

GUIDANCE NOTES

SOLICITOR'S APPLICATION FORM (CIV/SOL)

GENERAL

Please read these notes with the explanatory notes on the form itself.

Unless shown otherwise, you must answer all the questions. We will return the form to you if questions are left unanswered.

- If you cannot provide an answer to a question, mark the box as “not applicable” or “not known”.
- **Do not** leave any of the boxes blank unless the form directs you not to answer a particular question.

To ensure that we do not miss relevant information about the application:

- Use the application form – but use a covering letter for any additional explanation or details that you wish to include.
- If you need more space, use Section G and clearly state to which question(s) the information relates.
- If, in exceptional circumstances, Section G does not provide enough space, photocopy that page and attach it securely to the form.
- Type the form or complete it legibly in **black ink**.

Have we certified any specially urgent steps?

If we have certified specially urgent steps before you send us this application, insert at the top of page 1 of the form

- the legal aid reference number we gave for this and
- the date of certification. (This allows us to identify the correct legal aid reference number for the specially urgent work if you cannot give us the reference number.)

SECTIONS A & B – to be completed by the solicitor and applicant

SECTION A

(Questions 1-12) – Details of the applicant

You must give us all the details we ask for about the applicant.

You should enter only the applicant's details here. It is the **applicant's** financial eligibility we will assess. Where the applicant is, for example, a child or an incapacitated adult, you should enter their details here.

Actions under the Adults with Incapacity (Scotland) Act 2000

- Where the applicant is seeking an order for guardianship under the Adults with Incapacity (Scotland) Act 2000, it is that person whose details should be included here. Remember, it

is the incapacitated adult's financial details that should be included in the financial form CIV/FIN/1 or CIV/FIN 2.

- Where the applicant is opposing an order for guardianship under the Adults with Incapacity (Scotland) Act 2000, it is that person whose details should be included here. Regardless of whether that person is the incapacitated adult, it is the incapacitated adult's financial details that should be included in the financial form CIV/FIN/1 or CIV/FIN 2.
- Where the incapacitated adult wishes to oppose or seek an order under the Act, but a representative is acting on their behalf, the incapacitated adult is the applicant and the representative's details should be completed at question 13.
- Where a guardian has been appointed and an action is to be raised or opposed for the incapacitated adult, it is the incapacitated adult's details that should be included here. It is the incapacitated adult's financial details that should be included in the CIV/SU/MAN and any subsequent CIV/FIN/1 or CIV/FIN/2. The guardian should complete the representative's details at question 13.

If someone is applying in a representative, fiduciary, official or other capacity, enter their details in questions 13-15, **not** here.

Question 2 – Applicant's National Insurance number

It is very important that we have the applicant's National Insurance number. If you cannot supply this (for example, if the applicant is an asylum seeker or a child) please explain why in the box at question 2.

Question 8 – Other name by which the applicant is known

If the applicant is known by and uses a different name from that in the application, include details here so we address our correspondence in the way they prefer.

For example, Angelina Smith Shepherd may prefer to be known as Angie Shepherd, or Algernon Jacob Jones may wish to be known as Jacob Jones.

Question 10 – Maiden surname of applicant's mother

This information ensures we do not confuse one applicant's details with another's. It helps us identify the applicant where, for example, they have the same name as another applicant, or have given us the wrong National Insurance number.

Question 13 – Does the applicant have a representative who is acting on their behalf

You should always mark the "yes" or "no" box for this question.

For example, if the mother of a young child instructs you on behalf of a child, the mother is acting as a representative. Or, if you are the curator ad litem appointed by the court and wish to enter the child to an action, you are acting as a representative.

Where the applicant is a child, you must have regard to the Law Society of Scotland's guidance on representing children. If the child is under 12 years old, you should confirm in your covering letter that the child is capable of understanding and providing you with instructions.

Where someone is acting on behalf of an applicant, you **must**

- tell us what kind of representative they are
- complete the representative's details at question 15.

