EXPLANATORY NOTE

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

These regulations are made by the Ministry of Home Affairs under powers conferred by Part I of the Legal Aid and Advice Act (Northern Ireland) 1965 and supplement the provisions of that Part by providing for the procedure to be adopted on applications for Civil Aid Certificates and Emergency Certificates, their revocation and discharge, appeals against refusal of the grant of such certificates, the conduct of proceedings on behalf of assisted persons, and the taxation and assessment of costs in proceedings to which an assisted person is a party as well as other matters in connection with such proceedings or claims to which Part I of that Act applies.

1965. No. 218 **[C]**

LEGAL AID AND ADVICE

Assessment of Resources

REGULATIONS, DATED 28TH OCTOBER, 1965, MADE BY THE MINISTRY OF HOME AFFAIRS WITH THE CONCURRENCE OF THE MINISTRY OF FINANCE, UNDER SECTION 4 OF THE LEGAL AID AND ADVICE ACT (NORTHERN IRELAND) 1965.

The Ministry of Home Affairs, with the concurrence of the Ministry of Finance, in exercise of the powers conferred by section 4 of the Legal Aid and Advice Act (Northern Ireland) 1965(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:—

Citation, interpretation and commencement

1.—(1) These regulations may be cited as the Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1965 and shall come into operation on the 1st day of November, 1965.

(2) In these regulations—

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

"the Board" means the National Assistance Board for Northern Ireland;

"a certificate" means a Civil Aid Certificate issued in accordance with regulations made under the Act;

"child" means a child or stepchild of the person concerned, which child is either (i) under the upper limit of compulsory school age, that is to say, the age that is for the time being the upper limit of compulsory school age by virtue of section 33 of the Education Act (Northern Ireland) 1947(b), together with any Order in Council made under that section, or (ii) over the limit of compulsory school age and either receiving full-time instruction at an educational establishment or undergoing training for a trade, profession or vocation;

(a) 1965. c. 8 (N.I.). (b) 1947. c. 3.

"the committee" means the Legal Aid Committee or a Certifying Committee set up by a scheme made under section 10 of the Act by whom the Board are requested to determine or redetermine the disposable income and disposable capital and the maximum contribution of any person or any such committee by whom a certificate is amended, revoked or discharged, as the case may require;

"income" includes benefits and privileges; the income of the person concerned does not include any sum payable under the order of a court or under any instrument to that person for the purpose of the maintenance of an infant;

"the period of computation" means the period of 12 months next ensuing from the date of the application for a certificate or such other period of 12 months as in the particular circumstances of any case the Board may consider to be appropriate;

"the person concerned" means the person whose disposable income and disposable capital are to be determined or the person whose resources are to be treated as the resources of any other person, as the case may require;

"authorised summary proceedings" means the following proceedings in a court of summary jurisdiction, namely—

(*a*) proceedings for or relating to an affiliation order within the meaning of the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924(**a**) (whether as originally enacted or as applied or extended by or for the purposes of any other enactment), or an order under the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945(**b**);

(*b*) debt and ejectment proceedings within the meaning of Part VII of the Magistrates' Courts Act (Northern Ireland) 1964(**c**), other than proceedings under section 71(2) of that Act;

(*c*) proceedings under sections 63, 64, 65, 66, 67, 82, 111 and 112(1) of the Children and Young Persons Act (Northern Ireland) 1950(**d**) and section 38 of the Education Act (Northern Ireland) 1947;

"make a determination", in relation to the Board, means to determine the disposable income and disposable capital of the person concerned, and to determine the maximum amount of his contribution to the legal aid fund in respect of any proceedings.

Subject matter of dispute

2. In computing the disposable income or the disposable capital of the person concerned there shall be excluded the value of the subject matter of the dispute in respect of which application has been made for a certificate.

Resources of a spouse

3.—(1) Except as otherwise provided in paragraph (2), in computing the income and the capital of the person concerned the resources of his spouse shall be treated as his resources.

