

# ORDER IN COUNCIL

VI  
2004

ratifying a Projet de Loi

ENTITLED

## The Legal Aid (Bailiwick of Guernsey) Law, 2003

(Registered on the Records of the Island of Guernsey  
on the 29th March, 2004.)



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2004

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 29th day of March, 2004 before Sir de Vic Carey, Bailiff; present:—  
David Charles Lowe, Laurence Lenfestey Guille, Derek Martin Le  
Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson,  
David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend  
Peter Gerald Lane, Michael John Wilson, Michael Henry De La  
Mare, Michael John Tanguy, Esquires, and Susan Mowbray, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 11th day of February, 2004, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Legal Aid (Bailiwick of Guernsey) Law, 2003”, THE COURT, after the reading of the said Order in Council and having heard Her Majesty’s Comptroller thereon, ORDERED:-

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively.

# At the Court at Buckingham Palace

The 11th day of February, 2004

PRESENT,

## The Queen's Most Excellent Majesty in Council

THE FOLLOWING, report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“IN ACCORDANCE WITH YOUR MAJESTY’S General Order of Reference of the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolutions of the 25th of July, 2001, and the 1st August, 2003, the States of Deliberation at a meeting on the 1st August, 2003, approved a Projet de Loi entitled “The Legal Aid (Bailiwick of Guernsey) Law, 2003” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 17th September, 2003 considered the Projet de Loi when a Resolution was passed agreeing to its application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 1st October, 2003, considered the Projet de Loi when a Resolution was passed agreeing to its application to Sark. That the Projet de Loi is set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction “The Legal Aid (Bailiwick of Guernsey) Law, 2003”, and to order that it shall have force of law in the Bailiwick of Guernsey.

“THE COMMITTEE have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it.”

HER MAJESTY, having taken the Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

HER MAJESTY'S Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

*G. Donald*

# PROJET DE LOI

ENTITLED

## **The Legal Aid (Bailiwick of Guernsey) Law, 2003**

### ARRANGEMENT OF SECTIONS

#### PART I

##### PURPOSE OF THE LAW

1. Purpose of this Law.

#### PART II

##### OFFICE OF THE ADMINISTRATOR

2. Establishment of the Office of the Legal Aid Administrator.
3. Functions of the Administrator.
4. Powers of the Administrator.
5. Confidentiality.
6. Annual reports.
7. Civil proceedings to recover sums due to the Administrator.
8. Miscellaneous matters concerning the Administrator and his functions.

#### PART III

##### LEGAL AID FUND

9. Establishment of legal aid fund.
10. Grants and loans to the Administrator.



11. Investment of surplus funds.
12. Exemption from income tax.
13. Accounts and audit.

#### PART IV

#### POWERS TO MAKE PROVISION FOR THE PURPOSES OF THIS LAW BY ORDINANCE

14. Power to prescribe a Scheme.
15. Power to make provision for reimbursement to the Administrator out of payments made under this Law.
16. Power to make provision for the payment of costs in proceedings involving a legally assisted party.
17. Power to make provision for appeals.
18. Power to establish Legal Aid Board.
19. Power to enable authorised lawyer to represent legally assisted person etc.

#### PART V

#### REALTY CHARGING AND PERSONALTY ASSIGNMENT ORDERS

20. Realty charging orders.
21. Personalty assignment orders.
22. Application for orders and powers to make rules of practice and procedure.
23. Powers to vary and revoke orders.
24. Meaning of “the relevant sum” in this Part.

#### PART VI

#### DUTY OF COURTS

25. Duty of court and tribunal in proceedings involving a legally assisted party.

PART VII  
MISCELLANEOUS AND GENERAL

*Miscellaneous*

- 26. Law not generally to affect position of lawyers or other parties.
- 27. Selection and assignment of lawyers.

*Offences*

- 28. Offences and penalties.

*General*

- 29. Interpretation.
- 30. Ordinances, orders, regulations and rules.
- 31. Orders, regulations and rules: consultation and laying before the States.
- 32. Repeals.
- 33. Citation.
- 34. Commencement.

First Schedule - The Office of the Administrator

Second Schedule - Repeals

# PROJET DE LOI

ENTITLED

## **The Legal Aid (Bailiwick of Guernsey) Law, 2003**

**THE STATES**, in pursuance of their Resolutions of the 25<sup>th</sup> July 2001<sup>a</sup> and the 1<sup>st</sup> August 2003<sup>b</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

### PART I

#### PURPOSE OF THE LAW

##### **Purpose of this Law.**

1. The principal purpose of this Law is to establish a statutory framework for the efficient provision (at reasonable cost to -

- (a) the States;
- (b) the States of Alderney;
- (c) the Chief Pleas of Sark; and
- (d) any other provider of financial assistance under this Law)

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<sup>a</sup> Article VI of Billet d'État No. XVII of 2001.

<sup>b</sup> Article I of Billet d'État No. XIX of 2003.



of legal assistance throughout the Bailiwick with a view, when the interests of justice so require, to helping persons who might otherwise be unable to obtain that assistance on account of their means.

## PART II

### OFFICE OF THE ADMINISTRATOR

#### **Establishment of the Office of the Legal Aid Administrator.**

2. (1) There shall stand established an office to be known as the Office of the Legal Aid Administrator (referred to in this Law as the “**Office of the Administrator**”), and the holder of that office shall be known as the Administrator.

(2) The States shall, on the recommendation of the States Advisory and Finance Committee (referred to in this Law as the “**Committee**”), appoint the Administrator who shall carry out the functions assigned or transferred to the Administrator by or under this Law or any other enactment.

(3) The terms and conditions of the Administrator's appointment shall be such as may from time to time be agreed between the Committee and the Administrator, provided that none of those terms and conditions shall be -

- (a) inconsistent with any provision of the First Schedule to this Law; or
- (b) construed so as to create a contract of employment or agency between the States and the Administrator.

