
STATUTORY INSTRUMENTS

2012 No. 3098

The Civil Legal Aid (Procedure) Regulations 2012

PART 4

Licensed Work

Supporting documents: domestic violence

33.—(1) An application for civil legal services described in paragraph 12 of Part 1 of Schedule 1 to the Act must include evidence of the domestic violence or the risk of domestic violence.

(2) For the purpose of paragraph (1), the evidence of domestic violence or risk of domestic violence must be provided in one or more of the following forms—

- (a) a relevant unspent conviction for a domestic violence offence;
- (b) a relevant police caution for a domestic violence offence given within the twenty four month period immediately preceding the date of the application for civil legal services;
- (c) evidence of relevant criminal proceedings for a domestic violence offence which have not concluded;
- (d) a relevant protective injunction which is in force or which was granted within the twenty four month period immediately preceding the date of the application for civil legal services;
- (e) an undertaking given in England and Wales under section 46 or 63E of the Family Law Act 1996⁽¹⁾ (or given in Scotland or Northern Ireland in place of a protective injunction)—
 - (i) by the individual (“B”) with whom the applicant for civil legal services (“A”) was in a family relationship giving rise to the need for the civil legal services which are the subject of the application; and
 - (ii) within the twenty four month period immediately preceding the date of the application for civil legal services, provided that a cross-undertaking was not given by A;
- (f) a letter from the person appointed to chair a multi-agency risk assessment conference confirming that—
 - (i) A was referred to the conference as a high risk victim of domestic violence; and
 - (ii) the conference has, within the twenty four month period immediately preceding the date of the application for civil legal services, put in place a plan to protect A from a risk of harm by B;
- (g) a copy of a finding of fact, made in proceedings in the United Kingdom within the twenty four month period immediately preceding the date of the application for civil legal services, that there has been domestic violence by B giving rise to a risk of harm to A;

⁽¹⁾ 1996 c. 27. Section 46 was amended by the Domestic Violence, Crime and Victims Act 2004 (c. 28), section 58(1) and Schedule 10, paragraph 37(1) to (4). Section 63E was inserted by the Forced Marriage (Civil Protection) Act 2007 (c. 20), section 1.

- (h) a letter or report from a health professional confirming that the professional—
- (i) has examined A within the twenty four month period immediately preceding the date of the application for civil legal services;
 - (ii) was satisfied following that examination that A had injuries or a condition consistent with those of a victim of domestic violence; and
 - (iii) has no reason to believe that A's injuries or condition were not caused by domestic violence;
- (i) a letter from a social services department in England or Wales (or its equivalent in Scotland or Northern Ireland) confirming that, within the twenty four month period immediately preceding the date of the application, A was assessed as being, or at risk of being, a victim of domestic violence by B (or a copy of that assessment);
- (j) a letter or report from a domestic violence support organisation in the United Kingdom confirming—
- (i) that A was, within the twenty four month period immediately preceding the date of the application for civil legal services, admitted for a period of twenty four hours or more to a refuge established for the purpose of providing accommodation for victims of, or those at risk of, domestic violence;
 - (ii) the dates on which A was admitted to and, where relevant, left the refuge; and
 - (iii) that A was admitted to the refuge because of allegations by A of domestic violence.
- (3) For the purpose of this regulation—
- “A” and “B” have the meaning given in paragraph (2)(e)(i);
- “domestic violence offence” has the meaning given in the document published by the Lord Chancellor for that purpose under section 2 of the Act;
- “health professional” means a registered—
- (a) medical practitioner who holds a licence to practise;
 - (b) nurse; or
 - (c) midwife; and
- “protective injunction” means—
- (a) a non-molestation order under section 42 of the Family Law Act 1996⁽²⁾ or article 20 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998⁽³⁾;
 - (b) an occupation order under section 33, 35, 36, 37 or 38 of the Family Law Act 1996⁽⁴⁾ or article 11, 13, 14, 15 or 16 of the Family Homes and Domestic Violence (Northern Ireland) Order 1998⁽⁵⁾;
 - (c) an exclusion order under section 4 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981⁽⁶⁾ or section 104 of the Civil Partnership Act 2004;

(2) 1996 c. 27. Section 42 was amended by the Civil Partnership Act 2004 (c. 33), section 82 and Schedule 9, paragraph 9; and the Domestic Violence, Crime and Victims Act 2004, section 58(1) and (2) and Schedule 10, paragraph 36(1) to (3) and Schedule 11.

(3) S.I. 1998/1071 (N.I. 6) as amended by the Civil Partnership Act 2004, section 206 and Schedule 19, paragraph 15.