Questions 17-19

These three questions deal with any other rights or facilities that an applicant may have for assistance in the proceedings. The applicant should provide details of:

- any rights under motor or house insurance.
- membership of a professional or other body (including, for example, a trade union) that provides financial or other help.
- whether a charitable organisation or pressure group could offer assistance.

It is important the client has confirmed with any relevant bodies whether they have any other rights or facilities available to them. The client should contact, for example, their insurance company or trade union to check their entitlement.

SECTION B – DECLARATIONS

It is essential the applicant or representative, and the nominated solicitor, sign and date the declaration and the statutory statement. If the applicant or representative do not sign or date the declaration, we will return the application to allow it to be completed.

SECTIONS C-G – to be completed by the solicitor

SECTION C – DETAILS OF SOLICITORS ACTING

Where two firms are involved in representing the applicant, you should enter details of both firms in this section.

The nominated solicitor should

- submit the application for legal aid and sign it at Section H – Solicitor's declaration.
- sign the statutory statement.

SECTION D – SPECIAL URGENCY REQUIREMENTS

Use this section **instead of completing a separate CIV/SU2 form** to intimate any special urgency steps **already taken** under regulation 18(1)(a). You must do this within 28 days of starting the urgent steps.

You **do not** have to give us details of the steps undertaken, only the date the special urgency work began. If you do not provide the date the special urgency work began, we will remind you in our acknowledgement letter that we cannot pay you for the work done without this information.

Only one notification of work carried out under regulation 18(1)(a) is required. If you continue to do work under regulation 18(1)(a), **you do not need to complete a CIV/SU2 form.**

The only circumstances where you need to complete a separate CIV/SU2 are if

- you have completed and sent in the solicitor's application form **without completing Section D** and
- you then have to take special urgency steps under regulation 18(1)(a) before we have given you a decision on the application.

You must complete a CIV/SU4 form when seeking certification of urgent work to be carried out under regulation 18(1)(b).

SECTION E – DETERMINATION OF STATUTORY TESTS

Questions 1-23 help us assess whether the application meets the statutory tests of probable cause and reasonableness.

Question 1 – Nature of the case

You should put a cross in **one** primary category code, and any other ancillary category codes that you seek legal aid for. Only select the craves that you seek legal aid for. Where you want to defend an action, only include details of the craves you want to defend. For example, do not include divorce as the primary category if you do not seek to defend it. Where the applicant wishes to **counterclaim** in the action, you should tick the box in the third column to show this.

Example 1: If the applicant wishes to pursue divorce on the basis of unreasonable behaviour and a residence order - mark a cross in the column 'P' against 'DIVUN' and a cross in the 'A' column next to the category 'RES'.

Example 2: The applicant wishes to defend the above action, wishes to counterclaim for residence but does not seek legal aid to defend the divorce crave. Mark a cross in the column 'D' against the category 'RES' and a cross in the column 'C' against the category 'RES' again.

Example 3: If the applicant wants legal aid to pursue a personal injuries action – mark a cross in the column 'P' against 'REP'. But remember there are separate categories for different types of reparation and damages proceedings, such as medical negligence, disability discrimination and housing.

Example 4: If the applicant wishes to defend an action for payment and counterclaim for payment – mark a cross in the column 'D' against the category 'PAY' and a cross in the column 'C' against the same category 'PAY'.

We will only consider granting legal aid for the craves you have marked on these two pages. We will not consider any additional craves mentioned in the statutory statement or the applicant's statement.

Question 2 – Applicant’s interest in the proceedings

We only need to know the applicant’s interest in the proceedings for which legal aid is sought.

Example 1: Where the applicant intends to minute in terms of the Mortgage Rights (Scotland) Act 2001, the applicant is a minuter, not a defender.

Example 2: Where the applicant is a defender but wishes to raise minute proceedings, the applicant is a minuter.

Use the “Other” box –

- where several parties are involved, to show the specific interest of the applicant: for example, “third defender”
- to show where there is a dual interest: for example, if the applicant is concerned in the proceedings in both a personal and representative capacity.

Question 3 – Is the applicant concerned in the proceedings in a representative, fiduciary, official or other capacity

Use the box to show whether the applicant has already been appointed in such a capacity or is applying for legal aid to be appointed into a representative, fiduciary, official or other capacity.

