STATUTORY INSTRUMENTS

1964 No. 1536 (S. 98)

LEGAL AID AND ADVICE, SCOTLAND

The Legal Aid (Scotland) (Criminal Proceedings) Regulations 1964

Made - - - -	*18th September* 1964
Laid before Parliament	*24th September* 1964
Coming into Operation	*1st October* 1964

In exercise of the powers conferred on me by sections 12 and 17 of, and paragraph 6 of Schedule 3 to, the Legal Aid (Scotland) Act 1949(a), as amended by the Legal Aid Act 1960(b) and the Criminal Justice (Scotland) Act 1963(c), and of all other powers enabling me in that behalf, and with regard to regulation 11, with the concurrence of the Treasury, I hereby make the following regulations:—

Citation and commencement

1. These regulations may be cited as the Legal Aid (Scotland) (Criminal Proceedings) Regulations 1964 and shall come into operation on 1st October 1964.

Interpretation

2.—(1) In these regulations the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them:—

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

" Act of Adjournal " means the Act of Adjournal (Rules for Legal Aid in Criminal Proceedings) 1964(d);

" Act of 1954 " means the Summary Jurisdiction (Scotland) Act 1954(e);

" assisted person " means a person who is in receipt of legal aid;

" duty solicitor " means a solicitor acting under a duty plan in terms of the Scheme;

" High Court " means the High Court of Justiciary;

" legal aid " means legal aid under section 1 of the Act in connection with any criminal proceedings in the High Court or in the sheriff court or in a juvenile court constituted in pursuance of section 51 of the Children and Young Persons (Scotland) Act 1937(f);

" Legal Aid (Scotland) Fund " means the fund established under section 9 of the Act;

" list " means a list of solicitors prepared and maintained under article 5 of the Scheme;

(a) 12, 13 & 14 Geo. 6. c. 63. (b) 8 & 9 Eliz. 2. c. 28. (c) 1963 c. 39.
(d) S.I. 1964/1409 (1964 III, p. 3285). (e) 2 & 3 Eliz. 2. c. 48.
(f) 1 Edw. 8 & 1 Geo. 6. c. 37.

" local committee " means the local committee established by the Society under article 7 of the Legal Aid (Scotland) Scheme 1958, as amended, or any scheme made in place of that scheme;

" nominated solicitor " has the meaning assigned to it by article 2(1) of the Scheme;

" Scheme " means the Legal Aid (Scotland) (Criminal Proceedings) Scheme 1964 made by the Society under section 8 of the Act and includes any scheme amending that Scheme;

" Society " means the Law Society of Scotland established by the Solicitors (Scotland) Act 1949(a).

" Supreme Court Committee " means the committee established under article 6 of the Legal Aid (Scotland) Scheme 1958, as amended, or any scheme made in place of that scheme.

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

Applications for legal aid

3.—(1) An application for legal aid in connection with proceedings to which the provisions of section 2(2)(*a*) or (*b*) of the Act apply may be made orally or otherwise to the clerk of the court before which the proceedings are being taken.

(2) An application for legal aid in connection with proceedings in a court of first instance otherwise than under the said section 2(2) shall be made on such form as the Society may provide for the purpose, or in such other manner, being in writing, as the court may accept as sufficient in any particular case in which exceptional circumstances obtain.

(3) An application for legal aid in connection with proceedings by way of appeal, and any applications for a provisional financial certificate and for an interim appeal certificate under regulations 7 and 8 of these regulations respectively, shall be made on such forms as the Society may provide for the purpose.

(4) Where less than 7 days before the date of the trial fixed at the pleading diet the accused person makes an application for legal aid under paragraph (2) of this regulation the application shall be refused unless, on special cause shown, the court decides that the application may be considered as a timeous application under section 3 or section 4 of the Act of Adjournal as the case may be:

Provided that this paragraph shall not apply where less than 7 days elapse between the pleading diet and the trial.

