

**2006 No. 3322**

**CONSUMER PROTECTION, ENGLAND AND WALES**

**The Compensation (Claims Management Services)  
Regulations 2006**

*Made - - - - 12th December 2006*

*Coming into force in accordance with regulation 2*

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These Regulations are made in exercise of the powers conferred by sections 8(8), 9 and 15 of the Compensation Act 2006(a) and the Schedule to that Act.

A draft of this instrument has been laid before Parliament in accordance with section 15(10) of that Act and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State makes the following Regulations:

**PART 1**  
PRELIMINARY

**Citation**

1. These Regulations may be cited as the Compensation (Claims Management Services) Regulations 2006.

**Commencement**

2. These Regulations come into force on the day after the day on which they are made.

**Definitions**

3. In these Regulations—

“code of practice” means a code of practice issued by the Regulator under Part 6;

“rules” means rules prescribed by the Regulator under Part 6;

“the Act” means the Compensation Act 2006.

**Documents in electronic form**

4.—(1) A reference in these Regulations to a document includes a document or record of information in electronic form.

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(a) 2006 c. 29.

(2) If a person is required under these Regulations to produce to the Regulator a document that is in electronic form, the Regulator may require the person to produce a hard copy of the document.

#### **Use of electronic communication**

5.—(1) If, under a provision of these Regulations, a notice is required to be served or information given in writing, then, unless the provision expressly states otherwise, the notice may be served or information given by means of—

- (a) fax transmission; or
- (b) an electronic communication.

(2) If a notice is served, or information is given, by means of fax transmission or an electronic communication, unless the contrary is proved the notice is taken to have been served or the information given on the business day following the day on which the fax or electronic communication was sent.

(3) In paragraph (2), “business day” means a day that is not a Saturday, Sunday or bank or other public holiday.

## **PART 2**

### **WAIVER OF REQUIREMENT FOR AUTHORISATION**

#### **Circumstances in which Regulator may waive requirement for authorisation**

6.—(1) The Regulator may waive the requirement for authorisation in relation to a person if—

- (a) the Secretary of State intends to exempt the person under section 6 of the Act;
- (b) the Regulator is satisfied that—
  - (i) requiring the person to become authorised would be unduly burdensome to the person, or would not achieve the objects of the Act; and
  - (ii) the waiver would not result in undue risk to persons whose interests the Act is intended to protect.

(2) The Regulator must give the person a written notice of the waiver.

#### **Conditions on waiver**

7.—(1) The Regulator may impose a condition on a waiver under regulation 6 and, if he does so, must include a statement of the condition in the notice of the waiver.

(2) In particular, and without limiting the effect of paragraph (1), such a condition may be to the effect that—

- (a) the person who has the benefit of the waiver tells clients or potential clients in writing that the person is providing a regulated claims management service within the meaning of section 4(2)(e) of the Act;
- (b) the person tells clients or potential clients in writing that the person is providing that service subject to the waiver, pending an exemption by order under section 6 of the Act;
- (c) the person meets standards of service recommended by the Secretary of State.

(3) If the Regulator imposes on a waiver a condition of the kind referred to in paragraph (2)(c), the Regulator must set out the standard in the notice of the waiver.

(4) The waiver has effect for 6 months from the date of the notice, and cannot be renewed.

(5) However, if an order under section 6(2) of the Act exempting the person comes into effect before the waiver would cease to have effect under paragraph (4), the waiver ceases to have effect immediately before the order comes into effect.

## PART 3

### GRANT OF AUTHORISATIONS

#### **Application for authorisations**

**8.**—(1) A person must apply for authorisation in writing in the form approved by the Regulator for the purpose.

(2) The person must supply the information and documents required by the form in accordance with any directions on it.

(3) If the Regulator approves the use of an interactive system on line for the purposes of application, paragraph (2) requires an applicant to complete and submit an application, and provide documents, in accordance with the directions given by the interactive system.

(4) If the Regulator requires—

- (a) more information than that given in the application; or
- (b) another document;

to consider an application, the Regulator may ask for the information or document by written notice to the applicant.

(5) If the Regulator makes a request under paragraph (4), the period between when the Regulator makes the request and when the applicant provides the information or document requested does not count for the purposes of regulation 11.

(6) If the Regulator has authorised another person to carry out tasks of collecting information or otherwise processing applications, that other person may make a request under paragraph (4), and a request so made has the same effect as a request by the Regulator.

#### **Payment of application fee**

**9.**—(1) An application is not taken to have been made until the applicant has paid the application fee.

(2) If the Regulator has authorised another person to receive applications on his behalf, the application fee may be paid to that other person.

#### **Decisions about authorisations**

**10.**—(1) The Regulator must not grant an application for authorisation unless he is satisfied that the applicant is competent and suitable to provide the regulated claims management service to which the application relates.

