

1989 No. 338

LEGAL AID AND ADVICE, ENGLAND AND WALES

**The Civil Legal Aid (Assessment of Resources)
Regulations 1989**

<i>Made</i> - - - -	<i>3rd March 1989</i>
<i>Laid before Parliament</i>	<i>8th March 1989</i>
<i>Coming into force</i>	<i>1st April 1989</i>

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SCHEDULES

1. Revocations.
2. Computation of income.
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The Lord Chancellor, in exercise of the powers conferred on him by sections 15(1), 16, 34 and 43 of the Legal Aid Act 1988(a) and with the consent of the Treasury, hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Civil Legal Aid (Assessment of Resources) Regulations 1989 and shall come into force on 1st April 1989.

Revocations

2. The Regulations specified in Schedule 1 are hereby revoked.

Interpretation

3.—(1) In these Regulations, unless the context otherwise requires,—

“the Act” means the Legal Aid Act 1988;

“area committee”, “Area Director” and “assessment officer” have the meanings assigned to them by the Civil Legal Aid (General) Regulations 1989(b);

“certificate” means a legal aid certificate issued in accordance with the Civil Legal Aid (General) Regulations 1989;

“child” means a person—

(a) under the age that is for the time being the upper limit of compulsory school age within the meaning of the Education Act 1944(c); or

(b) over the limit of compulsory school age and either receiving full-time instruction at an educational establishment or undergoing training for a trade, profession or vocation;

“contribution” and “maximum contribution” have the meanings assigned to them by the Civil Legal Aid (General) Regulations 1989;

“disposable capital” and “disposable income” have the meanings assigned to them by regulation 4;

“income” includes—

(a) benefits,

(b) privileges, and

(c) any sum payable (whether voluntarily or under a court order, the terms of any instrument or otherwise) for the purpose of the maintenance of a child;

“legal aid” means representation under Part IV of the Act;

“make an assessment”, in relation to the assessment officer, means to assess the disposable income, disposable capital and maximum contribution of the person concerned;

“period of computation” means the period of 12 months next ensuing from the date of the application for a certificate, or such other period of 12 months as in the particular circumstances of any case the assessment officer may consider to be appropriate;

“person concerned” means the person—

(a) whose disposable income and disposable capital are to be assessed or reassessed; or

(b) whose resources are to be treated as the resources of any other person under these Regulations.

(2) Any reference in these Regulations to a regulation or Schedule by number means the regulation or Schedule so numbered in these Regulations.

Computation of disposable capital, disposable income and maximum contribution

4.—(1) Subject to the provisions of these Regulations, the assessment officer shall—

(a) take into account the financial resources of the person concerned; and

(a) 1988 c. 34; section 43 is an interpretation provision and is cited because of the meanings assigned to the words “prescribed” and “regulations”.

(b) S.I. 1989/339.

(c) 1944 c. 31.

(b) compute his income and capital in accordance with Schedules 2 and 3; and, in these Regulations, "disposable income" and "disposable capital" mean the amounts of income and capital available for the making of a contribution after the person concerned's income and capital have been computed in accordance with those Schedules.

(2) Legal aid shall be available to a person whose disposable income does not exceed £6,035 a year but a person may be refused legal aid where—

- (a) his disposable capital exceeds £6,000; and
- (b) it appears to the Area Director that he could afford to proceed without legal aid.

(3) The maximum contribution which a person who desires to receive legal aid shall be liable to make is—

- (a) where his disposable income exceeds £2,515 a year, a contribution in respect of disposable income not greater than one quarter of the excess;
- (b) where his disposable capital exceeds £3,000, a contribution in respect of disposable capital not greater than the excess.

Subject matter of dispute

5.—(1) In computing the income or capital of the person concerned, there shall be excluded the value of the subject matter of the dispute in respect of which the legal aid application has been made.

(2) Periodical payments of maintenance (whether made voluntarily or otherwise) shall not be treated as the subject matter of the dispute for the purposes of paragraph (1).

