STATUTORY INSTRUMENTS

1964 No. 1409 (S. 91)

LEGAL AID AND ADVICE, SCOTLAND

The Act of Adjournal (Rules for Legal Aid in Criminal Proceedings) 1964

Made - - - - 31*st August* 1964
Coming into Operation 1*st October* 1964

ACT OF ADJOURNAL

RELATIVE TO RULES FOR LEGAL AID IN CRIMINAL PROCEEDINGS

At Edinburgh, the 31*st day of August* 1964

Present—

The Right Honourable
The LORD JUSTICE-GENERAL;

The Honourable
LORD CARMONT;

The Honourable
LORD CAMERON.

The Lord Justice-General, Lord Justice-Clerk and Lords Commissioners of Justiciary, by virtue of the powers conferred on them by section 13 of the Legal Aid (Scotland) Act 1949(a), as amended by the Legal Aid Act 1960(b) and the Criminal Justice (Scotland) Act 1963(c), and of all other powers competent to them in that behalf, do hereby enact as follows:—

Title, commencement and interpretation

1.—(1) This Act of Adjournal may be cited as the Act of Adjournal (Rules for Legal Aid in Criminal Procedings) 1964, and shall come into operation on 1st October 1964.

(2) In this Act of Adjournal the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them:—

"the Act" means the Legal Aid (Scotland) Act 1949(a) as amended by the Legal Aid Act 1960(b) and the Criminal Justice (Scotland) Act 1963(c);

"assisted person" means a person who is in receipt of legal aid;

"the High Court" means the High Court of Justiciary;

"legal aid" means legal aid under section 1 of the Act in connection with any criminal proceedings in the High Court or in a sheriff court or in a juvenile court constituted in pursuance of section 51 of the Children and Young Persons (Scotland) Act 1937(d);

(a) 12, 13 & 14 Geo. 6. c. 63.
(b) 8 & 9 Eliz. 2. c. 28.
(c) 1963 c. 39.
(d) 1 Edw. 8 & 1 Geo. 6. c. 37.

"committee" means the Supreme Court Committee or the local committee established by the Law Society of Scotland under the Legal Aid (Scotland) Scheme 1958 as amended, or any scheme made in place of that Scheme, as the context may require;

"the Regulations" means the Legal Aid (Scotland) (Criminal Proceedings) Regulations 1964 and any regulations amending those regulations;

"the Scheme" means the Legal Aid (Scotland) (Criminal Proceedings) Scheme 1964 made by the Law Society of Scotland under section 8 of the Act and any scheme amending that Scheme.

(3) The Interpretation Act 1889(a) shall apply for the interpretation of this Act of Adjournal as it applies for the interpretation of an Act of Parliament.

Criminal proceedings for purposes of legal aid

2. For the purposes of legal aid the following criminal proceedings shall be treated as distinct proceedings:—

(*a*) proceedings to which the provisions either of section 2(2)(*a*) or of section 2(2)(*b*) of the Act apply;

(*b*) (i) proceedings on indictment in respect of which legal aid is made available after inquiry into the resources of an accused person and after consideration as to whether the accused person has available to him any of the rights or facilities to which regulation 6 of the Regulations applies;

(ii) summary proceedings in respect of which legal aid is made available, having regard to section 1(6A)(i)(*b*) of the Act, after inquiry into the resources of an accused person and after consideration as to whether the accused person has available to him any of the rights or facilities to which regulation 6 of the Regulations applies;

(*c*) proceedings of any kind by way of appeal to the High Court:

Provided that, as appropriate, any such proceedings shall be deemed to include—

(i) proceedings in connection with a bail appeal, or petitions for bail under the Criminal Appeal (Scotland) Act 1926(b);

(ii) proceedings in the High Court following a remit for sentence;

(iii) proceedings in the High Court under section 16 of the Criminal Appeal (Scotland) Act 1926;

(iv) proceedings following a remit from the High Court to the inferior court under section 71(2) of the Summary Jurisdiction (Scotland) Act 1954(c).

Applications for further legal aid by persons entitled under section 2(2)

3.—(1) Where at any stage of criminal proceedings referred to in section 2(2)(*a*) or section 2(2)(*b*) of the Act, an accused person to whom the said subsection relates has applied for legal aid otherwise than under the said section 2(2) of the Act, the court shall determine at the conclusion of any diet to which the provisions of section 2(2) of the Act relate or at such other time as the court may think fit—

(*a*) whether the applicant has available to him any of the rights or facilities to which regulation 6 of the Regulations applies;

(a) 52 & 53 Vict. c. 63. (b) 16 & 17 Geo. 5. c. 15. (c) 2 & 3 Eliz. 2. c. 48.

(*b*) whether the financial circumstances of the applicant are such as to satisfy the court that he is unable without undue hardship to himself or his dependants to meet the expenses of the case; and

(*c*) in summary proceedings, whether in all the circumstances of the case it is in the interests of justice that legal aid should be available to the applicant;

and shall thereafter grant or refuse the application in terms of section 5 hereof.

