

1980 No. 1793 (S.160)
LEGAL AID AND ADVICE, SCOTLAND
**The Legal Aid (Scotland) (Assessment of Resources)
Regulations 1980**

<i>Made - - - -</i>	<i>20th November 1980</i>
<i>Laid before Parliament</i>	<i>27th November 1980</i>
<i>Coming into Operation</i>	<i>1st December 1980</i>

In exercise of the powers conferred upon me by section 4 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:—

Citation and Commencement

1. These regulations may be cited as the Legal Aid (Scotland) (Assessment of Resources) Regulations 1980 and shall come into operation on 1st December 1980.

Interpretation

2.—(1) In these regulations, unless the context otherwise requires:—

“the Act” means the Legal Aid (Scotland) Act 1967;

“assessment officer” means a person authorised by the Secretary of State to determine the disposable income, disposable capital and the maximum contribution of the person concerned;

“certificate” means a legal aid certificate issued by a Committee in accordance with a Scheme;

“child” means a child or step-child or adopted child of the person concerned which child is either:—

(a) of or under school age; or

(b) over school age and either receiving full time instruction at an educational establishment or undergoing training for a trade, profession or vocation;

“Committee” means the Central Committee, the Supreme Court Committee or a local Committee established under a Scheme, which requires the assessment officer to determine the disposable income and the disposable capital and the maximum contribution of the person concerned;

“income” includes benefits and privileges and the income of the person concerned includes any sum payable for the purpose of the maintenance of a child including any sum payable to him under the order of a court or under any instrument for that purpose;

“maximum contribution” means the maximum amount of a person’s contribution to the Legal Aid Fund in respect of any proceedings;

“period of computation” means the period of 12 months next ensuing from the date of the application for a certificate or such other period of 12

^(a) 1967 c. 43; section 4 was amended by section 20 of and paragraph 4 of Schedule 4 to the Social Security Act 1980 (c. 30).

months as in the particular circumstances of any case the assessment officer may consider to be appropriate;

“person concerned” means the person whose disposable income, disposable capital and maximum contribution are to be determined or redetermined or the person whose resources are to be treated as the resources of any other person under these regulations;

“Scheme” means a scheme made under section 8 of the Act; and

“school age” has the same meaning as in section 135(1) of the Education (Scotland) Act 1980(a).

(2) Any reference in these regulations to any payment received or made or any debt due or owed or any other resource possessed or obligation due by the person concerned under Scots law shall include references to any such resource or obligation under any corresponding provision in the law of any other country.

Determination by Assessment Officer

3.—(1) Subject to the provisions of section 4 of the Act, the assessment officer shall determine the disposable income, disposable capital and maximum contribution of the person concerned and may call attention to any special circumstances affecting the manner in which any contribution under section 3 of the Act is to be made.

(2) Save as otherwise provided by these regulations, the disposable income and disposable capital of the person concerned shall respectively be determined at amounts calculated in accordance with the rules set out in Schedules 1 and 2 to these regulations.

Subject Matter of Dispute

4. In computing the disposable income or the disposable capital of the person concerned, there shall be excluded the value of the subject matter of the dispute in respect of which application has been made for a certificate.

Resources of a Spouse

5.—(1) Except as otherwise provided in paragraph (2) of this regulation, in computing the disposable income and the disposable capital of the person concerned, the resources of his or her spouse shall be treated as his or her resources.

(2) The resources of the spouse of the person concerned shall not be treated as his or her resources if:—

- (a) the spouse has a contrary interest in the dispute in respect of which application for a certificate is made; or
- (b) the person concerned and the spouse are living separate and apart.

Resources of an Applicant who is a child

6.—(1) Where an application for a certificate is made by or on behalf of a child who is of or under school age, there shall, save in exceptional circumstances, in addition to the child's resources, be determined and taken into account the resources of

- (a) any person liable to maintain the child under section 17 of the Supplementary Benefits Act 1976(b); and

(a) 1980 c. 44.

(b) 1976 c. 71, as amended by sections 6 and 21 and paragraph 16 of Schedule 2 to the Social Security Act 1980 (c. 30).

