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STATUTORY INSTRUMENTS

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**2001 No. 3632**

The Financial Services and Markets Tribunal  
(Legal Assistance) Regulations 2001

PART II—

ELIGIBILITY, ASSESSMENT AND CONTRIBUTIONS

**Eligibility**

8. The Tribunal shall grant legal assistance to an individual if it is satisfied that:
- (a) it is in the interests of justice to do so; and
  - (b) his financial resources are such that he requires assistance in meeting the legal costs he would, but for these Regulations, be likely to incur in relation to the proceedings before the Tribunal.

**Interests of justice test**

9. In deciding whether it is in the interests of justice for legal assistance to be granted, the Tribunal shall take all relevant factors into account, including:
- (a) whether the individual would, if any matter arising in the proceedings before the Tribunal is decided against him, be likely to lose his livelihood or suffer serious damage to his reputation;
  - (b) whether the determination of any matter arising in the proceedings may involve consideration of a substantial question of law;
  - (c) whether the individual may be unable to understand the proceedings or to state his own case;
  - (d) whether the proceedings may involve the tracing, interviewing or expert cross-examination of witnesses on behalf of the individual; and
  - (e) whether it is in the interests of another person that the individual be represented.

**Financial eligibility**

- 10.—(1) Where a doubt arises as to whether the financial resources of an individual are such that he requires legal assistance, the doubt shall be resolved in his favour.
- (2) The Tribunal shall determine the financial eligibility of the applicant and any contribution payable in accordance with these Regulations.
- (3) The Tribunal may appoint an expert to prepare a report with regard to the financial resources of the applicant.

### **Resources of other persons**

**11.**—(1) In calculating the disposable income and disposable capital of the applicant, the resources of his partner shall be treated as his resources.

(2) Where it appears to the Tribunal that:

- (a) another person is, has been or is likely to be substantially maintaining the applicant; or
- (b) any of the resources of another person have been or are likely to be made available to the applicant

the Tribunal may treat all or any part of the resources of that other person as the resources of the applicant.

(3) In this regulation and regulation 12 “person” includes a company, partnership, body of trustees and any body of persons, whether corporate or not corporate.

### **Deprivation or conversion of resources**

**12.** If it appears to the Tribunal that the applicant has, with intent to reduce the amount of his disposable income or disposable capital, whether for the purpose of making himself eligible to receive legal assistance, reducing his liability to pay a contribution, or otherwise:

- (a) directly or indirectly deprived himself of any resources;
- (b) transferred any resources to another person; or
- (c) converted any part of his resources into resources which under these Regulations are to be wholly or partly disregarded

the resources which he has so deprived himself of, transferred or converted shall be treated as part of his resources or as not so converted as the case may be.

### **Duty to report change in financial circumstances**

**13.** The assisted person shall immediately inform the Tribunal of any change in his financial circumstances (or those of any other person whose resources are to be treated as his resources under these Regulations) of which he is, or should reasonably be aware, which has occurred since any assessment of his resources, and which might affect the terms on which he was assessed as eligible to receive legal assistance.

### **Amendment of assessment due to error or receipt of new information**

**14.** Where:

- (a) it appears to the Tribunal that there has been an error in the assessment of a person’s resources or contribution, or in any calculation or estimate upon which such assessment was based; or
- (b) new information which is relevant to the assessment has come to light

the Tribunal may make an amended assessment, and may take such steps equitable to give effect to it in relation to any period during which legal assistance has already been provided.

### **Further assessments**

**15.**—(1) Where it appears that the circumstances of the assisted person may have altered so that:

- (a) his disposable income has increased by an amount greater than £750 or decreased by an amount greater than £300; or
- (b) his disposable capital has increased by an amount greater than £750

the Tribunal shall, subject to paragraph (6), make a further assessment of the assisted person's resources and any contribution which he is required to pay under regulation 35, in accordance with these Regulations.

(2) Where a further assessment is made, the period of calculation for the purposes of disposable income shall be the period of 12 months following the date of the change of circumstances or such other period of 12 months as the Tribunal considers appropriate.

(3) Where a further assessment is made, the amount or value of every resource of a capital nature acquired since the date of the original application shall be ascertained as at the date of receipt of that resource.

(4) Any capital contribution which becomes payable as a result of a further assessment shall be payable in respect of the cost of the legal assistance, including costs already incurred.

(5) Where legal assistance is withdrawn as a result of a further assessment of capital, the Tribunal may require a contribution to be paid in respect of costs already incurred.

(6) The Tribunal may decide not to make a further assessment under paragraph (1) if it considers such a further assessment inappropriate, having regard in particular to the period during which legal assistance is likely to continue to be provided to the assisted person.

### **Calculation of income**

**16.—**(1) The income of the individual from any source shall be taken to be the income which he may reasonably expect to receive (in cash or in kind) during the period of calculation.

