

The Community Legal Service (Financial) Regulations 2000 (as amended)

(S.I. 2000 No. 516)

These Regulations have been amended by the Community Legal Service (Financial) (Amendment) Regulations 2001 (S.I. 2001 No. 950) with effect from 9 April 2001, the Community Legal Service (Financial) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 2997) with effect from 1 October 2001, the Community Legal Service (Financial) (Amendment No.3) Regulations 2001 (S.I.2001 No.3663) with effect from 3 December 2001, the Community Legal Service (Financial) (Amendment) Regulations 2002 (S.I. 2002 No. 709) with effect from 8 April 2002 and the Community Legal Service (Financial) (Amendment No.2) Regulations 2002 (S.I.2002 No. 1766) with effect from 5 August 2002. Amendments are shown in bold.

Legal Services Commission, England and Wales

<i>Made</i>	<i>18th February 2000</i>
<i>Laid before Parliament</i>	<i>1st March 2000</i>
<i>Coming into force</i>	<i>1st April 2000</i>

The Lord Chancellor, in exercise of the powers conferred on him by sections 7 and 10 of the Access to Justice Act 1999, and all other powers enabling him in that behalf, makes the following Regulations:

Part I General

General

1. Citation and commencement

These Regulations may be cited as the Community Legal Service (Financial) Regulations 2000 and shall come into force on 1st April 2000.

2. Interpretation

(1) In these Regulations, unless the context requires otherwise:

“the Act” means the Access to Justice Act 1999;

“application” means an application to receive funded services, made by or on behalf of a client in accordance with the Funding Code;

“assessing authority” means:

- (a) the Commission, where the client's eligibility under regulation 5(6) is being assessed;
- (b) otherwise, the supplier;

“certificate” means a certificate issued under the Funding Code certifying a decision to fund services for the client;

“client” means an individual who applies for or receives funded services and, in the case of actual or contemplated proceedings, is a party or prospective party to the proceedings;

“clinical negligence proceedings” means proceedings which include:

- (a) a claim for damages in respect of breach of a duty of care or trespass to the person committed in the course of the provision of clinical or medical services (including dental or nursing services); or
- (b) a claim for damages in respect of alleged professional negligence in the conduct of such a claim;

“Commission” means the Legal Services Commission established under section 1 of the Act;

“CPR” means the Civil Procedure Rules 1998, and a reference to a Part or a rule, prefixed by “CPR”, means the Part or rule so numbered in the CPR;

“disposable income” and “disposable capital” mean, respectively, the income and capital of the person concerned, calculated in accordance with regulations 16 to 37;

“family proceedings” means proceedings which arise out of family relationships, including proceedings in which the welfare of children is determined. Family proceedings also include all proceedings under any one or more of the following:

- (a) the Matrimonial Causes Act 1973;
- (b) the Inheritance (Provision for Family and Dependents) Act 1975;
- (c) the Adoption Act 1976;
- (d) the Domestic Proceedings and Magistrates' Courts Act 1978;
- (e) Part III of the Matrimonial and Family Proceedings Act 1984;
- (f) Parts I, II and IV of the Children Act 1989;
- (g) Part IV of the Family Law Act 1996; and
- (h) the inherent jurisdiction of the High Court in relation to children.

“Funding Code” means the code approved under section 9 of the Act;

“funded services” means services which are provided directly for a client and funded for that client by the Commission as part of the Community Legal Service under sections 4 to 11 of the Act;

“partner” except in the expression “partner in a business” means a person with whom the person concerned lives as a couple, and includes a person with whom the person concerned is not currently living but from whom he is not living separate and apart;

“personal injury proceedings” means proceedings for damages in respect of death or any disease or impairment of the client's physical or mental condition, excluding proceedings for clinical negligence;

“person concerned” means the person:

- (a) whose eligibility is to be assessed; or
- (b) whose resources are to be treated as the resources of the client under these Regulations;

“solicitor” means solicitor or other person who is an authorised litigator within the meaning of section 119(1) of the Courts and Legal Services Act 1990;

“supplier” means the solicitor, mediator or agency being requested to provide or providing funded services to the client; **and**

“wider public interest” means the potential of proceedings to produce real benefits for individuals other than the client (other than any general benefits which normally flow from proceedings of the type in question).¹

- (2) References to the levels of service listed in paragraph (3) shall be construed as references to the application for, or receipt or provision of, those levels of service in accordance with the Funding Code.
- (3) The levels of service referred to in paragraph (2) are:
 - (a) Legal Help;
 - (b) Help at Court;
 - (c) Legal Representation;
 - (d) Family Mediation;
 - (e) Help with Mediation;
 - (f) General Family Help;
 - (g) Support Funding;
 - (h) Litigation Support.

¹ Inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663)

Part II Eligibility, Assessment and Contributions

Eligibility, Assessment and Contributions

3. Financial eligibility

- (1) The following services shall be available without reference to the client's financial resources:
 - (a) services consisting exclusively of the provision of general information about the law and legal system and the availability of legal services;
 - (b) legal advice consisting of such amount of Legal Help, **and Help at Court**² as is authorised under a contract to be provided without reference to the client's financial resources;
 - (c) Legal Representation in proceedings under the Children Act 1989 applied for by or on behalf of:
 - (i) a child in respect of whom an application is made for an order under:
 - section 31 (care or supervision order);
 - section 43 (child assessment order);
 - section 44 (emergency protection order); or
 - section 45 (extension or discharge of emergency protection order);
 - (ii) a parent of such a child, or a person with parental responsibility for such a child within the meaning of the Children Act 1989; or
 - (iii) a child who is brought before a court under section 25 (use of accommodation for restricting liberty) who is not, but wishes to be, legally represented before the court;
 - (d) Legal Representation in proceedings related to any proceedings in sub-paragraph (c) which are being heard together with those proceedings or in which an order is being sought as an alternative to an order in those proceedings;

² Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 2997).

