
STATUTORY INSTRUMENTS

2013 No. 471

The Criminal Legal Aid (Financial Resources) Regulations 2013

PART 3

Representation

Interpretation of Part 3

16. In this Part—

“child care costs” means the costs of care, other than excluded costs, provided by one or more of the following—

- (a) a school on school premises, out of school hours;
- (b) a local authority, out of school hours—
 - (i) for a child who is not disabled, in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their 15th birthday;
 - (ii) for a child who is disabled, in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their 16th birthday;
- (c) a child care provider approved in accordance with the Tax Credit (New Category of Care Provider) Regulations 1999⁽¹⁾;
- (d) persons registered under Part 3 of the Childcare Act 2006⁽²⁾ or Part 2 of the Children and Families (Wales) Measure 2010⁽³⁾;
- (e) persons referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010⁽⁴⁾, working in schools or establishments referred to in those articles;
- (f) persons prescribed in regulations made pursuant to section 12(4) of the Tax Credits Act 2002⁽⁵⁾;

“excluded costs” means costs paid—

- (a) in respect of the child’s compulsory education;
- (b) by the individual to that individual’s partner (or vice versa), in respect of any child for which either (or both) of them is responsible in accordance with regulation 20 of the Housing Benefit Regulations 2006⁽⁶⁾; or
- (c) in respect of care provided by a relative of the child wholly or mainly in the child’s home; and

(1) S.I. 1999/3110.
(2) 2006 c. 21.
(3) 2010 nawm 1 (W.233).
(4) S.I. 2010/2839.
(5) 2002 c. 21.
(6) S.I. 2006/213.

“the General Regulations” means the Criminal Legal Aid (General) Regulations 2013(7).

Representation for criminal proceedings: exceptions from requirement to make a determination in respect of an individual’s financial resources

17.—(1) The Director must make a determination in respect of an individual’s application for representation under section 16 of the Act without making a determination in respect of that individual’s financial resources, where that determination relates to—

- (a) any criminal proceedings which are not listed in paragraph (2); or
 - (b) the circumstances set out in regulation 25(2) of the General Regulations.
- (2) The criminal proceedings are—
- (a) any of the proceedings referred to in section 14(a) to (g) of the Act and in regulation 9(a) to (q) and (s) to (v) of the General Regulations, but only to the extent that such proceedings take place in the magistrates’ court; and
 - (b) proceedings in which an individual has been committed to the Crown Court for sentence, but only where that individual did not apply for, or was not granted, representation under section 16 of the Act for the proceedings that took place in the magistrates’ court.

Financial eligibility for representation

18.—(1) The Director must make a determination that an individual’s financial resources are such that the individual is eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act where—

- (a) that individual’s gross annual income does not exceed £12,475; or
- (b) that individual’s gross annual income is more than £12,475 and less than £22,325, if that individual’s annual disposable income does not exceed £3,398.

(2) The Director must make a determination that an individual’s financial resources are such that the individual is not eligible in accordance with section 21(1) of the Act under section 16 of the Act where that individual’s gross annual income is £22,325 or greater.

Resources to be treated as the individual’s resources

19.—(1) In this Part a reference to the financial resources, income or financial circumstances of, or amounts payable to an individual includes a reference to the financial resources, income or financial circumstances of, or amounts payable to the individual’s partner, unless the partner has a contrary interest in the proceedings in respect of which the individual is making an application for a determination by the Director under section 16 of the Act.

- (2) Where it appears to the Director that—
- (a) another person is or has been substantially maintaining the individual or the individual’s partner; or
 - (b) any of the financial resources of another person have been made available to the individual or the individual’s partner,

the Director may assess or estimate the value of the maintenance or the financial resources made available and may treat such amounts as the financial resources of the individual.

Assessment of resources: gross annual income

20.—(1) Subject to regulations 23 and 24, the gross annual 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 paragraph (2).

(2) The Director must deduct the following amounts if they are paid to the individual during the period of calculation—

- (a) any financial support paid under an agreement for the care of a foster child;
- (b) any payments paid out of—
 - (i) the Independent Living Fund(8);
 - (ii) the Independent Living (Extension) Fund(9);
 - (iii) the Independent Living (1993) Fund(10); or
 - (iv) the Independent Living Fund (2006)(11);
- (c) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(12);
- (d) any of the following payments—
 - (i) attendance allowance paid under section 64 of the 1992 Act or section 64 of the 1992 (Northern Ireland) Act;
 - (ii) severe disablement allowance paid under section 68 of the 1992 Act(13) or section 68 of the 1992 (Northern Ireland) Act 1992(14);
 - (iii) carer's allowance paid under section 70 of the 1992 Act(15) or section 70 of the 1992 (Northern Ireland) Act (16);
 - (iv) disability living allowance paid under section 71 of the 1992 Act(17) or section 71 of the 1992 (Northern Ireland) Act;
 - (v) constant attendance allowance paid under section 104 of the 1992 Act as an increase to a disablement pension or section 104 of the 1992 (Northern Ireland) Act;
 - (vi) housing benefit paid under section 130 of the 1992 Act(18) or section 129 of the 1992 (Northern Ireland) Act;

