

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

NO. R. 680

6 August 2021

LEGAL AID SOUTH AFRICA ACT, 2014: AMENDMENT OF REGULATIONS

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

SCHEDULE**Definitions**

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

Amendment of regulation 9 of Regulations

2. Regulation 9 of the Regulations is hereby amended—

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

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

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

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

(a) Civil proceedings involving children;

(b) evictions;

(c) social security matters;

(d) educational matters; and

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

Amendment of regulation 11 of Regulations

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

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

Amendment of regulation 13 of Regulations

4. Regulation 13 of the Regulations is hereby amended—

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

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

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

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

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

(b) the—

(i) opposing party is represented by a legal practitioner or is a legal practitioner; or

(ii) the legal aid applicant is over 60 years of age or disabled.”.

Amendment of regulation 14 of Regulations

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

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

Amendment of regulation 15 of Regulations

6. Regulation 15 of the Regulations is hereby amended by the substitution for subregulation (2) of the following subregulation:

“(2) Legal Aid South Africa may not grant legal aid for the following matters:

- (a) A divorce appeal;
- (b) a divorce action if the legal aid applicant married a foreigner to enable that foreigner to obtain South African citizenship; and
- (c) a divorce action where there is—
 - (i) no allegation of domestic abuse;
 - (ii) no child, including a disabled or intellectually challenged child;
 - (iii) no immovable property as part of the joint estate;
 - (iv) no pension interest as part of the joint assets; or
 - (v) any other substantial benefit in the joint estate.”.

Amendment of regulation 23 of Regulations

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

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

Amendment of regulation 27 of Regulations

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

“(7) The amounts contemplated in subregulations (2), (3), (4), (5) and (6) will increase annually on 1 April on the basis of the Consumer Price Index, rounded off to the next 100.”.

Amendment of regulation 31 of Regulations

9. Regulation 31 of the Regulations is hereby amended—

- (a) by the substitution for subregulation (1) of the following subregulation:

“(1) If a legal aid applicant does not qualify for legal aid in terms of the means test, Legal Aid South Africa may provide partially subsidised legal aid and require from the legal aid applicant to contribute to the cost of the legal aid.”;
- (b) by the substitution in subregulation (2) for the full stop at the end of paragraph (c) of the expression “; and”; and
- (c) by the addition in subregulation (2) after paragraph (c) of the following paragraph:

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

Amendment of regulation 32 of Regulations

10. Regulation 32 of the Regulations is hereby amended—

- (a) by the substitution in subregulation (1) for paragraphs (b) and (c) of the following paragraphs:
 - “(b) cessation of the criminal trial;
 - (c) the accused is convicted and sentenced to direct imprisonment; or”;and
- (b) by the addition after paragraph (c) of the following paragraph:

“(d) the finalisation of a civil matter.”.

**TSEBISO YA MMUSO
LEFAPHA LA TOKA LE NTSHETSOPELE YA MOLAO THEO**

THUSO YA MOLAO AFRIKA BORWA, 2014 (MOLAO 39 WA 2014): MELAO

Letona la Toka le Ditshebeletso tsa Tlhabollo ya batshwaruwa le entse melao Shejuleng ka tlasa karolo 23(1) ya Thuso ya Molao Afrika Borwa, 2014 (Molao 39 wa 2014), ka mora ho fumana dikgothaletso tsa Balaodi ba Lekgotla.

SHEJULE

Ditlhaloso

1. Shejuleng sena, "Melao" e hlalosa melao e phatlaladitsweng ka tlasa Tsebiso ya Mmuso Palo. R. 745 ya la 26 Phupu 2017, jwalo ka ha e lokisitswe ka Tsebiso ya Mmuso ya Palo. R. 498 ya la 29 Hlakubele 2019.

Tokiso ya molao 9 ho Melao

2. Molao 9 ho Melao o lokisitswe—

(a) ka phetolo ho molawana (1) bakeng la mantswe a etelletseng pele temana (a) ya mantswe a latelang:

"(1) Thuso ya Molao Afrika Borwa e ka nehelana ka thusa ya molao ho motletlebi nyeweng e nngwe le e nngwe ya baahi, ka, kapa ntle le nako ya kemo, moo—"; le

(b) ka ho kenngwa ka mora molawana (5) ya molawana o latelang:

"(6) Ha ho ka etsahala hore nako ya ho ema e hlalositsweng molawaneng (1) e kenngwe tshebetsong, Thuso ya Molao Afrika Borwa e tshwanetse ho nka dintlha tsa baahi tse nang le sekgahla se sehlo maphelong a bathusuwa e le tsa bohlokwa, ho akga ka hare dintlha tse latelang:

(a) Dinyewe tsa baahi tse akgang bana;

(b) ho ntshwa;

(c) dintlha tsa tshireletso ya baahi;

(d) dintlha tsa thuto: le

(e) dintlha tsa lekeno, jwalo ka mosebetsi kapa ho lelekwa, phenshene le ditjhelete tse amehang le tlhokome."

Tokiso ya molao 11 ho Melao

3. Molao 11 ho Melao e lokisitswe ka phetolo molawaneng (3) ho melao e latelang:

"(3) Ho ipapisitswe le molao 23(8), thuso ya molao e ka se nehelwe bakeng la ketso e nngwe le e nngwe e ka tlišwang lekgotleng la ditleleimi tse nyane ho latela *Small Claims Courts Act, 1984 (Act No. 61 of 1984)*: Ha feela Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao bakeng la tleleimi e fetang matla a tjelete ya lekgotla la dinyewe la ditleleimi tse nyane ka diperesente tse fetang 50."