(4) The Office of the Administrator is not a committee, servant or agent of the States and, except to the extent provided otherwise in this Law or any

other enactment -

- (a) is not subject to any rule of law relating to a committee of the States; and
- (b) does not have any of the rights or privileges vested in a committee of the States.

(5) The provisions of the First Schedule to this Law shall have effect with respect to the Office of the Administrator.

**Functions of the Administrator.**

3. The functions of the Administrator shall be -

- (a) to implement, manage and administer any Scheme created under section 14 (referred to in this Law as a “**Scheme**”), including, without prejudice to the generality of the foregoing  
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- (i) securing that adequate information concerning a Scheme is made available to any person who is or may be eligible for legal assistance under the provisions of the Scheme;
- (ii) determining applications for eligibility for legal assistance under the provisions of a Scheme; and
- (iii) assessing applications for payments to be made in accordance with the provisions of a Scheme;

- (b) to authorise the payment of monies due to persons in accordance with the provisions of a Scheme; and
- (c) to carry out such other functions as the States may by Ordinance or any other enactment assign or transfer to him.

**Powers of the Administrator.**

4. The Administrator may, having regard to the provisions of this Law, do anything that appears to him to be necessary or expedient for the purpose of carrying out his functions and, without prejudice to the generality of the foregoing, he shall have power -

- (a) to grant or refuse applications for legal assistance under the provisions of a Scheme;
- (b) to grant applications for legal assistance under the provisions of a Scheme subject to such conditions or limitations as may be provided for under the provisions of a Scheme;
- (c) to require the production of such documents, accounts or information from applicants for legal assistance under the provisions of a Scheme, as he may require for the purposes of properly assessing any application for assistance and to defer determination until any requirement is satisfied;
- (d) to revoke any grant of entitlement to legal assistance under the provisions of a Scheme;
- (e) to vary the conditions or limitations to which any grant of entitlement to legal assistance under the provisions of a

Scheme is subject;

- (f) to appoint any person or body to assist or advise him in relation to the carrying out of any of his functions;
- (g) to enter into any contract, including, without prejudice to the generality of the same, a contract -
  - (i) for the supply of legal services;
  - (ii) of insurance; or
  - (iii) of employment;
- (h) to grant an exclusive or non exclusive franchise for the supply of legal services in accordance with the provisions of a Scheme;
- (i) to make any arrangement with any person;
- (j) to terminate the obligations of the States under the provisions of any contract, agreement or other form of arrangement for or relating to the provision of legal assistance (including, by way of example, any agreement to pay an Advocate's costs and expenses) entered into or made by the States prior to the commencement of this section, in such manner and subject to such conditions and other matters as the States may by Ordinance provide;
- (k) to disclose to such persons, such information relating to

legally assisted persons and applicants for legal assistance under the provisions of a Scheme, in such circumstances, for such purposes and subject to such conditions as the States may by Ordinance provide; and

- (l) to do such other things as the States may by Ordinance assign or transfer to him.

**Confidentiality.**

5. (1) Any document or information from which an individual or body may be identified and which is acquired by the Administrator in the carrying out of any of his functions shall be regarded as confidential by the Administrator and by his officers and servants.

(2) No document or information of a description referred to in subsection (1) may be disclosed without the consent of every individual who, and every body which, can be identified from that document or information, except to the extent that its disclosure -

- (a) is expressly authorised or required by or under this Law or any other enactment; or
- (b) subject to subsection (3), appears to the Administrator to be necessary -
  - (i) to enable the Administrator to carry out his functions;
  - (ii) in the interests of the investigation, detection, prevention or prosecution of crime within or

outside the Bailiwick;

(iii) in connection with the discharge of any international obligation to which the Bailiwick, or any part of the Bailiwick, may from time to time be subject; or

(iv) to comply with an order of a court exercising jurisdiction within the Bailiwick.

(3) The exceptions created by subsections (2)(b)(ii) and (iii) shall not apply in relation to any document or information of a description referred to in subsection (1) where the subject matter of the document or the information consists of material which is subject to legal professional privilege.

(4) Without prejudice to subsections (1) and (2), any document or information communicated to the Administrator by a committee of the States shall, if that committee so requests, be regarded as confidential by the Administrator and by any person to whom the Administrator has delegated the carrying out of any function or appointed as Deputy Legal Aid Administrator under paragraph 6 or 7 of the First Schedule to this Law; and no such document or information shall be disclosed except -

(a) in compliance with an order of a court exercising jurisdiction within the Bailiwick; or

(b) with the leave of that committee, for any reason set out in subparagraphs (i) to (iii) of subsection (2)(b).

(5) A person who discloses any document or information or who

causes or permits the disclosure of any document or information in contravention of this section shall be guilty of an offence and liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

**Annual reports.**

6. The Committee shall lay before the States any report prepared by the Administrator under paragraph 5 of the First Schedule to this Law.

**Civil proceedings to recover sums due to the Administrator.**

7. (1) Any sum due to the Administrator under this Law shall (without prejudice to any other remedy) be recoverable by the Administrator as a civil debt.

(2) Proceedings for the recovery as a civil debt of any sum due to the Administrator shall be brought within a period of six years immediately following the day on which the cause of action accrued.

**Miscellaneous matters concerning the Administrator and his functions.**

8. (1) The Administrator may sue and be sued as Administrator.

(2) The Administrator shall carry out his functions with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with the purpose and provisions of or made under or by this Law and any other enactment or instrument assigning or transferring functions to him.



(3) The States may, on the recommendation of the Committee made after consultation with -

- (a) where that recommendation affects the interests of Alderney, the Policy and Finance Committee of the States of Alderney;
- (b) where that recommendation affects the interests of Sark, the General Purposes and Finance Committee of the Chief Pleas of Sark; and
- (c) the Administrator,

by Resolution assign or transfer to the Administrator such other functions as the States may decide are necessary or expedient in relation to the administration of a Scheme.

