
STATUTORY INSTRUMENTS

2006 No. 3322

The Compensation (Claims Management Services) Regulations 2006

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⁽¹⁾;

“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.

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,

(1) 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).

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(2);

“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(3) in relation to searches of premises.

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—

(2) 1984 c. 60.

(3) 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

- (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(4) 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.

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.