

“the Act” means the Compensation Act 2006(a).

(2) A reference in these Regulations to a document includes a document or record of information stored or recorded by means of a computer.

Electronic communication

4.—(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 requirement is taken to have been met if the notice is served or information given by means of—

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

(2) In paragraph (1)(b), “electronic communication” means—

- (a) a communication of information in the form of data, text or images by means of guided or unguided electromagnetic energy; or
- (b) a communication of information in the form of speech by means of guided or unguided electromagnetic energy, where the speech is processed at its destination by an automated voice recognition system.

(3) Without limiting paragraph (2), “electronic communication” includes an electronic mail message and an electronic attachment to such a message.

(4) 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 working day (that is, a day that is not a Saturday, Sunday or bank or other public holiday) following the day on which the fax or electronic communication was sent.

PART 2

WAIVER OF REQUIREMENT FOR AUTHORISATION

Circumstances in which Regulator may waive requirement for authorisation

5. The Regulator may waive the requirement for authorisation in relation to a person if the Regulator is satisfied that—

- (a) requiring the person to become authorised would be unduly burdensome to the person, or would not contribute to achieving the objectives of the Act;
- (b) the waiver would not result in undue risk to persons whose interests the Act is intended to protect; and
- (c) the Secretary of State intends to exempt the person under section 5 of the Act.

Procedure for waiver

6.—(1) If a person asks the Regulator to waive the requirement for authorisation in relation to the person, the Regulator must consider whether, having regard to the person’s activities, the person should apply for authorisation, and for that purpose may require the person to provide the Regulator with any information or documents reasonably necessary for the Regulator’s consideration.

(2) If the Regulator considers that the person should apply for authorisation, the Regulator must so inform the person in writing, setting out the reasons why the person should do so.

(3) If the Regulator considers that section 3(1) of the Act should not prevent the person from providing regulated claims management services, the Regulator must immediately so notify the

(a) 2006 c.

Secretary of State in writing, setting out his reasons for that opinion and a summary of the evidence on which the opinion is based.

(4) If the Secretary of State considers that section 3(1) of the Act should not prevent the person from providing regulated claims management services, and so notifies the Regulator in writing, the Regulator must, within 14 days, notify the person in writing that the Regulator waives the requirement for the person to become authorised.

(5) The Regulator may impose a condition on the waiver and, if he does so, must include a statement of the condition in the notice.

(6) In particular, and without limiting the effect of paragraph (5), such a condition may be to the effect that—

- (a) the person tells clients or potential clients in writing that the person is providing a regulated claims management service within the meaning of section 3(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 5 of the Act;
- (c) the person attempts to meet standards of service recommended by the Secretary of State in his notice of his or her decision to exempt the person from authorisation.

(7) If the Regulator imposes on a waiver a condition of the kind referred to in paragraph (6)(c), the Regulator must set out the standard in the notice of the waiver.

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

(9) If order is made under section 5 of the Act in relation to the person, the waiver ceases to have effect when the order comes into effect.

Effect of regulation 5 when Secretary of State exercising functions of Regulator

7. At a time when the Secretary of State is exercising the functions of the Regulator, regulation 6 has effect as if—

- (a) “the Regulator”, in each place where it occurs in paragraphs (1) and (2) of that regulation, were omitted and “the Secretary of State, in his exercise of the Regulator’s functions” were substituted;
- (b) paragraphs (3) and (4) of that regulation were omitted and the following paragraph substituted—

“(3) If the Secretary of State considers that section 3(1) of the Act should not prevent the person from providing regulated claims management services, he must, within 14 days, notify the person in writing that he, in his exercise of the Regulator’s functions, waives the requirement for the person to become authorised.”; and
- (c) “the Regulator”, in each place where it occurs in paragraphs (5) and (7) of that regulation, were omitted and “the Secretary of State, in his exercise of the Regulator’s functions” were substituted.

Revocation of waiver in certain circumstances

8.—(1) If, after the Regulator has waived the requirement for a person to become authorised, further information becomes available to the Regulator that satisfies the Regulator that the requirement should not have been waived, the Regulator may revoke the waiver by notice in writing.

(2) Before revoking the waiver, the Regulator must give the person notice in writing that the Regulator is considering revoking the waiver, setting out his reasons for doing so, and give the person a reasonable opportunity of making a submission in relation to the proposed revocation.