(4) The States may by Ordinance provide that no liability shall be incurred by -

- (a) the Administrator; or
- (b) any person -
  - (i) to whom the Administrator has, under paragraph 6 of the First Schedule to this Law, delegated the carrying out of any function; or
  - (ii) appointed as Deputy Legal Aid Administrator

under paragraph 7 of that schedule,

in respect of anything done or omitted to be done in the carrying out or purported carrying out of his functions unless the thing was done or omitted to be done in bad faith.

### PART III FINANCIAL PROVISIONS

#### **Establishment of Legal Aid Fund.**

9. (1) The Administrator shall establish a fund to be known as the Legal Aid Fund (referred to in this Law as the “**Fund**”) which shall vest in the Administrator.

(2) The Administrator may open, operate and close bank accounts for the Fund.

(3) The States may by Ordinance make such provision as they think fit concerning payments into and out of the Fund including, without prejudice to the generality of the foregoing, the purposes for which any such payments out of the Fund are to be applied.

#### **Grants and loans to the Administrator.**

10. (1) The States may, on the recommendation of the Committee made after consultation with the Administrator, and on such terms and conditions (whether as to repayment, payment of interest or otherwise) as they think fit, make grants or loans from the general revenue account of the States towards the costs and expenditure of the Administrator incurred in the carrying out of his functions.

(2) The States shall, before making any grant or loan under

subsection (1), satisfy themselves that the costs and expenditure or estimated costs and expenditure of the Office of the Administrator in any year is likely to exceed, or has exceeded, the income or estimated income of that Office in that year.

(3) The States of Alderney and the Chief Pleas of Sark may exercise the same powers in respect of grants or loans from funds vested in them as may be exercised by the States under subsection (1) in respect of grants or loans from the general revenue account of the States, subject in each case to satisfying themselves in accordance with subsection (2) and upon the recommendation of -

- (a) in the case of the States of Alderney, the Policy and Finance Committee of the States of Alderney; and
- (b) in the case of the Chief Pleas of Sark, the General Purposes and Finance Committee of the Chief Pleas of Sark.

#### **Investment of surplus funds.**

11. The Administrator may invest any monies of the Fund which are not immediately required by him in any investment approved for the purpose by the Committee in writing.

#### **Exemption from income tax.**

12. The Fund and the income thereof is not subject to income tax under the Income Tax (Guernsey) Law, 1975<sup>c</sup>.

#### **Accounts and audit.**

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<sup>c</sup> Ordres en Conseil Vol. XXV, p. 124; there are amendments which are not material to this Law.

13. (1) The Administrator shall -

- (a) keep proper accounts and proper records in relation to those accounts; and
- (b) prepare in respect of each year a statement of account giving a true and fair view of the state of affairs of the Office of the Administrator.

(2) The accounts of the Office of the Administrator, including the accounts relating to the Fund -

- (a) shall be audited annually by auditors appointed by the Administrator with the approval of the Committee; and
- (b) shall be submitted to the Committee which shall in turn submit them, together with the auditors' report thereon, to the Policy and Finance Committee of the States of Alderney, the General Purposes and Advisory Committee of the Chief Pleas of Sark and the States with the Administrator's report made under section 6.

#### PART IV

#### POWERS TO MAKE PROVISION FOR THE PURPOSES OF THIS LAW BY ORDINANCE

##### **Power to prescribe a Scheme.**

14. (1) Subject to subsection (4), the States may by Ordinance create

a Scheme for the purposes of this Law and a Scheme created by an Ordinance under this subsection may make any provision the States may consider appropriate in order to give full effect to the purposes of this Law throughout the Bailiwick.

(2) The powers of the States to create a Scheme by or under this Law shall be construed as widely as possible and, for the avoidance of any doubt, may be exercised from time to time -

- (a) to create more than one Scheme;
- (b) to amend, augment or replace a Scheme;
- (c) to terminate a Scheme; and
- (d) to create a Scheme, or make special provision in a Scheme, in respect of both Alderney and Sark or Alderney or Sark.

(3) Without prejudice to the generality of subsections (1) and (2), an Ordinance creating a Scheme may prescribe the following matters -

- (a) the nature and extent of any legal assistance which is available under the provisions of a Scheme;
- (b) the circumstances and conditions in and subject to which a person is or may be eligible for legal assistance under the provisions of a Scheme;
- (c) the circumstances in which a legally assisted person, or another person on behalf of that legally assisted

person, may be required to pay a contribution to the Administrator in respect of legal assistance under the provisions of a Scheme, including, without prejudice to the generality of the foregoing -

- (i) the amount of any contribution;
  - (ii) the method of payment of any contribution (including, whether it be by way of periodical payments, a capital sum or sums or otherwise); and
  - (iii) the circumstances in which there may be due to the assisted person, and the amount of, any refund of any contribution or part of any contribution;
- (d) the rates of remuneration which may be paid for legal services rendered for the purposes of providing legal assistance under the provisions of a Scheme;
- (e) the persons to whom and the circumstances and conditions in and subject to which payments may be made in respect of-
  - (i) legal or other services rendered; and
  - (ii) expenses incurred,

for the purposes of providing legal assistance under

the provisions of a Scheme;

- (f) the implementation of any international obligations, agreements or arrangements -

- (i) to which the Bailiwick is a party; or

- (ii) which apply in respect of the Bailiwick,

concerning the provision of legal assistance within or outside the Bailiwick; and

- (g) the terms and conditions upon which any person or firm of lawyers may be employed or engaged by the Administrator for the purposes of providing legal assistance under the provisions of a Scheme.

(4) Unless and until approved by a resolution of the Chief Pleas of Sark which is registered in accordance with subsection (5), the provisions of an Ordinance made under this section -

- (a) creating a Scheme; or

- (b) making special provision in a Scheme,

in respect of Sark, shall not have effect insofar as they relate to Sark.

(5) The Seneschal of Sark shall cause a true written copy of the wording of a resolution made under subsection (4) to be sent to the Law Officers who shall, upon receipt thereof, make application to the Royal Court, sitting as a



Full Court, for an order that the same shall be registered on the Records of the Island of Guernsey.