Tokiso ya molao 13 ho Melao

4. Molao 13 ho Melao o lokisitswe—

(a) ka phetolo bakeng la molawana (1) ya molawana o latelang:

"(1) Nyeweng ya tlhokomelo ho latela *Maintenance Act, 1998 (Act No. 99 of 1998)*, nyeweng ya dikgoka tsa ka lapeng ho latela *Domestic Violence Act, 1998 (Act No. 116 of 1998)*, kapa ntlha e tlesitsweng ho latela *Protection from Harassment Act, 2011 (Act No. 17 of 2011)*, Thuso ya Molao Afrika Borwa e ka nehelana ka thuso ya molao ho mokopi wa thuso ya molao bakeng la kopano ya pele ho ka mo eletsa ka ditokelo tsa hae, tsamaiso eo a tshwanetseng ho e latela le kgonahalo ya hae ya tlhoko."; le

(b) ka phetolo bakeng la molawana (2) ho molawana o latelang:

"(2) Thuso ya molao e ka nehelwa bakeng la kemedi ya molao ho mamelweng ha lekgotla la dinyewe ho dintlha tse hlalositsweng ho molawana (1), e bang—

(a) ho ya ka mohopolo wa Thuso ya Molao Afrika Borwa, tleleimi kapa boitshireletso ba mokopi wa thuso ya molao e na le kgonahalo e ntle ya tlhoko;

(b) le—

- (i) ya kgahlano ya emetsweng ke mosebeletsi wa molao kapa e le mosebeletsi wa molao;
- (ii) mokopi wa thuso ya molao a le dilemo tse ka hodimo ho dilemo tse 60 kapa a na le boqhwala.”.

Tokiso ya molao 14 ho Melao

5. Molao 14 ya Melao e fetotswe ka phetolo ho molawana (1) bakeng la temana (c) ka temana e latelang:

- “(c) thuso bakeng la ho kenya tshebetsong sephetho sa Khomishene ya Poelano le Bonamodi e theuweng ho latela Molao wa Basebetsi wa 1995, moo Khomishene ya Poelano le Bonamodi e seng e laetse sherifi ka ditjeho tsa yona mme sherifi e sa kgona ho ka atleha tshebetsong ya hae, ntle le moo ho senang kgonahalo ya phumaneho.”.

Tokiso ya molao 15 ho Melao

6. Molao 15 ho Melao e lokisitswe ka phetolo bakeng la molawana (2) wa molawana o latelang:

- “(2) Thuso ya Molao Afrika Borwa e ka se nehelane ka thuso ya molao bakeng la dintlha tse latelang:
 - (a) boipiletso tlhalanong;
 - (b) nyewe ya tlhalano e bang mokopi wa thuso ya molao a nyalane le molata hore molata eo a fumane boahi ba Afrika Borwa; le
 - (c) tlhalano moo—
 - (i) ho senang tlhekefetso ya ka lapeng;
 - (ii) ho senang ngwana, ho akga ngwana wa seqhwalwa kapa ya nang le bothata ba kelelle;
 - (iii) ho senang thepa e sa sutheng e le karolo ya thepa ya kopanelo;
 - (iv) ho senang kgahleho ya phenshene e le karolo ya kopanelo ya thepa; kapa
 - (v) kuno e nngwe le enngwe e kgolo kopanelong ya thepa.”.

Tokiso ya molao 23 ho Melao

7. Molao 23 ho Melao o lokisitswe ka phetolo bakeng la molawana (8) ho molawana o latelang:

- “(8) Thuso ya molao e ka nehelwa ho ngwana bakeng la tleleimi ya tjelete e welang ka tlasa matla a tjelete a lekgotla la dinyewe la ditleleimi tse nyane moo ho hlokalang ho sireletsa dikgahleho tsa ngwana eo mme toka e ka be e sa phethahala.”.

Tokiso ya molao 27 ho Melao

8. Molao 27 o lokisitswe ka ho kenngwa ha molawana o latelang ka mora molawana (6):
 “(7) Palo e hlalositse molawaneng (2), (3), (4), (5) le (6) e tla eketseha selemo le selemo ka la 1 Mmesa ka lebaka la Tshupane ya Theko ya Bareki, e akareditsweng ho 100 le latelang.”.

Tokiso ya molao 31 ho Melao

9. Molao 31 ho Melao e lokisitswe—

- (a) ka phetolo bakeng la molawana (1) wa molawana o latelang:
 - “(1) E bang mokopi wa thuso ya molao a sa dumellesehe ho ka thuswa ho latela teko e etswang, Thuso ya Molao Afrika Borwa e ka nehelana ka thuso e sa fellang ya molao mme e kope mokopi wa thuso ya molao ho kaba le seabo ditjehong tsa thuso ya molao.”;
- (b) ka phetolo ho molawana (2) bakeng la kgutlo qetellong ya temana (c) ho polelwana “; le”; le
- (c) ka ho kenngwa ha molawana (2) ka mora temana (c) ka temana e latelang:
 - “(d) hore na ditlhoko tsa molao 9(1) di fihletswe, dinyeweng tsa baahi.”.

Tokiso ya molao 32 ho Melao

10. Molao 32 ho Melao e lokisitswe—

- (a) ka phetolo ho molawana (1) bakeng la temana (b) le (c) tsa ditemana tse latelang:
 - “(b) ho fediswa ha nyewe ya tlolo ya molao;
 - (c) moqosuwa o ahlotswe aba a kwallwa; kapa”; le
- (b) ka ho kenngwa ka mora temana (c) ya temana e latelang:
 - “(d) phethelo nyeweng tsa baahi.”.