

This draft Statutory Instrument supersedes the draft Legal Services Act 2007 (Warrant) Regulations 2010 which were laid before Parliament and published on 10th February 2010. It is being issued free of charge to all known recipients of that draft Statutory Instrument.

Draft Regulations laid before Parliament under section 206(5) of the Legal Services Act 2007 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2015 No.

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Warrant) (Approved Regulator) Regulations 2015

Made - - - - *****

Coming into force in accordance with regulation 1(1)

The Lord Chancellor makes the following Regulations in exercise of the powers conferred by sections 42(6) and (7), 48(6) and (7), and 204(3) of the Legal Services Act 2007⁽¹⁾.

The Lord Chancellor has consulted the Legal Services Board about the making of these Regulations in accordance with sections 42(8)(b) and 48(8)(b) of that Act.

A draft of these Regulations has been approved by a resolution of each House of Parliament in accordance with section 206(5) of that Act.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Legal Services Act 2007 (Warrant) (Approved Regulator) Regulations 2015 and come into force 21 days after the day on which they are made.

(2) In these Regulations—

“the 2007 Act” means the Legal Services Act 2007;

“appointed person” means—

- (a) in relation to an application made under section 42(3) of the 2007 Act, the specified person (within the meaning of section 42 of the 2007 Act) or a person appointed by the specified person to act on its behalf; and
- (b) in relation to an application made under section 48(3) of the 2007 Act, the person appointed by the Board⁽²⁾ to act on its behalf;

(1) 2007 c. 29.

(2) “The Board” is defined in section 2 of the Legal Services Act 2007 (“the 2007 Act”) to mean the Legal Services Board.

“judicial officer” means—

- (c) a judge of the High Court;
- (d) a Circuit judge; or
- (e) a justice of the peace;

“relevant regulator” means—

- (f) in relation to a warrant issued under section 42(3) of the 2007 Act (intervention directions), the approved regulator⁽³⁾ in respect of whose premises that warrant was issued;
- (g) in relation to a warrant issued under section 48(3) of the 2007 Act (cancellation of designation), the former approved regulator which has had its designation cancelled under section 45 of the 2007 Act in respect of whose premises that warrant was issued.

(3) A reference in these regulations to a warrant is a reference to a warrant which has been or may be issued under sections 42(3) or 48(3) of the 2007 Act.

Conditions for issuing a warrant

2. A judicial officer may issue a warrant only if satisfied that—

- (a) the Board has made reasonable attempts to obtain the written or electronic records sought by other means, or that such attempts would be likely to result in the records being removed, hidden, tampered with or destroyed; and
- (b) no judicial officer has refused to issue a warrant based on another application that is in substance the same.

Execution of a warrant

3.—(1) Entry and search under a warrant must be—

- (a) within a period of one month beginning on the date of its issue; and
- (b) at a reasonable hour unless it appears to the appointed person exercising the power conferred by the warrant that the purpose of entry may be frustrated by entry at a reasonable hour.

(2) If there is a person (“P”) present at the premises of the relevant regulator when the appointed person seeks to exercise the power conferred by the warrant, and P is the occupier or appears to be in charge of the premises, the appointed person must—

- (a) show P documentary evidence of identity;
- (b) show the warrant to P; and
- (c) give P a certified copy of the warrant.

(3) If there is no occupier or person present at the premises who appears to be in charge of them, the appointed person must leave a certified copy of the warrant in a prominent place on the premises.

(4) The appointed person who exercises the power conferred by the warrant must make an endorsement on it stating—

- (a) the date on which the power conferred by the warrant was exercised;
- (b) whether any of the records sought were found;
- (c) whether any written or electronic records have been copied; and

(3) “Approved regulator” has the meaning given in section 20(2) of the 2007 Act. By virtue of section 67 of that Act the powers to issue warrants contained in sections 42 and 48 of the 2007 Act cannot be used in relation to the Legal Services Board in its capacity as an approved regulator.

(d) whether possession has been taken of any written or electronic records.