- (e) Legal Representation in proceedings before a Mental Health Review Tribunal under the Mental Health Act 1983, where the client's case or application to the Tribunal is, or is to be, the subject of the proceedings;
- (f) Legal Representation by a solicitor in England and Wales of a person whose application under the Hague Convention or the European Convention has been submitted to the Central Authority in England and Wales under section 3(2) or 14(2) of the Child Abduction and Custody Act 1985;
- (g) Legal Representation of a person who:
 - (i) appeals to a magistrates' court against the registration of, or the refusal to register, a maintenance order made in a Hague Convention country under the Maintenance Orders (Reciprocal Enforcement) Act 1972; or
 - (ii) applies for the registration of a judgment under section 4 of the Civil Jurisdiction and Judgments Act 1982 or
 - (iii) applies for the registration of a judgment under Council Regulation (EC) No 1347/2000 of 29th May 2000 on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility for children of both spouses³**

and who benefited from complete or partial assistance with, or exemption from, costs or expenses in the country in which the maintenance order was made or the judgment was given; **and**

- (h) such services as are funded through grants under section 6 (3)(c) of the Act except where the terms of the grant provide otherwise.⁴**

- (2) In this regulation:

“Central Authority” has the same meaning as in sections 3 and 14 of the Child Abduction and Custody Act 1985;

“European Convention” means the convention defined in section 12(1) of the Child Abduction and Custody Act 1985;

“Hague Convention” means the convention defined in section 1(1) of the Child Abduction and Custody Act 1985;

³ Inserted by the Community Legal Service (Financial) (Amendment) Regulations 2002 (S.I. 2002 No. 709).

⁴ Inserted by the Community Legal Service (Financial) (Amendment No.2) Regulations 2001 (S.I. 2001 No. 2997).

“Hague Convention country” has the same meaning as in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993; and

“the Maintenance Orders (Reciprocal Enforcement) Act 1972” means that Act as applied with such exceptions, adaptations and modifications as are specified in the Reciprocal Enforcement of Maintenance Orders (Hague Convention Countries) Order 1993.

4.

- (1) Subject to regulation 3, the assessing authority to which an application is made shall determine the financial eligibility of the client in accordance with these Regulations.**
- (2) Where the assessing authority is satisfied that the client is in receipt, directly or indirectly, of income support or income-based jobseeker’s allowance, it shall take his disposable income and, in relation to paragraphs (3)(b) and (c), disposable capital, as not exceeding the relevant sums specified in paragraph (3).**
- (3) The relevant sums mentioned in paragraph (2) are as follows:**
 - (a) where eligibility is being assessed under regulation 5(2), the disposable income figure in that paragraph;**
 - (b) where eligibility is being assessed under regulation 5(3), the disposable income and capital figures in that paragraph;**
 - (c) where eligibility is being assessed under regulation 5(5) or 5(6), the disposable income figure in regulation 38(2)(a), that is, £263, and the disposable capital figure in regulation 38(2)(b).⁵**

5.

- (1) This regulation has effect subject to regulations 3, 4 and 5A.**
- (2) A client is eligible for Legal Help, Help at Court, and Legal Representation before the Immigration Appeal Tribunal and an adjudicator if his monthly disposable income does not exceed £611, and his disposable capital does not exceed £3,000.**
- (3) A client is eligible for Family Mediation if his monthly disposable income does not exceed £695 and his disposable capital does not exceed £8,000.**

⁵ Regulation 4 was substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663) and further amended by the Community Legal Service (Financial) (Amendment) Regulations 2002 (S.I. 2002 No. 709)

- (4) A client who is eligible for Family Mediation under paragraph (3) shall also be eligible for Help with Mediation in relation to family mediation.
- (5) A client is eligible for Legal Representation in respect of family proceedings before a magistrates' court, other than proceedings under the Children Act 1989 or Part IV of the Family Law Act 1996, if his disposable income does not exceed £695 per month, but a person may be refused such services where:

 - (a) his disposable capital exceeds £8,000; and
 - (b) it appears to the assessing authority that the probable cost of the funded services to which the application relates would not exceed the contribution payable by him under regulation 38.
- (6) A client is eligible for Legal Representation (other than as provided for in paragraphs (2) and (5)), General Family Help and Support Funding, and for such other services as are required or authorized by the Lord Chancellor to be funded under section 6(8) of the Act, if his disposable income does not exceed £695 per month, but a person may be refused such services where:

 - (a) his disposable capital exceeds £8,000; and
 - (b) it appears to the assessing authority that the probable cost of the funded services to which the application relates would not exceed the contribution payable to him under regulation 38.⁶

5A.

