

2000 No. 3279

MAGISTRATES' COURTS

The Approval of Enforcement Agencies Regulations 2000

Made - - - - - *13th December 2000*

Laid before Parliament *14th December 2000*

Coming into force - - *8th January 2001*

The Lord Chancellor, in exercise of the powers conferred upon him by section 31A(2) of the Magistrates' Courts Act 1980(a), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Approval of Enforcement Agencies Regulations 2000 and shall come into force on 8th January 2001.

Interpretation and scope of regulations

2.—(1) These Regulations shall have effect for the purposes of the approval by a magistrates' courts committee ("the committee") of any person or body ("the agency") for the purpose of executing warrants pursuant to section 125B of the Magistrates' Courts Act 1980(b).

- (2) Any reference in these Regulations to the justices' chief executive means—
- (a) the justices' chief executive for the committee, or
 - (b) any member of the staff of the committee whom he may authorise to exercise his functions under these Regulations, when acting within the scope of that authority.

Approval of agency

3. The agency may only be approved if—
- (a) the conditions in regulations 4 and 5 are satisfied; and
 - (b) the procedure in regulations 7 to 10 is followed.

Conditions to be satisfied by agency

4.—(1) The conditions in the following paragraphs of this regulation must be satisfied by the agency.

(2) The agency and the committee must have entered into a contract complying with the requirements of regulation 6.

(3) The committee must be satisfied that the agency has in place procedures for producing annual accounts that will satisfy professional standards of accounting practice and the requirements of—

- (a) the Companies Acts, if the agency is a company; and
- (b) the Taxes Acts, in any event.

(a) 1997 c. 25; section 31A was inserted by section 93(1) of the Access to Justice Act 1999 (c. 22).
(b) 1980 c. 43; section 125B was inserted by section 93(2) of the Access to Justice Act 1999.

(4) The committee must be satisfied that the agency has in place adequate systems for training its staff in the law and practice relating to—

- (a) the enforcement of warrants;
- (b) human rights; and
- (c) health and safety.

(5) The committee must be satisfied that the agency has in place adequate systems for assessing the risks to individuals arising from the enforcement of warrants.

(6) The committee must be satisfied that the agency has an adequate system for dealing with complaints and for co-operating with any complaints procedure maintained by the committee.

(7) The agency must provide security to the committee in respect of any loss arising from the committee's use of the agency's services, in an amount to be determined by the committee but not less than £10,000.

(8) The agency must have professional indemnity insurance in an amount and on terms approved by the committee.

(9) The agency must maintain a separate account for money collected by it on behalf of the committee or of any magistrates' court within the area of the committee; and if it is approved by more than one committee it must maintain records showing what sums in that account are held in connection with the agency's work for each committee.

(10) The committee must be satisfied that the agency has in place adequate systems for ensuring that it can satisfy its liabilities to the committee in the event of a failure of the agency's business.

Conditions to be satisfied by individuals

5.—(1) The conditions in the following paragraphs of this regulation must be satisfied—

- (a) where the agency is an individual, by that individual;
- (b) where the agency is a company, by each director of the company;
- (c) where the agency is a partnership, by each partner; and
- (d) in any case, by each individual whom the agency proposes to authorise to execute warrants.

(2) None of the individuals referred to in paragraph (1) above must have been convicted of any criminal offence punishable by imprisonment or involving dishonesty or violence.

(3) None of those individuals must be under any liability in respect of overdue fines or court judgments.

(4) None of those individuals must be an undischarged bankrupt.

(5) None of those individuals must carry on or be associated with any business consisting of or including buying or trading in debt.

Contracts

6.—(1) This regulation applies to a contract between a committee and an agency under which the agency is to execute warrants issued by magistrates' courts within the area of the committee.

(2) The contract shall—

- (a) contain a service specification, covering the type and volume of work to be done by the agency, the standards of service required and the standards of conduct required of the agency's staff; and
- (b) provide for the committee to monitor the agency's compliance with that specification.

(3) The contract shall specify a fixed term not exceeding three years, but may make provision for the term to be extended for a period during which tenders for a new contract are invited.

