

## SCHEDULE 2

Regulation 10

### ASSESSMENT OF DISPOSABLE CAPITAL FOR THE PURPOSES OF CHILDREN'S LEGAL AID

1.—(1) Subject to these Regulations, there is to be included in the computation of the amount of the capital of the person concerned the amount or value of every resource of a capital nature ascertained as on the date of the application for legal aid.

(2) Where it is brought to the notice of the Board that between the date of the application and the determination—

- (a) there has been a substantial fluctuation in the value of a resource;
- (b) there has been a substantial variation in the nature of a resource affecting the basis of computation of its value;
- (c) any resource has ceased to exist; or
- (d) a new resource has come into the possession of the person concerned,

the Board is to compute the capital resources of that person in the light of such facts, and the resources as so computed are to be taken into account in the determination.

2. So far as any resource does not consist of money, the amount or value of the resource is to be taken to be—

- (a) the amount which that resource would realise if sold in the open market; or
- (b) if there is only a restricted market for that resource, the amount which it would realise in that market; or
- (c) the amount or value of the resource assessed in such manner as appears to the Board to be just and equitable.

3. Where money is due to the person concerned, whether immediately payable or otherwise and whether the payment the money is secured or not, the value is taken to be the present value of the money.

4. If the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Board may, instead of ascertaining the value of stocks, shares, bonds or debentures in that company, treat the person as if that person were such a sole owner or partner and compute the amount of the person's capital in respect of that resource in accordance with paragraph 5 of this Schedule.

5. Where the person concerned is, or is to be treated as, the sole owner of or a partner in any business, the value of such business or that person's share in the business to that person is taken to be either—

- (a) such sum, or that person's share of such sum, as the case may be, as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development of the business; or
- (b) such sum as that person could borrow on the security of his or her interest in such business without substantially injuring the commercial credit of that business, whichever is the greater.

6. The value of any interest, whether vested or contingent, of the person concerned in the fee of any heritable or moveable property forming the whole or part of any trust or other estate, is to be computed by the Board in such manner as appears to it to be both equitable and practicable.

7. In computing the amount of capital of the person concerned where that person is in receipt of income support under section 124 of the 1992 Act, income-related employment and support

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allowance or universal credit, there is disregarded any amount which exceeds the sum for the time being specified as the disposable capital limit under section 28K(2)(b)(1) of the Act.

8. In computing the amount of capital of the person concerned, there is wholly disregarded—
- (a) a back to work bonus (payable under the Jobseekers Act 1995)(2);
  - (b) any payment made under the Community Care (Direct Payments) Act 1996(3) or under section 12B of the Social Work (Scotland) Act 1968(4);
  - (c) a payment by a local authority in exercise of the powers in section 20 of the Local Government in Scotland Act 2003(5) (power to advance well-being) and using funds provided by the Scottish Ministers from the Scottish Welfare Fund where the payment is—
    - (i) a crisis payment made for the purpose of meeting an immediate short term need; or
    - (ii) made for the purpose of meeting a need for community care.

9. Save in exceptional circumstances, nothing is to be included in the amount of capital of the person concerned in respect of—

- (a) the household furniture and effects of the dwelling house occupied by that person;
- (b) articles of personal clothing; and
- (c) the personal tools and equipment of that person's trade, not being part of the plant or equipment of a business to which the provisions of paragraph 5 of this Schedule apply.

10.—(1) In computing the amount of capital of the person concerned, the value of any interest in the main or only dwelling in which that person resides is to be wholly disregarded.

(2) Where the person concerned resides in more than one dwelling in which that person has an interest, the Board is to decide which is the main dwelling and is to take into account, in respect of the value to that person of any interest in a dwelling which is not the main dwelling, any sum which might be obtained by borrowing money on the security of that dwelling.

11. Where the person concerned has received or is entitled to receive from a body of which that person is a member a sum of money by way of financial assistance towards the cost of the proceedings in respect of which legal aid is applied for, such sum is disregarded.

12. The value of any life assurance or endowment policy is taken to be the amount which the person concerned could readily borrow on the security of that life assurance or endowment policy.

13. Where under any statute, bond, agreement, indemnity, guarantee or other instrument the person concerned is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, an allowance is to be made of such an amount as is reasonably likely to become payable within the 12 months immediately following the date of application for children's legal aid.

14. An allowance may be made in respect of any debt owed by the person concerned (other than a debt secured on the dwelling or dwellings in which that person resides) to the extent to which the Board considers reasonable, provided that the person concerned produces evidence to the Board's satisfaction that the debt or part of the debt will be discharged within the twelve months immediately following the date of the application.

15.—(1) Where the person concerned is of pensionable age and his or her annual disposable income (excluding any net income derived from capital) is less than the figure prescribed in

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(1) Section 28K was inserted by section 191 of the 2011 Act.  
(2) 1995 c.18.  
(3) 1996 c.30.  
(4) 1968 c.49.  
(5) 2003 asp 1.

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section 28K(2)(a) of the Act there is disregarded the amount of capital as specified in the following table—

<i>Annual disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregarded</i>
Up to £350	£35,000
£351–£800	£30,000
£801–£1,200	£25,000
£1,201–£1,600	£20,000
£1,601–£2,050	£15,000
£2,051–£2,450	£10,000
£2,451 and above	£5,000

(2) In this Schedule “pensionable age” means the age of 60.

**16.** In computing the amount of capital there is disregarded such an amount of capital, if any, as the Board in the circumstances of the case may in its discretion decide.