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PUBLIC DEFENDERS ACT 2022

PUBLIC DEFENDERS REGULATIONS 2022

ARRANGEMENT OF REGULATIONS

PART 1

PRELIMINARY

Regulation

1. Citation and commencement
2. Definitions

PART 2

MATTERS RELATING TO APPLICATIONS FOR GRANT OF AID

3. Prescribed means criteria
4. Prescribed classes of offences for section 12(1)(c)(i) of Act
5. Time for making fresh application under section 20 of Act

PART 3

GRANT OF AID AND RELATED MATTERS

6. General provisions for issue of Grant of Aid
7. Specific provisions for issue of Grant of Aid to minor
8. Provisional Grant of Aid
9. Amendment of and prescribed circumstances for variation of Grant of Aid
10. Effect of variation of Grant of Aid
11. Prescribed circumstances for cancellation of Grant of Aid
12. Effect of cancellation of Grant of Aid
13. Grant of Aid after commencement of proceedings

PART 4

MATTERS RELATING TO ASSIGNED SOLICITORS

14. Documents for solicitors

Regulation

15. Fees for solicitors in certain cases
 16. Costs incurred or to be incurred by solicitors in proceedings, etc.
 17. Report on progress of proceedings, etc.
 18. Discharge by solicitor
- The Schedules
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In exercise of the powers conferred by section 25 of the Public Defenders Act 2022, the Minister for Law makes the following Regulations:

PART 1**PRELIMINARY****Citation and commencement**

1. These Regulations are the Public Defenders Regulations 2022 and come into operation on 1 December 2022.

Definitions

2. In these Regulations —

“board”, in relation to a variation or cancellation of a Grant of Aid, means a board (consisting of the Chief Public Defender and at least 2 solicitors appointed to an appropriate panel of solicitors established under section 4 of the Act) mentioned in section 12(1)(c)(ii) of the Act;

“Provisional Grant of Aid” means a Grant of Aid issued on a provisional basis under section 12(4) of the Act;

“working day” means any day other than a Saturday, Sunday or public holiday.

PART 2
MATTERS RELATING TO
APPLICATIONS FOR GRANT OF AID

Prescribed means criteria

3. For the purposes of section 12(1)(a)(i) and (ii) of the Act, the prescribed means criteria are set out in the First Schedule.

Prescribed classes of offences for section 12(1)(c)(i) of Act

4. For the purposes of section 12(1)(c)(i) of the Act, the prescribed classes of offences are set out in the Second Schedule.

Time for making fresh application under section 20 of Act

5. For the purposes of section 20(1) of the Act, the prescribed time for an aided accused person to make a fresh application for criminal defence aid in connection with a criminal appeal or criminal application mentioned in section 20(1)(b) of the Act is 7 working days before the last day fixed by the court or under any written law to file the notice of appeal or the criminal application, as the case may be.

PART 3
GRANT OF AID AND RELATED MATTERS

General provisions for issue of Grant of Aid

6.—(1) The Chief Public Defender may require an individual to pay the whole or any part of a contribution under section 17 of the Act before the issue of a Grant of Aid.

(2) In determining whether a contribution under section 17 of the Act is to be paid in a lump sum or by instalments, the Chief Public Defender must have regard to all the circumstances, including the likely period during which the Grant of Aid to be issued pursuant to an application for criminal defence aid may be in force.

(3) After an application for criminal defence aid has been approved, the Chief Public Defender must notify the applicant of the terms upon which the Grant of Aid will be issued to the applicant.

(4) When an applicant has accepted the terms for the issue of a Grant of Aid and paid the whole or any part of the contribution required to be paid before the issue of the Grant of Aid, the Chief Public Defender must issue to the applicant the Grant of Aid.

Specific provisions for issue of Grant of Aid to minor

7.—(1) Subject to paragraph (2), the Chief Public Defender must not —

- (a) approve an application for the grant of criminal defence aid to a minor made on behalf of the minor by a guardian of the minor under section 10(1) of the Act; or
- (b) issue a Grant of Aid to the minor under section 12 or 20 of the Act (whichever is applicable) in connection with any proceedings,

unless the guardian has signed an undertaking to pay to the Chief Public Defender (if called upon to do so) any contribution that an aided accused person of full age and capacity in the same circumstances may be required to pay under section 17 of the Act, or under these Regulations upon cancellation of the Grant of Aid.

(2) The Chief Public Defender may in any particular case dispense with the requirement for an undertaking under paragraph (1), if the Chief Public Defender is of the opinion that the dispensation is appropriate in the circumstances.

