
STATUTORY INSTRUMENTS

2013 No. 480

The Civil Legal Aid (Financial Resources and Payment for Services) Regulations 2013

PART 2 **E+W**

Determinations in respect of an individual's financial resources

CHAPTER 3 **E+W**

Calculation of income

Calculation of income **E+W**

21. The income of the individual must be taken to be—
- (a) the gross amount the individual has earned or will earn;
 - (b) the gross amount of any entitlements that have accrued, or will accrue, to the individual; and
 - (c) any other gross sums from any source which the individual has received, or is likely to receive,

in cash or in kind, during the period of calculation (referred to in regulation 14(2) and (3)), but in calculating such income the Director may have regard to the average income of the individual during such other period as the Director considers appropriate.

Calculation of income from trade, business or gainful employment **E+W**

22.—(1) The income from a trade, business or gainful occupation other than an occupation at a wage or salary must be deemed to be whichever of the following the Director considers more appropriate and practicable—

- (a) the profits which have accrued or will accrue to the individual in respect of the period of calculation; or
 - (b) the drawings of the individual.
- (2) In calculating the profits under paragraph (1)(a)—
- (a) the Director may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared; and
 - (b) there must be deducted all sums necessarily expended to earn those profits, but no deduction may be made in respect of the living expenses of the individual or any member of their family or household, except in so far as such member of their family or household is wholly or mainly employed in such trade or business and such living expenses form part of that member's remuneration.

Status: Point in time view as at 06/04/2016.

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Deductions for income tax and national insurance contributions **E+W**

23.—(1) For the purposes of this regulation, “national insurance contributions” means contributions under Part 1 of the Social Security Contributions and Benefits Act 1992 ^{M1}.

(2) Subject to paragraph (3), in calculating the disposable income of the individual, any income tax and national insurance contribution paid on that income in respect of the period of calculation must be deducted.

(3) Where an application is made for family help (higher) or legal representation, in calculating the disposable income of the individual any income tax and national insurance contribution payable on that income in respect of the period of calculation must be deducted.

Marginal Citations

M1 1992 c. 4.

Payments to be disregarded from calculation of disposable income or gross income **E+W**

24.—(1) In calculating the disposable income or the gross income of the individual, the following payments must be disregarded—

- (a) disability living allowance paid under section 71 of the Social Security Contributions and Benefits Act 1992 ^{M2} or section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ^{M3};
- (b) attendance allowance paid under section 64 of the Social Security Contributions and Benefits Act 1992 or section 64 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- (c) constant attendance allowance paid under section 104 of the Social Security Contributions and Benefits Act 1992 as an increase to a disablement pension or section 104 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- (d) any payment made out of the social fund under the Social Security Contributions and Benefits Act 1992 or the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
- (e) carer's allowance paid under section 70 of the Social Security Contributions and Benefits Act 1992 ^{M4} or section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ^{M5};
- (f) council tax benefit paid under section 131 of the Social Security Contributions and Benefits Act 1992 ^{M6};
- (g) any direct payments made under [^{F1}sections 31 to 33 of the Care Act 2014 (direct payments) or under] regulations made under [^{F2}section 49(3) of the Children and Families Act 2014 (personal budgets and direct payments),] section 57(1) of the Health and Social Care Act 2001 ^{M7} (direct payments), section 17A of the Children Act 1989 ^{M8} (direct payments)[^{F3}, section 8(1)] of the Carers and Direct Payments Act (Northern Ireland) 2002^{M9}[^{F4}or sections 50 to 53 of the Social Services and Well-being (Wales) Act 2014];
- (h) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995 ^{M10} as is by virtue of that section to be treated as payable by way of jobseeker's allowance;
- (i) severe disablement allowance paid under section 68 of the Social Security Contributions and Benefits Act 1992 ^{M11} or section 68 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992 ^{M12};

- (j) exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983 ^{M13};
- (k) any pensions paid under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006 ^{M14};
- (l) to the extent that it exceeds the relevant figure referred to in regulation 25(2)(b), any financial support paid under any agreement for the care of a foster child;
- (m) any payment made out of the Independent Living Fund 2006; ^{F5} ...
- (n) any personal independence payment under Part 4 of the Welfare Reform Act 2012 ^{M15} ^{F6};
- (o) any armed forces independence payment payable under the Armed Forces and Reserve Forces (Compensation Scheme) Order 2011].

