1971 No. 287 (S.33)

LEGAL AID AND ADVICE, SCOTLAND

Act of Sederunt (Legal Aid) (Children) 1971

Made - - - - *4th February* 1971

Coming into Operation *1st April* 1971

The Lords of Council and Session, under and by virtue of the powers conferred upon them by section 16 of the Legal Aid (Scotland) Act 1967(a) and of all other powers competent to them in that behalf, do hereby enact and declare as follows:—

Citation, commencement and interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Legal Aid) (Children) 1971 and shall come into operation on 1st April 1971.

(2) In this Act of Sederunt unless the context otherwise requires—

"the Act" means the Social Work (Scotland) Act 1967, as amended by the Act of 1968;

"Act of 1968" means the Social Work (Scotland) Act 1968(b);

"assisted person" means a child or the parent of a child to whom there has been issued and in respect of whom there is in force a certificate for legal aid;

"child" means a child as defined by section 30(1) of the Act of 1968;

"legal aid" means legal aid under the Act;

"Committee" means the Supreme Court Committee or a Local Committee established by the Law Society of Scotland under the Legal Aid (Scotland) Scheme 1958;

"the Regulations" means the Legal Aid Scotland (Children) Regulations 1971(c);

"the scheme" means the Legal Aid (Scotland) (Children) Scheme 1970 made by the Law Society of Scotland under section 8 of the Act.

"sheriff clerk" includes sheriff clerk depute.

(3) In this Act of Sederunt any reference to any enactment or scheme shall be construed as a reference to that enactment or scheme as amended or extended by or under any other enactment or scheme.

(4) The Interpretation Act 1889(d) shall apply for the interpretation of this Act of Sederunt as it applies for the interpretation of an Act of Parliament.

(a) 1967 c. 43.
(b) 1968 c. 49.
(c) S.I. 1971/288 (1971 I, p. 996).
(d) 1889 c. 63.

Proceedings for purposes of legal aid

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

(*a*) an application to the sheriff for a finding under section 42 of the Act of 1968;

(*b*) an appeal to the sheriff under section 49 of the Act of 1968 against a decision of a children's hearing to issue a warrant for a child's detention in a place of safety while his case awaits disposal by a children's hearing being the proceedings mentioned in section 2(5A) of the Act);

(*c*) an appeal to the sheriff under section 49 of the Act of 1968 against a decision of a children's hearing other than such an appeal as is mentioned in paragraph (*b*) above;

(*d*) an appeal by stated case to the Court of Session under section 50 of the Act of 1968.

Applications for legal aid in appeals against child's detention

3. An application for legal aid in connection with such proceedings as are mentioned in subsection (5A) of section 2 of the Act (entitlement, without enquiry as to resources, of child or parent to legal aid in appeal against child's detention) shall be made either orally or in writing to the sheriff who shall grant the application forthwith if he is satisfied that the child is entitled thereto by virtue of that subsection as read with section 1(6A) of the Act.

Applications for legal aid in proceedings before sheriff under the Act of 1968 *other than appeals against child's detention*

4.—(1) An application for legal aid in connection with any proceedings either in an application to the sheriff under section 42 of the Act of 1968 or in an appeal to the sheriff under section 49 of the Act of 1968, other than an appeal mentioned in section 2(5A) of the Act, shall be made by lodging an application in writing with the sheriff clerk and the application shall be brought as soon as possible before the sheriff in chambers for determination in accordance with the provisions of section 1(6A) (*b*) of the Act (circumstances in which sheriff may grant legal aid certificate).

(2) Where the sheriff is satisfied that an applicant for legal aid has available to him any other rights or facilities to which regulation 6(2) of the Regulations applies, the sheriff shall, except on special cause shown, refuse the application for legal aid.

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

(4) Where after considering the financial circumstances of the applicant the sheriff is satisfied that the applicant is unable without undue hardship to himself or his dependants, to meet the expenses of the case in question and that it is in the interests of justice that legal aid should be made available to him, the sheriff shall grant the application for legal aid.

Intimation of legal aid certificates

5. Where the sheriff grants an application for legal aid under sections 3 or 4 above, the sheriff clerk shall send to the Committee a legal aid certificate detailing the entitlement to legal aid of the applicant, and shall send a copy of the certificate to the applicant.

Provisional financial certificates

6.—(1) Where—

(*a*) a person desires to obtain legal aid in connection with an appeal under section 50 of the Act of 1968; and

(*b*) legal aid was not available, or was not sought, or was not made available to him otherwise than under section 2(5A) of the Act in the proceedings before the sheriff against whose decision the appeal is made; and

(*c*) he applies in writing to the sheriff clerk for the sheriff court of 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, after such other enquiry as he thinks fit, decide whether or not to grant a provisional financial certificate.

(2) As soon as may be after the grant or the refusal of a provisional financial certificate the sheriff clerk shall report the financial and other relevant circumstances of the applicant to the sheriff in order that the sheriff may determine whether the applicant 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(2) of the Regulations applies; and the sheriff shall report his determination to the Committee and where the determination is such that legal aid cannot be made available to the applicant, the sheriff shall discharge the provisional financial certificate.

Determinations of applications for legal aid to be final

7. The determination of a sheriff on an application for legal aid under section 6(2) above shall be final:

Provided that it shall be open to a person at any time to make a further application for legal aid 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.

Disqualification for continuance of legal aid

8.—(1) If a sheriff or, as the case may be, the Lord Ordinary before whom there are depending any proceedings to which an assisted person is a party is satisfied that the assisted person has—

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

(*c*) wilfully or deliberately given false information in connection with the proceedings to the solicitor acting for him or wilfully or deliberately concealed from him any information relevant to the proceedings; or

(*d*) without reasonable cause failed to attend at any proceedings 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

(*e*) conducted himself in connection with the proceedings in such a way as to make it appear to the sheriff or Lord Ordinary unreasonable that he should continue to receive legal aid,

the sheriff or, as the case may be, the Lord Ordinary may direct that his legal aid certificate shall be discharged.

(2) Where a sheriff or a Lord Ordinary issues a direction under the foregoing paragraph the principal clerk of session or, as the case may be, the sheriff clerk, shall send a copy of the direction to the Committee by whom the certificate was issued, and the Committee shall forthwith discharge the certificate of the assisted person concerned in relation to the proceedings before the sheriff or Lord Ordinary.

Statements on oath

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

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

10.—(1) Where an award of expenses is made in favour of a person in connection with any proceedings under the Act of 1968 in which he has received legal aid, those expenses shall be paid to the Law Society of Scotland and only that Society shall be capable of giving a good discharge therefor.

(2) Where an applicant for legal aid is entitled, through the membership of any body or through the holding of or the terms of any insurance policy, to payment of or to a contribution towards his legal expenses in connection with any proceedings under the Act of 1968 in connection with which he has received legal aid, the payment or, as the case may be, the 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 of Scotland under this section shall be paid into the Legal Aid (Scotland) Fund.

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt.

J. L. Clyde
I.P.D.

Edinburgh .
4th February 1971.

EXPLANATORY NOTE

(*This Note is not part of the Act of Sederunt.*)

This Act of Sederunt provides for the granting of legal aid for certain purposes under the Social Work (Scotland) Act 1968.