(4) The contract shall require the agency to allow regular inspection of client accounts—

- (a) by the committee,
- (b) by individuals authorised by the committee, or
- (c) by or on behalf of the Lord Chancellor.

(5) The contract shall provide for the prompt payment by the agency to the committee of money collected by the agency on behalf of the committee or of any magistrates' court within the area of that committee.

(6) The contract shall specify the circumstances in which the committee would be entitled to call upon the bank bond or other form of security provided by the agency, including provision for the committee to retain the bond or security for up to six months after the expiry or sooner determination of the contract.

(7) The contract shall be expressed to terminate immediately upon the committee revoking the approval of the agency for whatever reason, and make provision for arrangements consequential upon such termination, including but not limited to arrangements for payment of monies to the committee and arrangements concerning unexecuted warrants.

(8) The contract shall require the agency to provide the committee with a list of all other committees by which it has been approved, and to notify the committee of any new approval or revocation of approval by another committee.

(9) The contract shall provide for the remuneration of the agency, and in particular for the level of fees which the agency may charge when executing distress warrants.

(10) The contract shall require the committee and the agency to comply with the provisions concerning the authorisation of individuals to execute warrants set out in regulation 11 below.

(11) The contract shall specify procedures for dealing with complaints and require the committee to publicise those procedures.

(12) The contract shall require the agency to supply every person against whom a warrant is executed with information in writing on the following—

- (a) the purpose of the visit by the individual executing the warrant;
- (b) the powers vested in the agency;
- (c) how the sum (if any) in respect of which the warrant was issued may be paid;
- (d) where advice about the effect of the warrant and related matters may be obtained;
- (e) the charges that may be made in respect of the enforcement of the warrant; and
- (f) the complaints procedures operated by the agency and the committee.

(13) The contract shall require the agency to inform the committee of any change occurring subsequent to the approval of the agency in relation to any of the matters set out in regulations 4, 5 and 8.

(14) The contract shall permit the committee temporarily to withdraw the agency's authority to execute warrants, or to place restrictions on that authority, pending notice of a proposal to revoke their approval under regulation 12(4) below.

Invitation to tender

7.—(1) A committee may only grant approval to an agency following an invitation to tender in accordance with this regulation.

(2) Each committee, in inviting and considering applications from agencies, shall follow the tendering guidelines in its Financial Regulations.

(3) The committee shall issue a written invitation to tender, setting out—

- (a) the procedure which applicants are to follow, for example an application form to be submitted on or before a date specified by the committee, and
- (b) the terms of the proposed contract so far as they relate to the matters set out in regulation 6, including the service standards which would apply;

except that the committee may invite applicants to propose their own terms for the remuneration of the agency and accordingly exclude such terms from the terms of contract set out in the invitation.

Application procedure

8.—(1) Every application for approval following an invitation to tender in accordance with regulation 7 shall be in writing, and shall contain the terms relating to remuneration proposed by the applicant, so far as not set out in the invitation to tender.

