

# STATES OF JERSEY



Jersey

## ACCESS TO JUSTICE (JERSEY) LAW 2019 (APPOINTED DAY) ACT 202-

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Lodged au Greffe on 8th June 2021  
by the Chief Minister  
Earliest date for debate: 20th July 2021

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STATES GREFFE







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## REPORT

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### Background

The [Access to Justice \(Jersey\) Law 2019](#) (“the Law”) was adopted by the States Assembly on 1st May 2019, granted Royal Assent on 8th October 2019 and registered by the Royal Court on 18th October 2019. Article 23 provides for the Law to come into force on such day or days as the States may by Act appoint, and for different dates to be appointed for different provisions and different purposes of the Law.

Full details regarding the background to, and purpose of, the Law were included in the report to [P.23/2019](#).

The primary purpose of the Law is to provide a statutory basis for Jersey’s legal aid scheme.

### Legal Aid Guidelines Advisory Committee

The Law, when enacted, will formally establish the Legal Aid Guidelines Advisory Committee which advises and assists the Chief Minister in making the Legal Aid Guidelines. The Committee is Chaired by the Judicial Greffier and includes representatives of the Bailiff, Chief Minister, Law Society, States Assembly, as well as the Bâtonnier, Attorney General, and Magistrate’s Court Greffier or nominees of those office holders.

Since the adoption of the Law on 1st May 2019, the Guidelines Committee have been meeting in shadow form and have undertaken comprehensive work to develop a proposed Legal Aid Scheme for Jersey. The Committee completed the majority of its work in this respect by March 2020, and I am grateful to the Committee for the pace and thoroughness of its work.

The final work to refine the Committee’s proposed Scheme, and present it in a publishable form, was delayed both by the COVID-19 pandemic (which as Members will know also impacted significantly on the work of the Courts), and due to the Committee seeking clarity as to the means by which the Criminal Legal Aid Scheme might be funded. This work, in turn, was itself delayed due to policy officer resource being re-directed to deal with the challenges of Covid.

It is envisaged that draft Regulations under Article 6 of the [Costs in Criminal Cases \(Jersey\) Law 1961](#) will be lodged prior to a proposed Scheme being laid before the States, and that this will contribute towards meeting the cost of the publicly funded criminal legal aid scheme. Work in this respect, and to ensure that any further funds required to meet the costs of criminal legal aid are provided, is ongoing.

For the reasons outlined above, the proposed legal aid scheme was ultimately submitted to the Chief Minister’s office in November 2020. It has since been shared in confidence with the Legal Aid Review Panel and other key stakeholders and will be published in accordance with the process set out in the Law in due course.

Accordingly, the requirements set out in Article 6 of the Law have already been met. In the event that the States adopt this Appointed Day Act, the process leading to the publication of the final Guidelines will follow that as set out in Article 7 of the Law.

### **The Appointed Day Act**

This Appointed Day Act brings Articles 1, 6, 7, 8, and 9 of the Law into force on the day after the Act is made. This allows the Legal Aid Guidelines Advisory Committee to be officially constituted so it can formally advise and assist the Chief Minister to make Legal Aid Guidelines. The process leading to the publication of final Legal Aid Guidelines under Article 7 can also take place.

The Act provides for the remaining provisions, excluding Article 11, to come into force on the day on which the first Legal Aid Guidelines published by the Chief Minister come into effect (having met all the requirements as set out in Article 7).

It should be noted that Article 7(4) requires the Chief Minister to publish proposals for Legal Aid Guidelines and seek representations from the public. An Order must be made under Article 7(5) stipulating how the proposals will be published, and how representations will be provided. This Order can be made without Article 18(1) and 18(2) being in force. With respect to Article 18(3), the Chief Minister will nevertheless ensure that consultation takes place with the Judicial Greffier and the Law Society before the Order is made.

As mentioned above, Article 11 of the Law (which relates to conditional fee agreements) is excluded from this Appointed Day Act. Further consideration needs to be given to this matter, including the nature and content of the Order which may be made under this Article, before it is brought into effect.

### **Financial and manpower implications**

The Law does not of itself have any direct public resource implications. It does, however, enable Guidelines to be decided upon in due course which could have resource implications. The public resource implications of the proposed revised scheme attached as an annex to P.23/2019 were included in part 4 of the report to that proposition.

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## EXPLANATORY NOTE

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The Access to Justice (Jersey) Law 2019 (Appointed Day) Act 202-, if passed, would bring into force, in 2 tranches, the provisions of the Access to Justice (Jersey) Law 2019 other than Article 11.

The first tranche, which would come into force 7 days after the act is made, brings into force the following provisions of the Law: Article 1 (interpretation), Article 6 (establishment of the Legal Aid Guidelines Advisory Committee), Article 7 (Legal Aid Guidelines), Article 8 (transfer of cases), and Article 9 (exceptional circumstances).

This has the effect of allowing the Legal Aid Guidelines Advisory Committee to be formally constituted and to report to the Minister. It also allows the Minister to consider the report and publish the Legal Aid Guidelines under Article 7 of the Law.

The second tranche brings into force the following provisions of the Law: Article 2 (duty to provide legal aid), Article 3 (establishment of the Legal Aid Scheme), Article 4 (administration of the Legal Aid Scheme), Article 5 (resources), Article 10 (contributions), Article 12 (restriction on disclosure of information), Article 13 (legal professional privilege) Article 14 (protection from liability for damages, costs and loss), Article 15 (annual report and other reports), Article 16 (rules of court), and Articles 17 to 23 (which deal with administrative issues and consequential amendments).

This tranche would come into force on the day on which the first Legal Aid Guidelines published by the Minister come into effect (the Guidelines have to be laid before the Assembly at least 4 weeks before they come into effect, and do not come into effect if there is an outstanding proposition to annul them).

The one remaining provision, Article 11 (which relates to conditional fee agreements), is freestanding and can be brought into force at a later date.







Jersey

## **ACCESS TO JUSTICE (JERSEY) LAW 2019 (APPOINTED DAY) ACT 202-**

*Made* [date to be inserted]  
*Coming into force* [date to be inserted]

**THE STATES** make this Act under Article 23 of the Access to Justice (Jersey) Law 2019<sup>1</sup> –

### **1 Commencement of certain provisions of the Access to Justice (Jersey) Law 2019**

- (1) Articles 1, 6, 7, 8 and 9 of the Access to Justice (Jersey) Law 2019<sup>2</sup> come into force on the day after this Act is made.
- (2) The remaining provisions of that Law, other than Article 11, come into force on the day on which the first Legal Aid Guidelines published by the Minister come into effect.

### **2 Citation**

This Act may be cited as the Access to Justice (Jersey) Law 2019 (Appointed Day) Act 202-.

**ENDNOTES**

**Table of Endnote References**

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<a href="#">1</a>	<i>L.11/2019</i>
<a href="#">2</a>	<i>L.11/2019</i>