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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 1**

**Financial eligibility limits and waivers**

**Determination in respect of an individual's financial resources**

**4.—**(1) This Part applies for the purposes of determining whether an individual qualifies for civil legal services under Part 1 of the Act in accordance with section 11(1)(a).

(2) Subject to regulation 5, the Director must determine whether the individual's financial resources are such that the individual is eligible for civil legal services in accordance with these Regulations.

**Exceptions from requirement to make a determination in respect of an individual's financial resources**

**5.—**(1) The following forms of civil legal services may be provided without a determination in respect of an individual's financial resources—

- (a) such legal help and help at court as is authorised, under the provider's arrangement with the Lord Chancellor under section 2(1) (arrangements) of the Act, to be provided without a determination in respect of an individual's financial resources;
- (b) such forms of civil legal services as are provided through grants under section 2(2) (arrangements) of the Act where the terms of the grant provide that the services are available without a determination in respect of an individual's financial resources;
- (c) legal representation in a special Children Act 1989 case;
- (d) legal representation in proceedings related to any proceedings in sub-paragraph (c) to the extent that the individual to whom the legal representation may be provided is an individual to whom legal representation is being provided under sub-paragraph (c) and—
  - (i) the proceedings are being heard together with those proceedings referred to in sub-paragraph (c); or
  - (ii) an order is being sought in the proceedings as an alternative to an order in the proceedings referred to in sub-paragraph (c);
- (e) family help (lower) in any matter described in paragraph 1(1)(b) (care, supervision and protection of children) of Part 1 of Schedule 1 to the Act to the extent that the matter concerns contemplated proceedings under section 31 (care and supervision orders) of the

Children Act 1989(1) and the individual to whom the family help (lower) may be provided is—

- (i) the parent of a child, or the person with parental responsibility for a child within the meaning of the Children Act 1989 in respect of whom a local authority has given notice of contemplated proceedings under section 31 of that Act; or
- (ii) in the case of an unborn child in respect of whom a local authority has given notice of contemplated proceedings under section 31 of the Children Act 1989, the person who, following the birth of the child—
  - (aa) will be the parent of the child; and
  - (bb) will have parental responsibility for the child within the meaning of the Children Act 1989;
- (f) legal help in contemplated proceedings or legal representation in proceedings or contemplated proceedings in relation to any matter described in paragraph 5(1)(a) or (b) (mental health and repatriation of prisoners) of Part 1 of Schedule 1 to the Act to the extent that the individual's case or application to the relevant tribunal under the Mental Health Act 1983(2) or paragraph 5(2) of the Schedule to the Repatriation of Prisoners Act 1984(3) is, or is to be, the subject of proceedings before the relevant tribunal;
- (g) legal representation in relation to a matter described in paragraph 5(1)(c) (mental capacity) of Part 1 of Schedule 1 to the Act to the extent that—
  - (i) the legal representation is in proceedings in the Court of Protection under section 21A of the Mental Capacity Act 2005(4); and
  - (ii) the individual to whom legal representation may be provided is—
    - (aa) the individual in respect of whom an authorisation is in force under paragraph 2 of Schedule A1 to the Mental Capacity Act 2005; or
    - (bb) a representative of that individual appointed as such in accordance with Part 10 of that Schedule;
- (h) legal representation in relation to any matter described in paragraph 17(1)(a) and (b) (EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act, to the extent that the matter relates to an applicant under the 1980 European Convention on Child Custody(5) or 1980 Hague Convention(6);
- (i) legal representation in a case in which the applicant is an individual who, in the State of origin, has benefited from complete or partial legal aid, or exemption from costs or expenses, in relation to any matter described in—
  - (i) paragraph 17(1)(c) (EU and international agreements concerning children) of Part 1 of Schedule 1 to the Act; or
  - (ii) paragraph 18(1) (EU and international agreements concerning maintenance) of Part 1 of Schedule 1 to the Act;

(1) 1989 c. 41. Section 31 was amended by section 75 of, and paragraph 1 of Schedule 8 to, the Criminal Justice and Court Services Act 2000 (c. 43); sections 120 and 121(1) of the Adoption and Children Act 2002 (c. 38) and section 6 of, and paragraph 35 of Schedule 4 to, the Criminal Justice and Immigration Act 2008 (c. 4).

