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STATUTORY INSTRUMENTS

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**2013 No. 471**

**The Criminal Legal Aid (Financial Resources) Regulations 2013**

**PART 2**

Advice and assistance

**Advice and assistance: exceptions from requirement to make a determination in respect of an individual's financial resources**

5.—(1) The Director must make a determination in respect of an individual's application for relevant advice and assistance without making a determination in respect of that individual's financial resources.

(2) In this regulation—

“2010 Standard Crime Contract” means the contract so named between the Lord Chancellor and providers for the provision of criminal legal aid<sup>(1)</sup>;

“advocacy assistance” means advocacy and assistance provided under section 15(2)(a) or (b) of the Act;

“duty solicitor” means provider who is so authorised under the 2010 Standard Crime Contract;

“relevant advice and assistance” means the following advice and assistance made available under section 15 of the Act—

- (a) advocacy assistance before a magistrates' court or the Crown Court;
- (b) advice and assistance provided by a duty solicitor acting as such in accordance with an arrangement with the Lord Chancellor under section 2(1) of the Act;
- (c) advice and assistance provided to a volunteer during voluntary attendance;
- (d) advice and assistance provided to an individual being interviewed in connection with a serious service offence; and
- (e) advice and assistance provided to an individual who is the subject of an identification procedure carried out by means of a video recording, in connection with that procedure.

“serious service offence” means an offence under the Armed Forces Act 2006<sup>(2)</sup> which cannot be dealt with summarily; and

“volunteer” means an individual who, for the purpose of assisting with an investigation, without having been arrested—

- (a) attends voluntarily at a police station, customs office or any other place where a constable is present; or
- (b) accompanies a constable to a police station, customs office or any other such place.

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(1) A copy of the 2010 Standard Crime Contract is available at [www.justice.gov.uk/legal-aid](http://www.justice.gov.uk/legal-aid). Copies can be inspected at the Legal Aid Agency (Head Office), 102 Petty France, London, SW1H 9AJ.

(2) 2006 c. 52.

### **Disposable income and disposable capital**

6.—(1) Subject to regulation 14, the disposable income of an individual under this Part is that individual's total income from all sources during the period of calculation after the Director has deducted any amount in accordance with regulations 11 and 12.

(2) Subject to regulation 14, the disposable capital of an individual under this Part is the amount or value of every resource of a capital nature of that individual, after the Director has deducted any amount in accordance with regulation 13.

### **Advocacy assistance for individuals in prison**

7.—(1) The Director must make a determination in accordance with section 21(1) of the Act that an individual's financial resources are such that the individual is eligible for advocacy assistance under section 15(2)(c) of the Act—

- (a) in relation to the individual's treatment or discipline in a prison, young offender institution or secure training centre (other than in respect of actual or contemplated proceedings regarding personal injury, death or damage to property); or
- (b) in relation to proceedings before the Parole Board<sup>(3)</sup>, where the individual is the subject of the proceedings,

if the circumstances in paragraph (2) are satisfied.

- (2) The circumstances are that the individual's—
  - (a) disposable income does not exceed £209; and
  - (b) disposable capital does not exceed £3,000.

### **Other advice and assistance**

8. Except where regulations 5 or 7 apply, the Director must make a determination in accordance with section 21(1) of the Act that an individual's financial resources are such that the individual is eligible for advice and assistance under section 15 of the Act if that individual's—

- (a) disposable income does not exceed £99; and
- (b) disposable capital does not exceed £1,000.

### **Resources of a partner**

9. When calculating the disposable income and disposable capital of an individual, the Director must treat the financial resources of that individual's partner as the individual's financial resources unless—

- (a) the individual's partner has a contrary interest in the matter in respect of which the individual is seeking advice and assistance; or
- (b) the Director considers that, in all the circumstances of the case, it would be inequitable or impractical to do so.

