1965. No. 217 **[C]**

LEGAL AID AND ADVICE

General

REGULATIONS, DATED 29TH OCTOBER, 1965, MADE BY THE MINISTRY OF HOME AFFAIRS UNDER SECTIONS 1, 2, 3, 4, 5, 6 AND 14 OF, AND SCHEDULE 3 TO, THE LEGAL AID AND ADVICE ACT (NORTHERN IRELAND) 1965 WITH THE CONSENT OF THE SUPREME COURT RULES COMMITTEE SO FAR AS IS REQUIRED BY SECTION 14(5) OF THE SAID ACT AND WITH THE CONCURRENCE OF THE MINISTRY OF FINANCE SO FAR AS IS REQUIRED BY SECTION 4(10) OF THE SAID ACT OF 1965.

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SCHEDULE—Assessment of Resources of Applicant for Certificate Relating to a Claim.

The Ministry of Home Affairs, having obtained the consent of the Supreme Court Rules Committee to so much of the following regulations as applies to the procedure of the Supreme Court and after consultation with the County Court Rules Committee and the Magistrates' Courts Rules Committee as to so much of the said regulations as applies to the procedure of the County Courts, or, as the case may be, of the Magistrates' Courts, in exercise of the powers conferred on it by Sections 1, 2, 3, 4, 5, 6 and 14 of, and Schedule 3 to, the Legal Aid and Advice Act (Northern Ireland) 1965(a) and with the concurrence of the Ministry of Finance so far as is required by Section 4(10) of the said Act, hereby makes the following regulations:—

Citation, Commencement and Interpretation

1.—(1) These regulations may be cited as the Legal Aid (General) Regulations (Northern Ireland) 1965 and shall come into force on the first day of November, 1965.

(2) In these regulations:—

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

"appropriate committee" means the Legal Aid Committee or a certifying committee to whom an application for a certificate has been made;

"assisted person" means a person in respect of whom a certificate is in force;

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within the meaning of the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924(**b**) (whether as originally enacted or as applied or extended by or for the purposes of any other enactment or an order under the Summary Jurisdiction (Separation and Maintenance) Act (Northern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

(*b*) debt or ejectment proceedings within the meanings of Part VII of the Magistrates' Courts Act (Northern Ireland) 1964(**d**), 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(**e**) and Section 38 of the Education Act (Northern Ireland) 1947(**f**);

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

"certificate" means a civil aid certificate issued in accordance with these regulations entitling a person to legal aid and, if a further certificate is issued under the provisions of regulation 9(3)(*a*), means such further certificate (or the latest thereof if more than one further certificate is issued) and the word "certificate" also includes an emergency certificate issued under the provisions of Regulation 11;

"certifying committee" means a certifying committee set up by a scheme made under Section 10 of the Act;

"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 does not arise or has not yet 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 1 of the Act;

(a) 1965. c. 8 (N.I.).
(b) 14 & 15 Geo. 5. c. 27 (N.I.).
(c) 1945. c. 14.
(d) 1964. c. 21 (N.I.).
(e) 1950. c. 5.
(f) 1947. c. 3.

"the Council" means the Council of the Society;
"the fund" means the legal aid fund;
"the Society" means the Incorporated Law Society of Northern Ireland;
"legal aid" means legal aid under Part I of the Act;
"Legal Aid Committee" means the Legal Aid Committee set up under Section 10 of the Act;
"scheme" means a scheme made under Section 10 of the Act;
"secretary" means the secretary of such committee as the context requires.

(3) Where a power to do any act or exercise any jurisdiction or discretion is conferred by any provision of these regulations on a court, it may, unless it is exercisable only during the trial or hearing of the action, cause or matter, be exercised by—

(*a*) in the House of Lords, the Clerk of the Parliaments; or

(*b*) in the Supreme Court, a judge, registrar or taxing master; or

(*c*) in the County Court, the clerk of the Crown and Peace or the registrar.

(4) Where, under any of the following provisions, namely:—
Regulation 4(5),
Regulation 6(5)(*a*) and (10),
Regulation 9(1)(*a*), (*b*)(i), (ii) and (v), (*c*), (*d*), (*e*), (*f*) and (*h*),
Regulation 12(2)(*a*), (*b*) or (*c*), (*e*)(i) and (3)(*a*)(i) or (ii),
Regulation 15(3)(*b*), (6) and (7),
Paragraph (ii) of the proviso to Regulation 17(2) and Regulation 17(4) and (5),
Regulation 20(1),
Regulation 21(3),
Regulation 22(2),
any Order of the Minister under Schedule 3 to the Act,
the Legal Aid Committee or a certifying committee is required or entitled to perform any function, that function may, if the Legal Aid Committee so direct and to the extent specified in the direction, be performed on behalf of the appropriate committee by the chairman or secretary of that committee.

(5) Where, in any of the following provisions, namely:—
Regulation 3(4),
Regulation 4(2),
Regulation 5(2) and (6),
Regulation 6(3), (5)(*a*), (9), (11) and (13),
there is a reference to the appropriate committee or certifying committee that reference shall be deemed to include a reference to the secretary, in any case where the duty of considering the application for legal aid is, under these regulations, to be discharged by him.