- (2) An application shall contain the following information in relation to each of the individuals specified in regulation 5(1)—
- (a) the individual's name and address;
 - (b) whether that individual has been convicted of any criminal offence;
 - (c) whether there are any unsatisfied judgments against that individual;
 - (d) whether that individual is or has ever been subject to any of the following proceedings, and if so with what result—
 - (i) bankruptcy proceedings;
 - (ii) an administration order under section 112 of the County Courts Act 1984(a);
 - (iii) a deed of arrangement under the Deeds of Arrangement Act 1914(b) or a voluntary arrangement under Part VIII of the Insolvency Act 1986(c);
 - (iv) proceedings under the Company Directors Disqualification Act 1986(d);
 - (v) insolvency proceedings in relation to any partnership in which he was a partner, or any company of which he was a director; or
 - (vi) any other proceedings under the Insolvency Act 1986;
 - (e) whether that individual holds or has held a certificate under the Distress for Rent Rules 1988(e), together with the date of any such certificate;
 - (f) whether there has been a complaint as to that individual's fitness to hold a certificate under those Rules, and if so whether the complaint was upheld and whether the certificate was cancelled; and
 - (g) such other details as the committee may require.
- (3) Where the applicant is a partnership, the application shall contain—
- (a) the firm name and any other name under which it trades;
 - (b) the address of the partnership's principal office, or if there is none an address for correspondence;
 - (c) details of the partnership's history, the location or locations from which it trades and any experience relevant to the application; and
 - (d) details of the number of administrative staff to be involved in work for the courts.
- (4) Where the applicant is a company, the application shall contain—
- (a) the name of the company;
 - (b) any other name under which it trades;
 - (c) the company's registered number;
 - (d) the address of the registered office;
 - (e) details of the company's history, the location or locations from which it trades and any experience relevant to the application; and
 - (f) details of the number of administrative staff to be involved in work for the courts.
- (5) The application shall be accompanied by personal references as to the good character and suitability for the work of each individual whom the agency proposes to authorise to execute warrants.
- (6) Where the applicant has an existing business, the application shall be accompanied by audited or certified accounts of the applicant and of any company associated with the applicant for the preceding three years (or for the period of trading if this is shorter).
- (7) Each applicant shall provide details of any past judgments, orders or adverse determinations by any court, tribunal, complaints panel or professional or trade body against the applicant or any individuals employed by the applicant relating to unprofessional conduct or to failure to meet social security, tax or employment liabilities.
- (8) Each applicant shall provide the names and addresses of his bankers and accountants, together with authorisation for the committee to seek references from each of these in confidence.

(a) 1984 c. 28, as amended by section 13 of the Courts and Legal Services Act 1990 (c. 41).
 (b) 1914 c. 47, as amended by the Insolvency Act 1986 (c. 45).
 (c) 1986 c. 45.
 (d) 1986 c. 46.
 (e) S.I. 1988/2050, as amended by S.I. 1999/2360.

(9) Where the applicant has an existing business, he shall provide a list of such number of existing clients (not exceeding three) as may be specified by the committee, together with authorisation for the committee to seek references from those clients in confidence.

(10) Each applicant shall place an advertisement in such number of local or regional newspapers (not exceeding three) as may be specified by the committee, giving notice of his application to execute warrants on behalf of the committee.

Consideration of applications

9.—(1) The justices' chief executive shall make an initial assessment of all applications received in response to the invitation, and provide applicants with an opportunity to supply any missing information and correct any other procedural defects in their applications.

(2) The committee shall consider all properly completed applications received on or before the date specified in the invitation to tender, or within any extension of time which the committee may have allowed.

(3) The committee shall cause a notice to be displayed in the public area of each court building for which it is responsible, stating the fact that applications have been made and the name and trading address of each applicant.

(4) The committee shall draw up a short list of those applicants to whom it is considering granting approval, and shall direct the justices' chief executive to make further enquiries about the applicants on the short list including, but not limited to—

- (a) references to be taken up, and
- (b) visits to be made to the applicants' offices.

(5) The justices' chief executive shall prepare a written report to the committee setting out the results of those enquiries.

(6) The committee shall decide which if any of the applications received in response to the invitation to accept.

(7) Before accepting an application the committee may require the applicant to provide such evidence as it sees fit of any statement made for the purposes of the application, and shall in particular require evidence of the matters set out in regulations 5(2) and 8(2)(b).

Procedure following acceptance of application

10.—(1) Following the decision of the committee to grant approval to a successful applicant—

- (a) a contract complying with regulation 6 shall be signed;
- (b) the committee shall issue a certificate of approval to the successful applicant, to be signed by the justices' chief executive;
- (c) a copy of that form shall be displayed in the public area of the principal office of the agency.

(2) Every certificate of approval issued under paragraph (1)(b) above shall be issued subject to the condition that, should approval be revoked, the agency shall—

- (a) immediately return the certificate to the committee, and
- (b) satisfy the committee that all copies of that certificate have been destroyed or defaced in such a way as to show that the certificate is no longer in force.

Authorisation of individuals to execute warrants

11.—(1) The provisions concerning the authorisation of individuals to execute warrants referred to in regulation 6(10) above are those contained in the following paragraphs of this regulation.

(2) None of the individuals listed in regulation 5(1) above shall be permitted by the agency to execute a warrant unless the committee has issued a certificate of authorisation in relation to that individual in accordance with paragraph (3) or (4) of this regulation.