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- (8) The Independent Living Fund is a discretionary trust established by deed and funded by grants made by the Secretary of State, whose trustees have power to make payments to assist certain severely disabled people to live independently.
 - (9) The Independent Living (Extension) Fund is a Trust established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part.
 - (10) The Independent Living (1993) Fund is a Trust established by a deed dated 25th February 1993 and made between the Secretary of State for Social Security of the one part and Robin Glover Wendt and John Fletcher Shepherd of the other part.
 - (11) The Independent Living Fund (2006) is a Trust established by a deed dated 10th April 2006 and made between the Secretary of State for Work and Pensions of the one part and Margaret Rosemary Cooper, Michael Beresford Boyall and Marie Theresa Martin of the other part.
 - (12) [S.I. 1983/686](#). Article 15 of the Scheme, under which exceptionally severe disablement allowance is payable, was amended by paragraph 4 of Schedule 1 to the Personal Injuries (Civilians) Amendment Scheme 2001 ([S.I. 2001/420](#)). Paragraph 4 of Schedule 3 to the Scheme, which sets out the rate at which exceptionally severe disablement allowance is payable was substituted by paragraph 1 of Schedule 1 to the Personal Injuries (Civilians) Scheme (Amendment) Order 2010 ([S.I. 2010/283](#)).
 - (13) Section 68 was repealed by section 65 of, and Part IV of Schedule 13 to, the Welfare Reform and Pensions Act 1999 ([c.30](#)), but is subject to the savings provision specified in article 4 of the Welfare Reform and Pensions Act 1999 (Commencement No. 9, and Transitional and Savings Provisions) Order 2000 ([S.I. 2000/2958](#)).
 - (14) Section 68 was repealed by article 62 of, and paragraph 25 of Schedule 8 and Part IV of Schedule 10 to, the Welfare Reform and Pensions (Northern Ireland) Order 1999, but is subject to the savings provision specified in article 4 of the Welfare Reform and Pensions (1999 Order)(Commencement No. 6 and Transitional and Savings Provisions) Order (Northern Ireland) 2000 ([S.I. 2000/332 \(C. 14\)](#)).
 - (15) Section 70 was amended to provide for carer's allowance by articles 2 and 3 of, and paragraphs 1 and 2 of the Schedule to, the Regulatory Reform (Carer's Allowance) Order 2002 ([S.I. 2002/1457](#)).
 - (16) Section 70 was amended to provide for carer's allowance by article 3 of the Deregulation (Carer's Allowance) Order (Northern Ireland) 2002 [S.R. \(N.I.\) 2002 No 321](#).
 - (17) Section 71 is to be repealed by section 90 of the Welfare Reform Act 2012 at a date to be appointed.
 - (18) Section 130 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.

- (vii) council tax benefit paid under section 131 of the 1992 Act⁽¹⁹⁾;
- (viii) any payment made out of the social fund under the 1992 Act or the 1992 (Northern Ireland) Act;
- (e) any direct payments made under regulations made under section 57(1) of the 2001 Act, section 17A of the 1989 Act or section 8(1) of the 2002 (Northern Ireland) Direct Payments Act;
- (f) any reasonable living expenses provided for as an exception to a restraint order under section 41 of the Proceeds of Crime Act 2002;
- (g) any pensions paid under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006⁽²⁰⁾; and
- (h) any personal independence payment paid under Part 4 of the 2012 Act.

(3) Where an individual making an application for a determination by the Director under section 16 of the Act, has a partner, or a child of the individual, living as a member of their household, paragraph 2 of the Schedule to these Regulations has effect.

Assessment of resources: annual disposable income

21.—(1) Where an individual's gross annual income, calculated in accordance with regulation 20, is more than £12,475 and less than £22,325, the Director must calculate the individual's annual disposable income in accordance with paragraphs (2) and (3).

(2) For the purpose of paragraph (3), the Director must calculate the gross annual income of an individual as if regulation 20(3) did not apply.

