

CIVIL LEGAL AID REFORM

FREQUENTLY ASKED QUESTIONS, & ANSWERS

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REGISTRATION

1. What assistance and guidance will be provided for firms to help them comply with the new requirements?

Articles were published in both the *Journal* and *Recorder* outlining the detailed proposals as they were agreed between the Law Society and the Board and a series of detailed mailshots has been issued. In the summer, and run with the help of local faculties, there was a series of joint Society/Board roadshows to outline the proposals. In the autumn, a further series of joint Society/Board seminars was run, this time designed to deal with the practical elements of the new requirements. We have also set up a telephone helpline for practitioners to use with queries about the registration process, the applications or reporting processes or fees and accounts under the new system: **0131 240 2007**

All these provisions, cumulatively, should provide the information a firm needs—firstly, to decide whether there is a good business case to participate in the new arrangements, and secondly, to prepare for any necessary changes to comply with the new requirements. From November 2003 our Compliance Auditors will be available for consultation and assistance where practicable in relation to the new administrative requirements.

Additionally, the Board will be providing examples and pro-formas as guidance and we will be happy to hold information sessions at local faculty level in the New Year to assist in this regard.

If you have any specific questions on this point, please contact Brian Millar, Compliance Manager at the Board.

2. Will I have to put my procedures in writing?

Not necessarily, but you may find that doing so is more convenient. We anticipate that it will take less time to review firms with written procedures than those without. Of course, having written procedures will make it easier to inform staff of what they should be doing and how they should be doing it.

3. What are the main differences between criminal and civil registration?

For criminal registration, any solicitor wanting to provide criminal legal assistance has to be registered, and he/she has to be connected to a registered firm, and if he/she moves to an unregistered firm, he/she cannot continue to provide criminal legal assistance.

In the new civil scheme, only the firm is registered. Any solicitor moving from an unregistered firm to a registered firm does not need to register with the Board to provide civil legal aid and civil advice and assistance: provided the firm is on the Civil Register, the new solicitor can start to provide civil legal aid immediately. Obviously, if the firm provides both civil and criminal legal assistance, the solicitor would need to apply to be entered on the Criminal Legal Assistance Register (CLAR) before he/she can provide any criminal legal assistance.

4. So an individual solicitor within a firm does not have to register?

No, but please see the previous answer.

The practice rules provide for a “practice unit” to be registered and practice unit means (i) a solicitor who is a sole practitioner, (ii) a firm of solicitors or (iii) an incorporated practice.

5. Does our entry on the Register ensure that all our branches are registered?

The Register currently shows firms rather than branches. If your firm is registered, we will accept as valid civil legal aid applications from any of your branches.

However, we will making some changes the way the Register is structured and intend to structure it in such a way as to be useful to the public. We would like to have the Civil Register structured geographically, as well as by firm name, so that a member of the public can search for firms providing civil legal assistance in his or her locality. To that end, the Board will be phoning firms on the provisional Civil Register to ask for details of the outlets or branches where civil legal assistance is available. Aside from being a useful facility for the public, it will also be a good marketing tool for firms.

6. Will there be time-recording as with CLAR?

No.

7. Will I have to pay to register my firm, particularly if I only do a little civil legal assistance work?

No, you will not have to pay to register your firm, regardless of the volume of civil legal assistance you undertake.

8. What happens where a firm not wishing to register has existing cases?

Although solicitors within non-registered firms are not able to grant civil advice an assistance or apply for civil legal aid after 1 October, the transitional arrangements allow for them to continue to a conclusion any existing civil legal aid or civil advice and assistance cases. Firms are also, of course, entitled to be remunerated as appropriate for such cases.

Should a non-registered firm have submitted prior to 1 October applications for civil legal aid which have not by that date been determined, the applications will be determined and, if they met the statutory tests, granted. In these circumstances, the firm would be able to see the cases to a conclusion. However, a solicitor within a non-registered firm currently using advice and assistance on behalf of a client to prepare an application for civil legal aid, would not be able to submit the application on or after 1 October.

Any applications by non-registered firms granted after 1 October would be paid at the new rates unless they fell within one of the exceptions. Such cases would also be subject to the new reporting regime and may therefore ask the solicitor subsequently to provide additional information not contained in the old application form. The solicitor would be subject to the reporting requirements and each compulsory report would enable payment for the completed blocks at that stage.

APPLICATIONS AND REPORTING

9. To which cases will the new system apply?

Applications **granted** from 1 October 2003 will be subject to the new system, including the reporting requirements.

10. When should I start using the new application forms?

Please start using the new solicitor and applicant's forms from 1 October. Similarly, as soon as you need to use an SU2 or SU4 form or submit a report, use the new forms.

11. What if I submit an old application form after 1 October?

We recognise that there will be cases in the system in the run up to 1 October in which old forms are still in use. These forms can continue to be used up until the end of October should, for whatever reason, you not be able to secure a supply of the new forms. Where this is the case, we will ask you for any additional information which is contained in the new but not the old forms.

