



Civil legal assistance update

31 October 2007

This update for civil legal assistance practitioners contains guidance and updates on changes to civil legal assistance.

Inside this Civil Update:

Changes that are effective 1 November

- **Vulnerable Witnesses (Scotland) Act 2004**
 - our approach to sanction for vulnerable witnesses in civil actions and fatal accident inquiries
 - a new uplift provision in Schedule 6.
- **Adults with Incapacity (Scotland) Act 2000**
 - the extension of the existing legal aid provisions to other guardianship orders made under this Act
 - the extension of the modified means test in connection with such orders to the incapable adult.
- **Various amendments to Schedule 6 (block) civil fees including in:**
 - **undefended (non-divorce) actions:**
 - increasing core inclusive fee from 6 to 10 units
 - extended provision for written motions and attendance at court diets
 - new fee for instructing and considering reports
 - **defended actions:**
 - increased uplift provisions in defended cases allowing for 15% and 20% uplifts
 - inclusion of travel time in uplift calculations in all cases.

Simplifying civil legal assistance

This section of the Update tells you about changes we have made to help you. It also sets out steps you can take that will make getting legal assistance easier, reducing the need for unnecessary paperwork or correspondence with us.

Please take the time to read this section to see the benefits your busy office can get from reducing unnecessary paperwork. This section includes information on:

Civil legal aid

- Divorce applications needing minimal information
- Less form filling - questions you no longer require to complete on civil legal aid forms

Civil advice and assistance

- Benefits of using Legal Aid Online
- Quick and easy increases
- Getting the right accounts synopsis.

Online Civil Legal Assistance Handbook

- update on recent additions.

Vulnerable Witnesses (Scotland) Act 2004

The fourth phase of the implementation of the Vulnerable Witnesses (Scotland) Act 2004 is due to come into force for child and adult vulnerable witnesses in civil proceedings in the Court of Session and the Sheriff Court, including fatal accident inquiries, **with effect from 1 November 2007.**

The provisions of the 2004 Act, to be commenced on 1 November, will only apply to civil cases and fatal accident inquiries which commence on or after this date with proceedings being taken to have commenced when the petition, summons, initial writ or other document initiating the proceedings is served. Where the document is served on more than one person, the proceedings shall be taken to have commenced when the document is served on the first person on whom it is served.

We will be taking a similar approach to sanction requests for the use of special measures in respect of civil proceedings and in fatal accident inquiries as we do currently in children's hearings court proceedings.

Where the special measure identified as necessary to support the child witness or adult vulnerable witness is the use of a:

- live television link where witnesses are either in another part of the court building or in another Scottish court or other facility which is operated by the Scottish Courts Service;
- screen; or
- supporter, the work will not be classed as unusual and no prior sanction is needed. If however the cost of this work is likely to exceed £2000 then you will require to obtain sanction under the provisions for incurring unusually large expenditure.

Where the special measure identified as necessary to support the child witness or adult vulnerable witness is or includes:-

- live television link where witnesses are in a remote site not operated by the Scottish Courts Service
- the taking of evidence by a commissioner;
- such other measures as Scottish Ministers may, by order made by statutory instrument,

the work will be classed as unusual work where prior sanction is needed (even if the estimated costs do not exceed £2000).

The sanction request should contain sufficient information to explain why the measure is required to help the witness give their best evidence.

The Civil Legal Aid (Scotland) (Fees) Amendment (No.3) Regulations 2007 (S.S.I. 438) (available at <http://www.opsi.gov.uk/legislation/scotland/ssi2007/20070438.htm>) are also due to come into force on 1 November 2007 to coincide with the commencement of the provisions.

They prescribe that for civil cases that are paid in terms of Schedule 6 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (block fees), an additional circumstance has now been added to Chapter III in which the Board may allow an uplift.

A new paragraph 5A of Schedule 6, Chapter III will now state:

"That the assisted person or any other witness in the case is a vulnerable witness in terms of section 11 of the Vulnerable Witness (Scotland) Act 2004 and this has necessitated significant additional work in seeking, or opposing, or implementing a special measure for the taking of evidence by a vulnerable witness by virtue of sections 11, 12, 13 and 18(1)(a) and/or (b) of that Act".

