



Do I qualify financially for advice and assistance or civil legal aid?



This leaflet can help you work out if you are likely to qualify financially for help with legal costs for ‘advice and assistance’ or for ‘civil legal aid’. It contains the financial eligibility limits from 10 April 2006.

Valid from April 2006

The Scottish Legal Aid Board can provide funding for legal advice and 'representation' (a solicitor putting their case in court or other proceedings) for people who qualify. This may be free, or you may have to pay towards the cost of your case.

This leaflet covers two kinds of help you may be able to get*.

- First, there is **advice and assistance**. This helps pay for advice from a solicitor on any matter of Scots law, either civil or criminal. (For example, to try to settle a dispute for you without going to court.) However, it does not normally cover 'representation' – that is, putting your case in a trial or other proceedings. In special circumstances, it may cover your solicitor representing you; this is called ABWOR - assistance by way of representation.

In Summer 2006, changes will be made to the charges for Advice and Assistance in certain cases. This will make some contributions lower than those stated on page 7. You should check with your solicitor whether this applies to you.

- Second, there is **civil legal aid**. This will provide funding for your solicitor to take your case to court. It covers the preparation work, as well as the hearing itself, and can provide funding for advocates and experts if they are needed. (Most cases begin with advice and assistance, and civil legal aid may be the next step if necessary.)

The following guidelines will help you to work out whether you are likely to qualify financially for:

- advice and assistance - see page 3 and/or
- civil legal aid - see page 11.

(Please do not assume that if you do not qualify for advice and assistance, you do not qualify for civil legal aid, and vice versa.)

If you decide to go ahead with your application, this must be made through a solicitor.

* For information about criminal legal aid, see our leaflets, *Criminal legal assistance if you are in custody*, or *Criminal legal assistance if you are not in custody*. (Information on how to get these leaflets is shown on the back page.)

[1] Do I qualify for advice and assistance?

To qualify, you must show that **both** your income and your capital are within the current financial limits set by the Scottish Parliament.

Follow these steps to work out whether you are likely to qualify for advice and assistance. (Remember that these figures are only a guide, and your solicitor will go through them with you if you decide to go ahead with your application. He/she will confirm the exact figures and will be able to tell you if you are eligible for advice and assistance in line with the limits set by the Scottish Parliament.)

Step 1

Do you have a partner whose income and capital we need to consider?

(By partner, we mean someone you normally live with as a couple, whether or not you are married and of the same or different sex.)

If you have a partner, you must include their resources in the total figures at each of the following steps (unless you are living apart, or they have an opposing interest in the case, or in other situations where it would be unreasonable or too difficult to do so – speak to your solicitor if you think this applies to you).

Step 2

Do you/your partner receive Income Support or income-based Jobseeker's Allowance?

If you receive either of these benefits, **you qualify automatically** on income for advice and assistance and will not have to pay a contribution. But go to step 8 to check if you qualify on capital.

If you do not receive these benefits, move on to step 3.

Step 3

Work out your net weekly income

(This means your pay less tax and National Insurance contributions if you are employed.)

This is the total income, from all sources, you and your partner receive or become entitled to in a week.

If you apply, your solicitor will work this figure out for the seven days up to and including the date of your application.

If any payments are made monthly, multiply these by 12 and then divide by 52 to work out the weekly figure.

To make adding up the figures easier, round up or down to the nearest pound.

Remember that this is a guide to whether you are likely to be financially eligible. Your solicitor will go through these figures with you if you go ahead with your application, and will be able to tell you if you are eligible.

You must include:

- **earnings (including any tips), drawings or profits from business**
- **maintenance payments (unless paid through the Child Support Agency)**
- **private or employee pensions**
- **occupational sick pay**
- **occupational maternity pay**
- **student grants or bursaries (but do not include student loans)**
- **National Asylum Support Service (NASS) payments**
- **money received from friends and relatives (other than loans)**
- **income from savings and investments**
- **dividends from shares**

Do **not** include:

