

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<sup>a</sup>, 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<sup>b</sup>;

“child” means a person under the age of 16 years;

“co-habitee” means one of two persons living together as spouses, and for this purpose, two persons of the same gender are to be treated as living together as spouses, if (and only if) they would be so treated were they of different genders;

“dependant” means a person whose circumstances render them financially dependant upon another for support;

“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;

“spouse” means a married person or co-habitee.

**Subject matter of dispute**

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<sup>a</sup> 1986 c.23

<sup>b</sup> SD

2. (1) 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.

(2) For the purposes of paragraph (1), the value of the claim shall be apportioned equally between the parties save that in exceptional circumstances it may be determined, on application, by the certifying officer up to a maximum of £100,000 or, in the case of a matter mentioned in Schedule 1, paragraph 12, £250,000.

### **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 as

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 Isle of Man income-related benefits.

#### **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 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 or 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.

SCHEDULE 1

PART I

DETERMINATION OF RESOURCES

*Resources*

1. The financial eligibility of the person concerned shall be assessed pursuant to the method used to assess means by the Department of Health and Social Security for Family Income Supplement '(FIS').

*Capital*

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 ( in either case up to a maximum disregarded sum of £250,000), 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 resources, if any, as the Chief Registrar in the circumstances of the case may in his discretion decide.

*Supplemental*

PART II

LIMIT OF RESOURCES AND AMOUNT OF CONTRIBUTION

15. If the resources of the person concerned during the period of computation would ordinarily render qualification for Isle of Man Family Income Supplement 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 -

Net Resources (above FIS limit) Minimum £	Maximum £	Contribution NR = Net Resources	Max Contribution £	Max Monthly Payment £	Payment Period (Months)
0,001	1,000	2 x NR	2-2,000	42	1-48
1,001	2,000	2 x NR	2,002-4,000	84	24-48
2,001	3,000	2 x NR	4,002-6,000	126	32-48
3,001	4,000	2 x NR	6,002-8,000	168	36-48

(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 the highest maximum net resources sum (£4,000) identified in the table in paragraph 16 no certificate shall be granted.
18. If the assisted person becomes liable to pay a contribution, such contribution should be paid in accordance with instructions from the Chief Registrar.
19. If the contribution falls 21 days into arrears, the certifying officer shall write to the person concerned indicating that the certificate will be discharged, by a certain date, unless the person concerned, by that date, shows cause to the contrary.
20. If the certificate is discharged, and, subsequently the person concerned seeks another certificate, the certifying officer may require payment of all outstanding liability under the previous certificate to be paid together with any liability under the new certificate.
21. If the person concerned has outstanding liability on 2 earlier certificates, and an application for a further certificate is submitted, the certifying officer may refuse the said applications on the ground that the application is an abuse of the Legal Aid process.
22. If Legal Aid is amended, refused or discharged on the basis of a determination made by the Chief Registrar pursuant to paragraph 11(2) of the Legal Aid (General) Regulations 1997, the assisted person may seek a review by the certifying officer of that decision.

Regulation 10.

SCHEDULE 2

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 13<sup>th</sup> March 1997

(signed by)

Members of the Legal Aid Committee

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EXPLANATORY NOTE

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

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