Information to be furnished by applicants

4. Every applicant for legal aid shall furnish such particulars as are required by any form of application provided in accordance with regulation 3 of these regulations and such further particulars with respect to his case, or to his financial circumstances or those of his dependants, or to other relevant circumstances as may be required by the court or by the Society or by any committee or person acting on behalf of the Society in regard to the application.

(a) 12, 13 & 14 Geo. 6. c. 63. (b) 52 & 53 Vict. c. 63.

Matter in part of which a person receives legal aid

5. When an assisted person ceases to receive legal aid while proceedings are in course, the solicitor who acted for him under the Scheme shall, if any solicitor whom that person subsequently consults so requests, forward to that solicitor all the documents and papers in his possession relating to those proceedings and shall report to him on any steps taken.

Provisions as to applicant having rights or facilities in relation to his defence

6.—(1) Notwithstanding any rights or facilities that may be available to an accused person in relation to his defence in criminal proceedings, legal aid shall be made available, if sought in connection with those proceedings, under the provisions, where applicable, of section 2(2)(*a*) or (*b*) of the Act.

(2) Where, otherwise than at any stage in proceedings to which the provisions of section 2(2) of the Act apply, it appears to the court that an applicant for legal aid has available rights or facilities making it unnecessary for him to obtain legal aid, or has a reasonable expectation of obtaining financial or other help from a body of which he is a member, the court shall not, except on special cause shown, make legal aid available to him under section 2(1A) of the Act.

(3) Where the court makes legal aid available to a person who is a member of a body which might reasonably have been expected to give him financial help towards his defence, the court shall require him to sign an undertaking to pay to the Society any sum received from that body on account of the expenses of his defence.

Provisional financial certificates in matters of special urgency

7.—(1) Where a person seeks legal aid in connection with an appeal and legal aid was not available, or was not sought by, or was not made available to him in the proceedings in the court of first instance otherwise than under section 2(2) of the Act, he shall apply to the clerk of the sheriff court for the district in which those proceedings took place, or were initiated, for a provisional financial certificate that it appears that he is unable, without undue hardship to himself or his dependants, to meet the expenses of proceedings on appeal in connection with the charge specified in the said certificate and that he is not disentitled to receive legal aid by reason of regulation 6(2) of these regulations:

Provided that where, in the proceedings in the court of first instance, the court refused an application for legal aid under section 5(1) or section 5(2) of the Act of Adjournal a provisional financial certificate shall be granted only if the applicant can show, where legal aid was refused under section 5(1) in the court of first instance, that in relation to an appeal he has available to him no rights or facilities to which regulation 6 of these regulations applies or, where legal aid was refused under section 5(2) in the court of first instance, that there has been a material deterioration in his financial circumstances.

(2) Where a provisional financial certificate is granted the sheriff clerk shall transmit it to the local committee together with the completed form of application for an interim appeal certificate referred to in regulation 8(1) of these regulations.

Interim appeal certificates and appointment of interim solicitors in matters of special urgency

8.—(1) Where a person who requires a provisional financial certificate under regulation 7(1) of these regulations, or a person to whom legal aid was made available under section 2(1A) of the Act in connection with proceedings in the court of first instance but who was not being so aided when the prosecution was determined, seeks legal aid in connection with an appeal, the sheriff clerk shall assist him to complete the form of application for an interim appeal certificate as prescribed in regulation 3 of these regulations and shall send the completed form and, where applicable, the provisional financial certificate to the local committee.

(2) Subject to the provisions of regulation 9 of these regulations in regard to appeals by way of stated case under section 62 of the Act of 1954, the local committee shall, as soon as possible after receiving an application for an interim appeal certificate, issue such certificate on a form provided by the Society for the purpose:

Provided that such certificate shall not be issued unless the local committee have received a provisional financial certificate, where appropriate, and are satisfied in the case of an applicant—

(*a*) who was refused legal aid under section 1(6A)(i)(*b*) of the Act, or

(*b*) who ceased to receive legal aid in the court of first instance under a direction by the court, under section 10(1)(*e*) of the Act of Adjournal, made following a finding by the court that he had wilfully or deliberately given false information or furnished false particulars,

that it would not be unreasonable that the services of an interim solicitor should be made available to him in connection with his application for an appeal certificate.