- Attendance Allowance
- Back to Work Bonus
- Bereavement Allowance
- Bereavement Payment
- Child Benefit
- Child Maintenance Bonus
- Child Support Maintenance (paid through the Child Support Agency)
- Child Tax Credit
- Christmas Bonus
- Contribution-based Jobseeker's Allowance
- Council Tax Benefit
- Disability Living Allowance
- Disabled Person's Tax Credit
- Guardian's Allowance
- Housing Benefit
- Incapacity Benefit
- Industrial Injuries Disablement Pension
- Invalid Care Allowance
- Pension Credit
- Severe Disablement Allowance
- State Retirement Pension
- Statutory maternity pay (non-occupational)
- Statutory sick pay (non-occupational)
- Sums payable to holders of the Victoria Cross or George Cross
- War Disablement Pension
- War Widow's/Widower's Pension
- Widowed Parent's Allowance
- Working Tax Credit

This is your **total net weekly income**

– write the figure in this box

£

box 3

Step 4

If you pay maintenance, work out what you pay weekly

Weekly maintenance payment – write the figure in this box

£

box 4

Step 5

Add together the following allowances for your partner and each dependent relative (adult or child)

(By a dependant, we mean a child, or a person living with you who has no income of their own)

Partner:		£ 32.65
Dependants:	for each child	£ 45.58
	for each adult (other than partner)	£ 45.58

These are your **weekly allowances** – write the figure in this box

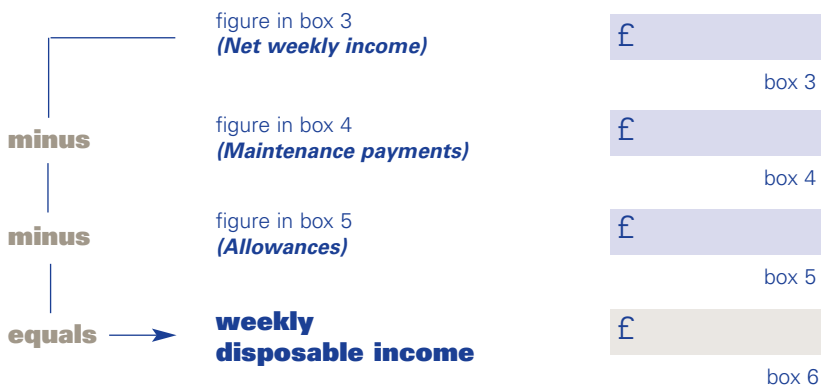
£

box 5

Step 6

Work out your total weekly disposable income

Take your net weekly income (see step 3), and take away any expenses and allowances at steps 4 and 5 - the figure you come to is your 'weekly disposable income'.



Step 7

Does this weekly disposable income qualify you for funding?

Depending on your disposable income, you may have to pay a contribution – this is calculated on the following scale:

Weekly disposable income	Contribution
Disposable income £88 or less	No Contribution
More than £88 but not more than £95	£7
More than £95 but not more than £102	£14
More than £102 but not more than £109	£21
More than £109 but not more than £116	£28
More than £116 but not more than £123	£35
More than £123 but not more than £130	£42
More than £130 but not more than £137	£49
More than £137 but not more than £144	£56
More than £144 but not more than £151	£63
More than £151 but not more than £158	£70
More than £158 but not more than £165	£77
More than £165 but not more than £172	£84
More than £172 but not more than £179	£91
More than £179 but not more than £186	£98
More than £186 but not more than £193	£105
More than £193 but not more than £200	£112
More than £200 but not more than £208	£119
More than £208	Not eligible

If you have a contribution to pay, this is paid to your solicitor and he/she will discuss with you how it is to be paid, either as a lump sum or in instalments.

If your weekly disposable income is more than £208, then you do NOT qualify for advice and assistance.

If it is less than £208, then you qualify on income, but you should see Step 8 to check if you qualify on capital.

Step 8

Now work out your total capital

Now that you have calculated if you qualify on income grounds, you need to work out if you qualify on capital.

Add up all your capital (and the capital of your partner if appropriate) – this means savings and anything else of value that you own.

Examples of capital include:

- the amount that could be borrowed against all land and buildings you or your partner own, other than the home that you live in, including interests in timeshares
- money in the bank, building society, Post Office, premium bonds, National Savings certificates etc
- investments, stocks and shares
- money that can be borrowed against insurance policies
- the value of any valuable possessions, such as a boat, a caravan, jewellery (but not wedding or engagement rings), antiques or items bought for investment purposes
- money that is owed to you or your partner
- money due from the will of someone who has died
- money due from a trust fund
- money that can be borrowed against business assets.