(2) Where an application is made for legal help or legal representation in relation to a matter described in paragraph 44 (cross-border disputes) of Part 1 of Schedule 1, in calculating the disposable income or the gross income of the individual, a payment by another EU Member State that is equivalent to a payment listed in paragraph (1) must be disregarded.

Textual Amendments

- F1** Words in reg. 24(1)(g) inserted (1.4.2015) by [The Care Act 2014 \(Consequential Amendments\) \(Secondary Legislation\) Order 2015 \(S.I. 2015/643\)](#), art. 1(2), **Sch. para. 44(2)** (with art. 4); S.I. 2015/993, **art. 2(a)**
- F2** Words in reg. 24(1)(g) inserted (13.4.2015) by [The Legal Aid, Community Legal Service and Criminal Defence Service \(Amendment\) Regulations 2015 \(S.I. 2015/838\)](#), regs. 1(2), **9(a)**
- F3** Words in reg. 24(1)(g) substituted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) \(Secondary Legislation\) Regulations 2016 \(S.I. 2016/211\)](#), reg. 1(2), **Sch. 3 para. 155(a)**
- F4** Words in reg. 24(1)(g) inserted (6.4.2016) by [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) \(Secondary Legislation\) Regulations 2016 \(S.I. 2016/211\)](#), reg. 1(2), **Sch. 3 para. 155(b)**
- F5** Word in reg. 24(1)(m) omitted (8.4.2013) by virtue of [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions: Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), art. 2(2), **Sch. para. 49(2)(a)**
- F6** Reg. 24(1)(o) inserted (8.4.2013) by [The Armed Forces and Reserve Forces Compensation Scheme \(Consequential Provisions: Subordinate Legislation\) Order 2013 \(S.I. 2013/591\)](#), art. 2(2), **Sch. para. 49(2)(b)**

Marginal Citations

- M2** Section 71 is to be repealed by section 90 of the Welfare Reform Act 2012 at a date to be appointed.
- M3** 1992 c. 7.
- M4** Section 70 was amended to provide for carer's allowance by articles 2 and 3 of, and paragraphs 1 and 2 of the Schedule to, the [Regulatory Reform \(Carer's Allowance\) Order 2002 \(S.I. 2002/1457\)](#).
- M5** Section 70 was amended to provide for carer's allowance by article 3 of the Deregulation (Carer's Allowance) Order (Northern Ireland) 2002 S.R. (NI) 2002 No 321.
- M6** Section 131 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.
- M7** 2001 c. 15. Section 57 was amended by section 146(1) to (7) of the [Health and Social Care Act 2008 \(c. 14\)](#) and in relation to Wales, by section 16 of the Social Care Charges (Wales) Measure 2010.
- M8** 1989 c. 41. Section 17A was substituted by section 58 of the [Health and Social Care Act 2001 \(c. 15\)](#); amended by section 39 of, and paragraph 1 and 3 of Schedule 3 to, the [Children and Young Persons Act 2008 \(c. 23\)](#); section 160 of, and paragraph 1 of Schedule 14 to, the [Health and Social Care Act 2008 \(c. 14\)](#); section 60 of, and Schedule 6 to, the [Tax Credits Act 2002 \(c. 21\)](#); section 47 of, and

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paragraphs 15 and 17 of Schedule 3 to, the Tax Credits Act 2002; and section 28(1) of, and paragraph 6(1) and (3) of Schedule 3 to, the [Welfare Reform Act 2007 \(c. 5\)](#).

