

EXPLANATORY NOTE

(This Note is not part of the Regulations but is intended to indicate their general purport.)

These regulations are made by the Ministry of Home Affairs under powers conferred by Part I of the Legal Aid and Advice Act (Northern Ireland) 1965 and supplement the provisions of that Part by providing for the procedure to be adopted on applications for Civil Aid Certificates and Emergency Certificates, their revocation and discharge, appeals against refusal of the grant of such certificates, the conduct of proceedings on behalf of assisted persons, and the taxation and assessment of costs in proceedings to which an assisted person is a party as well as other matters in connection with such proceedings or claims to which Part I of that Act applies.

1965. No. 218

[C]

LEGAL AID AND ADVICE

Assessment of Resources

REGULATIONS, DATED 28TH OCTOBER, 1965, MADE BY THE MINISTRY OF HOME AFFAIRS WITH THE CONCURRENCE OF THE MINISTRY OF FINANCE, UNDER SECTION 4 OF THE LEGAL AID AND ADVICE ACT (NORTHERN IRELAND) 1965.

The Ministry of Home Affairs, with the concurrence of the Ministry of Finance, in exercise of the powers conferred by section 4 of the Legal Aid and Advice Act (Northern Ireland) 1965(a) and of all other powers enabling it in that behalf, hereby makes the following regulations:—

Citation, interpretation and commencement

1.—(1) These regulations may be cited as the Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1965 and shall come into operation on the 1st day of November, 1965.

(2) In these regulations—

“the Act” means the Legal Aid and Advice Act (Northern Ireland) 1965;

“the Board” means the National Assistance Board for Northern Ireland;

“a certificate” means a Civil Aid Certificate issued in accordance with regulations made under the Act;

“child” means a child or stepchild of the person concerned, which child is either (i) under the upper limit of compulsory school age, that is to say, the age that is for the time being the upper limit of compulsory school age by virtue of section 33 of the Education Act (Northern Ireland) 1947(b), together with any Order in Council made under that section, or (ii) 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;

(a) 1965. c. 8. (N.I.).

(b) 1947. c. 3.

- “the committee” means the Legal Aid Committee or a Certifying Committee set up by a scheme made under section 10 of the Act by whom the Board are requested to determine or redetermine the disposable income and disposable capital and the maximum contribution of any person or any such committee by whom a certificate is amended, revoked or discharged, as the case may require;
- “income” includes benefits and privileges; the income of the person concerned does not include any sum payable under the order of a court or under any instrument to that person for the purpose of the maintenance of an infant;
- “the 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 Board may consider to be appropriate;
- “the person concerned” means the person whose disposable income and disposable capital are to be determined or the person whose resources are to be treated as the resources of any other person, as the case may require;
- “authorised summary proceedings” means the following proceedings in a court of summary jurisdiction, namely—
- (a) proceedings for or relating to an affiliation order within the meaning of the Illegitimate Children (Affiliation Orders) Act (Northern Ireland) 1924(a) (whether as originally enacted or as applied or extended by or for the purposes of any other enactment), or an order under the Summary Jurisdiction (Separation and Maintenance) Act (Northern Ireland) 1945(b);
 - (b) debt and ejectment proceedings within the meaning of Part VII of the Magistrates’ Courts Act (Northern Ireland) 1964(c), other than proceedings under section 71(2) of that Act;
 - (c) proceedings under sections 63, 64, 65, 66, 67, 82, 111 and 112(1) of the Children and Young Persons Act (Northern Ireland) 1950(d) and section 38 of the Education Act (Northern Ireland) 1947;
- “make a determination”, in relation to the Board, means to determine the disposable income and disposable capital of the person concerned, and to determine the maximum amount of his contribution to the legal aid fund in respect of any proceedings.

Subject matter of dispute

2. In computing the disposable income or the disposable capital of the person concerned there shall be excluded the value of the subject matter of the dispute in respect of which application has been made for a certificate.

Resources of a spouse

3.—(1) Except as otherwise provided in paragraph (2), in computing the income and the capital of the person concerned the resources of his spouse shall be treated as his resources.

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

- (i) the spouse has a contrary interest in the dispute in respect of which application for a certificate is made; or
- (ii) the person concerned and the spouse are living separate and apart;
or

- (iii) it would in the circumstances of the case be either inequitable or impracticable to make the resources of one spouse available to the other spouse.

