

SCHEDULE 3

Regulation 26(2)

DETERMINATION OF DISPOSABLE INCOME AND DISPOSABLE CAPITAL

General

1.—(1) In computing the disposable income and disposable capital of the person concerned, the financial resources of any spouse of his shall be treated as his resources except where—

- (a) the person concerned and his spouse are living separate and apart; or
- (b) the spouse has a contrary interest in the proceedings in respect of which an application for legal aid has been made; or
- (c) in all the circumstances of the case, it would be inequitable so to do.

(2) Where a spouse fails to provide information as to his financial resources in response to the request of the proper officer, the proper officer may make an estimate of the likely resources of the spouse on the basis of any information which is available.

2. Paragraph 1(1) and (2) above and the provisions of this Schedule shall apply to a man and a woman who are living with each other in the same household a husband and wife as they apply to the parties to a marriage.

3. Where it appears to the proper 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.

Disposable income

4.—(1) The income which the person concerned receives during the contribution period shall be taken to be his income for the purposes of this Schedule.

(2) The income received during the contribution period may be estimated on the basis of the income received by the person concerned during the 3 months prior to the commencement of the contribution period.

5.—(1) Where the person concerned receives the profits from any trade, business or gainful occupation other than employment at a wage or salary, the profit which accrues during the contribution period shall be taken to be his income for the purposes of this Schedule.

(2) The income received during the contribution period may be estimated on the basis of the profits made during the last accounting period for which accounts have been prepared.

6. In computing disposable income, there shall be disregarded—

- (a) attendance allowance paid under the Social Security Acts 1975–1988(1);
- (b) mobility allowance paid under the Social Security Acts 1975–1988;
- (c) constant attendance allowance paid as an increase to a disablement pension under section 61 of the Social Security Act 1975(2);

(1) 1975 c. 14; 1988 c. 7.

(2) 1975 c. 14; section 61 was amended by the Social Security Act 1986 (c. 50), section 39, Schedule 3, paragraph 6.

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- (d) housing benefit paid under the Social Security Act 1986(3); and
- (e) payments made out of the social fund under section 32 of the Social Security Act 1986(4).

7. In computing disposable income there shall be deducted—

- (a) the total amount of any tax payable on that income;
- (b) the total amount of any contributions payable under the Social Security Acts 1975–1988;
- (c) reasonable expenses of travelling to and from the place of employment;
- (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(5) or to a personal pension scheme within the meaning of the Social Security Act 1986; and
- (e) reasonable expenses in respect of the making of reasonable provision for the care of any dependent child living with the person concerned because of that person’s absence from home by reason of employment.

8.—(1) In computing disposable income there shall be a deduction in respect 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.

(2) For the purposes of this paragraph, “rent” includes—

- (a) the annual rent payable; and
- (b) a sum in respect of yearly outgoings borne by the householder including, in particular, rates, a reasonable allowance towards any necessary expenditure on repairs and insurance and any annual instalment (whether of interest or of capital) payable in respect of a mortgage debt or heritable security charged on the house in which the householder resides or has an interest and,

in calculating the amount of rent payable, any housing benefit paid under the Social Security Act 1986 shall be deducted from amount of rent payable.

(3) In this paragraph, the expression “net rent” means 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 are incurred except that, where any person or persons other than the person concerned, his or her spouse or any dependent of his or hers is accommodated, otherwise than as a sub-tenant, in the premises for which the rent is paid, the rent may be deemed to be reduced by an amount reasonably attributable to such other person or persons.

9. Where the person concerned is not a householder, there shall be a deduction in respect of the costs of his living accommodation of such an amount as is reasonable in the circumstances.

10.—(1) Subject to sub-paragraph (2) below, in computing disposable income, there shall be a deduction—

- (a) in respect of the maintenance of the spouse of the person concerned, where the spouses are living together;
- (b) in respect of the maintenance of any dependent child and of any dependent relative of the person concerned where such persons are members of his household;

at the following rates—

(3) 1986 c. 50.
(4) 1986 c. 50; section 32 was amended by the Social Security Act 1988 (c. 7), section 18, Schedule 3, paragraphs 1 to 7, Schedule 5.
(5) 1975 c. 60.

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- (i) in the case of a spouse at the rate equivalent to 25% 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 pension)(6);
- (ii) in the case of a dependent child or a dependent relative, at the rate equivalent to 25% above the amount specified for the time being in paragraph 2 of Part I of Schedule 2 to the Income Support (General) Regulations 1987(7) appropriate to the age of the child or relative.

(2) The proper officer may reduce any rate provided by virtue of sub-paragraph (1) 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.

(3) In ascertaining whether a child is a dependent child or whether a person is a dependent relative for the purposes of this paragraph, regard shall be had to their income and other resources.

11. Where the person concerned is making and, throughout such period as the proper officer may consider to be adequate, has regularly made bona fide payments for the maintenance of

- (a) a spouse who is living apart;
- (b) a former spouse;
- (c) a child; or
- (d) a relative;

who is not 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.

12. In computing disposable income, there shall be a deduction in respect of any sum or sums payable by the person concerned under an order made by, or arising from any conviction before, the High Court, the Crown Court, a county court, or a magistrates' court in any proceedings other than those in respect of which the legal aid order was made.

13. Where the person concerned is required to, or may reasonably, provide for any other matter, the proper 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 proper officer considers to be reasonable having regard to the nature of the income or to any other circumstances of the case.

Disposable capital

15.—(1) In computing the capital of the person concerned, there shall be included the amount or value of every resource of a capital nature belonging to him on the date of the assessment.

(2) In so far as any resource of a capital nature does not consist of money, its amount or value shall be taken to be—

- (a) the amount which that resource would realise if sold in the open market, or if there is only a restricted market for the resource, the amount which it would realise in that market, after deduction of any expenses incurred in the sale, or
- (b) if such an amount cannot be ascertained, an amount which appears to the proper officer to be reasonable.

16. In computing the capital of the person concerned, there shall be disregarded—

(6) 1975 c. 14; Part IV of Schedule 4 to the Social Security Act 1975 was amended by S.I.1989/43.

(7) S.I. 1987/1967.

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- (a) any savings of mobility allowance paid under the Social Security Act 1975 which the person concerned intends to use in connection with mobility;
- (b) for a period not exceeding 12 months from the date of receipt, any arrears of—
 - (i) attendance or mobility allowance paid under the Social Security Act 1975–1988;
 - (ii) income support or family credit; and
- (c) any payments made out of the social fund under section 32 of the Social Security Act 1986.

17. Except where it is reasonable in the circumstances so to do, no sum shall be included in the amount of the capital of the person concerned in respect of the value of the assets of any business owned in whole or in part by him.

18. Save in exceptional circumstances, no sum shall be included in the amount of the capital of the person concerned in respect of—

- (a) household furniture and effects of the main or only residence occupied by him;
- (b) articles of personal clothing; and
- (c) tools and equipment of his trade.

19. In computing the amount of the capital of the person concerned, the value of any interest in the main or only residence in which he resides shall be wholly disregarded.

20. In computing the capital of the person concerned, there may also be disregarded such an amount of capital (if any) as the proper officer decides to disregard taking into account the nature of the capital or any other circumstances of the case.