(3) If the Regulator decides that the waiver should be revoked, he must so notify the Secretary of State.

PART 3

GRANT OF AUTHORISATIONS

Application for authorisations

9.—(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 required by the form in accordance with any directions on it.

(3) If the Regulator reasonably 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 notice in writing to the applicant.

(4) In particular, the Regulator may ask for more information or a document about any of the matters mentioned or referred to in paragraph (5) or (6) of regulation 11.

(5) If the Regulator makes a request under paragraph (3), 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(1).

(6) If the Regulator has contracted with another person, body or authority to carry out tasks of collecting information or otherwise processing applications, that other person, body or authority may make a request under paragraph (3), and a request so made, if signed by or on behalf of the other person, body or authority, is as effective as if signed by the Regulator.

Payment of application fee

10. An application is not taken to have been made if the applicant has not paid the applicable application fee.

Decisions about authorisations

11.—(1) If the Regulator has not, within 3 months after the making of an application, given the applicant a notice of the Regulator's decision on the application, the Regulator is taken to have refused the application on the last day of that period.

(2) The Regulator must not approve the grant of an authorisation to an applicant unless he or she is satisfied that—

- (a) the applicant is competent; and
- (b) in the case of an applicant who is an individual, the applicant is suitable;

to provide the regulated claims management service to which the application relates.

(3) In the case of an applicant other than an individual, the Regulator must not approve the grant of the authorisation unless he is satisfied that—

- (a) in the case of an applicant that is a body corporate, each of the applicant's executive directors, or
- (b) in the case of an applicant that is a partnership or other body of persons, each of its members;

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

(4) In the case of an applicant other than an individual, the Regulator must not approve the grant of the authorisation if he has reason to believe that—

- (a) in the case of an applicant that is a body corporate, any of the applicant's non-executive directors, or
- (b) any other person who is able to exert significant influence on the applicant's policy or management;

is unsuitable to be associated with the provision of the regulated claims management service to which the application relates.

(5) For the purpose of forming an opinion regarding an applicant's suitability to provide a regulated claims management service, the Regulator may take into account—

- (a) the applicant's criminal record (if any), and in particular any conviction for an offence involving fraud, theft or false accounting, or in relation to financial services, consumer credit or consumer protection;
- (b) any 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;
- (c) the applicant's financial circumstances;
- (d) the applicant's management arrangements, including—
 - (i) how financial and other control is exercised or 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;
- (e) 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;
- (f) the applicant's policies and arrangements or proposed arrangements for training, and monitoring the competence of, its staff, and for recruiting;
- (g) the applicant's practice or proposed practice in relation to providing information to clients about fees;
- (h) if the applicant holds or proposes to hold clients' money, the applicant's arrangements or proposed arrangements for holding such money (in particular, whether the applicant has established or will establish a separate account for such money);
- (i) the applicant's arrangements or proposed arrangements for professional indemnity insurance.

(6) For the purpose of forming an opinion regarding the suitability of an individual who is a member, director or associate of an applicant to be associated with the provision of regulated claims management services, the Regulator may take into account—

- (a) the individual's criminal record (if any), and in particular any conviction for 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 withdrawal or revocation of his right to practice a profession, engage in a business or provide a service;
- (d) 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 practice a profession, engage in a business or provide a service;
- (e) his financial circumstances;

- (f) his qualifications and experience.

Grant of authorisations

12.—(1) If the Regulator has approved the grant of an authorisation to a person, and the person has paid 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) An authorisation has effect from the day on which it is granted, and continues in effect until revoked or surrendered.

(3) If the Regulator grants an authorisation subject to a condition, the Regulator must set the condition out in the instrument of authorisation.

Conditions of authorisation

13.—(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 the 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 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 the person complies with any direction of the Regulator under Part 5 (which deals with indemnity insurance);
- (d) that the person establishes a scheme, approved by the Regulator, for dealing with clients' complaints, and operates the scheme, in compliance with Part 7;
- (e) that the person permits inspection by the Regulator under Part 8 (which is about routine audit);
- (f) that in each year, no later than the anniversary in that year of the day on which the authorisation commenced, the person certifies in writing to the Regulator that during the past year the person has complied with—
 - (i) the conditions of the authorisation;
 - (ii) the rules; and
 - (iii) any applicable code of practice;
- (g) that in each year, if the Regulator so requires by notice in writing, the person produces to the Regulator, within a reasonable period specified by the Regulator, a set of audited accounts of the authorised person's business as an authorised person, showing the turnover of that business for the previous year;
- (h) that no later than the due date for payment of the annual fee, the authorised person pays the Regulator the amount of that fee in accordance with the Regulator's invoice.

