

Means Assessment Guidance

How to perform a means assessment

The following notes provide detailed guidance to Solicitors, CAB workers or other representatives, on the assessment of financial eligibility and applies to those criminal proceedings which –

- (a) are referred to in section 12(2)(a) to (f) of the Access to Justice Act 1999 and in regulation 3(2)(a) to (g) and (i) to (p) of the Criminal Defence Service (General) (No 2) Regulations 2001 and
- (b) are in a magistrates' court.

The financial limits and method of assessment are fixed in the Criminal Defence Service (Financial Eligibility) Regulations 2006 and came into force on 2nd October 2006. References to Regulations in this guidance are references to those Regulations unless otherwise stated.

The means assessment will be performed by the court, or in complex or high-risk applications, the LSC. These notes are intended to detail the process that will be used.

The applicant may only receive publicly funded representation where the representation authority has assessed that they are financially eligible to receive a representation order and if they fulfil the interests of justice requirements. Guidance on the application of the Interests of Justice Test is available separately. Both tests must be satisfied for a representation order to be granted.

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This section will help you to determine whether you can process the application or whether it will need to be referred to a special means assessment unit. You may also wish to refer to this section when you are completing an assessment if you become concerned about the application at that stage. Please see also **Appendix 3**.

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This section will show you how the Calculator assesses income weightings and how it determines whether an applicant is eligible. You may find this useful for queries or if you have to manually calculate eligibility.

Appendix 3

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This section provides more in depth detail on risk assessment.

Quick Reference 1

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Disregarded benefits

Disregarded benefits at a glance.

Quick reference 2

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State benefits.

This section is provided to show the current rates of the most common types of benefit. They may be useful to you when determining state benefit income.

Accepting an application

Section 1

1.0. Accepting an Application

- 1.1 The representation authority will determine the applicant's financial eligibility on information provided by the applicant or in the case of a young person, the person applying on their behalf. This information must be entered onto the CDS14 form or CDS15 Form (if relevant) provided by the Commission.
- 1.2 The forms CDS14 and CDS15 (if relevant) must be completed in full. Where the forms are incomplete, unsigned or otherwise required information is not provided, the application will be rejected. Sufficient information will be held on file to allow the assessment to be checked / audited if necessary by the Representation Authority. The form/s must be signed as these are statements of truth and we may need to rely on them in the event of fraud.
- 1.3 Table – The Form/s will be rejected if the following are not complied with.

ALL APPLICATIONS	INCOME SUPPORT/JSA/ PENSION CREDIT	FULL TEST APPLICATIONS	EMPLOYED	SELF EMPLOYED/ DIRECTOR/ PARTNER	Other
That the forms are legible	That the NINO of <u>Claimant</u> OR proof of benefits is supplied (Partner's NINO is required only where the benefits are claimed in their own name, where this is the case the partner's signature is required.)	ALL the yes/no questions are answered	The most recent wage slip per job/per person is supplied	The accounts or tax calculation sheets are attached	A bank statement or other evidence is supplied A statement of truth is attached if the defendant is in custody.
The right form filled is in	CDS14	CDS15	Where there are benefits in kind is a P2 form is supplied		Where mortgage or childcare over £500,

					evidence is supplied
The form/s are signed by the applicant			Where the mortgage or childcare cost are over £500, evidence is supplied		
The form/s are dated by the applicant					
Solicitor's details Fully completed					
The form CDS14 is signed by a solicitor					
Is the form CDS14 is dated by a solicitor					
The personal details are completed (practical)					

1.4. The representation authority may at any time require the individual to provide documentary evidence in support of the information required by the forms CDS14 and CDS15. The Representation Authority will take reasonable steps to verify the information provided by the applicant or their partner. Minimal evidence such as having the applicant's or their partners pay slip to evidence earnings, is required in all cases.

1.5. Partners

1.5.1. The partner must complete and sign the form CDS15 where means are to be aggregated. Where the partner has not completed and signed the form, the application will be rejected.

1.6. Defendants in custody.

1.6.1. Defendants in custody who cannot provide evidence of their income will need to attach a statement of truth. This is acceptable evidence only where the defendant is remanded into custody and cannot provide the evidence by any other means. The income figure will be taken from the statement of truth and the assessment then completed in the usual way.

Determining Risk

Section 2

2.0. Determining Risk

Applications that the Representation Authority classifies as complex or high risk will be processed at a special means unit. The following referral criteria will apply:

2.1. Complex cases

2.1.1. These cases are determined by the employment status of the applicant and/or their partner or other financial criteria, which indicated complex finances.

2.1.2.

Category	Outcome
Self employed	Will be referred to Specialist unit
Partners in a business	Will be referred to Specialist unit
Directors of a company	Will be referred to Specialist unit
Subject to a freezing order or injunction	Will be referred to Specialist unit

2.2. High risk cases

2.2.1. These are cases that the Representation Authority consider may be fraudulent and the following referral criteria will be considered:

2.2.2. Table

DEFENDANT TYPE	FACTORS TAKEN INTO ACCOUNT BY OFFICIALS	EXAMPLES
ALL DEFENDANTS	Aura of wealth	Something in the application makes officials think the applicant might be wealthy
		E.g. officials may know the address given by the applicant as one from a very affluent area.

	Suspicion of Fraud	Local knowledge may indicate to officials that false information has been provided in order to appear to be eligible for legal aid.
	Alteration of the wage slip or appearance that it has been made by the applicant	If correction fluid is used.
		Suspicion that the wage slip has been tampered with
	Suspicion that the wage slip is a fraudulent piece of evidence.	The wage slip suggests that the defendant works for a family member.
		If the applicant has the same name as their employer
		If the loJ information suggests that the applicant works for a family member
HIGH PROFILE DEFENDANT	Suggestion of wealth (e.g. a footballer)	
DEFENDANT HAS NO INCOME AT ALL	Does the applicant have a residential address?	Officials will look at whether the information provided for by the loJ test supports this (e.g. the applicant may be in prison or of no fixed abode)
NEGATIVE DISPOSABLE INCOME	Does the income that the applicant has declared on the wage slip or state benefits cover outgoings?	Do not include the living allowance for this – just tax and NI, housing costs, and childcare/maintenance costs.