(2) For the purposes of making a decision regarding the suitability of an applicant, the criteria are the following—

- (a) that the applicant does not have a history of committing relevant criminal offences (in particular, perjury or an offence involving fraud, theft or false accounting, or in relation to financial services, consumer credit or consumer protection) or breaches of any law or rule of practice regulating the provision of financial, legal or other relevant services;
- (b) there are no relevant proceedings (whether completed or not) in any court or tribunal, and in particular any proceedings in relation to financial services, consumer credit or consumer protection, against the applicant;
- (c) if the applicant holds or proposes to hold clients' money, the applicant has appropriate arrangements or proposed arrangements for holding such money; and
- (d) that the applicant has no arrangements with another person that might expose it to any conflict of interest.

(3) For the purposes of making a decision regarding the suitability of an applicant, the Regulator may have regard to—

- (a) the applicant's financial circumstances;
  - (b) the applicant's management arrangements, including—
    - (i) how financial and other control is exercised or is to be exercised;
    - (ii) who is responsible for the applicant's financial and other management;
    - (iii) measures to maintain its solvency;
    - (iv) the provision of verified, certified or audited accounts;
    - (v) any previous relationship with a company that has become insolvent, or against which an insolvency petition has been brought;
  - (c) the applicant's actual or proposed connections or arrangements with other persons, (including, in the case of an applicant that is a body corporate, its relationship with any parent or subsidiary company) and the applicant's arrangements to avoid conflicts of interest;
  - (d) the applicant's policies and arrangements or proposed arrangements for training, and monitoring the competence of, its staff, and for recruiting staff;
  - (e) the applicant's practice or proposed practice in relation to providing information to clients about fees;
  - (f) the applicant's arrangements or proposed arrangements for professional indemnity insurance.
- (4) In the case of an applicant other than an individual, it is a criterion for the grant of an application for authorisation that—
- (a) in the case of an applicant that is a body corporate, each of the applicant's directors;
  - (b) in the case of an applicant that is a partnership or other body of persons, each of its members; and
  - (c) each other person who appears to the Regulator to be able to exert significant influence on the applicant's policy or management;

is suitable to be associated with the provision of regulated claims management services of the kind to which the application relates.

(5) For the purpose of making a decision regarding the suitability of an individual to be associated with the provision of regulated claims management services, being an individual who is a director or partner of an applicant, or is otherwise able to exert significant influence on the applicant's policy or management, the Regulator may have regard to—

- (a) the individual's criminal record (if any), and in particular any conviction for perjury, or an offence involving fraud, theft or false accounting, or in relation to financial services, consumer credit or consumer protection;
- (b) whether the individual has ever been disqualified as a company director;
- (c) any relevant proceedings (whether completed or not) of a body exercising functions in relation to a trade or profession, and in particular any proceedings that may result in the withdrawal or revocation of the right to practise a profession, engage in a business or provide a service;
- (d) any withdrawal or revocation of his right to practise a profession, engage in a business or provide a service;
- (e) his financial circumstances;
- (f) his qualifications and experience.

### **Time for deciding applications**

11. The Regulator must decide to grant or refuse an authorisation within three months after the application for it is made.

## **Conditions of authorisation**

- 12.—(1) The Regulator may grant an authorisation subject to a condition or conditions.
- (2) In particular, and without limiting the effect of paragraph (1), a condition may be—
- (a) if the authorised person was granted authorisation despite not satisfying a requirement for authorisation, that the person satisfies the requirement within a specified period;
  - (b) a condition as to the way in which the person provides the service;
  - (c) that the person provides only a specified service or services; or
  - (d) that the person provides a service only in specified circumstances.
- (3) The Regulator may revoke the imposition of a condition on an authorisation if he is satisfied that it is no longer necessary for the authorisation to be subject to the condition.
- (4) If the Regulator revokes the imposition of a condition, the Regulator must give the authorised person a new instrument of authorisation under regulation 13 that does not show the condition.
- (5) In addition to any condition imposed by the Regulator, the following are conditions of an authorised person's authorisation—
- (a) that the person complies with the rules;
  - (b) that the person complies with any applicable code of practice;
  - (c) that if the person accepts referrals of potential clients from another person (not being a person required to be an authorised person), the person takes reasonable steps to ensure that the other person obtains the business in a way consistent with the rules;
  - (d) that the person complies with any direction of the Regulator under Part 5 (which deals with indemnity insurance);
  - (e) that the person permits inspection by the Regulator under Part 8 (which is about routine audit);
  - (f) that in each year, if the Regulator so requires by notice in writing, the person certifies in writing to the Regulator that during the past year the person has complied with the conditions mentioned in sub-paragraphs (a), (b) and (c) and any other condition of the authorisation specified in the notice;
  - (g) that in each year, within 1 month after the Regulator issues an invoice to the person for the annual fee, the person pays the Regulator the amount of that fee in accordance with the invoice;
  - (h) that the person complies with any direction under regulation 27 or 28(2);
  - (i) that the person implements, promptly and in full, any direction under regulation 29(1) or 29(3).