- (1) For the purposes of this regulation, "gross income" means total income from all sources, before any deductions are made other than those payments which are to be disregarded under regulation 19, and any housing benefit paid under the Social Security Contributions and Benefits Act 1992.
- (2) This regulation does not apply to any applications to which regulation 4(2) applies.
- (3) In relation to the calculation of gross income:

 - (a) regulations 6, 10, 11, 12 and 15 shall apply as if "gross income" were substituted for "disposable income" each time it appears; and
 - (b) regulations 21 and 23 shall not apply.

⁶ Regulation 5 was substituted by Community Legal Services (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663) and further amended by Community Legal Services (Financial) (Amendment) Regulations 2002 (S.I. 2002 No.709).

- (4) Subject to paragraph (5) and regulation 3, where the gross monthly income of the person concerned exceeds £2,250, the assessing authority shall refuse any application for funded services.
- (5) Where the person concerned has more than four dependant children in respect of whom he receives child benefit, the sum referred to in paragraph (4) shall be increased by £145 in respect of the fifth and each subsequent child.⁷

5B. Waiver of eligibility limit in Multi-Party Actions of wider public interest

- (1) For the purposes of this regulation, a Multi-Party Action means any action or actions in which a number of clients have causes of action which involve common issues of fact or law arising out of the same cause or event.
- (2) Paragraph (3) applies where:
 - (a) the Commission funds Legal Representation or Support Funding in a Multi-Party Action which it considers has a significant wider public interest; and
 - (b) the Commission considers it cost-effective to fund those services for a specified claimant or claimants, but not for other claimants or potential claimants who might benefit from the litigation.
- (3) Where this paragraph applies, the Commission may, if it considers it equitable to do so, disapply the eligibility limits in regulations 5(6) and 5A⁸

6. Assessment of resources

Where an application is made, the client shall provide the assessing authority with the information necessary to enable it to:

- (a) determine whether he satisfies the conditions set out in regulation 4; and
- (b) calculate, where relevant, his disposable income and disposable capital and those of any other person concerned.

⁷ Regulation 5A was inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663) and amended by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2002 (S.I. 2002 No. 1766).

⁸ Regulation 5B was inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (SI 2001 No. 3663).

- 7.
- (1) **The assessing authority shall:**
 - (a) **subject to regulation 4(2), calculate the disposable income and disposable capital of the person concerned in accordance with regulations 16 to 37;**
 - (b) **calculate the gross income of the person concerned in accordance with regulation 5A; and**
 - (c) **calculate any contribution payable in accordance with regulations 38 and 39.**
 - (2) **When calculating:**
 - (a) **disposable income for the purposes of regulation 5(2), (3), (5) or (6); or**
 - (b) **gross income for the purposes of regulation 5A**

the period of calculation shall be one month.
 - (3) **For the purposes of this regulation and regulation 15, one month means the period of one calendar month which ends on the date on which the application is made, or such other equivalent period as the Commission considers appropriate.**
 - (4) **Where the assessing authority calculates that a client has disposable income or disposable capital of an amount which makes him ineligible to receive funded services, it shall refuse the application.⁹**
8. The supplier shall not provide any funded services to the client prior to the assessment of resources in accordance with regulation 7 other than:
- (a) in accordance with Funding Code procedures; or
 - (b) where authorisation to do so is given by the Commission in a contract.
9. Where the assessing authority is the supplier, any question arising under regulations 10 to 41 shall be decided by the supplier and the supplier, in deciding any such question, shall have regard to any guidance which may from time to time be given by the Commission as to the application of these Regulations.
- 10. Application in representative, fiduciary or official capacity**

⁹ Regulation 7 was substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

Where the client is acting only in a representative, fiduciary or official capacity, the assessing authority shall, in calculating his disposable income and disposable capital, and the amount of any contribution to be made:

- (a) assess the value of any property or estate or the amount of any fund out of which he is entitled to be indemnified; and
- (b) unless it considers that he might benefit from the proceedings, disregard his personal resources.

11. Resources of other persons

- (1) Subject to paragraph (2), in calculating the disposable income and disposable capital of the client, the resources of his partner shall be treated as his resources.
- (2) The resources of the client's partner shall not be treated as his resources if he has a contrary interest in the dispute in respect of which the application is made.
- (3) Except where eligibility is being assessed under regulation 5(6), where the client is a child the resources of a parent, guardian or any other person who is responsible for maintaining him, or who usually contributes substantially to his maintenance, shall be treated as his resources, unless, having regard to all the circumstances, including the age and resources of the child and any conflict of interest, it appears inequitable to do so.
- (4) Where it appears to the assessing authority that:
 - (a) another person is or has been **or is likely to be**¹⁰ substantially maintaining the person concerned, or
 - (b) any of the resources of another person have been **or are likely to be**¹¹ made available to the person concerned,

the assessing authority may treat all or any part of the resources of that other person as the resources of the person concerned, **and may assess or estimate the value of those resources as well as it is able.**¹²
- (5) In this regulation and regulation 12, "person" includes a company, partnership, body of trustees and any body of persons, whether corporate or not corporate.

12. Deprivation or conversion of resources

¹⁰ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 2997).

¹¹ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 2997).

¹² Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 2997).