### **Resources of a maintaining adult**

10.—(1) Where an individual who makes an application for a determination in relation to advice and assistance under section 15 of the Act is a child, the Director must treat the financial resources of any maintaining adult as that child's financial resources unless, having regard to all the circumstances

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(3) The Parole Board is constituted under section 239 of the Criminal Justice Act 2003 (c. 44).

of the case, including the age and financial resources of the child and any conflict of interest between the child and the maintaining adult, it appears to the Director to be inequitable to do so.

(2) In this regulation “maintaining adult” means a parent, guardian or any other person who is responsible for maintaining a child, or who usually contributes substantially to the maintenance of that child.

### **Disposable income: deductions**

**11.**—(1) To calculate the disposable income of an individual in accordance with regulation 6(1), the Director must deduct the amounts specified in paragraphs (2) and (3).

(2) The amounts are such amounts as were paid or payable by the individual during the period of calculation in respect of—

- (a) any income tax on the individual’s income; and
- (b) any estimated contributions under Part I of the 1992 Act or Part 1 of the 1992 (Northern Ireland) Act.

(3) The amounts are such amounts as were paid to the individual during the period of calculation in respect of—

- (a) attendance allowance paid under section 64 of the 1992 Act or section 64 of the 1992 (Northern Ireland) Act;
- (b) disability living allowance paid under section 71 of the 1992 Act<sup>(4)</sup> or section 71 of the 1992 (Northern Ireland) Act;
- (c) constant attendance allowance paid under section 104 of the 1992 Act as an increase to a disablement pension or under section 104 of the 1992 (Northern Ireland) Act;
- (d) any payment made out of the social fund under the 1992 Act or the 1992 (Northern Ireland) Act;
- (e) so much of any back to work bonus received under section 26 of the 1995 Act as is, by virtue of that section, to be treated as payable by way of a jobseeker’s allowance;
- (f) any direct payments made under regulations made under section 57(1) of the 2001 Act<sup>(5)</sup>(direct payments), section 17A of the 1989 Act<sup>(6)</sup>(direct payments) or section 8(1) of the 2002 (Northern Ireland) Direct Payments Act (direct payments);
- (g) any reasonable living expenses provided for as an exception to a restraint order under section 41 of the Proceeds of Crime Act 2002<sup>(7)</sup>; and
- (h) any personal independence payment paid under Part 4 of the 2012 Act.

### **Disposable income: deductions for maintenance**

**12.**—(1) To calculate the disposable income of an individual in accordance with regulation 6(1), the Director must deduct the following amounts—

- (a) any maintenance payment that was liable to be paid by the individual during the period of calculation;

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(4) Section 71 is to be repealed by section 90 of the Welfare Reform Act 2012 at a date to be appointed.  
(5) Section 57 was amended by section 146(1) to (7) of the Health and Social Care Act 2008 (c. 14) and in relation to Wales, by section 16 of the Social Care Charges (Wales) Measure 2010.  
(6) Section 17A was substituted by section 58 of the Health and Social Care Act 2001 (c. 15). It was amended by section 39 of, and paragraph 1 and 3 of Schedule 3 to, the Children and Young Persons Act 2008 (c. 23); section 160 of, and paragraph 1 of Schedule 14 to, the Health and Social Care Act 2008 (c. 14); sections 47 and 60 of, and paragraph 15 and 17 of Schedule 3 and Schedule 6 to, the Tax Credits Act 2002 (c. 21); and section 28(1) of, and paragraph 6(1) and (3) of Schedule 3 to, the Welfare Reform Act 2007 (c. 5).  
(7) 2002 c. 29.

- (b) a sum in respect of the maintenance of an individual's partner, being the difference between—
  - (i) 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 Schedule 2 to the Income Support (General) Regulations 1987<sup>(8)</sup> ("Schedule 2"); and
  - (ii) the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of Schedule 2); and
- (c) subject to paragraph (2), a sum in respect of the maintenance of any dependant child or dependant relative of the individual that is a member of the individual's household being—
  - (i) in the case of a dependant child under the age of 16 at the beginning of the period of calculation, the amount specified at (a) in column 2 of the table in paragraph 2 of Schedule 2<sup>(9)</sup>; and
  - (ii) in the case of a dependant child aged 16 or 17 at the beginning of the period of calculation, or of a dependant relative, the amount specified at (b) in column 2 of the table in paragraph 2 of Schedule 2.

