

**2013 No. 471**

**LEGAL AID AND ADVICE, ENGLAND AND WALES**

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

*Made* - - - - *4th March 2013*

*Laid before Parliament* *6th March 2013*

*Coming into force* - - *1st April 2013*

**CONTENTS**

**PART 1**

General

1. Citation and commencement
2. Interpretation
3. Delegation
4. Deprivation of resources

**PART 2**

Advice and assistance

5. Advice and assistance: exceptions from requirement to make a determination in respect of an individual's financial resources
6. Disposable income and disposable capital
7. Advocacy assistance for individuals in prison
8. Other advice and assistance
9. Resources of a partner
10. Resources of a maintaining adult
11. Disposable income: deductions
12. Disposable income: deductions for maintenance
13. Disposable capital: deductions
14. Deemed eligibility: qualifying benefits
15. Reassessment

**PART 3**

Representation

16. Interpretation of Part 3
17. Representation for criminal proceedings: exceptions from requirement to make a determination in respect of an individual's financial resources
18. Financial eligibility for representation

19. Resources to be treated as the individual's resources
  20. Assessment of resources: gross annual income
  21. Assessment of resources: annual disposable income
  22. Deemed eligibility: children
  23. Deemed eligibility: qualifying benefits
  24. Reassessment of financial resources
  25. Furnishing evidence
  26. Duty to report change in financial circumstances
  27. Renewal of application
  28. Review of decision
  29. Withdrawal of a determination
- 

## SCHEDULE

The Lord Chancellor makes the following Regulations(a) in exercise of the powers conferred by sections 5(4), 21(2) to (7) and 41(1) to (3) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012(b).

## PART 1

### General

#### Citation and commencement

1. These Regulations may be cited as the Criminal Legal Aid (Financial Resources) Regulations 2013 and come into force on 1st April 2013.

#### Interpretation

2. In these Regulations—

“the Act” means the Legal Aid, Sentencing and Punishment of Offenders Act 2012;

“the 1989 Act” means the Children Act 1989(c);

“the 1992 Act” means the Social Security Contributions and Benefits Act 1992(d);

“the 1992 (Northern Ireland) Act” means the Social Security Contributions and Benefits (Northern Ireland) Act 1992(e);

“the 1995 Act” means the Jobseekers Act 1995(f);

“the 1995 (Northern Ireland) Order” means the Jobseekers (Northern Ireland) Order 1995(g);

“the 2001 Act” means the Health and Social Care Act 2001(h);

“the 2002 Act” means the State Pension Credit Act 2002(i);

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(a) Section 42(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) provides that in Part 1 of that Act “regulations” means regulations made by the Lord Chancellor.

(b) 2012 c. 10.

(c) 1989 c. 41.

(d) 1992 c. 4.

(e) 1992 c. 7.

(f) 1995 c. 18.

(g) S.I. 1995/2705 (N.I. 15).

(h) 2001 c. 15.

(i) 2002 c. 16.

“the 2002 (Northern Ireland) Act” means the State Pension Credit Act (Northern Ireland) 2002(a);

“the 2002 (Northern Ireland) Direct Payments Act” means Carers and Direct Payments Act (Northern Ireland) 2002(b);

“the 2007 Act” means the Welfare Reform Act 2007(c);

“the 2007 (Northern Ireland) Act” means the Welfare Reform Act (Northern Ireland) 2007(d)

“the 2012 Act” means the Welfare Reform Act 2012(e);

“child” means, unless different provision is made, an individual who is under the age of 18 on the date on which an application is made for a determination under section 15 of the Act (advice and assistance for criminal proceedings) or section 16 of the Act (representation for criminal proceedings);

“criminal legal aid” means advice, assistance and representation made available under sections 15 and 16 of the Act;

“dependant” means an individual (“A”) who—

- (a) is wholly or substantially maintained by an individual (“B”) whose financial resources fall to be assessed in accordance with these Regulations; and
- (b) the Director considers it equitable to treat as being dependant on B, having regard to A’s income and other resources;

