STATUTORY INSTRUMENTS

1975 No. 1372 (S.202)

LEGAL AID AND ADVICE, SCOTLAND

The Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1975

Made - - - -	*4th August* 1975
Laid before Parliament	*22nd August* 1975
Coming into Operation	*17th November* 1975

In exercise of the powers conferred on me by sections 4 and 15 of the Legal Aid (Scotland) Act 1967**(a)** and of all other powers enabling me in that behalf, and with the concurrence of the Treasury, I hereby make the following regulations:—

1.—(1) These regulations may be cited as the Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1975, and shall come into operation on 17th November 1975 and shall apply to the computation of disposable income where an application for a Certificate is made on or after that date.

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

2. The following shall be substituted for Rule 5, as amended**(c)**, of Schedule 1 to the Legal Aid (Scotland) (Assessment of Resources) Regulations 1960**(d)**:—

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

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

(*a*) allowances under the Family Allowances Act 1965**(e)**;

(*b*) any family income supplement under the Family Income Supplements Act 1970**(f)**;

(*c*) any graduated retirement benefit under section 36 of the National Insurance Act 1965**(g)**;

(*d*) any payment for the maintenance of the person concerned being a payment made under the order of a court or a payment made by a person who for the purposes of the Supplementary Benefit Act 1966**(h)** is liable to maintain the person concerned.

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

(*a*) £0.38 of—

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

(ii) any child's special allowance or any increase thereof in respect of a second qualifying child;

(a) 1967 c. 43.
(b) 1889 c. 63.
(c) The relevant amending instruments are S.I. 1966/1379, 1971/275 (1966 III, p. 3707; 1971 I, p. 990).
(d) S.I. 1960/1395 (1960 II, p. 1807).
(e) 1965 c. 53.
(f) 1970 c. 55.
(g) 1965 c. 51.
(h) 1966 c. 20.
(i) 1975 c. 14.

(*b*) £0.28 of—

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

(ii) any increase of a child's special allowance in respect of any additional qualifying child beyond the second.

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

(*a*) so much of—

(i) any widow's pension payable at the higher permanent rate under section 68 of that Act; or

(ii) any widower's pension under section 69 of that Act, as exceeds the rate specified in Part I of Schedule 4 to that Act for a widow's pension under section 26 of that Act;

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

(i) an only, or the elder or eldest, qualifying child; or

(ii) a second qualifying child;

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

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

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

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

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

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

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

(6) The Acts and schemes mentioned in paragraph (5) of this Rule are—

(*a*) the Ministry of Pensions Act 1916**(a)**, the Air Force (Constitution) Act 1917**(b)**, the Personal Injuries (Emergency Provisions) Act 1939**(c)**, the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939**(d)**, the Polish Resettlement Act 1947**(e)**, the Home Guard Act 1951**(f)** and the Ulster Defence Regiment Act 1969**(g)**;

(*b*) any scheme made under the Injuries in War (Compensation) Act 1914**(h)**, or the Injuries in War (Compensation) Act 1914 (Session2)**(i)** and any War Risk Compensation Scheme for the Mercantile Marine;

and that paragraph applies in relation to a pension or allowance for a woman

(a) 1916 c. 65. **(b)** 1917 c. 51. **(c)** 1939 c. 82. **(d)** 1939 c. 83.
(e) 1947 c. 19. **(f)** 15 & 16 Geo. 6 & 1 Eliz. 2c. 8.
(g) 1969 c. 65. **(h)** 1914 c. 30. **(i)** 5 & 6 Geo. 5 c. 18.

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

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

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

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

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

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

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

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

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

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

William Ross,
One of Her Majesty's Principal Secretaries of State.

New St. Andrew's House,
Edinburgh.
4th August, 1975.

We concur,

J. Dormand,
Donald R. Coleman,
Two of the Lords Commissioners of Her Majesty's Treasury.

4th August, 1975.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations amend the Legal Aid (Scotland) (Assessment of Resources) Regulations 1960 in consequence of the Social Security Benefits Act 1975 (C.11), and the Social Security (Consequential Provisions) Act 1975 (C.18).

The regulations apply the rules for disregarding certain income, other than earnings, in the Supplementary Benefit Act 1966 (also known as the Ministry of Social Security Act 1966), as amended by the Social Security Benefits Act 1975 and the Social Security (Consequential Provisions) Act 1975, to the assessment of the resources of an applicant for legal aid under the Legal Aid (Scotland) Act 1967.

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

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