Please refer to Appendix 3 for more details on risk assessment.

The form may be used as evidence in the event of a fraudulent application. The forms may not therefore be amended by court or LSC staff under any circumstances. Applicants should not therefore ask staff to do this where they have made an error.

Passported applications

Section 3

3.0. Passported Applications

3.1. Passporting Benefits

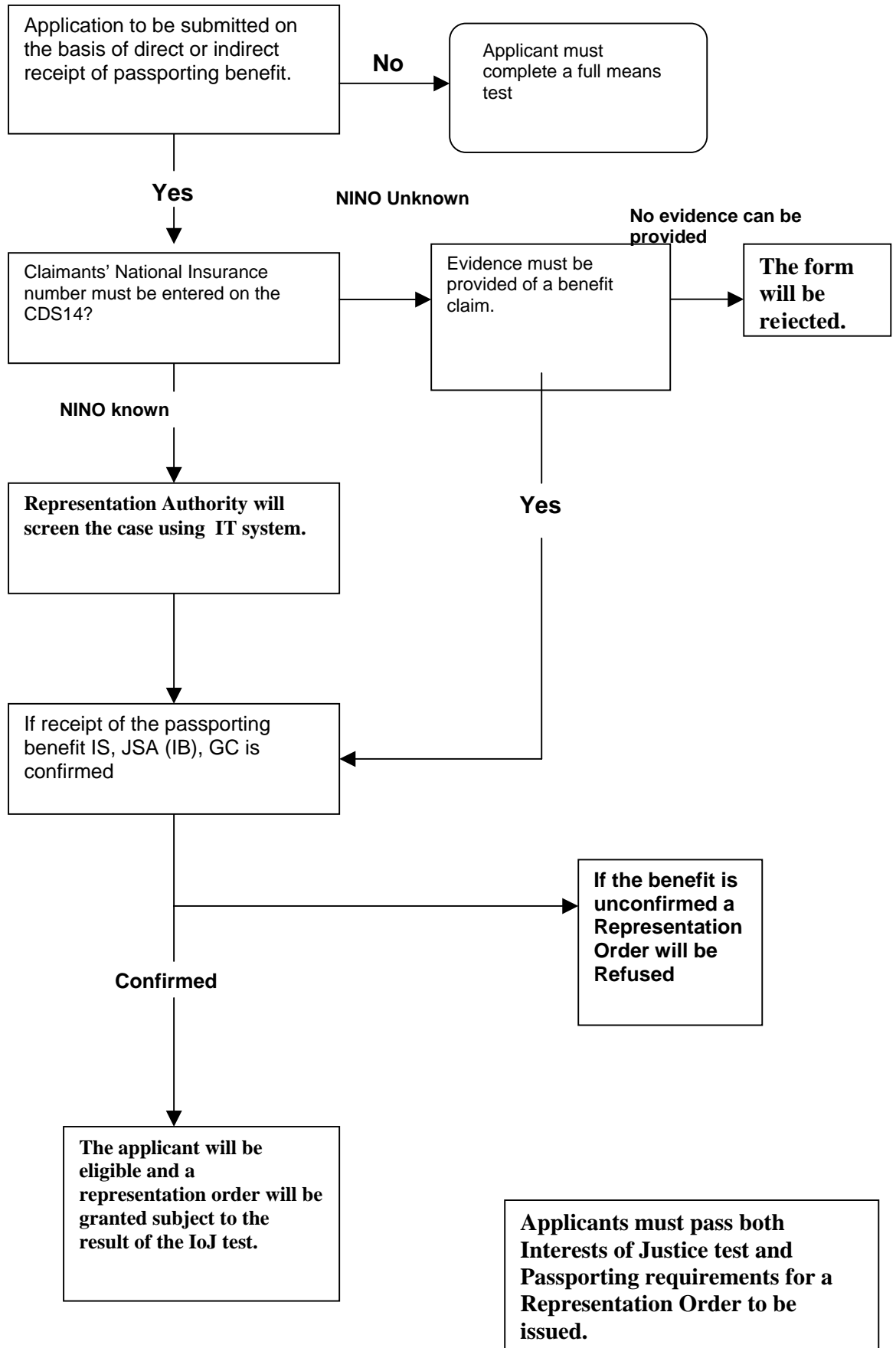
- 3.1.1. An applicant who is directly or indirectly in receipt of Income Support, Income Based Jobseeker's Allowance or Guarantee State Pension Credit ("Guarantee Credit") automatically satisfies the means test.
- 3.1.2. An applicant is directly in receipt of the passporting benefit if he / she is the claimant. An applicant is indirectly in receipt of the benefit if he / she is included in the benefit claim as a dependant of the claimant. The applicant is therefore passported if their partner is in receipt of one of those benefits and the applicant is included in the partner's benefit claim.
- 3.1.3. From 5 December 2005, a same sex couple claiming state benefits will be paid as a couple and no longer as two single people, this applies whether or not the couple have a registered civil partnership in accordance with the Civil Partnership Act 2004. Passporting arrangements will therefore apply to married and cohabiting couples (including couples of the same sex) and civil partners.
- 3.1.4. Where the partner is in receipt of a passported benefit as a single person (e.g. this may arise if the applicant is in custody) then the applicant is not passported for funding purposes. In such cases the applicant's means will be assessed and the partner's income support included in the assessment by the Representation Authority as a source of income for the couple.
- 3.1.5. The applicant must actually be receiving the benefit at the time of the application in order for it to be passporting. The applicant will not be passported on the basis that an application decision is pending or if a benefit claim has been suspended (e.g. due to an investigation into suspected fraud).