Application in representative, fiduciary or official capacity

6. Where an application for legal aid is made by a person who is concerned in the proceedings only in a representative, fiduciary or official capacity, the assessment officer shall, in computing the income and capital of that person and the amount of any contribution to be made,—

- (a) where so requested by the Area Director, assess the value of any property or estate or the amount of any fund out of which that person is entitled to be indemnified and the disposable income, disposable capital and maximum contribution of any persons (including that person if appropriate), who might benefit from the outcome of the proceedings; and
- (b) except in so far as they are assessed under paragraph (a), disregard the personal resources of that person.

Resources of spouses etc'

7.—(1) Subject to paragraph (2), in computing the income and capital of the person concerned the resources of his or her spouse shall be treated as his or her resources.

(2) The resources of the spouse of the person concerned shall not be treated as his or her resources if—

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

(3) Paragraphs (1) and (2) above and Schedules 2 and 3 shall apply to a man and a woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage.

Resources of an applicant who is a child

8.—(1) Subject to paragraph (2), where a legal aid application is made by or on behalf of a child who is under the upper limit of compulsory school age, the resources of any person—

- (a) who is responsible in law for maintaining the child; and
- (b) with whom the child is living or would normally live,

shall be assessed and taken into account in addition to the child's resources.

(2) Paragraph (1) shall not apply where the person responsible for maintaining the child has a contrary interest in the dispute in respect of which the legal aid application is made, or in other exceptional circumstances.

(3) Where a legal aid application is made by or on behalf of a child, the resources of the child shall, for the purposes of these Regulations, include any sum payable to any person for the maintenance of that child.

Deprivation or conversion of resources

9. Where it appears to the assessment officer that the person concerned has with intent to reduce the amount of his disposable income or disposable capital—

- (a) directly or indirectly deprived himself of any resources; or
- (b) converted any part of his 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 he has so deprived himself or which he has so converted shall be treated as part of his resources or as not so converted as the case may be and, for this purpose, resources which are to be wholly or partly disregarded shall include the repayment of money borrowed on the security of a dwelling.

Notification of the assessment officer's decision

10.—(1) The assessment officer shall make an assessment of the disposable capital, disposable income and maximum contribution of the person concerned.

(2) The assessment made under paragraph (1) shall be communicated in writing to the Area Director and the assessment officer may draw attention to any special circumstances affecting the manner in which any contribution is to be made.

Duty of the person concerned to report change in financial circumstances

11. The person concerned shall inform the Area Director of any change in his financial circumstances which has occurred since the original assessment was made and which he has reason to believe might affect the terms on which the certificate was granted or its continuation.

Re-assessment on change of circumstances

12.—(1) Where—

- (a) it appears that the circumstances upon which the assessment officer has assessed the disposable income or disposable capital of the person concerned have altered so that—
 - (i) his disposable income may have increased by an amount greater than £750 or decreased by an amount greater than £300; or
 - (ii) his disposable capital may have increased by an amount greater than £750;

or

- (b) new information which is relevant to the assessment has come to light;

the assessment officer shall re-assess that person's disposable income or disposable capital and maximum contribution, as the case may be, unless it appears to him to be unlikely that any significant change in that person's liability to make a contribution will result from such a re-assessment.

(2) For the purpose of making a re-assessment under paragraph (1), the amount and value of every resource of a capital nature acquired since the date of the legal aid application shall be ascertained as at the date of receipt of that resource.

Further assessment of resources outside the original period of computation

13.—(1) Where a certificate is still in force after the expiration of the period of computation and the Area Director considers that the current financial circumstances of the person concerned are such that he could afford to proceed without legal aid, he may request the assessment officer to make a further assessment of the current disposable income and current disposable capital of the person concerned with a view to discharging the certificate.

(2) Where a request under paragraph (1) is made, the assessment officer shall make a further assessment in accordance with the provisions of Schedules 2 and 3 and, for this purpose,—

- (a) the period of computation shall be the period of twelve months following the date of the Area Director's request; and
- (b) the amount and value of every resource of a capital nature acquired since the date of the legal aid application shall be ascertained as at the date of receipt of that resource.

