

1976 No. 125

LEGAL AID AND ADVICE

**Legal Aid (Assessment of Resources) (Amendment) Regulations
(Northern Ireland) 1976***Made* 8th April 1976*Coming into operation* 1st May 1976*To be laid before Parliament*

The Secretary of State in pursuance of section 4 of the Legal Aid and Advice Act (Northern Ireland) 1965(a) and with the concurrence of the Treasury(b) hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1976, shall come into operation on 1st May 1976 and shall apply to the computation of disposable income where an application for a certificate is made on or after that date.

(2) In these regulations—

“the principal Regulations” means the Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1965(c);

“the Regulations of 1966” means the Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1966(d).

Amendment to the principal Regulations

2. For rule 5 in Schedule 1 to the principal Regulations as substituted by regulation 2 of the Regulations of 1966 there shall be substituted the following rule:

“5.—(1) Subject to the provisions of this rule, there shall be disregarded £4 a week of the income taken into account except so far as it consists of earnings.

(2) This rule does not apply to income so far as it consists of—

(a) allowances under the Family Allowances Act (Northern Ireland) 1966(e);

(b) any family income supplement under the Family Income Supplements Act (Northern Ireland) 1971(f);

(c) any graduated retirement benefit under section 35 of the National Insurance Act (Northern Ireland) 1966(g); or

(a) 1965 c. 8 (N.I.)

(b) Formerly the Ministry of Finance for Northern Ireland: see S.I. 1973/2163

(c) S.R. & O. (N.I.) 1965 No. 218 (p. 937)

(d) S.R. & O. (N.I.) 1966 No. 271 (p. 863)

(e) 1966 c. 8 (N.I.)

(f) 1971 c. 8 (N.I.)

(g) 1966 c. 6 (N.I.)

(d) any payment for the maintenance of the person concerned being a payment made under the order of a court or a payment made by a person who for the purposes of the Supplementary Benefits &c. Act (Northern Ireland) 1966(h), is liable to maintain the person concerned.

(3) This rule does not apply to income so far as it consists of any benefit under Chapters I to III of Part II of the Social Security (Northern Ireland) Act 1975(i) except—

(a) £0.38 of—

- (i) any increase of widow's allowance or widowed mother's allowance, being an increase in respect of an only, or the elder or eldest, qualifying child or a second qualifying child; or
- (ii) any child's special allowance or any increase thereof in respect of a second qualifying child;

(b) £0.28 of—

- (i) any increase of a widow's allowance or widowed mother's allowance, being an increase in respect of any additional qualifying child beyond the first two; or
- (ii) any increase of a child's special allowance in respect of any additional qualifying child beyond the second.

(4) This rule does not apply to income so far as it consists of injury benefit under Part II of the Social Security (Northern Ireland) Act 1975 or of industrial death benefit under that Part of that Act except—

(a) so much of—

- (i) any widow's pension payable at the higher permanent rate under section 68 of that Act, or
- (ii) any widow's pension under section 69 of that Act as exceeds the rate specified in Part I of Schedule 4 to that Act for a widow's pension under section 26 of that Act;

(b) £0.38 of any allowance under section 70 of that Act in respect of—

- (i) an only, or the elder or eldest, qualifying child, or
- (ii) a second qualifying child;

(c) £0.28 of any allowance under that section in respect of any additional qualifying child beyond the first 2;

(d) any parent's pension under section 71 of that Act;

(e) any relative's pension under section 72 of that Act.

(5) This rule does not apply to income so far as it consists of any pension or allowance for a widow or widower or in respect of children granted in respect of a death due to service or war injury under powers conferred by or under any of the Acts mentioned in sub-paragraph (a) of paragraph (6) of this rule or under any such scheme as is mentioned in sub-paragraph (b) of that paragraph except—

(a) so much of any pension or allowance for a widow or widower as exceeds the rate specified in Part I of Schedule 4 to the Social Security (Northern Ireland) Act 1975 for a widow's pension under that Act;

(b) £0.38 of any allowance in respect of an only, or the elder or eldest, child or a second child;

(c) £0.28 of any allowance in respect of any additional child beyond the first 2.

(6) The Acts and schemes mentioned in paragraph (5) of this rule are:

(a) The Ministry of Pensions Act 1916(j), the Air Force (Constitution) Act 1917(k), the Personal Injuries (Emergency Provisions) Act 1939(l), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(m), the Polish Resettlement Act 1947(n), the Home Guard Act 1951(o) and the Ulster Defence Regiment Act 1969(p);

(b) any scheme made under the Injuries in War (Compensation) Act 1914(q), or the Injuries in War (Compensation) Act 1914 (Session 2)(r) and any War Risk Compensation Scheme for the Mercantile Marine;

and that paragraph applies in relation to a pension or allowance for a woman who was living with a deceased person as his wife as it applies in relation to a pension or allowance for a widow.

(7) In paragraphs (1) to (6) of this rule any reference to an allowance, pension, benefit or other payment of any description includes a reference to any analogous allowance, pension, benefit or payment.

(8) There shall not be disregarded under paragraphs (1) to (7) of this rule more than £1 a week of any income so far as it consists of one or more payments of any kind to which this paragraph and paragraph (9) apply, that is to say—

(a) any pension or other periodical sum paid to, or to the widow of, a person by reason of any service or employment in which he was formerly engaged;

(b) any periodical sum paid to a person on account of his employment having terminated by reason of redundancy.

(9) Sub-paragraphs (a) and (b) of paragraph (8) above apply whether or not the payment is made by a former employer and whether or not there is any right to receive it; but sub-paragraph (a) shall not be construed as applying to—

(a) any pension or allowance mentioned in paragraph (4) and (5) of this rule or any other payment by way of compensation for injury, disease, disablement or death suffered by a person by reason of the service or employment in which he was engaged; or

(b) any payment out of a trust fund established for relieving hardship in particular cases and made at the discretion of the trustees of the fund.

(10) Where under section 11(4) of the Act the resources of two or more persons are to be aggregated the preceding provisions of this rule shall apply to the aggregate of the resources of both or all of the said persons.

(j) 1916 c. 65
(k) 1917 c. 51
(l) 1939 c. 82
(m) 1939 c. 83
(n) 1947 c. 19

(o) 1951 c. 8
(p) 1969 c. 65
(q) 1914 c. 30
(r) 5 & 6 Geo. 5 c. 18

(11) Any sums payable to any person as holder of the Victoria Cross or the George Cross shall be wholly disregarded."

Northern Ireland Office
26th March 1976

Merlyn Rees
One of Her Majesty's Principal
Secretaries of State

Donald R. Coleman
J. Dormand

Two of the Lords Commissioners
of Her Majesty's Treasury

We concur
8th April 1976

EXPLANATORY NOTE

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

These regulations amend the Legal Aid (Assessment of Resources) Regulations 1965 in consequence of the Social Security Benefits Act 1975 (c. 15) and the Social Security (Consequential Provisions) Act 1975 (c. 18).

The regulations apply the rules for disregarding income, other than earnings, in the Supplementary Benefits &c. Act (Northern Ireland) 1966 as amended by the Social Security Benefits Act 1975 and the Social Security (Consequential Provisions) Act 1975 to the assessment of the resources of an applicant for legal aid under the Legal Aid and Advice Act (Northern Ireland) 1965.

The main effect is to raise to £4 a week the total of all income which is at present disregarded in assessing an applicant's resources, except that the amount disregarded in respect of occupational pensions and redundancy payments is restricted to £1 within the overall limit of £4.