“maintenance payment” means a payment by an individual for the maintenance of—

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

who is not a member of the individual’s household;

“partner” means—

- (a) an individual’s spouse or civil partner, from whom the individual is not separated due to a breakdown in the relationship which is likely to be permanent;
- (b) a person with whom the individual lives as a couple; or
- (c) a person with whom the individual ordinarily lives as a couple, from whom they are not separated due to a breakdown in the relationship which is likely to be permanent;

“period of calculation” means—

- (a) in Part 2 of these Regulations, the seven days up to and including the date on which the application for a determination under section 15 of the Act is made;
- (b) in Part 3 of these Regulations, the period of one year ending on the date on which the application for a determination under section 16 of the Act is made;

“provider” means a person with whom the Lord Chancellor has made an arrangement under section 2(1) of the Act (arrangements) for the provision of criminal legal aid;

“qualifying benefit” means any of the following—

- (a) income support paid under section 124 of the 1992 Act(f) or section 123 of the 1992 (Northern Ireland) Act;
- (b) income-based jobseeker’s allowance paid under the 1995 Act or an allowance payable under Part 2 of the 1995 (Northern Ireland) Order;

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(a) 2002 c. 14.

(b) 2002 c. 6.

(c) 2007 c. 5.

(d) 2007 c. 2.

(e) 2012 c. 5.

(f) Section 124 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.

- (c) guarantee credit paid under section 1(3)(a) of the 2002 Act or section 1(3)(a) of the 2002 (Northern Ireland) Act;
- (d) income-related employment and support allowance paid under Part 1 of the 2007 Act or section 1(2)(b) of the 2007 (Northern Ireland) Act; and
- (e) universal credit paid under Part 1 of the 2012 Act; and

“relative” means—

- (a) in the definition of “excluded costs” in regulation 16, a grandparent, brother, sister, aunt, uncle or first cousin, whether of the full blood or half blood or by marriage or civil partnership;
- (b) in the Schedule, a partner or child of an individual who is living as a member of that individual’s household; and
- (c) elsewhere in these Regulations, a parent, grandparent, grandchild, brother, sister, aunt, uncle, nephew, niece or first cousin, whether of the full blood or half blood, by marriage or civil partnership.

### **Delegation**

3. A function of the Director under these Regulations may be exercised by, or by an employee of, a person authorised for that purpose by the Director(a).

### **Deprivation of resources**

4. If it appears to the Director that an individual or that individual’s partner has, with intent to reduce the amount of the individual’s financial resources, whether for the purpose of making the individual eligible to receive criminal legal aid or otherwise—

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

the Director must treat such financial resources as part of the individual’s resources, or as not so converted as the case may be.

## **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(b);

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(a) Section 6 of the Act (authorisations) makes provision for authorisations given for the purpose of section 5 of the Act (delegation) or regulations under that section.  
 (b) 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.

“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(a) 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.

#### **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(b), 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.

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(a) 2006 c. 52.

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

### **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 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>(a)</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;

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(a) Section 71 is to be repealed by section 90 of the Welfare Reform Act 2012 at a date to be appointed.

- (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>(a)</sup>(direct payments), section 17A of the 1989 Act<sup>(b)</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>(c)</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;
- (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>(d)</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>(e)</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;

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(a) 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.

(b) 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).

(c) 2002 c. 29.

(d) 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.

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



- (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 hereditament 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 hereditaments;
  - (b) in making any deduction in accordance with sub-paragraph (a), the Director must deduct any mortgage debt or hereditament 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—
- (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 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.

