(*b*) a person has been admitted to the benefit of the Poor's Roll he shall continue to be entitled to the benefit of the Poor's Roll in connection with those proceedings, and (i) where such proceedings are in the Court of Session, Rules of Court 72 to 91(**a**), or (ii) where such proceedings are in the sheriff court, section 51 and Rules 152 to 169 in the First Schedule to the Sheriff Courts (Scotland) Act, 1907(**b**) shall to that extent be deemed not to have been repealed.

Repeal

8. Rules of Court, 72 to 91 are hereby repealed.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.

T. M. Cooper,
I.P.D.

Edinburgh.
26th July, 1950.

EXPLANATORY NOTE

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

This Act of Sederunt makes provision for the procedural and other mechanism required to enable Legal Aid to be introduced in the Court of Session and the Sheriff Courts in civil cases in pursuance of the Legal Aid (Scotland) Act, 1949, and the Scheme, Regulations and Orders made and to be made thereunder, and for the transition from the existing to the new procedure.

The Legal Aid (Scotland) (Assessment of Resources) Regulations, 1950

1950 No. 1514 (S. 110)

Made - - - -	11*th September*, 1950
Laid before Parliament	12*th September*, 1950
Coming into Operation	2*nd October*, 1950

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

1.—(1) These Regulations may be cited as the Legal Aid (Scotland) (Assessment of Resources) Regulations, 1950, and shall come into operation on the second day of October, 1950. These Regulations and the Legal Aid (Scotland) (General) Regulations, 1950(**d**), may be cited together as the Legal Aid (Scotland) Regulations, 1950.

(**a**) S.I. 1948 (No. 1691) I, p. 3778.
(**b**) 7 Edw. 7. c. 51.
(**c**) 12, 13 & 14 Geo. 6. c. 63.
(**d**) S.I. 1950 No. 1513, p. 1236 below.

(2) In these Regulations, unless the context otherwise requires—

" the Act " means the Legal Aid (Scotland) Act, 1949 ;

" the Board " means the National Assistance Board ;

" Committee " means the Supreme Court Committee or a Local Committee established under the Legal Aid (Scotland) Scheme, 1950, made under section 8 of the Act, by whom the Board are required to determine the disposable income and the disposable capital and the maximum contribution of any person ;

" certificate " means a legal aid certificate issued by a Committee in accordance with the Legal Aid (Scotland) Scheme, 1950 ;

" dependent child " means a child or stepchild or adopted child of the person concerned, living with him and under the upper limit of compulsory school age, and " the upper limit of compulsory school age " means the age at which under the law for the time being in force the parents of a child cease to be under obligation to cause him to receive sufficient education ;

" income " includes benefits and privileges ;

" the period of computation " means the period of twelve months next ensuing from the date of the application for a certificate or such other period of twelve months as in the particular circumstances of any case the Board may consider to be appropriate ;

" the person concerned " means the person whose disposable income, disposable capital and maximum contribution are to be determined or the person the rate of whose income and the amount of whose capital is to be computed or the person whose resources are to be treated as the resources of any other person as the case may require.

(3) The Interpretation Act, 1889(a), applies to these Regulations as it applies to the interpretation of an Act of Parliament.

(4) Any reference in these Regulations to any payment received or made or any debt due or owed or any other resource possessed or obligation due by an applicant under Scots law shall include references to any such resource or obligation under any corresponding provision in the law of any other country.

2. In computing the rate of income or the amount of capital of the person concerned there shall be excluded the value of the subject matter of the dispute in respect of which application has been made for a certificate.

3. Where any person has a duty or discretion to use any fund for the benefit of the person concerned there may be included in the rate of his income or the amount of his capital so much of that fund as appears to the Board to be reasonable.

4.—(1) Except as otherwise provided in paragraph (2) of this Regulation, in computing the rate of income and the amount of capital of the person concerned the resources of his or her spouse shall be treated as his or her resources.

(2) The resources of the spouse of the person concerned shall not be treated as his or her resources if—

(i) the proceedings in respect of which the application for a certificate is made are a consistorial action, or

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

(a) 52 & 53 Vict. c. 63.

(iii) it would in the circumstances of the case be either inequitable or impracticable to make the resources of one spouse available to the other spouse.

5. Where an application for legal aid is made on behalf of a person under the age of 16, his resources shall be deemed to include the resources of any person who under section 42 of the National Assistance Act, 1948(**a**), is liable to maintain him and for the purpose of any investigation by the Board such person shall be deemed to have applied for legal aid jointly with him.

6. If it appears to the Board that the person concerned, with intent to reduce the amount of his disposable income, disposable capital or maximum contribution, has directly or indirectly deprived himself of any resource or has converted any part of his resources into resources which under these Regulations are to be wholly or partly disregarded or in respect of which nothing is to be included, 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.