**Power to make provision for reimbursement to the Administrator of payments made under this Law .**

**15.** (1) The States may by Ordinance make such provision as they think fit in relation to the reimbursement to the Administrator -

- (a) in whole or in part; and
- (b) over such period of time and subject to such conditions as may be prescribed,

of payments made under this Law in respect of a legally assisted person.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for or concerning -

- (a) any sums recovered by virtue of an order or agreement for costs made in favour of a legally assisted person with respect to any proceedings;
- (b) reimbursement to the Administrator by another person (including a parent or guardian of the legally assisted person) of payments made under this Law in respect of a legally assisted person; and
- (c) any rights which a legally assisted person may have to be indemnified against expenses incurred in connection

with any proceedings, including provision that, in prescribed circumstances, any such rights shall enure for the benefit of the Administrator.

**Power to make provision for the payment of costs in proceedings involving a legally assisted party.**

16. (1) The States may by Ordinance make such provision as they think fit in relation to orders for costs made in proceedings involving a legally assisted party.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for or concerning the payment by the Administrator of the whole or part of any costs incurred by an unassisted party in civil proceedings where a legally assisted person is a party and which are finally decided in favour of that unassisted party.

**Power to make provision for appeals.**

17. (1) The States may by Ordinance make such provision as they think fit in relation to the fair determination of appeals or challenges against or concerning decisions taken by the Administrator in the carrying out of his functions under -

- (a) this Law;
- (b) any Ordinance or instrument made under this Law; or
- (c) any other enactment or instrument assigning or transferring functions to the Administrator.

(2) Without prejudice to the generality of the power under

subsection (1), an Ordinance made thereunder may make provision for or concerning -

- (a) the rights of any person aggrieved by a decision of the Administrator to make an appeal or challenge against or concerning that decision including, without limitation, all matters necessary for and ancillary to the exercise of such rights, including -
  - (i) the types of decisions against or concerning which an appeal or challenge may be made;
  - (ii) the grounds upon which an appeal or challenge may be made; and
  - (iii) the period of time within which an appeal or challenge may be made; and
- (b) the establishment of a tribunal with powers to determine any appeal or challenge against or concerning a decision of the Administrator including, without limitation, all matters necessary for ensuring that any such tribunal may exercise its powers of determination fairly, expeditiously and effectively, including -
  - (i) the procedure to be followed by the tribunal;
  - (ii) the powers of the tribunal to make awards of costs, fees, expenses and allowances (including

the expenses and allowances of members of the tribunal);

- (iii) the court or other body which may determine appeals against determinations made by any such tribunal and the grounds upon and circumstances in which such appeals may be made.

**Power to establish Legal Aid Board.**

**18.** (1) The States may by Ordinance, if they think fit, establish a Legal Aid Board (referred to in this Law as “**the Board**”) which shall -

- (a) carry out such functions;
- (b) have such rights; and
- (c) be subject to such obligations,

as the States may by Ordinance assign or transfer to it or otherwise provide.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for or concerning -

- (a) the constitution and membership of the Board;
- (b) the funding of the Board and the carrying out of its functions;

- (c) the Board to carry out, instead of, in addition to or in conjunction with the Administrator, any or all functions that the Administrator is authorised to carry out by or under -
  - (i) this Law;
  - (ii) any Ordinance or instrument made under this Law; or
  - (iii) any other enactment or instrument assigning or transferring functions to the Administrator;
- (d) appeals or challenges against or concerning decisions taken by the Board in the carrying out of its functions; and
- (e) the manner in which the Board may carry out its functions.

**Power to enable authorised lawyer to represent legally assisted person etc.**

**19.** (1) Subject to subsection (4), the States may by Ordinance make such provision as -

- (a) they think fit; or
- (b) may be necessary,

to enable an authorised lawyer who is providing legal assistance under the provisions of a Scheme, effectively and lawfully to represent a legally assisted

person before a court exercising jurisdiction within the Bailiwick.

(2) Without prejudice to the generality of the power under subsection (1), an Ordinance made thereunder may make provision for or concerning -

- (a) the class or description of legally assisted person who may be represented by an authorised lawyer;
- (b) the class or description of matters in respect of which an authorised lawyer may represent a legally assisted person;
- (c) the rights and privileges which an authorised lawyer shall enjoy when representing a legally assisted person;
- (d) the obligations to which an authorised lawyer shall be subject when representing a legally assisted person; and
- (e) the amendment of any other enactment or instrument which may be necessary or convenient to facilitate the purposes of subsection (1).

(3) For the purposes of this section, an “**authorised lawyer**” means a person (other than an Advocate) who falls within such description or class of persons as the States may, subject to subsection (4), by Ordinance specify.

(4) The provisions of an Ordinance made under this section shall

have no effect unless approved by an order of the Royal Court made under this section.

## PART V

### REALTY CHARGING AND PERSONALTY ASSIGNMENT ORDERS

#### **Realty charging orders.**

20. (1) Subject to subsection (6), a court may make a realty charging order in respect of any relevant real property securing the payment to the Administrator of the relevant sum or part thereof.

(2) For the purposes of this Law, a realty charging order is an order made under this section, imposing on any relevant real property a charge for securing the payment of money to the Administrator

(3) Upon submission of a true copy a realty charging order, it shall forthwith be registered -

- (a) if the relevant real property in respect of which it is made is in Guernsey, in the Livre des Hypothèques, Actes de Cour et Obligations at the Greffe in Guernsey;
- (b) if the relevant real property is in Alderney, by noting it against the entry relating to the land concerned in the Alderney Land Register as if an application had been made under section 18(1) of the Alderney Land



and Property, etc, Law, 1949<sup>d</sup> and concurred in by the registered owner of the land as mentioned in section 18(2) of that Law;

- (c) if the relevant real property is in Sark, at the Greffe in Sark as if it were a judgment debt ordered to be registered against the real property concerned by an Act of the Court of the Seneschal.

