STATUTORY INSTRUMENTS

1973 No. 390 (S.25)

LEGAL AID AND ADVICE, SCOTLAND

The Legal Advice and Assistance (Scotland) Regulations 1973

Made - - - -	*5th March* 1973
Laid before Parliament	*13th March* 1973
Coming into Operation	*2nd April* 1973

ARRANGEMENT OF REGULATIONS:

1. Title, Commencement and Interpretation
2. Eligibility for Advice and Assistance
3. Application for Advice and Assistance
4. Determination of Disposable Income and Disposable Capital
5. Duties of Solicitors
6. Charge on Property Recovered or Preserved
7. Duties of Local Committees and of the Central Committee
8. False Statements, etc.

Schedule: Assessment of Resources of Applicant for Advice or Assistance

In exercise of the powers conferred on me by sections 1, 4 and 15 of the Legal Aid (Scotland) Act 1967(a), as extended by section 6 of the Legal Advice and Assistance Act 1972(b) and sections 2, 3, 4, 5 and 11 of the Legal Advice and Assistance Act 1972, and of all other powers enabling me in that behalf, and with the concurrence of the Treasury, I hereby make the following regulations:—

Title, Commencement and Interpretation

1.—(1) These regulations may be cited as the Legal Advice and Assistance (Scotland) Regulations 1973 and shall come into operation on the 2nd April 1973.

(2) The Interpretation Act 1889(c) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

(3) In these regulations, unless the context otherwise requires:—

"the Act" means the Legal Advice and Assistance Act 1972;

"advice" and "assistance" mean respectively advice and assistance under the Act;

"applicant" means an applicant for advice or assistance;

"auditor" in relation to the taxation of accounts means the Auditor of a Sheriff Court within the area of the appropriate local committee;

"local committee" means a Local Committee appointed by the Law Society of Scotland under the provisions of a scheme;

"appropriate local Committee" means the local Committee in whose area advice or assistance has been applied for or given;

"Central Committee" means the Central Committee established under Article 5 of the Legal Aid (Scotland) Scheme 1958;

(a) 1967 c.43. (b) 1972 c.50. (c) 1889 c.63.

"charges or fees" includes outlays;

"child" means a person under the upper limit of school age (within the meaning of the Education (Scotland) Act 1962(a) as read with the Raising of the School Leaving Age (Scotland) Regulations 1972)(b);

"client" means a person receiving advice or assistance;

"family income supplement" means family income supplement under the Family Income Supplements Act 1970(c);

"the fund" means the Legal Aid (Scotland) Fund;

"scheme" means a scheme made under section 8 of the Legal Aid (Scotland) Act 1967 as extended by section 6 of the Act;

"supplementary benefit" means supplementary benefit under the Ministry of Social Security Act 1966(d);

"the Society" means the Law Society of Scotland established by the Solicitors (Scotland) Act 1949(e);

(4) Where a local committee are required or entitled to perform any function under regulations 2 or 7 they may delegate that function to a sub-committee or to the secretary of the committee.

Eligibility for Advice and Assistance

2. Subject to the provisions of the Act and these regulations—

(1) Any person (not being a pupil) shall be entitled to receive advice and assistance.

(2) Advice and assistance on behalf of a child may be applied for and received by his parent or guardian or other person under whose care he is, or by a person acting for the purposes of any proceedings as his curator or tutor.

(3) A person (not being a pupil) authorised to do so by any person who cannot for good reason attend upon a solicitor may apply for and receive advice and assistance on that person's behalf.

(4) A person shall not be given advice or assistance for the same matter by more than one solicitor without the prior authority of the appropriate local committee and such authority shall be given only on such terms and conditions as the local committee may in their discretion see fit to impose.

Application for Advice and Assistance

3.—(1) Save as is hereinafter provided in this regulation every applicant shall furnish the solicitor, on such form as the Society may approve, with such information as will enable the solicitor to determine the disposable capital of the applicant and either his disposable income or that he is in receipt of supplementary benefit or family income supplement.

(2) Where a person is applying for advice or assistance on behalf of a child he shall furnish the solicitor with such information as will enable the solicitor to determine the child's disposable capital and disposable income, and the disposable capital of any person whose resources may be treated as the child's and either that person's disposable income or that he is in receipt of supplementary benefit or family income supplement.

(3) Where a person is authorised to apply for and receive advice or assistance on behalf of a person who cannot for good reason attend upon a solicitor he shall furnish the solicitor with such information as will enable the solicitor to determine the disposable capital of that person and either that person's

(a)1962 c.47. (b) S.I. 1972/59 (1972 I, p.146). (c) 1970 c. 55.
(d) 1966 c.20. (e) 1949 c. 63.

disposable income or that he is in receipt of supplementary benefit or family income supplement.