(b) any person having care and control of the child, not being a person having such care and control by reason of any contract or for some temporary purpose.

(2) Where an application for a certificate is made by or on behalf of a child of or under school age, the resources of the child for the purposes of these regulations shall include any sum payable under the order of a court or under any instrument to any person for the purposes of the maintenance of the child.

Deprivation or Conversion of Resources

7. If it appears to the assessment officer that the person concerned has, with intent to reduce the amount of his disposable income or disposable capital—

(a) directly or indirectly deprived himself of any resources; or

(b) converted any part of his resources into resources which under these regulations are to be wholly or partly disregarded or in respect of which nothing is to be included in determining the resources of that person,

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.

Notification of the Assessment Officer's Determination

8. The assessment officer's determination of the disposable income, disposable capital and maximum contribution of the person concerned shall be communicated in writing to the Committee.

Re-determination on change of circumstances

9. Where it appears to a Committee that the circumstances upon which the assessment officer has determined the disposable income or disposable capital of the person concerned have altered to such an extent that his certificate should be varied or discharged, the assessment officer shall, if so required by that Committee, re-determine that person's disposable income, disposable capital and maximum contribution.

Amendment of Determination because of error or mistake

10. Where it appears to the assessment officer that there has been some error or mistake in the determination of a person's disposable income, disposable capital or maximum contribution or in any computation or estimate upon which such determination is based and that it would be just and equitable to correct the error or mistake, the officer may, with the consent of the Committee by whom the certificate would be issued, suspended or discharged, correct such error or mistake and make an amended determination; and such amended determination shall for all purposes be substituted for the original determination and shall have effect in all respects as if it were the original determination.

Appellate Proceedings

11. Where a Committee approve an application relating to proceedings (other than interlocutory proceedings) in an appellate court in any action, cause or matter in which the person concerned was an assisted person in a court below, they shall not require the assessment officer to re-determine that person's disposable income and disposable capital but shall, save as is hereinafter provided, assess the amount of the contribution, if any, payable in respect of the proceedings at an amount not greater than the maximum contribution determined by the assessment officer in relation to the earlier proceedings, less

any amount assessed by them or by another Committee to be paid in respect of those proceedings;

provided that, if since the last determination by the assessment officer of the disposable income and disposable capital of the person concerned, his circumstances have altered otherwise than as a result of the payment of a contribution in respect of proceedings in a court below, they may require the assessment officer to re-determine his disposable income and disposable capital and shall take into account

- (a) any increase in the amount of his disposable income by an amount greater than £156;
- (b) any decrease in the amount of his disposable income by an amount greater than £78; and
- (c) any increase in the amount of his disposable capital by an amount greater than £120.

Revocations

12. The regulations specified in Schedule 3 to these regulations are hereby revoked.

George Younger,
One of Her Majesty's Principal
Secretaries of State.

New St. Andrew's House,
Edinburgh.
20th November 1980.

We concur,

Carol Mather,
J. A Douglas-Hamilton,
Two of the Lords Commissioners
of Her Majesty's Treasury.

20th November 1980

Regulation (3) 2

SCHEDULE 1

RULES FOR COMPUTING DISPOSABLE INCOME

1. The income of the person concerned from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of computation, that income in the absence of other means of ascertaining it being taken to be the income received during the preceding year.

2. The income in respect of any emolument, benefit or privilege receivable otherwise than in cash shall be estimated at such a sum as in all the circumstances is just and equitable.

3.—(1) The income from a trade, business or gainful occupation other than an employment at a wage or salary shall be deemed to be the profits therefrom which have accrued or will accrue to the person concerned in respect of the period of computation and, in computing such profits, the assessment officer may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been made up.

(2) In ascertaining the profits for the purpose of the last foregoing paragraph there shall be deducted all sums necessarily expended to earn those profits, provided that no deduction shall be made in respect of the living expenses of that person or any member of his family or household, except in so far as such member of his family or household shall be wholly or mainly employed in such trade or business and such living expenses form part of his remuneration.

