
STATUTORY INSTRUMENTS

1996 No. 2444

The Civil Legal Aid (Scotland) Regulations 1996

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. If it appears to the Board that a person has, with intent to reduce his disposable income or disposable capital, whether for the purpose of making himself eligible for civil legal aid, reducing his liability to pay a contribution towards civil legal aid or otherwise—

- (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.

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) or (e) 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, his circumstances have altered otherwise than as a result of the payment of a contribution in respect of the earlier proceedings, the Board may redetermine his 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 his disposable income by an amount greater than £750;
- (b) any decrease in the amount of his disposable income by an amount greater than £300; and
- (c) any increase in the amount of his disposable capital by an amount greater than £750.

Assessment of resources, etc. of person making application in a representative, fiduciary or official 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 his 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 he 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 he 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 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 himself, if he were a party to the proceedings, be entitled to legal aid.