M9 2002 c. 6.

M10 1995 c. 18. Section 26 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.

M11 Section 68 was repealed by section 65 of, and Part IV of Schedule 13 to, the Welfare Reform and Pensions Act 1999, but is subject to the savings provision specified in article 4 of the [Welfare Reform and Pensions Act 1999 \(Commencement No. 9, and Transitional and Savings Provisions\) Order 2000 \(S.I. 2000/2958\)](#).

M12 Section 68 was repealed by article 62 of, and paragraph 25 of Schedule 8 and Part IV of Schedule 10 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999, but is subject to the savings provision specified in article 4 of the Welfare Reform and Pensions (1999 Order) (Commencement No. 6 and Transitional and Savings Provisions) Order (Northern Ireland) 2000 (S.I. 2000/332 (C. 14)).

M13 S.I. 1983/686. Article 15 of the Scheme, under which exceptionally severe disablement allowance is payable, was amended by paragraph 4 of Schedule 1 to the [Personal Injuries \(Civilians\) Amendment Scheme 2001 \(S.I. 2001/420\)](#). Paragraph 4 of Schedule 3 to the Scheme, which sets out the rate at which exceptionally severe disablement allowance is payable was substituted by paragraph 1 of Schedule 1 to the [Personal Injuries \(Civilians\) Scheme \(Amendment\) Order 2010 \(S.I. 2010/283\)](#).

M14 S.I. 2006/606, to which there are amendments not relevant to these Regulations.

M15 2012 c. 5.

Deductions in respect of a partner and dependants of the individual **E+W**

25.—(1) For the purposes of this regulation, “the Schedule” means Schedule 2 to the Income Support (General) Regulations 1987^{M16}.

(2) Subject to paragraph (3), in calculating the disposable income of the individual there must be a deduction at or equivalent to the following rates (as they applied at the beginning of the period of calculation)—

- (a) in respect of the maintenance of the individual's partner, the difference between the income support allowance for a couple both aged not less than 18 (which is specified in column 2 of item (3)(d) of the table in paragraph 1 of the Schedule), and the allowance for a single person aged not less than 25 (which is specified in column 2 of item (1)(e) of the table in paragraph 1 of the Schedule); and
- (b) in respect of the maintenance of any dependent child or dependent relative of the individual, where such persons are members of the individual's household—
 - (i) in the case of a dependent child or a dependent relative aged 15 or under at the beginning of the period of calculation, the amount specified at (a) in column 2 in the table in paragraph 2 of the Schedule; and
 - (ii) in the case of a dependent child or a dependent relative aged 16 or over at the beginning of the period of calculation, the amount specified at (b) in column 2 in the table in paragraph 2 of the Schedule.

(3) The Director may reduce any rate provided by virtue of paragraph (2) by taking into account the income and other resources of the dependent child or dependent relative to such extent as appears to the Director to be equitable.

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

Modifications etc. (not altering text)

- C1** Reg. 25 applied (1.4.2013) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Consequential, Transitional and Saving Provisions\) Regulations 2013 \(S.I. 2013/534\)](#), regs. 1, **9(2)(b)**

Marginal Citations

- M16** [S.I. 1987/1967](#), amended by [S.I. 2012/780](#), [S.I. 2003/455](#) and [S.I. 1996/2545](#); there are other amending instruments but none is relevant.

Deduction in respect of maintenance **E+W**

26. Where the individual is making and, throughout such period as the Director considers adequate, has regularly made payments for the maintenance of—

- (a) a former partner;
- (b) a child; or
- (c) a relative,

who is not a member of the individual's household, a reasonable amount must be deducted in respect of such payments.

Deductions in respect of employment expenses and child care costs **E+W**

27.—(1) Where the income of the individual consists, wholly or partly, of a wage or salary from employment, there must be deducted—

- (a) the sum of £45 per month; and
- (b) where it would be reasonable to do so, an amount to provide for the care of any dependent child living with the individual during the time that individual is absent from home by reason of their employment.

