
STATUTORY INSTRUMENTS

1989 No. 338

**The Civil Legal Aid (Assessment
of Resources) Regulations 1989**

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Assessment of Resources) Regulations 1989 and shall come into force on 1st April 1989.

Revocations

2. The Regulations specified in Schedule 1 are hereby revoked.

Interpretation

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

“the Act” means the Legal Aid Act 1988;

“area committee”, “Area Director” and “assessment officer” have the meanings assigned to them by the Civil Legal Aid (General) Regulations 1989(1);

“certificate” means a legal aid certificate issued in accordance with the Civil Legal Aid (General) Regulations 1989;

“child” means a person—

- (a) under the age that is for the time being the upper limit of compulsory school age within the meaning of the Education Act 1944(2); or
- (b) 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;

“contribution” and “maximum contribution” have the meanings assigned to them by the Civil Legal Aid (General) Regulations 1989;

“disposable capital” and “disposable income” have the meanings assigned to them by regulation 4;

“income” includes—

- (a) benefits,
- (b) privileges, and
- (c) any sum payable (whether voluntarily or under a court order, the terms of any instrument or otherwise) for the purpose of the maintenance of a child;

“legal aid” means representation under Part IV of the Act;

“make an assessment”, in relation to the assessment officer, means to assess the disposable income, disposable capital and maximum contribution of the person concerned;

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

“person concerned” means the person—

- (a) whose disposable income and disposable capital are to be assessed or reassessed; or
- (b) whose resources are to be treated as the resources of any other person under these Regulations.

(2) Any reference in these Regulations to a regulation or Schedule by number means the regulation or Schedule so numbered in these Regulations.

Computation of disposable capital, disposable income and maximum contribution

4.—(1) Subject to the provisions of these Regulations, the assessment officer shall—

- (a) take into account the financial resources of the person concerned; and
- (b) compute his income and capital in accordance with Schedules 2 and 3;

and, in these Regulations, “disposable income” and “disposable capital” mean the amounts of income and capital available for the making of a contribution after the person concerned’s income and capital have been computed in accordance with those Schedules.

(2) Legal aid shall be available to a person whose disposable income does not exceed £6,035 a year but a person may be refused legal aid where—

- (a) his disposable capital exceeds £6,000; and
- (b) it appears to the Area Director that he could afford to proceed without legal aid.

(3) The maximum contribution which a person who desires to receive legal aid shall be liable to make is—

- (a) where his disposable income exceeds £2,515 a year, a contribution in respect of disposable income not greater than one quarter of the excess;
- (b) where his disposable capital exceeds £3,000, a contribution in respect of disposable capital not greater than the excess.

Subject matter of dispute

5.—(1) In computing the income or capital of the person concerned, there shall be excluded the value of the subject matter of the dispute in respect of which the legal aid application has been made.

(2) Periodical payments of maintenance (whether made voluntarily or otherwise) shall not be treated as the subject matter of the dispute for the purposes of paragraph (1).

Application in representative, fiduciary or official capacity

6. Where an application for legal aid is made by a person who is concerned in the proceedings only in a representative, fiduciary or official capacity, the assessment officer shall, in computing the income and capital of that person and the amount of any contribution to be made,—

- (a) where so requested by the Area Director, assess the value of any property or estate or the amount of any fund out of which that person is entitled to be indemnified and the disposable income, disposable capital and maximum contribution of any persons (including that person if appropriate), who might benefit from the outcome of the proceedings; and
- (b) except in so far as they are assessed under paragraph (a), disregard the personal resources of that person.

Resources of spouses etc

7.—(1) Subject to paragraph (2), in computing the income and 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 the legal aid application is made; or
- (b) the person concerned and the spouse are living separate and apart.

(3) Paragraphs (1) and (2) above and Schedules 2 and 3 shall apply to a man and a woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage.

Resources of an applicant who is a child

8.—(1) Subject to paragraph (2), where a legal aid application is made by or on behalf of a child who is under the upper limit of compulsory school age, the resources of any person—

- (a) who is responsible in law for maintaining the child; and
- (b) with whom the child is living or would normally live,

shall be assessed and taken into account in addition to the child's resources.

