

1971 No. 288 (S.44)

## LEGAL AID AND ADVICE, SCOTLAND

## The Legal Aid (Scotland) (Children) Regulations 1971

<i>Made</i>	- - -	18th February 1971
<i>Laid before Parliament</i>		2nd March 1971
<i>Coming into Operation</i>		15th April 1971

In exercise of the powers conferred on me by section 15 of the Legal Aid (Scotland) Act 1967(a), and of all other powers enabling me in that behalf, I hereby make the following regulations:—

*Citation and commencement*

1. These regulations may be cited as the Legal Aid (Scotland) (Children) Regulations 1971, and shall come into operation on 15th April 1971.

*Interpretation*

2.—(1) In these regulations the following expressions shall, unless the context otherwise requires, have the meanings hereby respectively assigned to them:—

“the Act” means the Legal Aid (Scotland) Act 1967, as amended by the Social Work (Scotland) Act 1968(b);

“Act of Sederunt” means the Act of Sederunt (Legal Aid) (Children) 1971(c);

“Act of 1968” means the Social Work (Scotland) Act 1968;

“appointed solicitor” has the meaning assigned to it by article 2(1) of the Scheme;

“appeal certificate” means a certificate issued by the Supreme Court Committee under the Scheme;

“assisted person” means a child or the parent of a child to whom there has been issued and in respect of whom there is in force a certificate for legal aid;

“child” means a child as defined in section 30(1) of the Act of 1968;

“interim appeal certificate” means a preliminary appeal certificate issued in an appeal as a matter of urgency under these regulations;

“interim solicitor” means a solicitor appointed as a matter of urgency under these regulations;

“legal aid” means legal aid under the Act;

“Legal Aid (Scotland) Fund” means the fund established under section 9 of the Act;

(a) 1967 c. 43.

(c) S.I. 1971/287 (1971 I, p. 992).

(b) 1968 c. 49.

“list” means a list of counsel or of solicitors prepared and maintained under Article 12 of the Legal Aid (Scotland) Scheme 1958 or under article 5 of the Scheme ;

“parent” means a parent as defined in section 94 as read with section 30(2) of the Act of 1968 ;

“reporter” means a reporter appointed in terms of section 36 of the Act of 1968 ;

“Scheme” means the Legal Aid (Scotland) (Children) Scheme 1971, made by the Society under section 8 of the Act ;

“sheriff clerk” includes sheriff clerk depute

“Society” means the Law Society of Scotland established by the Solicitors (Scotland) Act 1949(a) ;

“the Supreme Court Committee” means the Supreme Court Committee established under article 6 of the Legal Aid (Scotland) Scheme 1958.

(2) In these regulations any reference to any enactment, regulation or scheme shall be construed as a reference to that enactment, regulation or scheme as amended or extended by or under any other enactment, regulation or scheme.

(3) The Interpretation Act 1889(b) shall apply for the interpretation of these regulations as it applies for the interpretation of an Act of Parliament.

#### *Applications for legal aid*

3.—(1) An application for legal aid in connection with proceedings to which the provisions of section 2(5A) of the Act apply may be made orally or otherwise to the sheriff.

(2) An application for legal aid in connection with proceedings before the sheriff otherwise than under the said section 2(5A) shall be made to the sheriff on such form as the Society may provide for the purpose, or in such other manner, being in writing, as the sheriff may accept as sufficient in any particular case in which exceptional circumstances obtain.

(3) An application for an appeal certificate for legal aid in connection with proceedings by way of appeal to the Court of Session, and any applications for a provisional financial certificate and for an interim appeal certificate under regulations 7 and 8 of these regulations respectively, shall be made to the Supreme Court Committee on such forms as the Society may provide for the purpose.

#### *Information to be furnished by applicants*

4. Every applicant for legal aid shall furnish such particulars as are required by any form of application provided in connection with regulation 3 of these regulations and such further particulars with respect to his case, or to his financial circumstances and those of his parent or child as the case may be, or those of the dependants of either, or to other relevant circumstances as may be required by the sheriff, or by the Society or by any committee or person acting on behalf of the Society in regard to the application.

(a) 1949 c. 63.

(b) 1889 c. 63.