(2) Where the income of the individual consists, wholly or partly, of income from a trade, business or gainful occupation other than an occupation at a wage or salary, there must be deducted, where it would be reasonable to do so, an amount to provide for the care of any dependent child living with the individual during the time that individual is absent from home whilst the individual is engaged in that trade, business or gainful occupation.

[^{F7}(3) Where the income of the individual consists, wholly or partly, of study-related income, there must be deducted, where it would be reasonable to do so, an amount to provide for the care of any dependent child living with the individual during the time that individual is absent from home by reason of their course of study.

(4) In this regulation, the “study-related income” of an individual means income consisting of a—

- (a) student loan;
- (b) student grant; or
- (c) other income received from a person who is not a partner or relative of the individual,

and the purpose of the income is to support the individual’s course of study.]

Textual Amendments

- F7** [Reg. 27\(3\)\(4\)](#) inserted (3.11.2014) by [The Civil Legal Aid \(Financial Resources and Payment for Services\) \(Amendment\) \(No. 2\) Regulations 2014 \(S.I. 2014/2701\)](#), regs. 1, **2(3)** (with regs. 3, 4)

Status: Point in time view as at 06/04/2016.

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Deductions in respect of rent or cost of living accommodation **E+W**

- 28.**—(1) Paragraphs (2) to (5) apply only if the individual is a householder.
- (2) Subject to paragraph (4), in calculating the disposable income of the individual—
- (a) the net rent payable by the individual in respect of their main or only dwelling must be deducted; and
 - (b) where the individual resides in more than one dwelling, the Director must decide which is the main dwelling.
- (3) In calculating the amount of net rent payable, there must be deducted—
- (a) any housing benefit paid under section 130 of the Social Security Contributions and Benefits Act 1992^{M17} or section 129 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992;
 - (b) any proceeds of sub-letting any part of the premises; and
 - (c) an amount reasonably attributable to any person other than the individual, their partner or any dependant of the individual, who is accommodated in the premises otherwise than as a sub-tenant.
- (4) Where the amount of net rent paid by the individual is less than the amount of net rent payable, the Director may deduct the lesser amount where the Director considers it is reasonable to do so in the circumstances, having regard to—
- (a) the likelihood that the individual will recommence payment of the full contractual amount in the future;
 - (b) the relationship of the individual with the landlord; and
 - (c) any agreement with the landlord or mortgagee for payment deferral.
- (5) Paragraph (4) does not apply where the individual makes an application in respect of a matter described in paragraph 33 (loss of home) of Part 1 of Schedule 1, to the extent that—
- (a) the matter concerns possession of the individual's home; and
 - (b) the individual is resisting a court order for such possession.
- (6) If the individual is not a householder, a reasonable amount in respect of the cost of their living accommodation must be deducted.
- (7) If no deduction has been made under regulation 25(2), the maximum amount to be deducted under paragraph (2) or (4) or, as the case may be, (6), must be £545.
- (8) In this regulation—
- “householder”, in relation to domestic premises, means a person who—
- (a) owns the dwelling (as a freeholder or leaseholder); or
 - (b) rents accommodation at that address (as a tenant or sub-tenant); and
- “net rent” means—
- (a) any monthly rent; and
 - (b) any monthly instalment (whether of interest or capital) in respect of a debt secured by a mortgage or charge on the property.

Marginal Citations

M17 1992 c. 4. Section 130 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.

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Deductions in respect of contribution orders **E+W**

29. In calculating the disposable income of the individual, any amounts due under a contribution order made under the Criminal Legal Aid (Contribution Orders) Regulations 2013 ^{M18} must be deducted.

Marginal Citations

M18 [S.I. 2013/438](#).

Status:

Point in time view as at 06/04/2016.

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