(2) 1983 c. 20.

(3) 1984 c. 47. Paragraph 5(2) was amended by article 9(1) of, and paragraph 69(a) of Schedule 3 to, S.I. 2008/2833.

(4) 2005 c. 9. Section 21A was inserted by section 50(7) of, and paragraphs 1 and 2 of Part 1 of Schedule 9 to, the Mental Health Act 2007 (c. 12).

(5) The 1980 European Convention on Child Custody is defined in paragraph 17(3) of Part 1 of Schedule 1 to the Act to mean the European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on the Restoration of Custody of Children which was signed in Luxembourg on 20 May 1980.

(6) The 1980 Hague Convention is defined in paragraph 17(3) of Part 1 of Schedule 1 to the Act to mean the Convention on the Civil Aspects of International Child Abduction which was signed at The Hague on 25 October 1980.

- (j) family help (higher) or legal representation in relation to any matter described in paragraph 18(3) (parties who benefited from free legal aid etc. in the Member State of origin) of Part 1 of Schedule 1 to the Act;
  - (k) legal help, family help (lower), family help (higher) and legal representation in relation to any matter described in paragraph 18(2) (EU and international agreements concerning maintenance) of Part 1 of Schedule 1 to the Act, to the extent that the matter—
    - (i) relates to any application under Article 56(1) of the EU Maintenance Regulation(7); and
    - (ii) is an application made by a creditor concerning maintenance obligations arising from a parent-child relationship towards a person under the age of 21; and
  - (l) civil legal services in relation to a matter described in paragraph 45(1) (terrorism prevention and investigation measures etc) of Part 1 of Schedule 1 to the Act to the extent that the services consist of—
    - (i) legal help or legal representation for an individual who is the subject of an application for permission under section 6 of the Terrorism Prevention and Investigation Measures Act 2011(8), in respect of such an application;
    - (ii) legal help for advice in connection with a TPIM notice(9) for an individual who is subject to that notice;
    - (iii) legal help for an individual who is subject to a TPIM notice, in respect of an application—
      - (aa) to vary measures specified in that notice under section 12(2) of the Terrorism Prevention and Investigation Measures Act 2011;
      - (bb) for revocation of that notice in accordance with section 13(3) of the Terrorism Prevention and Investigation Measures Act 2011;
      - (cc) for permission under Schedule 1 to the Terrorism Prevention and Investigation Measures Act 2011; or
    - (iv) legal representation in respect of TPIM proceedings for an individual who is subject to a TPIM notice.
- (2) In this regulation—
- “relevant tribunal” means—
- (a) the Health, Education and Social Care Chamber of the First-tier Tribunal(10); or
  - (b) the Mental Health Review Tribunal for Wales(11);
- “special Children Act 1989 case” means any matter described in paragraph 1(1)(a), (b) or (c) (care, supervision and protection of children) of Part 1 of Schedule 1 to the Act, to the extent that it relates to any of the following provisions of the Children Act 1989—

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(7) The EU Maintenance Regulation is defined in paragraph 18(5) of Part 1 of Schedule 1 to the Act to mean Council Regulation (EC) No. 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and co-operation in matters relating to maintenance obligations.

(8) 2011 c. 23.

(9) TPIM notice is defined in paragraph 45(4) of Part 1 of Schedule 1 to the Act to mean a notice under section 2(1) of the Terrorism Prevention and Investigation Measures Act 2011.

(10) The Health, Education and Social Care Chamber of the First-tier Tribunal is allocated these functions under article 4(i) of S.I. 2010/2655.

(11) The Mental Health Review Tribunal for Wales established under section 65 of the Mental Health Act 1983 (c. 20) as amended by section 2(1) of, and paragraph 107(6) of Schedule 1 to, the Health Authorities Act 1995 (c. 17) and article 9(1) of, and paragraphs 39 and 45 of Schedule 3 to, S.I. 2008/2833.