4.—(1) In computing the disposable income of the person concerned there shall be deducted the total amount of tax which it is estimated would be payable by the person concerned if his income, as computed in accordance with the foregoing rules of this Schedule (but without taking into account the operation of regulation 4 of these Regulations), were his income for a fiscal year and his liability for tax in that year were to be ascertained by reference to that income and not by reference to his income in any other year or period.

(2) For the purposes of this rule the tax shall be estimated at the rate provided by and after making all appropriate allowances, deductions or reliefs in accordance with the provisions of the Income Tax Acts in force for the fiscal year current at the date of the application for a certificate.

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) benefit under the Child Benefit Act 1975(a);
- (b) any benefit under the Family Income Supplements Act 1970(b);
- (c) any graduated retirement benefit under section 36 of the National Insurance Act 1965(c), as modified by regulation 3 of the Social Security (Graduated Retirement Benefit) (No. 2) Regulations 1978(d);
- (d) any payment for the maintenance of the person concerned being a payment made under the order of a court or a payment made by a person who for the purposes of the Supplementary Benefits Act 1976(e) is liable to maintain the person concerned;
- (e) benefit under the Supplementary Benefits Act 1976.

(3) This rule does not apply to income so far as it consists of any benefits under Chapters I to III of Part II of the Social Security Act 1975(f).

(4) This rule does not apply to income so far as it consists of injury benefit under

(a) 1975 c. 61.
(e) 1976 c. 71.

(b) 1970 c. 55.
(f) 1975 c. 14.

(c) 1965 c. 51.

(d) S.I. 1978/393.

Part II of the Social Security Act 1975 as amended 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 sum specified in section 6(1)(a) of the Social Security Pensions Act 1975(a);
- (b) any parent's pension under section 71 of the Social Security Act 1975;
- (c) 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 a woman who was living with the deceased as his wife or widower or in respect of children granted in respect of a death due to service or war injury under the power referred to in section 12(1) of the Social Security (Miscellaneous Provisions) Act 1977(b) (pensions etc., for death or disablement due to service of members of the armed forces) in so far as the pension or allowance concerned falls to be administered by the Secretary of State for Social Services, or under any power 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 so much of any pension or allowance for a widow or widower as exceeds the sum specified in section 6(1)(a) of the Social Security Pensions Act 1975.

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

- (a) the Personal Injuries (Emergency Provisions) Act 1939(c), the Pensions (Navy, Army, Air Force and Mercantile Marine) Act 1939(d) and the Polish Resettlement Act 1947(e);
- (b) any scheme made under the Injuries in War (Compensation) Act 1914(f), or the Injuries in War (Compensation) Act 1914 (Session 2)(g) and any War Risk Compensation Scheme for the Mercantile Marine.

(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 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 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 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.

6. There shall be disregarded:—

- (a) attendance allowance paid under the Social Security Acts 1975–1980(h);
- (b) mobility allowance paid under the Social Security Acts 1975–1980; and

(a) 1975 c. 60.
(e) 1947 c. 19.
(h) 1980 c. 30.

(b) 1977 c. 5.
(f) 1914 c. 30.

(c) 1939 c. 82.
(g) 1914 c. 18 (5 & 6 Geo. 5).

(d) 1939 c. 83.

- (c) constant attendance allowance paid as an increase to a disablement pension under section 61 of the Social Security Act 1975.

7. When the income of the person concerned consists, wholly or in part, of a wage or salary from employment there shall be deducted:—

- (a) the reasonable expenses of travelling to and from his place of employment;
 (b) the amount of any payments reasonably made for membership of a trade union or professional organisation; and
 (c) when it would be reasonable to do so, an amount to provide for the care of any dependent child living with the person concerned during the time that person is absent from the home by reason of employment; and
 (d) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme within the meaning of the Social Security Pensions Act 1975(a).

8. There shall be a deduction in respect of contributions payable by the person concerned (whether by deduction or otherwise) under the Social Security Acts, 1975 to 1980, of the amount estimated to be so payable in the 12 months following the application for a certificate.

9.—(1) There shall be a deduction in respect of rent of the main or only dwelling in the case of a householder of the amount of the net rent payable, or such part thereof as is reasonable in the circumstances and the assessment officer shall decide which is the main dwelling where the person concerned resides in more than one dwelling in which he has an interest.

