
SCOTTISH STATUTORY INSTRUMENTS

2002 No. 494

The Civil Legal Aid (Scotland) Regulations 2002

PART II

APPLICATIONS FOR LEGAL AID

Form of application

5.—(1) Subject to regulations 6 and 18 below, an application for legal aid under section 14 of the Act⁽¹⁾ shall be—

- (a) in writing, in such form as the Board may require, and signed by—
 - (i) the applicant;
 - (ii) where the applicant on cause shown cannot sign the application, by a person authorised by the applicant; or
 - (iii) where the applicant is mentally disordered in terms of section 1(2) of the Mental Health (Scotland) Act 1984⁽²⁾, or is an incapable adult in terms of section 1(6) of the Adults with Incapacity (Scotland) Act 2000, by the applicant's legal representative;
- (b) accompanied by a statement, signed by the applicant, or, where the applicant in terms of the above sub-paragraph either cannot sign the application or is mentally disordered or incapable, by an authorised person or by the applicant's legal representative, and by or on behalf of the solicitor acting for the applicant, as to the nature of the case and the interest of the applicant therein;
- (c) accompanied, so far as possible, by such precognitions and other documents as may be requisite to enable the Board to determine the application; and
- (d) accompanied by a copy for each opponent of the statement referred to in sub-paragraph (b) above together with such form of intimation as the Board may require in relation to each opponent and either the address of each opponent or each opponent's solicitor or a statement that the whereabouts of the opponent are unknown following reasonable enquiry.

(2) Where the applicant resides outside the United Kingdom and is not able to be present in the United Kingdom when the application is being considered, the application, which shall be in English or in French, shall, subject to paragraph (3) below, be sworn—

- (a) if the applicant resides within the Commonwealth or the Republic of Ireland, before any Justice of the Peace or Magistrate, or any person for the time being authorised by law, in the place where the applicant is, to administer an oath for any judicial or other legal purpose, or
- (b) if the applicant resides elsewhere, before a consular officer in the service of Her Majesty's Government in the United Kingdom, or any other person for the time being authorised to

(1) Section 14 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), Schedule 8, paragraph 36.

(2) 1984 c. 36; section 1(2) was amended by the Mental Health (Public Safety and Appeals) (Scotland) Act 1999 (asp 1), section 3.

exercise the functions of such an officer or having authority to administer an oath in that place for any judicial or other legal purpose,
and shall be accompanied by a statement in writing, itemising the applicant's disposable income and disposable capital.

(3) The requirements of paragraph (2) above may be waived in whole or in part by the Board where it is satisfied that compliance with them would cause serious difficulty, inconvenience or delay and the application satisfies the requirements of paragraph (1) above.

Applications on behalf of children

6.—(1) Without prejudice to any right of a child to apply under regulation 5 above, application on behalf of a child may be made by the child's legal representative or by any person in whose care the child is, or by a person acting for the purposes of any proceedings as the child's tutor or curator.

(2) An application by or on behalf of a child under the upper age limit of compulsory school age in terms of paragraph (1) above shall be determined in terms of Part III below.

Notification to opponent

7.—(1) Subject to paragraph (2) below, it shall be the duty of the Board to send to any opponent, or to the solicitor acting for any opponent—

- (a) notification that application for legal aid has been made;
- (b) a copy of the statement referred to in regulation 5(1)(b) above; and
- (c) notice of the opponent's right, under regulation 8 below, to make representations to the Board.

(2) Paragraph (1) above shall not apply if—

- (a) the addresses of the opponent and the opponent's solicitor are not known to the Board and could not reasonably be ascertained by the solicitor acting for the applicant; or
- (b) the Board, on the application of the solicitor acting for the applicant, determines that notification should be dispensed with or postponed.

Right of opponent to make representations

8. Any opponent may, within 14 days (or, in the case of an opponent resident outside the United Kingdom, 28 days) of being notified of the application, or such longer time as the Board may in the particular circumstances allow, make to the Board representations in writing as to the application, and the Board shall, except where it makes legal aid available under regulation 18 below, consider any such representations before determining the application.

Attendance for interview and supply of information

9.—(1) An applicant for legal aid shall, if required by the Board to do so, attend for interview by a representative of the Board or supply such further information or documents as the Board may require to enable it to determine the application.

(2) Where an applicant for legal aid fails to comply with a requirement under paragraph (1) above, the Board may treat the application as having been abandoned, and where it does so it shall give intimation of the abandonment to the applicant and any opponent.