- (a) section 25 (use of accommodation for restricting liberty)(**12**), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order;
- (b) section 31, to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child’s parent or other person with parental responsibility for that child;
- (c) section 43 (child assessment orders), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child’s parent or other person with parental responsibility for that child;
- (d) section 44 (orders for emergency protection of children), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child’s parent or other person with parental responsibility for that child; or
- (e) section 45 (duration of emergency protection orders and other supplemental provisions)(**13**), to the extent that the individual to whom civil legal services may be provided is the child who is or would be the subject of the order, that child’s parent or other person with parental responsibility for that child,

but does not include appeals from final orders made under any of those provisions of the Children Act 1989; and

“TPIM proceedings” are the proceedings listed at (b) to (g) of the definition of “TPIM proceedings” given in section 30(1) of the Terrorism Prevention and Investigation Measures Act 2011.

### **Individuals in receipt of certain support**

**6.—(1)** Where the Director is satisfied that the individual is in receipt, directly or indirectly, of support provided under section 4(**14**) or 95(**15**) of the Immigration and Asylum Act 1999(**16**), the Director must determine that the individual’s financial resources are such that the individual is eligible for—

- (a) legal help in relation to any matter described in paragraphs 24 to 30 (immigration and asylum) and 32(1) (victims of trafficking in human beings) of Part 1 of Schedule 1 to the Act;
- (b) help at court and legal representation for proceedings in—
  - (i) the Immigration and Asylum Chamber of the First-tier Tribunal(**17**); and
  - (ii) the Immigration and Asylum Chamber of the Upper Tribunal(**18**) in relation to an appeal or review from the Immigration and Asylum Chamber of the First-tier Tribunal.

(12) Section 25 was amended by section 39 of, and paragraph 15 of Schedule 3 to, the Children and Young Persons Act 2008 (c. 23) and section 24 of, and paragraph 45 of Schedule 4 to, the Access to Justice Act 1999 (c. 22).

(13) Section 45 was amended by section 52 of, and paragraph 4 of Schedule 6 to, the Family Law Act 1996 (c. 27); section 42 of, and paragraph 1 of Schedule 4 to, the Children and Young Persons Act 2008 (c. 23); section 116 of, and paragraph 19 of Part 1 of Schedule 16 to, the Courts and Legal Services Act 1990 (c. 41); S.I. 2002/253 and S.I. 2004/1771.

(14) Section 4 was amended by section 49 of the Nationality, Immigration and Asylum Act 2002 (c. 41); section 10(1) and (6) of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c. 19); and section 43(7) of the Immigration, Asylum and Nationality Act 2006 (c. 13).

(15) Section 95 was amended by section 50(1) of the Nationality, Immigration and Asylum Act 2002 (c. 41). Section 95 will be amended by section 44(6) of the Nationality, Immigration and Asylum Act 2002 at a date to be appointed.

(16) 1999 c. 33.

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

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

(2) Subject to paragraph (4), where the Director is satisfied that the individual is properly in receipt, directly or indirectly, of—

- (a) income support paid under section 124 of the Social Security Contributions and Benefits Act 1992<sup>(19)</sup> or section 123 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992<sup>(20)</sup>;
- (b) income-based jobseeker's allowance paid under the Jobseekers Act 1995<sup>(21)</sup> or Part II of the Jobseekers (Northern Ireland) Order 1995<sup>(22)</sup>;
- (c) guarantee credit paid under section 1(3)(a) of the State Pension Credit Act 2002<sup>(23)</sup> or section 1(3)(a) of the State Pension Credit Act (Northern Ireland) 2002<sup>(24)</sup>;
- (d) income-related employment and support allowance paid under Part 1 of the Welfare Reform Act 2007<sup>(25)</sup> or section 1(2)(b) of the Welfare Reform Act (Northern Ireland) 2007<sup>(26)</sup>; or
- (e) universal credit paid under Part 1 of the Welfare Reform Act 2012<sup>(27)</sup>,

the Director must determine that the individual's financial resources are such that the individual is eligible for all forms of civil legal services without paying (where applicable) any contributions.

(3) Subject to paragraph (4), where the Director is satisfied that the individual is properly in receipt, directly or indirectly, of a means-tested benefit or support paid by another EU Member State that is equivalent to a benefit or support listed in paragraph (2), the Director must determine that the individual's financial resources are such that the individual is eligible for legal help or legal representation in relation to a matter described in paragraph 44 (cross-border disputes) of Part 1 of Schedule 1 to the Act without paying (where applicable) any contributions.