Do not include:

- the home you live in
- your household furniture and clothing
- tools and equipment you need for work
- the value of any property or item that is the subject of the dispute.

Your **total capital** – write the figure in this box

£

box 8

Step 9

Add up the following allowances against capital for each dependent relative (adult or child) living with you

The allowances are:

for the first dependant	£ 335
for the second and	£ 200
for each additional dependant.	£ 100

Your **total allowances are** –
write the figure in this box

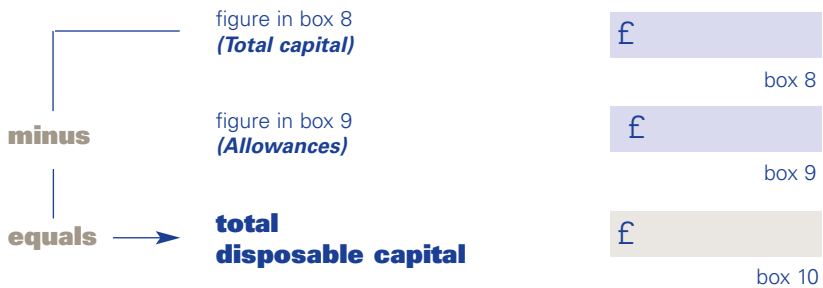
£

box 9

Step 10

Work out your total disposable capital

Take your total capital (see step 8), and take away any allowances in step 9. The figure you come to is your 'total disposable capital'.



For advice and assistance, if your total disposable capital is **£1,450** or less you qualify on capital*.

If your total disposable capital is more than **£1,450**, you do NOT qualify for advice and assistance.

Step 11

Do you qualify?

You are likely to qualify for advice and assistance if:

- your disposable income (the figure in box 6) is £208 or less (or you are on Income Support or income-based Jobseeker's Allowance)

and

- your disposable capital (the figure in box 10) is £1,450 or less*.

* If you are a pensioner, even if your capital is more than £1,450, you may still qualify - speak to your solicitor about this.

If you think you qualify, make sure you have checked whether you will have to pay a contribution based on your income (see step 7). You will not have to pay a contribution based on your capital for advice and assistance.

If you decide to go ahead with your application, when you visit your solicitor you should remember to take along proof of your income and capital.

Your solicitor will also have to be sure that the matter you are asking for advice on is a question of Scots law.

Step 12

What you may have to pay

When your solicitor finishes giving you advice and assistance, his or her bill will be paid:

- a) first, from any contributions you pay
- b) second, from any costs your opponent pays
- c) third, if the first two are not enough, from any property you win or keep (this is known as 'clawback' - see page 18 for more information)
- d) fourth, if the first three are not enough, by us, the Scottish Legal Aid Board.

[2] Do I qualify for civil legal aid?

To qualify for civil legal aid, you must show that your income is within the current financial limits set by the Scottish Parliament, and that your capital is not likely to be enough to cover the costs of your case. (You will also have to satisfy us, the Scottish Legal Aid Board, that you have a legal basis for your case and that it is reasonable for public funds to be used for your case.)

Follow these steps to work out whether you are likely to qualify financially for civil legal aid, but remember that the figures you come to should only be used as a guide. If you decide to go ahead with your application, we will carry out a full assessment to decide whether you qualify.

Step 1

Do you have a partner whose income and capital we need to consider?

(By partner, we mean someone you normally live with as a couple, whether or not you are married and of the same or different sex.)

If you have a partner, you must include their resources in the total figures at each of the following steps (unless your partner has an opposing interest in the case, or you are living apart because you consider your relationship to be at an end).

Step 2

Are you or your partner receiving Income Support or income-based Jobseeker's Allowance?

If you or your partner are receiving either of these benefits, **you qualify automatically** on income and capital for civil legal aid, and we will not ask you to pay a contribution towards the cost of your case.

If you are not receiving these benefits, move on to step 3.

Step 3

Work out what you expect your total income (before tax) to be in the next year

For civil legal aid, your income is calculated on what you can expect to earn in the year starting from the date we receive your application.

To make adding up the figures easier, round up or down to the nearest pound.