(2) For the purpose of this regulation and regulation 32, the period of calculation shall be the 12 months starting on the date of the application for legal assistance or such other 12 month period as the Tribunal considers appropriate.

**17.—**(1) The income from a trade, business or gainful occupation other than an occupation at a wage or salary shall be deemed to be whichever of the following the Tribunal considers more appropriate and practicable:

- (a) the profits which have accrued or will accrue to the individual in respect of the period of calculation; or
- (b) the drawings of the individual.

(2) In calculating the profits under paragraph (1)(a):

- (a) the Tribunal may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared; and
- (b) 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 the individual or any member of his family or household, except in so far as that person is wholly or mainly employed in that trade or business and such living expenses form part of his remuneration.

**18.—**(1) For the purposes of this regulation, "national insurance contributions" means contributions under Part I of the Social Security Contributions and Benefits Act 1992(1).

(2) In calculating the disposable income of the individual, any income tax and national insurance contributions paid or payable on that income in respect of the period of calculation shall be deducted.

**19.—**(1) For the purposes of this regulation, "the Schedule" means Schedule 2 to the Income Support (General) Regulations 1987(2).

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(1) 1992 c. 4.

(2) S.I.1987/1967; the relevant amending instruments are S.I. 2000/440 and 1993.

(2) Subject to paragraph (3), in calculating the disposable income of the individual there shall be a deduction at or equivalent to the following rates (as they applied at the beginning of the period of calculation):

- (a) in respect of the maintenance of his partner, the difference between the income support allowance for a couple both aged not less than 18 (which is specified in column 2 of paragraph 1(3)(d) of the Schedule), and the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of the Schedule); and
- (b) in respect of the maintenance of any dependant child or dependant relative of his, where such persons are members of his household:
  - (i) in the case of a dependant child or a dependant relative aged 15 or under at the beginning of the period of calculation, the amount specified at (a) in column 2 in paragraph 2(1) of the Schedule; and
  - (ii) in the case of a dependant child or a dependant relative aged 16 or over at the beginning of the period of calculation, the amount specified at (b) in column 2 in paragraph 2(1) of the Schedule.

(3) The Tribunal may reduce any rate provided by virtue of paragraph (2)(b) by taking into account the income and other resources of the dependant child or dependant relative to such extent as appears to the Tribunal to be equitable.

(4) In ascertaining whether a child is a dependant child or whether a person is a dependant relative for the purpose of this regulation, regard shall be had to their income and other resources.

**20.** Where the individual is making and, throughout such period as the Tribunal considers adequate, has regularly made payments for the maintenance of:

- (a) a former partner;
- (b) a child; or
- (c) a relative

who is not a member of his household, in calculating the disposable income of the individual a reasonable amount shall be deducted in respect of such payments.

**21.** In calculating the disposable income of the individual from any source, the Tribunal shall disregard such amount (if any) as it considers reasonable, having regard to the nature of the income or to any other circumstances.

**22.** In calculating the disposable income of the individual, any sums (net of council tax benefit) payable by him in respect of the council tax to which he is liable by virtue of section 6 of the Local Government Finance Act 1992(3) shall be deducted.

**23.** Where the income of the individual consists, wholly or partly, of a wage or salary from employment, in calculating his disposable income 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;
- (c) where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the individual during the time that he is absent from home by reason of his employment; and

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(3) 1992 c. 14; as amended by S.I. 1997/74.

- (d) the amount of any contribution paid, whether under a legal obligation or not, to an occupational pension scheme or a personal pension scheme within the meaning of section 1 of the Pension Schemes Act 1993<sup>(4)</sup>.

**24.**—(1) Paragraphs (2) to (5) apply only if the individual is a householder.

(2) In calculating the disposable income of the individual, the net rent payable by him in respect of his main or only dwelling, or such part of it as is reasonable in the circumstances, shall be deducted.

(3) Where the individual lives in more than one dwelling, the Tribunal shall decide which is the main dwelling.

(4) For the purpose of this regulation, “net rent” includes:

- (a) any annual rent payable;
- (b) any annual instalment (whether of interest or capital) in respect of a mortgage debt or heritable security up to a maximum of an amount bearing the same proportion to the amount of the annual instalment as £100,000 bears to the debt secured; and
- (c) a sum in respect of yearly outgoings borne by the householder including, in particular, any water and sewerage charges, and a reasonable allowance towards any necessary expenditure on repairs and insurance.

(5) In calculating the amount of net rent payable, there shall be deducted:

- (a) any housing benefit paid under the Social Security Contributions and Benefits Act 1992;
- (b) any proceeds of sub-letting any part of the premises; and
- (c) an amount reasonably attributable to any person other than the individual, his partner or any dependant, who is accommodated in the premises otherwise than as a sub-tenant.

