The Legal Aid (Scotland) (General) Regulations, 1950

1950 No. 1513 (S. 109)

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

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In exercise of the powers conferred on me by Sections 2, 12 and 17 of, and paragraph 6 of the Third Schedule to the Legal Aid (Scotland) Act, 1949(**a**), and of all other powers enabling me in that behalf, and with regard to Regulation 14, 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) (General) Regulations, 1950, and shall come into operation on the second day of October, 1950. These Regulations and the Legal Aid (Scotland) (Assessment of Resources) Regulations, 1950(**b**), may be cited together as the Legal Aid (Scotland) Regulations, 1950.

(a) 12, 13 & 14 Geo. 6. c. 63. (b) S.I. 1950 No. 1514, p. 1227 above.

Interpretation

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

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

" assisted person " means a person to whom there has been issued and in respect of whom there is in force a legal aid certificate or an emergency certificate issued in accordance with these Regulations ;

" the Board " means the National Assistance Board ;

" Central Committee ", " Supreme Court Committee " and " Local Committee " have the like meanings as in the Legal Aid (Scotland) Scheme, 1950, made under section 8 of the Act ;

" legal aid " means legal aid under sections 1 to 4 of the Act ;

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

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

(2) The Interpretation Act, 1889(**b**), shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

Applications for legal aid

3.—(1) An application for legal aid shall be made on such form as the Society with the approval of the Secretary of State may provide for the purpose or in such other manner, being in writing, as the Committee concerned may accept as sufficient in any particular case in which exceptional circumstances obtain.

(2) In the case of a person resident outside Great Britain and not able to be present in Great Britain while his application is being considered, every application shall be in English and shall be sworn, if the person is resident within the Commonwealth or the Irish Republic, before any Justice of the Peace or Magistrate or any person for the time being authorised by law in the place where he is to administer an oath for any judicial or other legal purpose, or, if he is resident elsewhere, before a Consular Officer in the service of His Majesty's Government in the United Kingdom or any other person for the time being authorised to exercise the functions of such Consular Officer, and shall be accompanied by—

(*a*) a statement in writing, signed by some responsible person who has knowledge of the facts, certifying that part of the application which relates to the applicant's income and capital ; and

(*b*) an undertaking, signed by the applicant, that he will pay to the Society on demand a sum to defray the expenses of any preliminary enquiries which the Supreme Court Committee or the Local Committee concerned may make as a result of the application.

Information to be furnished by applicants for legal aid

4. Every applicant for legal aid shall furnish such particulars as are required by the form of application aforesaid and such further particulars with respect to his case and to his resources as may be required by the Society or any Committee or person acting on their behalf or by the Board for the purpose of considering whether a legal aid certificate should be issued to the applicant and of assessing his disposable income and capital and the amount of the contribution (if any) to be paid by him.

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

Provisions as to applicant having joint interest etc. with other persons

5.—(1) Where it appears to the Supreme Court Committee or a Local Committee that a person making application for legal aid is jointly concerned with or has the same interest in the matter in connection with which the application is made as other persons, whether receiving legal aid or not, the Committee shall not grant legal aid if they are satisfied that

(*a*) the person making the application would not be seriously prejudiced in his own right if legal aid were not granted ; or

(*b*) it would be reasonable and proper for the other persons concerned with or having the same interest in the matter as the applicant to defray so much of the expenses as would be payable from the Legal Aid (Scotland) Fund in respect of the proceedings if legal aid were granted.

(2) Where a person applies for legal aid in connection with any proceedings in which he is concerned in a representative, fiduciary or official capacity and it appears to the Committee concerned that the applicant is entitled, whether by an order of the court or otherwise, to be indemnified in respect of his expenses in connection with the proceedings out of a fund or by a third party, they shall not grant legal aid unless they are satisfied that the fund cannot reasonably be expected to bear the expense of the proceedings or, as the case may be, that the third party would himself, if he were a party to the proceedings, be entitled to legal aid.

(3) Where in pursuance of the last foregoing paragraph legal aid is granted to an applicant, then for the purpose of determining the contribution to be made by him to the Legal Aid (Scotland) Fund the personal resources of the applicant shall not be taken into account but regard shall be had to the amount of the fund out of which he is entitled as aforesaid to be indemnified and to the resources of the persons, if any, who are beneficiaries of the fund or, as the case may be, to the resources of the third party.

Provision as to applicant having rights or facilities in relation to litigation

6.—(1) Where it appears to the Committee concerned that an applicant 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, they shall not approve the application unless the applicant has not succeeded in enforcing or obtaining such rights, facilities or help, after having, in the opinion of the Committee, taken all reasonable steps to enforce or obtain them or after having permitted the Committee to take those steps on his behalf :

Provided that where it appears that the applicant has a right to assistance in the conduct of the proceedings in question, he shall not, for the purpose of this regulation, be deemed to have failed to take all reasonable steps by reason only that he has not taken proceedings by way of declarator or otherwise to enforce that right.

