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# Legal aid

## Scotland

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European Judicial Network  
(in civil and commercial  
matters)

## 1 What costs are involved in legal proceedings and who normally has to bear them?

The costs will depend upon the nature of the case. Costs can include the fees of the solicitor who is acting for the person in receipt of legal aid (the assisted person), together with outlays such as court fees and expert opinions.

At the end of a case, the court will decide which party should pay the costs. In general, the successful party is ordered to pay the unsuccessful party's costs although there are many exceptions to this principle. If the assisted person is unsuccessful or if the other party is ordered to pay the costs but fails to do so the assisted person will be liable to pay his own costs.

## 2 What exactly is legal aid?

Publicly funded legal assistance (legal aid) allows people to pursue or defend their rights or pay for their defence when they could not otherwise afford to do so. Legal aid in Scotland is administered by the Scottish Legal Aid Board (SLAB), which is a Non-Departmental Public Body funded by The Scottish Government.

There are three types of legal assistance.

- **Civil advice and assistance:** Oral or written advice on the application of Scots law to any particular circumstances which have arisen in relation to the person seeking advice. It is provided by a solicitor and, where appropriate, by counsel.
- **Advice by way of representation (ABWOR):** A category of advice and assistance that allows for representation by a solicitor or, where appropriate, by counsel in civil proceedings in designated courts and tribunals in Scotland.
- **Civil legal aid:** A separate scheme that allows for representation by a solicitor or, where appropriate, by counsel in civil proceedings in other designated courts and tribunals in Scotland.

## 3 Do I have a right to legal aid?

The eligibility criteria for those accessing civil legal aid are consistent and transparent with applications being subject to statutory tests. The first two tests are applied to the legal content of the application. It must be shown that there is legal basis for the case for which legal aid is sought (called probable cause) and that it is reasonable to use public funds to support the case. The third test is applied to an applicant's financial circumstances.

Advice and assistance can be granted by a solicitor if he is satisfied that the applicant is financially eligible and the subject on which he seeks advice is a matter of Scots law. A solicitor can provide advice and assistance up to a certain level of expenditure. Any work which will exceed the initial level of expenditure must have SLAB's prior approval, as must any work requiring representation.

There is no requirement to be resident in Scotland when applying for legal assistance under the Legal Aid

(Scotland) Act 1986. Advice and Assistance is available for matters of Scots Law (including UK law that applies in Scotland). Legal Aid is available for proceedings in the Scottish courts.

## 4 Is legal aid granted for all types of proceedings?

See Question 2 above.

Civil advice and assistance is available on matters involving the application of Scots law.

ABWOR is available for civil proceedings in a number of courts and tribunals which are designated in legislation. These include Immigration Appeal Tribunals and Employment Tribunals.

Civil legal aid is available for civil proceedings in a number of other courts and tribunals which are designated in legislation. These include the Sheriff Court and the Court of Session, which are the principal courts in Scotland for civil matters. Legal aid is also available for a number of tribunals such as the Social Security Commissioners and Employment Appeal Tribunals.

Civil legal aid cannot be granted for proceedings wholly or partly concerned with defamation; election petitions; simplified divorce applications in the Court of Session or Sheriff Court; and petitions by a debtor for the sequestration of his estate. It cannot be made available for cases in the small claims court (i.e. where the value of a claim is less than £3000 unless the claim involves personal injury).

However, your solicitor may be able to advise you on these under advice and assistance.

## 5 Are there special procedures in cases of need?

A solicitor may undertake certain steps in proceedings as a matter of special urgency in order to protect an applicant's position before an application for civil legal aid is determined by SLAB.

## 6 Where can I obtain a legal aid application form?

SLAB will only accept applications which are submitted by a solicitor acting on behalf of an applicant.

## 7 Which documents need to be submitted with the legal aid application form?

Your solicitor will advise you about the documents which are required in relation to assessment of financial eligibility and the merits of your case.

## 8 Where do I submit my application for legal aid?

SLAB will only accept applications which are submitted by a solicitor acting on behalf of an applicant, not from applicants direct.

If you are unable to find a solicitor to represent you, the Law Society of Scotland provides a solicitor locator on [their website](#). This provides the option to search for a solicitor registered to provide legal aid. You can also call the Law Society on 0131 226 7411.

## 9 How do I find out whether I am entitled to legal aid?

Your solicitor will tell you if you are eligible to receive legally aided advice and assistance.

For legal aid, your solicitor will apply for this on your behalf and SLAB will write to you both once your application for civil legal aid has been assessed. SLAB also have a number of [eligibility estimators](#) on their website to help you gain an understanding of what you may be entitled to.

## 10 What should I do, if I am entitled to legal aid?

Your solicitor will advise you on the appropriate course of action.

## 11 Who chooses my lawyer, if I am entitled to legal aid?

You will have to consult a solicitor before you can apply for advice and assistance or legal aid.

If you are unable to find a solicitor to represent you, the Law Society of Scotland provides a [solicitor locator](#) on their website. This provides the option to search for a solicitor registered to provide legal aid. You can also call the Law Society on 0131 226 7411.

Alternatively, [SLAB](#) provides information on the nearest solicitors who offer help through legal aid, or other advice providers funded by the Board. For civil matters, it is possible to search by case type. Although a firm is registered for legal aid work, they are not obligated to offer services to any client or offer to take on a case on legal aid.

## 12 Does legal aid cover all the costs of the proceedings?

See question 1 above.

Legal aid covers only the costs of your own solicitor and other expenses related to your case such as court fees and expert opinions. Legal aid does not cover the other party's costs.

If you are eligible for legal aid, you may be required to pay a contribution towards the costs of the case. The level of contribution payable will be based on your financial circumstances.

## 13 Who bears the other costs, if I am entitled only to limited legal aid?

If you are entitled to a limited award of legal aid, you will have to pay towards the rest of the costs of the case yourself. If you have to pay a contribution, the amount will depend on your disposable income, savings and property. SLAB measure income from the date of application and capital (savings and items of value that you own) for as long as your case lasts.

## 14 Does legal aid also cover appeals?

The original legal aid certificate will not cover an appeal against the outcome of the case. A fresh application for legal aid is required and SLAB must be satisfied that the statutory tests are met in relation to the appeal.

## 15 Can legal aid be withdrawn before the proceedings are concluded (or even revoked after the proceedings have terminated)?

SLAB can, and do occasionally, suspend legal aid for various reasons, such as when a solicitor doesn't respond to a request for additional information. In line with the eligibility criteria set down in law, SLAB are required to take into account continuing assessment of a person's finances and to consider whether it continues to be reasonable to grant legal aid. One part of the reasonableness test is that a legally aided person is expected to comply with court orders.

Legal aid can also be terminated if the assisted person has provide false information or has failed to disclose material information and in those circumstances SLAB may also seek to recover any money it has paid out.

## 16 Can I contest a refusal to give legal aid?

If someone has been refused legal aid, SLAB will have given the reason(s) for the refusal. An individual can request a review of the case, particularly if circumstances have changed. An individual case can be discussed with SLAB via e-mail ([general@slab.org.uk](mailto:general@slab.org.uk)) or by telephone. The switchboard (0131 226 7061) is open, Monday

to Friday, 0830-1700.

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