If it appears to the assessing authority that the person concerned has, with intent to reduce the amount of his disposable income or disposable capital, whether for the purpose of making himself eligible to receive funded services, reducing his liability to pay a contribution, or otherwise:

- (a) directly or indirectly deprived himself of any resources,
- (b) transferred any resources to another person, or
- (c) converted any part of his resources into resources which under these Regulations are to be wholly or partly disregarded,

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

13. Duty to report change in financial circumstances

The client shall forthwith inform the assessing authority of any change in his financial circumstances (or those of any other person concerned) **of which he is, or should reasonably be, aware**¹³, which has occurred since any assessment of his resources, and which might affect the terms on which the client was assessed as eligible to receive funded services.

14. Amendment of assessment due to error or receipt of new information

Where:

- (a) it appears to the assessing authority that there has been an error in the assessment of a person's resources or contribution, or in any calculation or estimate upon which such assessment was based, or
- (b) new information which is relevant to the assessment has come to light,

the assessing authority may make an amended assessment, and may take such steps as appear equitable to give effect to it in relation to any period during which funded services have already been provided.

15. Further assessments

- (1) Where the eligibility of the person concerned was assessed under regulation 5(6) and it appears that his circumstances may have altered so that:

¹³ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2001 (S.I. 2001 No. 2997).

- (a) his **normal** disposable income may have increased by an amount greater than £60 or decreased by an amount greater than £25, or¹⁴
- (b) his disposable capital may have increased by an amount greater than £750,

the assessing authority shall, subject to paragraph (6), make a further assessment of the person's resources and contribution (if any) in accordance with these Regulations.

- (2) For the purposes of the further assessment, the period of calculation shall be the period of **one** month following the date of the change of circumstances or such other period of **one** month as the assessing authority considers to be appropriate.¹⁵
- (3) Where a further assessment is made, the amount or value of every resource of a capital nature acquired since the date of the original application shall be ascertained as at the date of receipt of that resource.
- (4) Any capital contribution which becomes payable as a result of a further assessment shall be payable in respect of the cost of the funded services, including costs already incurred.
- (5) Where a certificate is discharged as a result of a further assessment of capital, the assessing authority may require a contribution to be paid in respect of costs already incurred.
- (6) The assessing authority may decide not to make a further assessment under paragraph (1) if it considers such a further assessment inappropriate, having regard in particular to the period during which funded services are likely to continue to be provided to the client.

16. Calculation of income

The income of the person concerned from any source shall be taken to be the income which that person may reasonably expect to receive (in cash or in kind) during the period of calculation, **but where the eligibility of the person concerned is being assessed under regulation 5(6), in calculating such income the Commission may have regard to his average income during such other period as it considers appropriate**¹⁶.

¹⁴ Amended by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

¹⁵ Amended by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

¹⁶ Amended by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

17.

- (1) The income from a trade, business or gainful occupation other than an occupation at a wage or salary shall be deemed to be whichever of the following the assessing authority considers more appropriate and practicable:
 - (a) the profits which have accrued or will accrue to the person concerned in respect of the period of calculation; or
 - (b) the drawings of the person concerned.
- (2) In calculating the profits under paragraph (1)(a):
 - (a) the assessing authority may have regard to the profits of the last accounting period of such trade, business or gainful occupation for which accounts have been prepared; and
 - (b) there shall be deducted all sums necessarily expended to earn those profits, but no deduction shall be made in respect of the living expenses of the person concerned or any member of his family or household, except in so far as that person is wholly or mainly employed in that trade or business and such living expenses form part of his remuneration.

18.

- (1) For the purposes of this regulation, “national insurance contributions” means contributions under Part 1 of the Social Security Contributions and Benefits Act 1992.
- (2) In calculating the disposable income of the person concerned, any income tax and national insurance contributions paid or, in the case of an assessment under regulation 5(6), payable on that income in respect of the period of calculation shall be deducted.
- (3) [*Deleted*]¹⁷

19.

In calculating the disposable income **or the gross income**¹⁸ of the person concerned, the following payments shall be disregarded:

- (a) under the Social Security Contributions and Benefits Act 1992:
 - (i) disability living allowance;

¹⁷ Paragraph (3) was deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

¹⁸ Inserted by the Community Legal Service (Financial) (Amendment No. 2) Regulations 2002 (S.I. 2002 No. 1766).

- (ii) attendance allowance paid under section 64 or Schedule 8 paragraphs 4 or 7(2);
 - (iii) constant attendance allowance paid under section 104 as an increase to a disablement pension;
 - (iv) any payment made out of the social fund;
 - (v) **invalid care allowance;**
 - (vi) **council tax benefit; and¹⁹**
- (b) any payment made under the Community Care (Direct Payments) Act 1996;
 - (c) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of jobseeker's allowance;
 - (d) **severe disablement allowance paid under the Social Security (Severe Disablement Allowance) Regulations 1984;**
 - (e) **exceptionally severe disablement allowance paid under the Personal Injuries (Civilians) Scheme 1983;**
 - (f) **all pensions paid under the Naval, Military and Air Forces etc (Disability and Death) Service Pensions Order 1983; and**
 - (g) **to the extent that it exceeds the relevant figure referred to in regulation 20(2)(b), any financial support paid under an agreement for the care of a foster child entered into in accordance with regulation 5(6) of the Foster Placement (Children) Regulations 1991.²⁰**

20.

- (1) For the purposes of this regulation, “the Schedule” means Schedule 2 to the Income Support (General) Regulations 1987.
- (2) Subject to paragraph (3), in calculating the disposable income of the person concerned there shall be a deduction at or equivalent to the following rates (as they applied at the beginning of the period of calculation):

¹⁹ Inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

²⁰ Paragraphs (d) to (g) were inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663). Paragraph (f) was amended by the Community Legal Service (Financial) (Amendment) Regulations 2002 (S.I. 2002 No 709).