Amendment of assessment due to error or mistake

14. Where it appears to the assessment officer that—

- (a) there has been some error or mistake in the assessment of a person's disposable income, disposable capital or maximum contribution or in any computation or estimate upon which such assessment was based; and
- (b) it would be just and equitable to correct the error or mistake,

the officer may make an amended assessment which shall, for all purposes, be substituted for the original assessment and have effect in all respects as if it were the original assessment.

Power of assessment officer to estimate the resources of the person concerned

15.—(1) Where the Area Director informs the assessment officer that the person concerned requires a certificate as a matter of urgency and the officer is not satisfied that he can make an assessment and communicate it to the Area Director by the time that he is requested so to do, the officer may, on the basis of the information then available to him, make an estimate of the disposable income and disposable capital of the person concerned and of his maximum contribution.

(2) The assessment officer shall communicate any estimate made under paragraph (1) to the Area Director in writing and, until the making of a full assessment, the estimate shall be treated as if it were an assessment and section 17(1) of the Act and regulation 4(2) and (3) above shall have effect as if the disposable income, disposable capital and maximum contribution of the person concerned were of the amounts specified in the estimate.

(3) In any case in which the assessment officer makes an estimate under paragraph (1) he shall, upon receiving such additional information as he may require, make an assessment and shall communicate it to the Area Director in writing and the assessment shall for all purposes take the place of the estimate.

Dated 28th February 1989

Mackay of Clashfern, C.

We consent,

*Kenneth Carlisle
Alan Howarth*

Two of the Lords Commissioners
of Her Majesty's Treasury

Dated 3rd March 1989

SCHEDULE 1

Regulation 2

REGULATIONS REVOKED

<i>Title</i>	<i>Reference</i>
The Legal Aid (Assessment of Resources) Regulations 1980	S.I. 1980/1630
The Legal Aid (Assessment of Resources) (Amendment) Regulations 1983	S.I. 1983/423
The Legal Aid (Assessment of Resources) (Amendment) Regulations 1986	S.I. 1986/276
The Legal Aid (Assessment of Resources) (Amendment) Regulations 1988	S.I. 1988/467
The Legal Aid (Financial Conditions) Regulations 1988	S.I. 1988/667

COMPUTATION OF INCOME

1. The income of the person concerned from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of computation and, in the absence of other means of ascertaining it, shall be taken to be the income received during the preceding year.

2. The income in respect of any emolument, benefit or privilege which is received otherwise than in cash shall be estimated at such sum as in all the circumstances is just and equitable.

3.—(1) The income from a trade, business or gainful occupation other than an employment at a wage or salary shall be deemed to be the profits therefrom which have accrued or will accrue to the person concerned in respect of the period of computation, and, in computing such profits, the assessment officer may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared.

(2) In ascertaining the profits under paragraph (1), there shall be deducted all sums necessarily expended to earn those profits, but no deduction shall be made in respect of the living expenses of that person or of any member of his family or household, except in so far as such member of his family or household is wholly or mainly employed in such trade or business and such living expenses form part of his remuneration.

4.—(1) In computing the income of the person concerned, there shall be deducted the total amount of tax which it is estimated would be payable by the person concerned if his income (as computed in accordance with paragraphs 1 to 3 above but not taking into account the provisions of regulation 5) were his income for a fiscal year and his liability for tax in that year were to be ascertained by reference to that income and not by reference to his income in any other year or period.

(2) For the purposes of this paragraph, tax shall be estimated at the rate provided by and after making all appropriate allowances, deductions or reliefs in accordance with the statutory provisions relating to income tax in force for the fiscal year in which the legal aid application is made.

5. Where the person concerned or his spouse is in receipt of income support paid under the Social Security Act 1986(a), the person concerned shall, for the period during which income support is received, be deemed to have a disposable income which does not exceed the figure for the time being specified in regulation 4(3)(a).

6. There shall be disregarded—

- (a) attendance allowance paid under the Social Security Acts 1975–1988(b);
- (b) mobility allowance paid under the Social Security Acts 1975–1988;
- (c) constant attendance allowance paid as an increase to a disablement pension under section 61 of the Social Security Act 1975(c); and
- (d) any payment made out of the social fund under section 32 of the Social Security Act 1986(d).

