

LSANI Guidance - Applicant Declarations – All Levels of Service

This guidance informs practitioners of a change to the format of the applicant declarations for all levels of service which are to be used from 06 November 2023.

This guidance document also confirms who can sign the declaration in situations where the applicant is a minor, a patient or is instructing a solicitor in accordance with Regulation 6 of the Civil Legal Services (General) Regulations (NI) 2015 (“the General Regulations”). In addition, this guidance makes special provision for emergency applications for Representation Higher Courts by prisoners.

The publication of this guidance also revokes in its entirety circular ‘*LSA 07/2020*’ which permitted applicants to submit interim declarations and suppliers to submit supplier statements in lieu of declarations.

1. Background

1.1 Every application for legal aid (save for those covered by Paragraphs 2.2-2.7, 3 and 6.1 below) must be accompanied by the correct declaration duly signed and dated by the applicant (or their representative). The current declarations are based on whether the application matter type is means or non means tested. However, the Legal Services Agency (“the Agency”) has noted that incorrect declarations continue to be used which generates a significant number of queries back to the suppliers and thus delay in the processing of applications. The Agency has therefore amended the declarations so that there is one declaration for each level of service, regardless of whether the matter type is means or non-means tested.

2. Signing of Declarations

2.1 Declarations must be signed personally by the applicant save in the specific circumstances set out at 2.2 to 2.7 below. Under no circumstances should the supplier sign the declaration on behalf of the applicant.

Minors

2.2 Where the applicant is a minor and does not have capacity to personally instruct the supplier, their parent/guardian/next friend should sign the declaration.

2.3 Where the applicant is a minor and the supplier is satisfied that they have capacity to personally instruct them, the minor can sign the declaration in their own right. The supplier should make it clear within their comments on the merits of the case that they have assessed the applicant's competence and are so satisfied. The Agency will then consider the application of Regulation 8(7) of the General Regulations and if approved, the declaration will be accepted without the parent/guardian/next friend countersigning same. Please note that where a next friend is required in proceedings their full details should be entered in the "Associated Party" field in the usual way.

Patients

2.4 Where the applicant is over 18 years old and is a patient (in accordance with Article 2 of the Mental Health (Northern Ireland) Order 1986 then Regulation 8(3)(b)-(d) of the General Regulations set out the circumstances where a supplier can accept applications. All of the circumstances envisage the applications, and by extension the declaration, being provided by a third party i.e. their representative/next friend/a person considered reasonable by the Director.

2.5 While Regulation 8(7) of the General Regulations gives the Director a discretion to waive the requirements (when satisfied it is reasonable in the circumstances to do so) the Agency will expect suppliers to have explored all of the options contained in Regulation 8(3)(b)-(d) before seeking the use of the waiver.

- 2.6 Suppliers should therefore either provide a declaration, duly completed by one of the categories of person in Regulation 8(3)(b)-(d) or provide a full explanation as to why this is not possible along with representations to support a request for a waiver under Regulation 8(7).

All other Applicants who are over 18 (save for those covered by 3 below)

- 2.7 Where the applicant is over 18 years old and has no capacity issues but, for a “good reason” cannot attend upon the supplier in order to make an application then, in accordance with the provisions of Regulation 6 of the General Regulations, their representative should sign the declaration. The supplier should make it clear within their comments on the merits of the case what the “good reason” is for the applicant being unable to attend personally. The Agency will consider these representations and where they are accepted then the declaration, signed by the representative, will be acceptable. Where the reasons are not accepted then the matter will be returned to the supplier under query to seek that a fresh declaration duly signed by the applicant is provided before the matter can progress.

3. Declarations from Prisoners in Emergency Representation Higher Courts Applications

- 3.1 The Agency appreciates that in emergency situations it may not be possible to get a declaration signed by a prisoner in order to make an emergency Representation Higher Courts application on LAMS.
- 3.2 In recognition of this, from 06 November 2023, when an emergency application for Representation Higher Courts is made with no applicant declaration the Agency will adopt the following process:
- (a) The emergency means and merits will be assessed in the usual way.
 - (b) If both are considered to be met an indication will issue to the supplier via query indicating that the Director will commence cover subject to the supplier undertaking to obtain the proper declaration and upload same within 14 days of the date of the query.