Resources of an infant applicant

4.—(1) Where an application for a certificate is made by or on behalf of an infant who is under the upper limit of compulsory school age, there may, in addition to the resources of the infant, be taken into account the disposable income and disposable capital of such other person or persons, being one or more of the following persons, as the Board, having regard to all the circumstances, including the age and resources of the infant, may decide, that is to say—

- (i) any person who under section 19 of the National Assistance Act (Northern Ireland) 1948(a) is liable to maintain the infant;
- (ii) any person having the care and control of the infant, not being a person having such care and control by reason of any contract or for some temporary purpose.

(2) Where an application for a certificate is made by or on behalf of an infant, his resources for the purposes of these regulations shall include any sum payable under the order of a court or under any instrument to any person for the purpose of the maintenance of the infant.

Deprivation or conversion of resources

5. If it appears to the Board that the person concerned, with intent to reduce the amount of his disposable income or disposable capital, has directly or indirectly deprived himself of any resource or has 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, 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.

Determination of disposable income and disposable capital

6. Save as otherwise provided by these regulations, the disposable income and disposable capital of the person concerned shall respectively be determined at amounts calculated in accordance with the provisions of Schedules 1 and 2.

Decision of the Board

7. The determination in accordance with the provisions of section 4(8) of the Act of the disposable income, disposable capital and maximum contribution shall be communicated in writing to the committee.

Determination on change of circumstances

8. Where it appears to the committee that the circumstances upon which the Board have determined the disposable income or disposable capital of the person concerned have altered so that—

- (a) his disposable income may have increased or decreased by an amount greater than twenty-six pounds; or
- (b) his disposable capital may have increased by an amount greater than seventy-five pounds;

the Board shall, if so required by the committee, redetermine that person's disposable income, disposable capital and maximum contribution.

(a) 1948. c. 13.

Amendment of determination because of error or mistake

9. Where it appears to the Board that there has been some error or mistake in the determination of a person's disposable income, disposable capital or maximum contribution or in any computation or estimate upon which such determination is based and that it would be just and equitable to correct the determination, the Board may, with the consent of the committee, correct such error or mistake and make an amended determination, and such amended determination shall for all purposes be substituted for the original determination and shall have effect in all respects as if it were the original determination.

Power of the Board to estimate an applicant's resources

10.—(1) Where the committee informs the Board that the person concerned requires a certificate in a matter of special urgency and the Board are not satisfied that they can make a determination and communicate it to the committee by the time that they are requested to do so, the Board may, on the basis of the information then available to them, make an estimate of the disposable income and disposable capital of the person concerned and of the maximum amount of his contribution to the legal aid fund. Such estimate shall be communicated in writing to the committee and, until the making of a determination, shall be treated as if it were a determination and sections 2 and 3 of the Act shall have effect as if the disposable income and disposable capital of the person concerned were of the amounts specified in the estimate.

(2) In any case in which the Board make an estimate under the preceding paragraph they shall, upon receiving such additional information as they may require, make a determination and shall communicate the same in writing to the committee and, if the result of the determination is to vary the maximum amount of the contribution of the person concerned, the determination shall for all purposes take the place of the estimate.

(3) References in this regulation to "the committee" shall, in the case of application for a certificate in respect of authorised summary proceedings, be deemed to include references to the secretary of the committee.

Sealed with the Official Seal of the Ministry of Home Affairs for Northern Ireland this 26th day of October, 1965.

(L.S.)

J. G. Hill,

Assistant Secretary.

The Ministry of Finance hereby concurs with the foregoing regulations.

Sealed with the Official Seal of the Ministry of Finance for Northern Ireland this 28th day of October, 1965.

(L.S.)

R. R. Butler,

Assistant Secretary.

Regulation 6

SCHEDULE 1

Rules for computing disposable 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, that income in the absence of other means of ascertaining it being taken to be the income received during the preceding year.

2. The income in respect of any emolument, benefit or privilege receivable otherwise than in cash shall be estimated at such a 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 Board may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been made up.

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

4.—(1) In computing the disposable 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 the foregoing rules of this schedule (but without taking into account the operation of regulation 2), 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 rule the tax shall be estimated at the rate provided by and after making all appropriate allowances, deductions or reliefs in accordance with the provisions of the Income Tax Acts in force for the fiscal year current at the date of the application for a certificate.

5.—(1) In computing the income of any person any such payment or part of a payment as is specified in the following provisions of this rule shall be disregarded up to the amount of thirty shillings a week or, if the person in question is in receipt of more than one payment so specified, up to the said amount in the aggregate.