(4) If the individual's disposable capital—

- (a) exceeds £8,000, the Director must determine that the individual's financial resources are such that the individual is not eligible for civil legal services; and
- (b) exceeds £3,000 but does not exceed £8,000, the individual must pay a contribution out of capital in accordance with regulation 44<sup>(3)</sup>.

#### **Financial eligibility limit – gross income**

7.—(1) For the purposes of this regulation, “gross income” means income under regulation 21 before any deductions are made other than—

- (a) those payments which are to be disregarded under regulation 24; and
  - (b) any housing benefit paid under section 130 of the Social Security Contributions and Benefits Act 1992<sup>(28)</sup> or section 129 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.
- (2) This regulation does not apply to any applications to which regulation 5 or 6 applies.
- (3) In relation to the calculation of gross income—
- (a) regulations 13, 15, 16, 17 and 20 apply as if “gross income” were substituted for “disposable income” each time it appears; and

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(19) 1992 c. 4. Section 124 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 (c. 5) at a date to be appointed.

(20) 1992 c. 7.

(21) 1995 c. 18.

(22) S.I. 1995/2705 (N.I. 15).

(23) 2002 c. 16.

(24) 2002 c. 14.

(25) 2007 c. 5.

(26) 2007 c. 2.

(27) 2012 c. 5.

(28) 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.

(b) regulations 26 and 27 do not apply.

(4) Subject to paragraph (5), where the gross monthly income of the individual exceeds £2,657, the Director must determine that the individual's financial resources are such that the individual is not eligible for civil legal services.

(5) Where the individual has more than four dependent children in respect of whom the individual receives child benefit, the sum referred to in paragraph (4) must be increased by £222 in respect of the fifth and each subsequent child.

(6) In this regulation "child benefit" means child benefit under section 141(29) of the Social Security Contributions and Benefits Act 1992 or section 137(30) of the Social Security Contributions and Benefits (Northern Ireland) Act 1992.

### **Financial eligibility limit – disposable income and disposable capital**

8.—(1) This regulation has effect subject to regulations 5, 6 and 7.

(2) Except where paragraph (3) applies, where an individual's monthly disposable income does not exceed £733 and the individual's disposable capital does not exceed £8,000, the Director must determine that the individual's financial resources are such that the individual is eligible for civil legal services.

(3) Where an individual's monthly disposable income does not exceed £733 and the individual's disposable capital does not exceed £3,000, the Director must determine that the individual's financial resources are such that the individual is eligible for legal representation in respect of any matter described in paragraphs 25 to 29 (immigration) and 32(1) (victims of trafficking in human beings) of Part 1 of Schedule 1 to the Act before—

- (a) the Immigration and Asylum Chamber of the First-tier Tribunal; and
- (b) the Immigration and Asylum Chamber of the Upper Tribunal in relation to an appeal or review from the Immigration and Asylum Chamber of the First-tier Tribunal.

### **Waiver of eligibility limit in multi-party actions of significant wider public interest**

9. Where an application is made for legal representation in a multi-party action which the Director considers has a significant wider public interest, the Director may, if the Director considers it equitable to do so, do one or both of the following—

- (a) disapply the eligibility limits in regulations 7 and 8 in respect of those services in relation to specific issues within the multi-party action; and
- (b) waive all or part of any contributions payable under regulation 44.

### **Waiver of eligibility limits and contributions in inquests**

10.—(1) Where an application is made for legal help in relation to any matter described in paragraph 41 (inquests) of Part 1 of Schedule 1 to the Act, the Director may, if the Director considers it equitable to do so, disapply the eligibility limits in regulations 7 and 8 in respect of the application.

(2) Where an application is made for a relevant determination, the Director may, if the Director considers it equitable to do so, do one or both of the following:

- (a) disapply the eligibility limits in regulations 7 and 8 in respect of the application; and
- (b) waive all or part of any contributions payable under regulation 44.

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(29) Section 141 was amended by section 1(1) of the Child Benefit Act 2005 (c. 6).

(30) Section 137 was amended by section 2(1) of the Child Benefit Act 2005.

(3) In considering whether to disapply the eligibility limits under paragraph (1) and (2), the Director must have regard in particular to any applicable rights under Article 2 of the Human Rights Convention.

