

1965. No. 217

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order within the meaning of the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924(b) (whether as originally enacted or as applied or extended by or for the purposes of any other enactment or an order under the Summary Jurisdiction (Separation and Maintenance) Act (Northern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

- (c) that the total cost of asserting or disputing the claim would not be likely to exceed one hundred pounds; and
- (d) that the question of taking, defending or being a party to proceedings before a court or tribunal does not arise or has not yet arisen;

he shall (subject to Section 5 of the Act) approve the application on behalf of the committee; and in every other case he shall refer the application to his committee for their consideration and approval or refusal.

(2) The determination of disposable income, disposable capital and maximum contribution for the purposes of paragraph (1) shall be made in accordance with the provisions of the Schedule; save that, where the disposable income and disposable capital have been determined by the Board in accordance with Section 4(8) of the Act and the Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1965 before the certifying committee come to make their determination, they shall adopt the figures so determined by the Board.

(3) Where an application is made for a certificate relating to proceedings and the secretary to the certifying committee considers that the question of taking, defending or being a party to proceedings does not arise or has not yet arisen, but that, if the application had been for a certificate in respect of a claim, he would have approved it in accordance with the provisions of paragraph (1), the secretary may with the consent of the applicant so approve it.

(4) Subject to the provisions of Regulation 11 and of paragraphs (3) and (5) of this regulation, an application for a certificate in respect of proceedings shall not be approved except after consideration by the appropriate committee of the general circumstances in which it is made, including questions of fact or law arising out of the proceedings, nor, except as is provided by paragraph (10) of this regulation and Regulation 6(4), shall the application be approved except after determination by the Board of the disposable income, disposable capital and maximum contribution of the applicant.

(5) Subject to the provisions of Regulation 11—

- (a) an application for a certificate in respect of authorised summary proceedings shall be considered by the secretary to the certifying committee who, having regard to the general circumstances in which it was made, including questions of fact or law and either the determination or the estimate made by the Board of the disposable income and disposable capital of the applicant and the maximum contribution payable by him or the terms of any undertaking lodged by him under the provisions of Regulation 6(12), may (save in the circumstances mentioned in paragraph (8) of this regulation) approve the application on behalf of the certifying committee; and in every case in which he does not approve the application he shall refer it to the committee for their consideration and approval or refusal;
- (b) an application for a certificate in respect of authorised summary proceedings that has been referred to the certifying committee by the secretary shall be considered by that committee, which, having regard to the general circumstances in which it was made, including questions of fact or law and either the determination or the estimate made by the Board of the disposable income and disposable capital of the applicant and the maximum contribution payable by him or the terms of any undertaking lodged by him under the provisions of Regulation 6(12), may approve the application.

(6) Without prejudice to the generality of Section 1(6) and Section 5(3) of the Act (which provide that a person shall not be given legal aid unless he has reasonable grounds for taking, defending or being a party to the proceedings, and unless he has reasonable grounds for taking steps to assert or dispute the claim, and may also be refused legal aid if it appears unreasonable that he should receive it in the particular circumstances of the case), an application for a certificate shall not be approved where it appears to the appropriate committee that only a trivial advantage would be gained by the applicant in asserting or disputing the claim, or from the proceedings, to which the application relates, or that, on account of the simple nature of the claim or proceedings, a solicitor would not ordinarily be employed.

(7) (a) Where an application is made for a certificate relating to proceedings and refused on the ground that the applicant has not shown reasonable grounds for taking, defending or being a party to proceedings, or that it is not reasonable that he should receive it in the particular circumstances of the case, the certifying committee may treat the application as relating to a claim and, if satisfied in accordance with paragraph (1), may approve the application.

(b) Where an application is made for a certificate relating to a claim and the certifying committee consider that the applicant has reasonable grounds for taking, defending or being a party to proceedings and that it is reasonable in all the circumstances that he should receive legal aid in respect of proceedings, the committee may treat the application as relating to proceedings and, subject to the provisions of paragraphs (4) and (6), may approve the application.

(8) Where the Board determine that an applicant, having a disposable income of an amount which makes legal aid available for him, has a disposable capital of an amount which renders him liable to be refused legal aid, if it appears that he can afford to proceed without it, the appropriate committee shall not approve the application unless they estimate that the applicant's costs which might reasonably be incurred by him in taking, defending or being a party to any proceedings in respect of which the application was made would exceed the maximum contribution payable by the applicant under the Act.

(9) Where a person applies for legal aid in connection with any proceedings or claim in which he is concerned in a representative, fiduciary or official capacity and it appears to the appropriate committee that in the circumstances the court would, if proceedings were to be brought, order the taxed costs of the proceedings to be paid out of any property, estate or fund, the committee shall not grant the application, unless it appears that the property, estate or fund would be so diminished or exhausted by that order as to cause hardship to any person beneficially interested.

(10) Where an application is made by a person who is concerned in the proceedings or claim only in a representative, fiduciary or official capacity, then, for the purposes of determining any contribution to be made to the fund, the personal resources of the applicant shall not be taken into account, but the appropriate committee may, in their discretion, have regard to the value of the property or estate, or the amount of the fund out of which the applicant is entitled to be indemnified, and to the resources of the persons, if any, who are beneficially interested.

(11) Where an application is made by or on behalf of a person in connection with a cause or matter in which numerous persons have the same interest and, in accordance with rules of court, one or more persons may sue or be sued,

or may be authorised by a court to defend any such cause or matter on behalf of or for the benefit of all persons so interested, the appropriate committee shall refuse the application if they are satisfied—

- (a) that such refusal would not seriously prejudice the right of the applicant; or
- (b) that it would be reasonable and proper for the other persons having the same interest in the matter as the applicant to defray so much of the costs as would be payable from the fund in respect of the proceedings if a certificate were issued.

(12) Where an application is made by or on behalf of a person who has the right, in accordance with rules of court, to be joined in one action as plaintiff with others in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, because, if those persons brought separate proceedings, a common question of law or fact would arise, the appropriate committee may issue a certificate limited to such proceedings as may be necessary to preserve the applicant's right to relief.

(13) Where it appears to the appropriate committee that the applicant 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, they shall not approve the application unless the applicant has failed to enforce or obtain such rights, facilities or help, after having, in the opinion of the committee, taken all reasonable steps to enforce or obtain them or after having permitted the appropriate committee to take those steps on his behalf:

Provided that, where it appears that the applicant has a right to be indemnified against expenses incurred in connection with any proceedings, it shall not, for the purpose of this paragraph, be deemed a failure to take a reasonable step if he has not taken proceedings to enforce that right, whether for a declaration as to that right or otherwise.

Issue of Certificates

6.—(1) A certificate may be issued in respect of—

- (a) one or more steps to assert or dispute a claim, or
- (b) the whole or part of—
 - (i) proceedings in a court of first instance, or
 - (ii) proceedings in an appellate court,

but no certificate shall relate to proceedings (other than interlocutory appeals) both in a court of first instance and in an appellate court or to proceedings in more than one appellate court.

(2) A certificate shall not, except in the case of authorised summary proceedings, relate to more than one action, cause or matter, but may relate—

- (a) to more than one claim, where the claims arise in connection with the same circumstances and, if proceedings were taken on them, they could conveniently be joined in the same action, cause or matter; or
- (b) both to a claim and to proceedings where the question of taking the proceedings arises out of the same general circumstances as the claim;

and may relate to an application for a grant of representation to enable the action to be brought which is the subject of the certificate and may include proceedings which may be taken under Section 1 of the Act to enforce or to give effect to any agreement made in enforcing or disputing the claim, or any

order, or agreement made in the proceedings to which the certificate relates; and for the purposes of this paragraph proceedings to enforce or give effect to an agreement or order shall include proceedings in bankruptcy or to wind up a company.

(3) It shall be the duty of the appropriate committee to assess the amount of the contribution, if any, that is payable in respect of a certificate and, in so doing, the committee shall have regard to the probable cost of taking the steps to assert or dispute the claim or of the proceedings, and, save as is provided by these regulations, shall not assess an amount in excess of any maximum amount of contribution determined by them or by the Board. Where the probable cost of taking the steps or of the proceedings exceeds the maximum amount of contribution determined, the committee shall, save as aforesaid, assess the maximum amount as the amount of contribution payable in respect of the claim or proceedings.

(4) Where an application is approved relating to—

(a) proceedings (other than interlocutory proceedings) in an appellate court in any action, cause or matter, in which the applicant was an assisted person in the court below; or

(b) proceedings by way of a new trial ordered by an appellate court before whom the applicant was an assisted person;

the appropriate committee shall not require the Board to redetermine the applicant's disposable income and disposable capital, but shall, save as is hereinafter provided, assess the amount of contribution, if any, payable in respect of the proceedings at an amount not greater than the maximum contribution determined by the Board in relation to the previous proceedings less any amount assessed by the appropriate committee to be paid in respect of those proceedings:

Provided that, if, since the last determination by the Board of the disposable income and disposable capital of the applicant, his circumstances have altered otherwise than as a result of the payment of a contribution in respect of the previous proceedings, they may require the Board to redetermine his disposable income and disposable capital and shall take into account any increase or decrease in the amount of his disposable income by an amount greater than twenty-six pounds and any increase in the amount of his disposable capital by an amount greater than seventy-five pounds.