(6) If the individual is not a householder, a reasonable amount in respect of the cost of his living accommodation shall be deducted.

### **Calculation of capital**

**25.** Subject to the provisions of these Regulations, in calculating the disposable capital of the individual, the amount or value of every resource of a capital nature belonging to him on the date on which the application for legal assistance is made shall be included.

**26.** In so far as any resource of a capital nature does not consist of money, its value shall be taken to be:

- (a) the amount which that resource would realise if sold; or
- (b) the value assessed in such other manner as appears to the Tribunal to be equitable.

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

**28.** The value to the individual of any life insurance or endowment policy shall be taken to be the amount which he could readily borrow on the security of that policy.

**29.** Other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, nothing shall be included in the disposable capital of the individual in respect of:

- (a) the household furniture and effects of the main or only dwelling house occupied by him;
- (b) articles of personal clothing; and

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(4) 1993 c. 48. The definition of a personal pension scheme in section 1 was amended by the Welfare Reform and Pensions Act 1999 (c. 30), Schedule 2, paragraph 3(1)(a).

- (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 regulation 30 apply.

**30.**—(1) Where the individual is the sole owner of or partner in a business, the value of the business to him shall be taken to be the greater of:

- (a) such sum, or his share of such sum, as could be withdrawn from the assets of his business without substantially impairing its profits or normal development; and
- (b) such sum as the individual could borrow on the security of his interest in the business without substantially injuring its commercial credit.

(2) Where the individual stands in relation to a company in a position analogous to that of a sole owner or partner in a business, the Tribunal may, instead of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat him as if he were a sole owner or partner in a business and calculate the amount of his capital in respect of that resource in accordance with paragraph (1).

(3) Where the individual owns solely, jointly or in common with other persons, any interest on the termination of a prior estate, whether

- (a) legal or equitable;
- (b) vested or contingent;
- (c) in reversion or remainder; and
- (d) whether in real or personal property or in a trust or other fund

the value of such interest shall be calculated in such manner as is both equitable and practicable.

(4) In Scotland, the value of any interest, whether vested or contingent, of the individual in the fee of any heritable or moveable property forming the whole or part of any trust or other estate, shall be calculated in such manner as is both equitable and practicable.

**31.**—(1) In calculating the disposable capital of the individual, the value of any interest in land shall be taken to be the amount for which that interest could be sold less the amount of any mortgage debt or heritable security, subject to the following:

- (a) in calculating the value of his interests, the total amount to be deducted in respect of all mortgage debts or heritable securities shall not exceed £100,000;
- (b) in making the deductions in sub-paragraph (a), any mortgage debt or heritable security in respect of the main or only dwelling shall be deducted last; and
- (c) the first £100,000 of the value of his interest (if any) in the main or only dwelling in which he resides, after the application of sub-paragraphs (a) and (b), shall be disregarded.

(2) Where the individual resides in more than one dwelling, the Tribunal shall decide which is the main dwelling.

**32.** Where under any statute, bond, covenant, guarantee or other instrument the individual is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, the Tribunal shall disregard such amount as is reasonably likely to become payable within the period of calculation in regulation 16(2).

**33.** In calculating the disposable capital of the individual, the Tribunal may disregard any capital resource where:

- (a) the individual is restrained from dealing with that resource by order of a court;
- (b) he has requested the court which made the order to release part or all of that resource for use in connection with the proceedings before the Tribunal; and
- (c) that request has been refused.

**34.** In calculating the disposable capital of the individual, the Tribunal may disregard such amount of capital (if any) as it considers reasonable, having regard to the nature of the capital or to any other circumstances.

### **Contributions**

**35.—**(1) The assisted person shall make the following contributions:

- (a) where his annual disposable income exceeds £3,110, monthly contributions of one thirty-sixth of the excess; and
- (b) where his disposable capital exceeds £3,000, a contribution of the whole of the amount of the excess.

(2) All contributions shall be payable in such manner as the Tribunal directs.

(3) All contributions payable under paragraph (1)(a) shall be payable monthly throughout the period the legal assistance order is in force.

(4) All contributions payable under paragraph (1)(b) shall be payable upon assessment, or at such other time as the Tribunal directs.

(5) Where the contribution made by the assisted person exceeds the cost to the Tribunal of the legal assistance provided to him, the excess shall be refunded to the assisted person.

**36.—**(1) Where, on determining a reference, the Tribunal directs the Authority to:

- (a) take no action against the assisted person;
- (b) impose a penalty on the assisted person of a lesser amount than that stated in the decision notice; or
- (c) instead of imposing a penalty on the assisted person, publish a statement to the effect that he has engaged in market abuse

the Tribunal may, at the hearing of the reference, order the refund of some or all of any contribution made by the assisted person.

(2) In making a decision under paragraph (1), the Tribunal shall have regard to all the circumstances of the case, including the conduct of the parties.