(3) The local committee shall forthwith intimate their decision on the application for an interim appeal certificate to the applicant, the prosecutor and the clerk of court; and that decision shall be final subject to—

(*a*) any review that may be necessary following a determination by the sheriff court, under section 8(2) of the Act of Adjournal, that an applicant who was refused a provisional financial certificate by the sheriff clerk, under regulation 7(1) of these regulations, meets the conditions for issue of such certificate; or

(*b*) a decision, under section 10(3)(*b*) of the Act of Adjournal, that it would be reasonable for the purposes of an appeal that a direction made under section 10(1)(*e*) of the Act of Adjournal should cease to have effect.

(4) Where an interim appeal certificate is to be issued and the applicant has requested that a particular solicitor on the appropriate list should act for him, the committee shall appoint that solicitor as interim solicitor unless it is not reasonably practicable for him so to act in which case they may appoint another solicitor on the appropriate list; and the committee shall inform the applicant, the prosecutor and the clerk of court of the appointment.

(5) The interim solicitor shall carry out the duties prescribed in the Scheme for a nominated solicitor acting in such an appeal until he receives intimation either—

(*a*) that the sheriff court, acting under section 8(2) of the Act of Adjournal, has discharged the provisional financial certificate; or

(*b*) that the Supreme Court Committee has discharged the interim appeal certificate.

(6) The Supreme Court Committee shall discharge the interim appeal certificate if—

(*a*) they receive intimation that the provisional financial certificate has been discharged by the court; or

(*b*) they are refusing an appeal certificate;

and such discharge of the certificate shall be intimated to the interim solicitor and his Edinburgh correspondent, the prosecutor and the clerk of court.

(7) If the Supreme Court Committee are satisfied, under article 21(1) of the Scheme, that the applicant has substantial grounds for taking the appeal and that it is reasonable that he should receive legal aid, and they have received a report, under section 8(2) of the Act of Adjournal, to the effect that otherwise there is eligibility for legal aid, they shall replace the interim appeal certificate by an appeal certificate; and thereafter procedure in connection with legal aid for the appeal shall be in accordance with the relevant provisions of the Scheme:

Provided that the interim solicitor shall be appointed as nominated solicitor unless, on special cause shown, the local committee find it necessary to appoint another solicitor to act as nominated solicitor.

Matters of special urgency in regard to appeals by stated case

9.—(1) The provisions of this regulation shall apply only in the case of a person who, following the final determination of a summary prosecution in any court, seeks legal aid for the purpose of proceedings on appeal by way of stated case under section 62 of the Act of 1954.

(2) Where any such person was convicted in the said prosecution and—

(*a*) at the time of his conviction he had the services of a nominated solicitor or of a duty solicitor, such solicitor, if he is of opinion that in all the circumstances there are good grounds for an appeal being taken by way of stated case, shall submit a statement in writing of such grounds with the application for an interim appeal certificate to the local committee;

(*b*) at the time of his conviction he did not have the services of a solicitor under the Act, that person shall submit a statement in writing of the grounds of his proposed appeal with his application for an interim appeal certificate to the local committee.

(3) When any statement in writing referred to in paragraph (2) of this regulation is received by the local committee it shall be considered forthwith by the Secretary and a member, or by two members, of the committee, or, where circumstances so demand, by the secretary or one member of the committee, and unless, after such inquiry as they, or he, may deem sufficient in the circumstances, they are, or he is, reasonably satisfied that there are no *prima facie* grounds for an appeal in terms of section 1(6A)(ii) of the Act, the committee shall, subject to the provisions of regulation 8 of these regulations and of this regulation, issue an interim appeal certificate, and otherwise the committee shall refuse to issue such a certificate; and in either event the decision of the committee so taken shall be final except as provided in regulation 8(3) of these regulations.