(3) Any Grant of Aid in connection with any proceedings must be issued in the name of the minor.

(4) The Chief Public Defender may, if the Chief Public Defender considers it appropriate in the circumstances, require the guardian who made the application on behalf of the minor to also act on behalf of the minor for purposes of —

- (a) any matter relating to the issue, variation or cancellation of the Grant of Aid mentioned in paragraph (3); and
- (b) any other matter which may arise as between an aided accused person and the Chief Public Defender.

(5) For the purposes of section 10(4)(a) of the Act, the prescribed time for the giving of the written consent is 6 months after the aided accused person attains 21 years of age.

Provisional Grant of Aid

8.—(1) A Provisional Grant of Aid remains in force for a period not exceeding 3 months, unless the period is extended under paragraph (2).

(2) The Chief Public Defender may, if the Chief Public Defender considers appropriate in any particular case, extend the period mentioned in paragraph (1) by one or more further periods not exceeding 3 months each.

(3) The Provisional Grant of Aid ceases to have effect on the date that the Chief Public Defender issues a Grant of Aid under section 12(1) or 20 of the Act to the applicant in respect of the proceedings to which the Provisional Grant of Aid relates.

(4) If the Chief Public Defender does not approve an application for criminal defence aid under section 12(1) or 20 of the Act, the Chief Public Defender must as soon as practicable cancel the Provisional Grant of Aid that was issued pending the determination of that application.

(5) The Chief Public Defender must as soon as practicable notify all parties concerned if a Provisional Grant of Aid is cancelled or extended.

Amendment of and prescribed circumstances for variation of Grant of Aid

9.—(1) The Chief Public Defender may amend a Grant of Aid if it appears to the Chief Public Defender that there has been any mistake or error in the Grant of Aid.

(2) The Chief Public Defender may vary a Grant of Aid issued to an aided accused person in connection with any proceedings (called in this regulation the original proceedings) —

- (a) subject to paragraph (3), if it appears to the Chief Public Defender that it is appropriate in the circumstances within

the meaning of section 12(1)(d) of the Act that the Grant of Aid be extended to any other proceedings (called in this regulation the new proceedings), whether or not the new proceedings may be taken together with the original proceedings before the court;

- (b) subject to paragraph (4), if it appears to the Chief Public Defender that arising from any change in circumstances, there are no longer merits to the continuation of criminal defence aid for some of the original proceedings for which the Grant of Aid was issued; or
 - (c) if an aided accused person desires to change the solicitor who is acting for the aided accused person, or the solicitor assigned by the Chief Public Defender to act for the aided accused person has obtained the permission of the Chief Public Defender to discharge himself or herself from acting for the aided accused person.
- (3) Before the Chief Public Defender varies the Grant of Aid under paragraph (2)(a), the Chief Public Defender must consider whether —
- (a) there are merits to the new proceedings because —
 - (i) in the case of new proceedings that are only in respect of one or more offences that are in any class of offences set out in the Second Schedule — the requirements of section 12(1)(c)(i)(A), (B) or (C) of the Act, whichever is applicable, are satisfied; or
 - (ii) in the case of new proceedings that are in respect of one or more offences that are not in any class of offences set out in the Second Schedule — the board is of the opinion that the requirements of section 12(1)(c)(i)(A), (B) or (C) of the Act, whichever is applicable, are satisfied; and
 - (b) in the case of new proceedings that are in respect of an excluded offence — the requirements of section 12(8) of the Act are satisfied.

(4) Before the Chief Public Defender varies the Grant of Aid under paragraph (2)(b), the Chief Public Defender must consider whether —

- (a) in the case of original proceedings that are only in respect of one or more offences that are in any class of offences set out in the Second Schedule — the requirements of section 12(1)(c)(i)(A), (B) or (C) of the Act, whichever was applicable to the aided accused person's application, are no longer satisfied; or
- (b) in the case of original proceedings that are in respect of one or more offences that are not in any class of offences set out in the Second Schedule — the board is of the opinion that the requirements of section 12(1)(c)(i)(A), (B) or (C) of the Act, whichever was applicable to the aided accused person's application, are no longer satisfied.

Effect of variation of Grant of Aid

10. A Grant of Aid varied in accordance with regulation 9 takes effect on the date specified in a notice of variation issued by the Chief Public Defender to the aided accused person.

