1980 No. 402

LEGAL AID AND ADVICE

Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1980

Made . . . . . 6th November 1980

Coming into operation . . . 24th November 1980

To be laid before Parliament

The Secretary of State, in pursuance of sections 4 and 14 of the Legal Aid and Advice Act (Northern Ireland) 1965(**a**), and with the concurrence of the Treasury, hereby makes the following regulations:

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1980 and shall come into operation on 24th November 1980.

(2) In these regulations:—

"the Act" means the Legal Aid and Advice Act (Northern Ireland) 1965;

"assessment officer" means a person appointed by the Department of Health and Social Services to make a determination;

"certificate" means a legal aid certificate issued in accordance with regulations made under the Act;

"child" means a person who is for the time being either— (i) under the age that is the upper limit of compulsory school age by virtue of article 36 of the Education and Libraries (Northern Ireland) Order 1972(**b**), 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 the Legal Aid Committee or a Certifying Committee set up by a scheme made under section 10 of the Act or the secretary of such a committee acting on its behalf, which (i) requires the assessment officer to determine the disposable income and the disposable capital and the maximum contribution of the person concerned, or (ii) amends, revokes or discharges a certificate;

"income" includes benefits and privileges; the income of the person concerned includes any sum payable to that person for the purpose of the maintenance of a child including any sum so payable under the order of a court or under any instrument;

"make a determination" in relation to the assessment officer means to determine the disposable income and disposable capital of the person concerned and to determine the maximum amount of his contribution to the legal aid fund in respect of any proceedings;

(**a**) 1965 c. 8 (N.I.) as modified by S.I. 1973/2163 (1973 III, p. 7541) and amended by The Legal Aid, Advice and Assistance (Northern Ireland) Order 1979 S.I. 1979/1572 (N.I. 11) and by Article 15 and paragraph 5 of Schedule 3 to the Social Security (Northern Ireland) Order 1980 S.I. 1980/870 (N.I. 8)

(**b**) S.I. 1972/1263 (N.I. 12)

"the period of computation" means the period of 12 months next ensuing from the date of application for a certificate, or such other period of 12 months as in the particular circumstances of any case the assessment officer may consider to be appropriate;

"the person concerned" means the person whose disposable income and disposable capital are to be determined or re-determined or the person whose resources are to be treated as the resources of any other person, under these Regulations;

"secretary" means the secretary of the Legal Aid Committee or a Certifying Committee and includes any person authorised by the secretary to act on his behalf to the extent that such a person is so authorised.

Revocations

2. The regulations specified in Schedule 1 are hereby revoked.

Determination of disposable income and disposable capital and maximum contribution

3. Subject to the provisions of section 4 of the Act, the assessment officer shall make a determination and may call attention to any special circumstances affecting the manner in which any contribution under section 3 of the Act is to be made.

Determination of disposable income and disposable capital

4. Save as otherwise provided by these regulations, the disposable income and disposable capital of the person concerned shall respectively be determined in accordance with the provisions of Schedules 2 and 3 to these Regulations.

Subject matter of dispute

5.—(1) 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.

(2) Periodical payments of maintenance made under an order of a court shall not be treated as the subject matter of the dispute for the purposes of paragraph (1).

Application in representative, fiduciary or official capacity

6. Where an application for a certificate is made by a person who is concerned in the proceedings only in a representative, fiduciary or official capacity, then for the purpose of determining the disposable income and the disposable capital of that person and the amount of any contribution to be made to the legal aid fund, the assessment officer shall:—

(*a*) subject to sub-paragraph (*b*), disregard the personal resources of that person; but

(*b*) if so requested by the committee, determine the value of any property, or estate or the amount of any fund out of which that person is entitled to be indemnified and the disposable income and disposable capital and maximum contribution of any persons (including that person if appropriate), who might benefit from the outcome of the proceedings.

Resources of a spouse

7.—(1) Except as otherwise provided in paragraph (2), in computing the disposable income and the disposable 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.

Resources of an applicant who is a child

8.—(1) Where an application for a certificate is made by or on behalf of a child who is under the upper limit of compulsory school age, there shall, in addition to the child's resources, be determined and taken into account the resources of:—

(i) any person liable to maintain the child under article 22 of the Supplementary Benefits (Northern Ireland) Order 1977(c); and

(ii) any person having care and control of the child, not being a person having such care and control by reason of any contract or for some temporary purpose, except where that person has a contrary interest in the dispute in respect of which the application is made, or in other exceptional circumstances.