## **Grant and refusal of authorisations**

- 13.—(1) If the Regulator has approved the grant of an authorisation to a person, and the person pays the fee for the first year of the authorisation's currency, the Regulator must grant the authorisation by giving the person a written instrument of authorisation.
- (2) The instrument of authorisation must specify a day as its date of effect.
- (3) An authorisation—
- (a) has effect from the date of effect specified in the instrument of the authorisation; and
  - (b) continues in effect until revoked or surrendered.
- (4) If the Regulator grants an authorisation subject to a condition, the Regulator must set the condition out in the instrument of authorisation.
- (5) If the Regulator refuses to grant an authorisation to a person, or grants an authorisation subject to a condition not sought by the person, the Regulator must give written notice to the person, setting out in the notice—

- (a) the decision and the reasons for it;
- (b) a brief statement of the evidence on which the Regulator relied; and
- (c) a statement of the person's right to appeal to the Tribunal, including the Tribunal's address to which an appeal notice may be sent and the time limit for such an appeal.

### **Surrender of authorisations**

**14.**—(1) An authorised person may surrender his authorisation by giving notice in writing to the Regulator.

(2) Such a notice has effect—

- (a) if it specifies a day as the day on which it is to have effect, and that day is, or is after, the day on which the Regulator receives it, on the specified day; or
- (b) in any other case, on the day on which the Regulator receives it.

## **PART 4**

### **FEEES**

### **Determination of fees**

**15.**—(1) The Regulator must, by written instrument, determine—

- (a) fees, or a scale of fees, for the making of applications under Part 3; and
- (b) annual fees, or a scale of annual fees, for authorisations.

(2) A determination under paragraph (1)(b) may provide for the fee to be calculated by reference to the annual turnover or expected annual turnover of the business of the applicant or authorised person concerned.

(3) A determination under paragraph (1)—

- (a) may make provision that applies generally, or only in specified cases or circumstances;
- (b) may make different provision for different cases or circumstances;
- (c) may include transitional, incidental or consequential provisions; and
- (d) may provide for a fee of zero amount in specified circumstances.

(4) Before making such a determination, the Regulator must consult such persons as appear to him to represent the views of persons engaged in the provision of regulated claims management services, and such other organisations, as he considers appropriate.

(5) A determination under paragraph (1) (except a determination by the Secretary of State while exercising functions of the Regulator) has no effect unless a draft of it has been approved in writing by the Secretary of State.

### **Amendment etc of fees determination**

**16.**—(1) The Regulator may, by written instrument, revoke or amend any determination in force from time to time under regulation 15, but such a revocation or amendment (except a revocation or amendment by the Secretary of State while exercising the functions of the Regulator) has no effect unless a draft of it has been approved by the Secretary of State.

(2) A revocation or amendment may include transitional, incidental or consequential provisions.

### **Invoicing for fees**

**17.** Invoices for fees may be sent electronically, and regulation 5 applies to an invoice so sent.

### **Payment of fees by cheque**

18. If a cheque is accepted in payment of a fee, the fee is taken not to have been paid until the cheque is honoured in full.

### **Refund etc of fees**

19.—(1) The Regulator may refund all or part of a fee to an applicant or authorised person if he is satisfied that—

- (a) where the fee was calculated by reference to the applicant's or authorised person's expected turnover from claims management activities during a period, the actual turnover for the period was substantially less than the expected turnover; or
- (b) the applicant or authorised person has been otherwise overcharged.

(2) If an authorised person surrenders his authorisation, the Regulator may refund so much of the fee for that year as represents the difference between the amount paid and the amount that the Regulator is satisfied was properly due for the part of the year until the surrender.

### **Cancellation for non-payment of fee**

20. The Regulator may cancel an authorised person's authorisation if the Regulator sends an invoice for a fee to the person and the person does not pay the fee within one month after the date of the invoice.

## **PART 5**

### **INDEMNITY INSURANCE**

#### **Directions about indemnity insurance**

21. The Regulator may, by written notice, require an authorised person to take out a policy of professional indemnity insurance in accordance with specified conditions in respect of the person's activities in providing regulated claims management services.

## **PART 6**

### **RULES AND CODES OF PRACTICE**

#### **Rules**

22.—(1) The Regulator must prescribe, in writing, rules for the professional conduct of authorised persons.

(2) Before prescribing such rules, the Regulator must consult such persons as appear to him to represent the views of persons engaged in the provision of regulated claims management services, and such other organisations, as he considers appropriate.

(3) The rules—

- (a) may make provision that applies generally, or only in specified cases or circumstances;
- (b) may make different provision for different cases or circumstances; and
- (c) may include transitional, incidental or consequential provisions.

(4) The Regulator must not prescribe such rules unless the Secretary of State has approved a draft of the rules.

(5) Paragraph (4) has no effect while the Secretary of State is exercising the functions of the Regulator.

(6) The Regulator must publish the approved rules—

- (a) on his website; and
- (b) in printed form.

(7) Rules prescribed under paragraph (1) have effect only from the date on which they are published in accordance with sub-paragraph (6)(a).

### **Matters that the rules may cover**

23. In particular, the rules may make provision regarding—

- (a) the giving of notice to clients by an authorised person whose authorisation has been suspended or cancelled, or varied in such a way that the authorised person can no longer provide a regulated claims management service to one or more clients;
- (b) the accounting practices to be adopted by authorised persons who hold clients' money; and
- (c) the establishment and operation by authorised persons of schemes for the reception, investigation and rectification of complaints about their professional services.

### **Codes of practice**

24.—(1) The Regulator may issue, by written instrument, a code of practice for the professional conduct of authorised persons or a specified class or group of authorised persons.