(5) In the case of a warrant that authorises entry to and search of two or more premises of a relevant regulator, the appointed person exercising the power conferred by the warrant—

- (a) must make a separate endorsement in accordance with paragraph (4) for each premises entered and searched; and
- (b) must specify in each endorsement the premises to which the endorsement relates.

Legal privilege

4.—(1) The powers conferred by a warrant must not be exercised to take possession of or copy any written or electronic record subject to legal privilege (within the meaning of section 10 of the Police and Criminal Evidence Act 1984⁽⁴⁾).

(2) If possession is taken in error of any record of the kind referred to in paragraph (1), the record must be returned, and any copies taken must be destroyed, as soon as it is identified that the record is subject to legal privilege.

Notice and return of records taken

5. An appointed person who takes possession of any written or electronic record in the exercise of the power conferred by a warrant must—

- (a) provide a list of what was taken to the relevant regulator within a reasonable time, which must be no longer than a period of 21 days beginning on the date the record was taken; and
- (b) return that record to the relevant regulator—
 - (i) within a period of 3 months beginning on the date on which the appointed person took possession of it;
 - (ii) in the case of a warrant issued under section 42(3) of the 2007 Act, where the relevant regulator requests a record on the grounds that the record is required by that regulator to discharge a regulatory function, within a period of 7 days beginning with receipt of that request; or
 - (iii) when an intervention direction given under section 41 of the 2007 Act is revoked under section 44 of that Act,

whichever is earliest, unless the relevant regulator agrees otherwise in writing.

Copying of records

6.—(1) This regulation applies to any record of which an appointed person has taken possession in the exercise of a power conferred by a warrant.

(2) Where the record taken is electronic, the appointed person may produce records from it in a form that —

- (a) is visible and legible; and
- (b) can be copied,

for the purpose of determining whether the record may be copied in accordance with section 42(4) or 48(4) of the 2007 Act.

(3) As soon as it is identified that a record has been copied in error or otherwise than for the purpose in—

- (a) section 42(4) of the 2007 Act, in the case of a warrant issued under section 42(3); or

(4) 1984 c. 60.

(b) section 48(4) of the 2007 Act, in the case of a warrant issued under section 48(3), any copies taken of that record must be destroyed.

Notice to be given of records copied

7. An appointed person who copies any written or electronic record under section 42(4) or 48(4) of the 2007 Act must, at the request of the relevant regulator, provide a list of what was copied and the date on which it was copied.

Retention of copies

8. A copy of a written or electronic record taken in the exercise of a power conferred by a warrant may not be retained for longer than is necessary in all the circumstances.

Signed by authority of the Lord Chancellor

Date

Name
Parliamentary Under Secretary of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 42 and 48 of the Legal Services Act 2007 (“the 2007 Act”) permit the Legal Services Board (“the Board”), a person nominated by the Board as provided in section 41(2) of that Act, a person appointed to act for the Board or that person’s nominee to apply in certain circumstances for a warrant authorising the applicant to enter and search the premises of an approved regulator and take possession of any written or electronic records found on the premises. Those circumstances are where the Board has given an approved regulator (within the meaning of the 2007 Act) an intervention direction under section 41 of the 2007 Act or where an order of the Lord Chancellor under section 45 of the 2007 Act has cancelled a body’s designation as an approved regulator.

Regulation 2 specifies the matters of which a judicial officer (a judge of the High Court, circuit judge or justice of the peace) must be satisfied before issuing a warrant.

Regulation 3 regulates the exercise of the powers conferred by the warrant.

Regulation 4 prohibits the taking or copying of records subject to legal privilege, and provides that where such records are taken in error, they must be returned and copies must be destroyed.

Regulation 5 regulates the exercise of the powers conferred by the warrant where the person exercising those powers takes possession of documents under it, in particular in relation to the circumstances in which records must be returned.

Regulations 6, 7 and 8 make further provision which applies where documents are copied under section 42(4) or 48(4) of the 2007 Act.

A full impact assessment of the effect of the policy implemented by this instrument on the costs of business and the voluntary sector is available at www.legislation.gov.uk.