[Cross Reference: "Passported cases - Qualifying Benefit" diagram, Quick Reference 3].

3.2. Young persons (under the age of 16) and age related passporting criteria.

- 3.2.1. The application must be made on behalf of a young person, (i.e. an individual under the age of 16), by a responsible adult. When a young person is under the age of **16**, he / she will be deemed automatically eligible for funding i.e. the young person will have passported entitlement. The statement of truth signed on the CDS14 form will be treated as satisfactory evidence for the Applicant to be passported and therefore the Representation Authority will carry out no further checks.
- 3.2.2. An applicant who is aged 16 or over and, prior to his / her 18th birthday, is undertaking a **full** time course of study, will also have passported entitlement to a representation order. These applicants will sign the CDS14 form themselves.
- 3.2.3. Applicants aged 18 and over who are undertaking a full time course of study are **not** passported unless they are in receipt of a passporting benefit i.e. Income Support, Income-based Jobseekers Allowance or Guarantee Credit.
- 3.2.4. Applicants aged 16-18 and in part time education are not passported and must complete a full assessment on Form CDS15. These forms must be signed by the applicant.
- 3.2.5. Note: It is the age of the young person at the date of application, which is relevant.

3.3. Passported cases - Qualifying benefits



The initial means test

Section 4

4.1. The Initial Means Test

4.1.1. The initial means test acts as a filter. There are three possible outcomes from this part of the assessment:

- Applicant eligible
- Applicant ineligible
- Full means test required.

4.1.2. The Online calculator tool will calculate this for you, if you wish to determine eligibility for your client prior to the application, and will work by adding all income together and weighting it according to the equivalence scale. This can be found at Appendix 2

4.2. Initial filter - £20,740 weighted income (per annum)

4.2.1. "Income" means the total income from all sources, which an applicant has received or may reasonably expect to receive in respect of the computation period (also see 4.4.2). In determining gross income all income must be included whether from employment, state benefits (unless specifically disregarded) or elsewhere, e.g. assistance from friends or relatives. This gross income figure will then be equivalised or weighted, requiring an adjustment to be made to the applicant's actual gross income if he / she has a partner or child dependants living in the same household. (Note: the applicant's income will not be weighted for children who live in a separate household e.g. with a former spouse or partner). If the applicant is single with no dependants his / her equivalised income will be the same as his / her actual income, no adjustment is required (see Appendix 1 for equivalisation scale).

4.2.2. For the applicant to be eligible for legal aid the applicant's weighted income must not exceed £20,740 (per annum). This filter provides an initial assessment of whether the applicant is within the income range in which a more detailed means test should be performed. Through the use of equivalisation to weight income, the limit is intended to be sensitive to the individual circumstance of the applicant.

4.3. Lower threshold: £11,590 equivalised income

4.3.1. Where the applicant's weighted gross income (as defined above) falls below the lower threshold, he / she will be deemed to be eligible for a representation order without the necessity of further assessment.

4.4. General

- 4.4.1. "Income" means the total income from all sources, which a person has received or may reasonably expect to receive in respect of the computation period. In determining gross income all income must be included whether from employment, state benefits (unless specifically disregarded) or elsewhere, e.g. assistance from friends or relatives.
- 4.4.2. The calculation on an applicant's gross annual income (as described at Regulation 9 of the CDS (financial eligibility) regulations means the total annual income as at the date of the application. For those applications whose gross annual income falls between the thresholds described at Regulation 9, a more detailed assessment to determine annual disposable income will be carried out in accordance with Regulation 10. The relevant deductions are based on the month preceding the date of the application.
- 4.4.3. Any payments made direct to third parties on behalf of the applicant will count as the applicant's gross income by virtue of Regulation 6(2). This could be for example, payments made by an ex-partner direct to a third party on behalf of the applicant e.g. ex-partner pays the mortgage on the former matrimonial home direct to the lender, this would be treated as maintenance income. When determining the applicant's disposable income, an allowance will be made for the mortgage payment as a housing cost in accordance with the rules for that particular allowance. **[Cross-reference: Section 5.3 Housing Costs].**

4.5. Salary / Wages

- 4.5.1. Where an applicant is currently employed, details of any salary or wage received in respect of their work must be entered on the application. A wage slip – the most recent wage slip - must be provided as evidence. The salary / wage figure will be taken directly from the wage slip by the Representation Authority.

4.6. Erratic Income / Seasonal Workers

- 4.6.1. The income from the most recent wage slip will be used to calculate an annual figure for the purpose of the assessment. Where a seasonal worker is found to be ineligible based on a monthly income that would not be available to them in other periods of the year and for which they must budget accordingly, the Representation Authority will need to carry out a more in depth review of their means. For this to happen the applicant must complete the CDS16 form enclosing evidence that supports their claim. The hardship unit will do these assessments.

4.7. State Benefits

- 4.7.1. Certain state benefits are wholly disregarded for assessment purposes (see paragraph – 4.16). All other state benefits are included in the assessment as gross income as follows:
- a) The amount declared by the applicant of any state benefits or allowances (including pensions).
 - b) Where a monthly figure is quoted, the benefit will be payable 4 weekly.
 - c) To calculate income for the computation period, multiply by 52 if payment is weekly or multiply by 13 if payment is four weekly to obtain annual figure. The benefits agency confirms that benefits are paid lunar monthly (4 weekly).
- 4.7.2. Arrears of benefit will be treated as having been actually received when they were due i.e. they will not be taken to be current income if paid in respect of a period before the computation period.