- (a) in respect of the maintenance of his partner, the difference between the income support allowance for a couple both aged not less than 18 (which is specified in column 2 of paragraph 1(3)(c) of the Schedule), and the allowance for a single person aged not less than 25 (which is specified in column 2 of paragraph 1(1)(e) of the Schedule); and
- (b) in respect of the maintenance of any dependant child or dependant relative of his, where such persons are members of his household:
 - (i) in the case of a dependant child or a dependant relative aged 15 or under at the beginning of the period of calculation, the amount specified at (a) in column 2 in paragraph 2(1) of the Schedule; and
 - (ii) in the case of a dependant child or a dependant relative aged 16 or over at the beginning of the period of calculation, the amount specified at (b) in column 2 in paragraph 2(1) of the Schedule.
- (3) The assessing authority may reduce any rate provided by virtue of paragraph (1) by taking into account the income and other resources of the dependant child or dependant relative to such extent as appears to the assessing authority to be equitable.
- (4) In ascertaining whether a child is a dependant child or whether a person is a dependant relative for the purposes of this regulation, regard shall be had to their income and other resources.

21.

Where the person concerned is making and, throughout such period as the assessing authority considers adequate, has regularly made payments for the maintenance of:

- (a) a former partner;
- (b) a child; or
- (c) a relative

who is not a member of his household, a reasonable amount shall be deducted in respect of such payments.

22. [Deleted]²¹

23. Where the income of the person concerned consists, wholly or partly, of a wage or salary from employment, there shall be deducted:

²¹ Regulation 22 was deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

- (a) **the sum of £45 per month; and**
- (b) **where it would be reasonable to do so, an amount to provide for the care of any dependant child living with the person concerned during the time that person is absent from home by reason of his employment.**²²

24.

- (1) [Deleted]²³
- (2) Paragraphs (3) to (5) apply only if the person concerned is a householder.
- (3) In calculating the disposable income of the person concerned, the net rent payable by him in respect of his main or only dwelling, or such part of it as is reasonable in the circumstances, shall be deducted; and the assessing authority shall decide which is the main dwelling where the person concerned resides in more than one dwelling.
- (4) For the purpose of this regulation, “net rent” includes:
 - (a) any **monthly**²⁴ rent payable;
 - (b) any **monthly** instalment (whether of interest or capital) in respect of a mortgage debt or hereditary security²⁵
 - (c) [Deleted]²⁶
- (5) In calculating the amount of net rent payable, there shall be deducted:
 - (a) any housing benefit paid under the Social Security Contributions and Benefits Act 1992;
 - (b) any proceeds of sub-letting any part of the premises; and
 - (c) an amount reasonably attributable to any person other than the person concerned, his partner or any dependant, who is accommodated in the premises otherwise than as a sub-tenant.

²² Regulation 23 was substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

²³ Regulation 24(1) was deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

²⁴ Amended by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

²⁵ Amended by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

²⁶ Paragraph (c) was deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

(6) If the person concerned is not a householder, a reasonable amount in respect of the cost of his living accommodation shall be deducted.

(7) **If no deduction has been made under regulation 20(2), the maximum amount to be deducted under paragraph (3) or, as the case may be, (6) shall be £545.²⁷**

25. Calculation of capital

In calculating the disposable capital of the client, the amount or value of the subject matter of the dispute to which the application relates shall be excluded.

26. Subject to the provisions of these Regulations, in calculating the disposable capital of the person concerned, the amount or value of every resource of a capital nature belonging to him on the date on which the application is made shall be included.

27. In so far as any resource of a capital nature does not consist of money, its value shall be taken to be:

- (a) the amount which that resource would realise if sold; or
- (b) the value assessed in such other manner as appears to the assessing authority to be equitable.

28. Where money is due to the person concerned, whether it is payable immediately or otherwise and whether payment is secured or not, its value shall be taken to be its present value.

29. The value to the person concerned of any life insurance or endowment policy shall be taken to be the amount which he could readily borrow on the security of that policy.

30. Other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, nothing shall be included in the disposable capital of the person concerned in respect of:

- (a) the household furniture and effects of the main or only dwelling house occupied by him;
- (b) articles of personal clothing; and
- (c) the tools and equipment of his trade, unless they form part of the plant or equipment of a business to which the provisions of regulation 31 apply.

²⁷ Regulation 24(7) was inserted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

31.

- (1) Where eligibility is being assessed under regulation 5(6), paragraphs (2) to (4) apply.
- (2) Where the person concerned is the sole owner of or partner in a business, the value of the business to him shall be taken to be the greater of:
 - (a) such sum, or his share of such sum, as could be withdrawn from the assets of his business without substantially impairing its profits or normal development; and
 - (b) such sum as that person could borrow on the security of his interest in the business without substantially injuring its commercial credit.
- (3) Where the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in a business, the assessing authority may, instead of ascertaining the value of his stocks, shares, bonds or debentures in that company, treat that person as if he were a sole owner or partner in a business and calculate the amount of his capital in respect of that resource in accordance with paragraph (2).
- (4) Where the person concerned owns solely, jointly or in common with other persons, any interest on the termination of a prior estate, whether
 - (a) legal or equitable;
 - (b) vested or contingent;
 - (c) in reversion or remainder; and
 - (d) whether in real or personal property or in a trust or other fundthe value of such interest shall be calculated in such manner as is both equitable and practicable.
- (5) Where eligibility is being assessed other than under regulation 5(6), the sums mentioned in this regulation shall be disregarded.