(2) In this rule the expression “rent” means—

- (a) the feu duty or ground annual or the rent payable in respect of a year; and
 (b) a sum in respect of the yearly outgoings borne by the householder including, in particular, rates, a reasonable allowance towards any necessary expenditure on repairs and insurance and any other annual burden, including any annual instalment (whether of interest or capital) payable in respect of a heritable security (within the meaning of section 9(8)(a) of the Conveyancing and Feudal Reform (Scotland) Act 1970(b)) or a real burden *ad factum praestandum*.

(3) In this rule the expression “net rent” means

- (a) the rent less any proceeds of sub-letting any part of the premises in respect of which the said rent is paid or the outgoings incurred; or
 (b) where any person or persons other than the person concerned, his or her spouse or any dependant of his or hers is accommodated, otherwise than as a sub-tenant, in the premises for which the rent is paid, the rent less such an amount as the assessment officer may determine to be reasonably attributable to the accommodation of such person.

(4) Where any amount of the rent or rates is met by a rebate or allowance under Part II of the Housing (Financial Provisions) (Scotland) Act 1972(c) or by any rate rebate, the amount so met shall be deducted from the rent to be considered under paragraph (1) of this rule.

10. If the person concerned is not a householder, there shall be a deduction in respect of the cost of his living accommodation of such amount as is reasonable in the circumstances.

11.—(1) There shall be a deduction in respect of the maintenance of the spouse of the person concerned, if the spouses are living together, in respect of the maintenance of any dependent child and in respect of the maintenance of any dependent relative of the person concerned, being (in either of such cases) a member of his or her household, at the following rates:—

(a) 1975 c. 60.

(b) 1970 c. 35.

(c) 1972 c. 46.

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- (a) in the case of a spouse at a rate equivalent to 50 per cent above the amount specified for the time being in column (3) of paragraph 6 of Part IV of Schedule 4 to the Social Security Act 1975 (increase for adult dependant of Category A retirement pensioner)(a);
- (b) in the case of a dependent child or a dependent relative, at a rate equivalent to 50 per cent above the amount specified for the time being in paragraph 3 of Schedule 1 to the Supplementary Benefit (Requirements) Regulations 1980(b) appropriate to the age of the child or relative.

Provided that the assessment officer may reduce such rate by taking into account the income and other resources of the dependent child or other dependant to such extent as appears to the officer to be just and equitable.

(2) In ascertaining whether a child is a dependent child and whether a person is a dependent relative regard shall be had to their income and other resources.

12. If the person concerned is making and, throughout such period as the assessment officer may consider adequate, has regularly made bona fide payments for the maintenance of a spouse who is living apart, of a former spouse, of a child or of a relative who is not (in any of such cases) a member of the household of the person concerned, there shall be a deduction at the rate of such payments or at such rate, not exceeding the rate of such payments, as in all the circumstances is reasonable.

13. Where the person concerned must provide for any other matter the assessment officer may make an allowance of such amount as he considers to be reasonable in the circumstances of the case.

14. In computing the income from any source there shall be disregarded such amount, if any, as the assessment officer considers to be reasonable having regard to the nature of the income or to any other circumstances of the case.

(a) 1975 c. 14; Schedule 4 was amended by S.I. 1980/1245.
(b) S.I. 1980/1299.

Regulation (3) 2

SCHEDULE 2

RULES FOR COMPUTING DISPOSABLE CAPITAL

1. Subject to the provisions of these Regulations, there shall be included in the computation of the amount of the capital of the person concerned the amount or value of every resource of a capital nature ascertained as on the date of the application for a certificate:

Provided that, where it is brought to the notice of the assessment officer that, between the date of application for a certificate and the determination of the officer there has been a substantial fluctuation in the value of a resource or there has been a substantial variation in the nature of a resource affecting the basis of computation of its value, or any resource has ceased to exist or a new resource has come into the possession of the person concerned, the officer shall compute the capital resources of that person in the light of such facts and the resources as so computed shall be taken into account in the officer's determination.