As with all the other prescribed circumstances, the existence of this circumstance involving a vulnerable witness must also have had a **significant** effect on the conduct of the case.

As can be seen from paragraph 5A this circumstance cannot, however, be applied to the use of a screen and/or a supporter in assisting the vulnerable witness to give their evidence.

The discretionary uplift allowable for circumstance 5A will be 15%. If you make a claim under circumstance 5A you may not claim an additional fee under paragraph 2, 3 or 4 (Regulation 6(d)).

Adults With Incapacity (Scotland) Act 2000

The Civil Legal Aid (Scotland) Regulations 2002 were amended, as at 1 August 2006, to provide that civil legal aid should be available to a person concerned as claiming or having an interest in the property, financial affairs or personal welfare of an adult under the 2000 Act, other than the adult to whom the application relates, for:

- (a) an intervention order under section 53(1); or
- (b) a guardianship order under section 57(1)

relating to the personal welfare of an adult or to the property, financial affairs and personal welfare of an adult.

These regulations amended sections 15 and 17 of the Act and also regulation 5 of the principal civil regulations to provide that a person making such an application:

- would be eligible for legal aid without regard to that person's income or capital;
- would not require to pay any contribution to the Fund; and
- that such application need not be accompanied by a statement in writing itemising the applicant's

disposable income and disposable capital.

The Civil Legal Aid (Scotland) Amendment (No.2) Regulations 2007 (available at <http://www.opsi.gov.uk/legislation/scotland/ssi2007/20070425.htm>) came into force on 5 October 2007 and

- (i) further amend the civil regulations to provide for other guardianship order applications made under the 2000 Act, namely:-
 - renewal of guardianship orders under section 60(1);
 - joint guardianship orders under section 62(1); and
 - substitute guardianship orders under section 63(1).
- (ii) importantly, extend the modified means test, in connection with all such orders, to the incapable adult.

The Civil Legal Aid (Scotland) (Fees) Amendment (No. 3) Regulations 2007

Following recommendations by the Scottish Government and the Board, Scottish Ministers have agreed to implement a number of fee changes for undefended actions (non divorce or separation and aliment) chargeable under the Civil Legal Aid (Scotland)(Fees) Regulations 1989, Schedule 6, Chapter I, Part II, paragraph 1 and to the additional fee provisions prescribed in Schedule 6, Chapter III.

The regulations implementing these changes are the Civil Legal Aid (Scotland) (Fees) Amendment (No. 3) Regulations 2007 and come into force on **1 November 2007**. These regulations apply only to fees for work done and outlays incurred on or after 1 November 2007.

Undefended actions (except divorce or separation and aliment) chargeable under Schedule 6, Chapter I, Part II, paragraph 1

The changes are:

- (a) to increase the number of units payable for the core inclusive fee from 6 to 10 units;
- (b) to extend the scope of payment for any minute to include any written motions (currently only interim motions attract payment. This proposal brings parity to the fees payable in defended actions);
- (c) to make provision for a fee for the attendance of a solicitor, to include waiting time, at all court diets (e.g. procedural hearings, child welfare hearings, undefended proofs) not otherwise prescribed in the Table of Fees;
- (d) to make provision to allow for a fee to be paid for instructing and considering reports, of at least four sheets, and the taking of instructions following the receipt of any such report commissioned either by the solicitor acting for the assisted person or ordered by the court.

The revised fee table is shown on the following page.

Additional Fee under Schedule 6, Chapter III

As indicated above, in the vulnerable witnesses section, for civil cases that are paid in terms of Schedule 6 of the Civil Legal Aid (Scotland) (Fees) Regulations 1989 (ie. those paid on a block fee basis) an additional circumstance has now been added to Chapter III in which the Board may allow a fee additional to the block fees prescribed in Chapter II in certain circumstances where the case involves a vulnerable witness.

As with all the other prescribed circumstances, the existence of this circumstance must also have had a **significant** effect on the conduct of the case.

Increase in uplift percentages

The discretionary additional fee allowable for the circumstances specified in paragraphs 1 to 5A of this Chapter of Schedule 6 will be 15% (increased from 10%) and 20% (increased from 10%) in respect of each of the circumstances specified in paragraphs 6 and 7 of that Chapter. The maximum additional fee payable in any case remains at 50%.