(2) Where, at any stage of criminal proceedings in the sheriff court or in a specially constituted juvenile court to which proceedings the provisions of neither section 2(2)(*a*) nor section 2(2)(*b*) apply, an accused person who is in custody applies for legal aid the court shall, as soon as may be, determine the matters referred to in the last foregoing subsection and shall thereafter grant or refuse the application in terms of section 5 hereof.

Other applications in summary proceedings

4.—(1) Where an application for legal aid is made in connection with summary proceedings by an accused person who is not entitled to receive legal aid by virtue of section 2(2)(*b*) the court shall appoint and have intimated to the applicant a special diet at which it shall determine the matters referred to in section 3(1) hereof and shall thereafter grant or refuse the application in terms of section 5 hereof; and where it is not practicable in the opinion of the court to have those matters determined at a special diet the court shall determine them at the first diet at which the applicant is called upon to plead, and shall thereafter grant or refuse the application in terms of section 5 hereof:

Provided that where an applicant does not appear at a special diet of which he has received intimation the application shall be refused.

(2) Where at a stage subsequent to the pleading diet in summary proceedings an accused person who is not in custody applies for legal aid the court shall, as soon as may be, consider the matters referred to in section 3(1) hereof and shall thereafter grant or refuse the application in terms of section 5 hereof.

Decisions by courts on applications for legal aid otherwise than under section 2(2)

5.—(1) Where in any case the court is satisfied that an applicant for legal aid has available to him any other rights or facilities to which regulation 6 of the Regulations applies, the court shall, except on special cause shown, refuse the application for legal aid.

(2) Where in any case the court is not satisfied, after consideration of the financial circumstances of an applicant for legal aid, that he is unable without undue hardship to himself or his dependants to meet the expenses of the case the court shall refuse the application.

(3) Where in relation to proceedings on indictment the court is satisfied, after consideration of the financial circumstances of an applicant for legal aid, that he is unable without undue hardship to himself or his dependants to meet the expenses of the case, the court shall grant the application for legal aid.

(4) Where an accused person has applied for legal aid in connection with summary proceedings and the court does not consider that in all the circum-

stances of the case it is in the interests of justice that legal aid should be made available to him, the court shall refuse the application for legal aid.

(5) Where an accused person has applied for legal aid in summary proceedings and the court is satisfied that the accused person is unable without undue hardship to himself or his dependants to meet the expenses of the case and that it is in the interests of justice that legal aid should be made available to him, the court shall grant the application for legal aid.

(6) Where a court grants an application for legal aid the clerk of court shall send to the committee a legal aid certificate detailing the entitlement to legal aid of the accused person, and shall send a copy of this certificate to the accused person.

Legal Aid in the High Court

6.—(1) Where a case is being prosecuted before the High Court and the accused person applies for legal aid, the High Court may remit the application to the sheriff court for determination as though it were such an application as is referred to in section 3(2) above or if satisfied as to the merits of the application, may grant or refuse the same.

(2) Where an application for legal aid is made by a person in connection with an appeal to the High Court and legal aid was not given in relation to the relative proceedings in the court of first instance otherwise than under section 2(2) of the Act, the High Court may remit the application to the sheriff court for the district in which the proceedings at first instance were taken or initiated to determine whether that court, after consideration of the financial and other relevant circumstances of the applicant, is satisfied that he is unable without undue hardship to himself or his dependants to meet the expenses of the appeal and also that he has not available to him any other rights or facilities to which regulation 6 of the Regulations applies; and that sheriff court shall report its determination as soon as may be to the High Court and to the committee.

Application for legal aid made by persons in custody and not before the court

7. Where the court receives an application for legal aid by a person who is in custody and not before the court for any purpose, the court may, if satisfied that it has sufficient information before it regarding the financial circumstances of the applicant and all circumstances relevant to the application, proceed in his absence to decide whether to grant legal aid:

Provided that the court shall first be satsified that exceptional circumstances warrant the adoption of such procedure.

Provisional financial certificates

8.—(1) Where a person desires to obtain legal aid in connection with an appeal and legal aid was not available or was not sought or was not made available to him otherwise than under section 2(2) of the Act in the proceedings in the court of first instance, and he applies to the clerk of the sheriff court for the district in which those proceedings took place for a provisional financial certificate in accordance with regulation 7 of the Regulations, that sheriff clerk may question him and may make such other inquiry as he thinks fit before deciding whether to grant a provisional financial certificate.

(2) As soon as may be after the grant or the refusal of a provisional financial certificate the clerk of the sheriff court concerned shall report the

financial and other relevant circumstances of the applicant to the court in order that the court may determine whether he is unable without undue hardship to himself or his dependants to meet the expenses of the proposed appeal and whether he has available to him other rights or facilities to which regulation 6 of the Regulations applies; and the court shall report its determination to the committee and, where relevant, to the High Court; and where the determination is such that legal aid cannot be made available to the applicant the court shall discharge the provisional financial certificate.

