1961 No. 556

LEGAL AID AND ADVICE, ENGLAND

The Legal Aid (General) (Amendment) Regulations, 1961

Made - - - -	23*rd March*, 1961
Laid before Parliament	29*th March*, 1961
Coming into Operation	8*th May*, 1961

I, David Viscount Kilmuir, Lord High Chancellor of Great Britain, in exercise of the powers conferred upon me by section 12 of the Legal Aid and Advice Act, 1949(a), and paragraphs 1, 2 and 5 of the Third Schedule to that Act, hereby make the following Regulations:—

1.—(1) These Regulations may be cited as the Legal Aid (General) (Amendment) Regulations, 1961, and shall come into operation on the eighth day of May, 1961.

(2) The Interpretation Act, 1889(b), shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) In these Regulations, a regulation referred to by number means the regulation so numbered in the Legal Aid (General) Regulations, 1960(c), as amended(d).

2. Regulation 1 (which relates, among other things, to the interpretation of expressions used in the regulations) shall be amended as follows:—

(*a*) At the end of paragraph (3) there shall be added the following definitions:—

"'authorized summary proceedings' means the following proceedings in a court of summary jurisdiction, namely—

(i) proceedings for or relating to an affiliation order within the meaning of the Affiliation Proceedings Act, 1957(e), or an order under the Matrimonial Proceedings (Magistrates' Courts) Act, 1960(f);

(ii) proceedings under the Guardianship of Infants Acts, 1886 and 1925; and

(iii) proceedings under the Small Tenements Recovery Act, 1838(g).

'secretary' means the secretary of an appropriate committee."

(*b*) In paragraph (5) the words from "an Area Committee is required" to the end of the paragraph shall be omitted and the following words shall be inserted:—

"an Area or Local Committee is required to perform any function, that function may, if the Law Society so direct and to the extent specified in the direction, be performed on behalf of that committee by its chairman, vice-chairman or secretary."

(a) 12, 13 & 14 Geo. 6. c. 51. (b) 52 & 53 Vict. c. 63. (c) S.I. 1960/408 (1960 II, p. 1757). (d) S.I. 1960/730, 1472, 2057, 2369 (1960 II, pp. 1795, 1797, 1799, 1801). (e) 5 & 6 Eliz. 2. c. 55. (f) 8 & 9 Eliz. 2. c. 48. (g) 1 & 2 Vict. c. 74.

(*c*) After paragraph (5) there shall be inserted the following paragraph:—

"(5A) Where in any of the following provisions, namely:—

Paragraph (4) of Regulation 3,
Paragraph (2) of Regulation 4,
Paragraph (6) of Regulation 5,
Paragraphs (3), (5), (9), (10), (12) and (13) of Regulation 6,

there is a reference to an appropriate committee, that reference shall be deemed to include a reference to the secretary, in any case where the duty of considering the application for legal aid is, under these Regulations, to be discharged by him."

3. In Regulation 3 (which deals with applications for certificates) sub-paragraph (*b*) of paragraph (4) shall be deleted and the following shall be inserted:—

"(*b*) the appropriate committee or the Board to determine the disposable income and disposable capital of the applicant;

and the applicant shall, if required by the appropriate committee or the Board to do so, attend for an interview or supply such further information or documents as they may require."

4. Regulation 5 (which relates to the duties of committees receiving applications for certificates) shall be amended as follows:—

(*a*) In paragraph (2) the words "First Schedule" shall be substituted for the word "Schedule".

(*b*) In paragraph (5) for the words "the immediately preceding paragraph" there shall be substituted the words "paragraphs (4) and (5A)".

(*c*) The following paragraph shall be inserted after paragraph (5):—

"(5A) Subject to the provisions of Regulation 11—

(*a*) an application for a certificate in respect of authorized summary proceedings shall be considered by the secretary who, having regard to the general circumstances in which it was made, including questions of fact or law, and either the determination or the estimate made by the Board of the disposable income and disposable capital of the applicant and the maximum contribution payable by him or the terms of any undertaking lodged by him under the provisions of paragraph (12A) of Regulation 6, may (save in the circumstances mentioned in paragraph (8) of this Regulation) approve the application on behalf of the appropriate committee; and in every case in which he does not approve the application he shall refer it to the committee for their consideration and approval or refusal;

(*b*) an application for a certificate in respect of authorized summary proceedings that has been referred to an appropriate committee by the secretary shall be considered by that committee, which, having regard to the general circumstances in which it was made, including questions of fact or law and either the determination or the estimate made by the Board of the disposable income and disposable capital of the applicant and the maximum contribution payable by him or the terms of any undertaking lodged by him under the provisions of paragraph (12A) of Regulation 6, may approve the application."