4.8. Child Benefit

- 4.8.1. Child Benefit is a tax-free weekly cash benefit payable to a claimant who is responsible for a child who qualifies. HM Revenue and Customs pay this benefit. It is not means tested.
- 4.8.2. Benefit is paid for each qualifying child, at a higher rate for the first or only child and a lower rate for each subsequent child. Please see quick reference 3 for current rates.
- 4.8.3. Any Child Benefit paid to the applicant/partner is included as income in the assessment.
- 4.8.4. Child Benefit, which the applicant appears to be entitled to will be included even if not declared.
- 4.8.5. If the applicant is a single parent then as well as Child Benefit they may be entitled to Lone Parent Benefit (LPB). This was a tax-free weekly paid benefit. New claimants have not been able to make a claim for LPB since 6 July 1998.
- 4.8.6. If LPB has been declared on the CDS14 then it will be included in the assessment. In other cases receipt of LPB will **not** be assumed.

4.9. Tax Credit

- 4.9.1. Tax credit refers to Working Tax Credit and Child Tax Credit, which replaced Working Families Tax Credit and Disabled Person's Tax Credit from 6 April 2003 and is paid by HM Revenue and Customs. Working Tax Credit and Child Tax Credit are means tested, however these benefits are more generous than subsistence benefits such as Income Support or Income-based Jobseekers Allowance. Tax credits

are **not** passporting benefits and the net amount of tax credit received by the applicant and / or partner for the computation period must be included within the assessment. A Tax Credit Award Notice specifying the entitlement amount is issued to the claimant. State the required evidence e.g. the actual HMRC/DWP form reference number. There is no requirement that evidence is to be submitted with the application but if there are any concerns, evidence may be requested by the Representation Authority (usually by special means unit).

4.9.2. Note: Couples (whether married, civil partners, or otherwise cohabiting – including same sex couples) must make a joint tax credit application. However separate award notices may be issued. For example, in the case of a married couple the husband may be awarded Working Tax Credit while Child Tax Credit is awarded to the wife if she is deemed to be the main carer of the children living in their household.

4.10. Pensions

4.10.1. Include any payments that the applicant has received or may expect to receive for the computation period in respect of State Pension (Retirement Pension), an occupational pension or private pension. Pension payments are taxable income for the purposes of HM Revenue and Customs, however pensioners are **not** required to pay national insurance.

4.11. Maintenance Income

4.11.1. Included as income is the amount declared by the applicant as maintenance received for themselves and/or their dependant children. This will be maintenance paid by a spouse, former spouse or civil partner, or other parent of the child. Note: this income will be included in the assessment of the applicant whether or not the order specifies that the payments are made to or for the children.

4.11.2. The maintenance may be being paid voluntarily, through a court order, or through the Child Support Agency.

4.11.3. Maintenance payments are not generally treated as taxable income in the hands of the recipient. As a general rule therefore, tax will not be deducted from this income unless the applicant provides evidence that they are paying it.

4.12. Student Income

In relation to parental contributions to students and student grants or loans paid to the applicant or partner, these should be treated as income by assessing the annual student grant, loan or contribution obtained by the student.

4.13. Benefits in Kind

- 4.13.1. This refers to benefits, usually provided by an employer, instead of or in addition to cash payments or normal salary. This is counted as income and must therefore be added back to the wages figure.
- 4.13.2. The most common example is the provision of a company car and/or fuel allowance. Other examples are free health insurance, free accommodation and luncheon vouchers. Sometimes employers provide childcare vouchers or help to pay for the employee's mortgage.
- 4.13.3. HM Revenue and Customs (HMRC), treat all of these benefits as taxable income even though they are not received in cash. As a general rule therefore, the value of any benefit in kind from an assessment point of view will be taken to be its taxable value i.e. the Representation Authority will treat this benefit as income in the same way as HMRC.
- 4.13.4. The applicant is asked to specify the taxable value of any benefit in kind received on the Form CDS15 and to provide a copy of tax form P2 that will show the annual value. This value will therefore be added on to the applicant's gross income for the computation period.
- 4.13.5. Note: Where the total of the applicant's earned income (including the benefit in kind) does not exceed £8,500 per annum, then those benefits, which cannot be converted into cash or cash equivalent by the recipient, (e.g. company cars or medical insurance) are disregarded for tax purposes. Their taxable value as stated on the P2 should therefore be nil.
- 4.13.6. It is necessary, as outlined above, to include the taxable value of benefits in kind as gross income. However, where a full means test is being undertaken to determine the applicant's disposable income, an allowance against income will be made of the notional figure for expenses, which would normally be allowed under the regulations. In practical terms this will only arise where the employer provides accommodation to the applicant or pays childminding fees. In such cases a deduction can be made equivalent to the benefit in kind (and any fees the applicant pays on top of that money for accommodation or to a registered child minder).
- 4.13.7. Example: Client provides P2 showing 'car benefit - £750' for the tax year, that is the taxable value of the benefit is kind. Include £750 as income.

4.14. Income from savings and investments

- 4.14.1. Where the applicant's capital i.e. savings and investments, produces a regular monthly income then that income will be included in the

assessment. Form CDS15 requests information on interest bearing capital / capital which produces an income and these figures will be used in the assessment.

4.15. Trust Income

4.15.1. A trust may provide income directly to the applicant or his / her partner, or commonly may undertake payments on the individual's behalf e.g. meeting housing costs. Any income that the applicant receives or may expect to receive from a trust (including payments made directly to a third party on his/ her behalf) for the computation period will be assessed by virtue of Regulation 6(2). This money will be treated as non-taxable income for assessment

4.16. Disregarded income

4.16.1. Certain state benefits are wholly disregarded for assessment purposes. Therefore the applicant's gross annual income will be calculated by assessing his/ her total annual income from all sources, other than the receipt of any of the following –

(a) any of the following payments made under the Social Security Contributions and Benefits Act 1992:

(i) attendance allowance paid under section 64 or paragraph 4 or 7(2) of Schedule 8;

(ii) severe disablement allowance;

(iii) carer's allowance;

(iv) disability living allowance;

(v) constant attendance allowance paid under section 104 as an increase to a disablement pension;

(vi) council tax benefit;

(vii) any payment made out of the social fund;

(b) any direct payments made under the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003 or the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004;

(c) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983;

(d) any pensions paid under the Naval, Military and Air Forces etc (Disability and Death) Service Pensions Order 1983;

(e) any Independent Living Fund payments;

(f) any financial support paid under an agreement for the care of a foster child;

4.17. Other than the benefits shown above, all other income that is due or will become due for the period of calculation will be taken into account.