## 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(a);
- (d) persons registered under Part 3 of the Childcare Act 2006(b) or Part 2 of the Children and Families (Wales) Measure 2010(c);
- (e) persons referred to in article 11, 12 or 14 of the Child Minding and Day Care Exceptions (Wales) Order 2010(d), 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(e);

“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(f); or
- (c) in respect of care provided by a relative of the child wholly or mainly in the child’s home; and

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

#### **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—

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- (a) S.I. 1999/3110.
  - (b) 2006 c. 21.
  - (c) 2010 nawm 1 (W.233).
  - (d) S.I. 2010/2839.
  - (e) 2002 c. 21.
  - (f) S.I. 2006/213.
  - (g) S.I. 2013/9.

- (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(a);
- (ii) the Independent Living (Extension) Fund(b);
- (iii) the Independent Living (1993) Fund(c); or
- (iv) the Independent Living Fund (2006)(d);
- (c) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983(e);
- (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(f) or section 68 of the 1992 (Northern Ireland) Act 1992(g);
  - (iii) carer’s allowance paid under section 70 of the 1992 Act(h) or section 70 of the 1992 (Northern Ireland) Act (i);
  - (iv) disability living allowance paid under section 71 of the 1992 Act(j) 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(k) or section 129 of the 1992 (Northern Ireland) Act;
  - (vii) council tax benefit paid under section 131 of the 1992 Act(l);
  - (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;

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- (a) 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.
  - (b) 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.
  - (c) 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.
  - (d) 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.
  - (e) 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).
  - (f) 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).
  - (g) 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)).
  - (h) 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).
  - (i) 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.
  - (j) Section 71 is to be repealed by section 90 of the Welfare Reform Act 2012 at a date to be appointed.
  - (k) Section 130 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.
  - (l) Section 131 is to be repealed by Part 1 of Schedule 14 to the Welfare Reform Act 2012 at a date to be appointed.

- (g) any pensions paid under the Naval, Military and Air Forces Etc. (Disablement and Death) Service Pensions Order 2006<sup>(a)</sup>; 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.

#### **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).

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

### **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.

Signed by authority of the Lord Chancellor

4th March 2013

*McNally*  
Minister of State  
Ministry of Justice

## SCHEDULE

Regulations 20 and 21

**1.** In this Schedule, the relevant sum is calculated by adding the relevant figure for each relative of the individual in the table in paragraph 4 together and then adding 1.

**2.** For the purpose of regulation 20(3), the Director must calculate an individual's gross annual income by dividing the amount calculated in regulation 20(1) by the relevant sum.

**3.** For the purpose of regulation 21(2)(g)(ii), the Director must calculate an individual's cost of living expenses by multiplying £5,676 by the relevant sum.

<i>Relative of the individual</i>	<i>Relevant figure</i>
A partner	0.64
Each child of the individual in the individual's household, aged 0–1 years	0.15
Each child, as above, aged 2–4 years	0.30
Each child, as above, aged 5–7 years	0.34
Each child, as above, aged 8–10 years	0.38
Each child, as above, aged 11–12 years	0.41
Each child, as above, aged 13–15 years	0.44
Each child, as above, aged 16–17 years	0.59

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Criminal Legal Aid (Financial Resources) Regulations 2013 (“the Regulations”) make provision in relation to the circumstances in which an individual’s financial resources are such that they are eligible for criminal legal aid under Part 1 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (c.10) (“the Act”).

Regulation 3 provides that the functions of the Director of Legal Aid Casework under the Regulations may be exercised by, or by an employee of, a person authorised for that purpose by the Director.

Part 2 makes provision in relation to the financial eligibility of an individual for advice and assistance provided under section 15 (advice and assistance for criminal proceedings) of the Act.

Part 3 makes provision in relation to the financial eligibility of an individual for representation provided under section 16 (representation for criminal proceedings) of the Act.

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STATUTORY INSTRUMENTS

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**2013 No. 471**

**LEGAL AID AND ADVICE, ENGLAND AND WALES**

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

£5.75

E5962 03/2013 135962T 19585

ISBN 978-0-11-153586-8



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