(2) Where the Committee concerned approve an application by a person who is a member of a body which might reasonably have been expected to give him financial help towards the expenses of the proceedings, they shall require him to sign an undertaking to pay to the Society, in addition to his contribution (if any), any sum received from that body on account of the expenses of the proceedings.

Payment of contributions to Legal Aid (Scotland) Fund

7.—(1) A Committee shall not issue a legal aid certificate in favour of an applicant (whether the holder of an emergency certificate or not), until the contribution which he is required to make, or, as the case may be, the first instalment thereof has been paid ; and if a person who is receiving legal aid

and whose contribution to the Legal Aid (Scotland) Fund is payable by instalments fails to make timeous payment of any such instalment the Committee may suspend or discharge the legal aid certificate in his favour.

(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 15 of the Legal Aid (Scotland) Scheme, 1950, or under a direction given by a court under Rule 5 of the Act of Sederunt (Legal Aid Rules), 1950(a), 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:

Provided that where a certificate is discharged under the said Article 15 (6) 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.

(3) Where any sums are recovered by virtue of an award of expenses or of an agreement as to expenses in favour of a person who has ceased to receive legal aid in the proceedings to which the award or agreement relates, paragraph (*d*) of subsection (3) of section 2 of the Act shall apply to those sums in so far as the expenses were incurred while he was an assisted person.

(4) Where a certificate has been suspended or discharged those provisions of section 3 of the Act which require certain payments to be made, in priority to any other debts, out of property recovered or preserved for an assisted person shall have effect in relation to any property recovered or preserved as a result of the person whose certificate has been suspended or discharged continuing to take, defend or be a party to the proceedings to which the certificate in question related.

Application in matter of special urgency

8.—(1) Where it appears to the secretary and a member of the Committee concerned or to two members of the Committee that it is likely that an applicant for legal aid is eligible for a certificate and that it is desirable, in the interests of justice, that legal aid should be made available as a matter of urgency, such persons or any one of them may, subject to the provisions of this Regulation, issue an emergency certificate to the applicant without reference to the Committee or to the Board.

(2) An emergency certificate shall not be issued for legal aid for the purpose of enabling the applicant to take an appeal unless the application is accompanied by a statement from the solicitor who conducted the original proceedings that he is of the opinion that in all the circumstances there are good grounds for the appeal being taken.

(3) An emergency certificate shall have effect in all respects as if it were a legal aid certificate and any person holding such a certificate shall, while the certificate is in force, be deemed to have a disposable income of less than £420 a year.

(4) No emergency certificate shall be issued unless the applicant has given an undertaking in writing to pay into the Legal Aid (Scotland) Fund, in such manner as the Committee on whose behalf the certificate was issued may direct, such sum (not exceeding the sum determined by the Board to be the maximum amount of the contribution payable by him), as the Committee

(a) S.I. 1950 No. 1516, p. 1223 above.

may direct, or (if the Committee discharge the emergency certificate without issuing a legal aid certificate), such sum as has been paid or shall be payable out of the said Fund on his account in respect of the proceedings for which the emergency certificate was issued.

(5) As soon as may be after an emergency certificate has been issued the person by whom it was issued on behalf of the Committee shall bring the case before the Committee for their consideration.

(6) No emergency certificate shall remain in force for a longer period than six weeks and if on the expiry of that period a legal aid certificate has not been issued in lieu thereof, the emergency certificate shall be deemed to have been discharged:

Provided that if the Committee for good cause so determine in relation to any emergency certificate, this paragraph shall apply in relation thereto with the substitution for the period of six weeks of a period of twelve weeks.

(7) When a Committee consider a case in respect of which an emergency certificate has been issued, they may either discharge the certificate (but without prejudice to any rights accrued or action taken thereunder), or require the Board to determine the holder's disposable income, disposable capital and the maximum amount of his contribution to the Legal Aid (Scotland) Fund. Unless the Board determine that the holder's disposable income is greater than £420 a year the Committee shall issue a legal aid certificate in lieu of the emergency certificate, having effect from the date upon which the emergency certificate was issued and showing the amount of the contribution, if any, payable to the said Funds:

Provided that where the Board determine that the holder's disposable capital is more that £500 the Committee shall discharge the certificate as aforesaid unless they estimate that, if the certificate were discharged, the expenses which might reasonably be incurred by the holder in taking or defending the proceedings in respect of which he applied for legal aid would exceed the maximum contribution payable by him under the Act.

(8) If the proceedings have not been completed and the holder of the emergency certificate does not wish to receive further legal aid he may require the Committee to discharge the emergency certificate as aforesaid and shall thereupon be liable only for such sum as has been paid or shall be payable out of the Legal Aid (Scotland) Fund in respect of the work done on his account while the emergency certificate was in force, or, if the maximum amount of the contribution payable by him has been assessed by the Board, the amount of that contribution, whichever is the less.