You must include:

- earnings, drawings or profits from business
- maintenance payments you receive – either from an individual person or through the Child Support Agency
- pensions
- state benefits
- tax credits
- statutory sick pay
- statutory maternity pay
- student grants
- money received from friends and relatives
- income from savings and investments
- dividends from shares

This is your **gross annual income** – write the figure in this box

£

box 3

Step 4

Work out how much you expect to pay in the next year for any of the following expenses and allowances that apply to you

- income tax, National Insurance contributions
- maintenance payments you make
- child care expenses incurred because of work
- expense of travelling to and from work
- housing costs -
 - mortgage or rent repayments (less any housing benefit)
 - endowment policy premiums (if paid in connection with a mortgage)
 - costs of accommodation (if you do not rent or pay a mortgage)
 - council tax (less any discounts)

These are your **annual expenses** –
write the figure in this box

£

box 4

Step 5

Add together the following allowances for your partner (if applicable, see Step 1) and each dependent relative (adult/child)

(By a dependant, we mean a child or person living with you who has no income of their own)

Partner:		£ 1,702
Dependants:	for each child	£ 2,377
	for each adult (other than partner)	£ 2,377

These are your **allowances** –
write the figure in this box

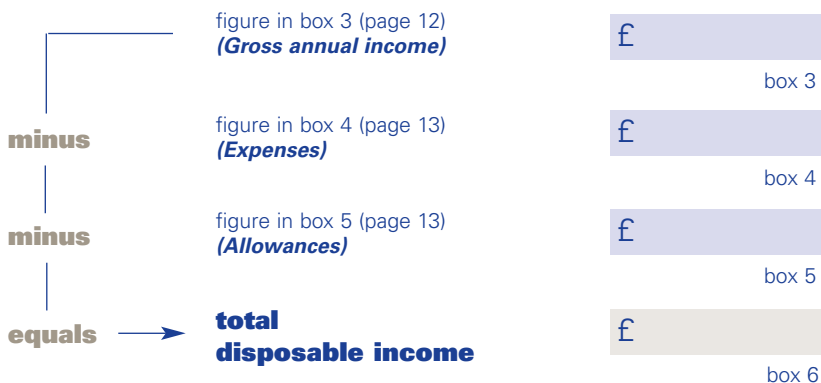
£

box 5

Step 6

Work out your total disposable income

Take your gross annual income (see step 3), and take away the expenses (see step 4) and allowances (see step 5). What you have left is your 'total disposable income'.



Step 7

Now work out your capital

Add up all your capital (and the capital of your partner if appropriate) – this means money and anything else of value that you own.

Examples of capital include:

- the value of all land and buildings you or your partner own, other than the home you live in, including interests in timeshares
- money in the bank, building society, Post Office, premium bonds, National Savings certificates etc
- investments, stocks and shares
- money that can be borrowed against insurance policies
- the value of any valuable possessions, such as a boat, a caravan, jewellery (but not wedding or engagement rings), antiques or items bought for investment purposes
- money that is owed to you or your partner
- money due from the will of someone who has died
- money due from a trust fund
- money that can be released from your or your partner's business or borrowed against business assets

Do **not** include:

- tools and equipment you need for work
- the value of any property or item that is the subject of the court case (for example, a holiday cottage would normally count, but not if ownership was being disputed as part of a divorce settlement)
- the value of the house you live in

This amount is your

total disposable capital

£

box 7

Step 8

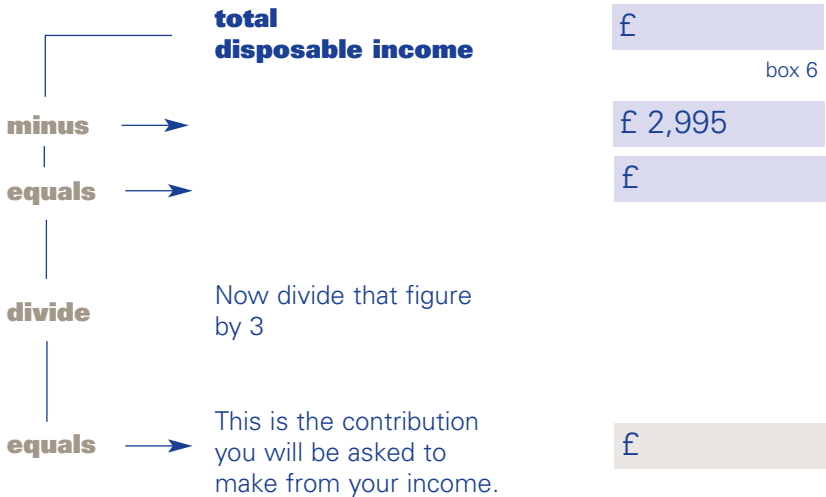
Do you qualify?