- (c) On receipt of the resubmission, confirming that the supplier has given that undertaking, a further query will issue confirming that cover has commenced from the date set out in the second query.
- (d) The matter will remain under query until the declaration is available at which point the supplier should upload it and resubmit.
- (e) The Agency will issue an Emergency Certificate dated as per (b) above.
- (f) If no undertaking is given then then cover will not be deemed to have commenced and if no response is received to the query within 21 days it will be recalled and the request withdrawn as per business as usual practice.

3.3 In order to facilitate the above, colleagues in the Northern Ireland Prison Service have confirmed that they will endeavour to ensure that a legal visit is made available to any practitioner who requires it to have a declaration signed within 14 days.

4. Format of New Declarations

- 4.1 The new [Advice and Assistance declaration](#) can be located on the LSANI website.
- 4.2 The new [Representation Lower Courts declaration](#) can be located on the LSANI website.
- 4.3 The new [Representation Higher Courts declaration](#) can be located on the LSANI website.
- 4.4 The new [Exceptional Funding declaration](#) can be located on the LSANI website.
- 4.5 All '[applicant declarations](#)' can be located within the '[LAMS – Legal aid supporting documents](#)' area of the LSANI website.

5. Notes for Applicant

- 5.1 Suppliers will note that the “Notes for Applicant” which accompany the Representation Lower Courts, Representation Higher Courts and Exceptional Funding Declarations have been substantially updated.

- 5.2 Suppliers are asked to ensure that the “Notes for Applicant” are discussed with the applicant when the declaration is being signed and that a copy is given to them to keep.
- 5.3 Suppliers will note that both the Representation Higher Courts Declaration and “Notes for Applicant” remind the applicant that they are under a duty to notify the Agency, via the supplier, of any change to their financial means during the life of their Certificate. They further reiterate that the Agency will be conducting routine checks on the applicant’s ongoing financial eligibility during the life of the Certificate. Further information in relation to the Agency’s Future Overpayment Prevention methodology can be found in circular [LSA 04/23](#).

6. First Time High Court Bails

- 6.1 The [Supplier Declaration for first time High Court Bails](#) has not changed and remains available on the ‘[Supplier declarations](#)’ page of the LSANI website. An applicant declaration will no longer be required for first time High Court Bails only.

7. Revocation of Circular LSA 07/2020

- 7.1 Circular LSA 07/2020 was implemented during the COVID Pandemic to ensure that applications could continue to be processed during the period when suppliers could not meet with applicants face to face to have declarations signed.
- 7.2 All provisions of circular LSA 07/2020 are hereby revoked and therefore applicant interim declarations and solicitor statements in lieu of declaration will not be accepted in any applications made on or after 06 November 2023.
- 7.3 For Certificates which were granted under circular LSA 07/2020 the supplier will still be required to comply with the conditions therein in relation to the provision of a correctly signed declaration in advance of payment.

8. Implementation Date, Transitional Arrangements and LAMS Changes

- 8.1 All Advice and Assistance and Representation Lower Courts applications where the date of initial advice is on or after 06 November 2023 should have the relevant new declaration fully completed and uploaded as a Supporting Document (with an appropriate label) on LAMS. Old style declarations will continue to be acceptable for all applications where the date of initial advice is before 06 November 2023.
- 8.2 All Representation Higher Courts and Exceptional Funding applications made on or after 06 November 2023 should have either the relevant new declaration fully completed and uploaded as a Supporting Document (with an appropriate label) on LAMS or an old style declaration dated no earlier than 06 August 2023. Any applications which are submitted using the old style declaration with a date earlier than 06 August 2023 or after 06 November 2023 be returned under query to allow a new style declaration to be uploaded.
- 8.3 LAMS auto-generates the appropriate declaration for the case type when the application is completed on the system. The new declarations introduced above will need to be added to LAMS to allow them to be auto-generated and this will take some time. Therefore, **until further notice, the declarations generated on LAMS should be ignored** and the appropriate new style declaration selected from the links at Paragraph 4 above.

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LSANI