

EXPLANATORY MEMORANDUM TO
THE COMPENSATION (CLAIMS MANAGEMENT SERVICES) (AMENDMENT)
REGULATIONS 2015

2015 No. [XXXX]

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument amends the Compensation (Claims Management Services) Regulations 2006 (S.I. 2006/3322) (“the 2006 Regulations”). This instrument is made in connection with the commencement of section 161 of the Legal Services Act 2007 (“the 2007 Act”) which will bring complaints about persons authorised by the Claims Management Services Regulator (“the Regulator”) within the remit of the Legal Ombudsman (“LeO”). The purpose of this instrument is to amend the 2006 Regulations to make them compatible with certain requirements of Part 6 (legal complaints) of the 2007 Act.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 Section 161 of the 2007 Act will be commenced before this instrument is made. This is because the Ministry of Justice considers that the powers in section 9 of, and the Schedule to, the Compensation Act 2006 are widened by section 161, in the context of LeO’s jurisdiction over claims management complaints.
4. **Legislative Context**
 - 4.1 The role of the Regulator is performed by the Secretary of State for Justice through the Ministry of Justice’s Claims Management Regulation Unit, as a separate Regulator has not been appointed under the Compensation Act 2006. The Secretary of State is directly responsible for authorising persons providing regulated claims management services within England and Wales, such as claims management companies.
 - 4.2 The Government announced in August 2012 that it would extend LeO’s jurisdiction to deal with complaints from clients dissatisfied with the service provided to them by persons authorised by the Regulator. This requires section 161 of the 2007 Act to be commenced. Section 161 of the 2007 Act, in bringing complaints about persons authorised by the Regulator within LeO’s remit, provides amongst other things that for the purposes of Part 6 of the 2007 Act the Regulator is to be treated as an approved regulator, and regulated claims management services are to be treated as a reserved legal activity.

4.3 Currently, the Regulator has a limited remit to handle consumer complaints about an authorised business. It can direct the authorised person to apologise, re-do work and in limited circumstances provide a full or partial refund of fees, but cannot award compensation. Bringing complaints about authorised persons and their provision of claims management services within LeO's remit will allow consumers whose complaints are upheld to benefit from the wider powers LeO has for redress, including the ability to award compensation.

4.4 The Regulator will remain responsible for ensuring the compliance of authorised persons with the conditions of their authorisation and will take enforcement action for breaches of the rules which apply to authorised persons, including about conduct and the initial handling of complaints. LeO will consider complaints from consumers about authorised persons after the consumer has made an initial complaint to the authorised person who provided the service.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister of State for Justice, Lord Faulks QC, has made the following statement regarding Human Rights:

In my view the provisions of the Compensation (Claims Management Services) (Amendment) Regulations 2015 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 Regulation 27 (redress) of the 2006 Regulations is revoked. This currently allows the Regulator to direct an authorised person to make redress in certain circumstances. This will now be a function of LeO and under section 157 of the 2007 Act the regulatory arrangements of an approved regulator must not make any provision relating to redress. Regulation 29 (directions of the Regulator about complaints handling and related matters) is amended for the same reason.

7.2 Regulation 28 (review by the Regulator of complaint handling) is revoked. This currently allows the Regulator to review how an authorised person has dealt with a client's complaint, which will become a function of LeO after section 161 is commenced. Regulation 12(5)(h) is also revoked in consequence of the revocation of regulations 27 and 28.

7.3 A new regulation 28A (power to share information) is inserted into the 2006 Regulations. This is to comply with the requirements of section 144 of the 2007 Act which provides that an approved regulator must make regulatory arrangements requiring it to disclose information to LeO in specified circumstances.

7.4 Regulation 29 (Regulator's power to issue directions about complaints handling and related matters) is amended. The current provision allows the Regulator to issue directions to an authorised person if satisfied that a complaint is well-founded. This is amended so that the Regulator can give directions if there is a breach of conditions of authorisation instead, as the Regulator will have no role in evaluating or handling complaints after the commencement of section 161.

- Consolidation

7.5 Although this instrument is not the first amendment to the 2006 Regulations, the Ministry of Justice does not intend to consolidate the regulations.

8. Consultation outcome

8.1 No consultation was carried out in respect of the amendments made by this instrument, as the amendments are being made in order to comply with the requirements of the 2007 Act.

9. Guidance

9.1 Guidance will be provided to authorised persons by the Claims Management Regulation Unit to assist them with complying with the conditions of their authorisation and understanding the changes resulting from the extension of LeO's complaints handling remit.

10. Impact

10.1 There is no impact on compliant business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal as Claims Management Regulation operates on a full cost recovery basis.

10.3 An Impact Assessment has not been prepared for this instrument. The impact of the 2007 Act, including LeO jurisdiction over claims management complaints, was fully assessed when that Act was progressing through Parliament.

11. Regulating small business

11.1 The legislation applies to all authorised persons including those classed as small businesses employing up to 20 people, however only non-compliant authorised persons are at risk of being affected.

12. Monitoring & review

- 12.1 The effectiveness of the new and existing sanctions will continue to be monitored as part of the general operation of the regulatory regime and will be reflected in the published claims management regulation annual review which is publicly available at the end of each regulatory year.

13. Contact

Kate Moore at the Claims Management Regulation Unit Tel: 0203 334 6489 or email: kate.moore@justice.gsi.gov.uk can answer any queries regarding the instrument.