Determination of Disposable Income and Disposable Capital

4.—(1) The determination of the disposable income and disposable capital and maximum contribution of the applicant, or, as the case may be, of the person on whose behalf the applicant is applying for advice or assistance, and, where that person is a child, of any person whose resources may be treated as the child's, shall be made by the solicitor to whom the applicant applies save that where the solicitor is satisfied that any of those persons is in receipt of supplementary benefit or family income supplement he shall not determine the disposable income or maximum contribution of the applicant or, as the case may be, of that person.

(2) The determination of disposable income and disposable capital shall be made in accordance with the Schedule to these regulations.

Duties of Solicitors

5.—(1) A solicitor shall be entitled for reasonable cause either to refuse to accept an application for advice or assistance or (having accepted an application) to decline to give advice or assistance and may, if he thinks fit, refuse to disclose his reasons for doing so to the applicant or person applying for advice or assistance on his behalf, but shall give the appropriate local committee such information as the committee may from time to time require for the purpose of performing their functions under the scheme.

(2) A solicitor who has given advice or assistance shall, if required, complete such form as the Society may approve and shall send it to the appropriate local committee and shall give them such additional information as they may from time to time require for the purpose of performing their functions under the scheme and shall not be precluded, by reason of any privilege arising out of the relationship between solicitor and client, from disclosing such information to them.

(3) Nothing in these regulations shall prevent a solicitor from entrusting any function under these regulations to a partner of his or to a competent and responsible representative of his employed in his office.

(4) A solicitor shall not give advice or assistance to any person where he has not determined the disposable capital and (unless the person is in receipt of supplementary benefit or family income supplement) the disposable income of any person whose resources fall to be determined by him in accordance with Regulation 4(1).

(5) Where it appears to a solicitor that the cost of giving the advice or assistance is likely to exceed the limit applicable under section 3(2) of the Act he shall apply to the appropriate local committee for prior authority to exceed that limit and shall give them such information as may enable them to consider and determine that application.

(6) Where an applicant is required to pay a contribution towards the cost of the advice or assistance, the solicitor may collect that contribution in such instalments as may be agreed between him and the applicant and where the total contribution is likely to exceed the cost of giving advice or assistance he shall require the applicant to pay a sum sufficient only to meet such expected cost.

(7) Where there is a deficiency in the charges or fees properly chargeable for the advice or assistance, after deduction of any contribution payable by the client under the provisions of section 4 of the Act and any expenses or property recovered or preserved under the provisions of section 5, the solicitor shall submit an account to the appropriate local committee and that committee shall transmit the account to the Central Committee.

(8) If any solicitor is dissatisfied with any decision of the Central Committee as to the payment of a deficiency in his charges or fees for advice or assistance he may require taxation of his account by the auditor.

(9) Where the charges or fees properly chargeable for the advice or assistance are less than any contribution paid by the client the solicitor shall refund the excess contribution.

Charge on Property Recovered or Preserved

6.—(1) The provisions of section 5(3)(*b*) and 5(7) of the Act shall not apply to:—

(*a*) monies payable, whether by way of arrears or otherwise, under a decree or an agreement in writing for the payment of aliment and in this sub-paragraph the expression "aliment" includes—

(i) an order for the payment of an annual or periodical allowance under section 2 of the Divorce (Scotland) Act 1938**(a)**,

(ii) an order for the payment of weekly or periodical sums under subsection (2) of section 3 or subsection (4) of section 5 of the Guardianship of Infants Act 1925**(b)**,

(iii) an order for the payment of sums in respect of aliment under subsection (3) of section 1 of the Illegitimate Children (Scotland) Act 1930**(c)**,

(iv) any order for the payment of sums for the maintenance of any person which is, by virtue of the Maintenance Orders Act 1950**(d)** enforceable in Scotland as if it were a decree for payment of aliment, and

(v) an order for the payment of a capital sum or a periodical allowance or both under section 26 of the Succession (Scotland) Act 1964**(e)**;

(*b*) monies payable as unemployment, sickness, maternity or widow's benefit, guardians' allowance, child's special allowance or retirement pension under the National Insurance Acts 1965**(f)** and 1966**(g)**;

(*c*) benefit payable under the National Insurance (Industrial Injuries) Acts 1965**(h)** and 1966**(i)**;

(*d*) allowances payable under the Family Allowances Act 1965**(j)**;

(*e*) allowances and benefit payable under the Industrial Injuries and Diseases (Old Cases) Act 1967 **(k)**;

(*f*) any rebate or allowance under Part II of the Housing (Financial Provisions) (Scotland) Act 1972**(l)**;

(*g*) any dwelling, household furniture or tools of trade recovered or preserved for the applicant as a result of advice or assistance given to him by the solicitor;

(*h*) one-half of any redundancy payment within the meaning of Part II of the Redundancy Payments Act 1965**(m)** recovered or preserved for the applicant.