(5) (a) Where the appropriate committee have assessed the amount of contribution payable at a sum less than the maximum amount determined or redetermined by the Board or the appropriate committee and it appears that the cost of the steps taken or to be taken or of the proceedings has been or is in the opinion of the Legal Aid Committee likely to be greater than the contribution assessed, the Legal Aid Committee shall increase the amount of contributions up to the amount which the steps or proceedings have or are likely to cost or to the maximum contribution determined or redetermined, where that amount is less.

(b) Whenever the circumstances upon which the Board have determined the disposable income or disposable capital of an assisted person have altered so that he has reason to believe that his disposable income has increased by an amount greater than twenty-six pounds or his disposable capital has increased by an amount greater than seventy-five pounds, he shall, if his certificate relates to proceedings, inform the Legal Aid Committee of that alteration in his circumstances.

(6) Where the appropriate committee approve an application made to them in the circumstances described in Regulation 5(11), they may take into account the means of all or any of the persons having the same interest in the matter as the applicant, and shall not assess an amount in excess of the aggregate of the applicant's maximum contribution as determined by the Board and of any sums which they think are reasonable in the circumstances for such persons to pay towards the cost of the proceedings.

(7) Where the appropriate committee approve an application made to them in the circumstances described in Regulation 5(13) and the applicant appears to be a member of a body which might reasonably have been expected to give him financial help towards the cost of the proceedings, but does not appear to have any right to be indemnified by them against expenses incurred in connection therewith, the appropriate committee shall require the applicant to sign an undertaking to pay to the Society, in addition to his contribution, if any, any sum received from that body on account of the cost of the proceedings.

(8) A certificate issued in respect of a claim shall authorise the assisted person to incur expenditure of a sum not exceeding a specified amount.

(9) In fixing the method by which any contribution shall be paid, the appropriate committee shall—

(a) require any contribution payable out of capital to be paid forthwith if the sum is readily available or, if it is not, by such time as seems to them reasonable in all the circumstances; and

(b) require any contribution payable out of income to be paid by instalments at a rate which would, if the maximum contribution from income was required, secure that that maximum amount would be paid within the twelve months next ensuing, or within the period in relation to which the disposable income has been computed whichever is the later.

(10) After the appropriate committee have approved an application for a certificate they shall—

(a) if the certificate is to relate to proceedings, other than authorised summary proceedings, draw the attention of the assisted person to the provisions of Section 2(3)(e) of the Act (which limits the liability of an assisted person under an order for costs made against him); and

(b) except where the certificate is to be one under which no contribution will be payable by the assisted person, or is to be a certificate issued against an undertaking in accordance with paragraph (12), or is to be an emergency certificate, notify the applicant—

(i) of the maximum amount of his contribution, as determined by them or the Board; and

(ii) of the terms upon which a certificate will be issued to him.

(11) Subject to paragraph (12), an applicant who desires that a certificate should be issued to him on the terms notified to him by the appropriate committee shall, within twenty-eight days of being so notified, or within such other period as the appropriate committee may allow—

(a) signify his acceptance of those terms on a form approved by the Society and lodge it with the Society; and

(b) if those terms require a contribution to be paid, sign on a form approved by the Society and lodge with them an undertaking to pay the contribu-

tion by the method stated in the terms and, if the contribution or a part of it is required to be paid before the certificate is issued, make that payment accordingly; and

- (c) notify the secretary of the name of the solicitor (being a member of an appropriate panel) whom he has selected to act for him.

(12) An applicant for legal aid in connection with authorised summary proceedings may, with a view to expediting the issue to him of a certificate, lodge with the secretary, at the time of applying for the certificate or at any time prior to its being issued, an undertaking in a form approved by the Society to pay any contribution that may be assessed by the certifying committee or its secretary in accordance with these regulations.

(13) When an applicant has complied with such of the provisions of paragraphs (11) and (12) as are relevant to his case the appropriate committee shall issue a civil aid certificate in such form as may be approved by the Society, send a copy of the certificate to the applicant and send the certificate and one copy thereof to the solicitor selected by him.

Refusal of Certificates

7. If the appropriate committee refuse an application for a certificate, they shall notify the applicant, stating that the application has been refused on one or more of the following grounds—

- (a) that the applicant is not ordinarily resident in the United Kingdom or domiciled in any part thereof, or the matter in respect of which the proceedings are brought arose, or is alleged to have arisen, outside Northern Ireland; or
- (b) that the Board have determined the applicant's disposable income at an amount greater than the maximum amount which makes legal aid available to an applicant; or
- (c) that the Board have determined that the applicant, having a disposable income of an amount which makes legal aid available for him, has a disposable capital of an amount which renders him liable to be refused legal aid, if it appears that he can afford to proceed without it, and it appears to the committee that, if the application were refused, the applicant's costs, which might reasonably be incurred by him in taking, defending or being a party to any proceedings in respect of which the application was made, would be less than the maximum contribution payable by the applicant under the Act; or
- (d) that the application relates to a claim and the maximum contribution payable by the applicant or his disposable capital has been determined at an amount greater than the maximum amount which makes legal aid in respect of a claim available to an applicant; or
- (e) that the proceedings to which the application relates or, where the application relates to a claim, the proceedings which would have to be taken, defended or participated in, if the question of doing so were to arise, are not proceedings for which legal aid may be given; or
- (f) that the applicant has not shown that he has reasonable grounds for taking steps to assert or dispute the claim, or for taking, defending or being a party to proceedings; or
- (g) that it appears unreasonable that he should receive legal aid in the particular circumstances of the case (whether as a result of any discretion given to the appropriate committee under any provision of these regulations or otherwise);

and shall inform him of the provisions, if any, of these regulations which relate to the circumstances in which he may appeal to the Legal Aid Committee for the decision to be reviewed.

Repeated Refusal of Certificates

8.—(1) Where a person has applied for and has been refused a certificate on more than four occasions and it appears to the appropriate committee that his conduct may amount to an abuse of the facilities provided by the Act, then the committee may report thereon to the Council.

(2) The Council, on receipt of such report, shall give the person referred to therein an opportunity of making (either himself or by some other person acting on his behalf) representations in writing on the matter and shall make such other enquiries as seem to be necessary and, if they are satisfied that his conduct has amounted to an abuse of the facilities provided by the Act, may make a direction (hereinafter in this regulation referred to as “a prohibitory direction”) that no consideration shall, for a period not exceeding three years, be given by the Legal Aid Committee or a certifying committee either—

(a) to any future application by that person for a certificate with regard to any particular matter; or

(b) in exceptional circumstances, to any further application by him whatsoever.

(3) The Council may in its discretion—

(a) include within the terms of any prohibitory direction any assignee, next friend, guardian *ad litem* or committee applying for a certificate on behalf of the person referred to in the prohibitory direction; and

(b) at any time vary or revoke any prohibitory direction in whole or in part.

(5) Where the Society make a prohibitory direction, they shall inform the Minister of Home Affairs thereof and shall, if so requested, give him their reasons for making the same.

Amendments of Certificates

9.—(1) The Legal Aid Committee may amend a certificate—

(a) where it appears to them that there has been some error or mistake in a certificate; or

(b) when, in their opinion, it has become desirable either for the certificate to extend to—

(i) other claims arising in connection with the same circumstances, or

(ii) other steps to assert or dispute a claim, or

(iii) proceedings, or

(iv) other proceedings being part of the same action, cause or matter to which the certificate relates, or

(v) proceedings which may be taken under Section 1 of the Act to enforce or give effect to any order or agreement made in enforcing or disputing the claim, or, as the case may be, in the proceedings, in respect of which it was issued;

or for the certificate not to extend to certain of the steps or certain of the proceedings in respect of which it was issued; or

(c) when an assisted person desires to change the solicitor who is acting for him or a solicitor gives up an assisted person's case; or

- (d) where the certificate relates to proceedings and the circumstances upon which the Board have determined an assisted person's disposable income or disposable capital have altered so that—
 - (i) his disposable income has increased or decreased by an amount greater than twenty-six pounds; or
 - (ii) his disposable capital has increased by an amount greater than seventy-five pounds; or
- (e) when, under the provisions of these regulations, they alter the amount of an assisted person's contribution; or
- (f) where it appears to them reasonable in all the circumstances that the amount of expenditure which is authorised by a certificate in respect of a claim should be increased; or
- (g) where, under the provisions of Regulation 15(3), they authorise a solicitor to add any further party to proceedings, or to set up or set off any right or claim, or to reply to any right or claim set up or set off by any other party; or
- (h) where under the provisions of Regulation 17(4) they direct that proceedings to enforce or give effect to an order or agreement be not taken by the assisted person.

(2) The provisions of Regulations 3, 4, 5 and 6 shall apply, so far as applicable, to applications for the amendment of certificates as they apply to applications for certificates, but, where necessary, with the substitution for references to the appropriate committee of references to the Legal Aid Committee.

(3) Where the Legal Aid Committee—

- (a) amend a certificate, they shall issue a further certificate showing on the face thereof that it replaces and amends the certificate previously issued, and shall send it and one copy thereof to the assisted person's solicitor and a further copy to the assisted person;
- (b) refuse an application for the amendment of a certificate, they shall notify the assisted person's solicitor in writing.

(4) The decision of the Legal Aid Committee on any question relating to the amendment of a certificate shall be final.