The full means test

Section 5

5.0. The Full Means Test

5.1. Disposable Income: £3156 Threshold

5.1.1. Where the Gross equivalised income of an applicant falls between the initial filter and lower threshold the full means test will be applied to establish the applicant's disposable income. Disposable Income will be assessed using the applicant's **actual** income (not the equivalised figure) after making deductions for:

- Any income tax paid or payable in respect of the period of calculation;
- Any national insurance contributions payable for the period of calculation;
- Housing costs;
- Child care fees;
- Maintenance paid to a former partner; and
- An annual living allowance adjusted according to the individual circumstances of the applicant.

These are the only outgoings that are allowed.

5.1.2. The figure assessed will be measured against a disposable income threshold of £3156. If the applicant's income exceeds this figure they will be expected to pay for their own defence in the Magistrates' Courts.

5.1.3. Detailed guidance is provided on each of these allowances below.

5.2. Tax and National Insurance

5.2.1. The following sums should be deducted from total income when calculating the disposable income for the computation period:

- (a) Any income tax paid on that income.
- (b) Any National Insurance contributions paid or payable on that income under Part I of the Social Security (Contributions) Act 1992.

5.3. Housing Costs

5.3.1. In calculating disposable income an allowance can be made in respect of either:

(a) The mortgage or rent payable for the period of calculation in respect of the applicant's main dwelling; or

(b) The cost of the applicant's living accommodation.

5.3.2. An allowance will also be given for any Council Tax paid or payable in respect of the period of calculation

5.4. Mortgage / Rent

5.4.1. The amount allowed for mortgage or rental payments should be net of housing benefit. The rent or mortgage repayments can be allowed in full, however where housing costs declared are in excess of £500 per month (£6000 per annum) the applicant is required to provide evidence of the payment amount.

5.4.2. The amount to be allowed in the assessment is the rent or mortgage payable during the computation period. In practical terms it will not be easy to identify separately arrears of mortgage payments, as the applicant will generally declare these as a single revised monthly mortgage payment. If the applicant has already come to an arrangement to pay off arrears by increasing their weekly / monthly rent or mortgage payment, then, provided those increased payments are actually being paid by the applicant, that increased rent or mortgage payment can be treated as the rent or mortgage payable in the assessment. This is different from a situation whereby an applicant has commenced paying off arrears in order to reduce their disposable income with a view to qualifying for funding. Such a situation would be regarded as intentional deprivation of income and only the normal monthly rent or mortgage payments should be allowed in the assessment in such circumstances.

5.4.3. No allowance is given for water rates, insurance premiums and other associated housing costs. These are not allowable deductions in the assessment. If there is a clearly identifiable amount relating to water rates included in the rent payable by the applicant then these should not be included as rent. However the Representation Authority will not routinely seek clarification as to whether or not the rent declared by the applicant includes a sum for water rates.

5.5. Accommodation costs

5.5.1. Where an applicant indicates they are paying board and lodgings then only the amount in respect of accommodation can be allowed, therefore the Representation Authority will deduct from the total board and lodgings figure the amount declared on form CDS15 that is for food. In those cases where informal arrangements exist, for example lodging with a close family member, and the amount in respect of food cannot be specified by the applicant, then it will be assumed that half of the declared board and lodging element is for accommodation, the

remainder is assumed to be for food and other incidentals not covered by the regulations.

- 5.5.2. Where the applicant states expenditure on accommodation costs which is more than £500 per month (or annual equivalent) they are requested to provide supporting evidence of the payment advised on the form CDS15.

5.6. Maintenance in payment

- 5.6.1. In calculating disposable income an allowance can be made for genuine maintenance payments made by the applicant and / or his current partner to an estranged / former spouse or civil partner, a child or relative, who is not in any such case a member of the household of the applicant. An allowance can be made whether the payments are being made under a court order, CSA ruling or voluntary agreement. Only payments actually made can be taken into account. This allowance should be the expenditure incurred during the computation period. There are no set limits to the amount that can be allowed under this heading for genuine payments. Maintenance payments could simply include paying an ex-partner's household bills or mortgage. No evidence is required with the initial application but the Representation Authority may request this later as part of a fraud check.

5.7. Child Care Costs

- 5.7.1. An allowance can be made for actual childminding expenses (paid to a registered care provider) incurred by the applicant during the computation period. Unless there are exceptional circumstances i.e. disability of the child, it would only be correct to make such a deduction in respect of a dependant child aged 15 or under.
- 5.7.2. "Child care costs" means the costs of care which is provided by one or more of the following care providers –
- (a) a school on school premises, out of school hours,
 - (b) a local authority, out of school hours –
 - (i) for children who are not disabled, in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their 15th birthday;
 - (ii) for children who are disabled, in respect of the period beginning on their eighth birthday and ending on the day preceding the first Monday in September following their 16th birthday;
 - (c) a child care provider approved by an organisation accredited by the Secretary of State under the scheme established by the Tax Credit (New Category of Care Provider) Regulations 1999;
 - (d) persons registered under Part XA of the Children Act 1989;
 - (e) persons referred to in paragraph 1 or 2 of Schedule 9A to the Children Act, in schools or establishments referred to in those paragraphs;

(f) persons prescribed in regulations made pursuant to section 12(4) of the Tax Credit Act 2002 other than costs paid in respect of the child's compulsory education or by a claimant to a partner, (or vice versa) in respect of any child for whom either or any of them is responsible in accordance with regulation 14 of the Housing Benefit (General) Regulations 1987, or in respect of care provided by a relative of the child wholly or mainly in the child's home.

