STATUTORY INSTRUMENTS

1964 No. 1276

LEGAL AID AND ADVICE, ENGLAND

The Legal Aid (Costs of Successful Unassisted Parties) Regulations 1964

Made - - - -	*5th August* 1964
Laid before Parliament	*12th August* 1964
Coming into Operation	*1st October* 1964

I, Reginald Edward, Baron Dilhorne, Lord High Chancellor of Great Britain, in exercise of the powers conferred on me by section 12(1) of the Legal Aid and Advice Act 1949(a) and section 2(1) and (2) of the Legal Aid Act 1964(b), hereby make the following Regulations:—

Citation, Commencement and Interpretation

1.—(1) These Regulations may be cited as the Legal Aid (Costs of Successful Unassisted Parties) Regulations 1964 and shall come into operation on 1st October 1964.

(2) The Interpretation Act 1889(c) shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) In these Regulations, unless the context otherwise requires:—

" the Act " means the Legal Aid Act 1964;

" affidavit of costs and resources " means an affidavit sworn by an applicant in support of his application which includes the matters specified in the Schedule hereto;

" applicant " means a person applying for an order under the Act;

" application " means an application for an order under the Act;

" the Area Secretary " means the Secretary of the Area Committee appointed by the Council of the Law Society under the provisions of a scheme made under section 8 of the Legal Aid and Advice Act 1949 in whose area legal aid was granted for the proceedings in respect of which an application is made or his duly authorised representative;

" court " in relation to proceedings tried or heard at first instance by a Master of the Supreme Court, a Registrar of the Probate, Divorce and Admiralty Division of the High Court or the Registrar of a county court includes that Master or Registrar;

" the General Regulations " means the Legal Aid (General) Regulations 1962(d) as amended(e) and any provision replacing a provision of those Regulations;

" master or registrar " in relation to an application made in respect of proceedings in or on appeal from the Chancery or Queen's Bench Divisions of the High Court means a Taxing Master of the Supreme Court or a District Registrar of the High Court; and in relation to an application

(a) 12, 13 & 14 Geo. 6. c. 51. (b) 1964 c. 30. (c) 52 & 53 Vict. c. 63.
(d) S.I. 1962/148 (1962 I, p. 117). (e) S.I. 1962/1714 (1962 II, p. 2122).

made in respect of proceedings in or on appeal from the Probate, Divorce and Admiralty Division of the High Court means a Registrar of the said Division or a District Registrar of the High Court;

"order under the Act" means an order under section 1 of the Act for the payment out of the legal aid fund of the costs of a successful unassisted party; and

"registrar" in relation to an application made in respect of proceedings in or on appeal from a county court means the registrar of that county court.

General Provisions

Separate proceedings

2. Any proceedings in respect of which a separate civil aid certificate could properly be issued under the General Regulations to a person receiving legal aid shall be treated as separate proceedings for the purposes of the Act.

Applicants in a fiduciary, representative or official capacity

3. Where an unassisted party is concerned in proceedings only in a fiduciary, representative or official capacity, then for the purposes of section 1(3)(*b*) of the Act the court shall not take into account his personal resources, but shall have regard to the value of the property, estate or fund out of which the unassisted party is entitled to be indemnified and may in its discretion also have regard to the resources of the persons, if any, who are beneficially interested in that property, estate or fund.

Time and form of applications

4. An application may be made at any time and in any manner in which an application for an order for costs might be made in respect of the same proceedings if neither party were receiving legal aid.

Written representations by Area Secretary

5.—(1) In any case where these Regulations confer on the Area Secretary a right to appear at any hearing or inquiry in connection with any application, he may, instead of so appearing, submit written representations concerning the application.

(2) Written representations submitted under paragraph (1) of this Regulation shall be:—

(*a*) supported by an affidavit sworn by the Area Secretary; and

(*b*) sent to the proper officer of the court, and copies thereof sent to the applicant, not less than 7 days before the hearing or inquiry to which they relate.

Magistrates' Courts Proceedings

Applications in respect of magistrates' courts proceedings

6.—(1) This Regulation shall apply to any application made in respect of proceedings at first instance in a magistrates' court.

(2) On an application being made, the court shall not make an order under the Act forthwith, but may in its discretion either:—

(*a*) adjourn the hearing of the application; or

(*b*) dismiss the application forthwith.

(3) If the court adjourns the hearing of the application, the applicant shall swear an affidavit of costs and resources, which he shall produce at the adjourned hearing.

(4) Not less than 21 days before the adjourned hearing, the applicant shall serve notice of the date and time thereof on the Area Secretary, together with a copy of his affidavit of costs and resources.

(5) The applicant need not serve on the Area Secretary any exhibit to or document supporting his affidavit of costs and resources, but the Area Secretary may call on the applicant to produce any such exhibit or document for inspection.

(6) The applicant and the Area Secretary may appear before the court at the adjourned hearing.

County Court Proceedings

Treatment of applications

7.—(1) This Regulation and Regulations 8 to 10 shall apply to any application made in respect of proceedings in or on appeal from a county court.