Appeals against Refusal of Certificates

10.—(1) Where a certifying committee refuse an application for a certificate in respect of proceedings other than authorised summary proceedings or an applicant feels aggrieved by the terms upon which the certifying committee would be prepared to issue it, the applicant may appeal to the Legal Aid Committee:

Provided that no appeal shall lie to the Legal Aid Committee from—

- (a) any determination of the Board; or
- (b) any decision by a certifying committee as to the amount of any contribution or the method by which it shall be paid.

(2) Such appeal shall be by way of review of the general circumstances in which the application for a certificate was made.

(3) Every appeal shall be brought by giving to the Legal Aid Committee, within four days of the date of notice of refusal of a certificate or of the terms upon which a certificate would be issued (or such longer period as the certifying

committee or the Legal Aid Committee may allow), notice of appeal in writing on a form approved by the Society or in such other manner, being in writing, as the secretary of the Legal Aid Committee may accept as sufficient in the circumstances of the case.

(4) Upon an appeal the appellant may, at his own expense, furnish further statements, whether oral or in writing, in support of his application, conduct the appeal himself, be represented by counsel or solicitor, or be assisted by any other person whom he may appoint for the purpose.

(5) The Legal Aid Committee shall determine the appeal in such manner as seems to them to be just and, without prejudice to the generality of the foregoing, may—

- (a) dismiss the appeal; or
- (b) direct the certifying committee to issue a certificate subject to such terms and conditions as the Legal Aid Committee think fit; or
- (c) instead of themselves settling such terms and conditions, direct the certifying committee to do so; or
- (d) refer the matter or any part of it back to the certifying committee for their determination or report.

(6) Any decision of the Legal Aid Committee with regard to an appeal shall be final, and they shall give notice of their decision, in a form approved by the Society, to the certifying committee, to the appellant and to any solicitor acting for him.

Emergency Certificates

11.—(1) The secretary of the appropriate committee, the chairman of the Legal Aid Committee, or any member of that committee nominated by such chairman, shall have power, in accordance with the provisions of this regulation, to issue an emergency certificate in a form approved by the Society on behalf of the appropriate committee and without reference to them or to the Board.

(2) Any person who desires legal aid in relation to proceedings as a matter of urgency may apply for an emergency certificate on a form approved by the Society, or in such other manner as the person to whom application is made may accept.

(3) Subject to the provisions of paragraph (4), an application for an emergency certificate shall be made to the secretary.

(4) Where a certificate is in force in respect of a claim, any application in respect of proceedings relating to the claim shall be made to the Legal Aid Committee and, where the Legal Aid Committee issue an emergency certificate, they shall direct that no further steps may be taken in relation to the claim and shall amend the certificate in respect of the claim accordingly.

(5) An applicant for an emergency certificate shall give such information as may be requisite to enable the person to whom application is made to determine whether—

- (a) the applicant is likely to fulfil the conditions under which legal aid may be granted under the Act and regulations made thereunder; and
- (b) it is in the interests of justice that the applicant should, as a matter of urgency, be granted legal aid;

and shall furnish such additional information and documents (if any) as may be sufficient to constitute an application for a certificate under the provisions of Regulation 3:

Provided that, if it appears to the person to whom the application is made that the applicant cannot at the time of the application reasonably furnish that information, or any part of it, that person shall nevertheless have power to issue an emergency certificate subject to such conditions as to the furnishing of additional information as he thinks reasonable.

(6) The emergency certificate and one copy thereof shall be sent to the solicitor selected by the applicant from the appropriate panel and one copy shall be sent to the applicant.

(7) An emergency certificate shall have the same effect in all respects as a certificate and any person holding an emergency certificate shall, while it is in force, be deemed for the purposes of Part I of the Act and these regulations to have a disposable income of an amount which makes legal aid available for him.

(8) An emergency certificate shall, subject to paragraph (9), remain in force for a period of six weeks, or such longer period, not exceeding three months, as the appropriate committee may allow, and, unless within that period a certificate is issued in respect of the proceedings to which the emergency certificate relates, it shall at the end of that period be deemed to have been revoked.

(9) Where, within the period referred to in paragraph (8)—

(a) the applicant is offered a certificate in respect of the proceedings to which the emergency certificate relates and fails to signify his acceptance within the time specified in Regulation 6(11), the emergency certificate shall be deemed to be revoked on the expiration of that time;

(b) the appropriate committee refuse an application for a certificate in respect of the proceedings to which the emergency certificate relates or the Legal Aid Committee dismiss an appeal from the refusal of a certifying committee to grant such a certificate, the committee when refusing the application or dismissing the appeal shall revoke the emergency certificate; and the revocation shall take effect forthwith unless an appeal against the refusal to grant a certificate lies under the provisions of Regulation 10(1), in which case—

(i) if notice of appeal has been given to the Legal Aid Committee within the time limits laid down by Regulation 10(3), the revocation shall not take effect, or

(ii) if no such notice has been given, the revocation shall take effect on the expiration of that time limit.

(10) Upon an emergency certificate being extended, revoked or deemed to be revoked, the appropriate committee shall forthwith issue a notice to that effect and shall send the notice and one copy thereof to the solicitor acting for the person to whom the emergency certificate was issued and shall send a further copy to that person and it shall be the duty of the solicitor to notify forthwith any counsel whom he may have instructed that the certificate has been revoked.

(11) A certificate issued within the period referred to in paragraphs (8) and (9) in respect of proceedings to which an emergency certificate relates shall take effect from the date upon which the emergency certificate was issued and shall state—

(a) the number and date of issue of the emergency certificate; and

(b) that the emergency certificate has been continuously in force from that date until the date of the certificate.

Discharge and Revocation of Certificates

12.—(1) A certificate may be either discharged or revoked by the authorities and in the circumstances specified in this regulation.

- (2) The Legal Aid Committee may discharge a certificate—
- (a) at any time at the request of the person to whom it is issued; or
 - (b) where an assisted person has been required to make a contribution and any payment in respect thereof is more than twenty one days in arrear; or
 - (c) if they are satisfied, after considering any report of the assisted person's solicitor, that the claim or proceedings to which the certificate relates have been disposed of; or
 - (d) where the assisted person's solicitor or counsel has given up the case and the Legal Aid Committee are satisfied that the assisted person has required the claim to be asserted or disputed, or the proceedings to be conducted, unreasonably so as to incur an unjustifiable expense to the fund or has required unreasonably that the claim be continued to be asserted or disputed or the proceedings be continued:

Provided that a certificate shall not be discharged under this subparagraph until notice has been served on the assisted person that the Legal Aid Committee may do so and that he may show cause why the certificate should not be discharged; or

- (e) on being satisfied by the report of an assisted person's solicitor or otherwise—
 - (i) that the assisted person has died, or
 - (ii) that the assisted person has been adjudicated bankrupt or an order has been made in relation to the assisted person under Section 343 of the Irish Bankrupt and Insolvent Act 1857(a); or
- (f) where the Committee have offered to extend to proceedings a certificate relating to a claim and the offer has been refused or has not been accepted within the time limits provided by these regulations.

(3) The Legal Aid Committee shall discharge a certificate if—

- (a) as a result of a determination by the Board it appears that—
 - (i) the disposable income of the assisted person exceeds the maximum amount which makes legal aid available to an applicant;
 - (ii) the disposable capital of the assisted person is of an amount which renders him liable to be refused legal aid, if it appears that he can afford to proceed without it, and the probable costs which might reasonably be incurred by him in continuing the proceedings, otherwise than as an assisted person, would not exceed the maximum contribution payable under the determination; or
- (b) as a result of any information coming to their knowledge they consider that the assisted person no longer has reasonable grounds for asserting or disputing the claim or for taking, defending or being a party to the proceedings, or that it is unreasonable in the particular circumstances for him to continue to receive legal aid (and for the purposes of providing information under this paragraph, any party may disclose to the Legal Aid Committee communications relating to the proceedings sent to or by the assisted person's solicitor, whether or not marked "without prejudice"):

Provided that a certificate shall not be discharged under this subparagraph until notice has been served on the assisted person that the

Legal Aid Committee may do so and that he may show cause why the certificate should not be discharged.

(4) Where the Legal Aid Committee have considered the discharge of a certificate in consequence of information brought to their knowledge by any person, they may, if they think fit, inform that person whether or not the certificate has been discharged.

(5) Where the Legal Aid Committee consider that an assisted person has, in relation to any application for a certificate which was granted to him, made an untrue statement as to his resources or has failed to disclose any material fact concerning them, they may, if they think fit, revoke that certificate, whether the statement was made or the failure occurred before or after its issue and notwithstanding that it was made or occurred in relation to any application to the Legal Aid Committee or a certifying committee in connection with the same proceedings:

Provided that the certificate shall not be revoked under this paragraph if the assisted person satisfies the Committee that he used due care and diligence to avoid such mis-statement or failure.

(6) Where the Legal Aid Committee are satisfied that an assisted person has, in relation to any application for a certificate which has been granted to him—

(a) wilfully failed to comply with these regulations by not furnishing to the Committee any material information concerning anything other than his resources; or

(b) knowingly made an untrue statement in furnishing such information; or

(c) failed to attend for an interview or to provide information when so required under Regulation 3(4),

they may, after giving the assisted person an opportunity to show cause why the certificate should not be revoked, revoke that certificate, whether the statement was made or failure occurred before or after its issue.