Prescribed circumstances for cancellation of Grant of Aid

11.—(1) The Chief Public Defender may cancel a Grant of Aid —

- (a) at any time at the request of the individual to whom it is issued;
- (b) where an individual has been required to make a contribution under section 17 of the Act and any payment in respect of the contribution is more than 30 days in arrears;
- (c) if the Chief Public Defender is satisfied that the proceedings to which the Grant of Aid relates have been disposed of; or
- (d) if the Chief Public Defender is satisfied that the individual to whom it is issued has died.

(2) Subject to paragraphs (3), (4) and (5), the Chief Public Defender may cancel a Grant of Aid issued to an aided accused person if —

- (a) the Chief Public Defender has reasonable grounds to suspect that the aided accused person has committed, is committing, or is attempting to commit, an offence under section 23 of the Act;
- (b) as a result of a further determination, the Chief Public Defender is satisfied that the applicable prescribed means criteria set out in the First Schedule are not satisfied;
- (c) the Chief Public Defender is satisfied that the aided accused person has breached any of the terms upon which a Grant of Aid was issued to the aided accused person;
- (d) the Chief Public Defender is satisfied that the aided accused person —
 - (i) has required the proceedings to which the Grant of Aid relates to be conducted unreasonably so as to incur an unjustifiable expense;
 - (ii) has required his or her defence to be conducted in an extravagant or unnecessary manner;
 - (iii) has required the proceedings to which the Grant of Aid relates to be commenced, continued or conducted in a manner that amounts to an abuse of the process of a court; or
 - (iv) has otherwise required unreasonably that the proceedings to which the Grant of Aid relates be continued; or
- (e) as a result of information coming to the knowledge of the Chief Public Defender after the Grant of Aid was issued or varied, the Chief Public Defender is satisfied there are no longer merits to the continuation of criminal defence aid for all of the proceedings to which the Grant of Aid relates.

(3) If the proceedings to which the Grant of Aid relates are in respect of one or more offences that are not in any class of offences set out in the Second Schedule, before the Chief Public Defender

cancels the Grant of Aid under paragraph (2)(d), the Chief Public Defender must consider whether the board is of the opinion that any of the grounds for cancellation under paragraph (2)(d) are satisfied.

(4) Before the Chief Public Defender cancels the Grant of Aid under paragraph (2)(e), the Chief Public Defender must consider whether —

- (a) if the proceedings to which the Grant of Aid relates are only in respect of one or more offences that are in any class of offences set out in the Second Schedule — the requirements of section 12(1)(c)(i)(A), (B) or (C) of the Act, whichever is applicable, are no longer satisfied in respect of all the proceedings; or
- (b) if the proceedings to which the Grant of Aid relates are in respect of one or more offences that are not in any class of offences set out in the Second Schedule — the board is of the opinion that the requirements of section 12(1)(c)(i)(A), (B) or (C) of the Act, whichever is applicable, are no longer satisfied in respect of all the proceedings.

(5) A Grant of Aid must not be cancelled under paragraph (2) unless the aided accused person is given an opportunity to show cause why the Grant of Aid should not be cancelled.

Effect of cancellation of Grant of Aid

12.—(1) Where a Grant of Aid has been cancelled under regulation 11, the individual to whom the Grant of Aid was issued remains liable for the payment of any contributions required by the Chief Public Defender under section 17 of the Act.

(2) The Chief Public Defender must notify a solicitor who has acted in any proceedings on behalf of an individual whose Grant of Aid was cancelled under regulation 11, of the cancellation of that Grant of Aid.

(3) Upon receipt by the solicitor of the notice of cancellation under paragraph (2), the solicitor is released from the solicitor's duty to act for that individual.

Grant of Aid after commencement of proceedings

13.—(1) A solicitor who —

- (a) has acted in any proceedings on behalf of an individual before the date of the issue of a Grant of Aid which relates to those proceedings; or
- (b) has, by law, a lien on any documents necessary for any proceedings to which the Grant of Aid relates and who has delivered them up subject to the solicitor’s lien,

may give notice of the fact to the Chief Public Defender.

(2) The Chief Public Defender may pay to the solicitor mentioned in paragraph (1) costs as may be agreed between the Chief Public Defender and the solicitor.

PART 4**MATTERS RELATING TO ASSIGNED SOLICITORS****Documents for solicitors**

14. Every set of documents provided by the Chief Public Defender to a solicitor acting for an aided accused person must be marked with the words “Criminal Defence Aid”.

