

SCHEDULE 2

Regulation 13(1)

ASSESSMENT OF RESOURCES

1. In this Schedule, unless the context otherwise requires—

“capital” means the amount or value of every resource of a capital nature;

“income” means the total income from all sources which the person concerned has received or may reasonably expect to receive in respect of the seven days up to and including the date of his application;

“the person concerned” means the person whose disposable capital and disposable income are to be assessed.

2. The provisions of this Schedule apply to a man and a woman who are living with each other in the same household as husband and wife as they apply to the parties to a marriage.

3. Any question arising under this Schedule shall be decided by the solicitor to whom the client has applied and that solicitor, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Board as to the application of this Schedule.

4. The disposable capital and disposable income of the person concerned shall be the capital and income as assessed by the solicitor 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.

5. The resources of any person who, under section 26(3) and (4) of the Social Security Act 1986 is liable to maintain a child or who usually contributes substantially to a child’s maintenance, or who has care and control of the child, not being a person who has such care and control by reason of any contract or for some temporary purpose, may be treated as the resources of the child, if, having regard to all the circumstances, including the age and resources of the child and to any conflict of interest it appears just and equitable to do so.

6. If it appears to the solicitor that the person concerned 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 wholly or partly, 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.

7.—(1) In computing the capital and income of the person concerned, there shall be left out of account the value of the subject matter of any claim in respect of which he is seeking advice or assistance.

(2) In computing the capital and income of the person concerned, the resources of any spouse of his shall be treated as his resources unless—

(i) the spouse has a contrary interest in the matter in respect of which he is seeking advice and assistance, or

(ii) the person concerned and his spouse are living separate and apart, or

(iii) in all the circumstances of the case it would be inequitable or impractical to do so.

8. In computing the capital of the person concerned—

(a) there shall be left out of account the value of the main or only dwelling in which he resides and the value of his household furniture and effects, of his clothes and of tools and implements of his trade;

(b) where the person concerned resides in more than one dwelling in which he has an interest there shall be taken into account in respect of the value to him of any interest in a dwelling

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which is not the main dwelling any sum which may be obtained by borrowing money on the security thereof;

- (c) where the person concerned 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 £335 in respect of the first person, £200 in respect of the second and £100 in respect of each further person.

9. In computing the income of the person concerned—

- (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) contributions estimated to have been paid under the Social Security Acts 1975–1988 or any scheme made under those Acts during or in respect of the seven days up to and including the date of the application for advice and assistance;
- (b) there shall be a deduction in respect 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—
 - (i) in the case of a spouse at a rate equivalent to 25 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(1) (increase for adult dependant of category A retirement pension);
 - (ii) in the case of a dependent child or a dependent relative, at a rate equivalent to 25 per cent above the amount specified for the time being in paragraph 2 of Part I of Schedule 2 to the Income Support (General) Regulations 1987(2) appropriate to the age of the child or relative.

10. If the person concerned is making bona fide payments for the maintenance of a spouse who is living apart, of a former spouse, of a child or relative who is not (in any such case) a member of the household of the person concerned, there shall be a deduction of such payment as was or will be made in respect of the seven days up to and including the date of the application for advice and assistance.

11. Where it appears to the solicitor that there has been some error or mistake in the assessment of the disposable income, disposable capital or maximum contribution of the person concerned, he may reassess the disposable income or disposable capital or maximum contribution or, as the case may be, amend the assessment and in the latter case the amended assessment shall for all purposes be substituted for the original assessment.

(1) 1975 c. 14; Part IV of Schedule 4 was amended by S.I.1989/43.
(2) S.I. 1987/1967.