(6) For paragraph (5)(h), the payment of an authorised person's annual fee is due 1 month after the date of the invoice issued by the Regulator for the fee.

Surrender of authorisations

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

(2) Such a notice has effect from the day it is given or a later day stated in it.

(3) An authorised person that surrenders his authorisation must, if the Regulator so requires by notice in writing, produce to the Regulator, within 1 month after the surrender, a set of audited accounts for the authorised person's business as an authorised person for the current year, or that part of it up to the surrender.

PART 4

FEES

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; and
- (c) may include transitional, incidental or consequential provisions.

(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 consumer organisations, as he considers appropriate.

(5) A determination under paragraph (1) has no effect unless—

- (a) except in the case of a determination by the Secretary of State while exercising functions of the Regulator, it has been approved in writing by the Secretary of State; and
- (b) the instrument has been published, and notice has been given of it, in accordance with paragraph (6).

(6) The Regulator must publish the determination on its website, and must—

- (a) send a copy to each authorised person; or
- (b) notify each authorised person by email that the determination has been made and is published on the Regulator's website.

Amendment etc of determination of fees

16.—(1) The Regulator may, by instrument in writing, revoke or amend any determination in force from time to time under regulation 15, but—

- (a) such a revocation or amendment has no effect until—
 - (i) it has been published, and each authorised person has been notified of it, as required by regulation 15(6); and
 - (ii) except in the case of a revocation or amendment by the Secretary of State while exercising the functions of the Regulator, it has been approved by the Secretary of State; and

- (b) if a determination is amended, the Regulator must, as soon as practicable, publish the text of the determination as so amended in the same way as that of a new determination, and notify each authorised person that the text as amended is available.
- (2) A revocation or amendment may include transitional, incidental or consequential provisions.

Refund etc of fees

17.—(1) The Regulator may refund all or part of a fee to an applicant or authorised person if he or she 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 less than the expected turnover;
- (b) the applicant or authorised person has been otherwise overcharged; or
- (c) in the case of an applicant for authorisation—the applicant is entitled to be granted an exemption under section 5 of the Act.

(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.

Payment of fees by cheque

18. If the Regulator accepts a cheque in payment of a fee, the fee is taken not to have been paid unless the cheque is honoured in full on first presentation.

Payment of application fee to contractor

19. If the Regulator has contracted with another person, body or authority to carry out the task of receiving applications, payment of the application fee to that other person, body or authority has the same effect as payment to the Regulator.

Cancellation for non-payment of fee

20.—(1) The Regulator may cancel an authorised person’s authorisation if the Regulator issues an invoice for a fee to the person and the person does not pay the fee within 1 month after the date of the invoice.

(2) For paragraph (1), invoices may be sent electronically, and regulation 4 applies to an invoice so sent.

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 a specified amount in respect of the person’s actions in providing regulated claims management services.

PART 6

RULES AND CODES OF PRACTICE

Rules

22.—(1) The Regulator must prescribe, by instrument 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 consumer 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 proposed 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 the Regulator’s website; and
- (b) in printed form.

(7) A rule has no effect to the extent (if any) that it has, or purports to have, effect from a time before it is published in accordance with paragraph (6).

Matters that the rules must cover

23. The rules must make provision regarding 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.

Codes of practice

24.—(1) The Regulator may issue, by instrument in writing, 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 consumer 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 proposed 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 the Regulator’s website; and
- (b) in printed form.

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 no effect to the extent (if any) that it has, or purports to have, effect from a time before it is published.

(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 24(6), 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 order an authorised person who has failed to comply with the rules or a code of conduct 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 cases in which the failure consists of the charging of an unjustifiable fee, the refund of all or part of the fee.

(3) Before making such an order, the Regulator—

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

(4) It is a condition of an authorised person's authorisation that the person complies with any order under this regulation.

Review by the Regulator of complaint handling

28.—(1) If 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) If a client of an authorised person is dissatisfied with the handling by the authorised person of such a complaint, the client may ask the Regulator to review the authorised person's handling of the complaint.

(3) 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.

(a) The procedure is set out in regulation 24.