Fees for solicitors in certain cases

15. Where the Chief Public Defender enters into any agreement (whether by way of a tender system or otherwise) with any solicitor for any purpose under section 4(1)(b) of the Act, the agreement may provide for the payment of solicitor and client costs (including disbursements) to the solicitor at such rates as may be agreed between the Chief Public Defender and the solicitor.

Costs incurred or to be incurred by solicitors in proceedings, etc.

16.—(1) Subject to paragraph (3), where it appears to an aided accused person’s solicitor necessary, for the proper conduct of any proceedings to which the Grant of Aid relates, to take any one or more of the following steps:

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- (a) to request for any record of any proceedings;
 - (b) to file any criminal application before the conclusion of any criminal proceedings in the court of first instance;
 - (c) to instruct more than one solicitor,

the solicitor must apply to the Chief Public Defender for authority to do so.

(2) The aided accused person's solicitor is not entitled to be reimbursed for any payment in respect of any of the steps mentioned in paragraph (1) that was taken without authority from the Chief Public Defender.

(3) Paragraphs (1) and (2) do not apply to any step mentioned in paragraph (1)(a), (b) or (c), if the terms of the Grant of Aid allow the taking of that step.

(4) The Chief Public Defender may give to solicitors acting for aided accused persons in any particular class of proceedings general authority to obtain reports or opinions of experts and to tender expert evidence, and if so, the Chief Public Defender must specify the maximum fee to be paid for any report, opinion or expert witness.

(5) Where it appears to an aided accused person's solicitor necessary for the proper conduct of any proceedings —

- (a) to obtain a report or opinion of one or more experts or to tender expert evidence in a case of a class not included in any general authority under paragraph (4); or
- (b) in a case of a class so included —
 - (i) to pay a higher fee than that specified by the Chief Public Defender under paragraph (4); or
 - (ii) to obtain more reports or opinions or to tender more experts as witnesses than have been authorised,

the solicitor may apply to the Chief Public Defender for authority to do so.

(6) If the Chief Public Defender gives authority to the aided accused person's solicitor for the purposes of paragraph (5)(a) or (b), the Chief Public Defender must specify —

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- (a) the maximum number of reports or opinions that may be obtained, or the maximum number of persons who may be tendered to give expert evidence; and
 - (b) the maximum total fee to be paid for those reports, opinions or expert evidence, as the case may be.
- (7) Except as provided by this regulation, a solicitor is not entitled to be reimbursed for any payment made for any report or opinion of an expert, or for expert evidence, tendered by or on behalf of an aided accused person.
- (8) Where it appears to the aided accused person's solicitor necessary for the proper conduct of any proceedings that a certain act should be done, but that act is unusual in its nature or involves unusually large expenditure —
- (a) the solicitor must obtain the Chief Public Defender's approval to carry out that act;
 - (b) if the Chief Public Defender so approves, the Chief Public Defender must specify the maximum total expenditure to be incurred for that act; and
 - (c) the solicitor is only entitled to be reimbursed for any payment in respect of any step to carry out that act that was approved by the Chief Public Defender.

Report on progress of proceedings, etc.

17.—(1) An aided accused person's solicitor must give the Chief Public Defender any information regarding the progress and disposal of proceedings to which the Grant of Aid relates, as the Chief Public Defender may require for the purpose of performing the Chief Public Defender's functions under the Act.

(2) Without limiting paragraph (1), a solicitor who has acted or is acting for an aided accused person must, on being satisfied that the aided accused person has died, report that fact to the Chief Public Defender.

Discharge by solicitor

18.—(1) A solicitor may seek the permission of the Chief Public Defender to discharge himself or herself from acting for an aided accused person, which permission must not be unreasonably refused.

(2) The solicitor mentioned in paragraph (1) must provide to the Chief Public Defender a report of the reasons for seeking permission to discharge himself or herself.

(3) To avoid doubt, paragraph (2) does not require the solicitor to provide any information that is subject to any privilege or any duty of confidentiality.

(4) Subject to section 18(3) of the Act, no solicitor acting for an aided accused person may entrust the conduct of any part of a case to any other person.

