1978 No. 30

LEGAL AID AND ADVICE, ENGLAND

The Legal Aid in Criminal Proceedings (Assessment of Resources) Regulations 1978.

Made - - - 11th January 1978

Laid before Parliament 20th January 1978

Coming into Operation 1st March 1978

ARRANGEMENT OF REGULATIONS

1. Citation and Commencement.
2. Interpretation.
3. Revocation.
4. General.
5. Resources of persons other than applicant or legally assisted person.
6. Assessment of resources on applications for legal aid.
7. Assessment of resources for contribution orders.
8. Assessment of income.
9. Assessment of capital.
10. Disclosure of increase in resources.

In pursuance of the powers conferred upon me by section 34 of the Legal Aid Act 1974(**a**), I hereby, with the consent of the Treasury, make the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Legal Aid in Criminal Proceedings (Assessment of Resources) Regulations 1978 and shall come into operation on 1st March 1978.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Legal Aid Act 1974;

"applicant" means in relation to an application made on behalf of a person who has not attained the age of seventeen years by his parent or guardian, that person and in the case of any other application the person making the application;

"application" is used with reference not only to an application for legal aid but also to an offer of legal aid made by a court without any such application;

"date of assessment" means the date on which the court empowered to make the contribution order first assesses the means of the legally assisted

(**a**) 1974 c. 4.

person or an appropriate contributor, or, if before such an assessment is made, the Supplementary Benefits Commission is requested to inquire into the means of the legally assisted person or appropriate contributor, the date on which such request was made;

"proper officer" means the Clerk of the Parliaments, the Registrar of Criminal Appeals, the appropriate officer of the Crown Court or the justices' clerk (as the case may be);

"social security contributions" means contributions payable under the Social Security Acts 1975 to 1977 or any scheme made thereunder;

"statement of means" means a statement of means submitted by an applicant for legal aid or an appropriate contributor, or, where the applicant is an infant, submitted by a person liable to maintain or having the care and control of the applicant.

(2) The Interpretation Act 1889(**a**) shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(3) References in these Regulations to any enactment or subordinate instrument shall include references to such enactment or subordinate instrument as amended from time to time.

Revocation

3. The Legal Aid in Criminal Proceedings (Assessment of Resources) Regulations 1968(**b**); the Legal Aid in Criminal Proceedings (Assessment of Resources) (Amendment) Regulations 1970(**c**) and the Legal Aid in Criminal Proceedings (Assessment of Resources) (Amendment) Regulations 1975(**d**) are hereby revoked.

General

4. The resources and commitments of any person may be assessed in accordance with the provisions of these Regulations by—

(*a*) the court empowered to make a legal aid order or a contribution order as the case may be, in the particular case, by virtue of section 28 or 32(4) of the Act; or

(*b*) any person entitled to sit as a member of that court; or

(*c*) the proper officer of that court,

hereinafter referred to as "the assessor".

Resources of persons other than applicant or legally assisted person

5.—(1) In assessing the resources and commitments of any person for the purpose of deciding whether he is eligible for legal aid or should make any payment or contribution in respect of legal aid ordered or to be ordered, the assessor (without prejudice to the other provisions of these Regulations)—

(*a*) may treat as the resources or commitments of that person any resources or commitments of his spouse unless it would in the circumstances of the case be unreasonable or impracticable for the spouse to make available his resources to that person;

(*b*) when the application is made by or on behalf of an infant, may take into account the resources and commitments of all or any of the following

(**a**) 1889 c. 63.
(**b**) S.I. 1968/1265.
(**c**) S.I. 1970/1994.
(**d**) S.I. 1975/64.

persons as the assessor, having regard to the circumstances, including the age and resources of the infant, may decide—

(i) any person who under section 17 of the Supplementary Benefits Act 1976(**a**) is liable to maintain the infant or would be so liable if the infant were under the age of sixteen;

(ii) any person having the care and control or actual custody of the infant, not being a person having such care and control or actual custody by reason of any contract or for some temporary purpose:

Provided that for the purposes of this Regulation the expression "person" shall not include the Secretary of State or a local authority or a fit person under the Children and Young Persons Act 1933(**b**).

(2) The resources of an infant shall include any sums payable under an order of the court or under any arrangement to any person for the maintenance of such infant.

Assessment of resources on applications for legal aid

6.—(1) In determining whether the means of an applicant or an appropriate contributor are such that the applicant should be given legal aid under Part II of the Act, in respect of all or part of the costs which he is likely to incur, or whether the applicant or an appropriate contributor shall be required to make a payment on account of any contribution which may be ordered under section 29(3) of the Act, the assessor shall assess, in accordance with the provisions of this Regulation, the resources of any person whose resources are to be taken into account.

(2) In making such determination, the assessor shall consider any statement of means submitted by any person and shall have regard to the costs likely to be incurred by such person if legal aid is not ordered and to the resources immediately available to such person at the date of the application which could, and ought reasonably to, be used to meet such costs, after such person has provided for all necessary commitments.

(3) In assessing the resources available to such person, the assessor shall not have regard to any capital which could not be realised, or on the security of which money could not be raised, in time to enable legal representation or advice to be obtained.