(7) At any time during the hearing of any proceedings to which an assisted person is a party the court may, upon application by or on behalf of any other party to the proceedings or by the Society, consider whether the assisted person—

(a) has wilfully failed to comply with these regulations by not furnishing to the Committee any material information concerning anything other than his resources; or

(b) knowingly made an untrue statement in furnishing such information; or

(c) has, in relation to any application for a certificate which has been granted to him, made an untrue statement as to his resources or has failed to disclose any material fact concerning them,

and on any such application the court may make an order revoking the certificate or discharging it from such date as may be appropriate and the court's decision shall be final:

Provided that no order shall be made under this paragraph until the assisted person has been given an opportunity to show cause why the certificate should not be discharged or, as the case may be, revoked, and provided further that no order shall be made under this paragraph by reason of any mis-statement or failure such as is referred to in paragraph (c) hereof, if the assisted person satisfies the court that he has used due care and diligence to avoid such mis-statement or failure.

(8) Where an application under paragraph (7) is made by the Society, the court may order the Society to be made a party to the proceedings for the purpose of the application.

(9) Where the Legal Aid Committee discharge or revoke an assisted person's certificate they shall forthwith issue a notice of discharge or revocation, as the case may be, and shall send the notice and one copy thereof to his solicitor, who shall forthwith inform any counsel instructed by him in the proceedings of the Committee's decision, and the Committee shall send a further copy of the notice to the assisted person.

(10) When a court makes an order revoking or discharging an assisted person's certificate, his solicitor shall forthwith inform the Legal Aid Committee.

Effect of Discharge and Revocation of Certificates

13.—(1) Subject to the provisions of this regulation, a person whose certificate is revoked shall be deemed never to have been an assisted person in relation to the claim or proceedings to which the certificate related, and a person whose certificate is discharged shall, from the date of discharge, cease to be an assisted person in the claim or proceedings.

(2) Upon receipt by him of notice of revocation or discharge of a certificate by the Legal Aid Committee or a certifying committee or upon revocation or discharge of a certificate by the court, the retainer of any solicitor and counsel selected by or acting on behalf of the assisted person in the claim or proceedings to which the certificate relates shall forthwith determine:

Provided that, if the Legal Aid Committee revoke or discharge a certificate or if a certificate has been revoked under the provisions of Regulation 11(8) and proceedings have commenced, whether *ex parte* or *inter partes*, the retainer of the solicitor shall not determine until he has filed and, if the proceedings are *inter partes*, has served any notice required by Regulation 16.

(3) Upon determination of a retainer under this regulation—

(a) the costs of the claim or proceedings to which the certificate related, incurred by or on behalf of the person to whom it was issued, shall, as soon as practicable thereafter—

(i) in the case of a claim be assessed in accordance with the provisions of the Act and these regulations or any Order made by the Minister of Home Affairs under Schedule 3 to the Act;

(ii) in the case of proceedings be taxed or so assessed, as the case may be;

(b) the fund shall remain liable for the payment of any costs so taxed or assessed.

(4) Where a certificate has been revoked or discharged, those provisions of Section 3 of the Act which provide for a charge upon property recovered or preserved for an assisted person shall apply to any property recovered or preserved as a result of the person whose certificate has been revoked or discharged continuing to assert or dispute the claim, whether by taking proceedings or otherwise, or continuing to take, defend or be a party to the proceedings to which the certificate related and, for the purpose of this paragraph, the reference to a person whose certificate has been discharged shall, where the certificate has been discharged under Regulation 12(2)(e) include his personal representatives, or his trustee Assignee in bankruptcy or the Official Assignee, as the case may be.

- (5) Where a certificate has been revoked—
- (a) the Society shall have the right to recover from the person to whom the certificate was issued the costs paid or payable under paragraph (3)(b) less any amount received from him by way of contribution; and
 - (b) the solicitor who has acted under the certificate shall have the right to recover from that person the difference between the amount paid or payable out of the fund and the full amount of his solicitor and own client costs.

(6) Where a certificate has been discharged, the person to whom the certificate was issued shall remain liable for the payment of his maximum contribution, if any, as determined by the appropriate committee or by the Board up to the amount paid or payable by the Society under paragraph (3)(b), and where he continues to assert or dispute the claim or to take, defend or be a party to the proceedings to which the certificate related—

- (a) those provisions of Section 2 of the Act which relate to sums recovered by virtue of an order or agreement for costs made in favour of an assisted person shall apply in so far as the costs were incurred while he was an assisted person; and
- (b) those provisions of Section 2 of the Act which relate to an assisted person's liability by virtue of an order for costs made against him shall apply in so far as the costs were incurred while he was an assisted person.

Legal Aid granted after Costs incurred

14.—(1) Where, after proceedings have been instituted in any court, any party becomes an assisted person in regard to those proceedings, the provisions of Section 2(3)(e) of the Act (which limits the liability of an assisted person under an order for costs made against him) shall apply only to so much of the costs of the proceedings as are incurred while a certificate is in force.

(2) Any solicitor who has acted on behalf of the assisted person in the claim or proceedings to which the certificate relates before the date of the certificate, and any solicitor who has by law a lien on any documents necessary for asserting or disputing the claim, or for the proceedings, and who has delivered them up subject to his lien, may give notice of the fact to the Legal Aid Committee.

(3) If damages or costs are recovered for the assisted person, the Society shall pay to such solicitor out of the sum so recovered the costs to which he would have been entitled following a taxation between solicitor and own client:

Provided that, in any case where the sums so recovered are insufficient to pay those costs in full in accordance with this paragraph and also to meet the sums paid or payable out of the fund on the assisted person's account, the sums recovered in the proceedings shall be divided between the fund and the solicitor in the same proportion as those costs bear to the costs allowed on taxation as between party and party in respect of the period during which the certificate was in force, and the first charge for the benefit of the fund imposed by virtue of Section 3(6) of the Act on property recovered or preserved in the proceedings shall take effect accordingly.

- (4) In any case in which—
- (a) the costs payable to the solicitors under this regulation, or
 - (b) the party and party costs incurred during the period in which the certificate was in force,

have not been ascertained by taxation they shall for the purpose of this regulation be fixed by the Legal Aid Committee.

Conduct of Proceedings, etc., on behalf of Assisted Persons

15.—(1) Where it appears to an assisted person's solicitor that the proper conduct of proceedings requires counsel, such counsel shall be selected from the appropriate panel.

(2) Every set of papers delivered by an assisted person's solicitor to counsel shall be marked "Legal Aid" but where authority has been given in the certificate or by the Legal Aid Committee for counsel to be instructed in any authorised summary proceedings a statement to that effect shall be endorsed thereon.

(3) Where it appears to the assisted person's solicitor necessary for the proper conduct of the proceedings to take or, where necessary, to apply to the court for leave to take one or more of the following steps, namely—

- (a) to add any further party to the proceedings;
- (b) to lodge any interlocutory appeal;
- (c) to instruct more than one counsel;
- (d) to set up or set off any right or claim having the same effect as a cross-action (other than a counterclaim or set-off arising out of the same transaction and capable of being pleaded as a defence), or to reply to any right or claim so set up or so set off by any other party;

he shall (unless a certifying committee or the Legal Aid Committee in issuing a certificate have authorised the step to be taken and it is so stated in the certificate) apply to the Legal Aid Committee for authority to take the step and no payment for any such step shall, unless the certifying committee or the Legal Aid Committee have given the necessary authority, be allowed on taxation.

(4) Where an assisted person's solicitor applies to a certifying committee or the Legal Aid Committee, as the case may be, for authority to instruct more than one counsel, the Committee shall authorise the solicitor to instruct more than one counsel if in accordance with the practice prevailing immediately before the coming into force of these regulations more than one counsel would normally have been allowed on taxation.

(5) The Society may give general authority to solicitors acting for assisted persons in any particular class of case to obtain experts' reports or opinions, tender expert evidence or bespeak transcripts or shorthand notes of any proceedings, and, if they do so, they shall state the fee to be paid for any report, opinion, expert evidence, or transcript.

(6) Where it appears to an assisted person's solicitor necessary for asserting or disputing the claim or for the proper conduct of the proceedings to do any of the following acts, namely—

- (a) to obtain a report or opinion of one or more experts or to tender expert evidence in a case of a class not included in any general authority under the foregoing paragraph; or
- (b) in a case of a class so included, to pay a higher fee than that stated by the Society or to obtain more reports or opinions or to tender more experts as witnesses than have been authorised; or
- (c) to bespeak any transcript of shorthand notes of any proceedings not included in any general authority under the foregoing paragraph; or

(d) to instruct counsel in authorised summary proceedings; he may (unless authority has been given in the certificate) apply to the Legal Aid Committee for authority so to do; and if that Committee give authority for any purpose mentioned in sub-paragraph (a) or (b) they shall state the number of reports or opinions that may be obtained or the number of persons who may be tendered to give expert evidence and the total fee to be paid.

(7) Where it appears to the assisted person's solicitor necessary for asserting or disputing the claim or for the proper conduct of the proceedings for any act to be done, but that the act is either unusual in its nature or involves unusually large expenditure, he shall obtain the approval of the Legal Aid Committee.