For example, that they have been appointed an executor or they are applying to be appointed as a guardian under the Adults with Incapacity (Scotland) Act 2000.

If the applicant is concerned in the proceedings in a dual capacity, you must send us a separate application to cover each capacity.

For example, one application as an executor in a reparation action and another as a second pursuer in the same action. But refer also to the note at the beginning of section A of this guidance about actions under the Adults with Incapacity (Scotland) Act 2000.

Question 4 – Court

Please show the type and location of the court in which proceedings have been or are to be brought or defended. Schedule 2 of the Legal Aid (Scotland) Act 1986 lists the courts in which civil legal aid is available and excepted proceedings.

Question 6-9 – Opponents

Giving us the number of opponents and interested parties in the proceedings at question 6 helps us confirm that you have given details of all opponents and interested parties at questions 7-9. This will ensure that we intimate any decisions to all relevant parties.

You can give details of up to three opponents here, but there is space at section G for you to give us more information:

- If there are more than three opponents, please put a cross in the box at the end of question 9, and provide the same details for the remaining opponents at section G as for questions 9a)-c).
- If you need more space for information about any of the opponents, please put a cross in the box at the end of questions 7(c), 8(c) or 9(c), and include this information at section G.

It is important that you give us accurate information about the opponent’s name and address, to allow us to intimate an application as quickly as possible to an opponent. On our website, we list the correct addresses of some organisations that are often wrongly addressed.

You should also give us any relevant file or reference numbers, or the name of the department, for any organisation that is an opponent.

Where you know the name of the solicitor acting for an opponent, give full details.

The opponent is any party with an interest in the proceedings other than the applicant. You must always include details of the opponent(s) and their solicitor(s), unless

- you give us good reasons why we should not intimate the legal aid application (for example, in a case of domestic abuse, or where there is a danger that the opponent may dispose of assets), or
- following reasonable enquiry, you do not know their address(es).

If you do not have the address of an opponent when applying for legal aid, but later discover it, you must tell us. Similarly, if a further party later becomes involved in the action as an opponent, you must give us their details.

Question 10 – Is there any other person, firm body or organisation jointly concerned with or having the same interest as the applicant

You must tell us if there is someone else with an interest in the case as it may be appropriate for them to pay some or all the costs of the action. If there is, we may refuse the applicant legal aid unless doing so would seriously prejudice them.

For example, the applicant wishes to raise an action against the closure of a school or a local facility and a campaign organisation has been set up. Or a number of members of the same family may be seeking compensation following the death of a family member.

Question 11 – Is the applicant at present a party to any other proceedings in the UK

If an applicant is already a party in another case, this may have a bearing on the tests of probable cause and reasonableness. It may also be relevant in assessing their financial eligibility.

Question 12 – Are the proceedings covered by this application to be regarded as a cross-action in relation to other proceedings

If the applicant is already liable to pay a contribution for other proceedings, we would not normally ask for a further contribution for the cross-action. It is therefore important that you fully complete this question.

We would, however, have to consider whether it would be reasonable to grant legal aid for a cross-action if all matters in dispute could be dealt with within one action.

Question 13 – Previous applications for civil legal aid

You should give us details, including the legal aid reference numbers, of any previous applications to the Scottish Legal Aid Board for civil legal aid, no matter how long ago.

Question 14 – Provision of advice and assistance in connection with the subject matter of the application.

We will be introducing new advice and assistance references in March 2006, and the boxes in question 14 are designed for these. Until then, give the ten digit number shown after the reference AA/07 – do not include either the AA or the 07 in the reference number.

Question 15(a) – What steps have been taken to avoid proceedings

Give details of all steps taken, including any attempts at negotiation, mediation or arbitration. You **must** complete this section even if it is simply to note that you are a defender to an action and the question is not applicable. If you do not answer the question, we will return the application to allow you to complete it.