*Matter in part of which a person receives legal aid*

5.—(1) Where a child or his parent begins to receive legal aid in respect of any proceedings after having consulted a solicitor in the ordinary way in connection with the same proceedings he shall obtain from the solicitor whom he originally consulted all documents and papers relating to the proceedings and shall produce them to the solicitor acting for him under the Scheme.

(2) When an assisted person ceases to receive legal aid while proceedings are in course, the solicitor who acted for him under the Scheme shall, if any solicitor whom that person subsequently consults so requests, forward to that solicitor all the documents and papers in his possession relating to those proceedings and shall report to him on any steps taken.

*Provisions as to applicant having rights or facilities in relation to legal proceedings*

6.—(1) Notwithstanding any rights or facilities that may be available to a child or his parent in relation to proceedings under Part III of the Act of 1968, legal aid shall be made available, if sought in connection with those proceedings, under the provisions, where applicable, of section 2(5A) of the Act.

(2) Where, otherwise than at any stage in proceedings to which the provisions of section 2(5A) of the Act apply, it appears to the sheriff that an applicant for legal aid, or his parent or child as the case may be, 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 the sheriff shall not, except on special cause shown, make legal aid available to him under section 2(2) of the Act and the sheriff clerk shall not, except on special cause shown, issue in his favour a provisional financial certificate under regulation 7(1) of these regulations.

(3) Where the sheriff makes legal aid available to a person, or the parent or child of a person, who is a member of a body which might reasonably have been expected to give him financial help towards the cost of the proceedings, or the sheriff clerk issues in his favour a provisional financial certificate under regulation 7(1) of these regulations the sheriff or the sheriff clerk shall require him to sign an undertaking to pay to the Society any sum received from that body on account of the expenses of the proceedings.

*Issue of provisional financial certificates in respect of appeals to the Court of Session*

7.—(1) Where a child or his parent seeks legal aid in connection with an appeal to the Court of Session and legal aid was not available, or was not sought by, or was not made available to him in the proceedings before the sheriff otherwise than under section 2(5A) of the Act, he shall apply in writing to the sheriff clerk for the sheriff court of the district in which the original proceedings before the sheriff took place for a provisional financial certificate that it appears that he is unable, without undue hardship to himself or to his parent or child as the case may be, or to the dependants of either, to meet the expenses of proceedings on appeal to the Court of Session and that he is not disentitled to receive legal aid by reason of regulation 6(2) of these regulations:

Provided that where, in the proceedings before the sheriff, the sheriff refused an application for legal aid under section 4(2) or section 4(3) of the Act of Sederunt a provisional financial certificate shall be granted only if the child

or his parent can show, where legal aid was refused by the sheriff under section 4(2) that in relation to an appeal to the Court of Session he has available to him no rights or facilities to which regulation 6(2) of these regulations applies, or where legal aid was refused by the sheriff under section 4(3) of the Act of Sederunt that there has been a material deterioration in his financial circumstances.

(2) Where a provisional financial certificate is granted the sheriff clerk shall transmit it to the Supreme Court Committee together with the completed form of application for an interim appeal certificate referred to in regulation 8(1) of these regulations.

*Issue of interim appeal certificate and appointment of interim solicitors in respect of appeals to the Court of Session*

8.—(1) Where a child or his parent wishes to appeal to the Court of Session against a decision of the sheriff and—

(a) at the time of the decision by the sheriff he had the services of an appointed solicitor, such solicitor, if he is of opinion that in all the circumstances there are substantial grounds for an appeal being taken to the Court of Session by way of stated case, shall submit a statement in writing of such grounds with the application for an interim appeal certificate to the Supreme Court Committee ;

(b) at the time of the decision by the sheriff he did not have the services of a solicitor under the Act, the sheriff clerk shall assist the child or his parent to complete the form of application for an interim appeal certificate as prescribed by regulation 3 of these regulations and shall send the completed form and the provisional financial certificate to the Supreme Court Committee together with a statement in writing of the terms of his proposed appeal prepared by the child or his parent.