(8) Where prior authority or approval has been given under the provisions of paragraph (5), (6) or (7), no question as to the propriety of the Act shall be raised on a taxation in accordance with the provisions of Schedule 3 to the Act or on an assessment by the Legal Aid Committee in accordance with Regulations 20, 21 or 22 or under any Order made by the Minister of Home Affairs under Schedule 3 to the Act; but where no such prior authority or approval has been obtained, payment for the act shall be made only if it has been allowed on the taxation or assessment.

(9) Without prejudice to the right of solicitors or counsel to give up a case for good reason, any solicitor or counsel may give up an assisted person's case if, in his opinion, the assisted person has required it to be conducted unreasonably so as to incur an unjustifiable expense to the fund or has required unreasonably that the case be continued.

(10) Where any solicitor or counsel exercises the right to give up an assisted person's case—

(a) under the provisions of paragraph (9); or

(b) on the ground that the assisted person has wilfully failed to comply with any regulation as to the information to be furnished by him or in furnishing such information has knowingly made a false statement or false representation;

the solicitor shall make a report to the Legal Aid Committee of the circumstances in which that right was exercised.

(11) Where the Legal Aid Committee upon receiving such report do not discharge the assisted person's certificate under the provisions of Regulation 12, they shall require the assisted person to select another solicitor from the appropriate panel to act for him and shall thereupon certify in writing that the first solicitor has ceased to act for the assisted person and shall send that certificate to that solicitor.

(12) On any application made under rules of court for an order to the effect that a solicitor has ceased to be the solicitor for the assisted person, a certificate issued under paragraph (11) shall be evidence of the facts stated therein.

(13) No solicitor or counsel acting for an assisted person shall entrust the conduct of any part of the case to any other person save to a solicitor or counsel who is a member of an appropriate panel:

Provided that nothing in this paragraph shall prevent a solicitor from entrusting the conduct of any part of the case to a person who is his partner or who is employed in his office.

(14) An assisted person's solicitor and his counsel (if any) shall give the Legal Aid Committee such information regarding the progress and disposal of the claim or proceedings to which the certificate relates as the Legal Aid Committee may from time to time require for the purpose of performing their functions under the scheme and, without prejudice to the generality of the preceding words, a solicitor who has acted or is acting for an assisted person, on being satisfied that the assisted person has died or has been adjudicated bankrupt or that an Order has been made in relation to the assisted person under Section 343 of the Irish Bankrupt and Insolvent Act 1857, shall report the facts to the Legal Aid Committee.

(15) Neither solicitor nor counsel shall be precluded, by reason of any privilege arising out of the relationship between counsel, solicitor and client, from disclosing to the Legal Aid Committee any information or from giving any opinion which may enable that Committee to perform their functions under the provisions of Regulation 12(3)(b).

Service of Notices, etc.

16.—(1) Any notice required to be served under any provision of these regulations shall be served either—

- (a) personally, or
- (b) by sending it by prepaid post to the last known address of the person required to be served, or
- (c) if served together with any process of a court by any mode of service authorised by rules of court for service of that process.

(2) Whenever an assisted person becomes a party to proceedings, or a party to proceedings becomes an assisted person, his solicitor shall forthwith serve all other parties with notice of the issue of a certificate in a form approved by the Society and shall, if at any time thereafter any other person becomes a party to the proceedings, forthwith serve similar notice upon such person.

(3) A solicitor receiving from the appropriate committee under the provisions of these regulations a notice that the certificate has been amended under the provisions of Regulation 9(1)(a), (b) or (g), discharged or revoked, or receiving a certificate in respect of proceedings to which an emergency certificate related, shall forthwith serve notice of the fact in a form approved by the Society upon any other persons who are parties to the proceedings and are not in default in entering appearance.

(4) Copies of the notices referred to in paragraphs (2) and (3) shall form part of the papers for the use of the judge at the trial.

(5) When a solicitor receives from the appropriate committee under the provisions of these regulations—

- (a) a certificate which relates to proceedings; or
- (b) a notice that a certificate has been discharged or revoked; or
- (c) a notice that an emergency certificate has been extended;

he shall, within fourteen days of the date of its issue or, if the proceedings have not then begun, upon their commencement, file it in the appropriate court office. The time for filing may be extended on application to the court *ex parte*; but, unless reasonable grounds are shown for the application, the court may impose such terms as it may think fit.

(6) Any person, not being himself an assisted person, who is a party to proceedings to which an assisted person is a party, may, at any time before

the judgment, file in the appropriate court office or registry an affidavit exhibiting thereto a statement setting out the rate of his own income and amount of his own capital and any other facts relevant to the determination of his means in accordance with the provisions of Section 2(3)(e) of the Act.

(7) Any person filing an affidavit under the provisions of paragraph (6) shall serve a copy thereof, together with the exhibit, upon the assisted person's solicitor, who shall forthwith serve him with a copy of the civil aid certificate, or, as the case may be, amended civil aid certificate, but, save as aforesaid, no document and no extract from a document filed or exhibited under paragraphs (5) and (6) shall be disclosed save by leave of the court.

(8) Any document filed or exhibited under the provisions of this regulation shall be bespoken or made available for the use of the judge at the hearing.

(9) Save as is otherwise provided by these regulations, in any proceedings in any court to which an assisted person is a party the procedure shall be regulated by the rules of procedure for that court.

(10) Paragraphs (2) to (8) shall not apply to authorised summary proceedings and, where an assisted person is a party to such proceedings, his solicitor shall, before or at the first hearing that takes place after the certificate has been issued, file a copy of the certificate with the Clerk of Petty Sessions.

(11) In the application of this regulation to County Court proceedings—

(a) the commencement of such proceedings for the purpose of paragraph (5) shall be deemed to be the time of entry of a civil bill or defence in the office of the Clerk of the Crown and Peace, in the case of a petition or summons the time of issue in such office, and in the case of a statutory appeal or application the time of lodgment of notice thereof in such office:

Provided that in the case of an action commenced by an assisted person by summary civil bill a certificate required to be filed under paragraph (5) shall be lodged in such office at the time of application for a summary decree;

(b) where such proceedings are on appeal from an order made by a court of summary jurisdiction in authorised summary proceedings a certificate required to be so filed shall be lodged with the Clerk of Petty Sessions together with the notice of appeal and shall be included with the documents sent by the Clerk of Petty Sessions to the Clerk of the Crown and Peace before the hearing of the appeal.

Property Recovered or Preserved for and Costs agreed to be paid to or awarded to an Assisted Person

17.—(1) Subject to the provisions of paragraph (9) all moneys payable to an assisted person—

(a) by virtue of any agreement or order made in connection with the claim or action, cause or matter to which his certificate relates, whether such agreement was made before or after the proceedings were taken; or

(b) being moneys payable in respect of the claim or the action, cause or matter to which his certificate relates upon the distribution of property of a person who has been adjudicated bankrupt, in relation to whom an order has been made under Section 343 of the Irish Bankrupt and Insolvent Act 1857 or who has entered into a deed of arrangement or of a company in liquidation; or

- (c) being moneys which were paid into court by him or on his behalf in any proceedings to which his certificate relates and which have been ordered to be repaid to him; or
- (d) being moneys standing in court to the credit of any proceedings to which his certificate relates;

shall be paid or repaid, as the case may be, to the solicitor of the assisted person or, if he is no longer represented by a solicitor, the Society, and only the solicitor or, as the case may be, the Society shall be capable of giving a good discharge for moneys so payable, provided that—

- (i) the payment of any sum under an order for costs in favour of an assisted person in authorised summary proceedings shall be made to the Clerk of Petty Sessions, who shall pay it to the Society or as the Society shall direct, and only the Clerk of Petty Sessions shall be able to give a good discharge therefor; and
- (ii) where moneys become payable to the solicitor of the assisted person or the Society out of property of a person who has been adjudicated bankrupt, in relation to whom an order has been made under Section 343 of the Irish Bankrupt and Insolvent Act 1857 or who has entered into a deed of arrangement or of a company in liquidation, as aforesaid, the solicitor or the Society, as the case may be, shall lodge with the Official Assignee or assignee or the liquidator of the company in liquidation the assisted person's certificate, which shall thereupon operate as a request by the assisted person for payment of such moneys to the solicitor or the Society, as the case may be, and shall be a sufficient authority for that purpose.

(2) All moneys received by an assisted person's solicitor under paragraph (1) shall be paid by him to the Society or as the Society shall direct:

Provided that, where—

- (a) by virtue of an order or agreement in connection with any claim, or with any action, cause or matter, for which in consequence of Regulation 20 or 21(1)(a) or (b) his remuneration falls to be determined by the Legal Aid Committee, or
- (b) the Legal Aid Committee so direct, because in the special circumstances of the case payment of the whole sum into the fund would be inequitable or impracticable,

he shall—

- (i) inform the Legal Aid Committee of any property recovered or preserved for the assisted person; and
- (ii) pay to the Society any sum paid to him by virtue of an order or agreement made in the assisted person's favour which in the opinion of the Legal Aid Committee should be retained by the Society in order to safeguard the rights of the fund under any provisions of the Act and these regulations; and
- (iii) pay any other moneys to the assisted person.

(3) Where in any proceedings to which an assisted person is a party—

- (a) an order or agreement is made providing for the recovery or preservation of property for the benefit of the assisted person and, by virtue of the Act, there is a first charge on the property for the benefit of the fund; or
- (b) an order or agreement is made for the payment of costs to the assisted person;

the assisted person shall, subject to the provisions of paragraph (4), take such

proceedings, being proceedings which may be taken under Section 1 of the Act, as may be necessary to enforce or give effect to such order or agreement.