(2) On an application being made, the court shall not make an order under the Act forthwith, but may in its discretion:—

(*a*) refer the application to the registrar for hearing and determination; or

(*b*) adjourn the application; or

(*c*) dismiss the application forthwith.

Reference of applications for hearing and determination

8. Where the court makes an order referring an application to the registrar for hearing and determination:—

(*a*) the provisions of Regulation 10 shall thereafter apply as if the registrar were the court and the court had adjourned the hearing of the application to a date to be fixed; and

(*b*) the applicant may appeal to the judge on a point of law from the registrar's determination within 14 days thereof.

Applications adjourned and referred for inquiry and report

9.—(1) The court may, if it adjourns the hearing of an application, make an order referring it to the registrar for inquiry and report; and if it does so, then:—

(*a*) the court shall serve a copy of its order on the applicant;

(*b*) within 21 days of the court making its order (or such longer time as the court may allow), the applicant shall file an affidavit of costs and resources together with a copy thereof; and

(*c*) the court shall thereupon serve a copy of the order of the court and of the applicant's affidavit of costs and resources on the Area Secretary.

(2) In complying with paragraph (1)(*c*) of this Regulation, the court need not serve on the Area Secretary any exhibit to or document supporting the applicant's affidavit of costs and resources; but the Area Secretary may inspect at the county court office any such exhibit or document, and may bespeak a copy thereof.

(3) As soon as the court has complied with paragraph (1)(*c*) of this Regulation, the registrar shall give the applicant and the Area Secretary not less than 21 days' notice of the date and time when he proposes to conduct his inquiry.

(4) In exercising his functions under this Regulation, the registrar shall have all the same powers as a taxing officer has in the exercise of his functions under the County Court Rules 1936(**a**).

(5) The applicant and the Area Secretary may appear before the registrar at his inquiry.

(6) On completing his inquiry, the registrar shall report to the court in writing, and shall at the same time send a copy of his report to the applicant and the Area Secretary.

(7) When the court has received the registrar's report, it shall send to the applicant and the Area Secretary notice of an appointment before the court for the hearing and determination of the application in chambers, giving not less than 21 days' notice thereof.

(8) The applicant and the Area Secretary may appear before the court at the adjourned hearing of the application.

Applications adjourned but not referred for inquiry and report

10.—(1) If the court adjourns the hearing of an application but does not refer it to the registrar for inquiry and report, then:—

(*a*) within 21 days of the adjournment the applicant shall file an affidavit of costs and resources together with a copy thereof; and

(*b*) not less than 21 days before the adjourned hearing the court shall serve on the Area Secretary notice of the date thereof together with a copy of the applicant's affidavit of costs and resources.

(2) In complying with paragraph (1)(*b*) of this Regulation, the court need not serve on the Area Secretary any exhibit to or document supporting the applicant's affidavit of costs and resources, but the Area Secretary may inspect at the county court office any such exhibit or document, and may bespeak a copy thereof.

(3) The applicant and the Area Secretary may appear before the court at the adjourned hearing.

HIGH COURT PROCEEDINGS

Treatment of applications

11.—(1) This Regulation and Regulations 12 to 14 shall apply to any application made in respect of proceedings at first instance in the High Court.

(2) On an application being made, the court shall not make an order under the Act forthwith, but it may in its discretion:—

(*a*) refer the application to the master or registrar for hearing and determination; or

(*b*) adjourn the hearing of the application; or

(*c*) dismiss the application forthwith.

(**a**) S.R. & O. 1936/626 (Rev. V, p. 163: 1936 I, p. 282).

Reference of applications for hearing and determination

12. Where the court makes an order referring an application to the master or registrar for hearing and determination:—

(*a*) the provisions of Regulation 14 shall thereafter apply as if the master or registrar were the court and the court had adjourned the hearing of the application to a date to be fixed; and

(*b*) the applicant may appeal to a judge sitting in chambers on a point of law from the determination of the master or registrar within 14 days thereof.

Applications adjourned and referred for inquiry and report

13.—(1) The court may, if it adjourns the hearing of an application, make an order referring it to the master or registrar for inquiry and report; and if it does so, then within 21 days of the court making the order (or such longer time as the master or registrar shall allow) the applicant shall:—

(*a*) file an affidavit of costs and resources;

(*b*) lodge a copy of the order of the court and of his affidavit of costs and resources, together with original exhibits and any other documents necessary to support the affidavit, with the master or registrar; and at the same time

(*c*) serve a copy of the order of the court and of his affidavit of costs and resources on the Area Secretary.

(2) In complying with paragraph (1)(*c*) of this Regulation, the applicant need not serve on the Area Secretary any exhibit to or document supporting his affidavit of costs and resources; but the Area Secretary may inspect at the office of the master or registrar any such exhibit or document, and may bespeak a copy thereof.

