

SCHEDULE 3

Article 17

Remissions and Part Remissions

Interpretation

1.—(1) In this Schedule—

“child” means a child or young person in respect of whom a party is entitled to receive child benefit in accordance with section 141, and regulations made under section 142, of the Social Security Contributions and Benefits Act 1992⁽¹⁾;

“child care costs” has the meaning given in Part 3 of the Criminal Legal Aid (Financial Resources) Regulations 2013⁽²⁾;

“couple” has the meaning given in section 3(5A) of the Tax Credits Act 2002⁽³⁾;

“disposable monthly income” has the meaning given in paragraph 5;

“excluded benefits” means—

(a) any of the following benefits payable under the Social Security Contributions and Benefits Act 1992—

(i) attendance allowance paid under section 64;

(ii) severe disablement allowance;

(iii) carer’s allowance;

(iv) disability living allowance;

(v) constant attendance allowance paid under section 104 as an increase to a disablement pension;

(vi) council tax benefit;

(vii) any payment made out of the social fund;

(viii) housing benefit;

(b) any direct payment made under the Community Care, Services for Carers and Children’s Services (Direct Payments) (England) Regulations 2009⁽⁴⁾, the Community Care, Services for Carers and Children’s Services (Direct Payments) (Wales) Regulations 2011⁽⁵⁾, or section 12B(1) of the Social Work (Scotland) Act 1968⁽⁶⁾;

(c) a back to work bonus payable under section 26 of the Jobseekers Act 1995⁽⁷⁾;

(d) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983⁽⁸⁾;

(1) 1992 c.4

(2) S.I. 2013/471

(3) 2002 c.21. Section 3(5A) was inserted by paragraph 144 of Schedule 24 to the Civil Partnership Act 2004 (c.33).

(4) S.I. 2009/1887

(5) S.I. 2011/831

(6) 1968 c. 49; section 12B was inserted by section 4 of the Community Care (Direct Payments) Act 1996 (c. 30). Subsection (1) was amended by section 7 of the Community Care and Health (Scotland) Act 2002 (asp 5) and section 70 of the Regulation of Care (Scotland) Act 2001 (asp 8).

(7) 1995 c.18. Section 26 has been amended but none of those amendments are relevant to this Order.

(8) S.I. 1983/686 as amended by S.I. 1983/1164, S.I. 1983/1540, S.I. 1984/1289, S.I. 1984/1675, S.I. 1985/1313, S.I. 1986/628, S.I. 1987/191, S.I. 1988/367, S.I. 1988/2260, section 123 of, and paragraph 3 of Schedule 8 to, the Criminal Justice Act 1988 (c.33), S.I. 1989/415, S.I. 1990/1300, S.I. 1991/708, S.I. 1992/702, S.I. 1992/3226, S.I. 1993/480, S.I. 1994/715, S.I. 1994/2021, S.I. 1995/445, S.I. 1997/812, S.I. 1999/262, S.I. 2001/420, S.I. 2002/672, S.I. 2004/717, S.I. 2005/655, S.I. 2005/3031, S.I. 2006/765, S.I. 2007/646, S.I. 2008/592, S.I. 2008/2683, S.I. 2009/438, S.I. 2010/283, S.I. 2010/1172, S.I. 2011/811, S.I. 2011/1740, S.I. 2012/670 and modified by S.I. 2005/3137.

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, No. 1893

- (e) any pension paid under the Naval, Military and Air Forces etc. (Disablement and Death) Service Pension Order 2006⁽⁹⁾;
- (f) any payment made from the Independent Living Funds; and
- (g) any financial support paid under an agreement for the care of a foster child;

“gross annual income” means total annual income, for the 12 months preceding the application for remission or part remission, from all sources other than receipt of any of the excluded benefits;

“gross monthly income” means total monthly income, for the month in which the application for remission or part remission is made, from all sources other than receipt of any of the excluded benefits;

“the Independent Living Funds” means any payment made from the funds listed at regulation 20(2)(b) of the Criminal Legal Aid (Financial Resources) Regulations 2013;

“partner” means a person with whom the party lives as a couple and includes a person with whom the party is not currently living but from whom the party is not living separate and apart;

“party” means the individual who would, but for this Schedule, be liable to pay the fee required under this Order.

(2) Paragraphs 2, 3 and 4 do not apply to a party for whom civil legal services, for which a certificate has been issued under the Civil Legal Aid (Procedure) Regulations 2012⁽¹⁰⁾, have been made available under arrangements made for the purposes of Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012⁽¹¹⁾ for the purposes of the proceedings.

Full remission of fees—qualifying benefits

2.—(1) No fee is payable under this Order if, at the time when a fee would otherwise be payable, the party is in receipt of a qualifying benefit.

(2) The following are qualifying benefits for the purposes of sub-paragraph (1)—

- (a) income support under the Social Security Contributions and Benefits Act 1992;
- (b) working tax credit, provided that no child tax credit is being paid to the party;
- (c) income-based jobseeker’s allowance under the Jobseekers Act 1995;
- (d) guarantee credit under the State Pension Credit Act 2002⁽¹²⁾; and
- (e) income-related employment and support allowance under the Welfare Reform Act 2007⁽¹³⁾.

Full remission of fees—gross annual income

3.—(1) No fee is payable under this Order if, at the time when the fee would otherwise be payable, the party has the number of children specified in column 1 of the following table and—

- (a) if the party is single, the gross annual income of the party does not exceed the amount set out in the appropriate row of column 2; or
- (b) if the party is one of a couple, the gross annual income of the couple does not exceed the amount set out in the appropriate row of column 3.

