

SCHEDULE 3

Regulation 10

RULES FOR COMPUTING DISPOSABLE CAPITAL

1. Subject to the provisions of these Regulations, there shall be included in the computation of the amount of the capital of the person concerned the amount or value of every resource of a capital nature ascertained as on the date of the application for legal aid:

Provided that, where it is brought to the notice of the Board that, between the date of the application and the determination there has been a substantial fluctuation in the value of a resource or there has been a substantial variation in the nature of a resource affecting the basis of computation of its value, or any resource has ceased to exist or a new resource has come into the possession of the person concerned, the Board shall compute the capital resources of that person in the light of such facts and the resources as so computed shall be taken into account in the determination.

2. So far as any resource does not consist of money, the amount or value thereof shall be taken to be the amount which that resource would realise if sold in the open market or, if there is only a restricted market for that resource, the amount which it would realise in that market, or shall be taken to be the amount or value thereof assessed in such manner as appears to the Board to be just and equitable.

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

4. If the person concerned stands in relation to a company in a position analogous to that of a sole owner or partner in the business of that company, the Board may, in lieu of ascertaining the value of stocks, shares, bonds or debentures in that company, treat that person as if he or she were such sole owner or partner and compute the amount of his or her capital in respect of that resource in accordance with the succeeding rule.

5. Where the person concerned is or is to be treated as the sole owner of or a partner in any business, the value of such business or that person's share therein to that person shall be taken to be either—

- (a) such sum, or that person's share of such sum, as the case may be, as could be withdrawn from the assets of such business without substantially impairing the profits of such business or the normal development thereof; or
- (b) such sum as that person could borrow on the security of his or her interest in such business without substantially injuring the commercial credit of that business;

whichever is the greater.

6. The value of any interest, whether vested or contingent, of the person concerned in the fee of any heritable or moveable property forming the whole or part of any trust or other estate, shall be computed by the Board in such manner as appears to it to be both equitable and practicable.

7. In computing the amount of capital of the person concerned where that person is in receipt of income support under section 124 of the 1992 Act or an income-based jobseeker's allowance (payable under the Jobseekers Act 1995), there shall be disregarded any amount which exceeds the sum for the time being specified as the disposable capital limit under section 17(2)(b) of the Act.

8. In computing the amount of capital of the person concerned, there shall be wholly disregarded—

- (a) any payment which is made out of the social fund under section 138 of the 1992 Act;
- (b) a back to work bonus (payable under the Jobseekers Act 1995);
- (c) any payment made under the Community Care (Direct Payments) Act 1996 or under section 12B of the Social Work (Scotland) Act 1968.

Status: This is the original version (as it was originally made).

9. Save in exceptional circumstances, nothing shall be included in the amount of capital of the person concerned in respect of—

- (a) the household furniture and effects of the dwelling house occupied by that person;
- (b) articles of personal clothing; and
- (c) the personal tools and equipment of that person’s trade, not being part of the plant or equipment of a business to which the provisions of rule 5 of this Schedule apply.

10.—(1) In computing the amount of capital of the person concerned, the value of any interest in the main or only dwelling in which that person resides shall be wholly disregarded.

(2) Where the person concerned resides in more than one dwelling in which that person has an interest, the Board shall decide which is the main dwelling and shall take into account in respect of the value to that person of any interest in a dwelling which is not the main dwelling any sum which might be obtained by borrowing money on the security thereof.

11. Where the person concerned has received or is entitled to receive from a body of which that person is a member a sum of money by way of financial assistance towards the cost of the proceedings in respect of which legal aid is applied for, such sum shall be disregarded.

12. The value of any life assurance or endowment policy shall be taken to be the amount which the person concerned could readily borrow on the security thereof.

13. Where under any statute, bond, agreement, indemnity, guarantee or other instrument the person concerned is under a contingent liability to pay any sum or is liable to pay a sum not yet ascertained, an allowance shall be made of such an amount as is reasonably likely to become payable within the 12 months immediately following the date of application for legal aid.

14. An allowance may be made in respect of any debt owed by the person concerned (other than a debt secured on the dwelling or dwellings in which that person resides) to the extent to which the Board considers reasonable, provided that the person concerned produces evidence to its satisfaction that the debt or part of the debt will be discharged within the twelve months immediately following the date of the application.

15.—(1) Where the person concerned is of pensionable age and his or her annual disposable income (excluding any net income derived from capital) is less than the figure prescribed in section 17(2)(a) of the Act there shall be disregarded the amount of capital as specified in the following table:—

<i>Annual disposable income (excluding net income derived from capital)</i>	<i>Amount of capital disregarded</i>
Up to £350	£35,000
£351–£800	£30,000
£801–£1,200	£25,000
£1,201–£1,600	£20,000
£1,601–£2,050	£15,000
£2,051–£2,450	£10,000
£2,451 and above	£ 5,000

(2) In this Schedule “pensionable age” means the age of 60.

16. In computing the amount of capital of the person concerned there shall be wholly disregarded any capital payment received from any source which is made in relation to the subject matter of the dispute in respect of which the application for legal aid has been made.

17. In computing the amount of capital there shall be disregarded such an amount of capital, if any, as the Board in the circumstances of the case may in its discretion decide.