PROCEDURE

1958 No. 1872 (S. 97)

Act of Sederunt (Legal Aid Rules) 1958

Made - - - - 28*th October*, 1958
Coming into Operation 1*st January*, 1959

The Lords of Council and Session, under and by virtue of the powers conferred on them by the Legal Aid (Scotland) Act, 1949(a), and of all other powers competent to them in that behalf, do hereby enact and declare as follows :—

Title, Commencement and Interpretation

1.—(1) This Act of Sederunt may be cited as the Act of Sederunt (Legal Aid Rules) 1958, and shall come into operation on the first day of January 1959.

(2) In this Act of Sederunt 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 ;

" assisted person " means a person to whom there has been issued, and in respect of whom there is in force, a legal aid certificate or an emergency certificate ;

" emergency certificate " means a certificate issued in accordance with the Regulations ;

" legal aid certificate " means a legal aid certificate issued in accordance with the Scheme for the time being in force under Section 8 of the Act ;

" the Regulations " means the Legal Aid (Scotland) Regulations, 1950(b), and any Regulations amending those Regulations(c).

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

Proceedings for purposes of legal aid

2.—(1) For the purposes of legal aid the following proceedings shall, subject to paragraph (2) of this Rule, be treated as distinct proceedings—

(*a*) proceedings in the sheriff court whether before the sheriff or the sheriff-substitute, in so far as they are proceedings in a court of first instance ;

(*b*) proceedings in the sheriff court before the sheriff on appeal from the sheriff-substitute ;

(*c*) proceedings in the Court of Session, whether in the Inner House or before a Lord Ordinary, in so far as they are proceedings in a court of first instance ;

(*d*) proceedings in the Court of Session in so far as they are proceedings in an appellate court and including proceedings by way of motion for a new trial.

(a) 12, 13 & 14 Geo. 6. c. 63, Pt. I. (b) S.I. 1950/1513, 1514 (1950 I, pp. 1236, 1227).
(c) *See* S.I. 1954/682 (1954 I, p. 1135). (d) 52 & 53 Vict. c. 63.

(2) Where proceedings are initiated in the sheriff court and are thereafter remitted to the Court of Session under section 5 or section 30 of the Sheriff Courts (Scotland) Act, 1907(a), or under any other enactment authorising or requiring proceedings to be remitted to the Court of Session the ensuing proceedings in that Court (other than any subsequent proceedings by way of appeal) shall not be treated for the purposes of legal aid as proceedings distinct from the initial proceedings in the sheriff court but shall be treated as forming part of those proceedings.

Marking of papers of assisted person and notices to be given by such person

3.—(1) The words " Assisted Person " shall follow the name of the assisted person on every step of process in the proceedings to which he is a party.

(2) Where a litigant is an assisted person he shall lodge, along with the summons, petition, initial writ or other principal writ by which the proceedings are commenced, or, if he is not the party initiating the proceedings, along with his defences or other document first lodged by him on becoming a party to the proceedings, or, in the case of proceedings in the Court of Session as an appellate court, before the appeal, reclaiming motion or motion for new trial is heard, the legal aid certificate or emergency certificate issued to him.

(3) If any person who is a party to any proceedings becomes during the dependence of those proceedings an assisted person, he shall forthwith lodge in process the legal aid certificate or emergency certificate issued to him and intimate the lodging thereof to all other parties to the proceedings.

(4) The documents aforesaid shall not be subject to be borrowed by any party to the proceedings except for the purpose of having the same amended, suspended or discharged by the Committee.

Provided that if the legal aid or emergency certificate is varied or discharged under the Scheme or any regulations made under the Act, the Committee by whom the certificate was issued shall be entitled to borrow the copy thereof lodged as aforesaid for the purpose of varying it or of marking it as having been discharged.

(5) On any person who is a party to any proceedings ceasing to be an assisted person, he shall forthwith serve notice of the fact by registered letter on all other parties to the proceedings.

Provisions as to Expenses in relation to Assisted Persons

4.—(1) Before making an award of expenses against an assisted person a Court may, for the purpose of determining in accordance with paragraph (*e*) of sub-section (3) of Section 2 of the Act the amount of such award, require the Committee by whom the legal aid or emergency certificate was issued to that person to lodge in process a copy of the application for legal aid made by that person, so far as relating to his means, and of the report of the National Assistance Board thereon, and may require the other party to the proceedings to furnish for the consideration of the Court such particulars with respect to his means as the Court may direct. The Court may require from the parties such further particulars as to their respective means as the Court may deem necessary.

(2) Where a legal aid certificate has been issued to the other party to the proceedings in whose favour an award of expenses may fall to be made and

(a) 7 Edw. 7. c. 51.

where, as a result thereof, the Law Society has an interest in the amount of expenses awarded to such other person, it shall be competent for the Law Society to be represented by Counsel in the Court of Session, or by Solicitor in the Sheriff Court in order to make representations to the Court as to the amount of the award of expenses to be made against the assisted person.

(3) An application made under sub-section (4) of section 2 of the Act for the re-assessment of the amount of an award of expenses made against an assisted person shall be made by Minute lodged in the original process and in any such application the Court may apply the procedure prescribed by the last foregoing sub-paragraph.

(4) The Court may in the exercise of its discretion dispose of any of the matters dealt with in the last two foregoing sub-paragraphs in Chambers or, in the event of a hearing being required, may direct that during any such hearing any persons not being officers of the Court or parties to the case, their counsel or solicitors or persons otherwise directly concerned with the case be excluded from the Court.