(3) The Director must deduct the following amounts from the individual's gross annual income if they are paid or payable by the individual during the period of calculation—

- (a) any income tax;
- (b) any estimated contributions under Part 1 of the 1992 Act or the 1992 (Northern Ireland) Act;
- (c) any council tax;
- (d) either—
 - (i) any annual rent or annual payment (whether of interest or capital) in respect of a mortgage debt or hereditary security, in respect of the individual's only or main dwelling; or
 - (ii) the annual cost of the individual's living accommodation;
- (e) any child care costs;
- (f) the amount of any maintenance payment, provided that the Director considers such amount to be reasonable;
- (g) an amount representing cost of living expenses, being either—
 - (i) £5,676; or
 - (ii) if the individual has a partner, or a child of the individual, living as a member of their household, the amount calculated in accordance with paragraph 3 of the Schedule to these Regulations.

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

⁽¹⁹⁾ Section 131 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.

⁽²⁰⁾ S.I. 2006/606, to which there are amendments not relevant to these Regulations.

Deemed eligibility: children

22. If the individual making an application for a determination is a child, the Director must determine that the individual's financial resources are such that the individual is eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act.

Deemed eligibility: qualifying benefits

23. Where the Director is satisfied that an individual is, directly or indirectly, properly in receipt of a qualifying benefit, the Director must treat that individual's gross annual income as not exceeding the amount specified in regulation 18(1)(a).

Reassessment of financial resources

24.—(1) Where it appears to the Director—

- (a) that there has been some error in the assessment of an individual's financial resources; or
- (b) new information which is relevant to an individual's application for a determination by the Director under section 16 of the Act has come to light (whether under regulation 26 or otherwise),

the Director must reassess the individual's financial resources.

(2) If the Director has reassessed the individual's financial resources in accordance with paragraph (1) and determines that an individual's financial resources are such that the individual is no longer eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act, the Director must withdraw the individual's determination.

Furnishing evidence

25.—(1) The Director may at any time require an individual to provide information and documents in relation to a relevant determination.

(2) Where the Director has made a relevant determination in favour of an individual, and that individual subsequently fails to comply with a requirement under paragraph (1), the Director must withdraw the individual's determination unless satisfied that there are good reasons not to do so.

(3) In this regulation, "a relevant determination" is a determination as to whether that the individual's financial resources are such that the individual is eligible in accordance with section 21(1) for representation under section 16 of the Act.

Duty to report change in financial circumstances

26.—(1) Where the Director has made 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 representation under section 16 of the Act, that individual must inform the Director of any change in their financial circumstances which might affect whether or not the individual is eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act.

(2) Where, as a result of any change in financial circumstances, the Director is satisfied that an individual's financial resources are such that the individual is no longer eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act, the Director must withdraw the individual's determination.

Renewal of application

27. Where the Director makes a determination in accordance with section 21(1) of the Act that an individual's financial resources are such that the individual is not eligible for representation under section 16 of the Act, that individual may only renew the application if—

- (a) there is a change in the individual's financial circumstances which might affect whether that individual is eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act; or
- (b) the determination that the individual's financial resources are such that the individual is not eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act has been withdrawn in accordance with regulation 28.

Review of decision

28.—(1) Where the Director makes a determination in accordance with section 21(1) of the Act that an individual's financial resources are such that the individual is not eligible for representation under section 16 of the Act, that individual may apply to the Director for a review of the decision on the grounds that—

- (a) there has been a miscalculation of the individual's financial resources or an administrative error; or
 - (b) the individual does not have sufficient financial resources to pay for the cost of legal assistance, notwithstanding the Director's determination in accordance with section 21(1) of the Act that the individual is not eligible for representation under section 16 of the Act.
- (2) An application for a review must be made in a form specified by the Lord Chancellor and must include any written representations supporting the application.
- (3) Where the grounds of the application are those mentioned in paragraph (1)(b), the individual must supply—
- (a) full particulars of the individual's income and expenditure; and
 - (b) a certificate from a provider as to the likely costs of the proceedings to the individual.
- (4) The individual must provide such further information and documents as the Director may request in relation to the review within fourteen days after the date of the request.
- (5) A review may be conducted without a hearing unless the Director directs otherwise.
- (6) The Director must consider the application and any written representations and may—
- (a) confirm or amend the determination which is the subject of the review;
 - (b) withdraw the determination which is the subject of the review; or
 - (c) substitute a new determination.
- (7) Notwithstanding regulation 18, in relation to an application for a review under regulation 28(1)(b), the Director may substitute a new determination that the individual's financial resources are such that the individual is eligible in accordance with section 21(1) of the Act for representation under section 16 of the Act.
- (8) Where the Director amends or substitutes a determination, the determination following the review takes effect (unless the Director directs otherwise) as if the original determination had not been made.

Withdrawal of a determination

29. Where the Director withdraws a determination in accordance with this Part, the Director must provide written notification of the withdrawal to—

- (a) the individual in whose favour the original determination was made;
- (b) any provider named in the representation order which records the determination; and
- (c) any advocate instructed in proceedings.