(4) Section 33 was amended by the Civil Partnership Act 2004, section 82 and Schedule 9, paragraph 4(1) to (7). Section 35 was amended by the Civil Partnership Act 2004, section 82 and Schedule 9, paragraph 6(1) to (10). Section 36 was amended by the Domestic Violence, Crime and Victims Act 2004, sections 2(2) and 58(1) and Schedule 10, paragraph 34(1) to (3); and the Civil Partnership Act 2004, section 82 and Schedule 9, paragraph 7. Section 37 was amended by the Civil Partnership Act 2004, section 82 and Schedule 9, paragraph 8(1) to (4). Section 38 was amended by the Domestic Violence, Crime and Victims Act 2004, section 58(1) and Schedule 10, paragraph 35.

(5) S.I. 1998/1071 (N.I. 6) as amended by the Civil Partnership Act 2004, section 206 and Schedule 19, paragraphs 10 to 14.

(6) 1981 c. 59. Section 4 was amended by the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985 (c. 73), section 13(5).

- (d) a forced marriage protection order or interim forced marriage protection order under any of the following provisions—
 - (i) Part 4A of the Family Law Act 1996(7);
 - (ii) section 2 of, and paragraph 1 of Schedule 1 to, the Forced Marriage (Civil Protection) Act 2007(8);
 - (iii) section 1 of the Forced Marriage etc. (Protection & Jurisdiction) (Scotland) Act 2011(9); and
 - (iv) section 5 of the Forced Marriage etc. (Protection & Jurisdiction) (Scotland) Act 2011;
 - (e) a restraining order under section 5 or 5A of the Protection from Harassment Act 1997(10);
 - (f) a restraining injunction under article 5 or a restraining order under article 7 or 7A of the Protection from Harassment (Northern Ireland) Order 1997(11);
 - (g) a non-harassment order under section 234A of the Criminal Procedure (Scotland) Act 1995(12) or section 8 or 8A of the Protection from Harassment Act 1997(13);
 - (h) a common law injunction;
 - (i) any of the following interdicts—
 - (i) a matrimonial interdict within the meaning of section 14 of the Matrimonial Homes (Family Protection) (Scotland) Act 1981;
 - (ii) a domestic interdict within the meaning of section 18A of the Matrimonial Homes (Family Protection) (Scotland) Act 1981(14);
 - (iii) an interdict for civil partners within the meaning of section 113 of the Civil Partnership Act 2004(15);
 - (iv) an interdict that has been determined to be a domestic abuse interdict within the meaning of section 3 of the Domestic Abuse (Scotland) Act 2011(16); and
 - (v) a common law interdict.
- (4) “Relevant” means that the evidence identifies—
- (a) A as being, or at risk of being, the victim of domestic violence unless the evidence—
 - (i) is in a form described in paragraph (2)(a) to (c), and
 - (ii) relates to a domestic violence offence which does not identify the victim; and
 - (b) B as being—

(7) Part 4A was inserted by the Forced Marriage (Civil Protection) Act 2007 (c. 20), section 1.

(8) 2007 c. 20.

(9) 2011 asp 15.

(10) 1997 c. 40. Section 5 was amended by the Domestic Violence, Crime and Victims Act 2004, section 12(1) to (4), 58(1) and (2) and Schedule 10, paragraph 43(1) to (3) and Schedule 11. Section 5A was inserted by the Domestic Violence, Crime and Victims Act 2004, section 12(5).

(11) SI. 1997/1180 (N.I. 9). Article 7 was amended by, and article 7A was inserted by, the Domestic Violence, Crime and Victims Act 2004, section 13.

(12) 1995 c. 46. Section 234A was inserted by the Protection from Harassment Act 1997 (c. 40), section 11. It was subsequently amended by the Criminal Justice and Licensing (Scotland) Act 2010 (asp 13), section 15(a) to (d); the Criminal Justice (Scotland) Act 2003 (asp 7), section 49(1)(a) and (b); and the Crime and Punishment (Scotland) Act 1997 (c. 48), section 62(2) and Schedule 3.

(13) 1997 c. 40. Section 8(1A) was inserted by the Domestic Abuse (Scotland) Act 2011 (asp 13), section 1(1). Section 8(8) was repealed by the Damages (Scotland) Act 2011 (asp 7), section 16 and Schedule 2. Section 8A was inserted by the Domestic Abuse (Scotland) Act 2011, section 1(2).

(14) 1981 c. 59. Section 18A was inserted by the Family Law (Scotland) Act 2006 (asp 2), section 31(3).

(15) 2004 c. 33. Section 113 was amended by the Family Law (Scotland) Act 2006, sections 33, 45(2) and 46(2) and Schedules 1 and 3 and the Family Law (Scotland) Act 2006 (Consequential Modifications) Order 2006 (S.S.I. 2006/384), article 10.

(16) 2011 asp 13.

- (i) for evidence described in paragraph (2)(a) to (c) convicted of, cautioned with or charged with the domestic violence offence; and
- (ii) for evidence described in paragraph (2)(d), the respondent to the protective injunction.