(9) An emergency certificate may be granted under this Regulation in any case on the application of an assisted person for the purpose of varying a legal aid certificate except where such variation is required by reason of a change of circumstances.

Matter in part of which a person receives legal aid

9.—(1) Where a person begins to receive legal aid in respect of any matter after having consulted a solicitor in the ordinary way in connection with the same matter such person shall obtain from the solicitor whom he originally consulted all documents and papers relating to the matter to the delivery of which he is entitled, and shall produce them to the solicitor giving him legal aid.

(2) Where a person in receipt of legal aid ceases to receive such aid before the matter in question is finally settled, the solicitor who gave the legal aid shall, if the solicitor whom the person subsequently consults so requests, forward to him all the documents and papers relating to the matter to the delivery of which the person formerly receiving legal aid is entitled.

(3) Where, after proceedings have been instituted in any court, a party thereto becomes an assisted person, the provisions of paragraph (*e*) of subsection (3) of section 2 of the Act (which relate to the liability of an assisted person by virtue of an order for expenses made against him) shall apply only to so much of the expenses of the proceedings as were incurred while his certificate was in force.

(4) 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 Article 15 (6) of the Legal Aid (Scotland) Scheme, 1950, or the direction of a court requiring discharge of his certificate is given under Rule 5 (1) (*c*) of the Act of Sederunt (Legal Aid Rules), 1950, the provisions of paragraph (*e*) of subsection (3) of section 2 of the Act shall not apply to him.

Change of circumstances of a person while in receipt of legal aid

10.—(1) A person receiving legal aid shall immediately inform the solicitor acting for him of any change in his circumstances, financial or otherwise, other than a change resulting from an increase or decrease in the rate of income tax or in the amount of any local rate which he is liable to pay, relevant to the conditions under which the legal aid certificate was issued.

(2) Where a person receiving legal aid informs a solicitor of a change of circumstances of the nature referred to in the foregoing paragraph, the solicitor shall report the change to the Committee who issued the legal aid certificate; and the Committee, after such inquiry (including such references to the Board) as they may consider necessary, may vary the amount of the assisted person's contribution or may discharge the legal aid certificate, as the case may be:

Provided that the Committee shall not take into account any change of circumstances unless it appears that such change has increased or decreased the assisted person's disposable income by an amount greater than fifty-two pounds or that his disposable capital has increased by an amount greater than seventy-five pounds.

Application for revision of award of expenses against person receiving legal aid

11. Where an award of expenses has been made by a court under paragraph (*e*) of subsection (3) of section 2 of the Act against a person who receives legal aid in connection with the proceedings, the period within which it shall be competent for any party concerned in the award to apply to the court for a re-assessment of the amount of the award on the ground that since the award was made there has been a relevant change of circumstances shall be ten years from the date of the award.

Inquiry into means of a person receiving legal aid who has been found liable in expenses

12. For the purposes of any inquiry under section 2 of the Act as to the means of a person who has been found liable in expenses, his dwelling-house, wearing apparel and household furniture and the tools and implements of his trade or profession shall be left out of account to the like extent as they are left out of account in the determination by the Board of his disposable income and disposable capital.

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

13. Where the Society fix an amount, 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 the Third Schedule 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 to the Poor's Roll

14. In the case of persons admitted to the Poor's Roll for the purpose of civil proceedings in the Court of Session or the sheriff court before the date on which these Regulations come into operation, the provisions of the Act shall not apply, and in lieu thereof the enactments specified in Part I of the Eighth Schedule to the Act in so far as they relate to the representation of such persons in such proceedings shall continue to apply and shall be deemed not to have been repealed.

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

St. Andrew's House,
Edinburgh, 1.

We, the undersigned, two of the Lords Commissioners of His Majesty's Treasury, do hereby concur in Regulation 14 of the above Regulations.

Charles Royle,
H. W. Bowden.

Dated this 11th day of September, 1950.

EXPLANATORY NOTE

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

These Regulations contain miscellaneous provisions relating to the administration of legal aid. They also modify the Legal Aid (Scotland) Act, 1949, in relation to applicants concerned in a representative, fiduciary or official capacity or having a joint interest with other persons or having rights or facilities in relation to litigation or seeking legal aid in emergency or while resident outside Great Britain. They specify the circumstances in which certain items may be taken into account by a court when deciding whether the award of expenses against an assisted litigant shall be restricted and prescribe ten years as the period within which application for revision of such a restricted award of expenses on account of a relevant change of circumstances may be made. They also contain transitional provisions requiring cases, begun under the former enactments relating to the Poor's Roll and in course when civil legal aid comes into operation, to be carried to a conclusion under those enactments.