Provisions\) \(Jersey\) Law 1949](#). The Law itself is due to be repealed in due course when the [Criminal Procedure \(Jersey\) Law 2018](#) comes into effect.