5. In Regulation 6 (which specifies the steps to be taken when an applicant desires that a certificate shall be issued to him)—

(*a*) There shall be inserted in paragraph 10 after the words "application for a certificate" the words "other than a certificate in respect of authorized summary proceedings";

(*b*) There shall be inserted at the beginning of paragraph (12) the words "Subject to the next paragraph of this Regulation";

(*c*) The following paragraph shall be inserted after paragraph (12):—

"(12A) An applicant for legal aid in connection with authorized summary proceedings may, with a view to expediting the issue to him of a certificate, lodge with the secretary, at the time of applying for the certificate or at any time prior to its being issued, an undertaking in a form approved by The Law Society to pay any contribution that may be assessed by the committee or its secretary in accordance with these Regulations";

(*d*) In paragraph (13) after the words "provisions of paragraph (12)" there shall be inserted the words "and paragraph (12A)" and before the word "Form" there shall be inserted the word "appropriate".

6. In paragraph (1) of Regulation 10 (which relates to appeals against the refusal of certificates, etc.), after the word "proceedings" there shall be inserted the words "other than authorized summary proceedings".

7. After sub-paragraph (*b*) of paragraph (5) of Regulation 12 (which deals with the discharge and revocation of certificates) there shall be added the following:—

"or (*c*) In the case of a failure to comply with the provisions of paragraph (4) (*b*) of Regulation 3 revoke the certificate, whether such omission or act occurred prior to or after the issue of the certificate."

8. After paragraph (10) of Regulation 16 (which deals with service of notices, etc.), there shall be added the following paragraph:—

"(11) Paragraphs (2) to (9), inclusive, of this Regulation shall not apply to authorized summary proceedings and where an assisted person is a party to such proceedings his solicitor shall, before or at the first hearing that takes place after the certificate has been issued, file a copy of the certificate with the clerk to the justices."

9. To paragraph (1) of Regulation 17 (which deals with moneys payable to an assisted person) there shall be added the following proviso:—

"Provided that the payment of any sum under an order for costs in favour of an assisted person in authorized summary proceedings shall be made to the clerk to the justices who shall pay it to The Law Society or as The Law Society shall direct and only the clerk to the justices shall be able to give a good discharge therefor."

10. After Regulation 24 there shall be inserted the following Regulation:—

"*Remuneration of counsel and solicitors in courts of summary jurisdiction, etc.*

25. Regulations 19 to 22 inclusive shall not apply in respect of the following proceedings in a court of summary jurisdiction or a court of quarter sessions:—

(*a*) proceedings for or relating to an affiliation order within the meaning of the Affiliation Proceedings Act, 1957, or an order under the Matrimonial Proceedings (Magistrates' Courts) Act, 1960;

(*b*) proceedings under the Guardianship of Infants Acts, 1886 and 1925;

(*c*) proceedings under the Small Tenements Recovery Act, 1838;

and the sums allowed to counsel and solicitors in connection with those proceedings shall be assessed by the appropriate Area Committee in accordance with the provisions of the Second Schedule to these Regulations."

11. The Schedule shall be called "First Schedule" and the following Schedule shall be inserted after the First Schedule:—

"SECOND SCHEDULE Regulation 25

REMUNERATION OF SOLICITORS AND COUNSEL GIVING LEGAL AID IN PROCEEDINGS IN COURTS OF SUMMARY JURISDICTION AND COURTS OF QUARTER SESSIONS

1.—(1) There shall be allowed to the solicitor acting under a certificate on behalf of an assisted person—

(*a*) where the hearing takes place in a court of summary jurisdiction, a fee of not less than £6 6s. 0d. and not exceeding £36 15s. 0d. and, in addition, a further fee not exceeding £12 12s. 0d. in respect of every day on which an adjourned hearing takes place; or

(*b*) where the hearing takes place in a court of quarter sessions, a fee of not less than £8 8s. 0d. and not exceeding £36 15s. 0d. and, in addition, a further fee not exceeding £12 12s. 0d. in respect of every day on which an adjourned hearing takes place or, if the court of quarter sessions is one in which a party may appear by a solicitor and counsel has not been instructed, a fee not exceeding £18 7s. 6d.

(2) In addition to any fee payable under sub-paragraph (1) of this paragraph, the solicitor shall be allowed:—

(*a*) expenses actually and reasonably incurred by him or his clerk in travelling to and from the court in which the hearing takes place and to and from any place visited for the purpose of preparing or conducting the case; and

(*b*) any other out-of-pocket expenses actually and reasonably incurred.

2.—(1) There shall be allowed to counsel acting under a certificate on behalf of an assisted person, a fee of not less than £6 11s. 0d. (except where the hearing takes place in a court of quarter sessions, where the fee shall not be less than £8 13s. 0d.) and not exceeding £37 15s. 0d.

(2) Where a hearing has not been concluded at the end of the first relevant period thereof there shall be allowed to counsel in respect of each relevant period, or, in the case of an incomplete period, part thereof, after the first, a refresher fee.