(4) A request under paragraph (1) or (2) by a client of an authorised person need not be in writing, but the Regulator may decline to act on such a request if insufficient information is provided to enable the Regulator to investigate the handling of the complaint.

Directions of the Regulator about complaints handling and related matters

29.—(1) Based on his or her investigations of the handling of a complaint that an authorised person has failed to comply with the rules or a code of conduct, and of the matter out of which the complaint arose, the Regulator may give a direction to the authorised person about the further handling of the complaint or matter.

(2) The Regulator may also give a direction about the future handling of complaints, or about any other aspect of the authorised person’s business in relation to claims management.

(3) Before giving such a direction, 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 direction; and
- (c) must take any such submission into account in deciding whether to give the direction.

(4) It is a condition of the authorised person’s authorisation that the authorised person implements, promptly and in full, a direction referred to in paragraph (1) or (2).

PART 7

COMPLAINTS SCHEMES

Requirement about complaints schemes

30.—(1) This regulation sets out the requirements for the complaints scheme that an authorised person must establish and operate.

(2) A complaints scheme—

- (a) must identify a person, by name or position, within the authorised person’s organisation to receive complaints and be responsible for dealing with them;
- (b) must provide for the acknowledgement of complaints within a reasonable period after their receipt;
- (c) must provide for the investigation of complaints and reporting to the authorised person on the outcome of the investigation;
- (d) must provide for keeping proper records of investigations and the complaint-handling process;
- (e) must provide for reporting to complainants; and
- (f) must provide for proper recompense in appropriate cases.

Details of scheme to be published and given to clients

31.—(1) An authorised person—

- (a) must publish details of its complaints scheme on its website, if any; and
- (b) must give a printed copy of the scheme to anybody who asks for it.

(2) When a person enters into a contract with an authorised person, the authorised person must immediately—

- (a) tell the client in writing—
 - (i) about the authorised person’s complaints scheme and the client’s rights under it; and

- (ii) the name or title of the person to whom complaints should be made, and that person's address, telephone number and email address (if any); and
- (b) give the client a printed copy of the scheme.

PART 8

ROUTINE AUDIT

Routine audit on notice

32.—(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—

- (a) the rules and any applicable code of practice; and
- (b) the terms and 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 (within the meaning given by section 10 of the Police and Criminal Evidence Act 1984)(a).

PART 9

INVESTIGATION

CHAPTER 1

PRELIMINARY

Definitions for this Part

33. 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 same meaning as in the Police and Criminal Evidence Act 1984(c);

“the Tribunal” means the Claims Management Services Tribunal established by section 11 of the Act.

Basis of investigation

34.—(1) The Regulator may investigate a person's conduct under this Part on the basis of reasonable suspicion.

(2) Nothing in this Part requires there to have been an allegation of misconduct or impropriety against a person before the Regulator may exercise his or her powers of investigation.

(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).

(c) 1984 c. 60.

CHAPTER 2

INVESTIGATION—OFFENCES BY UNAUTHORISED PERSONS

Investigation of offences against s 3(1) of Act: requirement to provide information

35.—(1) Before requiring a person to provide information or documents for the purpose of investigating whether a person has contravened section 3(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 that subsection has applied for an authorisation under section 3(1)(a), or has sought exemption under section 5, 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 of 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 s 7(4) of Act

36.—(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 3(1) of the Act, if the person—

- (a) is the person alleged or suspected to have 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 is to be by notice in writing, signed by the Regulator.

(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, 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 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) To avoid doubt, a requirement under this regulation may be for both information and documents.

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

Search warrants under s 7 of the Act

37.—(1) For the purposes of section 7(8) of the Act, the matters of which a judge or justice of the peace must be satisfied when considering an application under section 7(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 3(1) of the Act are likely to be found at the premises; and
- (b) paragraph (2), (3) or (5) applies in the particular case.(a)

(2) This paragraph applies if there is reason to believe that if the Regulator were to require, under regulation 36, 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 provide information or documents to the Regulator under regulation 36, 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 36, and of the person's response, if any.

(5) This paragraph applies if the Regulator is satisfied, after considering information or documents provided to him or her in answer to a requirement under regulation 36, that—

- (a) further investigation is justified of the alleged or suspected contravention in relation to which the requirement was made; and
- (b) there are further documents relevant to the investigation; and
- (c) there is reason to believe that if the Regulator were to require, under regulation 36, to be given the documents, the documents would be removed, tampered with or destroyed.