7. Save as otherwise provided by these Regulations, the disposable income of the person concerned shall be determined at the amount calculated by deducting from his rate of income computed in accordance with Part I of the First Schedule to these Regulations the sums computed in accordance with Part II of the said Schedule.

8. Save as otherwise provided by these Regulations, the disposable capital of the person concerned shall be determined at the amount calculated by deducting from the amount of his capital computed in accordance with Part I of the Second Schedule to these Regulations the sums computed in accordance with Part II of the said Schedule.

9.—(1) The disposable income, disposable capital and maximum contribution of the person concerned shall be determined by the Board in accordance with these Regulations and any question arising thereunder shall be decided by the Board, and in particular, but without prejudice to the generality of the foregoing, the Board shall decide any question as to the resources to be taken into account, the amount or value of any resources, the method of computation thereof (including whether a resource is of an income or capital nature), and the amount of any deduction, allowance or adjustment.

(2) Subject to the provisions of the succeeding Regulations, every decision or determination of the Board shall be final.

(3) The determination of the disposable income, disposable capital and maximum contribution shall be communicated in writing to the Committee.

10. Where it appears to a Committee that the circumstances upon which the Board has determined the disposable income or disposable capital of the person concerned have altered to such an extent that his certificate should be varied or discharged the Board shall, if so required by that Committee, redetermine that person's disposable income, disposable capital and maximum contribution.

11. Where it appears to the Board that there has been some error or mistake in the determination of a person's disposable income, disposable capital or maximum contribution or in any computation or estimate upon which such

(a) 11 & 12 Geo. 6. c. 29.

determination is based and that it would be just and equitable to correct the determination, the Board may, with the consent of the Committee by whom the certificate would be issued or discharged, correct such error or mistake and make an amended determination; and such amended determination shall for all purposes be substituted for the original determination and shall have effect in all respects as if it were the original determination.

12. Where the Supreme Court Committee approve an application relating to proceedings (other than interlocutory proceedings) in an appellate court in any action, cause or matter in which the applicant was an assisted person in the Outer House of the Court of Session or in the sheriff court, as the case may be, they shall not require the Board to redetermine the applicant's disposable income and disposable capital, but shall, save as is hereinafter provided, assess the amount of contribution, if any, payable in respect of the proceedings at an amount not greater than the maximum contribution determined by the Board in relation to the proceedings in the Outer House or the sheriff court, as the case may be, less any amount assessed by them or by any Local Committee to be paid in respect of those proceedings:

Provided that, if, since the last determination by the Board of the disposable income and disposable capital of the applicant, his circumstances have altered otherwise than as a result of the payment of a contribution in respect of the proceedings in the Outer House or the sheriff court, as the case may be, they may require the Board to redetermine his disposable income and disposable capital and shall take into account any increase or decrease in the amount of his disposable income by an amount greater than £52 and any increase in the amount of his disposable capital by an amount greater than £75.

Hector McNeil,
One of His Majesty's Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.

We concur.

Charles Royle,
H. W. Bowden,
Two of the Lords Commissioners of His Majesty's Treasury.

Dated this 11th day of September, 1950.

FIRST SCHEDULE

PART I

Rules for computing the rate of income

1. The rate of income of the person concerned from every source which is not to be disregarded under the provisions of these Regulations shall be computed on a yearly basis in accordance with the provisions of this Part of this Schedule.

2.—(1) The rate of income of the person concerned from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of computation, that income in the absence of other means of ascertaining it being taken to be the income received during the preceding year.

(2) No deduction for income tax shall be made in computing the amount of any income from any source for the purpose of this Part of this Schedule.

3.—(1) In computing the rate of income of any person any such payment or part of a payment as is specified in the following provisions of this rule shall be disregarded up to the amount of one pound a week or, if the person in question is in receipt of more than one payment so specified, up to the said amount in the aggregate.

(2) The payments and parts of payments hereinbefore referred to are:—

(*a*) the first ten shillings and sixpence a week of any payment of sick pay received from a friendly society or trade union;

(*b*) the first ten shillings and sixpence a week of any superannuation payment or superannuation payments in respect of previous service or employment from which the recipient has retired or resigned (whether payable by a former employer or not), not being a payment or payments—

(i) on account of a pension under the Old Age Pensions Act, 1936(**a**), or under or by virtue of the Widows', Orphans' and Old Age Contributory Pensions Acts, 1936 to 1941, or under any enactment repealed by any of those Acts, or

(ii) on account of a retirement pension under the National Insurance Act, 1946(**b**);

(*c*) any payment by way of attendance allowance under section fourteen of the National Insurance Act, 1946, and any payment by way of maternity allowance under section fifteen of that Act;

(*d*) any of the following payments, that is to say—

(i) any payment in respect of retired pay or pension to which section sixteen of the Finance Act, 1919(**c**), applies, including any payment in respect of a dependants' allowance attached to such a pension;

(ii) any payment in respect of a disablement pension awarded under the Personal Injuries (Emergency Provisions) Act, 1939(**d**), including an increase in such a pension in respect of dependants;

(iii) any weekly payment by way of compensation under any enactment relating to workmen's compensation;

(iv) any payment by way of disablement benefit under section twelve of the National Insurance (Industrial Injuries) Act, 1946(**e**).