(3) In this paragraph—

(*a*) 'relevant period' means either, as The Law Society may determine generally or as the appropriate Area Committee may determine in relation to any particular hearing, any day during any part of which the hearing continues or any period of five hours, whether continuous or not, during which the hearing continues;

(*b*) 'refresher fee' means such fee in addition to the fee allowed under the foregoing paragraph, not exceeding half the fee allowed as aforesaid, as appears to be proper in all the circumstances of the case.

(4) There shall be allowed to counsel in addition to any fees allowed under the foregoing paragraphs—

(*a*) in respect of any conference or consultation in chambers or elsewhere lasting not more than half-an-hour, a fee of £2 7s. 0d.;

(*b*) in respect of any conference or consultation in chambers or elsewhere lasting more than half-an-hour, such fee as appears to be proper in all the circumstances of the case;

(*c*) in respect of any application to the court for a case, which is in a list of cases to be heard on any particular day, not to be heard on that day, such fee as appears to be proper in all the circumstances of the case;

(*d*) for advice in writing, if in the opinion of the appropriate Area Committee it was reasonably necessary to obtain counsel's advice in writing, a fee not exceeding £11 0s. 0d.

3.—(1) Subject to the provisions of this Schedule, the appropriate Area Committee in assessing the sums payable to a solicitor or counsel shall take into account all the relevant circumstances, including the nature, importance, complexity or difficulty of the work, and the time involved, including time spent at the court on any day waiting for the case to be heard, if the case was in that day's list, and shall allow such amounts as appear to them to represent fair remuneration for the work actually and reasonably done.

(2) In assessing as aforesaid, the appropriate Area Committee shall not allow any sum in respect of any conference, consultation, attendance or visit unless it is satisfied that such conference, consultation, attendance or visit was reasonably necessary.

4. If it appears to the appropriate Area Committee in assessing the sums payable to a solicitor or counsel that for any reason, including the exceptional length, difficulty or complexity of the case in respect of which the certificate was granted, the sums payable by virtue of this Schedule would not provide fair remuneration according to the work actually and reasonably done, it shall certify accordingly, and where it so certifies, any limitation contained in this Schedule on the amount of any fee payable shall not apply, and the appropriate Area Committee shall, after taking into account all the relevant circumstances of the case and having regard to the considerations mentioned in the preceding paragraph, allow such fees in respect of the work to which the certificate relates as appear to it to represent fair remuneration according to the work actually and reasonably done.

5. Where a solicitor acting on behalf of an assisted person under a certificate reasonably undertakes work in giving notice of appeal or in applying for a case to be stated and in matters preliminary thereto, being work done within the ordinary time for giving notice or making an application, there shall, in addition to the fees which may be paid to him under the foregoing provisions of this Schedule and his disbursements on the said work, be allowed to him a fee not exceeding £10 10s. 0d. in respect of the said work and, in any case where counsel's opinion is required, a fee not exceeding £11 0s. 0d. shall be allowed to counsel for his opinion."

12. The following Form shall be added to the Forms contained in the Appendix to the Legal Aid (General) Regulations, 1960, as amended:—

"*Legal Aid* (*General*) *Regulations*, 1960.

THE LAW SOCIETY

CIVIL AID CERTIFICATE
FOR PROCEEDINGS IN COURTS OF SUMMARY JURISDICTION

THIS IS TO CERTIFY that

of

(hereinafter called "the assisted person") is entitled, in accordance with the Legal Aid and Advice Acts, 1949 and 1960, and the Regulations and Schemes made thereunder, to legal aid as in connection with the following proceedings.

THIS IS FURTHER TO CERTIFY that—

The assisted person's solicitor is

of

Dated this day of , 19 .

(Signed)

Secretary to the Local Committee in Legal Aid Area No. "

Dated this twenty-third day of March, 1961.

Kilmuir, C.

EXPLANATORY NOTE

(*This Note is not part of the Regulations, but is intended to indicate their general purport.*)

These Regulations make the amendments to the Legal Aid (General) Regulations, 1960, that are required by the introduction of legal aid for certain proceedings in courts of summary jurisdiction and quarter sessions (proceedings under the Affiliation Proceedings Act, 1957, the Matrimonial Proceedings (Magistrates' Courts) Act, 1960, the Guardianship of Infants Acts, 1886 and 1925 and the Small Tenements Recovery Act, 1838). Most of the proceedings under these Acts are of a domestic nature.

Regulation 4 (*c*) allows the secretary of the appropriate Local Committee of the Law Society to grant but not to refuse applications for legal aid for the proceedings mentioned above. Applications which are not granted must be referred to the committee whose decision is, under Regulation 6, final. Regulation 5 (*c*) provides, with a view to expediting the granting of legal aid in those proceedings, for an applicant to give an undertaking to pay such contribution as shall, in due course, be assessed in accordance with the Regulations.

Regulation 10 gives the Area Committees of the Law Society the duty of assessing the remuneration of counsel and the remuneration and expenses of solicitors, who give legal aid in these proceedings. These are to be assessed in accordance with the provisions of the Schedule to the Regulations, which is added in Regulation 11.