Decisions on applications for legal aid to be final

9. The decision of a court on an application for legal aid or under section 8(2) hereof shall be final:

Provided that it shall be open to a person at any time to make a further application for the consideration of the court on the ground that there has been a material change in his financial circumstances or that he has additional facts affecting his eligibility for legal aid to bring to the notice of the court.

Disqualification for continuance of legal aid

10.—(1) If the court, before which there are proceedings in which an assisted person is an accused person or appellant, is satisfied, after hearing the assisted person where appropriate, that the assisted person—

(*a*) has without reasonable cause failed to comply with any proper request made to him by the solicitor acting for him to supply any information relevant to the proceedings; or

(*b*) has delayed unreasonably in complying with any such request as aforesaid; or

(*c*) has without reasonable cause failed to attend at any diet of the court at which he has been required to attend or at any meeting with the solicitor or counsel acting for him under the Scheme at which he has reasonably and properly been required to attend; or

(*d*) has conducted himself in connection with the proceedings in such a way as to make it appear to the court unreasonable that he should continue to receive legal aid; or

(*e*) has wilfully or deliberately given false information for the purpose of misleading the court in considering his financial circumstances under section 2(1A) of the Act or has wilfully or deliberately furnished false particulars under regulation 4 of the Regulations;

the court may direct that he shall cease to be entitled to legal aid in connection with those proceedings; and where such a direction is made in the course of proceedings to which the provisions of section 2(2)(*a*) or section 2(2)(*b*) of the Act apply, the accused person shall not be entitled to legal aid in relation to any later stages of the same proceedings before the court of first instance.

(2) Where a court issues a direction under the foregoing paragraph, the clerk of court shall send notice of it to the committee.

(3) (*a*) Where a court of first instance, which has made a direction under paragraph (1)(*a*) (*b*) (*c*) or (*d*) of this section, shall consider that the relevant conduct of the assisted person in connection with the proceedings in that court is such as to make it unreasonable that he should receive legal aid in connection with any appeal arising from those proceedings, the court shall instruct the clerk of the court that in the event of an application by

the accused person for legal aid in connection with an appeal under section 1(6A)(ii) of the Act the terms of the finding made by the court in this respect shall be reported to the committee concerned for their consideration.

(*b*) Where a court of first instance has made a direction under paragraph (1)(*e*) of this section the direction shall continue to apply to any proceedings on appeal that may follow the proceedings in the court of first instance unless at the time of the making of the said direction or subsequently on the application of the person concerned, the court of first instance shall decide that it would be reasonable for the purposes of an appeal that the direction should cease to have effect.

Statements on oath

11. In considering any matter in regard to the entitlement of a person to legal aid the court may require that person to make a statement on oath for the purpose of ascertaining or verifying any fact material to his entitlement to legal aid.

Finding of caution etc.

12. Where a court has to fix a sum to be consigned by an appellant or for which caution is to be found by him under section 64 of the Summary Jurisdiction (Scotland) Act 1954 and the appellant has been granted an interim appeal certificate under regulation 9 of the Regulations, the court shall take into account as one of the relevant factors that the appellant has been granted such a certificate.

Recovery of sums due to the Legal Aid (Scotland) Fund

13.—(1) Where an award of expenses is made in favour of a person in any proceedings in which he has received legal aid then such expenses shall be paid to the Law Society of Scotland and only the Law Society shall be capable of giving a good discharge therefor.

(2) Where an accused person is entitled through the membership of any body or through the holding of or the terms of any insurance policy to payment of his legal expenses or to a contribution towards his legal expenses in connection with any proceedings under which he has received legal aid then such payment or contribution shall be made to the Law Society of Scotland by the body or insurance company concerned.

(3) Any sum paid to the Law Society under this section shall be paid into the Legal Aid (Scotland) Fund.

Transitional provisions

14. Where, at the date of coming into operation of this Act of Adjournal, a person involved in criminal proceedings is being defended as a poor person and regulation 11 of the Regulations applies to those proceedings, he shall continue to be entitled to be defended as a poor person in connection with those proceedings and the provisions of this Act of Adjournal shall not apply in connection therewith unless such person ceases, with the approval of the court, to be so defended for the purposes of the said proceedings.

And the Lords appoint this Act of Adjournal to be recorded in the Books of Adjournal, and to be published in the *Edinburgh Gazette*.

(Signed) *J. L. Clyde,*

I.P.D.

EXPLANATORY NOTE

(This note is not part of the Act of Adjournal, but is intended to indicate its general purport.)

This Act of Adjournal prescribes the criminal proceedings which shall be treated as distinct proceedings for the purposes of legal aid. It prescribes procedure for the disposal of applications to a Court for criminal legal aid, and states the circumstances in which the Court may direct that an assisted person shall cease to be entitled to legal aid. It also provides that the Court may put a person on oath in a matter in regard to his entitlement to legal aid. It provides for certain expenses and other payments to which an assisted person is entitled, to be paid into the Legal Aid (Scotland) Fund.