Effect of Certificates

2.—(1) Legal aid shall be available to any person to whom a certificate has been issued in accordance with these regulations.

(2) Any document purporting to be a certificate issued in accordance with these regulations shall, until the contrary is proved, be deemed to be a valid certificate issued to the person named therein.

Applications for Certificates

3.—(1) Any person desiring legal aid in respect of proceedings—

(*a*) before the House of Lords in the exercise of its jurisdiction in relation to appeals from the Court of Appeal;

(*b*) before the Judicial Committee of the Privy Council in the exercise of its jurisdiction in relation to an appeal or reference from Northern Ireland;

(*c*) before the Court of Appeal in the exercise of its jurisdiction in relation to appeals from the High Court or a Judge of Assize;

may apply to the Legal Aid Committee for a certificate.

(2) Any person desiring legal aid in respect of any other proceedings or in respect of any claim may apply for a certificate to a certifying committee.

(3) Every application shall be made in writing on a form approved by the Society or in such other manner, being in writing, as the secretary may accept as sufficient in the circumstances of the case and shall be lodged with the secretary.

(4) Every application shall contain such information and shall be accompanied by such documents as may be requisite to enable—

(*a*) the appropriate committee to determine—

(i) the nature of the proceedings or the nature of the claim in relation to which legal aid is sought and the circumstances in which legal aid is required; and

(ii) the question whether it is reasonable that a certificate should be granted; and

(*b*) the appropriate committee or the Board to determine the disposable income, disposable capital and maximum contribution of the applicant;

and the applicant shall (for the purpose of providing additional information), if required by the secretary, the appropriate committee or the Board to do so, attend for an interview or supply such further information or documents as he or they may require.

(5) In the case of a person resident outside Northern Ireland and not able to be present in Northern Ireland while his application is being considered the application shall be in English and shall be sworn, if the person is resident within the Commonwealth or the Republic of Ireland, 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 to exercise the functions of such Consular Officer or having authority to administer an oath in that place, 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 requirements may be waived by the secretary where compliance with them would cause serious difficulty, inconvenience or delay and the application satisfies the provisions of paragraphs (3) and (4).

(6) The appropriate committee shall, except as is provided by Regulation 5(1) and Regulation 6(4), unless they shall have previously refused the application, submit to the Board so much of it as is relevant to the determination of the disposable income and disposable capital of the applicant.

Applications on behalf of Infants and Persons of Unsound Mind

4.—(1) Save as is hereinafter provided, an application for legal aid for an infant or person of unsound mind shall be made on his behalf by a person of full age and capacity and, where the application relates to proceedings which are required by rules of court to be brought or defended by a next friend,

guardian *ad litem* or committee, that person shall be the next friend, guardian *ad litem*, committee, as the case may be, or, where the application relates to proceedings and they have not actually begun or to any claim, a person who, subject to any contrary order of the court, intends to act in any such capacity when the proceedings begin or if the question of taking them were to arise.

(2) The appropriate committee shall not issue a certificate applied for by a person on behalf of an infant or person of unsound mind unless that person has signed an undertaking to pay to the Society (if called upon to do so) any sum which, by virtue of any provision of the Act or these regulations, the appropriate committee may require an assisted person of full age and capacity to pay upon the issue or during the currency or upon discharge or revocation of the certificate.

(3) Any certificate issued by virtue of this regulation shall be in the name of the infant or person of unsound mind, stating the name of the person by whom he has applied.

(4) In any matter relating to the issue, amendment, revocation or discharge of a certificate issued by virtue of this regulation and in any other matter which may arise as between an assisted person and the appropriate committee, the person by whom the infant or person of unsound mind has applied for a certificate shall be treated for all purposes (including the receipt of notices) as the agent of the infant or person of unsound mind.

(5) The appropriate committee may, where the circumstances appear to make it desirable, waive all or any of the requirements of the preceding paragraphs of this regulation.

(6) Where an infant is an assisted person, his means for the purpose of determining his liability for costs under Section 2(3)(*e*) of the Act (which limits the liability of an assisted person under an order for costs made against him) shall be taken as including the means of any person whose disposable income and disposable capital has, by virtue of the Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1965(a) been included by the Board in computing the infant's rate of income and amount of capital.

(7) Where an order for costs is made against a next friend, guardian *ad litem* or committee, as the case may be, of an infant assisted person or of an assisted person of unsound mind, he or they shall have the benefit of Section 2(3)(*e*) of the Act in like manner as it applies to an assisted person, and the means of the next friend, guardian *ad litem* or committee shall, as the case may be, be taken as being the means of the infant as defined in paragraph (6) or of the person of unsound mind.

Duties of Committees receiving Applications for Certificates

5.—(1) An application for a certificate in respect of a claim shall be considered by the secretary to the certifying committee and if, after consideration by him of the general circumstances in which it was made, including questions of fact or law arising out of the claim, and after determination by him of the disposable income and disposable capital of the applicant and the maximum contribution payable by the applicant, it appears to the secretary—

(*a*) that the applicant has reasonable grounds for taking steps to assert or dispute a claim; and

(*b*) that it is reasonable in the circumstances that he should receive legal aid; and

(a) S.R. & O. (N.I.) 1965, No. 218.