



Criminal ABWOR - Data capture form

Revised March
2011

This is not a mandate form. There are no declarations and you do not need to sign it or keep a copy. It has been produced so that you can record the information you intend to provide in the online application, before completing the application online or passing it to someone else in your firm to complete online on your behalf.

SECTION E - ABWOR (ASSISTANCE BY WAY OF REPRESENTATION)

Date proceedings commenced (date complaint was served):

If this application is for ABWOR where it is:

- granted by the appointed solicitor in a custody case → go to **Question 1**.
- granted by the solicitor where an interests of justice test is applied → go to **Question 4**.
- granted for other types of case where no interests of justice test is applied → go to **Question 13**.
- granted subject to the Board's approval in the case categories: removal of a disqualification from driving, or proceeds of crime → go to **Question 15**.

APPOINTED SOLICITOR ("Appointed solicitor" is a solicitor who represents a client appearing from custody with whom there is a previous solicitor-client relationship)

1 Were you instructed directly by the applicant? Yes No **If No - ABWOR cannot be granted**

2 Please describe the nature of the solicitor/client relationship with the applicant (other than that relating solely to this appearance).

3 Having taken instructions, were you able to act immediately, in person or through the services of another solicitor, at the pleading diet? Yes No **If No - ABWOR cannot be granted**

INTERESTS OF JUSTICE

Where the ABWOR merits tests have been incorrectly or inappropriately applied, we may not pay your account. In determining if it is in the interests of justice to make ABWOR available, you must take into account factors specified in regulation 7 of the Advice and Assistance (Assistance by Way of Representation) (Scotland) Regulations 2003, as amended. These statutory factors are shown below at questions 9 - 11. If you believe that any of the statutory factors at Questions 9, 10 and 11 apply, please give a relevant explanation against that factor. You should answer these questions with reference to the disclosable summary of evidence. You need to tell us which aspects of the disclosable summary of evidence support the factors which you feel are present in the case. For example, aspects relating to the description of the locus, the description of events, any police interviews, medical evidence or 'caution and charge' replies which may be appropriate. You may wish to send us a copy of the disclosable summary of evidence to assist in that process.

4 Is the disclosable summary of evidence attached? Yes No

5 Have you taken or are you taking a preliminary plea? Yes No **If no → go to Question 7**

6 If Yes, state the basis of the preliminary plea.

- plea to relevancy
- plea to competency
- plea in bar of trial
- other/outcome if known-specify:

7 Have you tendered a guilty plea or continued without plea? Tendered a guilty plea → go to Question 9 Continued without plea **If the plea is not guilty, you should apply for summary criminal legal aid.**

8 If the case was continued without plea, why was this? negotiation investigation Crown motion for production of documentation other - please specify:

9 Statutory test: Is it **LIKELY** that if the offence is proved, that the court would impose a sentence which would deprive the applicant of their liberty or lead to the loss of their livelihood? Please cross all boxes that apply. If Yes, please explain why such a sentence is likely. Yes - loss of liberty Yes - loss of livelihood No → go to Question 10.

Tell us which aspects of the disclosable summary of evidence are relevant to this factor or, where the summary is not enclosed, provide details of the relevant information contained in the summary. You should refer to the nature and circumstances of the offence(s). If appropriate, include details of the estimated value of any goods stolen, property damaged, injuries suffered etc, and any relevant previous convictions. Also attach any supporting documentation such as a schedule of previous convictions or if appropriate, a copy of driving licence or a copy of letter from employer where loss of livelihood is possible.

- 10 Statutory test: Does the determination of the case involve consideration of a substantial question of law, or evidence of a complex or difficult nature? Please cross all boxes that apply.

- Yes - substantial question of law
 Yes - complex or difficult nature
 No → go to Question 11.

If Yes, please explain what these are. Tell us which aspects of the disclosable summary of evidence are relevant to this factor or, where the summary is not enclosed, provide details of the relevant information contained in the summary. For example, any relevant case law etc.

- 11 Statutory test: Will the applicant be unable to understand the proceedings or to state their own case because of their age, inadequate knowledge of English, mental illness, other mental or physical disability or otherwise? Please refer to our guidance in the Criminal Legal Assistance Handbook for further information on applying the test to, for example, inadequate knowledge of English. Please cross all boxes that apply.

- Yes - age
 Yes - inadequate English
 Yes - mental illness
 Yes - other mental or physical disability
 Yes - other incapacity
 No → go to Question 12.

If Yes, please give details of the reason and explain why. Tell us which aspects of the disclosable summary of evidence are relevant to this factor or, where the summary is not enclosed, provide details of the relevant information contained in the summary. For example, if you consider the applicant's physical or mental health is a factor, you should detail any medical assistance or support they receive. You should also show how this affects their abilities to follow proceedings, provide instructions etc. The particular effects of any addiction should be shown. You should also state any difficulties you have in getting instructions from the applicant.

- 12 Please explain any other interests of justice factors or additional information and why you took them into account. Please state which aspects of the disclosable summary of evidence are relevant to this factor or, where the summary is not enclosed, provide details of the relevant information contained in the summary.

OTHER CASES

- 13 What category of case has ABWOR been granted for under regulation 3 or 4 of the Advice and Assistance (Assistance by Way of Representation)(Scotland) Regulations 2003, as amended, where no interests of justice test is applied?

- | | |
|---|---|
| <input type="checkbox"/> (PAR) Proceedings in Parole Board cases | <input type="checkbox"/> (RPRB) Progress review of a probation order |
| <input type="checkbox"/> (CJPO) Return of sound equipment | <input type="checkbox"/> (PBO) Breach of a probation order |
| <input type="checkbox"/> (TERF) Warrant for further detention or extension under the Terrorism Act 2000 | <input type="checkbox"/> (CPPO) Conviction of probationer following offence during probation period |
| <input type="checkbox"/> (OBWI) Obstructive witness order under sections 90B-90E | <input type="checkbox"/> (BCS) Breach of a community service order |
| <input type="checkbox"/> (VFBO) Variation/termination of a football banning order | <input type="checkbox"/> (CSO) Amendment/revocation of a community service order |
| <input type="checkbox"/> (BNHO) Revocation/variation of a non-harassment order | <input type="checkbox"/> (BSA) Breach of a supervised attendance order |
| <input type="checkbox"/> (BRLO) Variation/revocation/breach of a restriction of liberty order | <input type="checkbox"/> (SAO) Amendment/revocation of a supervised attendance or |
| <input type="checkbox"/> (DTTO) Variation/revocation/review/breach of requirement of a DTTO | Other categories not listed above - refer to Board guidance: |

- 14 Where appropriate, in which court was the ABWOR provided?

- JP court
 Sheriff court
 High Court

BOARD APPROVAL SOUGHT

- 15 Where you are requesting prior Board approval, what is the case category?
You should refer to regulation 5 of the ABWOR regulations for more information on the procedures covered by ABWOR. Remember that certain proceedings, including those relating to a restraining order, civil recovery and forfeiture, calling before a sheriff exercising civil jurisdiction or the Court of Session, are civil matters, for which civil legal aid, not ABWOR, is available.

- Removal of a disqualification from driving
 Proceeds of crime

- 16 Please explain why you wish us to approve the grant of ABWOR.
You should address the criteria to be considered as set out in our guidance in the Criminal Legal Assistance Handbook, available on our website at www.slab.org.uk You need our approval BEFORE proceeding to provide ABWOR.