1965. No. 235 **[C]**

LEGAL AID AND ADVICE

Costs of Successful Unassisted Parties

REGULATIONS, DATED 11TH NOVEMBER, 1965, MADE BY THE MINISTRY OF HOME AFFAIRS UNDER SECTIONS 9(1) AND (2) AND 14(1) OF THE LEGAL AID AND ADVICE ACT (NORTHERN IRELAND) 1965 WITH THE CONCURRENCE OF THE LORD CHIEF JUSTICE IN SO FAR AS IS REQUIRED BY SECTION 9(3) OF THE SAID ACT AND WITH THE CONSENT OF THE SUPREME COURT RULES COMMITTEE IN SO FAR AS IS REQUIRED BY SECTION 14(5) OF THE SAID ACT.

The Ministry of Home Affairs, in exercise of the powers conferred by sections 9(1) and (2) and 14(1) of the Legal Aid and Advice Act (Northern Ireland) 1965(a), with the concurrence of the Lord Chief Justice in so far as is required by section 9(3) of the said Act and with the consent of the Supreme Court Rules Committee in so far as is required by section 14(5) of the said Act, and after consultation with the County Court Rules Committee and the Magistrates' Courts Rules Committee in so far as is required by the said section 14(5), hereby makes the following regulations:—

Citation, Interpretation and Commencement

1.—(1) These regulations may be cited as the Legal Aid (Costs of Successful Unassisted Parties) Regulations (Northern Ireland) 1965 and shall come into operation on the 15th day of November, 1965.

(2) In these regulations—

"the Act" means the Legal Aid and Advice Act (Northern Ireland) 1965;

"affidavit of costs and resources" means an affidavit sworn by an applicant in support of his application which includes the matters specified in the Schedule hereto;

"applicant" means a person applying for an order under section 8 of the Act;

"application" means an application for an order under section 8 of the Act;

"authorised summary proceedings" has the same meaning as in the General Regulations;

"clerk of the Crown and peace" means the clerk of the Crown and peace acting for the county court division in which the proceedings were brought;

"court" in relation to proceedings tried or heard at first instance by a registrar or other officer of the Supreme Court includes such registrar or other officer;

"court" in relation to proceedings tried or heard at first instance by a clerk of the Crown and peace or registrar of a county court includes such clerk or registrar;

"registrar" in relation to an application made in respect of proceedings in a county court means the registrar of that county court;

"the General Regulations" means the Legal Aid (General) Regulations (Northern Ireland) 1965(b);

(a) 1965. c. 8 (N.I.). (b) S.R. & O. (N.I.) 1965, No. 217.

"the secretary" means the secretary of the Legal Aid Committee established by a Scheme made by the Society under section 10 of the Act;
"the Society" means the Incorporated Law Society of Northern Ireland;
"taxing master" means the taxing master of the Supreme Court.

GENERAL PROVISIONS

Separate proceedings

2. Any proceedings in respect of which a separate civil aid certificate could properly be issued under the General Regulations to a person receiving legal aid shall be treated as separate proceedings for the purposes of section 8 of the Act.

Applicants in a fiduciary, representative or official capacity

3. Where an unassisted party is concerned in proceedings only in a fiduciary, representative or official capacity, then for the purposes of section 8(3)(*b*) of the Act the court shall not take into account his personal resources, but shall have regard to the value of the property, estate or fund out of which the unassisted party is entitled to be indemnified and may in its discretion also have regard to the resources of the persons, if any, who are beneficially interested in that property, estate or fund.

Time and form of application

4. An application may be made at any time and in any manner in which an application for an order for costs might be made in respect of the same proceedings if neither party were receiving legal aid.

Written representations by the Secretary

5.—(1) In any case where these regulations confer on the secretary a right to appear at any hearing or inquiry in connection with any application, he may, instead of so appearing, submit written representations concerning the application.

(2) Written representations submitted under paragraph (1) shall in so far as they consist of averments of fact be—

(*a*) supported by an affidavit sworn by the secretary; and

(*b*) sent to the proper officer of the court, and copies thereof sent to the applicant, not less than 7 days before the hearing or inquiry to which they relate.

PROCEEDINGS BEFORE A COURT OF SUMMARY JURISDICTION

Applications in respect of proceedings before a Court of Summary Jurisdiction

6.—(1) This regulation shall apply to any application made to a court of summary jurisdiction in respect of proceedings in that court.

(2) On an application being made, the court may in its discretion either—

(*a*) adjourn the hearing of the application; or

(*b*) dismiss or grant the application forthwith.

(3) Where the proceedings are finally decided within the meaning of section 9(4) of the Act and the court grants the application forthwith, unless the secretary appears or is represented at the hearing of the application and agrees to waive the requirement, the court shall direct that the order shall have effect upon the expiration of 10 days after service of notice thereof on

the secretary by the applicant unless within such period the secretary applies to the court to vary or discharge such order.

(4) Where the proceedings are not finally decided and the court grants the application forthwith, unless the secretary appears or is represented at the hearing of the application and agrees to waive the requirement, the court shall direct that a notice be served immediately by the applicant upon the secretary and the secretary may at any time before the order takes effect apply to the court to vary or revoke such order.

(5) If the court adjourns the hearing of the application, the applicant if the court so directs shall swear an affidavit of costs and resources, which he shall produce at the adjourned hearing.

(6) Not less than 10 days before the adjourned hearing, the applicant shall serve notice of the date and time thereof on the secretary, together with a copy of his affidavit of costs and resources.

(7) The applicant need not serve on the secretary any exhibit to or document supporting his affidavit of costs and resources, but the secretary may call on the applicant to produce any such exhibit or document for inspection.

(8) The applicant and the secretary may appear before the court at the adjourned hearing.

COUNTY COURT PROCEEDINGS

Treatment of applications

7.—(1) This regulation and regulations 8 to 10 shall apply to any application made to a county court Judge in respect of any proceedings in a county court or in a court of summary jurisdiction where an appeal is heard by the county court from an order made in authorised summary proceedings.

(2) On an application being made, the court may in its discretion—

(*a*) refer the application to the clerk of the Crown and peace or registrar for hearing and determination; or

(*b*) in special circumstances, refer the application to the clerk of the Crown and peace or registrar for inquiry and report; or

(*c*) adjourn and subsequently determine the application; or

(*d*) dismiss or grant the application forthwith.

(3) Where the proceedings are finally decided within the meaning of section 9(4) of the Act and the court grants the application forthwith, unless the secretary appears or is represented at the hearing of the application and agrees to waive the requirement, the court shall direct that the order shall have effect at the expiration of 10 days after service of notice thereof on the secretary by the applicant unless within such period the secretary applies to the court to vary or discharge such order.

(4) Where the proceedings are not finally decided and the court grants the application forthwith, unless the secretary appears or is represented at the hearing of the application and agrees to waive the requirement, the court shall direct that a notice thereof be served immediately by the applicant upon the secretary and the secretary may at any time before the order takes effect apply to the court to vary or revoke such order.