(4) In this regulation—

“Human Rights Convention” has the meaning given to “the Convention” by section 21(1) of the Human Rights Act 1998<sup>(31)</sup>; and

“relevant determination” is a determination under—

- (a) section 10(2)(b) of the Act, to the extent that it relates to services which consist of advocacy in proceedings at an inquest under the Coroners Act 1988<sup>(32)</sup> into the death of a member of the family of the individual who has made an application; or
- (b) section 10(4)(c) of the Act.

#### **Waiver of eligibility limit and contributions in cross-border disputes**

**11.**—(1) This regulation applies to an application by an individual in relation to a matter described in paragraph 44 (cross-border disputes) of Part 1 of Schedule 1 to the Act.

(2) Where this regulation applies, the Director must—

- (a) disapply the relevant eligibility limits in regulations 7 and 8 if the individual proves that they are unable to pay the cost of proceedings in England and Wales in relation to the dispute as a result of differences in the cost of living between the individual’s Member State of domicile or habitual residence and England and Wales; and
- (b) waive all or part of any contributions payable under regulation 44, if and to such extent as the individual proves that they are unable to pay them as a result of such differences in the cost of living.

(3) For the purposes of this regulation the Member State in which an individual is domiciled must be determined in accordance with Article 59 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

#### **Waiver of eligibility limit in proceedings relating to domestic violence and forced marriage**

**12.**—(1) This regulation applies to an application in respect of legal representation in a matter described in paragraph 11 (family homes and domestic violence) or 16 (forced marriage) of Part 1 of Schedule 1 to the extent that the individual is seeking—

- (a) an injunction or other order for protection from harm to the person; or
- (b) committal for breach of any such order.

(2) Where this regulation applies, the Director may, if the Director considers it equitable to do so, disapply the eligibility limits in regulations 7 and 8.

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<sup>(31)</sup> 1998 c. 42. Section 21(1) has been amended but the amendments are not relevant to these Regulations.

<sup>(32)</sup> 1988 c. 13.

## CHAPTER 2

### Making a determination in respect of an individual's financial resources

#### Provision of information

13. Where an application is made, or a further determination falls to be made under regulation 20, the individual must provide the Director with the information necessary to enable the Director to—

- (a) make the determination referred to in regulation 4(2); and
- (b) calculate, where relevant, the disposable income and disposable capital of the individual.

#### Calculations

14.—(1) The Director must, subject to regulation 6—

- (a) calculate the gross income of the individual in accordance with regulation 7;
- (b) calculate the disposable income and disposable capital of the individual in accordance with regulations 21 to 43; and
- (c) calculate any contributions payable in accordance with regulations 44 and 45.

(2) When calculating—

- (a) gross income for the purposes of regulation 7; or
- (b) disposable income for the purposes of regulation 8,

the period of calculation is one month.

(3) For the purposes of this regulation, one month means the period of one calendar month which ends on the date on which the application is made, or such other equivalent period as the Director considers appropriate.

(4) Where the Director calculates that an individual has disposable income or disposable capital of an amount which does not make the individual eligible for civil legal services, the Director must determine that the individual's financial resources are such that the individual is not eligible for civil legal services.

#### Application in representative, fiduciary or official capacity

15.—(1) Sub-paragraph (2) applies where the individual is acting in a representative, fiduciary or official capacity.

(2) The Director, in calculating the individual's disposable income and disposable capital, and the amount of any contribution to be paid—

- (a) subject to sub-paragraph (c), must not take the personal resources of the individual acting in such a capacity into account unless the Director considers that the individual might benefit from the proceedings;
- (b) must have regard to the value of any property or estate, or the amount of any fund, out of which that individual is entitled to be indemnified; and
- (c) may also have regard to the resources of any person who has a beneficial interest in that property, estate or fund.

#### Resources to be treated as the individual's resources

16.—(1) Subject to paragraph (2), in calculating the disposable income and disposable capital of the individual, the resources of the individual's partner must be treated as the individual's resources.



(2) The resources of the individual's partner must not be treated as the individual's resources if the individual has a contrary interest in the dispute in respect of which the application is made.

(3) Paragraph (4) applies where an application is made for any form of civil legal services except legal representation (other than legal representation in family proceedings).

(4) Where the individual is a child, the resources of a parent, guardian or any other person who is responsible for maintaining the child, or who usually contributes substantially to the child's maintenance, must be treated as the child's resources, unless, having regard to all the circumstances, including the age and resources of the child and any conflict of interest, it appears inequitable to do so.

