*Draft Regulations laid before Parliament under section 15 (10) of the Compensation Act 2006, for approval by resolution of each House of Parliament.*

DRAFT STATUTORY INSTRUMENTS

# 2006 No. 0000

# CONSUMER PROTECTION, ENGLAND AND WALES

## The Compensation (Claims Management Services) Regulations 2006

*Made - - - - ... ... 2006*

*Coming into force in accordance with regulation 2*

These Regulations are made in exercise of the powers conferred by sections 8(8), 9 and 15 of the Compensation Act 2006(**1**) 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—

(**1**) 2006 c. 29.

"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.

(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);