(2) When any statement in writing referred to in paragraph (1) of this regulation is received by the Supreme Court Committee it shall be considered forthwith by the secretary and a member, or by 2 members, of the committee, or, where circumstances so demand, by the secretary or 1 member of the committee, and unless, after such enquiry as they, or he, may deem sufficient in the circumstances, they are, or he is, reasonably satisfied that there are no prima facie grounds for an appeal in terms of section 1(6A)(c) of the Act, the committee shall issue an interim appeal certificate and otherwise the committee shall refuse to issue such a certificate :

Provided that such certificate shall not be issued unless the Supreme Court Committee has received a provisional financial certificate, where appropriate, and are satisfied in the case of an applicant who was refused legal aid under section 1(6A)(b) of the Act that it would not be unreasonable that the services of an interim solicitor should be made available to him in connection with his application for an interim appeal certificate.

(3) The Supreme Court Committee shall forthwith intimate their decision on the application for an interim appeal certificate to the applicant, and, if he be a child, to his parent, the reporter and the sheriff clerk, and that decision shall be final subject to any review that may be necessary following a determination by the sheriff, under section 6(2) of the Act of Sederunt, that an applicant who was refused a provisional financial certificate by the sheriff clerk, under regulation 7(1) of these regulations, meets the conditions for issue of such certificate.

(4) Where an interim appeal certificate is to be issued and the applicant has requested that a particular solicitor on the appropriate list should act for him

the committee shall take that request into consideration in making the appointment of an interim solicitor; and the committee shall inform the applicant and, if he be a child, his parent, the reporter and the sheriff clerk of the appointment.

(5) The Supreme Court Committee shall discharge the interim appeal certificate if—

(a) they receive information that the provisional financial certificate has been discharged by the sheriff; or

(b) they are refusing an appeal certificate; and such discharge of the certificate shall be intimated to the interim solicitor and his Edinburgh correspondent, the child, his parent, the reporter and the sheriff clerk.

(6) If the Supreme Court Committee are satisfied, under article 9 of the Scheme, that the applicant has substantial grounds for making the appeal and that it is reasonable that he should receive legal aid, and they have received a report, under section 6(2) of the Act of Sederunt, to the effect that otherwise there is eligibility for legal aid, they shall replace the interim appeal certificate by an appeal certificate; and thereafter procedure in connection with legal aid for the appeal shall be in accordance with the relevant provisions of the Scheme:

Provided that the interim solicitor shall be appointed as appointed solicitor unless, on special cause shown, the Supreme Court Committee find it necessary to appoint another solicitor to act as appointed solicitor.

#### *Duties of appointed solicitors and interim solicitors*

9.—(1) Where the reporter applies for a stated case under section 50 of the Act of 1968 and the child or his parent seeks legal aid in relation thereto, the Supreme Court Committee shall, on a request by the appointed solicitor or by the child or his parent, as the case may be, issue an interim appeal certificate, provided they are satisfied, in any case in which it is appropriate, that a provisional financial certificate has been granted.

(2) (a) Where an interim appeal certificate is issued within the statutory period for application for a stated case, the appointed solicitor, or interim solicitor, shall submit it to the sheriff clerk with an application for such a case on behalf of the child or his parent.

(b) Where an application for a stated case is made to the sheriff and an interim appeal certificate is obtained after the expiry of the said statutory period, the solicitor concerned shall lodge the interim appeal certificate with the sheriff clerk.

(3) Where an interim appeal certificate is issued, the solicitor named in the certificate shall carry out the procedure specified in the Act of Sederunt (Rules of Court Amendment No. 1) 1971(a), and he shall also send a copy of the stated case, as adjusted, to the Supreme Court Committee together with an application for an appeal certificate in the form prescribed by regulation 3 of these regulations.

(4) An interim appeal certificate issued under this regulation shall entitle the assisted person to legal aid until an adjusted stated case is lodged with the Court of Session or until such earlier date as the certificate is discharged by the Supreme Court Committee under regulation 8(5) of these regulations.

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

10. Where an amount is fixed by the Society, 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 Schedule 2 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.

*Gordon Campbell,*  
One of Her Majesty's Principal  
Secretaries of State.

St. Andrew's House,  
Edinburgh.

18th February 1971.

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#### EXPLANATORY NOTE

*(This Note is not part of the Regulations.)*

These Regulations make provision for the granting of Legal Aid in the proceedings specified in section 53 of the Social Work (Scotland) Act 1968.