1960 No. 497 (S. 22)

The Legal Aid (Scotland) (Section 5) Regulations, 1960

Made - - - -	17*th March*, 1960
Laid before Parliament	24*th March*, 1960
Coming into Operation	28*th March*, 1960

ARRANGEMENT OF REGULATIONS

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In exercise of the powers conferred on me by section 5, sections 2, 3 and 4 as applied by section 5, and section 12 of the Legal Aid (Scotland) Act, 1949(a), 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) (Section 5) Regulations, 1960, and shall come into operation on the 28th day of March, 1960.

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 ;

" claim " means a claim which it is desired to assert or dispute where the question of taking, defending or being a party to proceedings before a court or tribunal does not arise or has not arisen ; but if it did arise, the proceedings would, or might properly, be such that legal aid could be given in connection therewith under section one of the Act ;

(a) 12, 13 & 14 Geo. 6. c. 63.

" legal aid " means legal aid under section 5 of the Act;

" legal aid certificate " means a legal aid certificate issued by a Local Committee in accordance with the Legal Aid (Scotland) (Section 5) Scheme, 1960, or in accordance with any Scheme varying that Scheme.

" Local Committee " has the like meaning as in the Legal Aid (Scotland) Scheme, 1958, made 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.

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 Local Committee concerned 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, 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 of Regulation 4 of these Regulations.

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 claim and to his resources as may be required by a Local Committee or any person acting on their behalf 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.

Limitation of Expenditure

5. Without prejudice to the provisions of the Legal Aid (Scotland) (Section 5) Scheme, 1960, a legal aid certificate may provide that the assisted person or his solicitor shall not, without the prior authority of the Local Committee, incur expenditure

(*a*) in excess of such sum as may be prescribed in the certificate; or

(*b*) of a kind specified in the certificate;

or both.

(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

6.—(1) Where it appears to the Local Committee that a person making application for legal aid is jointly concerned with or has the same interest in the claim in connection with which the application is made as other persons, whether receiving legal aid or not, the Local 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 claim as the applicant to defray so much of the expenses as would be payable from the Legal Aid (Scotland) Fund in respect of the claim if legal aid were granted.

(2) Where a person applies for legal aid in connection with any claim in which he is concerned in a representative, fiduciary or official capacity and it appears to the Local Committee that the applicant is entitled to be indemnified in respect of his expenses in connection with the claim 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 claim or, as the case may be, that the third party would himself, if he were a party to the claim, 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 a claim

7.—(1) Where it appears to the Local 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 asserting or disputing the claim 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 Local 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 asserting or disputing the claim, they shall require him to sign an undertaking to pay to the Society, in addition to his contribution (if any), the sum received from that body on account of the expenses of the claim.

Payment of contributions to Legal Aid (Scotland) Fund

8.—(1) (*a*) A Local Committee shall not issue a legal aid certificate in favour of an applicant 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 Local Committee may suspend or discharge the legal aid certificate in his favour.

(*b*) 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 Local 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 Local Committee acting under the powers given to them by these Regulations or by paragraphs (5) or (6) of Article 8 of the Legal Aid (Scotland) (Section 5) Scheme, 1960, 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 the Society shall have the right to recover from the person in whose favour the certificate was issued 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 claim to which the discharged certificate related.

(3) Where any sums are recovered by virtue of an agreement as to expenses in favour of a person who has ceased to receive legal aid in the claim to which the 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 assert or dispute the claim to which the certificate in question related.

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) Any solicitor who has acted for a person in any claim in which that person subsequently begins to receive legal aid and is represented by another solicitor, and any solicitor who has by law a right of retention over any documents necessary for the purpose of asserting or disputing a claim 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 Local

Committee that he has so acted or that he has so delivered up documents as the case may be; and if as a result of asserting or disputing the claim 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 under the scale laid down in sub-paragraph (1) of Article 10 of the Legal Aid (Scotland) (Section 5) Scheme, 1960:

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 provision of subsection (4) of section three of the Act with respect to the priority of payments to the Legal Aid (Scotland) Fund out of property recovered or preserved shall have effect accordingly.

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

(*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 claim

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 Local Committee who issued the legal aid certificate; and the Local Committee, after such inquiry 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.

Determination of Means

11. The determination by a Local Committee of disposable income, disposable capital and maximum contribution under Article 7 of the Legal Aid (Scotland) (Section 5) Scheme, 1960, shall be in accordance with the provisions of the Schedule to these Regulations.

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

16th March, 1960.

We concur in Regulation 11 of the above Regulations.

Michael Hughes-Young,
R. Brooman White,
Two of the Lords Commissioners of Her Majesty's Treasury.

17th March, 1960.