12. You refer to the "Mandate" in section C of the solicitor's form – what is that?

This is the document previously referred to as the "pro-forma calculation sheet".

13. You refer to the "statement" in section H of the solicitor's form – what is that?

This is the document previously referred to as the "Memorandum".

14. Can I submit an SU2 before submitting an application for civil legal aid?

No, you can use section C of the solicitor's form to intimate to us special urgency steps already taken under Regulation 18(1)(a). When doing so, you do not need to complete a separate SU2.

The only circumstances in which an SU2 will be used is when you have completed and submitted a solicitor's application form and then require to take special urgency steps under Regulation 18(1)(a) before we have notified you of the decision in respect of the application.

You cannot submit an SU2 *before* the application for civil legal aid is submitted. Regulation 18(2) allows you to commence work of a certain nature and then to inform the Board that they have done this work.

However, if you think an urgent step should be taken but is not but is not described in Regulation 18(1)(a) and Regulation 18(2), you will need Board certification before doing the work and should use an SU4.

15. Do I have to submit an Applicant's Mandate Form with each SU2 or SU4 submitted?

No, you only need to submit an Applicant's Mandate Form with the first SU2 or SU4. A Mandate is not required should there be a need in the case to submit a further SU2 or SU4.

16. How can I get more copies of the forms or information booklet?

We enclosed with mailshot 4 an order form for the Board's printers, Stewarts. For the reasons outlined in the mailshot we seek your co-operation by asking you to limit your supply of the booklets to the number that you anticipate will meet your needs for the next six months.

To place an order you can call Stewarts on 0131 659 6010 or return the order form by fax or mail (if faxing an order, you do not need to also send as confirmation your order form by mail). When placing an order, you must give your firm code and/or practitioner number.

17. Can I download the forms from the Internet?

All of the forms included in the starter pack and the information for applicants booklet are available in an electronic format on the Board's website at www.slabpro.org.uk (the username is procurator and password LAACT1986). The forms are available in pdf format, and you will need Adobe Reader (formerly called Adobe Acrobat Reader) to use them - this software is free and available from Adobe's web site at www.adobe.co.uk

All of the new civil forms are available in a format to let you print them and then complete them by hand. The following forms are available in interactive versions to let you complete the details on screen (in the same way as the other legal aid forms):

- Solicitor's application form - CIV/SOL
- Special urgency – notification - CIV/SU2
- Special urgency – request - CIV/SU4
- Reporting Form - CIV/REP

To download the forms, you should visit the what's new page that welcomes you to our website, or the forms area of the site. You can open each form and then save it to your computer, or you can right-click on the form name and then save it to your computer.

If you use the interactive versions and wish to save the data you have typed into the form, you need to purchase Adobe Acrobat software. The standard version of Adobe Acrobat costs £259 and the professional edition is £395. Alternatively Adobe Acrobat Approval (version 5) which enables you to save data from forms costs £35 (all excluding VAT). You can find out more details of this software and buy it on Adobe's website at www.adobe.co.uk

18. Will you be issuing a CD ROM with the new forms?

Yes, we plan to issue a CDROM in November. In the meantime you can obtain them from our website.

FEES AND ACCOUNTS

19. To which cases will the new fee structure apply?

To most cases in the sheriff court where the application is **granted** on or after 1 October 2003. The only exceptions are expressly set out in the regulations.

20. And what are the exceptions?

- adoptions (including freeing fro adoption)
- conveyancing work required to implement an Order of the Court
- fatal accident inquiries
- minute procedure in a closed process
- proceedings where the assisted person is a curator *ad litem*
- proceedings where the assisted person is a third party minuter
- work carried out under Regulation 18 of the Civil Legal Aid(Scotland) Regulations 2002 in a case which does not proceed to a grant of civil legal aid
- work in connection with drafting and submitting an account of expenses, or disputing (on receipt) an opponent's account of expenses, including attendance at taxation and taking/opposing Notes of Objections, including taxations instructed by the Board
- summary applications

These exceptions and Court of Session cases will continue to be paid on a time and line basis, but with fee scales increased by 19%. Please continue to submit detailed accounts.

Where work is carried out under Regulation 18 of the Civil Legal Aid (Scotland) Regulations 2002, in a case which does not proceed to a grant of civil legal aid the new fees will apply only to work **incurred on or after** 1 October. Work incurred prior to this date should be charged under Schedule 3 of The Civil Legal Aid (Scotland)(Fees) Regulations 1989.

The regulations apply only to civil cases and therefore children's cases are not included within the new fee structure.

21. Where can I obtain a copy of the regulations?

A print version of The Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003 can be obtained from Her Majesty's Stationery Office (HMSO).

Copies can be downloaded from www.scotland-legislation.hmso.gov.uk.

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