(2) The resources of the spouse of the person concerned shall not be treated as his resources if—

(i) the spouse has a contrary interest in the dispute in respect of which application for a certificate is made; or

(ii) the person concerned and the spouse are living separate and apart; or

(a) 14 & 15 Geo. 5. c. 27 (N.I.). (b) 1945. c. 14. (c) 1964. c. 21 (N.I.). (d) 1950. c. 5.

(iii) it would in the circumstances of the case be either inequitable or impracticable to make the resources of one spouse available to the other spouse.

Resources of an infant applicant

4.—(1) Where an application for a certificate is made by or on behalf of an infant who is under the upper limit of compulsory school age, there may, in addition to the resources of the infant, be taken into account the disposable income and disposable capital of such other person or persons, being one or more of the following persons, as the Board, having regard to all the circumstances, including the age and resources of the infant, may decide, that is to say—

(i) any person who under section 19 of the National Assistance Act (Northern Ireland) 1948(a) is liable to maintain the infant;

(ii) any person having the care and control of the infant, not being a person having such care and control by reason of any contract or for some temporary purpose.

(2) Where an application for a certificate is made by or on behalf of an infant, his resources for the purposes of these regulations shall include any sum payable under the order of a court or under any instrument to any person for the purpose of the maintenance of the infant.

Deprivation or conversion of resources

5. If it appears to the Board that the person concerned, with intent to reduce the amount of his disposable income or disposable capital, has directly or indirectly deprived himself of any resource or has converted any part of his resources into resources which under these regulations are to be wholly or partly disregarded or in respect of which nothing is to be included, 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.

Determination of disposable income and disposable capital

6. Save as otherwise provided by these regulations, the disposable income and disposable capital of the person concerned shall respectively be determined at amounts calculated in accordance with the provisions of Schedules 1 and 2.

Decision of the Board

7. The determination in accordance with the provisions of section 4(8) of the Act of the disposable income, disposable capital and maximum contribution shall be communicated in writing to the committee.

Determination on change of circumstances

8. Where it appears to the committee that the circumstances upon which the Board have determined the disposable income or disposable capital of the person concerned have altered so that—

(*a*) his disposable income may have increased or decreased by an amount greater than twenty-six pounds; or

(*b*) his disposable capital may have increased by an amount greater than seventy-five pounds;

the Board shall, if so required by the committee, redetermine that person's disposable income, disposable capital and maximum contribution.

(a) 1948. c. 13.

Amendment of determination because of error or mistake

9. Where it appears to the Board that there has been some error or mistake in the determination of a person's disposable income, disposable capital or maximum contribution or in any computation or estimate upon which such determination is based and that it would be just and equitable to correct the determination, the Board may, with the consent of the committee, correct such error or mistake and make an amended determination, and such amended determination shall for all purposes be substituted for the original determination and shall have effect in all respects as if it were the original determination.

Power of the Board to estimate an applicant's resources

10.—(1) Where the committee informs the Board that the person concerned requires a certificate in a matter of special urgency and the Board are not satisfied that they can make a determination and communicate it to the committee by the time that they are requested to do so, the Board may, on the basis of the information then available to them, make an estimate of the disposable income and disposable capital of the person concerned and of the maximum amount of his contribution to the legal aid fund. Such estimate shall be communicated in writing to the committee and, until the making of a determination, shall be treated as if it were a determination and sections 2 and 3 of the Act shall have effect as if the disposable income and disposable capital of the person concerned were of the amounts specified in the estimate.

(2) In any case in which the Board make an estimate under the preceding paragraph they shall, upon receiving such additional information as they may require, make a determination and shall communicate the same in writing to the committee and, if the result of the determination is to vary the maximum amount of the contribution of the person concerned, the determination shall for all purposes take the place of the estimate.

(3) References in this regulation to "the committee" shall, in the case of application for a certificate in respect of authorised summary proceedings, be deemed to include references to the secretary of the committee.

Sealed with the Official Seal of the Ministry of Home Affairs for Northern Ireland this 26th day of October, 1965.

(L.S.) *J. G. Hill,*
Assistant Secretary.

The Ministry of Finance hereby concurs with the foregoing regulations.

Sealed with the Official Seal of the Ministry of Finance for Northern Ireland this 28th day of October, 1965.

(L.S.) *R. R. Butler,*
Assistant Secretary.