Question 15(b) – Has any offer to settle the issues been made

You **must** answer this question, giving full details of any offer to settle made by any party to the proceedings and explaining why the offer was rejected. If no offer has been made, you must say so. If you do not answer the question, we will return the application to allow you to complete it.

Questions 15(a) and (b) apply to all proceedings, not just those relating to a claim for money and property.

Question 16 – What is your assessment of the applicant's prospects of success

Give your assessment of the applicant's prospects of winning or successfully defending the action. You **must** explain the reasons behind your assessment. If you consider the prospects of success are "poor" or "fair", explain why it is reasonable to grant legal aid.

It is essential that you give us full details. If you do not answer the question, we will return the application to allow you to complete it.

Question 18 – What is your estimate of the prospects of recovery

Where the applicant is claiming money or property, give your estimate of their prospects of recovering it. For example, what is the opponent able to pay? If you consider the prospects of recovery are "poor" or "fair", explain why it is reasonable to grant legal aid. If you do not answer the question, we will return the application to allow you to complete it.

Question 19 – Estimated case cost

You **must** give details of the estimated cost of seeing the case to a close, based on your current instructions and knowledge of the case. This estimate must include the cost of any expert and/or counsel you think will be needed. If the cost is likely to be more than £5,000, please provide an estimated total cost and an explanation for this.

We need this estimate to allow us to:

- use our discretion to grant legal aid where the applicant's disposable capital exceeds the upper limit if it appears they cannot afford to proceed without legal aid
- reduce the applicant's contribution where the estimated case cost is lower than the assessed contribution – we cannot adjust the assessed contribution without this information. You should ask us to do this in your covering letter.
- do a cost-benefit analysis when considering whether it is reasonable to grant legal aid.

If you do not answer the question, we will return the application to allow you to complete it. Writing "not applicable" in response to this question is not acceptable.

You can tell us of any changes in the estimated case cost throughout the lifetime of the case through stage reporting.

Question 20 – Wider public interest

Before completing this question, you should refer to our guidance in the Civil Legal Assistance Handbook on our approach to cases with a wider public interest. We need to consider this aspect of a case when looking at the reasonableness of granting legal aid.

Cases where such an interest may arise include judicial review, or cases whose outcome may have a modest tangible benefit to the applicant but will also have a tangible benefit to many others.

For example, a challenge to the approach to a local authority's homelessness policy or a challenge to the availability of a drug on the NHS.

This question is not applicable if the application relates to, for example, an action for divorce, debt or a straightforward 'tripping and slipping' case.

If you consider there is a wider public interest, you must give us full information to show the case meets the criteria set out in our guidance.

Questions 21 and 22 – Probable cause and reasonableness

Under the Legal Aid (Scotland) Act 1986, all applications for civil legal aid must meet the statutory tests of probable cause and reasonableness. You **must** therefore answer both questions 21 and 22 for applications under all proceedings, although the detail we need under each heading is likely to vary from case to case. If you do not answer the questions, we will return the application to allow you to complete it.

Probable cause

The test of probable cause is modest and covers issues such as jurisdiction, title to sue and the legal basis of the action. You must give us information to show there is a plausible basis for the case.

Example 1: In reparation cases, you should address issues such as the duty of care owed and how it has been breached.

Example 2: In divorce actions, you should explain the basis for the irretrievable breakdown of marriage and make reference to any matrimonial property if there are financial craves.

Example 3: In actions for parental rights and responsibilities, residence or contact, you should explain the applicant's relationship to the child; and/or whether residence or contact currently takes place.

Reasonableness

Reasonableness covers a wide range of issues including cost-benefit analysis, the prospects of success and the prospects for recovery. Include here any information you consider we should take into account in deciding whether it is reasonable to grant legal aid.

You should refer to the guidance we have issued on our approach to the reasonableness test in the Civil Legal Assistance Handbook. The handbook provides a list of craves and the information you should provide to support each crave.

It is in the applicant's interest that you complete these questions as fully as possible, putting forward whatever issues you consider we should or must take into account in deciding whether to grant the application. It is an opportunity for you to focus the mind of the decision-maker on the important aspects of the case.