(9) S.I. 2006/606 amended S.I. 2006/1455, S.I. 2007/909, S.I. 2008/679, S.I. 2008/2683, S.I. 2009/706, S.I. 2010/240, S.I. 2011/235, S.I. 2011/1740 and S.I. 2012/359.

(10) S.I. 2012/3098

(11) 2012 c. 10

(12) 2002 c.16

(13) 2007 c.5

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Number of children of party</i>	<i>Single</i>	<i>Couple</i>
no children	£13,000	£18,000
1 child	£15,930	£20,930
2 children	£18,860	£23,860
3 children	£21,790	£26,790
4 children	£24,720	£29,720

(2) If the party has more than 4 children then the relevant amount of gross annual income is the amount specified in the table for 4 children plus the sum of £2,930 for each additional child.

Full and part remission of fees—disposable monthly income

4.—(1) No fee is payable under this Order if, at the time when the fee would otherwise be payable, the disposable monthly income of the party is £50 or less.

(2) The maximum amount of fee payable is—

- (a) if the disposable monthly income of the party is more than £50 but does not exceed £210, an amount equal to one-quarter of every £10 of the party's disposable monthly income up to a maximum of £50; and
- (b) if the disposable monthly income is more than £210, an amount equal to £50 plus one-half of every £10 over £200 of the party's disposable monthly income.

(3) Where the fee that would otherwise be payable under this Order is greater than the maximum fee which a party is required to pay as calculated in sub-paragraph (2), the fee will be remitted to the amount payable under that sub-paragraph.

Disposable monthly income

5.—(1) A party's disposable monthly income is the gross monthly income of the party for the month in which the fee becomes payable ("the period") less the deductions referred to in sub-paragraphs (2) and (3).

(2) There are to be deducted from the gross monthly income—

- (a) income tax paid or payable in respect of the period;
- (b) any contributions estimated to have been paid under Part 1 of the Social Security Contributions and Benefits Act 1992 in respect of the period;
- (c) either—
 - (i) monthly rent or monthly payment in respect of a mortgage debt or hereditament security, payable in respect of the only or main dwelling of the party, less any housing benefit paid under the Social Security Contributions and Benefits Act 1992; or
 - (ii) the monthly cost of the living accommodation of the party;
- (d) any child care costs paid or payable in respect of the period;
- (e) if the party is making bona fide payments for the maintenance of a child who is not a member of the household of the party, the amount of such payments paid or payable in respect of the period; and
- (f) any amount paid or payable by the party, in respect of the period, in pursuance of a court order.

(3) There will be deducted from the gross monthly income an amount representing the cost of living expenses in respect of the period being—

- (a) £315; plus
- (b) £244 for each child of the party; plus
- (c) £159, if the party has a partner.

Resources of partners

6.—(1) For the purpose of determining whether a party is entitled to the remission or part remission of a fee in accordance with this Schedule, the income of a partner, if any, is to be included as income of the party.

(2) The receipt by a partner of a qualifying benefit does not entitle a party to remission of a fee.

Application for remission or part remission of fees

7.—(1) A party is only relieved by paragraphs 2 to 4 of liability to pay a fee if that party makes an application for remission in accordance with this paragraph.

(2) An application for remission or part remission of a fee must be made to the Lord Chancellor at the time when the fee would otherwise be payable.

(3) Where a claim for full remission of fees is made, the party must provide documentary evidence of, as the case may be—

- (a) entitlement to a qualifying benefit; or
- (b) gross annual income and, if applicable, the children included for the purposes of paragraph 3.

(4) Where a claim for full or part remission of fees under paragraph 4 is made, the party must provide documentary evidence of—

- (a) such of the party's gross monthly income as is derived from—
 - (i) employment;
 - (ii) rental or other income received from persons living with the party by reason of their residence in the party's home;
 - (iii) a pension; or
 - (iv) a state benefit, not being an excluded benefit; and
- (b) any expenditure being deducted from the gross monthly income in accordance with paragraph 5(2).

Remission in exceptional circumstances

8. A fee specified in this Order may be reduced or remitted where the Lord Chancellor is satisfied there are exceptional circumstances which justify doing so.

Time for payment following remission application

9.—(1) Where a person applies for remission on or before the date on which a fee is payable, the date for payment of the fee specified in article 4 is disapplied.

(2) Where the Lord Chancellor refuses remission or grants part remission of a fee, the amount of the fee which remains unremitted must be paid within such period as may be notified in writing by the Lord Chancellor to the party or the fee group (as the case may be).

Refunds

10.—(1) Subject to sub-paragraph (3), where a party has not provided the documentary evidence required by paragraph 7 and a fee has been paid at a time when, under paragraph 2, 3 or 4, it was not payable, the fee must be refunded if documentary evidence relating to the time when the fee became payable is provided at a later date.

(2) Subject to sub-paragraph (3), where a fee has been paid at a time where the Lord Chancellor, if all the circumstances had been known, would have reduced or remitted the fee under paragraph 8, the fee or the amount by which the fee would have been reduced, as the case may be, must be refunded.

(3) No refund shall be made under this paragraph unless the party who paid the fee applies within 6 months of paying the fee.

(4) The Lord Chancellor may extend the period of 6 months mentioned in sub-paragraph (3) if the Lord Chancellor considers that there is a good reason for an application being made after the end of the period of 6 months.