32.

- (1) In calculating the disposable capital of the person concerned, the value of any interest in land shall be taken to be the amount for which that interest could be sold less the amount of any mortgage debt or hereditary security, subject to the following:
 - (a) in calculating the value of his interests, the total amount to be deducted in respect of all mortgage debts or hereditary securities shall not exceed £100,000;

- (b) in making the deductions in sub-paragraph (a), any mortgage debt or hereditible security in respect of the main or only dwelling shall be deducted last; and
 - (c) the first £100,000 of the value of his interest (if any) in the main or only dwelling in which he resides, after the application of sub-paragraphs (a) and (b), shall be disregarded.
 - (2) Where the person concerned resides in more than one dwelling, the assessing authority shall decide which is the main dwelling.
- 33.** In calculating the disposable capital of the person concerned, there shall be disregarded:
- (a) so much of any back to work bonus received under section 26 of the Jobseekers Act 1995 as is by virtue of that section to be treated as payable by way of jobseeker's allowance; and
 - (b) the whole of any payment made out of the social fund under the Social Security Contributions and Benefits Act 1992 or any arrears of payments made under the Community Care (Direct Payments) Act 1996.
- 34.** *[Deleted]*²⁸

²⁸ Regulation 34 was deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

35.

- (1) Where eligibility is being assessed under regulation 5(6), the person concerned is **aged 60 or over** and his annual disposable income (excluding any net income derived from capital) is less than the **first** figure prescribed in regulation 38(2)(a), **that is, 263** the amount of capital shown in the following table shall be disregarded²⁹:

<i>Monthly disposable income (excluding net income derived from capital)</i>	<i>amount of capital disregard</i>
<i>up to £25</i>	<i>£100,000</i>
<i>£26-50</i>	<i>£90,000</i>
<i>£51-75</i>	<i>£80,000</i>
<i>£76-100</i>	<i>£70,000</i>
<i>£101-125</i>	<i>£60,000</i>
<i>£126-150</i>	<i>£50,000</i>
<i>£151-175</i>	<i>£40,000`</i>
<i>£176-200</i>	<i>£30,000</i>
<i>£201-225</i>	<i>£20,000</i>
<i>£226-250</i>	<i>£10,000³⁰</i>

- (2) [*Deleted*]³¹

36. Where eligibility is being assessed under regulation 5(5) or 5(6), in calculating the disposable capital of the person concerned, any interim payment made to him in any court proceedings may be disregarded.³²
37. Where eligibility is being assessed under regulation 5(5) or 5(6), in calculating the disposable capital or the person concerned, any capital resource may be disregarded where:

²⁹ Amended by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663) and the Community Legal Service (Financial) (Amendment) Regulations 2002 (S.I. 2002 No.709).

³⁰ The table was substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

³¹ Deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

³² Substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

- (a) he is restrained from dealing with that resource by order of the court;
- (b) he has requested the court which made the order to release part or all of that resource for use in connection with the proceedings to which the application for funding relates; and
- (c) that request has been refused.³³

38. Contributions

- (1) Subject to regulation 15, all contributions shall be:
 - (a) assessed at the beginning of the case; and
 - (b) payable to the assessing authority.
- (2) A person whose eligibility is assessed under regulation 5(5) or 5(6) shall make the following contributions:
 - (a) where his monthly disposable income exceeds £263:
 - (i) one quarter of any such income between £259 and £386 inclusive;
 - (ii) one third of any such income between £387 and £513 inclusive; and
 - (iii) one half of his remaining disposable income; and
 - (b) where his disposable capital exceeds £3,000, a contribution of the lesser of the excess and the sum which the assessing authority considers to be the likely maximum cost of the funded services.
- (3) All contributions under paragraph (2)(a) shall be payable monthly throughout the period the certificate is in force.
- (4) All contributions under paragraph (2)(b) shall be payable upon assessment.
- (5) Paragraph (6) applies where:
 - (a) eligibility is being assessed under regulation 5(5) or 5(6); and
 - (b) the Commission considers that:

³³ Substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

- (i) **there are other persons or bodies, including those who have the same or a similar interest to the client or who might benefit from any proceedings, who can reasonably be expected to contribute to the cost of the funded services; or**
 - (ii) **some other source of funding exists which could be used to contribute to that cost.**
 - (6) **Where this paragraph applies, the Commission may add a reasonable additional amount to the contribution (if any) due from the client.**
 - (7) **The Commission may subsequently vary the amount of any additional contribution payable under paragraph (6).**
 - (8) **Paragraph (9) applies where:**
 - (a) **the Commission funds Legal Representation or Support Funding in proceedings which it considers to have a significant wider public interest; and**
 - (b) **the Commission considers it cost-effective to fund those services for a specified claimant or claimants, but not for other claimants or potential claimants who might benefit from the litigation.**
 - (9) **Where this paragraph applies, the Commission may, if it considers it equitable to do so, waive part or all of the contributions payable under this regulation.³⁴**
- 39.** Where more than one certificate is in force in respect of the client at any one time, contributions from income under only one certificate shall be payable, and the Commission may decide under which certificate contributions shall be paid.
- 40.**
- (1) Where a certificate has been discharged or revoked and the contribution made by the client exceeds the net cost of the funded services, the excess shall be refunded to the client.
 - (2) The net cost of the funded services means the cost paid by the Commission less any costs recovered by the Commission from another party.
 - (3) Where funding is provided by the Commission under a contract which does not differentiate between the remuneration for the client's case and remuneration for other cases, or require the cost of individual cases to be assessed, the reference in paragraph (2) to the cost paid by the Commission shall be construed as a reference to such part of the remuneration payable under the contract as may be specified in writing by the Commission.

