LEGAL AID

1960 No. 1395 (S. 71)

The Legal Aid (Scotland) (Assessment of Resources) Regulations, 1960

Made - - - -	28*th July*, 1960
Laid before Parliament	9*th August*, 1960
Coming into Operation	22*nd August*, 1960

In exercise of the powers conferred on 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:—

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Legal Aid (Scotland) (Assessment of Resources) Regulations, 1960, and shall come into operation on the 22nd day of August, 1960.

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

"the Act" means the Legal Aid (Scotland) Act, 1949, as amended by the Legal Aid Act, 1960(b);

"the Board" means the National Assistance Board;

"certificate" means a legal aid certificate issued by a Committee in accordance with a Scheme;

"child" means a child or stepchild or adopted child of the person concerned which child is either:—

(*a*) under the upper limit of school age (within the meaning of the Education (Scotland) Act, 1946(c)); or

(*b*) over the limit of school age as aforesaid and either receiving full-time instruction at an educational establishment or undergoing training for a trade, profession or vocation;

"Committee" means the Supreme Court Committee or a local Committee established under a Scheme, by whom the Board are required to determine the disposable income and the disposable capital and the maximum contribution of any person;

"income" includes benefits and privileges, and the income of the person concerned does not include any sum payable to him under the order of a a court or under any instrument for the purpose of the maintenance of a child;

"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 appropriate;

"the person concerned" means the person whose disposable income, disposable capital and maximum contribution are to be determined or the

(a) 12. 13 & 14 Geo. 6. c. 63. (b) 8 & 9 Eliz. 2. c. 28. (c) 9 & 10 Geo. 6. c. 72.

person whose resources are to be treated as the resources of any other person as the case may require ;

" scheme " means a scheme made under section 8 of the Act.

(3) The Interpretation Act, 1889(a), shall apply to the interpretation of 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 the person concerned under Scots law shall include references to any such resource or obligation under any corresponding provision in the law of any other country.

Revocation of Regulations

2. The Legal Aid (Scotland) (Assessment of Resources) Regulations, 1950(b), and the Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations, 1959(c), are hereby revoked.

Subject matter of dispute

3. In computing the disposable income or the disposable 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.

Resources of a spouse

4.—(1) Except as otherwise provided in paragraph (2) of this Regulation, in computing the income and the 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 spouse has a contrary interest in the dispute in respect of which application for a certificate is made, or

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

(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.

Application by or on behalf of a juvenile

5.—(1) Where an application for a certificate is made by or on behalf of a person under the upper limit of school age (within the meaning of the Education (Scotland) Act, 1946) (in this Regulation called a " juvenile ") there may, in addition to the resources of the juvenile, be taken into account the disposable income and disposable capital of such other person or persons being one or more of the following persons as the Board having regard to all the circumstances including the age and resources of the juvenile may decide, that is to say—

(i) any person who under section 42 of the National Assistance Act, 1948(d), is liable to maintain the juvenile

(a) 52 & 53 Vict. c. 63. (b) S.I. 1950/1514 (1950 I, p. 1227).
(c) S.I. 1959/1431 (1959 I, p. 1560). (d) 11 & 12 Geo. 6. c. 29.

(ii) any person having the care and control of the juvenile, not being a person having such care and control by reason of any contract or for some temporary purpose.

(2) Where an application for a certificate is made by or on behalf of a juvenile his resources for the purposes of these Regulations shall include any sum payable under the order of a court or under any instrument to any person for the purpose of the maintenance of the juvenile.

Deprivation or conversion of resources

6. If it appears to the Board that the person concerned, with intent to reduce the amount of his disposable income or disposable capital, 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.

Determination of disposable income and capital

7. Save as otherwise provided by these Regulations, the disposable income and disposable capital of the person concerned shall respectively be determined at amounts calculated in accordance with the Rules set forth in the First and Second Schedules to these Regulations.

Notification of the Board's determination

8. The determination in accordance with the provisions of section 4 (6) of the Act of the disposable income, disposable capital and maximum contribution shall be communicated in writing to the Committee.

Change of circumstances of the person concerned

9. Where it appears to a Committee that the circumstances upon which the Board have 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.

Amendment of determination in case of error or mistake

10. 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 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, suspended 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.

Appellate proceedings

11. 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 person concerned was an assisted person in a court below they shall not require the Board to redetermine that person'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 earlier proceedings, 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 person concerned, his circumstances have altered otherwise than as a result of the payment of a contribution in respect of proceedings in a court below, 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 £26 and any increase in the amount of his disposable capital by an amount greater than £75.

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

28th July, 1960.

We concur.

Michael Hughes Young,
J. D. Gibson Watt,
Two of the Lords Commissioners of Her Majesty's Treasury.

28th July, 1960.

FIRST SCHEDULE

RULES FOR COMPUTING DISPOSABLE INCOME

1. The 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 twelve months.

2. The 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.

3.—(1) The income from a trade, business or gainful occupation, other than employment 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 these profits:

Provided that no deduction shall be made in respect of the living expenses of the person concerned 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.

4.—(1) In computing the disposable income of the person concerned there shall be deducted the total amount of tax which it is estimated would be payable by that person if his income as computed in accordance with the foregoing Rules of this Schedule (but without taking into account the operation of Regulation 3 of these Regulations) 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.

5.—(1) In computing the 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 thirty shillings 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 fifteen shillings a week of any payment of sick pay received from a friendly society or trade union ;

(*b*) the first fifteen shilings 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 380 of the Income Tax Act, 1952(**c**), applies, including any payment in respect of a dependant's 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.