(4) The Legal Aid Committee may (either of its own motion or on application by the assisted person) direct that paragraph (3) shall not apply to an assisted person on the ground that, having regard to the probable cost of any proceedings referred to, or to the likelihood of their being successful, or to any other relevant circumstances, it would be unreasonable for him to take such proceedings.

(5) Where the order is for payment of money and the Legal Aid Committee direct that proceedings need not be taken by the assisted person himself, the Society may take the proceedings in its own name or in the name of any officer of the Society appointed by the Society for that purpose in writing—

(a) by issuing an enforcement process in the county court; or

(b) by instituting proceedings in bankruptcy, or, where the debtor is a company, to wind up the company; or

(c) to enforce or give effect to the order outside the jurisdiction, and for any of those purposes the Society may authorise such person to swear an affidavit, file a proof, receive a dividend, or take any other step in the proceedings in the name of the Society; and the costs incurred by the Society in any such proceedings shall be a first charge on any sum so recovered.

(6) Upon receipt of moneys paid to them by virtue of this regulation, the Society shall retain—

(a) any sum paid by virtue of an order or agreement for costs made in the assisted person's favour;

(b) a sum equal to the amount (if any) by which any property recovered or preserved is charged for the benefit of the fund by virtue of Section 3(6) of the Act (which provides that any sums remaining unpaid on account of an assisted person's contribution and, if the total contribution is less than the net liability of the fund on his account, a sum equal to the deficiency shall be a first charge on any property recovered or preserved for him in the proceedings); and

(c) any costs of proceedings taken under the provisions of paragraph (5) in so far as such costs have not been recovered from the person against whom the proceedings have been taken;

and shall pay the balance to the assisted person.

(7) The Legal Aid Committee may defer the payment to an assisted person's solicitor of his profit costs in connection with the proceedings until he has, in their opinion, given effect to any provisions of this regulation.

(8) Where any moneys recovered or preserved for an assisted person in any proceedings are ordered to be paid into or remain in court and invested for the benefit of the assisted person, the charge created by Section 3(6) of the Act shall attach only to such part of those moneys as, in the opinion of the Legal Aid Committee, as notified in writing to the court, will be sufficient to safeguard the rights of the fund under any provisions of the Act or these regulations.

(9) The provisions of this regulation shall not apply to—

(a) payments of money under the provisions of—

(i) Section 1 of the Inheritance (Family Provision) Act (Northern Ireland) 1960(a); or

- (ii) Sections 17, 19 and 22 of the Matrimonial Causes Act (Northern Ireland) 1939(a) and Sections 4 and 5 of the Law Reform (Miscellaneous Provisions) Act (Northern Ireland) 1951(b); or
 - (iii) Section 1 of the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924; or
 - (iv) Sections 3, 4 and 5 of the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945; or
- (b) moneys paid in lieu of or with respect to arrears of any payments referred to in sub-paragraph (a); or
- (c) moneys payable, whether by way of arrears or otherwise, under an agreement in writing made between parties to a marriage for the purposes of their living separately and containing financial arrangements (whether made during the continuance or after the dissolution or annulment of the marriage); or
- (d) payments of money under the provisions of any Act which provides for the enforcement of or for giving effect to an order made under one of the sections set out in sub-paragraph (a); or
- (e) moneys so paid as a result of proceedings taken in a court in Northern Ireland to enforce an order made by a court outside its jurisdiction in proceedings for relief comparable to that which may be given by a court in Northern Ireland under the provisions mentioned in this paragraph; and moneys so payable or property passing in lieu shall not be the subject of a charge within the terms of Section 3(6) of the Act.

(10) Where a certificate relates to a matrimonial cause and an application under Section 17 of the Married Women's Property Act 1882(e) is made in that cause, the Legal Aid Committee may, if they think fit, treat the application as a separate proceeding for the purposes of Section 3(6) of the Act.

(11) For the purposes of this regulation the expression "assisted person" includes a person in respect of whom a certificate has been but is no longer in force.

Costs awarded against an Assisted Person

18.—(1) Where an order for costs is made against an assisted person, the determination of the amount of his liability for costs in accordance with Section 2(3)(e) of the Act shall be made at the trial or hearing of the action, cause or matter:

Provided that the court may, if it thinks it expedient in the interests of justice and upon such terms, if any, as it thinks fit—

- (a) postpone or adjourn the determination for such time and to such place, including chambers, as the court thinks fit, so however that the determination shall take place before the judge or officer of the Supreme Court before whom the trial or hearing took place, or
- (b) refer to an officer of the Supreme Court or County Court or the Clerk of the Parliaments or, in the case of an appeal from a decision of a county court or court of summary jurisdiction, to the clerk of the Crown and peace, registrar or clerk of petty sessions, as the case may be, of the court from which the appeal is brought, for investigation, any question of fact relevant to the determination, requiring him to report his finding on that question to the court.

(a) 2 & 3 Geo. 6. c. 13.
(b) 1951. c. 7.

(c) 45 & 46 Vict. c. 75.

- (2) In determining the amount of the assisted person's liability—
- (a) his dwelling-house and household furniture and the tools and implements of his trade shall be left out of account to the like extent as they are left out of account by the Board in determining his disposable income and disposable capital; and
 - (b) any certificate, notice or affidavit which may have been filed under the provisions of Regulation 16 shall be evidence of the facts stated therein:

Provided that the court may, if it thinks fit, order the assisted person and any party who has filed an affidavit pursuant to Regulation 16(6) to attend for oral examination as to his means and as to any other facts (whether stated in any document before the court or otherwise) relevant to determine the amount of the assisted person's liability and may permit any party to give evidence and call witnesses thereon.

- (3) The court may direct—
- (a) that payment under the order for costs shall be limited to such amount, payable by instalments or otherwise (including where there is to be a taxation of costs any amount to be determined on taxation not exceeding such first mentioned amount) as the court thinks reasonable having regard to all the circumstances, or
 - (b) where the court thinks it reasonable either for payment under subparagraph (a) not to be made immediately or for the assisted person to have no liability for payment, that payment under the order for costs be suspended either until such date as the court may determine or sine die.

(4) The party in whose favour the order is made may, within six years from the date thereof, apply to the court for the order to be varied on the grounds that there has been a change in the assisted person's circumstances since the date of the order and on any such application the order may be varied as the court thinks fit; but save as aforesaid the determination of the court shall be final.

(5) Where an assisted person serves notice of discontinuance or where an order for costs is made against him by reason of his default of appearance or defence or by reason of summary judgment, or upon application by him for leave to discontinue, he shall be liable for the full amount of the costs, unless he makes an application for determination of the amount of his liability under the provisions of Section 2(3)(e) of the Act, in which case the court may make any such order for payment as may be made in determining an assisted person's liability by virtue of an order for costs made against him at a trial or hearing of an action, cause or matter and shall to the same extent be final.

(6) Where an order for costs is made against an assisted person who is concerned in the proceedings in a representative, fiduciary or official capacity he shall have the benefit of Section 2(3)(e) of the Act and his personal resources shall not (unless there is reason to the contrary) be taken into account for that purpose, but regard shall be had to the value of the property or estate, or the amount of the fund out of which he is entitled to be indemnified.

Authorisation by Legal Aid Committee of payment of sums on account of disbursements

19.—(1) A solicitor acting for an assisted person may apply to the Legal Aid Committee for the payment of a sum on account of disbursements incurred

or to be incurred in connection with the proceedings to which such person's certificate relates.

(2) On considering such application the Legal Aid Committee may authorise the immediate payment to such solicitor out of the fund of the amount applied for or of such other sum as they consider appropriate in the circumstances.

Costs incurred in relation to a claim or where a retainer ceases before proceedings are begun

20.—(1) Where—

(a) work has been done by an assisted person's solicitor in relation to a claim; or

(b) the retainer of an assisted person's solicitor or counsel is determined before proceedings are actually begun,

the Legal Aid Committee may authorise payment to the solicitor or counsel of such amount as is fair remuneration for work reasonably undertaken and properly done.

(2) Where an application is made for such payment the solicitor shall lodge with the Legal Aid Committee—

(a) a bill of costs showing in detail the amount sought for the solicitor's profit costs and disbursements and including the amount sought in respect of counsel's remuneration; and

(b) supporting vouchers and papers.

Miscellaneous Provisions as to Costs in proceedings other than in the County Court or a Court of Summary Jurisdiction

21.—(1) In proceedings (other than proceedings in the County Court or a Court of Summary Jurisdiction) where—

(a) the solicitor acting for an assisted person is of opinion that the total amount which he and counsel (if any) would receive after a taxation in accordance with the provisions of Schedule 3 to the Act would not be more than £40; or

(b) the case of an assisted person (who is not such a person as is referred to in Order XXII Rule 8 of the Rules of the Supreme Court (Northern Ireland) 1936^(a)) has been settled without any direction of the court as to costs, on terms that include provision for an agreed sum in respect of costs to be paid to the assisted person which the solicitor and counsel (if any) is willing to accept in full satisfaction of the work done; or

(c) the case of an assisted person (who is not such a person as is referred to in Order XXII Rule 8 of the Rules of the Supreme Court (Northern Ireland) 1936) has been settled on terms or has resulted in a judgment or order of the court that the assisted person will be paid his party and party costs by an unassisted person, and the unassisted person liable for such costs agrees; or

(d) there has been a change of solicitor and it appears unlikely to the solicitor whose retainer is determined that there will be a taxation of his costs within six months of the date the retainer was determined; or

(e) there are special circumstances where a taxation would be against the interest of the assisted person or would increase the amount payable from the fund; or

(f) after a direction or order that the assisted person's costs shall be taxed in accordance with Schedule 3 to the Act the solicitor incurs costs for the purpose of receiving moneys payable into the fund; or

(a) S.R. & O. 1936, No. 70.