³⁴ Regulation 38 was substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663) and amended by the Community Legal Service (Financial) (Amendment) Regulations 2002 (S.I. 2002 No. 709).

- (4) For the purposes of this regulation and regulation 43, where a certificate is discharged the cost of any assessment proceedings under CPR Part 47 or of taxation in the House of Lords shall not be included as part of the cost of the funded services, and the cost of drawing up a bill is not part of the cost of assessment proceedings.
- 41.** Where the Commission has revoked a certificate in accordance with Part 15 of the Funding Code:
- (a) the client shall pay to the Commission all costs paid or payable by it under the certificate, less any amount already paid by way of contribution; and
 - (b) the solicitor shall have the right to recover from the client the difference between the amount paid or payable to him by the Commission and the full amount of his costs assessed on the indemnity basis under CPR rule 44.4.

Part III The Statutory Charge

The Statutory Charge

42. Calculation of the statutory charge

In regulations 43 to 53:

“relevant dispute” means the dispute in connection with which funded services are provided;

“relevant proceedings” means proceedings in connection with which funded services are provided;

“recovered”, in relation to property or money, means property or money recovered or preserved by a client, whether for himself or for any other person;

“statutory charge” means the charge created by section 10(7) of the Act in respect of the amount defined in regulation 43; and

“success fee” is defined in accordance with section 58 of the Courts and Legal Services Act 1990.

43.

- (1) Subject to paragraphs (3) and (4), where any money or property is recovered for a client in a relevant dispute or proceedings, the amount of the statutory charge shall be the aggregate of the sums referred to in section 10(7)(a) and (b) of the Act.
- (2) For the purposes of this regulation:
 - (a) the sum referred to in section 10(7)(a) shall be defined in accordance with regulation 40(2) to (4), less any contribution paid by the client;

- (b) the sum referred to in section 10(7)(b) shall include:
 - (i) any interest payable under regulation 52; and
 - (ii) any sum which the client has agreed to pay only in specific circumstances under section 10(2)(c) of the Act, including that proportion of any success fee payable by a client in receipt of Litigation Support which he has agreed should be payable to the Commission under the terms of a conditional fee agreement.
- (3) Subject to paragraph (4), the amount of the charge created by section 10(7) of the Act shall not include sums expended by the Commission in funding any of the following services:
 - (a) Legal Help;
 - (b) Help at Court;
 - (c) Family Mediation; or
 - (d) Help with Mediation.
- (4) Paragraph (3)(a) and (b) does not apply where the funded services are given in relation to family, clinical negligence or personal injury proceedings or a dispute which may give rise to such proceedings.

44. Exemptions from the statutory charge

- (1) The charge created by section 10(7) of the Act shall not apply to any of the following:
 - (a) any periodical payment of maintenance;
 - (b) other than in circumstances which are exceptional having regard in particular to the quantity or value of the items concerned, the client's clothes or household furniture or the tools or implements of his trade;
 - (c) any sum or sums ordered to be paid under section 5 of the Inheritance (Provision for Family and Dependents) Act 1975 or Part IV of the Family Law Act 1996;
 - (d) **other than for the purposes of registration under regulation 52(1)(c), the first £3,000 of any money or the value of any property recovered by virtue of an order made or deemed to be made under any of the enactments specified in paragraph (2), or an agreement which has the same effect as such an order, but where the enforcement of the charge is postponed under regulation 52 this exemption will apply when the amount of the charge is paid³⁵;**
 - (e) one-half of any redundancy payment within the meaning of Part XI of the Employment Rights Act 1996 recovered by the client;
 - (f) any payment of money made in accordance with an order made by the Employment Appeal Tribunal (excluding an order for costs);
 - (g) where the statutory charge is in favour of the supplier, the client's main or only dwelling; or
 - (h) any sum, payment or benefit which, by virtue of any provision of or made under an Act of Parliament, cannot be assigned or charged.
- (2) The enactments referred to in paragraph (1)(d) are:
 - (a) section 23(1)(c) or (f), 23(2), 24, 27(6)(c) or (f), 31(7A) or (7B), or 35 of the Matrimonial Causes Act 1973;
 - (b) section 2 or 6 of the Inheritance (Provision for Family and Dependents) Act 1975;
 - (c) section 17 of the Married Women's Property Act 1882;
 - (d) section 2(1)(b) or (d), 6(1) or (5), or 20(2) of the Domestic Proceedings and Magistrates' Courts Act 1978; and

³⁵ Substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

(e) Schedule 1 to the Children Act 1989;

- (3) In paragraph (1)(a), “maintenance” means money or money's worth paid towards the support of a former partner, child or any other person for whose support the payer has previously been responsible or has made payments.

45.