(2) A code of practice—

- (a) may make provision that applies generally, or only in specified cases or circumstances;
- (b) may make different provision for different cases or circumstances; and
- (c) may include transitional, incidental or consequential provisions.

(3) Before issuing such a code, the Regulator must consult such persons as appear to him to represent the views of persons engaged in the provision of regulated claims management services, and such other organisations, as he considers appropriate.

(4) The Regulator must not issue a code of practice unless the Secretary of State has approved a draft of the code.

(5) Paragraph (4) has no effect while the Secretary of State is exercising the functions of the Regulator.

(6) The Regulator must publish an approved code of practice—

- (a) on his website; and
- (b) in printed form.

(7) A code of practice issued under paragraph (1) has effect only from the date on which it is published in accordance with sub-paragraph (6)(a).

### **Amendment etc of rules or code of practice**

25.—(1) The Regulator may amend or revoke rules or a code of practice.

(2) The procedure for amending or revoking rules or a code of practice is the same as the procedure for prescribing rules or issuing such a code(a).

(3) Such an amendment or revocation may include transitional, incidental or consequential provisions.

(4) An amendment or revocation of rules or a code of practice has effect only from the date on which the text of the amendment or revocation is published.

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(a) The procedure is set out in regulations 22 and 24 respectively.

(5) If the Regulator amends rules or a code of practice, the Regulator must, as soon as reasonably practicable, publish, in the ways set out in regulation 22(6) or 24(6), as the case requires, the text of the rules or code as amended.

### **Charge for supply of copies**

26. The Regulator may make a reasonable charge for supplying a printed copy of rules or a code of practice, or an instrument amending or revoking rules or a code of practice.

### **Redress**

27.—(1) The Regulator may direct an authorised person who has failed to comply with the rules or a code of practice to make redress, in a specified way or form, to a person aggrieved by that failure.

(2) The forms of redress may include, but are not limited to—

- (a) an apology;
- (b) the re-doing, without charge to the aggrieved person, of work improperly done; or
- (c) in a case in which the failure consists of the charging of an unjustifiable fee, the refund of all or part of the fee.

(3) For the purposes of paragraph (2)(c), a fee is unjustifiable if it should not have been charged.

(4) Before giving such a direction, the Regulator—

- (a) must notify the authorised person of the proposed direction, and the reasons for giving it;
- (b) must give the authorised person a reasonable opportunity to make submissions in relation to the proposed direction; and
- (c) must take any such submission into account in deciding whether to give the direction.

## **PART 7**

### **COMPLAINTS**

#### **Review by the Regulator of complaint handling**

28.—(1) If—

- (a) a client of an authorised person is dissatisfied with the handling by the authorised person of a complaint by the client; or
- (b) an authorised person and a client cannot agree on how to resolve a complaint by the client that the authorised person has failed to comply with the rules or a code of practice;

either the client or the authorised person may ask the Regulator to review the authorised person's handling of the complaint.

(2) For the purpose of such a review, the Regulator may direct the authorised person in writing to give the Regulator information or documents (being information or documents concerning either the handling of the complaint, or the conduct of the matter out of which the complaint arose) to the Regulator, and the authorised person must give the information or documents to the Regulator without delay.

#### **Directions of the Regulator about complaints handling and related matters**

29.—(1) This regulation has effect in relation to a case where the Regulator is satisfied that—

- (a) a complaint against an authorised person is well-founded; or
- (b) the authorised person should alter its claims management procedures.

(2) The Regulator may give the authorised person a direction about the further handling of the complaint.

(3) The Regulator may also give the authorised person a direction about the future handling of complaints, or about any other aspect of the authorised person's business that relates to the provision of claims management services.

(4) Before giving a direction under paragraph (2) or (3), the Regulator—

- (a) must notify the authorised person of any direction that the Regulator proposes to give, and the reasons for giving it;
- (b) must give the authorised person a reasonable opportunity to make submissions in relation to the proposed direction; and
- (c) must take any such submission into account in deciding whether to give the direction.

## PART 8

### ROUTINE AUDIT

#### **Routine inspection of records**

**30.**—(1) The Regulator may, at a reasonable time and on reasonable notice, inspect the records of an authorised person for the purposes of assessing the authorised person's compliance with the conditions of authorisation.

(2) Nothing in this regulation requires an authorised person to produce, or authorises the Regulator to require an authorised person to produce, any document or thing that is an item subject to legal privilege (as defined in section 10 of the Police and Criminal Evidence Act 1984(a)).

## PART 9

### INVESTIGATION

#### CHAPTER 1

#### PRELIMINARY

#### **Definitions for this Part**

**31.** In this Part—

“judicial officer” means—

- (a) a Judge of the High Court;
- (b) a Circuit judge; or
- (c) a justice of the peace(b);

“premises” has the meaning given by section 23 of the Police and Criminal Evidence Act 1984;

“the Tribunal” means the Claims Management Services Tribunal established by section 12 of the Act.

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(a) 1984 c. 60.

(b) A District Judge (Magistrates' Courts) is by virtue of his or her office a justice of the peace—see s 25 of the Courts Act 2003 (2003 c. 39).