The payments and parts of payments herein before referred to are:—

- (a) the first fifteen shillings a week of any payment of sick pay received from a friendly society or trade union;
- (b) the first fifteen shillings a week of any superannuation payment or superannuation payments in respect of previous service or employment from which the recipient has retired or resigned (whether payable by a former employer or not), not being a payment or payments—
 - (i) on account of a pension under the Old Age Pensions Act (Northern Ireland) 1936(a) or under or by virtue of the Widows', Orphans' and Old Age Contributory Pensions Acts (Northern Ireland) 1936 to 1941 or under any enactment repealed by any of those Acts; or
 - (ii) on account of a retirement pension under the National Insurance Act (Northern Ireland) 1946(b);
- (c) any payment by way of maternity allowance under section 14 of the National Insurance Act (Northern Ireland) 1946;
- (d) any of the following payments, that is to say—

(a) 26 Geo. 5 & 1 Edw. 8, c. 31 (N.I.). (b) 1946, c. 23.

- (i) any payment in respect of retired pay or pension to which section 380(1) and (2) of the Income Tax Act 1952(a) applies, including any payment in respect of a dependant's allowance attached to such a pension;
- (ii) any payment in respect of a disablement pension awarded under the Personal Injuries (Emergency Provisions) Act 1939(b), including an increase in such a pension in respect of dependants;
- (iii) any weekly payment by way of compensation under any enactment relating to workmen's compensation;
- (iv) any payment by way of disablement benefit under section 12 of the National Insurance (Industrial Injuries) Act (Northern Ireland) 1946(c);
- (e) the first seven shillings and sixpence a week of any payment in respect of a child, being—
 - (i) an increase of widow's allowance or widowed mother's allowance under the third or fourth column of Part I of Schedule 2 to the National Insurance Act (Northern Ireland) 1946; or
 - (ii) child's special allowance under the second column, or an increase of child's special allowance under the fourth column, of the said Part I; or
 - (iii) an increase of death benefit under sub-paragraph (i) or (ii) of paragraph 11(b) of Schedule 4 to the National Insurance etc. Act (Northern Ireland) 1964(d); and
- (f) the first five shillings and sixpence a week of any payment in respect of a child, being—
 - (i) an increase of widow's allowance, widowed mother's allowance or child's special allowance under the fifth column of the said Part I; or
 - (ii) an increase of death benefit under sub-paragraph (iii) of the said paragraph 11(b).

(2) Where under section 4(4) of the Act the resources of two or more persons are to be aggregated, the last foregoing paragraph of this rule shall apply to the aggregate of the resources of both or all the said persons.

6. There shall be deducted from the income from employment at a wage or salary the reasonable expenses, if any, incurred by the person concerned in connection with his employment.

7. There shall be a deduction in respect of contributions payable by the person concerned (whether by deduction or otherwise) under the National Insurance Acts (Northern Ireland) 1946 to 1964 of the amount estimated to be so payable in the 12 months following the application for a certificate.

8.—(1) There shall be a deduction in respect of rent in the case of a householder of the amount of the net rent payable, or such a part thereof as is reasonable in the circumstances.

(2) In this rule the expression "rent" means—

(a) the rent payable in respect of a year; and

(b) a sum in respect of the 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 capital) payable in respect of a mortgage debt or heritable security charged on the house in which the householder resides or on any interest therein.

(3) In this rule 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 incurred:

Provided that, where any person other than the person concerned, his spouse or any dependant of his 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.

(a) 15. & 16 Geo. 6 & 1 Eliz.-2. c. 10.
(b) 2 & 3 Geo. 6. c. 82.

(c) 1946. c. 21.
(d) 1964. c. 37 (N.I.).

(9) 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.

10.—(1) There shall be a deduction in respect of the maintenance of the spouse of the person concerned, if the spouses are living together, in respect of the maintenance of any dependent child and in respect of the maintenance of any dependent relative of the person concerned, being (in either of such cases) a member of his household, at the following rates:—

- (a) in the case of the spouse, at the rate equivalent to the amount by which the rate for the time being prescribed for a husband and wife by paragraph 2(a) of Part I of Schedule 1 to the National Assistance (Determination of Need) Regulations (Northern Ireland) 1964(a) exceeds the rate for the time being prescribed by paragraph 2(b) for a person living alone;
- (b) in the case of a dependent child and a dependent relative, at the rate for the time being prescribed for a dependant of the age of the child or other dependant by the said Part I:

Provided that the Board may reduce such rate by taking into account the income and other resources of the dependent child or other dependant to such extent as appears to the Board to be just and equitable.