Travel no longer excluded in calculation

The note on the application of Chapter III is changed at paragraph (a) taking away the exclusion of the travel time element of the uplifted fee. This paragraph now provides as follows -

Except where an uplift is granted under paragraph 5 or 6, the element of the solicitor's fee subject to an uplift will exclude any amount charged in relation to time spent waiting or appearing at court.

A new note (d) is inserted which provides that a solicitor of an assisted person, who is a vulnerable witness, may not claim in respect of the assisted person the additional fee under paragraphs 2, 3 or 4, if there is a claim under paragraph 5A in respect of the assisted person as a vulnerable witness.

Appendix 1 -

Revised fee table for *undefended actions (except divorce or separation and aliment) chargeable under Schedule 6, Chapter I, Part II, paragraph 1*

<i>Work Done</i>	<i>Inclusive Fee in Units</i>
<i>Part II - All actions except those actions of divorce or separation and aliment to which Part II1 applies</i>	
1. Actions (other than those specified in paragraph 2 of this Part) in which decree is granted without proof-	
Inclusive fee to cover all work from taking instructions up to and including obtaining extract decree.	10
<i>Note:</i> In cases where settlement is effected after service of a writ but before the expiry of the period of notice.	5
Additional fee to cover-	
(a) drawing, intimating and lodging any written motion or minute (including any Motion for an interim Order) or diligence, including the first quarter hour of argument, even if involving appearances on different dates (to include instructing service and implementation)	6
(b) thereafter, waiting for or attending by solicitor at the conduct of any hearing not otherwise prescribed (including any continued hearing and ancillary hearing on expenses or other miscellaneous subsequent hearing) per quarter hour	1
To framing all necessary affidavits per sheet (to include notarial fee unless on cause shown the affidavit cannot be notarised within the principal agent's firm, in which case a fee to the external notary is 1 unit).	1
<i>Note:</i> charges levied by notaries outwith the United Kingdom shall be payable according to the circumstances of the case; and affidavits in this Part do not include those required to prove a divorce.	
Report Fee - to instructing (if required) perusing and taking instructions on any report extending to at least four sheets obtained from a professional or expert person.	4
(i) where the report is commissioned by the solicitor for the assisted person; or	
(ii) the report is commissioned by order of Court.	

Note: Attendance at Hearing - Paragraph 19 of the Notes on the operation of Chapter II in relation to the calculation of time shall apply in relation to attendance of a hearing under Part II of Chapter I.

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Civil legal aid

Divorce applications needing minimal information

In July of this year, we issued a mail shot to all civil practitioners setting out a modified approach to applications for divorce based on one or two years' separation where no ancillary craves are being sought. Not all solicitors seem to be aware of the changes, meaning they are still sending us information we do not need.

We would remind you that we no longer need to see any statement or supporting documentation for any legal aid applications made on the basis of one or two years' separation where no ancillary craves are sought. You only need to confirm that

- there is independent support for the period of separation
- that there are children under 16
- where applicable, there is consent from the opponent to the action.

We do not need any more information than this. We do not need statements from applicants, supporting statements or evidence of consent.

Where a divorce based on one or two years' separation is being sought together with ancillary craves we do, however, still need to see statements and supporting documentation.

Less form filling

This summer we reviewed our existing forms and told you there were some questions on the forms you no longer had to answer. We are, however, still getting a large number of applications where these questions are completed. We would remind you that you no longer need to complete the questions listed below. This will reduce the time it takes to complete civil legal aid application forms.

CIV/SOL Form:

- **Section A** - Question 1, Question 8, Question 9, Question 10 and Question 12.
- **Section C**: If you give us your practitioner and branch code number, your name and your firm's name, you do not need to give us any other information such as the firm code, the address of the firm, its postcode or the LP / DX number and exchange.
- **Section E**: Question 13.

These changes also apply to the forms:

- CIV/SANCTION
- CIV/AMEND
- CIV/TRANSFER
- CIV/CEASE
- CIV/REP
- CIV/CONC.

Also, in these forms where you have already given us the applicant's national insurance number in either the CIV/SOL or an SU 4 form, you do not need to provide it in any later application form.