(5) Where it appears to the Director that—

- (a) another person is, has been or is likely to be substantially maintaining the individual or any person whose resources are to be treated as the individual's resources under this regulation; or
- (b) any of the resources of another person have been or are likely to be made available to the individual or any person whose resources are to be treated as the individual's resources under this regulation,

the Director may treat all or any part of the resources of that other person as the resources of the individual, and may assess or estimate the value of those resources as well as the Director is able.

(6) A reference to "individual" in regulations 21 to 36 and 40 to 43 is a reference to—

- (a) the individual in respect of whom the determination about financial resources is being made; and
- (b) any person whose resources are to be treated as the individual's resources under this regulation.

(7) In this regulation—

"family enactment" has the same meaning as in paragraph 12(9) of Part 1 of Schedule 1 to the Act;

"family relationship" and "matter arising out of a family relationship" have the same meaning as in paragraphs 12(7) and (8) of Part 1 of Schedule 1 to the Act(33); and

"family proceedings" means—

- (a) any matter which is described in any of the following paragraphs of Part 1 of Schedule 1 to the Act (civil legal services)—
  - (i) paragraph 1 (care, supervision and protection of children);
  - (ii) paragraph 9 (inherent jurisdiction of High Court in relation to children and vulnerable adults), to the extent that the matter relates to—
    - (aa) a child; or
    - (bb) a vulnerable adult but only to the extent that it is a matter arising out of a family relationship;
  - (iii) paragraph 10 (unlawful removal of children);
  - (iv) paragraph 11 (family homes and domestic violence);
  - (v) paragraph 12 (victims of domestic violence and family matters);
  - (vi) paragraph 13 (protection of children and family matters);
  - (vii) paragraph 14 (mediation in family disputes);

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(33) The Civil Legal Aid (Family Relationship) Regulations 2012 (S.I. 2012/2684), made under paragraph 12(8)(b) of Part 1 of Schedule 1 to the Act, make provision about when matters arise out of a family relationship for the purpose of paragraph 12.

- (viii) paragraph 15 (children who are parties to family proceedings);
- (ix) paragraph 16 (forced marriage);
- (x) paragraph 17 (EU and international agreements concerning children);
- (xi) paragraph 18 (EU and international agreements concerning maintenance); or
- (b) a matter arising out of a family relationship in respect of which the Director has made an exceptional case determination under section 10 of the Act and which is under—
  - (i) a family enactment; or
  - (ii) the Trusts of Land and Appointment of Trustees Act 1996<sup>(34)</sup>.

### **Deprivation or conversion of resources**

**17.** If it appears to the Director that the individual, or any person whose resources are to be treated as the individual's resources in accordance with regulation 16, has, with intent to reduce the amount of their disposable income or disposable capital, whether for the purpose of making the individual eligible to receive civil legal services, reducing the individual's liability to pay a contribution, or otherwise—

- (a) directly or indirectly deprived themselves of any resources;
- (b) transferred any resources to another person; or
- (c) converted any part of their resources into resources which under these Regulations are to be wholly or partly disregarded,

those resources must be treated as part of the individual's resources or as not so converted as the case may be.

### **Duty to report change in financial circumstances**

**18.** The individual must immediately inform the Director of any change in the individual's financial circumstances (or those of any person whose resources are to be treated as the individual's resources in accordance with regulation 16)—

- (a) of which the individual is, or should reasonably be, aware;
- (b) which has occurred since any application or determination in respect of the individual's financial resources; and
- (c) which might affect a determination that the individual's financial resources are such that the individual is eligible for civil legal services or the amount, if any, of any contribution payable.

### **Amendment of determination due to error or receipt of new information**

**19.** Where—

- (a) it appears to the Director that there has been an error in a determination in respect of an individual's financial resources or the amount of any contribution payable, or in any calculation or estimate upon which that determination was based; or
- (b) new information which is relevant to the determination in respect of an individual's financial resources has come to light,

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(34) 1996 c. 47.

the Director may amend the determination in respect of the individual's financial resources, and may take such steps as appear equitable to give effect to it in relation to any period during which civil legal services have already been provided.

