LEGAL AID

1960 No. 1471

The Legal Aid (Assessment of Resources) Regulations, 1960

Made - - - -	16*th August*, 1960
Laid before Parliament	19*th August*, 1960
Coming into Operation	22*nd August*, 1960

In pursuance of the powers conferred upon me by section 4 of the Legal Aid and Advice Act, 1949(a), and all other powers enabling me in this behalf, I, David Viscount Kilmuir, Lord High Chancellor of Great Britain, with the concurrence of the Treasury, hereby make the following regulations:—

Citation, interpretation and commencement

1.—(1) These regulations may be cited as the Legal Aid (Assessment of Resources) Regulations, 1960, and shall come into operation on the twenty-second day of August, 1960.

(2) In these regulations, unless the context otherwise requires—

"the Act" means the Legal Aid and Advice Act, 1949, as amended by the Legal Aid Act, 1960(b).

"the Board" means the National Assistance Board.

"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 35 of the Education Act, 1944(c), 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.

"the committee" means an Area or Local Committee set up by a scheme made under section 8 of the Act by whom the Board are requested to determine the disposable income and the disposable capital and the maximum contribution of any person or any Committee so set up 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.

(a) 12, 13 & 14 Geo. 6. c. 51. (b) 8 & 9 Eliz. 2. c. 28. (c) 7 & 8 Geo. 6. c. 31.

(3) The Interpretation Act, 1889(a), shall apply to the interpretation of these regulations as it applies to the interpretation of an Act of Parliament.

Revocation of regulations

2. The Legal Aid (Assessment of Resources) Regulations, 1950(b), and the Legal Aid (Assessment of Resources) Amendment Regulations, 1959(c), are hereby revoked.

Subject matter of dispute

3. 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

4.—(1) Except as otherwise provided in the next succeeding paragraph of this regulation, in computing the income and the capital of the person concerned the resources of his or her spouse shall be treated as his or her resources.

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

5.—(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 42 of the National Assistance Act, 1948(d), 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

6. 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

(a) 52 & 53 Vict. c. 63. (b) S.I. 1950/1358 (1950 I, p. 1190).
(c) S.I. 1959/1350 (1959 I, p. 1545). (d) 11 & 12 Geo. 6. c. 29.

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

7. 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 the First and Second Schedules to these regulations.

Decision of the Board

8. The determination in accordance with the provisions of section 4 (6) of the Legal Aid and Advice Act, 1949, of the disposable income, disposable capital and maximum contribution shall be communicated in writing to the committee.

Determination on change of circumstances

9. Where it appears to a committee that the circumstances upon which the Board have determined the disposable income or disposable capital of the person concerned have altered to such an extent that his certificate should be amended or discharged, the Board shall, if so required by that committee, redetermine that person's disposable income, disposable capital and maximum contribution.

Amendment of determination because of error or mistake

10. 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 by whom the certificate would be issued, discharged or revoked, 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.

Dated this fourth day of August, 1960.

Kilmuir, C.

We concur.

Dated this sixteenth day of August, 1960.

Michael Hughes-Young
J. D. Gibson-Watt
} Lords Commissioners of Her Majesty's Treasury.

Regulation 7

FIRST SCHEDULE

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 3 of these regulations), 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, 1936(**a**), or under or by virtue of the Widows', Orphans' and Old Age Contributory Pensions Acts, 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, 1946(**b**);

(*c*) any payment by way of attendance allowance under section fourteen of the National Insurance Act, 1946, and any payment by way of maternity allowance under section fifteen of that Act; and

(**a**) 26 Geo. 5 & 1 Edw. 8. c. 31. (**b**) 9 & 10 Geo. 6. c. 67.

(*d*) any of the following payments, that is to say—

(i) any payment in respect of retired pay or pension to which section 380 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 twelve of the National Insurance (Industrial Injuries) Act, 1946(c).

(2) Where under subsection (4) of section four 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, 1946 to 1959, 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, income tax, 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 or persons other than the person concerned, his or her spouse or any dependant of his or hers 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.

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 or her 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 sub-paragraph (*a*) of paragraph 2 of Part I of the Schedule to the National Assistance (Determination of Need) Regulations, 1948(d), as amended by any subsequent regulation, exceeds the rate for the time being prescribed by sub-paragraph (*b*) of the said paragraph 2 for a person living alone;

(a) 15 & 16 Geo. 6 & 1 Eliz. 2. c. 10.
(b) 2 & 3 Geo. 6. c. 82. (c) 9 & 10 Geo. 6. c. 62.
(d) S.I. 1948/1334 (Rev. XV, p. 251: 1948 I, p. 2023).

(*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, as amended:

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 payments 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 7 SECOND SCHEDULE

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.

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 22 of the National Insurance Act, 1946; and

(*b*) any maternity grant to which a woman is entitled under section 14 of the National Insurance Act, 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 of this Schedule apply.

9.—(1) Except as is provided in the next succeeding paragraph of this rule, 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 the First Schedule.

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 consolidate, with amendments, the Legal Aid (Assessment of Resources) Regulations, 1950, and subsequent amending Regulations. They include amended provisions for the assessment of resources where applications for legal aid are made by or on behalf of children; for allowances against income in respect of income tax and adult dependants; for allowances against capital in respect of the applicant's dwelling house, insurance policies and dependants; and for a further allowance against capital where the applicant has a small disposable income.