(2) Where in the opinion of the solicitor the payment of his charges or fees in priority to any other debts out of any property mentioned in sections 5(3)(*b*)

(a) 1938 c.50. **(b)** 1925 c.45. **(c)** 1930 c.33. **(d)** 1950 c.37.
(e) 1964 c.41. **(f)** 1965 c.51. **(g)** 1966 c.6. **(h)** 1965 c.52.
(i) 1966 c.6. **(j)** 1965 c.53. **(k)** 1967 c.34. **(l)** 1972 c.46.
(m) 1965 c.62.

and 5(7) of the Act:—

(*a*) would cause grave hardship or distress to the client; or

(*b*) could only be effected with unreasonable difficulty because of the nature of the property;

the solicitor may apply to the Central Committee for authority not to enforce, either wholly or partly, such payment and, if the Committee so authorise, any deficiency in the solicitor's charges or fees shall be computed as if sections 5(3)(b) and 5(7) of the Act did not apply to that property or to such part of it that the Committee may have authorised.

Duties of Local Committees and of the Central Committee

7.—(1) Where a local committee receives an application in accordance with regulation 5(5) from a solicitor to exceed the limit applicable under section 3(2) of the Act they shall consider:—

(*a*) whether it is reasonable for the advice or assistance to be given; and

(*b*) whether the estimated amount of the cost to be incurred in giving the advice or assistance is fair and reasonable;

and, if they approve the application, shall prescribe whatever larger amount they think fit and may authorise that the advice or assistance be limited to such subject matter as they think fit;

(2) Where the Central Committee receive an account in accordance with regulation 5(7) they shall scrutinise the account and if necessary, assess it and shall pay the solicitor either the deficiency claimed or such other sum as they consider to constitute fair and reasonable remuneration for work necessarily done in connection with the matter on which advice or assistance was given.

(3) An account so submitted may be in an abridged form and shall be charged according to the Table of Fees for Conveyancing and General Business approved by the Council of the Society.

False Statements, etc.

8. Where an applicant has wilfully failed to comply with the provisions of these regulation as to the information to be furnished by him or, in furnishing such information, has knowingly made a false statement or false representation and the failure arose or the false statement or false representation was made prior to the receipt by the applicant of advice or assistance, the Society may declare that the advice or assistance so given was not given under the Act and these regulations and shall so inform the applicant and the solicitor; and thereafter the Society shall be entitled to recover from the applicant any sums paid out of the fund to the solicitor in respect of the advice or assistance so given.

Gordon Campbell,
One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh.
1st March 1973.

We concur.

Tim Fortescue,
V. H. Goodhew,
Two of the Lords Commissioners of Her Majesty's Treasury.

5th March 1973.

SCHEDULE

ASSESSMENT OF RESOURCES OF APPLICANT FOR ADVICE OR ASSISTANCE

1. In this Schedule, unless the context otherwise requires:—
"capital" means the amount or value of every resource of a capital nature;
"income" means the total income from all sources which the person concerned received or became entitled to during or in respect of the seven days up to and including the date of his application;
"the person concerned" means the person whose disposable capital and disposable income are to be determined.

2. Any question arising under this Schedule shall be decided by the solicitor to whom the applicant has applied and that solicitor, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Central Committee as to the application of this Schedule.

3. The disposable capital and disposable income of the person concerned shall be the capital and income as determined by the solicitor after deducting any sums which are to be left out of account or for which allowance is to be made under the provisions of this Schedule.

4. The resources of any person who under section 22 of the Ministry of Social Security Act 1966(a), is liable to maintain a child or who usually contributes substantially to a child's maintenance may be treated as the resources of the child, if, having regard to all the circumstances, including the age and resources of the child, it appears just and equitable to do so.

5. If it appears to the solicitor that the person concerned has, with intent to reduce the disposable capital or disposable income or maximum contribution, directly or indirectly deprived himself of any resource or has converted any part of his resources into resources which are to be left out of account wholly or partly, the resources of which he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted, as the case may be.

