Draft Regulations laid before Parliament under section 206(4) and (5) of the Legal Services Act 2007 (c. 29) for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No. [XX]

LEGAL SERVICES, ENGLAND AND WALES

The Legal Services Act 2007 (Warrant) Regulations 2010

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 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 the Legal Services Act 2007.

A draft of these Regulations has been approved by a resolution of each House of Parliament pursuant to section 206(5) of the Legal Services Act 2007.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Legal Services Act 2007 (Warrant) Regulations 2010 and come into force on the day after the day on which they are made.

(2) In these Regulations—

"2007 Act" means the Legal Services Act 2007;

"items subject to legal privilege" has the meaning given in section 10 of the Police and Criminal Evidence Act 1984(**2**);

"judicial officer" means—

(a) a judge of the High Court;

(b) a Circuit judge; or

(c) a justice of the peace;

"officer or agent" means a person appointed by a specified person to act on its behalf as permitted by section 42(3) or 48(3) of the 2007 Act; and

"specified person" has the meaning given in section 42(9) of the 2007 Act.

(**1**) 2007 c. 29.
(**2**) 1984 c. 60.

Application (information needed by a judicial officer)

2.—(1) An application may be made without notice and must be supported by—

(a) in the case of an application made under section 42(3) of the 2007 Act, a copy of the intervention direction given under section 41 of that Act; or

(b) in the case of an application made under section 48(3) of the 2007 Act, a copy of the order made under section 45 of that Act.

(2) The application must set out—

(a) the address of each set of premises to be entered and searched;

(b) so far as practicable, the records sought;

(c) the number of entries sought;

(d) the identity of the applicant (including the name of the officer or agent who may execute the warrant);

(e) which of the conditions set out in regulation 3(1)(a) apply in relation to each set of premises; and

(f) whether the warrant is being sought under section 42(3) or 48(3), as the case may be.

(3) An application for a warrant made under section 42(3) or 48(3) must include a declaration that no judicial officer has refused to issue a warrant based on another application that is in substance the same.

Issue of warrants

3.—(1) A judicial officer may issue a warrant under section 42(3) or 48(3) of the 2007 Act only if satisfied that—

(a) one of the following conditions has been met—

(i) reasonable attempts have been made to obtain the relevant records by other means; or

(ii) if reasonable attempts to obtain the relevant records have not been made, that such attempts would likely result in the relevant records being removed, hidden, tampered with or destroyed;

(b) the officer or agent who may execute the warrant has been authorised in writing by a specified person under regulation 5(1); and

(c) no judicial officer has refused to issue a warrant based on another application that is in substance the same.

(2) A judicial officer may not issue a warrant under section 42(3) or 48(3) of the 2007 Act in relation to records which consist of items subject to legal privilege where the approved regulator is the client with the benefit of the legal privilege.

Form of warrants (necessary for proper execution)

4.—(1) A warrant must state—

(a) the address of each set of premises to be searched;

(b) so far as practicable, the records sought;

(c) how many entries it permits;

(d) the name of each officer or agent who may execute it;

(e) the date on which it was issued; and

(f) that it was issued under section 42(3) or 48(3) of the 2007 Act as the case may be.

(2) The appropriate number of clearly certified copies of the warrant must be made and, for these purposes, the appropriate number of copies is—

(a) in the case of a warrant that specifies only one set of premises, two; and

(b) in the case of a warrant that specifies two or more sets of premises, one more than the number of sets of premises specified.

Execution of the warrant

5.—(1) An officer or agent of a specified person may execute a warrant to enter and search premises only if the specified person—

(a) has considered the officer or agent's training and experience;

(b) is satisfied that the officer or agent is a fit and proper person to exercise such a power; and

(c) has authorised the officer or agent in writing to execute search warrants.

(2) Entry and search under a warrant must be within one month from the date of its issue.

(3) Entry and search under a warrant must be at a reasonable hour unless it appears to the person executing it that the purpose of entry may be frustrated by entry at a reasonable hour.

(4) A warrant authorises a search of premises only to the extent required for the purpose for which the warrant was issued.

(5) If the occupier of the premises is present when the officer or agent of the specified person seeks to execute a warrant to enter and search them, the officer or agent must—

(a) identify himself to the occupier and show the occupier documentary evidence of identity;

(b) show the warrant to the occupier; and

(c) give the occupier a certified copy of the warrant.

(6) If the occupier of the premises to be entered and searched is not present when an officer or agent seeks to execute a warrant, but a person who appears to be in charge of the premises is present, paragraph (5) has effect as if each reference to the occupier were a reference to that other person.

(7) If there is no person present at the premises who appears to be in charge of them, the officer or agent must, before departure, leave a certified copy of the warrant in a prominent place on the premises.

(8) The officer or agent who executes a warrant must make an endorsement on it stating—

(a) whether any of the records sought were found;

(b) whether any written or electronic records have been copied; and

(c) whether possession has been taken of—

(i) any written or electronic records; and

(ii) any items subject to legal privilege (without prejudice to the prohibition in regulation 3(2)).

(9) In the case of a warrant that authorises entry to and search of two or more sets of premises, the officer or agent executing the warrant—

(a) must make a separate endorsement in accordance with paragraph (8) for each set of premises entered and searched; and

(b) must specify in each endorsement the premises to which it relates.