## CHAPTER 2

### INVESTIGATION—OFFENCES BY UNAUTHORISED PERSONS

#### **Investigation of offences against section 4(1) of Act: requirement to provide information**

**32.**—(1) Before requiring a person to provide information or documents for the purpose of investigating whether a person has contravened section 4(1) of the Act, the Regulator must consider whether investigation is justified.

(2) If an allegation of such a contravention has been made, the Regulator must consider whether the allegation—

- (a) is on its face credible; and
- (b) taken with any information offered by the complainant in support of it, is sufficiently detailed and specific for an investigation to be practicable.

(3) In all cases the Regulator must take into account—

- (a) if the person alleged or suspected to have contravened section 4(1) has applied for an authorisation under section 5(1)(a), or has sought exemption under section 6, of the Act, the application or request, its result and anything else in the Regulator's records about it; and
- (b) anything else in the Regulator's records that is relevant (for example, anything that tends to establish a pattern of allegations against, or apparent contraventions by, the person).

(4) For the purposes of paragraph (3)(a), the Regulator may consider material in, or the result of, an application or a request for exemption even if the application was for authorisation to provide, or the exemption was sought in relation to, another kind of regulated claims management service than that in relation to which the contravention is alleged or suspected to have occurred.

#### **Requirements for information under section 8(4) of Act**

**33.**—(1) The Regulator may require a person to give the Regulator information or documents for the purpose of investigating an alleged or suspected contravention of section 4(1) of the Act, if the person—

- (a) is the person alleged to have, or suspected of having, contravened the subsection; or
- (b) is otherwise likely to be able to provide information relevant to the investigation of the alleged or suspected contravention.

(2) Such a requirement must be by notice in writing.

(3) Such a notice—

- (a) must specify or describe the information or documents that are to be given to the Regulator;
- (b) must specify the place at which, and the period within which, the information or documents are to be given to the Regulator; and
- (c) may specify the form in which the information or a document is to be given.

(4) If such a notice specifies that information or a document is to be given in a particular form, the notice has not been complied with until the information or document is given in that form.

(5) The period specified must be a period that is, in all the circumstances, reasonable.

(6) The Regulator may allow more time for the giving of the information or documents if—

- (a) the person required to give the information or documents so requests in writing; and
- (b) the Regulator is satisfied that, because of exceptional circumstances, it is reasonable to allow the extra time.

(7) Nothing in this regulation authorises a search of any premises.

### **Search warrants under section 8 of the Act**

**34.—**(1) For the purposes of section 8(8) of the Act, the matters of which a judicial officer must be satisfied when considering an application under section 8(5) are that—

- (a) there is reason to believe that information or documents relevant, and of substantial value, to the investigation of an alleged or suspected contravention of subsection 4(1) of the Act are likely to be found at the premises concerned; and
- (b) paragraph (2), (3) or (5) applies in the particular case.

(2) This paragraph applies if there is reason to believe that if the Regulator were to require, under regulation 33, to be given the information or documents, the information or documents would be removed, tampered with or destroyed.

(3) This paragraph applies if the person has been required to give information or documents to the Regulator under regulation 33, and has not done so within the period permitted by the requirement.

(4) An application for a search warrant in relation to which paragraph (3) applies must set out the steps taken to require the person to provide information or documents under regulation 33, and the person's response, if any.

(5) This paragraph applies if there is reason to believe, on the basis of information or documents provided to the Regulator in answer to a requirement under regulation 33, that—

- (a) further investigation is justified of the alleged or suspected contravention in relation to which the requirement was made;
- (b) there are further documents relevant to the investigation; and
- (c) if the Regulator were to require, under regulation 33, to be given the further documents, they would be removed, tampered with or destroyed.

## **CHAPTER 3**

### **INVESTIGATION—FAILURES BY AUTHORISED PERSONS TO COMPLY WITH CONDITIONS OF AUTHORISATION**

#### **Regulator to investigate complaints or suspicions of unprofessional conduct**

**35.—**(1) If a person complains to the Regulator about the professional conduct of an authorised person, the Regulator may investigate the complaint.

(2) The Regulator may also investigate the professional conduct of an authorised person if the Regulator is satisfied, otherwise than as a result of a complaint, that—

- (a) there are reasonable grounds to suspect that the authorised person has failed to comply with a condition of authorisation; and
- (b) the alleged or suspected breach is serious enough to justify investigation.

(3) In making the decision whether or not to investigate, the Regulator must take into account—

- (a) the source of any allegation made against the authorised person, and whether the allegation is credible;
- (b) if the grounds for the suspicion are not an allegation or allegations against the person, what those grounds are and the credibility of their source;
- (c) whether the person also engages in another business activity and, if so, what that activity is and its relationship to the business of the provision of claims management services;
- (d) whether there have been other credible allegations against, or suspicions about, the person of failure to comply with a condition of authorisation;
- (e) anything in the Regulator's records about the person that is relevant to the person's conduct as an authorised person, including, in particular—
  - (i) the person's application to become an authorised person;

- (ii) any statements by the person under regulation 12(5)(f) to the effect that he has complied with conditions of the authorisation;
- (iii) any audit and inspection reports held by the Regulator; and
- (iv) any previous allegations against, or suspicions about, the person that the Regulator reasonably considers to have been well founded, even if no action was taken against the person;
- (f) any report in the media;
- (g) any advertising by the person;
- (h) any other publicly available information about the person; and
- (i) any information or documents provided by the person in answer to a requirement under regulation 36.

