1960 No. 2195 (S. 113)

The Legal Aid (Scotland) (General) Regulations, 1960

Made - - - -	*28th November,* 1960
Laid before Parliament	*1st December,* 1960
Coming into Operation	*2nd December,* 1960

ARRANGEMENT OF REGULATIONS

Regulation

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In exercise of the powers conferred on me by sections 2, 3, 12 and 17 and paragraph 6 of the Third Schedule to the Legal Aid (Scotland) Act, 1949(**a**), as amended by the Legal Aid Act, 1960(**b**), and of all other powers enabling me in that behalf, and with regard to Regulation 15, with the concurrence of the Treasury, I hereby make the following Regulations:—

Citation, commencement and revocation

1.—(1) These Regulations may be cited as the Legal Aid (Scotland) (General) Regulations, 1960, and shall come into operation on the 2nd day of December, 1960.

(2) The Legal Aid (Scotland) (General) Regulations, 1950 to 1960(**c**), are hereby revoked.

(**a**) 12, 13 & 14 Geo. 6. c. 63. (**b**) 8 & 9 Eliz. 2. c. 28.
(**c**) S.I. 1950/1513, 1951/503, 1954/682, 1958/2199, 1960/725 (1950 I, p. 1236; 1951 I, p. 1242; 1954 I, p. 1135; 1958 I, p. 1343).

Interpretation

2.—(1) 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;

"appropriate Committee" means that Committee established by the Society under the Legal Aid (Scotland) Scheme, 1958, or under any Scheme amending that Scheme, which shall be responsible for issuing a legal aid certificate;

"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;

"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 a Scheme for the time being in force;

"Scheme" means a Scheme made by the Society under section 8 of the Act;

"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.

Interpretation of "property" in section 3 (4) of the Act

3. For the purposes of subsection (4) of section 3 of the Act the expression "property" shall be taken not to include any moneys payable under a decree for payment of aliment or under a settlement arrived at to prevent or bring to an end proceedings in which such a decree may be granted; and in this paragraph the expression "decree for payment of aliment" includes—

(*a*) an order for the payment of an annual or periodical allowance under section 2 of the Divorce (Scotland) Act, 1938(**c**);

(*b*) an order for the payment of weekly or periodical sums under subsection (2) of section 3 or subsection (4) of section 5 of the Guardianship of Infants Act, 1925(**d**);

(*c*) an order for the payment of sums in respect of aliment under subsection (3) of section 1 of the Illegitimate Children (Scotland) Act, 1930(**e**); and

(*d*) any order for the payment of sums for the maintenance of any person which is, by virtue of the Maintenance Orders Act, 1950(**f**), enforceable in Scotland as if it were a decree for payment of aliment.

Applications for legal aid

4.—(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 appropriate Committee may accept as sufficient in any particular case in which exceptional circumstances obtain.

(2) The application of a person resident outside Great Britain and not able to be present in Great Britain while his application is being considered

(**a**) 12, 13 & 14 Geo. 6. c. 63. (**b**) 52 & 53 Vict. c. 63. (**c**) 1 & 2 Geo. 6. c. 50.
(**d**) 15 & 16 Geo. 5. c. 45. (**e**) 20 & 21 Geo. 5. c. 33. (**f**) 14 Geo. 6. c. 37.

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 Her Majesty's Government in the United Kingdom, or any other 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, and shall be accompanied by 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:

Provided that these arrangements may be waived by the Society where compliance with them would cause serious difficulty, inconvenience or delay and the application satisfies the requirements of paragraph (1) of this Regulation and Regulation 5 of these Regulations.

Information to be furnished by applicants

5. 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 made by him to the Legal Aid (Scotland) Fund.

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

6.—(1) Where it appears to the appropriate 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 appropriate Committee 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.

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

7.—(1) Where it appears to the appropriate Committee 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 appropriate Committee 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

8.—(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 until he has completed a letter of undertaking to comply with the conditions laid down in the certificate; 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. Where the contribution to the Legal Aid (Scotland) Fund of a person receiving legal aid is payable by instalments and two or more instalments are in arrear, the Committee may require that person forthwith to pay the whole balance due by him of the contribution, and the Society shall have the right to recover from him any sum not paid in pursuance of such requirement.