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

Deprivation or conversion of resources

9. If it appears to the assessment officer that the person concerned has with intent to reduce the amount of his disposable income and disposable capital:—

(i) directly or indirectly deprived himself of any resources, or

(ii) converted any part of his resources into resources which under these Regulations are to be wholly or partly disregarded (including for this purpose the repayment of money borrowed on the security of a dwelling), or in respect of which nothing is to be included in determining the resources of that person,

the resources of which he has so deprived himself or converted shall be treated as part of his resources or as not so converted as the case may be.

Notification of the assessment officer's decision

10. The assessment officer's determination of the disposable income, disposable capital and maximum contribution of the person concerned shall be communicated in writing to the committee.

Duty of the person concerned to report change in financial circumstances

11. The person concerned shall inform the committee of any change in the financial circumstances under which the original determination was made which he has reason to believe might affect the terms or continuation of his certificate.

Re-determination on change of circumstances

12. Where it appears to a committee that the circumstances upon which the assessment officer has determined the disposable income or disposable capital of the person concerned have altered so that:—

(*a*) his disposable income may have increased by an amount greater than £156 or decreased by an amount greater than £78; or

(*b*) his disposable capital may have increased by an amount greater than £120;

(c) S.I. 1977/2156 (N.I. 27) as amended by Articles 1, 2 and 7 and paragraph 16 of Schedule 2 to the Social Security (Northern Ireland) Order 1980 S.I. 1980/870 (N.I. 8)

the assessment officer shall, if so required by the committee, re-determine that person's disposable income, disposable capital and maximum contribution.

Determination of resources outside the original period of computation

13.—(1) Where a certificate is still in force after the expiration of the period of computation the committee may require the assessment officer to determine the current disposable income and disposable capital of the person concerned and shall discharge the certificate from such dates as it thinks fit where it considers that the current financial circumstances of the person concerned are such that he could afford to proceed without legal aid.

(2) Where the officer is required by the committee under paragraph (1) to determine the current disposable income and disposable capital of the person concerned after the original period of computation, he shall do so in accordance with the provision of Schedules 2 and 3 to these Regulations; and for this purpose:

(*a*) the period of computation shall be the period of twelve months following the date of the request by the committee, and

(*b*) the amount and value of every resource of a capital nature shall be ascertained as on the date of the request by the committee.

Amendment of determination because of error or mistake

14. Where it appears to the assessment officer 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 error or mistake, the officer may, with the consent of the committee, make an amended determination, which shall for all purposes be substituted for the original determination and shall have effect in all respects as if it were the original determination.

Power of the assessment officer to estimate the resources of the person concerned

15.—(1) Where the committee informs the assessment officer that the person concerned requires a certificate in a matter of special urgency and the officer is not satisfied that he can make a determination and communicate it to the committee by the time that he is requested so to do, the officer may, on the basis of the information then available to him, make an estimate of the disposable income and disposable capital of the person concerned and of the maximum amount of his contribution.

(2) The officer shall communicate the estimate made under paragraph (1) to the committee in writing and, until the making of a determination, the estimate shall be treated as if it were a determination and sections 2 and 3 of the Act shall have effect as if the disposable income, disposable capital and maximum contribution of the person concerned were of the amounts specified in the estimate.

(3) In any case in which the officer makes an estimate under paragraph (1) he shall, upon receiving such additional information as he may require, make a determination and shall communicate it to the committee in writing and the determination shall for all purposes take the place of the estimate.

Humphrey Atkins
One of Her Majesty's Principal Secretaries of State

Northern Ireland Office
6th November 1980

Peter Morrison
J. A. Douglas-Hamilton
Two of the Lords Commissioners of Her Majesty's Treasury

We concur
10th November 1980

SCHEDULE 1 Regulation 2

Regulations Revoked

Title	*Reference*
Legal Aid (Assessment of Resources) Regulations (Northern Ireland) 1965	S.R. & O. (N.I.) 1965 No. 218
Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1966	S.R. & O. (N.I.) 1966 No. 271
Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1969	S.R. & O. (N.I.) 1969 No. 307
Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1970	S.R. & O. (N.I.) 1970 No. 246
Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1971	S.R. & O. (N.I.) 1971 No. 115
Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1972	S.R. & O. (N.I.) 1972 No. 337
Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1976	S.R. 1976 No. 125
Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1978	S.R. 1978 No. 191
Legal Aid (Assessment of Resources) (Amendment No. 2) Regulations (Northern Ireland) 1978	S.R. 1978 No. 367
Legal Aid (Assessment of Resources) (Amendment) Regulations (Northern Ireland) 1979	S.R. 1979 No. 189