(3) Where under subsection (4) of section four of the Act the resources of two or more persons are to be aggregated, paragraphs (1) and (2) of this rule shall apply to the aggregate of the resources of both or all the said persons.

4.—(1) The income from a trade, business or gainful occupation, other than an employment under a contract of service at a wage or salary, shall be deemed to be the profits therefrom which have accrued or will accrue to the person concerned in respect of the period of computation, and in computing such profits the Board may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been made up.

(2) In ascertaining the profits for the purpose of the foregoing paragraph there shall be deducted all sums necessarily expended to earn those profits (not being expenses in respect of which an allowance is made under Part II of this Schedule):

Provided that no deduction shall be made in respect of the living expenses of that person or any member of his family or household except in so far as such member of his family or household shall be wholly or mainly employed in such trade or business and such living expenses form part of his remuneration.

(a) 26 Geo. 5. & 1 Edw. 8. c. 31. (b) 9 & 10 Geo. 6. c. 67.
(c) 9 & 10 Geo. 5. c. 32. (d) 2 & 3 Geo. 6. c. 82.
(e) 9 & 10 Geo. 6. c. 62.

(3) The income from employment at a wage or salary shall be the net remuneration derived by the person concerned from that employment after the deduction of the reasonable expenses, if any, incurred by that person in connection with his employment, not being expenses in respect of which an allowance is made under Part II of this Schedule.

5. The rate of income in respect of any emolument, benefit or privilege receivable otherwise than in cash shall be estimated at such a sum as in all the circumstances is just and equitable.

6. The income of any person from an annuity whether for a term of years or for life shall be taken to be the whole amount thereof which will arise or accrue to that person in the period of computation notwithstanding that the annuity is expressed to be wholly or partly by way of repayment of capital.

7. Income from any allowance in money or in kind made voluntarily to any person shall be taken to be of such an amount as the recipient thereof may reasonably expect to receive during the period of computation.

8. In computing the income from any source there may be disregarded such amount, if any, as is reasonable having regard to the nature of the income or to any other circumstance of the case:

Provided that the total of the amounts so disregarded and the amounts, if any, disregarded under rule 3 of this Part of this Schedule shall not exceed £52 a year.

9. Where there are any special circumstances the amount of income calculated in accordance with this Part of this Schedule may be adjusted as may be appropriate to those circumstances.

PART II

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 twelve months following the application for a certificate.

4.—(1) In the case of a house-holder the allowance to be made in respect of the rent of his dwelling-house shall be the amount by which the net rent payable by him exceeds £39 a year.

(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 any 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 necessarily 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.

(4) Notwithstanding the foregoing provisions of this rule the amount to be allowed under this rule shall not exceed—

(i) £65 in the case of a single person having no dependant living with him, and

(ii) £91 in the case of a married person or of a single person having a dependant living with him.

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 of £52 per annum;

(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 Regulations.

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.

(3) The total of the amounts allowed under this rule shall not exceed £52.

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:

Provided that the total of the amounts allowed under this rule together with the total of the amounts allowed under the last preceding rule shall not exceed £78.

SECOND SCHEDULE

PART I

Rules for computing the amount of capital

1. Subject to the provisions of these regulations relating to disregarding certain assets, there shall be included in the computation of the amount of the capital of the person concerned the amount or value of every resource of a capital nature ascertained as on the date of the application for legal aid.

(a) 14 & 15 Geo. 5. c. 27. (b) S.I. 1948 (No. 1334) I p. 2023.

2. So far as any resource does not consist of money the amount or value thereof shall be taken to be the amount which that resource would realise if sold in the open market or, if there is only a restricted market for that resource, the amount which it would realise in that market:

Provided that such amount shall be the net amount which would be receivable after deducting such legal charges, agents' commission and similar expenses as would properly be incurred in effecting a sale.

3. In computing the amount of capital of the person concerned there shall be wholly disregarded—

(*a*) any death grant paid to a person under the provisions of section 22 of the National Insurance Act, 1946; and

(*b*) any maternity grant to which a woman is entitled under section 14 of the National Insurance Act, 1946.