Simply writing "see statements" or other non-specific comments wastes this opportunity, and may mean that you do not persuade us that there are good reasons to grant the application.

Example 1: In a reparation case you should refer to the value of the claim, the prospects of recovery, attempts to settle the case and highlight supporting information in medical reports.

Example 2: In a divorce action, you should refer to the nature of the breakdown of the marriage, why the matrimonial property should be split in the manner suggested by the applicant and the outcome of negotiations with the opponent.

Example 3: In an action concerning children, you should refer to the outcome of negotiations with the opponent and address the welfare of the child

Question 23 – Subject matter of dispute

Give us full information about any resources we should treat as forming part of the subject matter of the dispute for which the applicant is seeking legal aid. This will help us decide whether the resources do form part of the subject matter of dispute, and what parts of them we need to take into account in assessing financial eligibility. Please do not state “See writ”.

Example 1: Where the opponent seeks a capital payment or transfer of property, any part of the applicant’s capital and property that is at issue in the dispute is treated as subject matter of the dispute.

Example 2: Where the applicant seeks a share of the matrimonial property, we would not treat all the applicant’s capital assets and half of those owned by the opponent as the subject matter of the dispute.

SECTION F – CONDUCT OF CASE – APPLICATIONS FOR EMPLOYMENT OF COUNSEL OR EXPERT WITNESSES

Sometimes you may be able to identify the need for counsel or an expert at an early stage. If so, you should use this section to apply for sanction. We will only use this information and consider this application for sanction after we grant legal aid.

If you need sanction for counsel or an expert in special urgency work under regulation 18, complete the form CIV/SANCTION rather than section F, so we do not delay considering the sanction request.

Remember that you do not require sanction to employ one junior counsel in a Court of Session action.

Do not use this section of the form if you only have a general intention to use counsel or an expert at some stage in the proceedings.

Only complete section F if you recognise from the outset that you will need counsel or a specific expert to take forward the case. We cannot consider the request for counsel or an expert unless you give us enough information to show the need to involve the expert and the benefit that they will bring to the case.

SECTION G – MORE INFORMATION

Section G allows you to give more information on any aspect of the case, including details of opponents; details of any additional experts you need to take the case forward; and answers to the questions on probable cause and reasonableness.

If this section does not allow you enough space, please photocopy the page and attach it securely to the form.

SECTION H – SOLICITOR’S DECLARATION

The solicitor acting for the client must sign the form. The declaration includes

- consent to release the application and associated documents for quality assurance and stage reporting and
- confirmation that you have kept a copy of the application, since you will need to refer to this when completing stage reports.

You must date this declaration. **If you do not sign or date the declaration, we will return the application to allow you to complete it.**

SECTION I – ATTACHMENTS

Use the checklist of attachments in section I to check what documents you should send us with the application. You should complete this section, confirming you have attached the correct documents, in all applications.

We must have all the documents listed to consider the application, **unless**

- you can show why a particular document (or documents) is inappropriate to the specific case or
- you are using the application to notify us of special urgency steps or after we have certified special urgency steps.

Do not send the form if you do not have all the supporting documents. We cannot hold the form even if you state that a document is to follow. We will have to continue the application for you to provide the document.

However, **for special urgency work**, where

- you are using this form to intimate specially urgent work under regulation 18(1)(a) or
 - we have certified that you can carry out urgent work,
- you do not need to send us all the listed documents if you are not in a position to do so. You must, however, send us a copy of the mandate and the statutory statement. If, in these circumstances, you are not enclosing other documents such as the applicant’s financial form, please tick “to follow”. You must send us the documents as soon as they are available.

If, for any reason, you cannot get the client to sign the statutory statement where you are undertaking regulation 18 work, we may, at our discretion, accept your signature instead of the client’s on the statutory statement.

To assist you, the list below shows examples of the documents required in particular types of cases:

Type of action	Document required
Personal injury	Medical report
Professional negligence	Hunter v Hanley report
Divorce on the basis of two years’ separation	Letter of consent from the opponent, and independent corroboration as required under the Civil Evidence (Scotland) Act 1988
Defence of an action	Initial writ