6. There shall be deducted from the income from employment at a wage or salary the reasonable expenses, if any, incurred by the person concerned in connection with that employment.

7. There shall be a deduction in respect of contributions payable by the person concerned (whether by deduction or otherwise) under the National Insurance Acts, 1946 to 1959 of the amount estimated to be so payable in the twelve months following the application for a certificate.

8.—(1) In the case of a householder there shall be a deduction in respect of the rent of his dwellinghouse of the amount of the net rent payable, or such a part thereof as is reasonable in the circumstances.

(**a**) 26 Geo. 6 & 1 Edw. 8. c. 31. (**b**) 9 & 10 Geo. 6. c. 67.
(**c**) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10. (**d**) 2 & 3 Geo. 6. c. 82. (**e**) 9 & 10 Geo. 6. c. 62.

(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 a 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 person.

9. If the person concerned is not a householder, there shall be a deduction in respect of the cost of his living accommodation of such amount as is reasonable in the circumstances.

10.—(1) There shall be deductions in respect of the maintenance of

(*a*) the spouse of the person concerned if the spouses are living together ; and

(*b*) any dependent child or other dependent relative being, in either case, a member of the household of the person concerned.

(2) In ascertaining whether a child is a dependent child or whether a person is a dependent relative, regard shall be had to his income and other resources.

(3) The deductions made under paragraph 1 of this Rule shall be at the following rates—

(*a*) in the case of the spouse, 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(b), 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 ;

(*b*) in the case of a dependent child or other dependent relative, at the rate for the time being prescribed for a dependant of the age of the child or other dependant by the said Part I as amended as aforesaid :

Provided that the Board may reduce such rate by taking into account the income and other resources of the dependent child or other dependant to such extent as appears to the Board to be just and equitable.

11. Where the person concerned is making and throughout such period as the Board may consider adequate has regularly made bona fide payments for the maintenance of

(*a*) a spouse or former spouse who is living separate and apart,

(*b*) a child or relative who is not a member of his household,

there shall be a deduction at the rate of such payments or at such rate not exceeding the rate of such payments as in all the circumstances is reasonable.

12. There shall be an allowance of such amount as is just and equitable in respect of any other matter for which the person concerned must or reasonably may provide.

13. In computing the income from any source there shall be disregarded such amount, if any, as the Board consider to be reasonable having regard to the nature of the income or to any other circumstances of the case.

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

SECOND SCHEDULE

RULES FOR COMPUTING DISPOSABLE CAPITAL

1. Subject to the provisions of these Regulations relating to the disregarding of 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 a certificate:

Provided that 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 possession of the person concerned, the Board shall compute the capital resources of that person in the light of such facts and the resources as so computed shall be taken into account in the Board's determination.

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, or shall be taken to be the amount or value thereof assessed in such manner as appears to the Board to be just and equitable.

3. 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.

4. If the 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.

5. Where the person concerned is or is to be treated as the sole owner of or a partner in any business, the value to him of such business or his share therein shall be taken to be either—

(*a*) 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; or

(*b*) such sum as that person could borrow on the security of his interest in such business without injuring the commercial credit of that business;

whichever is the greater.

6. 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.

7. 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.

8. 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 dwellinghouse occupied by him;

(ii) articles of personal clothing; and

(iii) the personal tools and equipment of his trade, not being part of the plant or equipment of a business to which the provisions of Rule 5 of this Schedule apply.

9.—(1) Except as is provided in the next succeeding paragraph of this Rule 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 dwellinghouse 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 dwellinghouse, after deducting therefrom any sums secured on the land comprising the dwellinghouse 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 £3,000:

Provided that the Board shall not take into account any sum in respect of the value of the dwellinghouse if it appears to the Board to be inequitable or impracticable to do so.

10. 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.

11. 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 of the aggregate amount so computed in respect of all the policies held by the person concerned, the first £125 may be disregarded.

12. 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.

13. An allowance may be made of the amount of any debt owed by the person concerned (other than a debt secured on the dwellinghouse in which he resides):

Provided that the Board may not make the allowance, or may make it only in part, where it appears to the Board that there is no intention to repay the said debt within twelve months following the date of the application for a certificate.

14. Where the person concerned has living with him one or more of the following persons, namely:—

(*a*) a spouse whose resources are required to be treated as his for the purpose of these Regulations;

(*b*) a dependent child;

(*c*) a dependent relative wholly or partly maintained by him;

an allowance shall be made of £75 in respect of the first person, £50 in respect of the second person and £25 in respect of each further person. For the purpose of this Rule, a dependent child or a dependent relative is a person who has been so ascertained under Rule 10 (2) of the First Schedule.

15. Where the disposable income of the person concerned is less than £375 there shall be an allowance of a sum equal to the difference between the amount of the disposable income and £375.

16. In computing the amount of capital there shall be disregarded such an amount of capital, if any, as the Board in the circumstances of the case may in their discretion decide.

EXPLANATORY NOTE

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

These Regulations consolidate, with amendments, the Legal Aid (Scotland) (Assessment of Resources) Regulations, 1950, and subsequent amending Regulations. They include amended provisions for the assessment of resources where applications for legal aid are made by or on behalf of children; for allowances against income in respect of income tax and adult dependants; for allowances against capital in respect of the applicant's dwellinghouse, insurance policies and dependants; and for a further allowance against capital where the applicant has a small disposable income.