



THE LEGAL AID ACT 1986

THE LEGAL AID (FINANCIAL RESOURCES) REGULATIONS 1997

Approved by Tynwald

15th April 1997

Coming into operation

1st May 1997

In exercise of the powers conferred on the Legal Aid Committee by sections 3, 4, 12 and 16 of the Legal Aid Act 1986(a), and of all other enabling powers, the following Regulations are hereby made:—

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Legal Aid (Financial Resources) Regulations 1997 and, subject to section 24 of the Act, shall come into operation on the 1st May 1997.

(2) In these Regulations -

"the Act" means the Legal Aid Act 1986;

"certificate" means a legal aid certificate issued in accordance with the Legal Aid (General) Regulations 1997(b);

"child" (except in paragraph 7 of Schedule 1) means a person under the age of 16 years;

"the period of computation" means the period of 12 months ensuing from the date of the application for a certificate or such other period of 12 months as in the particular circumstances the Chief Registrar may consider appropriate;

"the person concerned" means the person whose resources 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;

"resources" means financial resources.

(a) 1986 c.23 (b) SD

Subject matter of dispute

2. In computing the resources 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

3. (1) Except as otherwise provided in paragraph (2), in computing the resources 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 the 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

4. (1) Where an application for a certificate is made by or on behalf of a child there may, in addition to the resources of the child, be taken into account the financial resources of one or more of the following persons, as the Chief Registrar, having regard to all the circumstances, including the age and resources of the child, may decide, that is to say :—

- (i) any person who under section 33 of the National Assistance (Isle of Man) Act 1951(c) is liable to maintain the child,
- (ii) any person having the care and control of the child, not being a person having such care and control by reason of any contract or for such temporary purpose.

(2) Where an application for a certificate is made by or on behalf of a child, his resources for the purpose 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 maintaining the child.

Deprivation or conversion of resources

5. If it appears to the Chief Registrar that the person concerned, with intent to reduce the amount of his resources has directly or indirectly deprived himself of any resources or has converted any part of his resources into resources (including capital) which are not to be included as resources under regulation 6, the 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 converted as the case may be.

Determination of resources, eligibility for legal aid and calculation of contribution

6. (1) The resources of the person concerned shall be determined in accordance with Part I of Schedule 1.

(2) The maximum amount of the resources of the person concerned which will enable a certificate to be granted shall be as provided for in Part II of Schedule 1 and (subject to paragraph (3)) the amount of the contribution to be paid to the Treasury in respect thereof shall be calculated in accordance with the said Part II.

(3) No contribution shall be payable where the person concerned is (directly or indirectly) in receipt of supplementary benefit or family income supplement.

Determination or change of circumstances

7. Where it appears to the Chief Registrar that the circumstances upon which he had determined the resources of the person concerned have altered and that it would be just to do so he shall re-determine that person's resources and the amount of contribution, if any, which shall be payable into the general revenue.

Amendment of determination because of error or mistake

8. Where it appears to the Chief Registrar that there has been some mistake in the determination of a person's resources or contribution and that it would be just and equitable to correct the determination he may 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.

Determination by Department of Health and Social Security

9. The Chief Registrar may refer any determination of the resources or of the amount of contribution to be paid, if any, by an applicant for a certificate under the provisions of the Legal Aid (General) Regulations 1997 to the Department of Health and Social Security

and, upon such reference being made, the powers and discretions exercisable by the Chief Registrar under these Regulations in respect of such a determination shall be exercisable by the Department and any determination so made by the Department shall be deemed to be a determination made by the Chief Registrar.

Transitional provision

10. Nothing in these Regulations applies in the case of proceedings in respect of which a certificate has been granted before the coming into operation of these Regulations.

Revocations

11. The regulations specified in Schedule 2 are revoked.

PART I

DETERMINATION OF RESOURCES

Resources

1. Subject to the following paragraphs of this Part, the resources of the person concerned shall be taken to be the gross income which that person may reasonably expect to receive (in cash or in kind) from any source during the period of computation.

Income

2. The income in respect of any emolument, benefit or privilege receivable otherwise than in cash shall be estimated at such sum and in such manner as in all the circumstances as the Chief Registrar shall consider just and equitable.

3. In ascertaining the gross income the following benefits shall be disregarded —

- (a) attendance allowance;
- (b) disability living allowance;
- (c) constant attendance allowance paid as an increase to a disablement pension.

4. (1) The income from a trade, business or gainful occupation other than 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 Chief Registrar 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 paragraph (1) 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.

5. If the person concerned makes use of the service of a nursery or child-minder to enable him to engage in employment or in a trade, business or gainful occupation, there shall be deducted from the gross income the amount of any charges made for those services or such lesser amount as in all the circumstances is reasonable.

6. If the person concerned is making and, throughout such period as the Chief Registrar 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 deducted from the gross income the amount of such payments or such lesser amount as in all the circumstances is reasonable.