FIRST SCHEDULE

Regulations 3 and 11(2)(b)

PRESCRIBED MEANS CRITERIA

1. For the purposes of section 12(1)(a)(i) of the Act, the prescribed means criteria in relation to an applicant are all the following:
 - (a) the average per capita gross monthly household income for the household of the applicant during the relevant period must be \$1,500 or lower;
 - (b) on the date of the application, the applicant —
 - (i) is not the owner of any property; or
 - (ii) is the owner of only one property (whether by himself or herself, or jointly with any other individual), for which the annual value during the relevant period is \$13,000 or lower;
 - (c) the total amount of savings and investments of the applicant on the date of the application must be —
 - (i) in a case where the applicant is 60 years of age or older on the date of the application — \$40,000 or lower; and
 - (ii) in any other case — \$10,000 or lower.
2. For the purposes of section 12(1)(a)(ii) of the Act, the prescribed means criteria in relation to an applicant who is an unmarried minor and the applicant's guardian are all of the following:

FIRST SCHEDULE — *continued*

- (a) the average per capita gross monthly household income for the combined household of the applicant and the guardian during the relevant period must be \$1,500 or lower;
- (b) on the date of the application —
 - (i) the applicant does not own any property; and
 - (ii) the guardian —
 - (A) is not the owner of any property: or
 - (B) is the owner of only one property (whether by himself or herself, or jointly with any other individual), for which the annual value during the relevant period is \$13,000 or lower;
- (c) the total amount of savings and investments of the applicant and the guardian on the date of the application must be —
 - (i) in a case where the guardian is 60 years of age or older on the date of the application — \$40,000 or lower; and
 - (ii) in any other case — \$10,000 or lower.

3. In this Schedule —

“annual value” has the meaning given by section 2(1) of the Property Tax Act 1960;

“applicant” means an applicant for criminal defence aid;

“application” means an application for criminal defence aid;

“combined household”, in relation to an applicant who is an unmarried minor and the applicant’s guardian, means —

- (a) the applicant;
- (b) the guardian; and
- (c) every other individual (if any) who lives in the same place of residence as the applicant and guardian (where the applicant and guardian live in the same place of residence), or in the same place of residence as the applicant or guardian (where the applicant and guardian do not live in the same place of residence), and is related to the applicant or guardian by adoption (by virtue of a court order in Singapore or elsewhere), blood or marriage;

FIRST SCHEDULE — *continued*

“gross monthly household income” —

- (a) in relation to the household of an applicant who is not an unmarried minor, means the total sum of the gross monthly income payable for any month to the applicant and every other individual (if any) in that household; and
- (b) in relation to the combined household of an applicant who is an unmarried minor and the applicant’s guardian, means the total sum of the gross monthly income payable for any month to the applicant, the guardian and every other individual (if any) in that combined household;

“guardian” means the guardian of an unmarried minor who made an application on behalf of the minor under section 10(1) of the Act;

“household”, in relation to an applicant who is not an unmarried minor, means —

- (a) the applicant; and
- (b) every other individual (if any) who lives in the same place of residence as the applicant and is related to the applicant by adoption (by virtue of a court order in Singapore or elsewhere), blood or marriage;

“investment” excludes any investment, using moneys withdrawn from an individual’s account in the Central Provident Fund, made in accordance with the Central Provident Fund (Investment Schemes) Regulations (Rg 9);

“owner”, in relation to any property, includes —

- (a) a purchaser of any property sold under Part 4 or 4B of the Housing and Development Act 1959; and
- (b) a purchaser of any property sold under an executive condominium scheme within the meaning of section 2(1) of the Executive Condominium Housing Scheme Act 1996;

“per capita gross monthly household income” —

- (a) in relation to the household of an applicant who is not an unmarried minor, means the gross monthly household income of the household concerned divided by the total number of individuals (including the applicant) in that household; and
- (b) in relation to the combined household of an applicant who is an unmarried minor and the applicant’s guardian, means the gross

FIRST SCHEDULE — *continued*

monthly household income of the combined household concerned divided by the total number of individuals (including the applicant and the guardian) in that combined household;

“place of residence”, in relation to an applicant or a guardian, means the address specified on the identity card of the applicant or guardian (as the case may be) on the date of the application;

“relevant period”, in relation to an application, means a continuous period of 12 months immediately preceding the date of the application.

SECOND SCHEDULE

Regulations 4, 9(3)(a) and
(4) and 11(3) and (4)

PRESCRIBED CLASSES OF OFFENCES

1. The following are the prescribed classes of offences for the purposes of section 12(1)(c)(i) of the Act:
 - (a) an offence that is not an excluded offence and is punishable only with a fine;
 - (b) an offence that is not an excluded offence and is punishable with a fine or imprisonment, or both, for which the maximum term of imprisonment provided by written law does not exceed 7 years.

Made on 30 November 2022.

LOH KHUM YEAN
*Permanent Secretary,
Ministry of Law,
Singapore.*

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(To be presented to Parliament under section 25(6) of the Public Defenders Act 2022).