5.7.3. Where the applicant has declared expenditure on child care which is more than £500 per month he / she is requested on form CDS15 to provide supporting evidence (e.g. copy of bank statement, copy of agreement/contract with childcare provider) to support the figures stated.

5.8. Cost of Living Allowance

5.8.1. The online calculator tool automatically deducts a standard amount, which represents the cost of living expenses in respect of the period of calculation. The amount is £5304 for a single person.

5.8.2. Where the individual has a partner or has children living in his household, an amount is calculated in accordance with the Equivalence scale (see Appendix 2).

5.8.3. N.B. It is the age of the child at the date of application i.e. at the end of the period of calculation, which determines which rate is appropriate.

5.8.4. This allowance takes into account food, energy bills and other basic living allowances.

5.9. Contributions

5.9.1. The means-testing scheme in Magistrates' Courts will be **non-contributory**. If the applicant's financial resources are assessed to be within the eligibility limits, he/she will qualify for funding without the need to pay a contribution towards the cost of his/her defence.

5.10 Capital

5.10.1 There is no assessment of capital other than the income it generates. (Please see 4.14.)

General information

Appendix 1

6.0. General

6.1. Aims and Purpose

The key objectives of the new means testing model:

- Simple to administer and straightforward to operate, minimising the risk of delay to the wider criminal justice system.
- Sensitive to the individual circumstances of the applicant (ensuring full compliance with the Government's ECHR obligations)
- Transparent and easily understood by practitioners, defendants and court staff alike.

6.2. General Principles of Assessment

It is the intention of the Representation Authority to provide an assessment that is:

- transparent to the applicant (i.e. the applicant understands the reason for the decision to grant or refuse public funding);
- justifiable (i.e. a applicant or their representative is able to match the decision to the assessment regulations); and
- consistent (i.e. the same circumstances presented within an application should result in the same outcome, wherever and whenever the application is made).

7.1. Calculating annual and disposable income

The calculation on an applicant's gross annual income (as described at Regulation 9 of the CDS (financial eligibility) Regulations means the total annual income as at the date of the application. For those applications whose gross annual income falls between the thresholds described at Regulation 9, a more detailed assessment to determine annual disposable income will be carried out in accordance with Regulation 10. The relevant deductions are based on the month period preceding the date of the application.

7.2. Aggregation of Means

- 7.2.1. Regulation 6(1) contains a general provision that the income of the applicant's partner must be taken into account and added to that of the applicant unless there is a contrary interest in the proceedings.
- 7.2.2. Partner is defined as anyone (including a person of the same sex) with whom the applicant lives as a couple. This includes any partners who may be living separately at the present time due to reasons other than that they have separated. For example: where one party lives away for work (armed forces, oil rig) or is in prison.
- 7.2.3. Where the relationship has ended the resources are not aggregated, even where the two people remain under the same roof as long as they consider the relationship over and live separate lives. For example: they may be waiting for the property to be sold in divorce proceedings.
- 7.2.4. In addition for unmarried couples, although not conclusive it would be usual for there to be some evidence of a pooling of financial resources and they must regard themselves as a couple. It would not be appropriate to aggregate the resources of say a brother and sister, or flatmates who are not living as a couple. Further evidence of living as a couple may include joint care of a child of the couple.
- 7.2.5. Issues may arise where a couple are married according to English law but have not undergone their traditional cultural ceremony and thus are not and never have been actually living together. In the eyes of each other and their family and community they are not yet married. In such cases it would be appropriate to treat them as though they were not married and therefore not to aggregate the resources in the assessment.
- 7.2.6. If an applicant has left his or her spouse or civil partner and has gone to live with a new partner as a couple in the same household, then the means of the new partner should be aggregated with those of the applicant.
- 7.2.7. A simple declaration on the CDS14 that the applicant is living with a partner (i.e. by reference to the marital status information on the form along with the inclusion of a partner's details on the form CDS14 and/or CDS15) will be accepted as evidence of the applicant having a partner and the applicant's financial resources will be aggregated with that person.

7.3. Contrary Interest

- 7.3.1. However, there is an important exception to this rule and means are not aggregated where the partner has a contrary interest in the matter in respect of which the applicant is seeking funding.

7.3.2. Contrary interest in the most obvious sense will arise in proceedings where the partner is the alleged victim of the crime(s) the applicant is accused of and for which the representation order is sought. Means are also not aggregated where:

- The applicant and partner are both defendants in the same proceedings and where a contrary interest is identified.
- The partner is a prosecution witness in the case for which the representation order is sought.

8. Third Party Resources

8.1. Regulation 6(2) provides for certain other circumstances in which assets belonging to persons other than the applicant can be taken into account. There are two scenarios:

- (a) Where another person is or has been or is likely to be substantially maintaining the applicant or his partner; or
- (b) Resources of another person have been or are likely to be made available to the applicant or his/her partner,

8.1.1. Note: 'Person' for these purposes includes a company, partnership, trust etc.

8.2. If (a) or (b) above apply, the assessment officer has power to treat all or any part of the resources of the other person concerned as belonging to the applicant.

8.3. It is in the assessment officer's discretion as to how much of the resources of the other person should be treated as belonging to the applicant. In practice the assessment officer will include the income received by the applicant or his/her partner from the third party whether provided directly to the applicant or paid out to another third party on his/ her behalf to meet their living expenses e.g. utility bills, housing costs etc) during the computation period i.e. the 12 months leading up to the date of the application for representation.

8.4. The assessment officer will assume, unless compelling evidence is provided to the contrary, that assistance given to and resources made available for the applicant in the past will continue to be given/made available in the future and the assessment will be carried out on that basis. This situation will most commonly arise where a wealthy family has supported the applicant, even though the applicant himself has no assets.

- 8.5. Note that the resources belonging to the other person (as described at (a) and (b) will be assessed in accordance with the normal rules of assessment. The representation authority has power to assess or if necessary estimate the value of such resources.

