STATUTORY INSTRUMENTS

1971 No. 1914 (S.206)

LEGAL AID AND ADVICE, SCOTLAND

The Legal Aid (Scotland) (General) Amendment (No. 2) Regulations 1971

Made - - - -	*24th November* 1971
Laid before Parliament	*30th November* 1971
Coming into Operation	*1st December* 1971

In exercise of the powers conferred on me by section 15 of the Legal Aid (Scotland) Act 1967(**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.—(1) These regulations may be cited as the Legal Aid (Scotland) (General) Amendment (No. 2) Regulations 1971 and shall come into operation on 1 December 1971.

(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.

(3) In these regulations a regulation referred to by number means a regulation so numbered in the Legal Aid (Scotland) (General) Regulations 1960(**c**) as amended(**d**).

2. In the Arrangement of Regulations at the beginning of the Legal Aid (Scotland) (General) Regulations 1960, after "4. Applications for legal aid" there shall be inserted "4A. Applications for legal aid in connection with proceedings before the National Industrial Relations Court".

3. Regulation 3 shall be amended by the addition of the following paragraph :—

"(2) For the purpose of subsection (4) of section 3 of the Act the expression "property" shall be taken not to include any moneys payable under an order made by the National Industrial Relations Court established under section 99 of the Industrial Relations Act 1971(**e**)."

(**a**) 1967 c. 43.
(**b**) 1889 c. 63.
(**c**) S.I. 1960/2195 (1960 II, p. 1817).
(**d**) S.I. 1971/194 (1971 I, p. 570).
(**e**) 1971 c. 72.

4. The following regulation shall be inserted after regulation 4:—

"*Applications for legal aid in connection with proceedings before the National Industrial Relations Court*

4A—(1) In this regulation the expression "the Industrial Court" means the National Industrial Relations Court established under section 99 of the Industrial Relations Act 1971 and the expresssion "the secretary of the court" means the person appointed to be secretary of the Industrial Court and includes any officer of the Industrial Court authorised to act as his deputy.

(2) Except in so far as otherwise provided by this regulation, these regulations shall apply to applications for legal aid in connection with proceedings in the Industrial Court in like manner as they apply to applications for legal aid in connection with proceedings in any other court.

(3)(*a*) Where it appears to the appropriate committee that an application for legal aid relates to proceedings which are likely to be conducted in England and Wales, they shall transmit the application forthwith to the Law Society in England and Wales and shall notify the applicant and his solicitor that they have done so.

(*b*) Where it appears to the appropriate Committee doubtful whether the proceedings to which an application for a certificate relates will be conducted in England and Wales or in Scotland, they shall request the secretary of the court to determine that question and that determination shall be binding upon the Committee.

(4) Where a certificate has been issued and there is a change of circumstances regarding the conduct of proceedings in that, by direction of the court, they will be wholly or partly conducted in England and Wales, the assisted person's certificate shall remain in force and he may continue to be represented for the proceedings in England and Wales by the solicitor and counsel, if any, who represented him in Scotland; and any counsel subsequently appointed to represent him may be selected from the appropriate list of counsel willing to act for assisted persons which is maintained by the Society.

(5) Where on the coming into force of these regulations a certificate has been granted in respect of an appeal to the Court of Session from a decision of an industrial tribunal and that appeal has been transferred to the Industrial Court in pursuanee of any order made under section 114 of the Industrial Relations Act 1971, the certificate shall be deemed to have been granted in respect of an appeal to the Industrial Court."

5. For regulation 8(2) there shall be substituted the following:—

"(2) Where a legal aid certificate is suspended or discharged by a Committee acting under the powers given to them by these regulations or by paragraphs (5) or (6) of article 16 of the Legal Aid (Scotland) Scheme 1958, or by paragraphs (5) or (6) of article 8 of the Legal Aid (Scotland) (House of Lords) Scheme 1960, or by paragraphs (5) or (6) of article 9 of the Legal Aid (Scottish Land Court) Scheme 1971 or by paragraphs (5) or (6) of article 9 of the Legal Aid (Lands Tribunal for Scotland) Scheme 1971 or paragraphs (5) or (6) of article 9 of the Legal Aid (Scotland) (National Industrial Relations Court) Scheme 1971 or under a direction given by a court under rule 5 of the Act of Sederunt (Legal Aid Rules) 1958(**a**) or otherwise, the assisted person shall remain liable to pay to the Society so much of his contribution as is required to defray the expenses incurred up to the date of suspension or discharge:

(**a**) S.I. 1958/1872 (1958 I, p. 389).

Provided that where a certificate is discharged under paragraph (6) of article 16 of the Legal Aid (Scotland) Scheme 1958 or paragraph (6) of article 8 of the Legal Aid (Scotland) (House of Lords) Scheme 1960 or paragraph (6) of article 9 of the Legal Aid (Scottish Land Court) Scheme 1971 or paragraph (6) of article 9 of the Legal Aid (Lands Tribunal for Scotland) Scheme 1971 or paragraph (6) of article 9 of the Legal Aid (Scotland) (National Industrial Relations Court) Scheme 1971 or the direction of a court requiring discharge of a certificate is given under sub-paragraph (*c*) of paragraph (1) of the said rule 5 or where, in any other case, a court so directs, the Society shall have the right to recover from the person by whom the certificate was held any sum over and above the amount of his contribution which may be required to meet the sums paid or payable by the Society on his account in respect of the proceedings to which the discharged certificate related."

6. For regulation 10(5) there shall be substituted the following:—

"(5) Where, at any stage in proceedings, a party who is an assisted person ceases to receive legal aid, he shall be deemed to be an assisted person for the purpose of any award of expenses made against him only to the extent that those expenses were incurred before he ceased to receive legal aid:

Provided that where an assisted person's legal aid certificate is discharged under paragraph (6) of article 16 of the Legal Aid (Scotland) Scheme 1958 or paragraph (6) of article 8 of the Legal Aid (Scotland) (House of Lords) Scheme 1960 or paragraph (6) of article 9 of the Legal Aid (Scottish Land Court) Scheme 1971 or paragraph (6) of article 9 of the Legal Aid (Lands Tribunal for Scotland) Scheme 1971 or paragraph (6) of article 9 of the Legal Aid (Scotland) (National Industrial Relations Court) Scheme 1971 or the direction of a court requiring discharge of his certificate is given under sub-paragraph (*c*) of paragraph (1) of rule 5 of the Act of Sederunt (Legal Aid Rules) 1958, the provisions of paragraph (e) of sub-section (6) of section 2 of the Legal Aid (Scotland) Act 1967 shall not apply to him."

St. Andrew's House,
Edinburgh.
22nd November 1971.

Gordon Campbell,
One of Her Majesty's Principal Secretaries of State.

We concur,

24th November 1971.

Walter Clegg,
P. L. Hawkins,
Two of the Lords Commissioners of Her Majesty's Treasury.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations apply the Legal Aid (Scotland) (General) Regulations 1960 with certain modifications to proceedings in the National Industrial Relations Court and make provision for legal aid certificates granted in Scotland to remain in force in the event of proceedings being transferred to England.