6. In computing the capital and income of the person concerned:—

(*a*) There shall be left out of account the value of the subject matter of any claim in respect of which he is applying for advice or assistance;

(*b*) the resources of any spouse of his shall be treated as his resources unless—

(i) the spouse has a contrary interest in the matter in respect of which he is applying for advice or assistance, or

(ii) the person concerned and his spouse are living separate and apart, or

(iii) in all the circumstances of the case it would be inequitable or impracticable to do so.

7. In computing the capital of the person concerned:—

(*a*) The value of his household furniture and effects, of articles of personal clothing and of the tools and implements of his trade shall be left out of account.

(*b*) There shall be taken into account one half of the amount by which the value of the main or only dwelling in which he resides and has an interest, after deducting therefrom the amount of any encumbrance charged thereon, exceeds £6,000; provided that the solicitor shall not take into account any sum in respect of the value of the dwelling if it appears to the solicitor to be inequitable or impracticable to do so.

(*c*) Where the applicant resides in more than one dwelling in which he has an interest there shall be taken into account in respect of the value to him of any interest in a dwelling which is not the main dwelling any sum which may be obtained by borrowing money on the security thereof.

(*d*) Where the person concerned has living with him one or more of the following persons, namely, a spouse whose resources are required to be aggregated with his, a dependent child or a dependent relative wholly or substantially maintained by him, a deduction shall be made of £125 in respect of the first person, £80 in respect of the second person and £40 in respect of each further person.

(a) 1966 c. 20.

8. In computing the income of the person concerned:—

(*a*) There shall be left out of account:—

(i) any Income Tax paid or payable on income treated under the provisions of this Schedule as his income;

(ii) the amount estimated to have been paid under the National Health Service Contributions Act 1965(**a**), the National Insurance Act 1965(**b**), the National Insurance (Industrial Injuries) Act 1965(**c**) or any scheme made under either of the last two mentioned Acts during or in respect of the seven days up to and including the date of his application for advice or assistance.

(*b*) There shall be a deduction in respect of the spouse of the person concerned, if the spouses are living together, in respect of the maintenance of any dependent child and in respect of the maintenance of any dependent relative of the person concerned, being, in either of such cases, a member of his or her household, at the following rates:—

(i) In the case of a spouse at a rate equivalent to the weekly amount by which the amount in sub-paragraph (*a*) of paragraph 9 of Schedule 2 to the Ministry of Social Security Act 1966(**d**) for a husband and wife exceeds the amount in sub-paragraph (*b*) of that paragraph for a person living alone;

(ii) in the case of a dependant child and a dependent relative, at the amount in sub-paragraph (*c*) of paragraph 9 of the said Schedule appropriate to a dependant of the age of that child or other dependant.

9. If the person concerned is making bona fide payments for the maintenance of a spouse who is living apart, of a former spouse, of a child or relative who is not (in any such case) a member of the household of the person concerned, there shall be a deduction of such payment as was made during or in respect of the seven days up to and including the date of the application for advice or assistance.

10. Where it appears to the solicitor that there has been some error or mistake in the determination of the disposable income, disposable capital or maximum contribution of the person concerned, he may redetermine the disposable income or disposable capital or maximum contribution or, as the case may be, amend the determination, and in the latter case the amended determination shall for all purposes be substituted for the original determination.

EXPLANATORY NOTE

(*This Note is not part of the Regulations.*)

These Regulations make provision for legal advice and assistance to be given to those who are financially eligible.

Regulation 2 provides for eligibility for advice or assistance and for applications on behalf of children under school age and those who cannot attend upon a solicitor personally;

Regulation 3 provides for the furnishing of information as to capital and income (or receipt of supplementary benefit or family income supplement);

Regulation 4 provides for the determination by the solicitor of disposable income and capital;

Regulation 5 imposes duties on solicitors. It enables them not to undertake a case where there are reasonable grounds for refusal; they may be required to give information to the Law Society of Scotland; the procedure for obtaining authority to incur fees and outlays of more than £25 is laid down and provision is made for collecting contributions by instalments, for collecting only sufficient

(**a**) 1965 c. 54. (**b**) 1965 c. 51. (**c**) 1965 c. 52. (**d**) 1966 c. 20.

contribution to meet the fees and outlays and refunding any excess; provision is also made for claiming fees and outlays out of the legal aid fund;

Regulation 6 avoids or reduces the charge on property recovered or preserved in a number of instances;

Regulation 7 imposes duties on local committees and the Legal Aid Central Committee of the Law Society of Scotland in relation to granting authority to incur fees and outlays of more than £25 and assessing fees;

Regulation 8 deals with false statements.

The Schedule sets out the general principles for computing gross income and capital of an applicant and the deductions and allowances to be made therefrom.

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