(5) Where a general award of expenses is made in respect of a case consisting of more than one distinct proceeding within the meaning of Rule 2 of this Act of Sederunt, and the person in whose favour or against whom the award is made has received legal aid in connection with one or more of those proceedings the auditor of the court by which the award was made shall, on the direction of that court, apportion between the proceedings the amount recovered or recoverable by virtue of the award.

(6) Where expenses have been incurred on behalf of an assisted person in connection with any proceedings, the court may, notwithstanding that the account of such expenses would not in ordinary course be remitted to the auditor for taxation, remit it to the auditor for taxation.

Disqualification for continuance of legal aid

5.—(1) If the court before which there are depending any proceedings to which an assisted person is a party is satisfied 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 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*) 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 at which he has reasonably and properly been required to attend ; or

(*e*) has been guilty of any contempt of court or has otherwise 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 ;

the court may direct that his legal aid certificate shall be discharged.

(2) Where a court issues a direction under the foregoing paragraph, the Principal Clerk of Session or the sheriff clerk, as the case may be, shall send a copy of the direction to the Committee by whom the certificate was issued, who shall forthwith discharge the certificate of the assisted person concerned in relation to the proceedings before that court.

Recovery of sums due to Legal Aid Fund

6.—(1) Where under a judgment of a court or under a settlement arrived at to prevent or bring to an end any proceedings any property is recovered or preserved for an assisted person, or an award of expenses or an agreement as to expenses is made in his favour, the Law Society may take all such proceedings as may be necessary to enforce such judgment, settlement, award or agreement, and may require the Solicitor who has acted for the assisted person to act in any such proceedings, and the legal aid or emergency certificate shall be deemed to relate to such proceedings. Provided that it shall be competent for the Law Society to do diligence on a decree for expenses either in the name of the assisted person or in the name of the Society without obtaining a formal assignation from the assisted person.

(2) Where under any judgment of a court or under any settlement arrived at to prevent or bring to an end any proceedings, or under any award of, or agreement as to expenses, any moneys are payable to or preserved for a person to whom at any time a legal aid certificate has been issued in respect of those proceedings, such moneys shall be paid to the Law Society, and only their receipt shall be a good discharge to the person paying the same of a liability to pay moneys due to a person who has received a legal aid certificate as aforesaid or to a Clerk of Court or otherwise on behalf of that person.

(3) Where under any judgment of a court or under any settlement arrived at to prevent or bring to an end any proceedings, or under any award of or agreement as to expenses any corporeal moveables are deliverable to or preserved for a person to whom at any time a legal aid certificate has been issued in respect of those proceedings, such corporeal moveables shall, if the Law Society so require, be delivered to the Law Society in which event only their receipt shall be a good discharge to the person delivering the same of a liability to deliver corporeal moveables to a person who has received a legal aid certificate as aforesaid or to a Clerk of Court or otherwise on behalf of that person; and the Law Society shall have power to sell any of said corporeal moveables in order to make payment to the legal aid fund of any sum payable under paragraph (4) of this Rule.

(4) Out of the moneys paid to or realised by them as aforesaid the Law Society shall pay in to the legal aid fund in addition to any sum paid under any award or agreement as to expenses and in priority to all other claims on the balance of such moneys, such sum as may be due to the legal aid fund by the person who has received a legal aid certificate in respect of his liability to that fund in connection with the proceedings; and any moneys or corporeal moveables thereafter remaining shall, subject to any requirement of law whereby the moneys or corporeal moveables fall to be paid in whole or in part to any person other than the person who has received a legal aid certificate be paid to the person who has received a legal aid certificate.

(5) Where the property recovered or preserved for a person who has received a legal aid certificate in any proceedings is of such a nature that it can be made the subject of a heritable security, the Law Society may make in favour of themselves a charging order charging and burdening the

property with an annuity to pay to the Law Society any sum due to the legal aid fund by the person who has received a legal aid certificate in connection with the proceedings, together with the expenses of making the charging order and recording it in the appropriate Register of Sasines; and the provisions of subsection (2) and subsections (4) to (10) of section fifty-five of the Water (Scotland) Act, 1946(a), shall with any necessary modifications apply to any such charging order, and the legal aid or emergency certificate shall be deemed to relate to the making thereof.

(6) If it appears to the Law Society that the solicitor acting for a person who has received a legal aid certificate has failed to carry out any of the obligations imposed on him by the foregoing provisions of this Rule, they may report the matter by minute lodged in the original process, to the Court before which the proceedings concerned depended, and that Court may authorise the Society to refuse payment to the solicitor of the whole, or of such part as the Court may deem proper, of the sums, other than cash outlays, otherwise payable to him out of the legal aid fund in respect of those proceedings.

Repeal

7. The Act of Sederunt (Legal Aid Rules) 1950(b) is hereby repealed.

And the Lords appoint this Act of Sederunt to be inserted in the Books of Sederunt and to be printed and published in common form.

J. L. Clyde,
I.P.D

Edinburgh, 28th October, 1958.

EXPLANATORY NOTE

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

This Act of Sederunt repeals the Act of Sederunt (Legal Aid Rules) 1950 but substantially re-enacts its provisions with further provisions relating to awards of expenses against assisted persons and to recovery of sums due to the legal aid fund.

(a) 9 & 10 Geo. 6. c. 42.

(b) S.I. 1950/1516 (1950 I, p. 1223).