

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 former authority 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
 - (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 former authority, 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(a)).

(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.

(a) 1984 c. 60.

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 the warrant must—

- (a) provide a list of what was taken to the former authority 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 former authority within a period of 3 months beginning on the date on which the appointed person took possession of it, unless the former authority 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 the 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 79(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 section 79(4) of the 2007 Act, 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 79(4) of the 2007 Act must, at the request of the former authority, 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)

Section 79 of the Legal Services Act 2007 (“the 2007 Act”) permits a person, appointed by the Legal Services Board (“the Board”) to act on its behalf, to apply in certain circumstances for a warrant authorising that person to enter and search the premises of a former licensing authority and take possession of any written or electronic records found on the premises. Those circumstances are where a body has had its designation as a licensing authority cancelled, either automatically under section 75 of the 2007 Act because its designation as an approved regulator has been cancelled under section 45, or by an order made by the Lord Chancellor under section 76 of the 2007 Act.

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 79(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.

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