(2) Paragraph (1) shall not apply where the person responsible for maintaining the child has a contrary interest in the dispute in respect of which the legal aid application is made, or in other exceptional circumstances.

(3) Where a legal aid application is made by or on behalf of a child, the resources of the child shall, for the purposes of these Regulations, include any sum payable to any person for the maintenance of that child.

Deprivation or conversion of resources

9. Where 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 and, for this purpose, resources which are to be wholly or partly disregarded shall include the repayment of money borrowed on the security of a dwelling.

Notification of the assessment officer's decision

10.—(1) The assessment officer shall make an assessment of the disposable capital, disposable income and maximum contribution of the person concerned.

(2) The assessment made under paragraph (1) shall be communicated in writing to the Area Director and the assessment officer may draw attention to any special circumstances affecting the manner in which any contribution is to be made.

Duty of the person concerned to report change in financial circumstances

11. The person concerned shall inform the Area Director of any change in his financial circumstances which has occurred since the original assessment was made and which he has reason to believe might affect the terms on which the certificate was granted or its continuation.

Re-assessment on change of circumstances

12.—(1) Where—

(a) it appears that the circumstances upon which the assessment officer has assessed the disposable income or disposable capital of the person concerned have altered so that—

(i) his disposable income may have increased by an amount greater than £750 or decreased by an amount greater than £300; or

(ii) his disposable capital may have increased by an amount greater than £750;

or

(b) new information which is relevant to the assessment has come to light;

the assessment officer shall re-assess that person's disposable income or disposable capital and maximum contribution, as the case may be, unless it appears to him to be unlikely that any significant change in that person's liability to make a contribution will result from such a re-assessment.

(2) For the purpose of making a re-assessment under paragraph (1), the amount and value of every resource of a capital nature acquired since the date of the legal aid application shall be ascertained as at the date of receipt of that resource.

Further assessment of resources outside the original period of computation

13.—(1) Where a certificate is still in force after the expiration of the period of computation and the Area Director considers that the current financial circumstances of the person concerned are such that he could afford to proceed without legal aid, he may request the assessment officer to make a further assessment of the current disposable income and current disposable capital of the person concerned with a view to discharging the certificate.

(2) Where a request under paragraph (1) is made, the assessment officer shall make a further assessment in accordance with the provisions of Schedules 2 and 3 and, for this purpose,—

(a) the period of computation shall be the period of twelve months following the date of the Area Director's request; and

(b) the amount and value of every resource of a capital nature acquired since the date of the legal aid application shall be ascertained as at the date of receipt of that resource.

Amendment of assessment due to error or mistake

14. Where it appears to the assessment officer that—

(a) there has been some error or mistake in the assessment of a person's disposable income, disposable capital or maximum contribution or in any computation or estimate upon which such assessment was based; and

(b) it would be just and equitable to correct the error or mistake,

the officer may make an amended assessment which shall, for all purposes, be substituted for the original assessment and have effect in all respects as if it were the original assessment.

Power of assessment officer to estimate the resources of the person concerned

15.—(1) Where the Area Director informs the assessment officer that the person concerned requires a certificate as a matter of urgency and the officer is not satisfied that he can make an assessment and communicate it to the Area Director by the time that he is requested so to do, the officer may, on the basis of the information then available to him, make an estimate of the disposable income and disposable capital of the person concerned and of his maximum contribution.

(2) The assessment officer shall communicate any estimate made under paragraph (1) to the Area Director in writing and, until the making of a full assessment, the estimate shall be treated as if it were an assessment and section 17(1) of the Act and regulation 4(2) and (3) above shall have effect as if the disposable income, disposable capital and maximum contribution of the person concerned were of the amounts specified in the estimate.

(3) In any case in which the assessment officer makes an estimate under paragraph (1) he shall, upon receiving such additional information as he may require, make an assessment and shall communicate it to the Area Director in writing and the assessment shall for all purposes take the place of the estimate.

Dated 28th February 1989

Mackay of Clashfern, C.

We consent,

*Kenneth Carlisle
Alan Howarth*

Two of the Lords Commissioners of Her Majesty's Treasury

Dated 3rd March 1989