(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 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:

Provided that where a certificate is discharged under paragraph 6 of the said Article 16 or paragraph 6 of the said Article 8 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

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

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

9.—(1) Where it appears to the secretary and a member of the appropriate Committee 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:

Provided that an emergency certificate shall not be issued in connection with proceedings in the House of Lords on appeal from the Court of Session.

(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 the income limit.

(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 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 the income limit 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 Fund:

Provided that where the Board determine that the holder's disposable capital is more than the capital limit 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 in pursuance of the Act or any Regulations made thereunder.

(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.

(10) In this Regulation

(*a*) "the income limit" in relation to a person's disposable income means the annual amount of such income by reference to which (by virtue of subsection (1) of section 2 of the Act and any Regulations made thereunder) a person's entitlement to legal aid falls to be determined, subject to the proviso to that subsection and to other provisions of the Act; and

(*b*) "the capital limit" in relation to a person's disposable capital means the amount of such capital by reference to which (by virtue of the proviso to subsection (1) of section 2 of the Act and any Regulations made thereunder) the existence of a right to refuse legal aid in the case of any person, if it appears that he can afford to proceed without such aid, falls to be determined.

Matter in part of which a person receives legal aid

10.—(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 that 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 that 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) Any solicitor who has acted for a person in any proceedings in which that person subsequently begins to receive legal aid and is represented by another solicitor, or any solicitor who has by law a right of retention over any documents necessary for proceedings in respect of which a person is receiving legal aid and who has delivered them up subject to his right of retention, may give notice to the appropriate Committee that he has so acted or that he has so delivered up documents, as the case may be; and if in the proceedings any property is recovered or preserved for that person (within the meaning of subsection (5) of section 3 of the Act), the Society shall pay to the solicitor out of the property so recovered or preserved the expenses to which he would have been entitled on a taxation as between solicitor and client:

Provided that in any case where the property so recovered or preserved is insufficient to pay those expenses in full in accordance with this paragraph and also to meet the net liability of the Legal Aid (Scotland) Fund on account of the assisted person, payment shall be made out of the property recovered or preserved to that Fund and to the solicitor in proportion to the amount owing to each, and the provisions of subsection (4) of section 3 of the Act with respect to the priority of payments to the legal aid fund out of property recovered or preserved shall have effect accordingly.

(4) 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.

(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 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 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

11.—(1) A person receiving legal aid shall immediately inform the solicitor acting for him of

(*a*) any change in his circumstances, financial or otherwise, or

(*b*) any change in the circumstances, financial or otherwise, so far as known to him, of any other person jointly concerned with, or having the same interest in the matter,

being a change relevant to the conditions under which the legal aid certificate was issued :

Provided that he shall not be obliged to report a change resulting from an increase or decrease in the rate of income tax or in the amount of any local rate which he or, as the case may be, the other person is liable to pay, being a change 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 appropriate Committee ; 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 twenty-six 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

12. 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

13. 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 they are left out of account in the determination by the Board of his disposable income and disposable capital.

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

14. 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 concerned in proceedings in forma pauperis *in the House of Lords*

15. Where, at the time of coming into operation of these Regulations, any person has been admitted in the House of Lords to take, defend or be a party to any proceedings *in forma pauperis*, these proceedings may be continued as if subsection (3) of section 17 of the Act had not been passed.

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

26th November, 1960

We concur in Regulation 15 of the above Regulations.

David Gibson-Watt,
P. E. O. Bryan,
Two of the Lords Commissioners
of Her Majesty's Treasury.

28th November, 1960

EXPLANATORY NOTE

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

These Regulations consolidate the provisions contained in the Legal Aid (Scotland) (General) Regulations, 1950 to 1960, which relate to legal aid for litigation. They incorporate minor amendments required by the extension of legal aid to proceedings in the House of Lords on appeal from the Court of Session.