(4) A realty charging order shall have effect as a preliminary vesting order in favour of the Administrator (with priority from the date of its registration); except that, notwithstanding any rules of court or rules of customary law to the contrary, the Administrator shall remain entitled to levy execution upon, and to recover out of, the personal property of the legally assisted party whose real property is subject to the charging order, all or any part of the relevant sum.

- (5) In this section, unless the context otherwise requires -

“**court**” means -

- (a) the court conducting the proceedings in the course of which the relevant real property is recovered or preserved; or
- (b) where the relevant real property is recovered or preserved under any compromise or settlement and the property is situate in -

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<sup>d</sup> Ordres en Conseil Vol. XIV, p. 67; Vol. XV, p. 268; Vol. XVI, p. 202; Vol. XXVIII, p. 576; Vol. XXIX, p. 156; Order in Council No. VII of 1994.

- (i) Guernsey, the Royal Court;
- (ii) Alderney, the Court of Alderney; and
- (iii) Sark, the Court of the Seneschal;

**“relevant real property”** means real property which -

- (a) is specified in an order made under subsection (1); and
- (b) is recovered or preserved for a legally assisted person

-

- (i) in the course of any proceedings; or
- (ii) under any compromise or settlement arrived at

-

(aa) to avoid any proceedings; or

(bb) to bring them to an end; and

**“the relevant sum”** has the meaning given by section 24.

(6) Unless and until approved by a resolution of the Chief Pleas of Sark which is registered in accordance with subsection (7), the provisions of this section shall not enable a court to make a realty charging order in respect of relevant real property situate in Sark.

(7) The Seneschal of Sark shall cause a true written copy of the wording of a resolution made under subsection (4) to be sent to the Law Officers who shall, upon receipt thereof, make application to the Royal Court, sitting as a Full Court, for an order that the same shall be registered on the Records of the Island of Guernsey.

(8) The registration of a realty charging order under this section shall not be subject to the payment of any duty, charge or fee including, for the avoidance of doubt, any document duty payable under the provisions of the Document Duty (Guernsey) Law, 1973<sup>e</sup>.

**Personalty assignment orders.**

**21.** (1) A court may make a personalty assignment order in respect of any relevant personal property enabling the Administrator to use or apply that property in, or to secure or obtain, payment to the Administrator of the relevant sum or part thereof.

(2) For the purposes of this Law, a personalty assignment order -

- (a) is an order made under this section assigning the legal title or right to any relevant personal property to the Administrator; and
- (b) shall have effect as an absolute assignment by the legal owner of the title or right to the relevant personal property to the Administrator.

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<sup>e</sup> Ordres en Conseil Vol. XXIV, pp 74 and 236; Vol. XXV, p. 43; Order in Council No. XXVI of 2002; Recueil d'Ordonnances Tome XXVI, pp. 139 and 465; Ordinance No. IX of 1997; No. XXII of 2000; No. XXXVI of 2001 and No. VI of 2003.

(3) Where relevant personal property vested in the Administrator by a personalty assignment order -

(a) is sold or otherwise disposed of by the Administrator for the purposes of raising cash; and

(b) the amount of cash so raised exceeds the relevant sum,

the Administrator shall pay any excess to the legally assisted person.

(4) In this section, unless the context otherwise requires -

“**court**” means -

(a) the court conducting the proceedings in the course of which the relevant personal property is recovered or preserved; or

(b) where the relevant personal property is recovered or preserved under any compromise or settlement and the legally assisted person for whom the property is recovered or preserved is resident in -

(i) Guernsey, the Royal Court;

(ii) Alderney, the Court of Alderney; or

(iii) Sark, the Court of the Seneschal;

**“relevant personal property”** means personal property which is recovered or preserved for a legally assisted person -

- (a) in the course of any proceedings; or
- (b) under any compromise or settlement arrived at -
  - (i) to avoid any proceedings; or
  - (ii) to bring them to an end; and

**“the relevant sum”** has the meaning given by section 24.

**Applications for orders and power to make rules of procedure and practice.**

**22.** (1) The Royal Court may by order make rules prescribing -

- (a) the circumstances in which an Advocate shall be under a duty to make an application for an order under sections 20 and 21; and
- (b) the penalties to which an Advocate, who fails to perform any duty to make such an application, may be subject.

(2) Any court exercising jurisdiction within the Bailiwick, may by order make rules governing the practice and procedure to be used in its proceedings in connection with applications for orders under sections 20 and 21.

(3) An order made under subsection (2) by a court other than the Court of Appeal or the Royal Court shall not come into force unless and until

approved by the Royal Court.

(4) Subsections (2) and (3) shall not prevent a court from making an effective order under section 20 or 21 which it is necessary to make for the purposes of preserving an interest in any relevant real property (as that phrase is defined for the purposes of section 20) or relevant personal property (as that phrase is defined for the purposes of section 21).

**Powers to vary and revoke orders.**

23. (1) For the avoidance of doubt, the powers of a court under sections 20 and 21 to make orders include powers to vary and revoke the same.

(2) A court exercising appellate jurisdiction in respect of a decision made by another court (“**the inferior court**”) may, where it thinks fit, direct the inferior court to vary or revoke an order which that court has made under section 20 or 21, in which case, the inferior court shall so vary or revoke the same.

**Meaning of “the relevant sum” in this Part.**

24. In this Part, unless the context otherwise requires, “**the relevant sum**” means the amount of the sums paid or payable by the Administrator in accordance with the provisions of a Scheme, so as to provide legal assistance in connection with proceedings for a legally assisted person, being sums not recouped by the Administrator by sums which are recoverable by virtue of -

- (a) any order or agreement for costs made in favour of the legally assisted person with respect to those proceedings; or
- (b) any right of his to be indemnified against expenses incurred by him in connection with those proceedings.