**Breaches by authorised persons of condition: requirement to provide information etc**

**36.**—(1) For the purpose of making a decision under regulation 35, the Regulator may require an authorised person to give the Regulator information or documents relevant to the decision.

(2) The requirement must be by notice in writing.

(3) Such a notice—

- (a) must specify or describe the information or documents to be given to the Regulator; and
- (b) must specify the place at which, and the period within which, the information or documents are to be given to the Regulator; and
- (c) may specify the form in which the information or a document is to be given.

(4) If such a notice specifies that information or a document is to be given in a particular form, it has not been complied with until the information or document is given in that form.

(5) The period specified must be a period that is, in all the circumstances, reasonable.

(6) The Regulator may allow more time for the information or documents to be provided if—

- (a) the person required to give the information or documents so requests in writing; and
- (b) the Regulator is satisfied that, in the circumstances, it is reasonable to allow the extra time.

(7) Nothing in this regulation authorises a search of any premises.

**Search warrants for purposes of investigation of professional conduct**

**37.**—(1) The Regulator may apply to a judicial officer for a search warrant to authorise a search of premises if the Regulator is satisfied, on the basis of information available to the Regulator as a result of a request for information or documents under regulation 36, that—

- (a) an authorised person has failed to comply with a condition of authorisation; and
- (b) information or documents relevant, and of substantial value, to the investigation of the apparent failure are likely to be found at the premises.

(2) The Regulator may apply to a judicial officer for a search warrant to authorise a search of premises if—

- (a) there is reason to believe that—
  - (i) an authorised person has failed to comply with a condition of authorisation; and
  - (ii) information or documents relevant, and of substantial value, to the investigation of the apparent failure are likely to be found at the premises; and
- (b) paragraph (3) or (5) applies in the particular case.

(3) This paragraph applies if—

- (a) the Regulator has required the authorised person to give the Regulator information or documents under regulation 36; and

(b) the authorised person has not done so within the period permitted by the requirement.

(4) An application for a search warrant in relation to which paragraph (3) applies must set out the steps taken to require the person to provide information or documents under regulation 36, and the person's response, if any.

(5) This paragraph applies if there is reason to believe that if the Regulator required the authorised person to give information or documents under regulation 36, documents relevant to the investigation of the apparent failure would be removed, tampered with or destroyed.

(6) A judicial officer must not issue a search warrant under this regulation unless he is satisfied that the warrant is for the purpose of—

- (a) investigating a complaint about the activities of an authorised person; or
- (b) assessing compliance with a condition or conditions of an authorisation.

## CHAPTER 4

### SEARCH WARRANTS GENERALLY

#### Definitions

**38.**—(1) In this Chapter—

“excluded material” has the meaning given by section 11 of the Police and Criminal Evidence Act 1984(a);

“items subject to legal privilege” has the meaning given by section 10 of that Act;

“special procedure material” has the meaning given by section 14 of that Act.

(2) In this Chapter, a reference to an officer of the Regulator is a reference to an officer of the Regulator authorised in writing by the Regulator for the purposes of section 8(7) of, or paragraph 14(5) of the Schedule to, the Act.

#### Application generally

**39.**—(1) An application for a warrant must state that no judicial officer has refused to issue a warrant based on another application that is in substance the same.

(2) If the Regulator applies for a warrant (whether the application is made under this Part or under section 8(5) of the Act), he must—

- (a) state in the application—
  - (i) the ground on which he makes the application;
  - (ii) whether the application is made under this Part or under section 8(5) of the Act; and
- (b) specify in the application—
  - (i) each set of premises which it is desired to enter and search; and
  - (ii) so far as is practicable, the material to be sought.

(3) An application is to be made ex parte and supported by an information in writing.

(4) When applying for a warrant, the Regulator must have regard as far as possible to the relevant provisions of any code issued under section 66 of the Police and Criminal Evidence Act 1984(b) in relation to searches of premises.

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(a) 1984 c. 60.

(b) 1984 c. 60. Section 66 amended by the Criminal Justice and Court Services Act 2000 (c. 43), ss 57(1), (4); and the Serious Organised Crime and Police Act 2005 (c. 15), ss 110(3)(a), 110(3)(b), 174(2) and Sch 17, Pt 2

### **Issue of warrants generally**

**40.**—(1) A judicial officer may, on application by the Regulator, issue a warrant authorising an officer of the Regulator to enter and search premises (being one or more sets of premises specified in the application) if the judicial officer is satisfied—

- (a) that a ground specified in regulation 34 or 37, as the case requires, for application for the issue of a warrant has been made out;
- (b) that the material to be sought does not consist of or include—
  - (i) items subject to legal privilege;
  - (ii) excluded material; or
  - (iii) special procedure material; and
- (c) that at least one of the conditions set out in paragraph (2) applies in relation to each set of premises.

