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STATUTORY INSTRUMENTS

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**2013 No. 480**

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

**PART 2**

Determinations in respect of an individual's financial resources

CHAPTER 4

Calculation of capital

**Calculating disposable capital**

**30.** Subject to the provisions of these Regulations, in calculating the disposable capital of the individual, the amount or value of every resource of a capital nature belonging to the individual on the date on which the application is made must be included.

**Value of resource of a capital nature**

**31.** In so far as any resource of a capital nature does not consist of money, its value must be taken to be—

- (a) the amount which that resource would realise if sold; or
- (b) the value assessed in such other manner as appears to the Director to be equitable.

**Value of any money due**

**32.** Where money is due to the individual—

- (a) whether it is payable immediately or otherwise; and
- (b) whether payment is secured or not,

its value must be taken to be its present value.

**Value of life insurance etc**

**33.** The value to the individual of any life insurance or endowment policy must be taken to be the amount which the individual could readily borrow on the security of that policy.

**Exclusions from disposable capital**

**34.** Other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, nothing may be included in the disposable capital of the individual in respect of—

- (a) the household furniture and effects of the main or only dwelling occupied by the individual;

- (b) articles of personal clothing; and
- (c) the implements of the trade of the individual, unless they form part of the plant or equipment of a business to which the provisions of regulation 36 apply.

### **Interest in common property**

**35.** Subject to regulation 36, in calculating the value of the interest of the individual in any resource of a capital nature which the individual owns jointly or in common with any other person, the Director may treat that resource as being owned—

- (a) in equal shares; or
- (b) in such other proportions as appear to the Director to be equitable.

### **Value of the business etc**

**36.**—(1) Paragraphs (2) to (4) apply where an application is made for—

- (a) legal representation, except legal representation for proceedings in—
  - (i) the Immigration and Asylum Chamber of the First-tier Tribunal<sup>(1)</sup>;
  - (ii) the Immigration and Asylum Chamber of the Upper Tribunal<sup>(2)</sup> in relation to an appeal or review from the Immigration and Asylum Chamber of the First-tier Tribunal; or
- (b) family help (higher).

(2) Where the individual is the sole owner of, or a partner in, a business, the value of the business to the individual must be taken to be the greater of—

- (a) such sum, or their share of such sum, as could be withdrawn from the assets of the business without substantially impairing its profits or normal development; and
- (b) such sum as the individual could borrow on the security of their interest in the business without substantially injuring its commercial credit.

(3) Where the individual stands in relation to a company in a position analogous to that of a sole owner of, or a partner in, a business, the Director may, instead of ascertaining the value of the individual's stocks, shares, bonds or debentures in that company, treat the individual as if they were a sole owner of, or a partner in, a business and calculate the amount of the individual's capital in respect of that resource in accordance with paragraph (2).

(4) Where the individual owns solely, jointly or in common with other persons, any interest on the termination of a prior estate—

- (a) whether—
  - (i) legal or equitable;
  - (ii) vested or contingent; or
  - (iii) in reversion or remainder; and
- (b) whether in real or personal property or in a trust or other fund,

the Director must calculate the value of such interest in such manner as appears to the Director to be both equitable and practicable.

(5) Where an application is made for other forms of civil legal services, the sums described in this regulation must be disregarded from the calculation of capital.

<sup>(1)</sup> The Immigration and Asylum Chamber of the First-tier Tribunal is allocated these functions under article 5 of S.I. 2010/2655.

<sup>(2)</sup> The Immigration and Asylum Chamber of the Upper Tribunal is allocated these functions under article 11(a) and (b) of S.I. 2010/2655.

### **Interest in land**

**37.**—(1) In calculating the disposable capital of the individual, the value of any interest in land must be taken to be the amount for which that interest could be sold after deducting, subject to paragraphs (2) and (3), the amount of any debt secured by a mortgage or charge on the property.

(2) The total amount to be deducted under this regulation on an assessment of the individual's disposable capital may not exceed £100,000 in respect of all secured debts.

(3) Where—

(a) the interests in land which are taken into account in an assessment of the individual's disposable capital includes interests in both—

- (i) the main or only dwelling in which the individual resides; and
- (ii) one or more other properties; and

(b) debts totalling more than £100,000 are secured on the main or only dwelling and one or more of the other properties,

the deductions to be made under this regulation must be made in respect of the debts secured on the other properties first.

(4) Where the individual resides in more than one dwelling, the Director must decide which is the main dwelling for the purposes of this regulation and regulations 38 and 39.

### **Subject matter of the dispute disregarded**

**38.**—(1) Subject to paragraphs (2) and (3), in calculating the disposable capital of the individual, the amount or value of the subject matter of the dispute to which the application relates must be disregarded.

(2) The total amount to be disregarded under this regulation must not exceed £100,000.

(3) If—

(a) the subject matter of the dispute includes interests of the individual in—

- (i) the main or only dwelling in which the individual resides; and
- (ii) other resources of a capital nature; and

(b) the total value of those interests (after the application of regulation 37) exceeds £100,000, the Director must disregard the value of the individual's interests in their main or only dwelling first.

### **Amount of interest in dwellings to be disregarded**

**39.**—(1) Subject to paragraph (2), in calculating the disposable capital of the individual, the value (after the application of regulations 37 and 38) of the individual's interest (if any) in the main or only dwelling in which the individual resides must be disregarded.

(2) The total amount to be disregarded under this regulation must not exceed £100,000.

### **Certain payments to be disregarded**

**40.** In calculating the disposable capital of the individual, there must be disregarded—

- (a) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995(3) as is by virtue of that section to be treated as payable by way of jobseeker's allowance;
- (b) any—

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(3) 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.

- (i) 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; or
- (ii) arrears of payments made under the Community Care (Direct Payments) Act 1996(4) or under regulations made under section 57 of the Health and Social Care Act 2001 (direct payments); and
- (c) any payment made out of the Independent Living Fund 2006.

### **Disregards for individuals aged 60 or over**

**41.**—(1) Where—

- (a) the individual is aged 60 or over; and
- (b) the monthly disposable income (excluding any net income derived from capital) of the individual is less than the first figure prescribed in regulation 44(2)(b) (£315),

the amount of capital shown in Table 1 must be disregarded.

(2) For the purposes of paragraph (1)(b), an individual who is properly in receipt, directly or indirectly, of a benefit listed in regulation 6(2) or (3) is deemed to have a monthly disposable income of nil.

**Table 1**

<i>Monthly disposable income</i>	<i>Amount of capital disregard</i>
<i>(excluding net income derived from capital)</i>	
Up to £25	£100,000
£26-50	£90,000
£51-75	£80,000
£76-100	£70,000
£101-125	£60,000
£126-150	£50,000
£151-175	£40,000
£176-200	£30,000
£201-225	£20,000
£226-315	£10,000

### **Discretion to disregard interim payments**

**42.** Where an application is made for legal representation or family help (higher), in calculating the disposable capital of the individual, any interim payment made to the individual in any court proceedings may be disregarded.

(4) 1996 c. 30.

**Discretion to disregard restrained assets**

**43.** Where an application is made for legal representation or family help (higher), in calculating the disposable capital of the individual, any capital resource may be disregarded where—

- (a) the individual is restrained from dealing with that resource by order of the court;
- (b) the individual has requested the court which made the order to release all or part of that resource for use in connection with the proceedings to which the application relates; and
- (c) that request has been refused.