7. Where the income of the person concerned consists, wholly or in part, of a wage or salary from employment, there shall be deducted—

- (a) the reasonable expenses of travelling to and from his place of employment;
- (b) the amount of any payments reasonably made for membership of a trade union or professional organisation; and
- (c) where it would be reasonable so to do, an amount to provide for the care of any dependant child living with the person concerned during the time that person is absent from home by reason of his employment; and
- (d) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme within the meaning of the Social Security Pensions Act 1975(e) or to a personal pension scheme within the meaning of the Social Security Act 1986.

(a) 1986 c. 50.

(b) 1975 c. 14; 1988 c. 7.

(c) 1975 c. 14; section 61 was amended by the Social Security Act 1986 (c. 50), section 39, Schedule 3, paragraph 6.

(d) 1986 c. 50; section 32 was amended by the Social Security Act 1988 (c. 7), section 18, Schedule 3, paragraphs 1 to 7, Schedule 5.

(e) 1975 c. 60.

8. There shall be a deduction in respect of contributions payable by the person concerned (whether by deduction or otherwise) under the Social Security Acts 1975 to 1988, of the amount estimated to be so payable in the 12 months following the application for a certificate.

9.—(1) In the case of a householder, there shall be a deduction in respect of rent of the main or only dwelling of the amount of the net rent payable, or such part thereof as is reasonable in the circumstances, and the assessment officer shall decide which is the main dwelling where the person concerned resides in more than one dwelling in which he has an interest.

(2) For the purposes of this paragraph, "rent" includes—

(a) the annual rent payable; and

(b) a sum in respect of yearly outgoings borne by the householder including, in particular, rates, a reasonable allowance towards any necessary expenditure on repairs and insurance and any annual instalment (whether of interest or of capital) payable in respect of a mortgage debt or heritable security charged on the house in which the householder resides or has an interest;

and, in calculating the amount of rent payable, any housing benefit paid under the Social Security Act 1986 shall be deducted from the amount of rent payable.

(3) In this paragraph, the expression "net rent" means the rent less any proceeds of sub-letting any part of the premises in respect of which the said rent is paid or the outgoings are incurred except that, where any person or persons other than the person concerned, his or her spouse or any dependant of his or hers is accommodated, otherwise than as a sub-tenant, in the premises for which the rent is paid, the rent may be deemed to be reduced by an amount reasonably attributable to such other person or persons.

10. If the person concerned is not a householder, there shall be a deduction in respect of the cost of his living accommodation of such amount as is reasonable in the circumstances.

11.—(1) Subject to paragraph (2), in computing the income of the person concerned there shall be a deduction—

(a) in respect of the maintenance of the spouse of the person concerned, where the spouses are living together;

(b) in respect of the maintenance of any dependent child and of any dependent relative of the person concerned, where such persons are members of his household;

at the following rates—

(i) in the case of a spouse at a rate equivalent to 25% above the amount specified for the time being in column (3) of paragraph 6 of Part IV of Schedule 4 to the Social Security Act 1975 (increase for adult dependant of Category A retirement pension)(a);

(ii) in the case of a dependent child or a dependent relative, at a rate equivalent to 25% above the amount specified for the time being in paragraph 2 of Part I of Schedule 2 to the Income Support (General) Regulations 1987(b) appropriate to the age of the child or relative.

(2) The assessment officer may reduce any rate provided by virtue of sub-paragraph (1) by taking into account the income and other resources of the dependent child or other dependant to such extent as appears to the officer to be just and equitable.

(3) In ascertaining whether a child is a dependent child or whether a person is a dependent relative for the purposes of this paragraph, regard shall be had to their income and other resources.

12. Where the person concerned is making and, throughout such period as the assessment officer may consider to be adequate, has regularly made *bona fide* payments for the maintenance of—

(a) a spouse who is living apart;

(b) a former spouse;

(c) a child; or

(d) a relative;

who is not a member of the household of the person concerned, there shall be a deduction at the rate of such payments or at such rate (not exceeding the rate of such payments) as in all the circumstances is reasonable.