(2) The conditions referred to in paragraph (1)(c) are—

- (a) that it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) that it is practicable to communicate with a person entitled to grant entry to the premises, but it is not practicable to communicate with any person entitled to grant access to the material;
- (c) that entry to the premises will not be granted unless a warrant is produced;
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless an officer of the Regulator arriving at the premises can secure immediate entry to them.

(3) A judicial officer must not issue a warrant in response to an application unless he is satisfied that no judicial officer has refused to issue a warrant based on another application that is in substance the same.

### **Search warrants—form**

**41.**—(1) A warrant—

- (a) must set out—
  - (i) the name of the officer of the Regulator who applied for it; and
  - (ii) the date on which it was issued;
- (b) must specify each set of premises to be searched;
- (c) must specify, so far as is practicable, the material sought; and
- (d) must state that it was issued under section 8(5) of the Act or regulation 40, as the case may be.

(2) The appropriate number of copies of the warrant must be made.

(3) For the purposes of paragraph (2), 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.

(4) The copies must be clearly certified as copies.

### **Execution of warrants**

**42.**—(1) Any officer of the Regulator who is authorised to execute search warrants may execute a warrant to enter and search premises.

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

(3) Entry and search under a warrant must be at a reasonable hour.

(4) A warrant authorises entry on only one occasion.

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

(6) When executing a warrant, an officer of the Regulator must have regard as far as possible to the relevant provisions of any code issued under section 66 of the Police and Criminal Evidence Act 1984(a) in relation to searches of premises.

(7) If the occupier of premises which are to be entered and searched is present when an officer of the Regulator seeks to execute a warrant to enter and search them, the officer—

- (a) must identify himself to the occupier and show the occupier documentary evidence that he is an officer of the Regulator;
- (b) must show the warrant to the occupier; and
- (c) must give the occupier a copy of it.

(8) If the occupier of such premises is not present when an officer of the Regulator seeks to execute a warrant, but a person who appears to the officer to be in charge of the premises is present, paragraph (7) has effect as if each reference to the occupier were a reference to that other person.

(9) If there is no person present at the premises who appears to the officer of the Regulator to be in charge of them, the officer must leave a copy of the warrant in a prominent place on the premises.

(10) The officer of the Regulator who executes a warrant must make an endorsement on it stating—

- (a) whether any of the material sought was found; and
- (b) whether anything was copied.

(11) In the case of a warrant that authorises entry to and search of two or more sets of premises, the officer of the Regulator who executes the warrant—

- (a) must make a separate endorsement in accordance with paragraph (10) for each set of premises entered and searched; and
- (b) must specify in each endorsement the premises to which it relates.

### **Copying of documents**

43.—(1) The officer of the Regulator who executes a warrant may take a copy of any record for which the warrant authorises a search.

(2) The officer may require any information that is stored in electronic form, and is accessible from the premises, to be produced in a form—

- (a) in which it can be copied; and
- (b) in which it is visible and legible, or from which it can readily be produced in a visible and legible form;

if he has reasonable grounds for believing that it is a record for which the warrant authorises a search.

(3) However, nothing in this regulation authorises an officer of the Regulator to take a copy of anything that the officer has reasonable grounds for believing to be—

- (a) an item subject to legal privilege;
- (b) excluded material; or
- (c) special procedure material.

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(a) 1984 c. 60.

### **Record to be given of records copied**

44. If—

- (a) an officer of the Regulator copies a record for which a warrant authorises a search; and
- (b) a person shows himself—
  - (i) to be the occupier of premises on which the record was found; or
  - (ii) to have had custody or control of it; and
- (c) the person asks the officer to give him a record of what was copied;

the officer must do so within a reasonable time.

### **Retention of copies**

45.—(1) A copy made of a record for which a search was authorised by a warrant may be retained for as long as is necessary in all the circumstances.

(2) Without prejudice to the generality of paragraph (1), a copy made for the purposes of an investigation may be retained for use as evidence—

- (a) if the investigation is in relation to an offence, at a trial for the offence; and
- (b) if the investigation is in relation to an alleged or suspected failure to comply with a condition of authorisation, before the Tribunal in proceedings in relation to the failure.

## **PART 10**

### **CANCELLATION, SUSPENSION AND VARIATION OF AUTHORISATIONS**

#### **Cancellation etc of authorisations**

46.—(1) Paragraph (2) applies if, after investigation of an alleged or suspected failure by an authorised person to comply with a condition of authorisation, the Regulator is satisfied that—

- (a) the person has failed to comply with the condition; and
- (b) cancellation, suspension or variation of the person's authorisation is appropriate.

(2) The Regulator may—

- (a) cancel the authorisation, or suspend it for a period; or
- (b) vary the authorisation by limiting the classes of claims management services that the person may undertake or provide, or otherwise varying the conditions of the authorisation (including by imposing an additional condition).

(3) The cancellation of, or the proposed suspension or variation of, the person's authorisation is appropriate for the purposes of paragraph (1)(b) only if the nature and seriousness of the person's failure to comply with the condition is such that, to protect the public, it is necessary to cancel the authorisation, suspend it for the proposed period or vary it in the proposed way, as the case may be.