PART VI  
DUTY OF COURTS AND TRIBUNALS

**Duty of court and tribunal in proceedings involving a legally assisted party.**

25. (1) Any court or tribunal shall carry out its functions in any legal proceedings involving a legally assisted party, in such manner as is intended to ensure that only such expenditure payable under or by virtue of this Law is incurred, as is reasonably necessary in the interests of justice in connection with those proceedings.

(2) Subject to subsection (4) a court may by order prescribe rules of practice and procedure for the purposes of subsection (1) including, without prejudice to the generality of the same, rules concerning the taxation of costs of parties to proceedings in which a legally assisted party is a party.

(3) Without prejudice to the generality of the power under subsection (2), orders made thereunder may make provision for or concerning -

- (a) special or particular rules of practice and procedure which shall apply in legal proceedings involving a legally assisted party; and
- (b) in the case of the Royal Court, the duties of Advocates appearing before the Royal Court and any other court, in legal proceedings involving a legally assisted party.

(4) An order made under this section by a court other than the Court of Appeal or the Royal Court shall not come into force unless and until approved by the Royal Court.



(5) A tribunal may by order prescribe rules of practice and procedure for the purposes of subsection (1).

PART VII  
MISCELLANEOUS AND GENERAL

*Miscellaneous*

**Law not generally to affect position of lawyers or other parties.**

**26.** (1) Except as expressly provided by or under this Law -

- (a) the fact that the services of a lawyer are given under this Law or the provisions of a Scheme shall not affect the relationship between or rights of the lawyer and client or any privilege arising out of such relationship; and
- (b) the rights conferred by or under this Law on a person receiving legal assistance under it or the provisions of a Scheme shall not affect the rights or liabilities of other parties to the proceedings or the principles on which the discretion of any court or tribunal is normally exercised.

(2) Without prejudice to the generality of subsection (1)(b) above, for the purpose of determining the costs of a legally assisted person in pursuance of an order for costs or an agreement for costs in his favour the services of his lawyer shall be treated as having been provided otherwise than under this Law or the provisions of a Scheme.

(3) A person who provides legal assistance under this Law shall not take any payment in respect of that assistance except such payment as is made by the Administrator or authorised by or under this Law.

(4) The revocation under this Law of a grant of legal assistance to a legally assisted person shall not affect the right of any lawyer of his, arising otherwise than under a contract, to remuneration for work done before the date of the revocation.

**Selection and assignment of lawyers.**

27. (1) Subject to the provisions of -

- (a) this section;
- (b) a Scheme;
- (c) an instrument; or
- (d) any other enactment

a person entitled to receive legal assistance may select the lawyer to assist him from among the lawyers willing to provide assistance under this Law.

(2) The selection by or assignment to a person of a lawyer shall not prejudice the law and practice relating to the conduct of proceedings by a lawyer or the circumstances in which a lawyer may refuse or give up a case or entrust it to another.

*Offences*

**Offences and penalties.**

28. (1) A person who, for the purpose of obtaining legal assistance or any payment under any provision of this Law or any Ordinance or instrument made under this Law, whether for himself or some other person, or for the purpose of evading payment of any contribution payable under any such provision, or for any other purpose connected with this Law -

- (a) knowingly makes a false statement or false representation; or
- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

is guilty of an offence.

(2) A person who is guilty of an offence under subsection (1) is liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both; or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding level 5 on the uniform scale, or to both.

(3) Where a person is charged with an offence under subsection (1) which concerns the evasion of the payment of any contribution, then, whether or

not he is convicted of that offence, the contribution shall be recoverable from him as a civil debt by the person to whom payment was due.

(4) A person who contravenes or attempts to contravene any regulation under this Law is guilty of an offence and liable on summary conviction to such penalty as may be prescribed: provided that the penalty in respect of such an offence shall not exceed a fine of level 4 on the uniform scale or, in the case of a person's second or subsequent conviction of such an offence, level 5 on the uniform scale.

(5) Regulations may provide that the proviso to subsection (4) shall not apply to a contravention or attempted contravention of any of those regulations.

(6) Where an offence under this Law committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and punishable accordingly.

(7) Nothing in this section shall prevent the Administrator from recovering by civil proceedings any sums due to him.

### *General*

#### **Interpretation.**

**29.** (1) In this Law, unless the context otherwise requires -

“**advice**” means oral or written advice on the application of the laws

of Guernsey, Alderney or Sark to any particular circumstances that have arisen in relation to the person seeking the advice and as to the steps which that person might appropriately take having regard to the application of the laws to those circumstances;

“**Advocate**” means an Advocate of the Royal Court of Guernsey;

“**Alderney**” means the Island of Alderney including its dependencies;

“**assistance**” means assistance in taking any steps which a person might take, including steps with respect to proceedings, having regard to the application of the laws of Guernsey, Alderney or Sark to any particular circumstances that have arisen in relation to him, whether by taking such steps on his own behalf (including assistance by way of representation) or by assisting him in taking them on his own behalf;

“**authorised lawyer**” has the meaning given by section 19(3);

“**Bailiwick**” means the Bailiwick of Guernsey;

“**Committee**” means the States Advisory and Finance Committee;

“**committee of the States**” means a committee (however described) of the States;

“**court**” means a court exercising jurisdiction in the Bailiwick;

“**Court of Appeal**” means the court established by the Court of

Appeal (Guernsey) Law, 1961<sup>f</sup>;

**“functions”** includes duties and powers and other functions assigned or transferred by or under this Law and any other enactment or instrument;

**“Fund”** means the Legal Aid Fund established under section 9;

**“instrument”** means any order (including any Order of the Royal Court), regulations, rules or other subsidiary legislative instrument;

**“lawyer”** means an Advocate or an authorised lawyer;

**“legal assistance”** includes advice, assistance and representation;

**“legally assisted party”** means a legally assisted person who is a party to legal proceedings in the Bailiwick;

**“legally assisted person”** means a person receiving legal assistance by or under any provision of this Law;

**“material which is subject to legal professional privilege”** means

- (a) communications between a lawyer and his client or any person representing his client made in connection with the giving of legal advice to the client;
- (b) communications between a lawyer and his client or any person representing his client or between such an