(4) Where the prosecutor in summary proceedings applies for a stated case under section 62 of the Act of 1954 and the person concerned seeks legal aid in relation thereto, the local committee shall, on a request by the nominated solicitor or by the said person, as the case may be, issue an interim appeal certificate, provided they are satisfied, in any case in which it is appropriate, that a provisional financial certificate has been granted.

(5)(*a*) Where an interim appeal certificate is issued within the statutory period for application for a stated case, the nominated solicitor, or interim solicitor, shall submit it to the clerk of court with an application for such a case on behalf of the person concerned together with, where appropriate, an application to the court asking the court to have regard to section 12 of the Act of Adjournal in fixing the amount of the sum to be consigned or for which caution is to be found under section 64 of the Act of 1954.

(*b*) Where an application for a stated case is made to the court and an interim appeal certificate is obtained after the expiry of the said statutory period, the solicitor concerned shall lodge the interim appeal certificate with the clerk of court.

(6) Where an interim appeal certificate is issued, the solicitor named in the certificate shall carry out the procedure specified in section 67 of the Act of 1954, and he shall also send a copy of the stated case, as adjusted, to the Supreme Court Committee together with an application for an appeal certificate in the form prescribed in regulation 3 of these regulations.

(7) An interim appeal certificate issued under this regulation shall entitle the assisted person to legal aid until an adjusted stated case is lodged with the High Court or until such earlier date as the certificate is discharged by the Supreme Court Committee under regulation 8(6) of these regulations; and it is hereby declared that the duties of a solicitor acting under such a certificate in respect of proceedings by way of appeal following the determination of proceedings in a court of summary jurisdiction in which legal aid is not available under the Act, shall include any necessary attendance before that court in connection with the appeal.

Fees etc. agreed by the Society to be treated as allowed on taxation

10. Where an amount is fixed by the Society, whether on account of outlays or fees, by agreement with the solicitor to whom such amount is payable in the first instance out of the Legal Aid (Scotland) Fund, that amount shall, for the purposes of Schedule 3 to the Act, be treated as if it were an amount allowed on taxation:

Provided that this regulation shall not have effect in relation to any amount if any person to or by whom such amount is payable, in whole or in part, requires it to be fixed by taxation.

Provisions as to persons already admitted as poor persons

11.—(1) In the case of the persons referred to in paragraph (2) of this regulation, the provisions of the Act shall not apply, and in lieu thereof the enactments specified in Part I of Schedule 8 to the Act, in so far as they relate to the representation of persons in criminal proceedings, shall continue to apply and shall be deemed not to have been repealed.

(2) The said persons are persons who, before the date on which these regulations come into operation,—

(*a*) are being represented as poor persons for the purpose of proceedings in the High Court sitting as a court of first instance or in the sheriff court, and have made at least one appearance in the sheriff court in connection with those proceedings, or

(*b*) are being represented as poor persons for the purpose of proceedings on appeal in the High Court,

and who do not cease, with the approval of the court, to be so represented for the purpose of the said proceedings.

Michael Noble,
One of Her Majesty's
Principal Secretaries of State.

St. Andrew's House,
Edinburgh, 1.
15th September 1964.

We concur in regulation 11.

John Peel,
M. A. Hamilton,
Two of the Lords Commissioners
of Her Majesty's Treasury.

18th September 1964.

EXPLANATORY NOTE

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

These regulations contain miscellaneous general provisions relating to the administration of criminal legal aid. They also modify the Legal Aid (Scotland) Act 1949 in relation to applicants having rights or facilities in relation to their defence or seeking criminal legal aid in matters of special urgency. They also contain transitional provisions specifying the circumstances in which persons, who are being represented as poor persons in criminal proceedings when criminal legal aid comes into operation, shall continue to be so represented.