(4) Where it appears desirable in the interests of justice to make a legal aid order, such an order shall not be refused if—

(*a*) the applicant, or his spouse with whom he is living, is in receipt of a supplementary pension or allowance payable under the Supplementary Benefits Act 1976; or

(*b*) the applicant's resources at the date of the application which are immediately available do not exceed £70 or, where the applicant is married and living with his spouse, the joint resources of the applicant and his spouse which are immediately available do not exceed £110; or

(*c*) where the applicant is an infant, any person referred to in Regulation 5(1)(*b*) of these Regulations whose resources are taken into account by the assessor is in receipt of such a supplementary pension or allowance, or the resources of such person at the date of the application which are immediately available do not exceed £70 or, where such person is married and living with his spouse, the joint resources of that person and his spouse which are immediately available do not exceed £110.

(**a**) 1976 c. 71. (**b**) 1933 c. 12.

Assessment of resources for contribution orders

7.—(1) In determining whether a legally assisted person or an appropriate contributor shall be required to make a contribution under section 32 of the Act (whether in respect of the whole or part of the costs incurred) the assessor shall, in making his assessment of the resources of any person, have regard to—

(*a*) that person's likely income determined in accordance with Regulation 8 of these Regulations during the period of twelve months from the date of assessment;

(*b*) such part, if any, of that person's capital determined in accordance with Regulation 9 of these Regulations as it seems reasonable to the assessor to take into account.

(2) No legally assisted person shall be required to make a contribution as aforesaid if—

(*a*) he or an appropriate contributor is in receipt of a supplementary pension or allowance payable under the Supplementary Benefits Act 1976; or

(*b*) the income from all sources during the period of 12 months prior to the date of assessment of the legally assisted person, an appropriate contributor or any other person referred to in Regulation 5(1)(*b*) of these Regulations whose resources are taken into account by the assessor after deducting income tax and social security contributions amounted to £760 or less and the capital at the date of assessment of the legally assisted person, appropriate contributor or other person, as the case may be, is £70 or less:

Provided that in relation to a legally assisted person, appropriate contributor or other person who is married and living with his wife for the reference to his income amounting to £760 or less there shall be substituted a reference to their joint income amounting to £1231 or less and for the reference to his capital being £70 or less there shall be substituted a reference to their joint capital being £110 or less.

Assessment of income

8.—(1) In assessing a person's likely income, the assessor may, where appropriate, have regard to any income received by him at any time during a period between a date twelve months prior to the submission of his statement of means and the date of assessment.

(2) The income of a person from any trade or business or gainful occupation other than employment at a wage or salary shall be deemed to be the profits therefrom which will accrue during the period of twelve months from the date of assessment, and in calculating such profits the assessor may have regard to the profits of the last accounting period for which accounts have been made up.

(3) In assessing the income of any person there shall be deducted reasonable sums in respect of—

(*a*) the total amount of tax which it is estimated would be payable by him if his income for the period of assessment were his income for a fiscal year;

(*b*) his social security contributions for that period;

(*c*) expenses incurred in connection with his employment at a wage or salary;

(*d*) his annual outgoings in respect of accommodation including—

(i) the rent, after deducting the proceeds of sub-letting any part of the premises;

(ii) rates, repairs and insurance;

(iii) any instalments (whether of interest or capital) payable in respect of a mortgage debt or heritable security charged on the house in which he resides or on any interest therein after deducting the proceeds of sub-letting any part of the premises;

(*e*) the maintenance of his spouse or former spouse, children whom he is liable to maintain and his dependent relatives, whether living with him or not;

(*f*) any other matter for which he must, or reasonably may, provide.

(4) In assessing income from any source the assessor may disregard such amount as he considers to be reasonable to disregard, having regard to the nature of the income or to any other circumstances.

Assessment of capital

9.—(1) Subject to the provisions of this Regulation, in assessing the capital of any person there shall be included the amount or value of every resource of a capital nature belonging to him on the date of the assessment.

(2) So far as such 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 the resource, the amount which it would realise in that market, after deduction of any expenses incurred in the sale, or if such amount cannot be ascertained, an amount which appears to the assessor to be reasonable.

(3) In assessing such capital, there shall be wholly disregarded—

(*a*) any death grant paid under the provisions of section 32 of the Social Security Act 1975(**a**);

(*b*) any maternity grant which a woman is paid under the provisions of section 21 of the said Act;

(*c*) save in exceptional cases, the personal clothing of the person, the household furniture and effects of the dwellinghouse occupied by him and the personal tools and equipment of his trade;

(*d*) the value of any interest in the main or only dwelling in which the person resides.

Disclosure of increase in resources

10. Before the assessor determines whether a contribution order should be made, the applicant or legally assisted person or appropriate contributor, shall disclose to him any material change in his resources since submission of his statement of means.

Merlyn Rees,
One of Her Majesty's Principal Secretaries of State.

Home Office,
5th January 1978.

We consent,

Peter Snape,
T. E. Graham,
Two of the Lords Commissioners of Her Majesty's Treasury.

11th January 1978.

(a) 1975 c. 14.

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations make provision for the assessment of the resources of any person concerned when a court is considering whether to make a legal aid order in criminal proceedings under section 28 or a contribution order under section 32 of the Legal Aid Act 1974. Previous regulations are revoked and re-enacted with amendments. In Regulation 7(2) the figures for determining whether a person should be required to make a contribution in respect of his legal aid costs are increased. In Regulation 9(3) it is provided that in assessing a person's capital the value of any interest in the main or only dwelling in which he resides shall be disregarded.

SI 1978/30
ISBN 0-11-083030-X

