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SCOTTISH STATUTORY INSTRUMENTS

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**2002 No. 494**

**The Civil Legal Aid (Scotland) Regulations 2002**

**PART III**

**ASSESSMENT OF RESOURCES**

**Determination of disposable income and disposable capital**

**10.** Save as otherwise provided by these Regulations, the disposable income and disposable capital of a person shall respectively be determined at amounts calculated in accordance with the rules set out in Schedules 2 and 3 to these Regulations.

**Circumstances in which resources of spouse not to be taken into account and resources of cohabittees**

**11.—(1)** The resources of a person's spouse shall not be treated as his or her resources if—

- (a) the spouse has a contrary interest in the dispute in respect of which application for legal aid is made; or
- (b) the Board is satisfied that the person and the spouse are living separate and apart.

(2) A man and a woman who are not married to each other and who are living together in the same household as husband and wife shall be treated for the purposes of section 42 of the Act as if they were spouses of each other.

**Deprivation or conversion of resources**

**12.—(1)** If it appears to the Board that a person has, with intent to reduce that person's disposable income or disposable capital, whether for the purpose of making that person eligible for civil legal aid, reducing that person's liability to pay a contribution towards civil legal aid or otherwise—

- (a) directly or indirectly deprived that person of any resources; or
- (b) converted any part of that person's 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 that person has so deprived himself or herself or which he or she has so converted shall be treated as part of that person's resources or as not so converted, as the case may be.

(2) Where it appears to the Board that an assisted person has acted in the way described in paragraph (1) above it may make an amended determination in accordance with regulation 28.

**Assessment of disposable income, etc. in relation to appellate proceedings**

**13.—(1)** Subject to paragraph (2) below, where an application relates to any of the proceedings specified in regulation 4(1)(b), (d), (e) or (j) above, and the applicant was previously an assisted person in relation to that action, cause or matter, the Board shall not redetermine the applicant's disposable income and disposable capital but shall assess the amount of the maximum contribution,

if any, payable in respect of the proceedings at an amount not greater than the maximum contribution assessed in relation to the earlier proceedings, less any amount assessed by the Board to be paid in respect of those proceedings.

(2) If since the last occasion on which the disposable income and disposable capital of the person concerned was determined in relation to that action, cause or matter, that person's circumstances have altered otherwise than as a result of the payment of a contribution in respect of the earlier proceedings, the Board may redetermine that person's disposable income and disposable capital in accordance with the law applicable at the time of the original determination and shall take into account—

- (a) any increase in the amount of that person's disposable income by an amount greater than £750;
- (b) any decrease in the amount of that person's disposable income by an amount greater than £300; and
- (c) any increase in the amount of that person's disposable capital by an amount greater than £750.

**Assessment of resources, etc. of person making application in representative, fiduciary, official or other capacity**

14.—(1) Where the applicant is a person who is concerned in the proceedings only in a representative, fiduciary or official capacity, then for the purpose of determining that person's disposable income and disposable capital, and the amount of any contribution required under section 17 of the Act, the personal resources of the applicant shall be disregarded, but regard shall be had to the value of any property or the amount of any fund out of which the applicant is entitled to be indemnified and to the disposable income and disposable capital of any persons (including the applicant if appropriate) who might benefit from the outcome of the proceedings.

(2) Where a person applies for legal aid in connection with any proceedings in which that person is concerned in a representative, fiduciary or official capacity and it appears to the Board that the applicant is entitled, whether by an order of the court or otherwise, to be indemnified in respect of his or her expenses in connection with the proceedings out of a fund or by a third party, it shall not grant legal aid unless it is satisfied that the fund cannot reasonably be expected to bear the expense of the proceedings or, as the case may be, that the third party would, if a party to the proceedings, be entitled to legal aid.

(3) Where the applicant is a person concerned in any of the proceedings set out in paragraph (4) below only as claiming or having an interest in the property, financial affairs or personal welfare of an incapable adult under the Adults with Incapacity (Scotland) Act 2000<sup>(1)</sup> (in this regulation referred to as “the 2000 Act”) then for the purpose of determining the applicant's disposable income and disposable capital, and the amount of any contribution required under section 17 of the Act, the personal resources of the applicant shall be disregarded, but regard shall be had to the personal resources of the incapable adult.

- (4) The proceedings referred to in paragraph (3) above are proceedings where—
- (a) an application is made to the sheriff under section 3(3) of the 2000 Act;
  - (b) a decision as to the incapacity of an adult is appealed under section 14(b) of the 2000 Act;
  - (c) an application is made to the sheriff for an order under section 20(2) of the 2000 Act;
  - (d) an application is made to the sheriff under section 3(6) of the 2000 Act to vary the terms of an order made under section 20(2) of the 2000 Act;

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(1) 2000 asp 4.

- (e) an application under section 26(1) of the 2000 Act for authority to intromit with funds is remitted for determination by the sheriff under section 26(8) of the 2000 Act;
- (f) a decision of the Public Guardian to grant or refuse an application under section 26(1) of the 2000 Act for authority to intromit with funds is appealed under section 26(9)(a) of the 2000 Act;
- (g) a decision of the Public Guardian to refuse to remit an application to the sheriff under section 26(8) is appealed under section 26(9)(b) of the 2000 Act;
- (h) a decision as to the medical treatment of an adult is appealed under section 50(3) of the 2000 Act;
- (i) an application is made to the Court of Session under section 50(6) of the 2000 Act;
- (j) a decision as to the medical treatment of the adult is appealed under section 52 of the 2000 Act;
- (k) an application is made to the sheriff for an intervention order under section 53(1) of the 2000 Act;
- (l) an application is made for a guardianship order under section 57(1) of the 2000 Act;
- (m) an application is made to the sheriff for the replacement or removal of a guardian, or the recall of a guardianship order, under section 71(1) of the 2000 Act; and
- (n) an application is made to the sheriff for variation of a guardianship order under section 74(1) of the 2000 Act.