(4) Before cancelling, suspending or varying an authorised person's authorisation, the Regulator must give written notice to the authorised person—

- (a) stating that the Regulator proposes to cancel, suspend or vary the authorisation, as the case may be;
- (b) in the case of suspension or variation, setting out the terms of the proposed suspension or variation;
- (c) setting out the reasons for the Regulator's decision, and a summary of the evidence on which the Regulator relies;
- (d) inviting the person to make a written submission in relation to the proposed cancellation, suspension or variation; and

(e) specifying a reasonable period within which the person must do so.

(5) Before cancelling, suspending or varying the authorisation, the Regulator must take into account any submission made by the authorised person within the period allowed (or any further period allowed by the Regulator).

**Procedure for cancellation etc**

47.—(1) If the Regulator decides to cancel, suspend or vary an authorised person's authorisation, the Regulator must give written notice to the authorised person of the cancellation, suspension or variation.

(2) The notice must specify a day as its earliest day of effect.

(3) The notice may be served by post, but if so must be served by a method that provides a record of its delivery.

(4) The cancellation, suspension or variation has effect from the later of—

(a) the day specified in it as its earliest day of effect; and

(b) either—

(i) if it is sent by electronic communication, the day it is taken to have been received under regulation 5(2); or

(ii) if it is sent or served in any other way, the day it is actually received by the authorised person.(a)

Signed by the authority of the Secretary of State

12th December 2006

*Cathy Ashton*  
Parliamentary Under Secretary of State  
Department for Constitutional Affairs

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(a) The Tribunal has the power to suspend the operation of the Regulator's decision—see the Act, s 11(4).

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations are made under the Compensation Act 2006 (a) (the Act). Under the Act, “regulated claims management service” means a claims management service of a kind prescribed by order by the Secretary of State(b), and “claims management services” include services in relation to claims for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage, or in respect of an obligation.

Part 1 of the Regulations provides for preliminary matters such as definitions.

Part 2 of the Regulations makes provision about waiver, by the Regulator appointed under the Act, of the requirement for a person who provides regulated claims management services to be authorised. Such a waiver will be granted to a person only if the Regulator is satisfied that the Secretary of State intends to exempt the person from that requirement under section 6 of the Act, and only for a maximum period of six months. A waiver cannot be renewed.

Members of certain professions whose professional conduct is already regulated (in particular, barristers, solicitors and legal executives), and certain other classes of person that are regulated in other ways, will be exempted from Part 2 of the Act by order by the Secretary of State. Certain persons or bodies that provide regulated claims management services on a not-for-profit basis will also be exempted.

Part 3 of the Regulations deals with applications for authorisation to provide regulated claims management services.

Part 4 of the Regulations authorises the Regulator to prescribe fees for application for and grant of authorisations and the renewal of authorisations. The fees must be approved by the Secretary of State.

The Act requires the regulations to require the Regulator to prescribe rules, and to authorise the Regulator to issue a code or codes of practice, with which authorised persons must comply (see paragraph 8 of the Schedule to the Act). Part 6 of the Regulations sets out the requirements for those rules and codes of practice.

Part 7 of the Regulations sets out the scheme for review by the Regulator of an authorised person’s handling of complaints. The Regulator may review the authorised person’s records and may give the authorised person directions about the future handling of the complaint or of complaints generally.

Part 8 of the Regulations provides for the Regulator to audit an authorised person’s records, at a reasonable time and on reasonable notice. The authorised person is however not obliged to show the Regulator anything that is an item subject to legal privilege, as defined in the Police and Criminal Evidence Act 1984.

Part 9 of the Regulations provides for enforcement. It deals with the investigation of allegations or suspicion that a person has breached section 4 of the Act. A person who provides a regulated claims management service commits an offence under section 4 of the Act unless he is authorised under Part 2 to provide the service, is exempt under that Part or has the benefit of a waiver of the requirement to be authorised.

If a person is alleged or suspected to have breached section 4 of the Act, the Regulator may require a person to provide information or documents to enable the Regulator to investigate the allegation.

Chapter 3 of Part 9 deals with the investigation of allegations or suspicion that authorised persons have failed to comply with conditions of authorisation. It also provides for circumstances in which

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(a) 2006 c. 29.

(b) See the Compensation (Regulated Claims Management Services) Order 2006, SI 2006/...

the Regulator may apply to a Judge of the High Court, Circuit judge or justice of the peace for a search warrant.

Chapter 4 of Part 9 deals with search warrants generally. Regulations 39 to 45 are intended to reproduce, as nearly as possible and as far as applicable, the effect of sections 8 to 22 (except sections 17 and 18, which are not relevant) of the Police and Criminal Evidence Act 1984, which deal generally with the issue and execution of search warrants. A Regulator's officer applying for or executing a warrant is required to have regard to the codes issued by the Home Secretary under the Police and Criminal Evidence Act 1984 for searches of premises. Note that there is no power to seize documents.

Part 10 deals with suspension and cancellation of an authorisation. An authorised person whose authorisation is cancelled, suspended or varied has the right of appeal to the Claims Management Services Tribunal and to the Court of Appeal.

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