13. Where the person concerned is required to, or may reasonably provide for any other matter, the assessment officer may make an allowance of such amount as he considers to be reasonable in the circumstances of the case.

(a) 1975 c. 14; Part IV of Schedule 4 to the Social Security Act 1975 was amended by S.I. 1989/43.

(b) S.I. 1987/1967.

14. In computing the income from any source, there shall be disregarded such amount, if any, as the assessment officer considers to be reasonable having regard to the nature of the income or to any other circumstances of the case.

COMPUTATION OF CAPITAL

1.—(1) Subject to paragraph (2) and to the provisions of these Regulations, in computing the capital of the person concerned, there shall be included the amount or value of every resource of a capital nature belonging to him on the date the legal aid application is made.

(2) Where it comes to the attention of the assessment officer that, between the date the legal aid application is made and the assessment, there has been a substantial fluctuation in the value of a resource or there has been a substantial variation in the nature of a resource affecting the basis of computation of its value, or any resource has ceased to exist or a new resource has come into the possession of the person concerned, the officer shall compute the capital resources of that person in the light of such facts and the resources as so computed shall be taken into account in the assessment.

2. In so far as any resource of a capital nature does not consist of money, its amount or value shall be taken to be—

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

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

4. Where 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 assessment officer may, in lieu of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat that person as if he were the sole owner or partner and compute the amount of his capital in respect of that resource in accordance with paragraph 5 below.

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 to him or his share shall be taken to be either—

- (a) such sum, or his 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 its normal development; or
- (b) such sum as that person could borrow on the security of his interest in such business without injuring the commercial credit of that business;

whichever is the greater.

6. The value of any interest in reversion or remainder on the termination of a prior estate, whether legal or equitable, in any real or personal property or in a trust or other fund, whether the person concerned has the sole interest or an interest jointly or in common with other persons or whether his interest is vested or contingent, shall be computed in such manner as is both equitable and practicable.

7. Where the person concerned or his spouse is in receipt of income support paid under the Social Security Act 1986, the person concerned shall, for the period during which income support is received, be deemed to have disposable capital not exceeding the figure for the time being specified in regulation 4(3)(b).

8. In computing the amount of capital of the person concerned, there shall be wholly disregarded any payment which is made out of the social fund under section 32 of the Social Security Act 1986.

9. Save in exceptional circumstances, no sum shall be included in the amount of the capital of the person concerned in respect of—

- (a) the household furniture and effects of the dwelling house occupied by him;
- (b) articles of personal clothing; and
- (c) the tools and equipment of his trade, unless they form 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 he resides shall be wholly disregarded.

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

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

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

13. Where under any statute, bond, covenant, 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 shall be made of such an amount as is reasonably likely to become payable within the 12 months immediately following the date of the application for a certificate.

14. Where the person concerned produces evidence which satisfies the assessment officer that the debt or part of the debt will be discharged within the twelve months immediately following the date of the legal aid application, an allowance may be made in respect of any debt owing by the person concerned (other than a debt secured on the dwelling or dwellings in which he resides) to the extent to which the assessment officer considers reasonable.

15. In computing the capital of the person concerned, there may also be disregarded such an amount of capital (if any) as the assessment officer may, in his discretion, decide having regard to all the circumstances of the case.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace, with amendments, the Legal Aid (Assessment of Resources) Regulations 1980 (as subsequently amended). These Regulations, together with the Civil Legal Aid (General) Regulations 1989, govern the provision of representation under Part IV of the Legal Aid Act 1988 (legal aid in civil proceedings).

These Regulations make provision for the assessment of the financial resources of the person concerned in order to determine eligibility to receive legal aid and to assess the maximum contribution payable towards the cost of providing representation in the proceedings in respect of which the legal aid application is made.

The main changes made are as follows:

- (a) the income and capital eligibility limits (which determine whether a person is eligible to receive legal aid and provide the financial limits above which a contribution is to be payable) are set out in the Regulations and not in the Act (*regulation 4*);
- (b) the resources of persons living together as husband and wife are to be treated as if those persons were married (*regulation 7(3)*).

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