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<sup>f</sup> Ordres en Conseil Vol. XVIII, p. 315.

adviser or his client or any such representative and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings; and

(c) items enclosed with or referred to in such communications and made -

(i) in connection with the giving of legal advice;  
or

(ii) in connection with or in contemplation of legal proceedings and for the purposes of such proceedings,

when they are in the possession of a person who is entitled to possession of them:

Provided that material held with the intention of furthering a criminal purpose is not material subject to legal professional privilege;

**“Office of the Administrator”** means the Office of the Legal Aid Administrator established under section 2(1);

**“person”** does not include any body of persons corporate;

**“proceedings”** includes both legal proceedings before a court or tribunal and other forms of proceedings (including, by way of example and not limitation, mediation and arbitration) intended to resolve any form of dispute;

**“representation”** means representation for the purposes of proceedings and includes -

- (a) all such assistance as is usually given by a lawyer in the steps preliminary or incidental to any proceedings;
- (b) all such assistance as is usually so given in any proceedings in arriving or giving effect to a compromise to avoid or bring to an end those proceedings; and
- (c) advice and assistance as to any appeal;

**“the Royal Court”** means the Royal Court of Guernsey sitting as an Ordinary Court;

**“Sark”** means the Island of Sark including its dependencies;

**“Scheme”** means a scheme prescribed under section 14;

**“States”** means the States of Deliberation;

**“tribunal”** means a tribunal established by or under any enactment having effect in the Bailiwick; and

**“unassisted party”** means a party to legal proceedings within the Bailiwick who is not a legally assisted person.

- (2) Unless the context otherwise requires, a reference in this Law



to the carrying out of a function includes the performance of a duty and the exercise of a power.

(3) Unless the context otherwise requires, references in this Law and any Ordinance or instrument made under this Law to an enactment or an instrument are references thereto as amended, re-enacted (with or without modification), extended or applied.

(4) In this Law any words importing the neuter gender include the masculine and the feminine, and any words importing the masculine gender include the feminine and the neuter.

(5) The Interpretation (Guernsey) Law, 1948<sup>g</sup> applies to the interpretation of this Law throughout the Bailiwick.

(6) Unless the context otherwise requires -

- (a) a reference in this Law to a numbered or lettered Part, section, subsection, paragraph or subparagraph is a reference to the Part, section, subsection, paragraph or subparagraph of this Law which is so numbered or lettered; and
- (b) a reference in a provision of this Law to a numbered or lettered subsection or subparagraph is a reference to the subsection or subparagraph of that provision which is so numbered or lettered.

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<sup>g</sup> Ordres en Conseil Vol. XIII, p. 355.

**Ordinances, orders, regulations and rules.**

30. (1) The States may by Ordinance -
- (a) make provision -
    - (i) for the purpose of carrying this Law into effect;
    - (ii) for prescribing any matter which may be prescribed under this Law by Ordinance of the States;
  - (b) without prejudice to any other provision of this Law conferring power to enact or make Ordinances, orders, regulations or rules, amend any provision of this Law.
- (2) Any Ordinance, order, regulation or rule under this Law -
- (a) may be amended or repealed by a subsequent Ordinance, order, regulation, or rule as the case may be, hereunder;
  - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient including, without prejudice to the generality of the foregoing -
    - (i) provision as to the creation and punishment of offences in respect of contraventions of the

Ordinance, order, regulation or rule;

- (ii) provision amending or modifying any provision of this Law.

(3) Any power conferred by this Law to make any Ordinance, order, regulation or rule may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases; and

- (b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes; and

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(4) The Committee, before recommending the States to agree to make an Ordinance under this Law (other than an Ordinance under section 32 or

34) which affects the interests of Alderney or Sark shall -

- (a) in respect of the interests of Alderney, consult the Policy and Finance Committee of the States of Alderney; and
- (b) in respect of the interests of Sark, consult the General Purposes and Finance Committee of the Chief Pleas of Sark,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection shall not invalidate any Ordinance made under this Law.

(5) The requirement imposed by subsection (4) to consult the Policy and Finance Committee of the States of Alderney and the General Purposes and Finance Committee of the Chief Pleas of Sark shall include a requirement to inform the States of the views of those committees when making any recommendation to the States as to the matter consulted upon.

**Orders, regulations and rules: consultation and laying before States.**

31. Other than orders or rules which may be made by a court, orders, regulations or rules -

- (a) may be made under this Law or under an Ordinance made under this Law, by the Committee;
- (b) shall be made by the Committee -
  - (i) after consultation with the Administrator; and

- (ii) where they affect the interests of -
  - (aa) Alderney, with the agreement of the Policy and Finance Committee of the States of Alderney;  
or
  - (bb) Sark, with the agreement of the General Purposes and Finance Committee of the Chief Pleas of Sark; and
- (c) shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the order, regulations or rules be annulled, the order, regulations or rules, as the case may be, shall cease to have effect but without prejudice to anything done under them or to the making of a new order, regulations or rules.

**Repeals.**

32. The States may by Ordinance repeal the enactments specified in the Second Schedule to this Law to the extent specified therein.

**Citation.**

33. This Law may be cited as the Legal Aid (Bailiwick of Guernsey) Law, 2003.

**Commencement.**

34. This Law shall come into force on the day appointed by Ordinance of the States; and different days may be appointed for different provisions of this Law or for different purposes.

## FIRST SCHEDULE

### THE OFFICE OF THE ADMINISTRATOR

#### *Tenure of office*

1. (1) Subject to the provisions of this paragraph, the Administrator shall hold office for such term not exceeding five years as may be agreed between the Committee and the Administrator at the time of his appointment.

(2) The Administrator may only be relieved of his office before the expiration of its full term, by the Committee-

(a) pursuant to a Resolution of the States requiring the Committee so to do; or

(b) on receipt of a written request made by the Administrator.

(3) When the Administrator ceases to hold office by reason of the expiration of his term he shall be eligible for reappointment.