4. Save in exceptional circumstances nothing shall be included in the amount of capital of the person concerned in respect of—

(i) the household furniture and effects of the dwelling-house occupied by him;

(ii) articles of personal clothing; and

(iii) the personal tools and equipment of his trade, which expression may include any vehicle maintained and used by him for the purpose of his business or employment not being part of the plant or equipment of a business to which the provisions of rule 10 of this Part of this Schedule apply.

5.—(1) Except as in the next succeeding paragraph of this rule is provided, in computing the amount of capital of the person concerned, there shall be disregarded in respect of the value to him of any interest in the dwelling-house in which he resides any sum which might be obtained by him by selling that interest or borrowing money on the security thereof.

(2) There shall be taken into account one half of the amount by which the value of the dwelling-house, after deducting therefrom any sums secured on the land comprising the dwelling-house by a heritable security within the meaning of the Conveyancing (Scotland) Act, 1924, or any security constituted by *ex facie* absolute disposition or a real burden *ad factum praestandum*, exceeds £2,000.

6. No account shall be taken of any loose cash in the possession of the person concerned reasonably necessary to meet his current requirements so far as it does not exceed £20.

7. Where the person concerned has received or is entitled to receive from a body of which he is a member a sum of money by way of financial assistance towards the cost of the proceedings in respect of which a certificate is applied for, such sum shall be disregarded.

8. For the purpose of rule 2 of this Part of this Schedule the value of any stocks, shares, bonds, debentures or other marketable securities quoted on a Stock Exchange shall be taken to be the lower price of the quotation on the date of the application for a certificate.

9. If a person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Board may, in lieu of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat that person as if he were such sole owner or partner and compute the amount of his capital in respect of that resource in accordance with the next succeeding rule.

10. Where the person concerned is or is to be treated as the sole owner of or a partner in any business, the value of such business or his share therein to that person shall be taken to be such sum, or his share of such sum as the case may be, as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development thereof.

11. Where money is due to the person concerned, whether immediately payable or otherwise and whether the payment thereof is secured or not, the value shall be taken to be the present value thereof.

12. The value of any life assurance or endowment policy shall be taken to be the amount which the person concerned could readily borrow on the security thereof:

Provided that where it appears that the total amount which can be so borrowed in respect of all his policies will be less than £75 the value of the policies may be disregarded.

13. The value of any interest, whether vested or contingent, of the person concerned in the fee of any heritable or moveable property forming the whole or part of any trust or other estate shall be computed by the Board in such manner as appears to them to be both equitable and practicable.

14. The value of any other resource which is of a capital nature and ought to be taken into account in the computation but which ought not to be taken at the market value thereof in accordance with rule 2 of this Part of this Schedule shall be computed in such manner as is both equitable and practicable.

15. For the purpose of computing the amount of the capital of the person concerned the Board may disregard in whole or in part any resource which in their opinion is of such a nature that, whether on the ground that it is not readily realisable or otherwise, it ought not to be taken into consideration.

16. Where there are special circumstances the amount computed in accordance with this Part of this Schedule may be adjusted as is appropriate to meet those circumstances.

17. Where it is brought to the notice of the Board that between the date of application for a certificate and the determination of the Board there has been a substantial fluctuation in the value of a resource or there has been a substantial variation in the nature of a resource affecting the basis of computation of its value, or any resource has ceased to exist or a new resource has come into the applicant's possession, the Board shall compute the capital resources of the applicant in the light of such facts and the resources as so computed shall be taken into account in the Board's determination.

PART II

Deductions and allowances to be made in respect of capital

1. The deduction to be made in calculating the disposable capital of the person concerned under Regulation 8 of these Regulations shall be the total of the allowances computed in accordance with the provisions of this Part of this Schedule.

2. Where under any statute, bond, agreement, indemnity or other instrument the person concerned is under a contingent liability to pay any sum or liability to pay a sum not yet ascertained an allowance shall be made of such an amount as is reasonably likely to become payable within the twelve months immediately following the date of application for a certificate.

3. An allowance shall be made of the amount of any debt (other than a debt secured on the dwelling-house in which he resides).

4. Where the person concerned has living with him either a spouse whose resources are required to be aggregated with his or a dependent child or other dependent relative wholly maintained by him, an allowance of £75 shall be made.

5. Where there are special circumstances the amount to be deducted from the applicant's capital resources may be adjusted as is appropriate to meet those circumstances.

EXPLANATORY NOTE

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

The Regulations make provision, by virtue of section 4 of the Legal Aid (Scotland) Act, 1949, for the assessment of resources of applicants for legal aid. The Regulations set out the general principles to be followed in computing the gross income and capital of an applicant and the allowances and deductions to be made therefrom so as to ascertain the amount of his disposable income and disposable capital.