### **Further determinations**

**20.**—(1) Where—

- (a) the Director has determined under regulation 8 that the individual's financial resources are such that the individual is eligible to receive civil legal services; and
- (b) it appears to the Director that the circumstances of the individual may have changed so that—
  - (i) their normal disposable income may have increased by an amount greater than £60 or decreased by an amount greater than £25; or
  - (ii) their disposable capital may have increased by an amount greater than £750,

the Director must, subject to paragraph (7), make a further determination in respect of the individual's financial resources, and the contribution (if any) payable in accordance with these Regulations.

(2) Where—

- (a) the Director has determined under regulation 6 that the individual's financial resources are such that the individual is eligible for civil legal services; and
- (b) it appears to the Director that the individual is not, or is no longer, properly in receipt, directly or indirectly, of a benefit or support referred to in that regulation,

the Director must, subject to paragraph (7), make a further determination in respect of the individual's financial resources, and contribution (if any) payable in accordance with these Regulations.

(3) For the purposes of the further determination under paragraph (1) or (2), the period of calculation must be the period of one month following the date of the change of circumstances or such other period of one month as the Director considers appropriate.

(4) Where a further determination is made, the amount or value of every resource of a capital nature acquired since the date the original application was made must be ascertained as at the date of receipt of that resource.

(5) Any contribution out of capital in accordance with regulation 44(3) which becomes payable as a result of a further determination must be paid in respect of the cost of the civil legal services, including costs already incurred.

(6) Where a determination in relation to which a certificate was issued is withdrawn as a result of a further determination, the Director may require a contribution to be paid in respect of costs already incurred.

(7) The Director may decide not to make a further determination under paragraph (1) or (2) if the Director considers such a further determination inappropriate, having regard in particular to the period during which civil legal services are likely to continue to be provided to the individual.

## **CHAPTER 3**

### **Calculation of income**

#### **Calculation of income**

**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**

**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.

### **Deductions for income tax and national insurance contributions**

**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(35).

(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.

### **Payments to be disregarded from calculation of disposable income or gross income**

**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(36) or section 71 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(37);
- (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;

(35) 1992 c. 4.

(36) Section 71 is to be repealed by section 90 of the Welfare Reform Act 2012 at a date to be appointed.

(37) 1992 c. 7.

- (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(38) or section 70 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(39);
- (f) council tax benefit paid under section 131 of the Social Security Contributions and Benefits Act 1992(40);
- (g) any direct payments made under regulations made under section 57(1) of the Health and Social Care Act 2001(41) (direct payments), section 17A of the Children Act 1989(42) (direct payments) or section 8(1) of the Carers and Direct Payments Act (Northern Ireland) 2002(43);
- (h) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995(44) 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(45) or section 68 of the Social Security Contributions and Benefits (Northern Ireland) Act 1992(46);
- (j) exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(47);
- (k) any pensions paid under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006(48);
- (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; and

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- (38) 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).
  - (39) 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.
  - (40) Section 131 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.
  - (41) 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.
  - (42) 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 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).
  - (43) 2002 c. 6.
  - (44) 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.
  - (45) 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).
  - (46) 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)).
  - (47) 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).
  - (48) S.I. 2006/606, to which there are amendments not relevant to these Regulations.

(n) any personal independence payment under Part 4 of the Welfare Reform Act 2012<sup>(49)</sup>.

(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.

### **Deductions in respect of a partner and dependants of the individual**

**25.**—(1) For the purposes of this regulation, “the Schedule” means Schedule 2 to the Income Support (General) Regulations 1987<sup>(50)</sup>.

(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.

### **Deduction in respect of maintenance**

**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**

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

<sup>(49)</sup> 2012 c. 5.

<sup>(50)</sup> 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.

- (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.

### **Deductions in respect of rent or cost of living accommodation**

**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<sup>(51)</sup> 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

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(51) 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.

- (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.

### **Deductions in respect of contribution orders**

**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(52) must be deducted.

## 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(53);
  - (ii) the Immigration and Asylum Chamber of the Upper Tribunal(54) 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.

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(53) The Immigration and Asylum Chamber of the First-tier Tribunal is allocated these functions under article 5 of S.I. 2010/2655.  
(54) 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<sup>(55)</sup> as is by virtue of that section to be treated as payable by way of jobseeker's allowance;
- (b) any—

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<sup>(55)</sup> 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<sup>(56)</sup> 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.

(56) 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.