Regulation 11

SCHEDULE

Assessment of Resources of Applicant for a Legal Aid Certificate

1. In this Schedule, unless the context otherwise requires, the following expressions have the meanings respectively assigned to them—

"capital" means the amount or value of every resource of a capital nature;

"income" means the total income from all sources which the applicant may reasonably expect to receive during the twelve months next ensuing from the date of the application, 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 disposable capital and disposable income of an applicant shall be the capital and income as determined by the Local Committee after deducting any sums which are to be left out of account or for which allowance is to be made under the provisions of this Schedule.

3.—(1) Where an application for legal aid is made on behalf of a pupil, the resources of the pupil shall, subject to the provisions of the next succeeding sub-paragraph, be treated as the resources of the applicant, and the resources of the applicant shall be left out of account.

(2) The resources of any person who, under section 42 of the National Assistance Act, 1948(a), is liable to maintain the pupil or who usually contributes substantially to the pupil's maintenance may be treated as the resources of the pupil if, having regard to all the circumstances including the age and resources of the pupil, it appears just and equitable to do so.

4. Where an application for legal aid is made by a child under the age of 16, not being a pupil, the resources of any person who, under section 42 of the National Assistance Act, 1948, is liable to maintain the child or who usually contributes substantially to the child's maintenance may be treated as the resources of the child if, having regard to all the circumstances including the age and resources of the child, it appears just and equitable to do so.

5. If it appears to the Local Committee that any person whose capital and income falls to be computed under the provisions of this Schedule has, with intent to reduce the disposable capital or disposable income or maximum contribution, directly or indirectly deprived himself of any resource or has converted any part of his resources into resources which are to be left out of account, 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.

6. Subject to the provisions of this Schedule, an applicant shall be entitled to legal aid in respect of a claim if his disposable capital does not exceed £75 and he either was in receipt of national assistance at the date of his application or his disposable income does not exceed £234:

Provided that legal aid may nevertheless be refused to a person who was in receipt of national assistance at the date of his application if his disposable income exceeds £234 and it appears that the assistance was or is likely to be of a temporary nature.

(a) 11 & 12 Geo. 6. c. 29.

7. In computing the capital and income of an applicant—

(*a*) there shall be left out of account the value of the subject matter of the claim in respect of which he is seeking legal aid.

(*b*) the resources of any spouse of his shall be treated as the applicant's resources unless—

(i) the spouse has a contrary interest in the claim on which the applicant is seeking legal aid ; or

(ii) the applicant and his spouse are living separate and apart ; or

(iii) in all the circumstances of the case it would be either inequitable or impracticable to do so.

8. In computing the capital of an applicant the value of his dwelling house, household furniture and effects, articles of personal clothing and the tools and implements of his trade shall be left out of account.

9. The deductions to be made from the income of an applicant shall be—

(*a*) £78 in respect of any spouse of his if wholly or substantially maintained by him, or where the capital and income of the spouse are treated as his resources ;

(*b*) £65 in respect of any child wholly or substantially maintained by him or, where the capital and income of any spouse of his are treated as his resources, by the spouse ;

(*c*) £78 in respect of any other person wholly or substantially maintained by him or, where the capital and income of any spouse of his are treated as his resources, by the spouse ;

(*d*) any income tax paid or payable on income to be treated as the income of the applicant for the purposes of these Regulations ; and

(*e*) any contribution estimated to be payable by the applicant, or, where the resources of any person are to be treated as the applicant's resources, by that person, under the provisions of the National Insurance Acts, 1946 to 1957, the National Insurance (Industrial Injuries) Acts, 1946 to 1957, and the National Health Service Contribution Acts, 1957 and 1958, during the twelve months next ensuing from the date of his application.

10. Where the disposable income of the applicant as computed in accordance with the foregoing provisions of this Schedule is or exceeds £194, he shall be required to pay a contribution to the Legal Aid (Scotland) Fund in respect of sums payable therefrom on his account of not more than £5 for each £10 in excess of £184.

11. Where it appears to the Local Committee that the circumstances upon which they have determined the disposable income or disposable capital of the applicant have altered to such an extent that his certificate should be varied or discharged or that there has been some error or mistake in the determination of his disposable income, disposable capital or maximum contribution, they may redetermine the disposable income or disposable capital or maximum contribution or, as the case may be, amend the determination and in the latter case the amended determination shall for all purposes be substituted for the original determination.

12. Any question arising under this Schedule shall, subject to the right of the applicant to appeal in terms of Article 9 of the Legal Aid (Scotland) (Section 5) Scheme, 1960, be decided by the Local Committee who, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Society as to the application of this Schedule.

EXPLANATORY NOTE

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

The Regulations make provision for legal aid in matters not involving litigation under section 5 of the Legal Aid (Scotland) Act, 1949. The Regulations include provisions relating to applications for legal aid under that section and matters arising therefrom, and for the recovery of money in such cases for the benefit of the Legal Aid (Scotland) Fund. The Schedule to the Regulations provides for the assessment of the resources of applicants and for the assessment of any contribution paid by persons who are granted legal aid under section 5 of the 1949 Act. Legal aid will be available to those who have disposable capital not exceeding £75 and disposable income not exceeding £234.