Appendix 2

9.1. Equivalence Scale

9.1.1. The following instructions will allow Solicitors, CAB Official or other representatives to estimate the likelihood of an applicant being awarded a representation order, when the calculator is not available.

9.1.1. For the purposes of regulation 8(1) Equivalised Gross Income, add the relevant figure below to 1.00 and **divide** the individual's gross annual income by the total.

9.1.2. For the purposes of regulation 9(2) Cost of Living Allowance, add the relevant figure below to 1.00 and **multiply** £5304 by the total.

9.1.3. A partner	0.64
Each child of the individual in his household aged 0-1	0.15
Each child, as above, aged 2-4	0.30
Each child, as above, aged 5-7	0.34
Each child, as above, aged 8-10	0.38
Each child, as above, aged 11-12	0.41
Each child, as above, aged 13-15	0.44
Each child, as above, aged 16-18	0.59

9.2. Thresholds Table

	Actual Gross Income	Equivalised Income	Status
Single defendant, no dependants	£20,741 +	£20,741+	Ineligible
	£20,740	£20,740	Full Means Test
	£11,590	£11,590	Eligible
Couple, no children	£34,014 +	£20,741+	Ineligible
	£34,013	£20,740	Full Means Test
	£19,007	£11,590	Eligible
Full Means Test	Residual Income > £3,156		Ineligible
	Residual Income = < £3,156		Eligible

9.3. Worked Examples

Example 1

A single applicant with no dependants, if total income is £20,741 per annum he / she will be ineligible for a representation order as the income figure exceeds the £20,740 per annum threshold. [If income is £20,740 per annum or less the assessment will move to the next stage].

Example 2

For an applicant who resides with a partner, if total aggregated income is £34,000 the equivalised total income is calculated as follows:

£34,000 divided by 1.64 (obtained by adding 1.00 + 0.64 see Appendix 1 equivalisation scale), which equals **£20,732**. The applicant's equivalised income is below the initial threshold, and the assessment will move to the next stage.

Example 3

Where the applicant resides in a single headed household with a child dependant aged 2 at the end of the computation period (i.e. the date of application), if total aggregated income is £15,000: the equivalised total income is calculated as follows:

£15,000 divided by 1.30 (obtained by adding 1.00 + 0.30), which equals **£11,538**. The applicant's equivalised income is below the initial threshold and below the lower threshold. The applicant is therefore financially eligible without the need for further assessment.

Example 4

Where the applicant resides with a partner and 2 children aged 9 and 13 at the end of the computation period (i.e. the date of application), if total aggregated income is £50,000: the equivalised total income is calculated as follows:

£50,000 divided by 2.46 (obtained by adding 1.00 + 0.64 + 0.38 + 0.44), which equals **£20,325**. The applicant's equivalised income is below the initial threshold, and the assessment will move to the next stage.

9.4. Personal living allowance

The allowance made for living includes the following:

Table of Expenditure Categories
Under the Expenditure and Food Survey

1. Food & non-alcoholic drinks

- 2. Clothing & footwear**
- 3. Housing*, fuel & power**
- 4. Household goods & services**
- 5. Health**
- 6. Transport**
- 7. Communication**
- 8. Education**
- 9. Miscellaneous goods & services**

(*Net of mortgage payments, rent and council tax)

Risk assessment

Appendix 3

10.0. Risk Assessment

10.1. Form CDS15 contains an 'Official Use' box (reproduced below), for the representation authority to undertake a risk assessment on each case.

For official use only

OCC	temporary <input type="checkbox"/>	prof <input type="checkbox"/>	self/share <input type="checkbox"/>	salary <input type="checkbox"/>
EX	childcare <input type="checkbox"/>	2 nd property <input type="checkbox"/>	mort <input type="checkbox"/>	trust <input type="checkbox"/>
API/AW	highp <input type="checkbox"/>	freezing order <input type="checkbox"/>	tax 40% <input type="checkbox"/>	SA form <input type="checkbox"/>
CID	refuse/withdrawn <input type="checkbox"/>	ndi <input type="checkbox"/>		
ANALYSIS	HR <input type="checkbox"/>	LR <input type="checkbox"/>		

State any additional factors considered when determining the application, including any information given orally.

10.1.1. The official use box will be completed by the Representation Authority to indicate whether the application is high or low risk.

10.2. Principles of Risk Assessment

10.2.1. The cases targeted generally will fit the higher risk profile where the type of case, or the applicant's lifestyle (aura of wealth / complex means), or consideration of previous conduct in respect of an application for representation, suggests that they are unlikely to qualify for funding within the current limits.

10.3. Criteria

10.3.1. Overall assessment - Cases To Be Transferred To Specialist Unit:

10.3.2. The criteria below sets out elements, which may go towards an increased risk in any particular case. In certain circumstances such as for child care costs or housing costs, where expenditure exceeds a specified amount, evidence will be requested from the applicant at the outset and an assessment will be undertaken on that basis.

Certain cases could however be classified as high-risk cases and will be transferred by Court staff to the specialist unit to be assessed.

10.3.3. The overall rating of a case being designated “High Risk” applies where any one or more of the following is indicated

- Applicant is self employed, company director/shareholder of private limited company (see self employed section of CDS 14).
- A restraint order / freezing order is in force – CDS14 (a), question 11a.

10.3.4. Where the Representation Authority identifies higher risk indicators e.g. mortgage or childcare costs are ticked, this will be marked as low risk as long as the evidence has been provided. Where the applicant provides no evidence, the application will be rejected. If the Representation Authority identifies a case, which is showing a negative disposable income (i.e. during the course of the assessment) that cannot be explained by the cost of living allowance, the case will be classified as high risk and referred. The living allowance will be deducted before deciding whether the case is NDI as the allowance has been calculated on an average household spend, if it is the living allowance that takes the applicant into negative disposable income it is safe to assume that they are not spending the average amount on food, clothes and other bills.