(2) In ascertaining whether a child is a dependent child and whether a person is a dependent relative regard shall be had to their income and other resources.

11. If the person concerned is making and, throughout such period as the Board may consider adequate, has regularly made bona fide payments for the maintenance of a spouse who is living apart, of a former spouse, of a child or of a relative who is not (in any of such cases) a member of the household of the person concerned, there shall be a deduction at the rate of such payment or at such rate, not exceeding the rate of such payments, as in all the circumstances is reasonable.

12. There shall be an allowance of such amount as is just and equitable in respect of any other matter for which the person concerned must or reasonably may provide.

13. In computing the income from any source there shall be disregarded such amount, if any, as the Board consider to be reasonable having regard to the nature of the income or to any other circumstances of the case.

Regulation 6

SCHEDULE 2

Rules for computing disposable capital

1. Subject to the provisions of these regulations relating to disregarding certain assets, there shall 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 a certificate:

Provided that, where it is brought to the notice of the Board that, between the date of application for a certificate and the determination of the Board, 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 Board 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 Board's determination.

2. So far as any resource does not consist of money, the amount or value thereof shall be taken to be 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 shall be taken to be the amount or value thereof assessed in such manner as appears to the Board to be just and equitable.

(a) S.R. & O. 1964, No. 216 (NI).

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

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, in lieu of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat that person as if he were such sole owner or partner and compute the amount of his capital in respect of that resource in accordance with the next succeeding rule.

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 his share therein to that person 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 the normal development thereof; 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. In computing the amount of capital of the person concerned, there shall be wholly disregarded—

- (a) any death grant paid to a person under the provisions of section 21 of the National Insurance Act (Northern Ireland) 1946; and
- (b) any maternity grant to which a woman is entitled under section 13 of the National Insurance Act (Northern Ireland) 1946.

8. Save in exceptional circumstances, nothing shall 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 him;
- (b) articles of personal clothing; and
- (c) the personal tools and equipment of his trade, not being part of the plant or equipment of a business to which the provisions of rule 5 apply.

9.—(1) Except as is provided in paragraph (2), in computing the amount of capital of the person concerned, there shall be disregarded, in respect of the value to him of any interest in the dwelling-house in which he resides, any sum which might be obtained by him by selling that interest or borrowing money on the security thereof.

(2) There shall be taken into account one half of the amount by which the value of the dwelling-house, after deducting therefrom the amount of any encumbrance charged thereon, exceeds £3,000:

Provided that the Board shall not take into account any sum in respect of the value of the dwelling-house if it appears to the Board to be inequitable or impracticable to do so.

10. 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 a certificate is applied for, such sum shall be disregarded.

11. The value 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:

Provided that the first £125 of the aggregate amount so computed in respect of all the policies held by the person concerned may be disregarded.

12. 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 application for a certificate.

13. An allowance may be made of the amount of any debt (other than a debt secured on the dwelling-house in which he resides) owing by the person concerned, provided that the Board may not make the allowance, or may make it only in part, if it appears to the Board that he does not intend to discharge the debt within the 12 months immediately following the date of application for a certificate.

14. Where the person concerned has living with him one or more of the following persons, namely:—

(a) a spouse whose resources are required to be treated as his for the purpose of these regulations;

(b) a dependent child;

(c) a dependent relative wholly or partly maintained by him;

an allowance shall be made of £75 in respect of the first person, £50 in respect of the second person and £25 in respect of each further person. For the purpose of this rule, a dependent child or a dependent relative is a person who has been so ascertained under rule 10(2) of Schedule 1.

15. Where the disposable income of the person concerned is less than £375, there shall be an allowance of a sum equal to the difference between the amount of the disposable income and £375.

16. In computing the amount of capital there shall be disregarded such an amount of capital, if any, as the Board in the circumstances of the case may in their discretion decide.

EXPLANATORY NOTE

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These regulations make provision, by virtue of section 4 of the Legal Aid and Advice Act (Northern Ireland) 1965 for the assessment of the resources of applicants for legal aid. The regulations set out the general principles to be followed in computing the gross income and capital of an applicant and the allowances and deductions to be made therefrom so as to ascertain the amount of his disposable income and disposable capital.