(3) Where the applicant has complied with the requirements of paragraph (1) of this Regulation, the master or registrar shall fix a date and time when he proposes to conduct his inquiry, and he shall give the applicant and the Area Secretary not less than 21 days' notice thereof.

(4) In exercising his functions under this Regulation, the master or registrar shall have all the same powers as a taxing officer has in the exercise of his functions under the Supreme Court Costs Rules 1959(**a**).

(5) The applicant and the Area Secretary may appear before the master or registrar at his inquiry.

(6) On completing his inquiry, the master or registrar shall report to the court in writing, and shall at the same time send a copy of his report to the applicant and to the Area Secretary.

(7) When the court has received the report of the master or registrar, the applicant shall take an appointment before the court for the hearing and determination of the application in chambers, and shall give to the Area Secretary not less than 21 days' notice of the date and time of that appointment.

(8) The applicant and the Area Secretary may appear before the court at the adjourned hearing of the application.

Applications adjourned but not referred for inquiry and report

14.—(1) If the court adjourns the hearing of an application but does not refer it for inquiry and report, then:—

(*a*) within 21 days of the adjournment the applicant shall file an affidavit

(**a**) S.I. 1959/1958 (Schedule 2) (1959 II, p. 2535).

of costs and resources together with original exhibits and any other documents necessary to support the affidavit;

(*b*) not less than 21 days before the adjourned hearing, the applicant shall serve notice on the Area Secretary of the date and time of the adjourned hearing together with a copy of his affidavit of costs and resources.

(2) In complying with paragraph (1)(*b*) of this Regulation, the applicant need not serve on the Area Secretary any exhibit to or document supporting his affidavit of costs and resources; but the Area Secretary may inspect at the appropriate office of the court any such exhibit or document, and may bespeak a copy of any such exhibit or document.

(3) The applicant and the Area Secretary may appear before the court at the adjourned hearing of the application.

Appellate Proceedings

Applications to appellate court

15.—(1) Where an applicant applies to an appellate court for an order under the Act for the payment of his costs incurred in proceedings at first instance, these Regulations shall apply as if the appellate court were the court of first instance where those proceedings took place.

(2) Where an applicant applies to an appellate court for an order under the Act for the payment of his costs incurred in any appeal and the court adjourns the hearing of the application, so as to enable the Law Society to be heard in connection with it, the applicant shall, not less than 21 days before the adjourned hearing, serve notice of the date and time thereof on the Area Secretary, together with a copy of any evidence with which he supports his application.

(3) The applicant and the Area Secretary may appear before the appellate court at the adjourned hearing.

Other Courts

Application of Regulations to other courts

16. These Regulations shall apply with the necessary modifications to applications made to:—

(*a*) the Chancery Courts of the counties Palatine of Lancaster and Durham; and

(*b*) the Mayor's and City of London Court, the Liverpool Court of Passage, the Court of Record for the Hundred of Salford in the county of Lancaster, the Tolzey Court of Bristol and the Norwich Guildhall Court.

Dated 5th August 1964.

Dilhorne, C.

Regulation 1(3)

SCHEDULE

MATTERS TO BE INCLUDED IN AN AFFIDAVIT OF COSTS AND RESOURCES

1. An estimate of the applicant's costs as between party and party of the proceedings in respect of which his application is made, supported by:—

(*a*) particulars of the estimated costs in the form of a summary bill of costs; and

(*b*) all necessary documentary evidence to substantiate each item therein.

2. A statement, supported by evidence, of the applicant's financial resources of every kind during the period beginning three years before his application is made, and of his estimated future financial resources and expectations.

3. A declaration that to the best of his knowledge and belief the applicant has not, and at any relevant time has not had and will not have any financial resources or expectations not specified in the statement described in paragraph 2 above.

4. A declaration that the applicant has not at any time deliberately foregone or deprived himself of any financial resources or expectations with a view to furthering his application.

5. A statement supported by evidence of the applicant's reasonable financial commitments during the period covered by his statement described in paragraph 2 above, including, if desired, his estimated solicitor and own client costs of the proceedings in respect of which his application is made.

6. If the applicant has, or at any relevant time has had, a spouse, his statements and declarations described in paragraphs 2 to 5 above shall also take account of and (to the best of his knowledge and belief) specify that spouse's financial resources, expectations and commitments, unless she had a contrary interest to the applicant in the proceedings in respect of which his application is made, or the applicant and his spouse are or at the relevant time were living separate and apart, or for some other reason it would be either inequitable or impracticable for the applicant to comply with the requirement of this paragraph.

7. Full particulars of any application for legal aid made by the applicant in connection with the proceedings in respect of which his application is made, including the date and reference number of any such application and the committee to which it was made.

EXPLANATORY NOTE

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

These Regulations regulate the procedure to be followed when a successful unassisted opponent of a party receiving legal aid applies under the Legal Aid Act 1964 for the payment of his costs out of the legal aid fund.

The Regulations also define "separate proceedings" for the purposes of the Act and provide for cases where the unassisted person was concerned in the proceedings in a fiduciary, representative or official capacity.