STATUTORY INSTRUMENTS

1965 No. 865

LEGAL AID AND ADVICE, ENGLAND

The Legal Aid (General) (Amendment) Regulations 1965

Made - - - -	*7th April* 1965
Laid before Parliament	*14th April* 1965
Coming into Operation	*1st May* 1965

I, Gerald, Baron Gardiner, 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**), hereby make the following Regulations :—

1.—(1) These Regulations may be cited as the Legal Aid (General) (Amendment) Regulations 1965 and shall come into operation on 1st May 1965.

(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 1962(**c**), as amended(**d**).

2. Regulation 3 (which relates to applications for certificates) shall be amended as follows:—

(*a*) sub-paragraph (*a*) of paragraph (1) shall be deleted and there shall be substituted :—

"(*a*) if resident in the United Kingdom or in the Republic of Eire, to any Area Committee ; "

(*b*) sub-paragraph (*a*) of paragraph (2) shall be deleted and there shall be substituted :—

"(*a*) if resident in the United Kingdom or in the Republic of Eire, to any Local Committee ; ".

3. Regulation 12 (which relates to the discharge and revocation of certificates) shall be amended as follows :—

(*a*) Paragraph (5) shall be revoked and the following paragraphs shall be inserted after paragraph (4)—

"(4A) Where the appropriate Area Committee consider that an assisted person has, in relation to any application for a certificate which was granted to him, made an untrue statement as to his resources or has failed to disclose any material fact concerning them, they may, if they think fit, revoke that certificate, whether the statement was made or the failure occurred before or after its issue, and

(**a**) 12, 13 & 14 Geo. 6. c. 51. (**b**) 52 & 53 Vict. c. 63. (**c**) S.I. 1962/148 (1962 I, p. 117).
(**d**) The amending Regulations are not relevant to the subject matter of these Regulations.

notwithstanding that it was made or occurred in relation to any application to another Area or Local Committee in connection with the same proceedings :

Provided that the certificate shall not be revoked under this paragraph if the assisted person satisfies the Committee that he used due care and diligence to avoid such misstatement or failure.

(5) Where the appropriate Area Committee are satisfied that an assisted person has, in relation to any application for a certificate which has been granted to him—

(*a*) wilfully failed to comply with these Regulations by not furnishing to the Committee any material information concerning anything other than his resources ; or

(*b*) knowingly made an untrue statement in furnishing such information ; or

(*c*) failed to attend for an interview or to provide information when so required under Regulation 3(4) ;

they may, after giving the assisted person an opportunity to show cause why the certificate should not be revoked, revoke that certificate, whether the statement was made or the failure occurred before or after its issue, and notwithstanding that it was made or occurred in relation to any application to another Area or Local Committee in connection with the same proceedings."

(*b*) Paragraph (6) shall be amended—

(i) by substituting the following for sub-paragraphs (*a*) and (*b*)—

" (*a*) has wilfully failed to comply with these Regulations by not furnishing to the Committee any material information concerning anything other than his resources ; or

(*b*) knowingly made an untrue statement in furnishing such information ; or

(*c*) has, in relation to any application for a certificate which has been granted to him, made an untrue statement as to his resources or has failed to disclose any material fact concerning them ; "

(ii) by the insertion of the following words at the end of the paragraph—

" and provided further that no order shall be made under this paragraph by reason of any misstatement or failure such as is referred to in sub-paragraph (*c*) hereof, if the assisted person satisfies the court that he used due care and diligence to avoid such misstatement or failure ".

(*c*) The following paragraph shall be inserted after paragraph (6)—

" (6A) Where an application under the preceding paragraph is made by The Law Society, the court may order The Law Society to be made a party to the proceedings for the purpose of the application."