CHAPTER 3

INVESTIGATION—FAILURES BY AUTHORISED PERSONS TO COMPLY WITH RULES OR CODES OF PRACTICE

Regulator to investigate complaints or suspicions of unprofessional conduct

38.—(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 has grounds, otherwise than as a result of an allegation or complaint, to suspect that the authorised person has failed to comply with the rules, a code of practice or a condition of the person's authorisation

(3) Before undertaking such an investigation, the Regulator must decide whether—

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

(4) In making that decision, the Regulator must take into account—

- (a) the origin of any allegation made against the person, and whether the allegation is credible; and
- (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; and
- (c) whether the person also engages in another business activity and, if so, what that activity is and its relationship to the business of claims management; and

(a) Certain provisions of the Police and Criminal Evidence Act 1984 apply to a search warrant under this Chapter—see regulation 43.

- (d) whether there have been other credible allegations against or suspicions about, the person of such failures; and
- (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; and
 - (ii) the record of his or her agreement to observe the Rules and any code of practice; and
 - (iii) any audit and inspection reports held by the Regulator; and
 - (iv) any previous allegations against, or suspicions about, the person that have been substantiated; and
- (f) any report in the media that appears to be credible; and
- (g) any advertising by the person; and
- (h) any other apparently credible publicly available information about the person; and
- (i) any information or documents provided by the person in answer to a requirement under regulation 39.

Breaches by authorised persons of rules, code of practice or condition: requirement to provide information etc

39.—(1) For the purpose of making a decision under regulation 38, 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, signed by the Regulator.

(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) To avoid doubt, a requirement under this regulation may be for both information and documents.

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

(7) 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, because of exceptional circumstances, it is reasonable to allow the extra time.

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

Search warrants

40.—(1) The Regulator may apply to a judicial officer for a search warrant to authorise a search of, and the seizure of documents from, 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 39, that—

- (a) an authorised person has failed to comply with the rules, an applicable code of practice or a condition of authorisation; and
- (b) information or documents relevant 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, and the seizure of documents from, premises if—

- (a) there is reason to believe that—
 - (i) an authorised person has failed to comply with the rules, a code of practice or a condition of authorisation; and
 - (ii) information or documents relevant to the investigation of the apparent failure are likely to be found at the premises; and
 - (b) paragraph (3) or (4) 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 39; and
 - (b) the authorised person has not done so within the period permitted by the requirement.
- (4) This paragraph applies if there is reason to believe that if the Regulator required the authorised person to give information or documents under regulation 39, documents relevant to the investigation of the apparent failure would be removed, concealed or destroyed.
- (5) An application under paragraph (2) for a search warrant must set out the steps taken to require the authorised person to give information or documents under regulation 39, and the authorised person’s response, if any.

CHAPTER 4

SEARCH WARRANTS GENERALLY

Application generally

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

(2) 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.

Issue of warrants for entry to residences

42. A judicial officer must not issue a search warrant under these Regulations to authorise entry to, a search for documents in, or the seizure of documents from, premises that are used exclusively as a residence unless he is satisfied that there is reason to believe that—

- (a) documents have been removed to the premises with the intention of placing them beyond the reach of the warrant; or
- (b) an occupier of the premises has provided or offered to provide a regulated claims management service from the premises.

Application of certain enactments

43.—(1) Sections 8 to 16, and sections 19 to 23, of the Police and Criminal Evidence Act 1984^(a) apply in relation to the issue and execution of a search warrant under this Part, but with the following modifications—

- (a) references to a constable are taken to be references to a person authorised by the Regulator to apply for and execute search warrants;
- (b) references to a justice of the peace are taken to be references to a Judge of the High Court, a circuit judge or a justice of the peace, and references to a judge are taken to be references to a Judge of the High Court or a circuit judge;

(a) 1984 c. 60.