- (g) the proceedings are, or have been, brought to an end without a direction having been given, whether under paragraph (5) or otherwise, as to the assisted person's costs being taxed in accordance with Schedule 3 to the Act; or
- (h) a retainer is determined under the provisions of Regulation 13(2); or
- (i) where any report is made by an assisted person's solicitor under Regulation 12 or any application is made under Regulation 15, the solicitor for the assisted person may apply to the Legal Aid Committee for payment to himself and counsel (if any) in respect of the work done.

(2) Where an application is made under paragraph (1) the solicitor shall lodge with the Legal Aid Committee—

- (a) a bill of costs showing in detail the amount sought for the solicitor's profit costs and disbursements and including the amount sought in respect of counsel's remuneration; and
- (b) the supporting vouchers and papers.

(3) Subject to paragraph (4), on any such application as is referred to in paragraph (1) the Legal Aid Committee may authorise the payment to the solicitor or counsel (if any) of such an amount as in their opinion—

- (a) where a settlement is reached within the terms of paragraph (1)(b) is fair remuneration for work reasonably undertaken and properly done; and
- (b) in any other case, is the amount as estimated by the Legal Aid Committee which would have been allowed to the solicitor or counsel had the costs been taxed under Schedule 3 to the Act.

(4) No authorisation shall be given by the Legal Aid Committee under paragraph (3) where any member of the Committee dissents therefrom and, in that event, the amounts due to counsel or the solicitor for the assisted person shall be determined upon taxation in accordance with Schedule 3 to the Act.

(5) Subject to the preceding provisions of this regulation, where in any proceedings commenced in the High Court to which an assisted person is a party—

- (a) judgment is signed in default of appearance or defence, the judgment shall contain a direction that the costs of any assisted person shall be taxed in accordance with the provisions of Schedule 3 to the Act;
- (b) the court gives judgment or makes a final order in the proceedings, the judgment or order shall include a direction (in addition to any other direction as to taxation contained in the judgment or order) that the costs of any assisted person shall be so taxed.

(6) Where in any proceedings to which an assisted person is a party a judgment or order in favour of an opposite party, which includes a direction that the assisted person's costs be so taxed, has not been drawn up or, as the case may be, entered by him, an order that the assisted person's costs be taxed in accordance with Schedule 3 to the Act shall be made on application to the proper officer of the court by his solicitor and the costs of the application and the costs of the taxation shall be deemed to be costs in the proceedings to which the certificate relates or related.

(7) Costs incurred by reason of Regulation 16 shall be costs in the cause.

Remuneration of Counsel and Solicitors in the County Court

22.—(1) Where a solicitor has acted in any proceedings in the County Court (including proceedings resulting in a settlement) for an assisted person he shall

apply to the Legal Aid Committee for payment to himself and counsel (if any) in respect of the work done.

(2) Subject to paragraph (3), on any such application the Legal Aid Committee may authorise the payment to the solicitor or counsel (if any) of such amount as—

- (a) in relation to proceedings, other than under the equity jurisdiction of the County Court or remitted to it by the High Court, is prescribed by Order of the Minister of Home Affairs under Section 6 of the Act and paragraph 1(2)(b) or paragraph 2(2)(b) of Schedule 3 to the Act; or
- (b) in relation to proceedings under the equity jurisdiction of the County Court or remitted to it by the High Court, is the amount as estimated by the Legal Aid Committee which would have been allowed to the solicitor or to counsel had the costs been taxed under Schedule 3 to the Act after taking into account any actual taxation that may have taken place in the proceedings.

(3) No authorisation shall be given by the Legal Aid Committee under paragraph (2) where any member of the Committee dissents therefrom and, in that event, the amounts due to counsel or the solicitor for the assisted person shall be determined upon taxation in accordance with Schedule 3 to the Act.

(4) Before authorising any payment under this regulation the Legal Aid Committee shall take into account any costs incurred by reason of Regulation 16.

Taxation of Costs in proceedings other than in the County Court or a Court of Summary Jurisdiction

23.—(1) Where the costs of proceedings to which an assisted person is a party are to be taxed they shall be taxed in accordance with any direction or order given or made in the proceedings irrespective of the interest (if any) of the assisted person in the taxation, and for the purpose of these regulations an order for the taxation of the costs of a review of taxation or of the costs of an appeal from a decision of the judge on such a review shall be deemed to be a final order.

(2) It shall be the duty of an assisted person's solicitor to safeguard the interests of the fund on any taxation as between party and party pursuant to an order for costs made in favour of the assisted person where that person may himself have no interest in the result of the taxation and for this purpose to take such steps as may appear to the solicitor to be necessary to obtain a review of taxation under the succeeding provisions of this regulation.

(3) (a) Any proceedings under the succeeding provisions of this regulation or under Regulation 25 shall be deemed to be proceedings to which the assisted person's certificate relates, whether or not it has been discharged or revoked, and the costs of such proceedings shall be paid out of the fund.

(b) Where the assisted person has no interest in the taxation or would, save for the provisions of this regulation, have an interest adverse to that of his solicitor he shall not be required to make any contribution to the fund on account of the costs of the taxation or in consequence of any order made thereon, nor shall any resulting increase in the net liability of the fund be a charge on any property recovered or preserved for the assisted person in the proceedings to which his certificate relates.

(4) Where—

- (a) an assisted person is dissatisfied with any decision of a taxing officer in regard to the amount which he is entitled to recover by virtue of an order or agreement for costs made in his favour or for which he is liable by virtue of an order for costs made against him; or
- (b) the assisted person's solicitor is dissatisfied with any decision of the taxing officer—
 - (i) on a taxation as between party and party pursuant to an order for costs made in favour of the assisted person; or
 - (ii) on a taxation in accordance with Schedule 3 to the Act,

the solicitor shall apply to the Legal Aid Committee for authority to carry in objections to the taxation and if the Committee give authority the solicitor may thereupon carry in objections in accordance with rules of court; and where the assisted person has no interest in the taxation or would, save for the provisions of this regulation, have an interest adverse to that of his solicitor, it shall be the duty of the solicitor to place before the taxing officer all matters which are proper to be taken into account on the consideration of the objections and the taxing officer shall reconsider and review the taxation accordingly.

(5) Where the assisted person or his solicitor, as the case may be, is dissatisfied with the decision of the taxing officer on any matter to which objection has been taken as aforesaid, the solicitor shall apply to the Society for authority to have the taxation reviewed, and, if the Society give authority, the solicitor may thereupon apply to a judge either personally or by counsel to review the taxation in accordance with rules of court; and where the assisted person has no interest in the taxation or would, save for the provisions of this regulation, have an interest adverse to that of his solicitor, it shall be the duty of the solicitor to ensure that there are placed before the judge all matters which are proper to be taken into account on the review and the judge shall hear and determine the application accordingly.

(6) Where any party to a taxation is an assisted person, the certificate or allocatur shall not, save by consent, be signed within twenty one days after the taxing officer's decision; and where an assisted person's solicitor applies under either paragraph (4) or (5) for authority to carry in objections or to have a taxation reviewed, he shall do so before the expiration of the time allowed by rules of court for applying to the taxing officer for a reconsideration or review of a taxation and shall thereupon give notice of his application to the taxing officer and to the opposite party and the time so allowed shall thereupon be extended by one month.

(7) Where counsel acting for an assisted person is dissatisfied with any decision on a taxation in accordance with Schedule 3 to the Act, it shall be the duty of the assisted person's solicitor to report the matter to the Legal Aid Committee or to the Society, as the case may be, and, if the Committee or the Society give authority in that behalf, to carry in objections to the taxation, to apply to a judge to review the taxation or to appeal from the decision of the judge, as the case may be, and paragraphs (3), (4) and (5) of this regulation and Regulation 25(1) shall apply as if the solicitor were the person dissatisfied.

(8) If, in proceedings to which an assisted person is a party, any other party carries in objections to a taxation as between party and party or applies to a judge to review the taxation, the assisted person's solicitor may be heard on the objection or review notwithstanding that the assisted person himself may have no interest in the taxation.

Appointment of Solicitor to Intervene in proceedings other than in the County Court or a Court of Summary Jurisdiction

24.—(1) The Minister of Home Affairs may appoint a solicitor to intervene for the purposes hereinafter mentioned in any review by a judge of a taxation of the costs of proceedings to which an assisted person is a party, and such appointment may be made in respect of a particular review or may extend to any review of taxation during the period for which the solicitor is appointed.

(2) Whenever the Society give authority to an assisted person's solicitor to apply to a judge to review a taxation, they shall notify the Minister of Home Affairs and inform him of the name and address of the assisted person's solicitor.