You have to meet the financial tests for both income and capital. If you qualify, you may have to pay a contribution from income, capital or both.

If your **disposable income** (see box 6, page 14) is:

- more than **£9,781**, you are not eligible on income and do NOT qualify for civil legal aid
- **£2,995** or less, you are eligible on income and will not have to pay a contribution from income
- between **£2,995** and **£9,781**, you are eligible on income but will have to pay a contribution.

To work out what this contribution will be, subtract £2,995 from the amount of your disposable income (figure from box 6).



If you qualify on income, and your **disposable capital** (see box 7, page 15) is:

- **£6,640** or less, you are eligible on capital and will not have to pay a contribution from your capital
- between **£6,640** and **£11,070** you are eligible on capital, but will have to pay a contribution – this will be equal to the difference between your capital figure and £6,640
- more than **£11,070*** you would normally be refused legal aid if we think you can afford to proceed without it. (This will depend on the type of proceedings you are involved in, and how costly these are likely to be.)

*If you are a pensioner, even if your capital is more than **£11,070** you may still qualify: speak to your solicitor about this.

Step 9

What you may have to pay

9.1 Contributions

The figures shown above are the maximum that you would have to pay as 'contributions'. Bear in mind that you may have to pay a contribution for advice and assistance **and** a contribution for civil legal aid.

If you apply for civil legal aid, your solicitor will estimate how much your case is likely to cost.

- If this estimate is less than the amount that we decide you are able to pay in contributions, we may reduce the amount of the contributions we ask you to pay.
- However, if the case ends up costing more than your solicitor's estimate, you will still have to pay the full amount we calculated originally, or the sum of your solicitor's account, whichever is less.

You may get some of your contribution back if the case costs less than we expect, or if we get back some of the costs from your opponent.

9.2 'Special urgency' contributions

In certain circumstances, your solicitor may be able to do urgent work on your behalf in court before we make a decision on your legal aid application – for example, to apply to the court for an order to prevent someone assaulting you. However, you may have to pay us a contribution for this work, even if you decide not to go ahead with the case, or your application for legal aid is unsuccessful. Any contribution we ask for will be based on your ability to pay, so you must give us the information we need to work out how much you can pay. If you don't give us this information, you may have to pay the whole cost.

9.3 What else you might have to pay

If you are granted civil legal aid, then at the end of the case we will pay your solicitor's bill. However, to cover the costs of the case, we will use:

- first, any costs paid by your opponent(s)
- second, any contribution you have to pay to us
- third, if these first two are not enough, part or all of any money or property you win or manage to keep as a result of your case
- fourth, if these first three are not enough, we will pay the remainder.

This means that **as well as any contributions you have to pay**, if you win or keep money or property, we may take some or all of this money to cover any shortfall between what we have paid out in your case and what we have received. This is sometimes called '**clawback**'. If your case relates to money or property, then you need to know more about 'clawback'. You should read our leaflet, *Civil legal aid – what you may have to pay at the end of your case if you win or keep money or property*. (The back page has information on how to get this leaflet.)

You should also understand that legal aid does not mean that your opponent's costs are covered. If you lose your case, the court may order you to pay some or all of your opponent's costs.

If you are worried about this, or anything else to do with your case and how legal aid would affect you, you should ask your solicitor. You can also get more information on all aspects of civil legal aid from our leaflet *Civil legal aid - information for applicants*, which your solicitor will give you before you apply.

Step 10

Payment of contributions

If you are required to pay a contribution, we will normally allow you to pay in instalments. Most contributions based on income can be paid over a period of up to 20 months. If your contribution is based on your capital, we will normally ask you to pay this in a lump sum.

This leaflet explains only about qualifying **financially** for civil legal assistance. You will also have to meet other tests relating to your case before you can be granted civil legal aid, and these are explained in more detail in the Board's leaflet, *Civil legal assistance – a simple guide*. (The back page has information on how to get this leaflet.)