2. So far as any resource does not consist of money, the amount or value thereof shall be taken to be the amount which that resource would realise if sold in the open market or, if there is only a restricted market for that resource, the amount which it would realise in that market, or shall be taken to be the amount or value thereof assessed in such manner as appears to the assessment officer to be just and equitable.

3. Where money is due to the person concerned, whether immediately payable or otherwise and whether the payment thereof is secured or not, the value shall be taken to be the present value thereof.

4. If the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the assessment officer may, in lieu of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat that person as if he were such sole owner or partner and compute the amount of his capital in respect of that resource in accordance with the next succeeding rule.

5. Where the person concerned is or is to be treated as the sole owner of or a partner in any business, the value of such business or his share therein to that person shall be taken to be either:—

- (a) such sum, or his share of such sum, as the case may be, as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development thereof; or
- (b) such sum as that person could borrow on the security of his interest in such business without injuring the commercial credit of that business;

whichever is the greater.

6. The value of any interest, whether vested or contingent, of the person concerned in the fee of any heritable or moveable property forming the whole or part of any trust or other estate, shall be computed by the assessment officer in such manner as appears to him to be both equitable and practicable.

7. In computing the amount of capital of the person concerned, there shall be wholly disregarded—

- (a) any death grant paid to a person under the provisions of section 32 of the Social Security Act 1975(a); and
- (b) any maternity grant to which a woman is entitled under section 21 of the Social Security Act 1975.

8. Save in exceptional circumstances, nothing shall be included in the amount of capital of the person concerned in respect of—

- (a) the household furniture and effects of the dwelling house occupied by him;

(b) articles of personal clothing; and

(c) the personal tools and equipment of his trade, not being part of the plant or equipment of a business to which the provisions of rule 5 of this Schedule apply.

9.—(1) In computing the amount of capital of the person concerned, the value of any interest in the main or only dwelling in which he resides shall be wholly disregarded.

(2) Where the person concerned resides in more than one dwelling in which he has an interest, the assessment officer shall decide which is the main dwelling and shall take into account in respect of the value to him of any interest in a dwelling which is not the main dwelling any sum which might be obtained by borrowing money on the security thereof.

10. Where the person concerned has received or is entitled to receive from a body of which he is a member a sum of money by way of financial assistance towards the cost of the proceedings in respect of which a certificate is applied for, such sum shall be disregarded.

11. The value of any life assurance or endowment policy shall be taken to be the amount which the person concerned could readily borrow on the security thereof.

12. Where under any statute, bond, agreement, indemnity, guarantee or other instrument the person concerned is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, an allowance shall be made of such an amount as is reasonably likely to become payable within the 12 months immediately following the date of application for a certificate.

13. An allowance may be made in respect of any debt owed by the person concerned (other than a debt secured on the dwelling or dwellings in which he resides) to the extent to which the assessment officer considers reasonable, provided that the person concerned produces evidence to the satisfaction of the officer that the debt or part of the debt will be discharged within the twelve months immediately following the date of application for a certificate.

14. In computing the amount of capital there shall be disregarded such an amount of capital, if any, as the assessment officer in the circumstances of the case may in his discretion decide.

Regulation 12

SCHEDULE 3

REGULATIONS REVOKED

Title	Reference
Legal Aid (Scotland) (Assessment of Resources) Regulations 1960	S.I. 1960/1395
Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1960	S.I. 1960/2194
Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1966	S.I. 1966/1379
Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1970	S.I. 1970/1135
Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1971	S.I. 1971/275
Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1972	S.I. 1972/1756
Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1973	S.I. 1973/1561
Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1975	S.I. 1975/1372
Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1977	S.I. 1977/1761
Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1978	S.I. 1978/1566
Legal Aid (Scotland) (Assessment of Resources) Amendment Regulations 1979	S.I. 1979/324

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations consolidate, with amendments, the Legal Aid (Scotland) (Assessment of Resources) Regulations 1960 and subsequent amending regulations.

The main change is that, following upon the abolition of the Supplementary Benefits Commission under the Social Security Act 1980, the assessment of resources of the applicant for legal aid is to be carried out by an officer authorised by the Secretary of State (Regulation 3).

The regulations also contain the rules for computing disposable income (Schedule 1) and disposable capital (Schedule 2).

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