- (1) Subject to paragraph (2), the statutory charge shall be in favour of the Commission.
- (2) Subject to paragraph (3), where it relates to the cost of Legal Help or Help at Court, the statutory charge shall be in favour of the supplier.
- (3) Where Legal Help or Help at Court has been provided, the statutory charge shall be in favour of the Commission if it attaches to money or property recovered after a certificate has been granted in relation to the same matter.

46. Supplier's authority to waive statutory charge

- (1) This regulation applies only where the statutory charge is in favour of the supplier.
- (2) The Commission may grant a supplier authority, either in respect of individual cases or generally, to waive either all or part of the amount of the statutory charge where its enforcement would cause grave hardship or distress to the client or would be unreasonably difficult because of the nature of the property.

47. Waiver of charge in case of wider public interest

- (1) [Deleted]³⁶
- (2) Paragraph (3) applies where:
 - (a) the Commission funds Legal Representation or Support Funding in proceedings which it considers have a significant wider public interest; and
 - (b) the Commission considers it cost-effective to fund those services for a specified claimant or claimants, but not for other claimants or potential claimants who might benefit from the litigation.
- (3) Where this paragraph applies, the Commission may, if it considers it equitable to do so, waive some or all of the amount of the statutory charge.

48. Application of regulations 49 to 53

Regulations 49 to 53 apply only in relation to a statutory charge in favour of the Commission.

49. Operation of statutory charge where certificate revoked or discharged

- (1) Where a certificate has been revoked or discharged, section 10(7) of the Act shall apply to any money or property recovered as a result of the client continuing to pursue the relevant dispute or take, defend or be a party to the relevant proceedings.
- (2) In paragraph (1), "client" means the person whose certificate has been revoked or discharged, or, as the case may be, his personal representatives, trustee in bankruptcy or the Official Receiver.

50. Operation of statutory charge on money in court

- (1) Paragraph (2) applies where any money recovered by a client in any proceedings is ordered to be paid into or remain in court and invested for the benefit of the client.

³⁶ Deleted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2001 No. 3663).

- (2) Where this paragraph applies, the statutory charge shall attach only to such part of the money as, in the opinion of the Commission, will be sufficient to safeguard the interests of the Commission, and the Commission shall notify the court in writing of the amount so attached.

51. Enforcement of statutory charge

Subject to regulation 52, the Commission may enforce the statutory charge in any manner which would be available to a chargee in respect of a charge given between parties.

52.

- (1) The Commission may postpone the enforcement of the statutory charge where (but only where):
 - (a) by order of the court or agreement it relates to property to be used as a home by the client or his dependants, or, where the relevant proceedings were family proceedings, to money to pay for such a home;
 - (b) the Commission is satisfied that the property in question will provide such security for the statutory charge as it considers appropriate; and
 - (c) as soon as it is possible to do so, the Commission registers a charge under the Land Registration Act 1925 to secure the amount in regulation 43 or, as appropriate, takes equivalent steps (whether in England and Wales or in any other jurisdiction) to protect its interest in the property.
- (2) Where the client wishes to purchase a property in substitution for the property over which a charge is registered under paragraph (1)(c), the Commission may release the charge if the conditions in paragraph (1)(b) and (c) are satisfied.
- (3) Where the enforcement of the statutory charge is postponed, interest shall accrue for the benefit of the Commission in accordance with regulation 53.
- (4) Without prejudice to the provisions of the Land Registration Act 1925 and the Land Charges Act 1972, all conveyances and acts done to defeat, or operating to defeat, any charge shall, except in the case of a bona fide purchaser for value without notice, be void as against the Commission.

53. Payment and recovery of interest

- (1) Where interest is payable by the client under regulation 52, that interest shall continue to accrue until the amount of the statutory charge is paid.
- (2) The client may make interim payments of interest or capital in respect of the outstanding amount of the statutory charge, but no interim payment shall be used to reduce the capital outstanding while any interest remains outstanding.

- (3) Where interest is payable by the client under regulation 52:
- (a) it shall run from the date when the charge is first registered;
 - (b) the applicable rate shall be:
 - (i) 8% per annum until 31st March 2002;
 - (ii) thereafter, 1 percentage point above the Bank of England base rate current on 1st April 2002;
 - (c) subject to sub-paragraph (d), the applicable rate shall be varied on 1st April of each subsequent year so that it remains at the rate of 1 percentage point above the Bank of England base rate then current;
 - (d) the variation set out in sub-paragraph (c) shall take place only if the application of the new base rate has the effect of varying the base rate previously applicable by 1 percentage point or more; and
 - (e) the capital on which it is calculated shall be the lesser of:
 - (i) the amount of the statutory charge outstanding from time to time, less any interest accrued by virtue of regulation 52(3), or
 - (ii) the value of the property recovered at the time of such recovery, less the amount of any exemption under regulation 44(1)(d) which would apply were the amount of the charge to be paid.³⁷

Irvine of Lairg, C.

Dated 18th February 2000

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations govern the financial aspects of the provision of services funded by the Legal Services Commission in civil matters.

They make provision for the assessment of the financial resources of the person concerned in order to determine eligibility to receive funded services and to assess any contribution to be made. They also provide for the scope and operation of the statutory charge.

³⁷ Paragraph 3 was substituted by the Community Legal Service (Financial) (Amendment No. 3) Regulations 2001 (S.I. 2002 No. 3663).