(2) For the purpose of making a deduction in accordance with this regulation, the Director may substitute an amount specified in paragraph (1)(c) with such lesser amount as appears to the Director to be equitable, having taken into account the income and other financial resources of a dependant child or dependant relative.

### **Disposable capital: deductions**

**13.**—(1) To calculate the disposable capital of an individual in accordance with regulation 6(2), the Director must deduct the following amounts—

- (a) the value of the individual's—
  - (i) household furniture and effects;
  - (ii) clothes; and
  - (iii) tools and implements of the individual's trade; and
- (b) so much of any back to work bonus received under section 26 of the 1995 Act as is, by virtue of that section, to be treated as payable by way of a jobseeker's allowance.

(2) To calculate the disposable capital of an individual, in accordance with regulation 6(2) the Director must assess the value of any interest in land as the amount for which that interest could be sold, less the amount of any mortgage debt or hereditary security secured on that land, subject to the following—

- (a) the Director must not deduct more than £100,000 in respect of all mortgage debts or hereditary securities;
- (b) in making any deduction in accordance with sub-paragraph (a), the Director must deduct any mortgage debt or hereditary security in respect of the main or only dwelling last; and
- (c) the Director must disregard the first £100,000 of the value of the individual's interest (if any) in the main or only dwelling in which the individual resides, after the application of sub-paragraphs (a) and (b).

(3) For the purpose of paragraph (2), where an individual resides in more than one dwelling, the Director must decide which dwelling is the main dwelling.

- (4) Paragraph (5) applies where an individual lives with one or more of the following—

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<sup>(8)</sup> S.I. 1987/1967. Paragraph 1 of Schedule 2 has been amended by S.I. 1990/1168 and S.I. 2012/780. There have been other amendments but none are relevant.

<sup>(9)</sup> Paragraph 2 of Schedule 2 has been amended by S.I. 2012/780. There have been other amendments but none are relevant.

- (a) a partner whose resources are required to be treated as the resources of the individual in accordance with regulation 9; or
  - (b) a dependant child or a dependant relative.
- (5) The Director must deduct—
- (a) £335 in respect of the first of any of the individuals specified in paragraph (4)(a) or (b);
  - (b) £200 in respect of the second such individual; and
  - (c) £100 in respect of each further such individual.

### **Deemed eligibility: qualifying benefits**

**14.**—(1) Where the Director is satisfied that any individual whose disposable income is to be assessed under regulation 6(1) is, directly or indirectly, properly in receipt of any benefit specified in paragraph (3), the Director must treat that individual's disposable income as not exceeding the disposable income sum specified in regulations 7(2)(a) or 8(a) as appropriate.

(2) Where the Director is satisfied that any individual whose disposable capital is to be assessed in accordance with regulation 6(2) is, directly or indirectly, properly in receipt of any benefit specified in paragraph (3), the Director must treat that individual's disposable capital as not exceeding the disposable capital sum specified in regulations 7(2)(b) or 8(b) as appropriate.

- (3) The benefits are—
- (a) any qualifying benefit; or
  - (b) where the individual's total income from all sources for the year ending with the date on which the application for a determination in relation to advice and assistance under section 15 of the Act is made is not more than £14,213,—
    - (i) any working tax credit payable under Part 1 of the 2002 Act claimed together with child tax credit payable under Part 1 of that Act; or
    - (ii) any working tax credit payable under Part 1 of the 2002 Act with a disability element or severe disability element (or both).

### **Reassessment**

**15.** Where it appears to the Director that there has been an error in the assessment of the disposable income or disposable capital of an individual, the Director may—

- (a) reassess that individual's disposable income or disposable capital; or
- (b) amend the original assessment, in which case such amended assessment must for all purposes be substituted for the original assessment.