7. (1) There shall be deducted from the gross income in respect of each person specified in column 1 of the following table the corresponding amount specified in column 2 -

<i>Dependant</i>	<i>Deduction</i> £
The spouse of the person concerned, if they are living together at the relevant time	3,400
Each child dependent on the person concerned, if he is a member of that person's household at the relevant time —	
(a) if aged 18 years or over	2,100
(b) if aged 16 or 17 years	1,900
(c) if aged 11 to 15 years	1,400
(d) if aged under 11 years	600

(2) In this paragraph "the relevant time" means the time of the application or, such other time as in the particular circumstances the Chief Registrar may consider appropriate.

8. (1) There shall be deducted from the gross income the amount of net housing expenses payable by the person concerned during the period of computation.

(2) In this paragraph "net housing expenses" means —

(a) the rent payable in respect of the only or main dwelling of the person concerned for the period of computation, and

(b) so much of any outgoings in respect of the said dwelling borne by the person concerned as is attributable to the period of computation, including in particular —

(i) rates, and

(ii) such proportion as is for the time being attributable to interest of any sum payable in respect of a debt secured on the said dwelling, or any interest therein;

less any proceeds of letting or sub-letting any part of the said dwelling.

Capital

9. (1) In ascertaining the gross income for the purpose of paragraph 1, capital resources together with any income derived from them shall be treated as equivalent to an income of £13 for each complete £50 of the excess of the value of the capital resources over £10,000.

(2) For the purposes of sub-paragraph (1), if the value of the capital resources taken into account would not exceed £10,000 they shall be wholly disregarded together with any income therefrom.

10. (1) Subject to sub-paragraph (2) and to paragraphs 11, 12 and 13, there shall be included in the computation of the value of the capital resources of the person concerned every resource of a capital nature ascertained as on the date of the application for a certificate.

(2) Where it is brought to the notice of the Chief Registrar that, between the date of the application for a certificate and the determination by him, 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 Chief Registrar shall compute the value of the capital resources of that person in

the light of such facts and the value of the resources as so computed shall be taken into account in the Chief Registrar's determination.

11 Save in exceptional circumstances, in computing the value of the capital resources of the person concerned there shall be disregarded the value of the following, -

- (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 of which he is the sole owner or a partner.

12. In computing the value of the capital resource of the person concerned, there shall be disregarded, in respect of the value to him of any interest in the main or only dwelling in which he resides, any sum which might be obtained by him by selling that interest or borrowing money on the security thereof, but there shall be taken into account in respect of the value to him of any interest in a dwelling which is not the main dwelling any sum which may be obtained by borrowing money on the security thereof.

13. Without prejudice to the foregoing paragraphs, in computing the value of the capital resources of any person there shall be disregarded such capital resource, if any, as the Chief Registrar in the circumstances of the case may in his discretion decide.

Supplemental

14. It is hereby declared that any income arising to the person concerned under a contract whereby any other person occupies any part of a dwelling in which the person concerned resides, or any profits arising out of a business of which the person concerned is the sole owner or of which he is a partner, shall not be income arising from capital resources for the purpose of paragraph 9.

PART II

LIMIT OF RESOURCES AND AMOUNT OF CONTRIBUTION

15. If the resources of the person concerned during the period of computation do not exceed £4,000 a certificate shall be granted without a contribution being required.

16. (1) If the resources of the person concerned during the period of computation exceed an amount specified in column 1 of the following table but do not exceed the corresponding amount specified in column 2, a contribution equal to the corresponding proportion of the net liability of the Treasury specified in column 3 shall be paid, but so that the maximum contribution shall not exceed the amount specified in column 4 -

<i>Exceed</i>	<i>Resources</i>		<i>Contribution</i>	<i>Maximum</i>
<i>£</i>	<i>Do not exceed</i>	<i>£</i>	<i>per cent.</i>	<i>contribution</i>
<i>£</i>	<i>£</i>	<i>£</i>		<i>£</i>
4,000	5,000	5,000	10	500
5,000	6,000	6,000	25	1,000
6,000	7,000	7,000	50	1,500
7,000	8,000	8,000	75	2,000

(2) The reference in sub-paragraph (1) to the net liability of the Treasury shall be construed in accordance with section 4(5) of the Act.

17. If the resources of the person concerned during the period of computation exceed £8,000 no certificate shall be granted.

REGULATIONS REVOKED

<i>Reference</i>	<i>Title</i>
GC 221/86	The Legal Aid (Financial Resources) Regulations 1986.
GC 323/89	The Legal Aid (Financial Resources) (Amendment) Regulations 1989.
GC 383/91	The Legal Aid (Financial Resources) (Amendment) Regulations 1991.
SD 363/93	The Legal Aid (Financial Resources) (Amendment) Regulations 1993.

MADE 13th March 1997



Members of the Legal Aid Committee.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations replace the Legal Aid (Financial Resources) Regulations 1986 as amended.