- (c) references to an indictable offence, a serious arrestable offence, or an offence, are taken to include references to a failure to comply with the rules, an applicable code of practice or a condition of authorisation;
- (d) subsections (1A) to (1D) of section 8 are taken to be omitted and the following subsection substituted—
 - “(1A) The premises referred to in subsection (1)(b) above are one or more sets of premises specified in the application.”
- (e) subsections (4), (5) and (6) of section 8 are taken to be omitted and the following subsections substituted—
 - “(4) In this section, ‘relevant evidence’—
 - (a) in relation to an offence, means anything that would be admissible in evidence at a trial for the offence; and
 - (b) in relation to an alleged or suspected failure to comply with the rules, a code of practice or a condition of authorisation, includes anything that would be admissible in evidence before the Tribunal in proceedings in relation to the failure.
 - (5) In subsection (4)—
 - ‘authorised person’ has the same meaning as in the Compensation Act 2006(a);
 - ‘code of practice’, ‘condition of authorisation’, ‘rules’ and ‘Tribunal’ have the same respective meanings as in the Compensation (Claims Management Services) Regulations 2006.”;
- (f) subsections (1) and (2) of section 9 are taken to be omitted;
- (g) subsections (1), (2) and (2A) of section 16 are taken to be omitted and the following subsections substituted—
 - “**16.**—(1) A warrant to enter and search premises may be executed by any officer of the Regulator authorised by the Regulator to execute search warrants.
 - (2) An officer of the Regulator so authorised has the same powers, in relation to—
 - (a) the execution of a search warrant; and
 - (b) the seizure of anything to which such a warrant relates,
 as if he or she were a member of a police force executing the warrant.”
- (h) subsections (3A), (3B) and (4) of section 16 are taken to be omitted and the following subsection substituted—
 - “(4) Entry and search under a warrant must be at a reasonable hour.”
 - (2) To avoid doubt, the provisions of Part 2 of the Criminal Justice and Police Act 2001(b) apply in relation to search and seizure under this Part.
 - (3) For the application of Part 2 of that Act, references in that Part to a constable are taken to be references to a person authorised by the Regulator to apply for and execute search warrants;

PART 10

CANCELLATION, SUSPENSION AND VARIATION OF AUTHORISATIONS

Cancellation etc of authorisations

44.—(1) If, after investigation of an alleged or suspected failure by an authorised person to comply with the rules, a code of practice or a condition of authorisation, the Regulator is satisfied that—

(a) 2006 c. ...
 (b) 2001 c. 16.

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

the Regulator may—

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

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

(3) 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.

(4) 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

45.—(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 cancellation, suspension or variation has effect from the day of its receipt by the authorised person, or a later day specified in the notice.(a)

Signed by the authority of the Secretary of State

Cathy Ashton
Parliamentary Under Secretary of State
Department for Constitutional Affairs

Date

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations are made under the Compensation Act 2006 (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

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

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

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 5 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, have been 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 are also exempted.^(a)

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 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 9 of the Regulations provides for enforcement. Chapter 1 of that Part is preliminary, setting out definitions of terms used in the Part.

Chapter 2 of Part 9 deals with the investigation of allegations or suspicion that a person has breached section 3 of the Act. A person who provides a regulated claims management service commits an offence under section 3 of the Act unless he or she is authorised under Part 2 to do so, 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 3 of the Act, the Regulator may require a person to provide information or documents to enable the Regulator to investigate the allegation, but must first decide whether the allegation or suspicion is credible and sufficiently detailed and specific to justify investigation.

Chapter 3 of Part 9 deals with the investigation of allegations or suspicion that authorised persons have failed to comply with the Rules or a code of practice.

If an authorised person is alleged or suspected to have failed to comply with the Rules or a code of practice, the Regulator may require a person to provide information or documents to the Regulator for the purposes of investigation of the allegation or suspicion, but must first decide whether the allegation or suspicion is credible and justifies investigation.

If information or documents are not provided in answer to a written request, if there is reason to suspect that documents may be concealed or destroyed, or if there is reason to believe that further documents may be obtained by search under warrant, 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. The rules that apply to search warrants generally also apply to a search warrant issued under the Regulations except that such a warrant is to be applied for and executed by an officer of the Regulator authorised for the purpose by the Regulator, and that the Regulator's officer who executes the warrant must be accompanied by a member of the police force for the police area in which the premises to be entered and searched

(a) See the Compensation (Exemptions) Order 2006, SI 2006/....

are located. The premises to be searched under the authority of such a search warrant must be business premises, and the search must be carried out at a reasonable hour.

Part 10 deals with suspension and cancellation of an authorisation. The Regulator can cancel, suspend or vary an authorised person's authorisation to the extent necessary to protect the public, but such a cancellation, suspension or variation does not take effect until the end of the period within which the matter may be referred to the Claims Management Services Tribunal established under section 11 of the Act (and if it is so referred, until the matter and any resulting appeal is finally disposed of).