(3) In notifying the grant of approval to a successful applicant, the committee shall either—

- (a) confirm that all the individuals concerning whom information was given under regulation 8(2) may be authorised by the agency to execute warrants; or

- (b) impose conditions on the agency stating which of those individuals may be authorised to execute warrants;

and in either case the committee shall issue each individual to be authorised to execute warrants with a certificate of authorisation signed by the justices' chief executive.

(4) Where, subsequent to the grant of approval, the agency proposes to authorise an individual to execute warrants—

- (a) the agency shall apply to the committee for authorisation in relation to that individual, supplying all relevant details including references and the matters set out in regulations 5 and 8(2);
- (b) the committee shall consider that application;
- (c) if the committee decides to grant that application, it shall issue a certificate of authorisation signed by the justices' chief executive.

(5) The committee may at any time withdraw the authorisation granted under this regulation in relation to any individual.

(6) The agency shall issue each individual authorised to execute warrants with an identity card, displaying—

- (a) a photograph of that individual, and
- (b) a photographic reproduction of the certificate of authorisation.

(7) The contract shall provide that each individual authorised to execute warrants shall—

- (a) carry at all times and produce on demand the identity card issued in accordance with paragraph (6) above; and
- (b) whether demanded or not, show that card to every person against whom he is executing a warrant.

(8) Every certificate of authorisation under this regulation shall be issued subject to the condition that, should the committee withdraw their authorisation of the individual in question or revoke their approval of the agency—

- (a) the certificate, together with the identity card issued under paragraph (6) above, shall immediately be returned to the committee for destruction;
- (b) the agency shall satisfy the committee that any copy of such a certificate or identity card in its possession has been destroyed or defaced in such a way as to show that the certificate is no longer in force.

(9) The committee may arrange for the justices' chief executive to carry out such of their functions under this regulation in relation to the authorisation of individuals as they see fit, and any reference to the committee in the preceding paragraphs of this regulation shall where appropriate be construed as including a reference to the justices' chief executive.

Revocation of approval

12.—(1) The committee may revoke their approval of an agency at any time if they consider that it would be in the public interest to do so.

(2) In particular, the committee shall revoke their approval if the contract between the committee and the agency has expired, or terminated in accordance with the provisions thereof, or ceased to be binding for whatever reason.

(3) Without prejudice to the generality of paragraph (1) above, the committee may revoke their approval if—

- (a) any of the information provided with the application is found to be untrue;
- (b) any of the conditions in regulation 4 or 5 has ceased to obtain;
- (c) the agency has permitted an individual to execute a warrant without formal authorisation in accordance with regulation 11;
- (d) the agency or an individual authorised by it to execute warrants has behaved in a manner which the committee consider to be unprofessional or unacceptable; or
- (e) in the opinion of the committee, the agency is in serious breach of its contract with the committee.

(4) Where the committee propose to revoke their approval other than in the circumstances in paragraph (2) above, they shall, unless they consider the matter to be urgent, give prior notice to the agency so as to give the agency the opportunity—

- (a) to make representations about the committee's reasons for revoking their approval; and
- (b) to remedy the circumstances giving rise to the committee's proposal to revoke their approval.

(5) When the committee revoke their approval of an agency, they shall—

- (a) notify the agency of their decision in writing, stating the reasons for their decision;
- (b) place an advertisement in at least two newspapers circulating in the area of the committee stating the fact that the approval has been revoked; and
- (c) notify any other committee which, to the knowledge of the committee revoking approval, has approved the agency.

Signed by authority of the Lord Chancellor

13th December 2000

Jane Kennedy
Parliamentary Secretary,
Lord Chancellor's Department

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 125B of the Magistrates' Courts Act 1980, as inserted by the Access to Justice Act 1999, provides for the enforcement of certain warrants by enforcement agencies to be approved by a magistrates' courts committee, and section 31A of the Justices of the Peace Act 1997, also inserted by the Access to Justice Act 1999, provides for the approval of such agencies for this purpose. These Regulations set out the conditions that must be satisfied for an agency to be approved, and the procedure to be followed.

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