#### *Staffing resources etc.*

2. (1) The Committee must make available to the Administrator such number and descriptions of staff as he may reasonably require for the proper and effectual discharge of his functions.

(2) To the extent that the services of a States employee are made available to the Administrator as required by this paragraph, it is hereby declared for the avoidance of doubt that for the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>h</sup> -

- (a) that employee is an officer responsible to the Administrator;
- (b) the Administrator may arrange for any of the functions of his office to be performed in his name by that employee to the extent permitted by section 4 of that Law.

(3) The Committee must provide for the Administrator such accommodation and equipment, such secretarial and clerical services, and such other facilities, as he may reasonably request for the proper and effectual discharge and carrying out of his functions.

(4) The costs of meeting the requirements of this paragraph, as also the agreed emoluments and expenses of the Administrator, shall be paid by the Committee from the general revenue account of the States.

*Financial and accounting provisions*

3. (1) All sums received by the Administrator in the carrying out of his functions under this Law shall be paid by him to the Committee for the general revenue account of the States.

(2) Subparagraph (1) of this paragraph does not apply if and to the extent that -

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<sup>h</sup> Order in Council No. XXI of 1991.

(a) in accordance with agreed financial procedures, the Committee may otherwise direct; or

(b) the provisions of a Scheme otherwise provide.

(3) Except where the provisions of a Scheme otherwise provide, sums payable by the Administrator under this Law shall be paid on behalf of the Administrator from -

(a) the general revenue account of the States; or

(b) such other source, as the Committee may from time to time determine.

(4) The Administrator shall -

(a) maintain proper accounts and proper records in relation to those accounts; and

(b) furnish to the Committee, as often as the Committee may reasonably direct but not less frequently than once in any period of 12 months, a full and accurate statement of those accounts.

(5) For the purposes of the States Audit Commission (Guernsey) Law, 1997<sup>i</sup>, but only for those purposes, the Office of the Administrator is deemed to be a department or operation conducted by the Committee.

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<sup>i</sup> Order in Council No. XXIII of 1997.



### *Oath of office*

4. The Administrator shall, upon his appointment or as soon as reasonably practicable thereafter, take an oath or make an affirmation before the Royal Court in the following terms or in words to the like effect:

“You [swear and promise on the faith and truth that you owe to God] [do solemnly, sincerely and truly declare and affirm] that you will well and faithfully discharge the functions of the office of the Legal Aid Administrator in accordance with law; that you will exercise the powers entrusted to you only as appears necessary to you for the due discharge of those functions; and that you will not disclose any information received by you in the discharge of those functions which to your knowledge may directly lead to the identification of any person, save to persons engaged in the discharge of those functions; pursuant to an express power conferred by or under the Legal Aid (Bailiwick of Guernsey) Law, 2003; or in any other case required by law.”

### *Annual report*

5. The Administrator must report in writing to the Committee at least once in every period of 12 months as to the discharge and carrying out of his functions.

### *Delegation of functions*

6. (1) The Administrator may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions to be carried out in his name by any person named or described in the instrument, other than -

- (a) this power of delegation;
- (b) his obligation under paragraph 5 to submit an annual report to the Committee;
- (c) any function which (however framed or worded) requires him to consider representations concerning a decision which he proposes to make.

(2) A function carried out by a delegate pursuant to an arrangement made under this paragraph is for all purposes carried out by the Administrator; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Administrator.

(3) An arrangement made under this paragraph for the carrying out of a function by a delegate -

- (a) may be varied or terminated at any time by the Administrator, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement;
- (b) does not prevent the carrying out of the function by the Administrator while the arrangement subsists.

7. Without prejudice to the generality of paragraph 6, the Administrator may appoint any person as Deputy Administrator with full authority to carry out the Administrator's functions during any period during which the Administrator is unavailable; and the provisions of paragraphs 6(2) and 6(3) shall apply in relation to an appointment under this paragraph as they apply to an arrangement under

paragraph 6(1).

*Disclosure of interests*

8. The Administrator shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seized under this Law, disclose the nature of his interest to the Committee.

*Official seal*

9. (1) The Administrator shall have an official seal for the authentication of documents required for the purpose of carrying out his functions.

(2) Any document -

(a) sealed with the official seal of the Administrator; and

(b) signed by -

(i) the Administrator;

(ii) any person to whom, pursuant to paragraph 6, the Administrator has delegated authority to affix his official seal; or

(iii) by any person appointed as Deputy Legal Aid Administrator under paragraph 7,

shall be deemed to have been duly executed by or on behalf of the Administrator and shall be effective in law to bind him.

*Proof of documents*

10. In any proceedings any document purporting to be issued by or on behalf of the Administrator or to be signed by the Administrator or any person to whom, pursuant to paragraph 6 or 7, he has delegated authority to issue or sign documents on his behalf -

- (a) shall be received in evidence;
- (b) shall, unless the contrary is proved, be deemed -
  - (i) to be the document which it purports to be; and
  - (ii) to have been issued by or on behalf of the Administrator or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity; and
- (c) shall be evidence of the matters stated therein.

SECOND SCHEDULE

ENACTMENTS WHICH MAY BE REPEALED BY ORDINANCE MADE  
UNDER SECTION 32

1. Sections 33 and 36(4)(a) of the Court of Appeal (Guernsey) Law, 1961<sup>j</sup>.
2. Section 4 of the Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988<sup>k</sup>.
3. The Matrimonial Causes (Assisted Persons) Ordinance, 1952<sup>l</sup>.
4. The Matrimonial Causes (Assisted Persons) (Amendment) Ordinance, 1987<sup>m</sup>.

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<sup>j</sup> Ordres en Conseil Vol. XVIII, p. 315.

<sup>k</sup> Ordres en Conseil Vol. XXXI, p. 83.

<sup>l</sup> Recueil d'Ordonnances Tome X, p. 288.

<sup>m</sup> Recueil d'Ordonnances Tome XXIV, p. 85.