4. Regulation 17 (which relates to property recovered for an assisted person, etc.) shall be amended as follows:—

(*a*) For paragraph (1) there shall be substituted the following:—

" (1) Subject to the provisions of paragraph (9) of this Regulation, all moneys payable to an assisted person—

(*a*) by virtue of any agreement or order made in connection with the claim or action, cause or matter to which his certificate re-

lates, whether such agreement was made before or after the proceedings were taken; or

(*b*) being moneys payable in respect of the claim or the action, cause or matter to which his certificate relates upon the distribution of property of a person who has been adjudicated bankrupt or has entered into a deed of arrangement, or of a company in liquidation; or

(*c*) being moneys which were paid into court by him or on his behalf in any proceedings to which his certificate relates and which have been ordered to be repaid to him; or

(*d*) being moneys standing in court to the credit of any proceedings to which his certificate relates;

shall be paid or repaid, as the case may be, to the solicitor of the assisted person or, if he is no longer represented by a solicitor, The Law Society, and only the solicitor, or, as the case may be, The Law Society, shall be capable of giving a good discharge for moneys so payable, provided that—

(i) the payment of any sum under an order for costs in favour of an assisted person in authorised 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; and

(ii) where moneys become payable to the solicitor of the assisted person or The Law Society out of property of a person who has been adjudicated bankrupt, or has entered into a deed of arrangement, or of a company in liquidation, as aforesaid, the solicitor or The Law Society as the case may be shall lodge with the trustee in bankruptcy, the trustee or assignee of the deed of arrangement, or the liquidator of the company in liquidation, the assisted person's certificate which shall thereupon operate as a request by the assisted person for payment of such moneys to the solicitor or The Law Society as the case may be and shall be a sufficient authority for that purpose."

(*b*) For paragraph (5) there shall be substituted the following:—

"(5) Where the order is for the payment of money and an Area Committee direct that the proceedings need not be taken by the assisted person himself, The Law Society may take the proceedings in its own name—

(*a*) by issuing a judgment summons in the county court; or

(*b*) by instituting proceedings in bankruptcy, or where the debtor is a company to wind up the company, or by intervening in any proceedings in bankruptcy or to wind up the company; or

(*c*) to enforce or give effect to the order outside the jurisdiction;

and for any of those purposes may authorise any person to swear an affidavit, file a proof, receive a dividend, or take any other step in the proceedings in the name of The Law Society; and the costs incurred by The Law Society in any such proceedings shall be a first charge on any sum so recovered."

(*c*) After paragraph (9)(*e*) there shall be inserted the following:—

"(*f*) moneys paid as a result of proceedings taken in a court in England or Wales to enforce an order made by a court outside its

jurisdiction in proceedings for relief comparable to that which may be given by a court in England or Wales under the provision mentioned in this paragraph ; ".

Dated 7th April 1965.

Gardiner, C.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Legal Aid (General) Regulations 1962.

Regulation 2 has the effect of enabling a person who is resident in Scotland, Northern Ireland or the Republic of Eire to apply for legal aid to any Area or Local Committee instead of having to apply to a Committee in London.

Regulation 3 allows an Area Committee to revoke a Legal Aid Certificate where the applicant—

(*a*) has made an untrue statement as to his resources or has failed to disclose a material fact concerning them ; and

(*b*) has made an untrue statement about anything other than his resources.

The extent of the burden of proof in these two cases differs. In the former the Committee can revoke the assisted person's certificate if they consider that he has made an untrue statement as to his resources or has failed to disclose any material fact concerning them, with the proviso, however, that they shall not revoke his certificate if he satisfies them that he used due care and diligence to avoid a misstatement. In the latter case the Committee can only revoke a certificate if they are satisfied that an assisted person has knowingly made an untrue statement in furnishing information, etc.

The Court is also given power, by Regulation 3, to make The Law Society a party to the proceedings where it is considering an application to have a Legal Aid Certificate revoked on either of the above grounds.

Regulation 4 provides for the payment to an assisted person's solicitor, or to The Law Society if he has no solicitor, of money recovered on his behalf upon the distribution of property in the case of an insolvency. The Regulation also provides for The Law Society to take proceedings in its own name to enforce an order for the payment of moneys due to an assisted person and payable to the Legal Aid fund. In addition, Regulation 4 dispenses, in certain cases, with the general requirement of the Regulations for payment into the fund of moneys which are recovered on behalf of an assisted person.