LEGAL AID

1959 No. 1431 (S. 85)

The Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations, 1959

Made - - - -	*5th August*, 1959
Laid before Parliament	*18th August*, 1959
Coming into Operation	*7th September*, 1959

In exercise of the powers conferred upon me by section 4 of the Legal Aid (Scotland) Act, 1949(a), and of all other powers enabling me in that behalf, and with the concurrence of the Treasury, I hereby make the following Regulations:—

1. These Regulations may be cited as the Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations, 1959, and shall come into operation on the 7th day of September, 1959.

2.—(1) In the Legal Aid (Scotland) (Assessment of Resources) Regulations, 1950(b) (hereinafter referred to as " the principal regulations "), Part II of the First Schedule (which sets out the rules for computing allowances in respect of income) shall be amended in accordance with the provisions of the following paragraphs of this regulation and shall accordingly have effect as set out in the Schedule to these regulations.

(2) In sub-paragraph (1) of paragraph 4 of the said Part II (which paragraph relates to the allowance to be made in respect of rent) for the words " by which the net rent payable by him exceeds £39 a year " there shall be substituted the words " of the net rent payable, or such a part thereof as is reasonable in the circumstances ".

(3) Sub-paragraph (4) of the said paragraph 4 shall be omitted.

(4) In sub-paragraph (i) of paragraph 5 of the said Part II (which paragraph relates to the allowance to be made in respect of the spouse of the person concerned) for the words " at the rate of £52 per annum " there shall be substituted the words " at the rate equivalent to the amount by which the rate for the time being prescribed for a husband and wife by sub-paragraph (*a*) of paragraph 2 of Part I of the Schedule to the National Assistance (Determination of Need) Regulations, 1948(c), as amended by any subsequent regulation, exceeds the rate for the time being prescribed by sub-paragraph (*b*) of the said paragraph 2 for a person who is living alone ".

(5) Sub-paragraph (3) of paragraph 7 of the said Part II (which sub-paragraph provides that the total of amounts allowed for dependent relatives shall not exceed £52) shall be omitted.

(a) 12, 13 & 14 Geo. 6. c. 63. (b) S.I. 1950/1514 (1950 I, p. 1227).
(c) S.I. 1948/1334 (Rev. XV, p. 251: 1948 I, p. 2023).

(6) In paragraph 8 of the said Part II the proviso (which provides that the total of amounts allowed under that paragraph and for dependent relatives shall not exceed £78) shall be omitted.

Dated this 31st day of July, 1959.

John S. Maclay,
One of Her Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.

We concur

R. Brooman-White,
Michael Hughes-Young,
Two of the Lords Commissioners of Her Majesty's Treasury.

5th August, 1959.

Regulation 2

SCHEDULE

PART II OF THE FIRST SCHEDULE TO THE LEGAL AID (SCOTLAND) (ASSESSMENT OF RESOURCES) REGULATIONS 1950 AS AMENDED BY THESE REGULATIONS

Rules for computing allowances in respect of income

1. The deduction to be made in calculating the disposable income of the person concerned under Regulation 7 of these Regulations shall be the total of the allowances computed in accordance with the provisions of this Part of this Schedule.

2.—(1) The allowance in respect of Income Tax shall be the total amount of tax which it is estimated would be payable by the person concerned if his income as computed in accordance with Part I of this Schedule were his income for a fiscal year and his liability for tax in that year were to be ascertained by reference to that income and not by reference to his income in any other year or period.

(2) For the purposes of this rule the tax shall be estimated at the rate provided by and after making all appropriate allowances deductions or reliefs in accordance with the provisions of the Income Tax Acts in force for the fiscal year current at the date of the application for a certificate.

3. The allowance to be made in respect of contributions payable by the person concerned (whether by deduction or otherwise) under the National Insurance Acts, 1946 to 1949 shall be the amount estimated to be so payable in the 12 months following the application for a certificate.

4.—(1) In the case of a householder the allowance to be made in respect of the rent of his dwelling-house shall be the amount of the net rent payable, or such a part thereof as is reasonable in the circumstances.

(2) In this rule the expression "rent" means—

(i) the feu duty or ground annual or the rent payable in respect of a year, and

(ii) a sum in respect of the yearly outgoings borne by the householder including, in particular, income tax, rates, and any other annual burden, including any annual instalment (whether of interest or capital) payable in respect of heritable security within the meaning of the Conveyancing

(Scotland) Act, 1924(a) or any security constituted by ex facie absolute disposition or a real burden *ad factum praestandum* and a reasonable sum towards any yearly expenditure on repairs and insurance reasonably incurred by the householder.

(3) In this rule the expression "net rent" means—the rent less any proceeds of sub-letting any part of the premises in respect of which the said rent is paid or where any person or persons other than the person concerned or his or her spouse or any dependant of his or hers is accommodated, otherwise than as a sub-tenant, in the premises for which the rent is paid, the rent less such an amount as the Board may determine to be reasonably attributable to the accommodation of such other person.

5. An allowance in respect of the spouse of the person concerned shall be made at the following rates:—

(i) if the spouses are living together, at the rate equivalent to the amount by which the rate for the time being prescribed for a husband and wife by sub-paragraph (*a*) of paragraph 2 of Part I of the Schedule to the National Assistance (Determination of Need) Regulations, 1948, as amended by any subsequent regulation, exceeds the rate for the time being prescribed by sub-paragraph (*b*) of the said paragraph 2 for a person who is living alone;

(ii) if the spouses are living apart and the person concerned is making and throughout such period as the Board may consider adequate has regularly made payments for the maintenance of the spouse, at the rate of such payments or at such rate not exceeding the rate of such payments as in all the circumstances is reasonable.

6. An allowance in respect of any dependent child shall be made at the rate for the time being prescribed in respect of a dependant of the age group in which such child falls by paragraph 2 (*c*) of Part I of the Schedule to the National Assistance (Determination of Need) Regulations, 1948(b), as amended by any subsequent Regulation.

7.—(1) An allowance may be made in respect of a dependent relative of such an amount as is reasonable having regard to all the circumstances.

(2) For the purpose of this rule the expression "dependent relative" means a person who, by reason of age or physical or mental disability, is incapable of maintaining himself and who, in relation to the person concerned or his or her spouse is:—

(*a*) a parent or remoter lineal ancestor or a brother or sister of a parent or remoter lineal ancestor;

(*b*) a brother or sister or a child or grandchild of a brother or sister;

(*c*) a child or grandchild not being a dependent child.

8. In respect of any other matter for which the person concerned must or reasonably may provide and which is of a like nature or ought in the special circumstances to be taken into account there shall be allowed such amount as is just and equitable.

EXPLANATORY NOTE

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

These Regulations amend the rules for computing allowances on the incomes of persons applying for legal aid. They provide that certain allowances shall no longer be subject to the upper limits laid down in the Legal Aid (Scotland) (Assessment of Resources) Regulations 1950, that the allowance for a spouse shall be at the same rate as the corresponding national assistance allowance and that rent may be allowed in full.

(a) 14 & 15 Geo. 5. c. 27. (b) S.I. 1948/1334 (Rev. XV, p. 251: 1948 I, p. 2023).