(3) If, in proceedings to which an assisted person is a party, any other party applies to a judge to review a taxation between party and party or the assisted person's solicitor applies to a judge to review any such taxation as is referred to in Regulation 23(4), the assisted person's solicitor shall inform the Society of that fact and the Society shall notify the Minister of Home Affairs and inform him of the name and address of the assisted person's solicitor and, where the taxation to be reviewed is as between party and party, the name and address of the solicitor acting for the other party.

(4) The solicitor appointed by the Minister of Home Affairs to intervene in a review of taxation shall be entitled to production of all documents relevant to the matters at issue before the judge and to delivery of copies thereof and to appear by counsel and be heard on the review, with a view to ensuring that all considerations which are proper to be taken into account are placed before the court, whether they relate to the interests of the fund or of the assisted person or to the fair remuneration of solicitors and counsel acting for assisted persons.

(5) On any review in which the solicitor appointed by the Minister of Home Affairs has intervened the judge may make such order as may be just for the payment to or by that solicitor of the costs incurred by him or any other party, so however that any sum due to the solicitor by virtue of any such order shall be paid by him to the Society and any sum so payable by the solicitor shall be paid out of the fund; and the solicitor shall be entitled to receive from the fund his costs of a review in which he has intervened.

Appeal from Review of Taxation in proceedings other than in the County Court or a Court of Summary Jurisdiction

25.—(1) An assisted person's solicitor may, with the authority of the Society, appeal from the decision of the judge on a review of taxation under Regulation 23(5) or (7) and shall be entitled to appear by counsel and be heard on an appeal by any other party notwithstanding that the assisted person may have no interest in the appeal or would, save for the provisions of Regulation 23, have an interest adverse to that of his solicitor;

Provided that nothing in this regulation shall be deemed to confer a right of appeal where there is no such right in proceedings to which an assisted person is not a party.

(2) The solicitor appointed by the Minister of Home Affairs under Regulation 24(1) may appeal from the decision of the judge on a review of taxation under Regulation 23(5) or (7) and Regulation 24(2) to (5) shall apply to an appeal as they apply to a review.

Charges upon Property Recovered or Preserved

26.—(1) Any charge on property recovered or preserved for an assisted person arising under Section 3(6) of the Act shall vest in the Society.

(2) The Society may enforce any such charge in any manner which would be available if the charge had been given *inter partes*.

(3) All conveyances and acts done to defeat, or operating to defeat, such charge shall, except in the case of a conveyance to a bona fide purchaser for value without notice, be void as against the Society.

Remuneration of Counsel and Solicitors in connection with authorised summary proceedings

27. The sums allowed to solicitors or counsel in connection with authorised summary proceedings shall be such as are assessed by the Legal Aid Committee in accordance with an Order made by the Minister of Home Affairs under Section 6 of and paragraphs 1(3) and 2(3) of Schedule 3 to the Act.

Transitional Provisions

28.—(1) Where on the commencement of these regulations an application for a Poor Persons Certificate under Part III of Order XVI of the Rules of the Supreme Court (Northern Ireland) 1936 (in this regulation referred to as the Poor Persons Rules) is pending the Poor Persons Committee shall forward the application to the secretary and thereupon the applicant shall be deemed to have applied for legal aid under the provisions of the Act and these regulations.

(2) Where on the commencement of these regulations a person has been admitted as a poor person under the Poor Persons Rules to take, defend or be a party to any proceedings mentioned in Part II of Schedule 1 to the Act, he may continue to proceed under the Poor Persons Rules and those Rules shall continue to apply for the purposes of those proceedings as if they had not been repealed.

(3) Where before the commencement of these regulations a person has been admitted as a poor person under the Poor Persons Rules to take, defend or be a party to any proceedings other than those referred to in paragraph (2)—

- (a) the Board shall be deemed to have determined his disposable income to be less than two hundred and fifty pounds a year and his disposable capital to be less than one hundred and twenty-five pounds;
- (b) the Poor Persons Certificate issued to him shall, on the material date, be deemed to have become a certificate issued under the provisions of these regulations and these regulations shall, so far as applicable, thereupon apply to that person as if he were an assisted person; and
- (c) his conducting solicitor and counsel (if any) retained for the purposes of the proceedings shall be deemed to be members of an appropriate panel, acting for him in accordance with the Act and these regulations.

(4) A person receiving legal aid in consequence of the provisions of paragraph (3) shall remain liable for any sum of money which he has been or may be required to pay under the Poor Persons Rules to the extent that it is required to meet out-of-pocket expenses of his solicitor in so far as those expenses have been incurred before the material date.

(5) The Poor Persons Committee shall supply to the Society such accounts and information as the Society may require with regard to sums paid to the Committee by persons admitted to take, defend or be a party to any proceedings as poor persons, and the Society may require any account so supplied to be audited at the expense of the fund.

Sealed with the Official Seal of the Ministry of Home Affairs for Northern Ireland this 29th day of October, 1965, in the presence of

(L.S.)

J. G. Hill,
Assistant Secretary.

The Ministry of Finance hereby concurs in Regulation 5 and the Schedule.

Sealed with the Official Seal of the Ministry of Finance for Northern Ireland this 29th day of October, 1965, in the presence of

(L.S.)

R. R. Butler,
Assistant Secretary.

The Supreme Court Rules Committee has consented to the making of these regulations, in so far as they relate to the procedure of the Supreme Court as required by Section 14(5) of the Act.

J. Ritchie,
Secretary,
Supreme Court Rules Committee.

Dated this 29th day of October, 1965.

SCHEDULE

Regulation 5(2)

**Assessment of Resources of Applicant for Certificate
relating to a Claim**

1. In this schedule—

“capital” means the amount or value of every resource of a capital nature;
“income” means the total income from all sources which the applicant may reasonably expect to receive during the twelve months next ensuing from the date of the application; that income in the absence of other means of ascertaining it being taken to be the income received during the preceding twelve months.

2. Any question arising under this schedule shall be decided by the certifying committee who, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Law Society as to the application of this schedule.

3. The disposable capital and disposable income of an applicant shall be the capital and income as determined by the certifying committee after deducting any sums which are to be left out of account or for which allowance is to be made under the provisions of this schedule.

4.—(1) Where an application is made on behalf of an infant, the capital and income of the infant shall, subject to the provisions of sub-paragraph (2), be treated as the capital and income of the applicant and the applicant’s capital and income shall be left out of account.

(2) The resources of any person who, under Section 19 of the National Assistance Act (Northern Ireland) 1948(a), is liable to maintain the infant, or who usually contributes substantially to the infant’s maintenance, may be treated as the resources of the infant if, having regard to all the circumstances, including the age and resources of the infant, it appears just and equitable to do so.

5. If it appears to the certifying committee that any person whose capital and income falls to be computed under the provisions of this schedule has, with intent to reduce the disposable capital or disposable income or maximum contribution, directly or indirectly deprived himself of any resource or has converted any part

of his resources into resources which are to be left out of account, 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.

6. In computing the capital and income of an applicant—

- (a) there shall be left out of account the value of the subject-matter of the claim in respect of which he is seeking legal aid;
- (b) the resources of any spouse of his shall be treated as his resources unless—
 - (i) the spouse has a contrary interest in the claim in respect of which he is seeking legal aid; or
 - (ii) the applicant and his spouse are living separate and apart; or
 - (iii) in all the circumstances of the case it would be inequitable or impracticable to do so.

7. In computing the capital of an applicant—

- (a) the value of his dwelling house, household furniture and effects, articles of personal clothing and the tools and implements of his trade shall be left out of account;
- (b) where the applicant has living with him one or more of the following persons, namely, a spouse whose resources are required to be aggregated with his, a dependent child or a dependent relative wholly or substantially maintained by him, a deduction shall be made of £75 in respect of the first person, £50 in respect of the second person and £25 in respect of each further person;
- (c) where the disposable income of the applicant is less than £375, a deduction shall be made of a sum equal to the difference between the disposable income and £375.

8. In computing the income of an applicant—

- (a) there shall be left out of account—
 - (i) any income tax paid or payable on income treated under the provisions of this schedule as his income;
 - (ii) the amount estimated to be payable in the twelve months next ensuing from the date of the application under the National Insurance Acts (Northern Ireland) 1946 to 1964, the National Insurance (Industrial Injuries) Acts (Northern Ireland) 1946 to 1964, and the National Health Service Contributions Acts 1957 and 1961, by any person whose income is, under the provisions of this schedule, to be treated as the applicant's;
- (b) there shall be allowed—
 - (i) £117 in respect of any spouse of his wholly or substantially maintained by him, or where the capital and income of the spouse are treated as his resources;
 - (ii) £70 in respect of any child wholly or substantially maintained by him, or by any spouse of his where the capital and income of the spouse are treated as his resources;
 - (iii) £117 in respect of any other person wholly or substantially maintained by him, or by any spouse of his where the capital and income of the spouse are treated as his resources;
 - (iv) £65 in respect of the cost of rent and any other matters for which the person concerned must or reasonably may provide, regardless of their actual cost.

9. Where the disposable income of the applicant is or exceeds £253, he shall be required to pay a contribution to the fund in respect of sums payable thereout on his account of not more than £1 for each £3 in excess of £250.

10. Where it appears to the certifying committee that there has been some error or mistake in the determination of the disposable income, disposal capital or maximum contribution of the applicant, they may redetermine the disposable income or disposable capital or maximum contribution or, as the case may be, amend the determination, and in the latter case the amended determination shall for all purposes be substituted for the original determination.

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.