10.3.5. Occupation (**OCC**)

The applicant is required to provide details of their current job and wage / salary. This will be supported by evidence i.e. payslips. Applicants present a higher risk where the applicant or partner is:

- Self employed, company directors/shareholders of private limited company (see self employed section of CDS15 form). This makes the application high risk and must be referred.
- Working in a professional occupation e.g. accountant, solicitor or doctor.
- Earning a high salary, in excess of £33,000. (Bear in mind that for a single applicant, the applicant would be ineligible for representation, having a gross income above the initial filter; for a couple who may also have additional income from state benefits or part-time earning etc. gross equivalised income will be nearing the upper limit.

10.4. Expenditure (EX)

10.4.1. Certain types of expenditure or the amount declared by the applicant may also indicate a higher risk, for example where

- The applicant has child care costs in excess of £500 per month.

- The applicant is paying for a second property
- The applicant has mortgage repayments in excess of £500 per month (£6000 per annum).
- There is a trust fund, which benefits the applicant or partner.

10.4.2. Where either child care costs or mortgage repayments in excess of £500 per month are declared the applicant is advised on the CDS15 form to provide supporting evidence.

10.5. Appropriate Prosecutor / Aura Of Wealth (AP/AW)

10.5.1. Higher risk criteria also include 'appropriate prosecutor' cases and aura of wealth.

10.5.2. Appropriate prosecutor cases refer to cases prosecuted by the Serious Fraud Office or more generally, any case involving an allegation of fraud. In cases where applicants are accused of large-scale fraud, money laundering, forgery, theft and other offences of dishonesty, an **asset freezing order** may be expected to be in operation. An asset freezing order in any event may signal the possibility of significant income or assets held and thus is also an 'aura of wealth' indicator. Where the applicant advises that income, capital or assets that are subject to the operation of a restraint or freezing order, this is a clear high-risk indicator. Appropriate prosecutor cases, which are not subject to a freezing order, may be referred by Court Staff to the Commission if other high-risk criteria apply or in cases of suspected fraud.

10.6. Application Profile (CID)

10.6.1. Other higher risk indicators will include cases where:

- The applicant is making a further application for a representation order where previously the application was refused (applicant was ineligible) or where a representation order was previously granted but withdrawn due to abuse of the scheme.
- Declared expenditure exceeds income i.e. negative disposable income

10.6.2. In cases where a representation order was previously refused, evidence is required of the particular change of circumstance (which is the basis of the new application). If a representation order was previously withdrawn due to abuse of the scheme, Court Staff will pay close attention to the case and evidence of all income and expenditure will be required.

10.6.3. In relation to cases where negative disposable income is reported, the caseworker will consider whether the discrepancy can be explained by the cost of living allowance assessed in the particular case. If the amount by which expenditure exceeds income cannot be

explained by the cost of living allowance (i.e. if the allowance were removed there would still be negative disposable income) the application will be referred to the special means unit.

10.6.4. Note: in cases of suspected fraud, a referral will be made to the Commission.

10.7. Required action:

10.7.1. Required action for cases following the risk assessment will include either refusing the application, assessing the information on the forms CDS14 and CDS15 (if relevant) supported by any required evidence, transferring high risk cases to the specialist unit or transferring suspected fraudulent cases to the Commission.

Disregarded benefits

Quick reference 1

Disregarded Benefits

Certain state benefits are wholly disregarded for assessment purposes. Therefore the applicant's gross annual income will be calculated by assessing his/ her total annual income from all sources, other than the receipt of any of the following –

(a) any of the following payments made under the Social Security Contributions and Benefits Act 1992:

- (i) attendance allowance paid under section 64 or paragraph 4 or 7(2) of Schedule 8;
- (ii) severe disablement allowance;
- (iii) carer's allowance;
- (iv) disability living allowance;
- (v) constant attendance allowance paid under section 104 as an increase to a disablement pension;
- (vi) council tax benefit;
- (vii) any payment made out of the social fund;

- (b) any direct payments made under the Community Care, Services for Carers and Children's Services (Direct Payments) (England) Regulations 2003 or the Community Care, Services for Carers and Children's Services (Direct Payments) (Wales) Regulations 2004;
- (c) any exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983;
- (d) any pensions paid under the Naval, Military and Air Forces etc (Disability and Death) Service Pensions Order 1983;
- (e) any Independent Living Fund payments;
- (f) any financial support paid under an agreement for the care of a foster child;

Other than the benefits shown above, the Representation Authority will take all other income that is due or will become due during the period of calculation, into account.

State benefits

Quick reference 2

Rates of State Benefits

Type of Benefit	Weekly rates from 10.04.06
Child Benefit	
1 st / Only Child	£17.45
Each subsequent child	£11.70
Incapacity Benefit	
Claimant under pension age	
Short term lower rate paid to the unemployed or those not entitled to SSP	
Basic	£59.20
Adult Dependency Increase	£36.60
Short term higher rate paid after 28 weeks of SSP	
Basic	£70.05
Adult Dependency Increase	£36.60
Long term paid after 24 weeks at short term higher rate or to those who are terminally ill	
Incapacity began before aged 35	£95.00
Incapacity began between aged 35-44	£86.75
Incapacity began aged 44+	£78.50
Adult dependency increase	£46.95
Claimant over pension age	
Short term rate	
Basic / higher	£75.35 / £78.50
Adult dependency increase	£45.15
Child dependency increase	
First child	£9.40
Each other child	£11.35
1.1.1.1 Lone Parent Benefit	£0.10
1.1.1.2 Maternity Allowance	Up to £108.85*
1.1.1.3 Increase for adult dependents	£36.60
1.1.1.4 Statutory Maternity / Paternity / Adoption Pay	Up to £108.85*
Statutory Sick Pay	£70.05

* paid standard rate £108.85 or 90% of average weekly earnings if less.