Civil advice and assistance

Benefits of being Online

In July we improved our Legal Aid Online service. We now have over 270 firms using Legal Aid Online for advice and assistance. Last month 43% of intimations and 36% of increase requests received for civil advice and assistance were made online.

Feedback from those using the revised service is very good. They find it speedy and efficient. Benefits from using Legal Aid Online include:

- faster processing of applications and accounts
- faster payments
- cutting down on paperwork
- more accurate information gathering
- working at times convenient for you
- quicker decisions.

If you are not already doing so, you should consider using our Legal Aid Online service as it is a free, quick, easy and secure way to send us applications for advice and assistance.

Both solicitors and administrative staff can use the system. All you need is access to the internet from your computer.

To start using Legal Aid Online, please register your details with us. We will be in touch to discuss setting you up for our online service. Your move to Legal Aid Online will be supported with help and training to get you up and running.

You can register your details by contacting our Legal Aid Online team on 0131 240 2013 or email online@slab.org.uk or complete the form on our website.

Quick and easy increases

When civil advice and assistance reform came into effect on 1 May 2007, we almost trebled the number of templates you can use for increases in authorised expenditure. The templates now cover most types of case. Using a template to get an increase in authorised expenditure is quick and easy. If the criteria applying to each individual template are met you will get your increase to do work as soon as the increase is registered.

Using a template:

- saves you time completing the form
- means that you do not have to return to us repeatedly for further increases and
- gives you an assurance about the funding you have for a case.

Since May 2007 applications for increases in authorised expenditure using the templates have risen to over 50% of requests. We are, however, aware that some solicitors are asking for increases where a template would have been available to them for the work.

We need very little information to grant an increase using one of the templates. In the vast majority of cases all you need to do is put a cross in the box beside the relevant template. We can also authorise specific standard additional items of work where particular templates are used. Again, all that we need to give authority for these additional standard items of work is a cross in the box beside the relevant work item.

Getting the right accounts synopsis

There are now two types of civil advice and assistance - standard and diagnostic. Our category codes card issued this year shows whether a matter is diagnostic or standard.

Most work solicitors do is standard advice and assistance. Where work is not covered by an approved standard category the advice and assistance is given by way of a diagnostic interview. Only limited funding of £35 is available for a diagnostic interview.

Before granting advice and assistance you need to consider whether the work is diagnostic or standard advice and assistance. If the category code for work done shows it is diagnostic advice and assistance, the account synopsis form we send you will show that diagnostic advice and assistance only has been made available. Please make sure you use the correct category code on the advice and assistance application form.

Where the work you want to do has a diagnostic category code and you think standard advice and assistance is needed to help your client you have to ask us for our authority for this. The form includes questions to deal with such a request. You can also telephone us to ask for this authority. It is important to explain why you feel this is needed to help your client. If you do not do this you will only be authorised for work done under diagnostic advice and assistance.

Check your details

So that correspondence and other important information from us reaches you, please write to our Receipts and Payments Department immediately if your address, firm, or practitioner details change. Please also tell us if your firm changes to or from Royal Mail, Hays DX or Legal Post so we can update our records and send mail to you by the right carrier.

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Online Civil Legal Assistance Handbook

The Online Civil Legal Assistance Handbook is your easy to use comprehensive guide to civil legal assistance, covering both guidance and legislation. It is available on our website www.slab.org.uk

The civil handbook has been expanded since it was initially published in 2005, and now includes:

- guidance on accounts - reflecting the provisions of the 2007 regulations which came into force on 10 February 2007
- information about recent changes involving vulnerable witnesses
- the major changes in advice and assistance that took place in April 2007, including templates for many types of case
- guidance on property recovered and preserved under advice and assistance, and more detail on applications under regulation 16(3)
- private charging after a grant of advice and assistance
- updated and improved guidance on the merits of civil legal aid applications, in particular the sections on family law
- guidance on employing counsel in reparation proceedings
- guidance on completing forms for
 - a. advice and assistance applications and increases - including the procedures for standard and diagnostic advice and assistance
 - b. civil application forms - including simplification so you no longer have to complete some parts of the forms
 - c. accounts
- advice on what you need to tell your clients about, for example, paying contributions on time, the possibility of clawback applying, and their liability for an opponent's costs if they lose their case
- what we look for in applications made by, or on behalf of, children.

