

2014 No. 3239

CONSUMER PROTECTION, ENGLAND AND WALES

**The Compensation (Claims Management Services)
(Amendment) Regulations 2014**

Made - - - - 8th December 2014

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 9 and 15(1)(b) and (c) of the Compensation Act 2006^(a) and paragraphs 1, 2, 8, 9, 10, 11, 13, 14 and 16 of 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.

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Compensation (Claims Management Services) (Amendment) Regulations 2014.

(2) This regulation, regulation 2(1) to (5) and regulation 3(1) to (3) come into force on the day after the day these Regulations are made.

(3) Regulation 2(6) and regulation 3(4) and (5) come into force 21 days after the day these Regulations are made.

(4) In these Regulations “the 2006 Regulations” means the Compensation (Claims Management Services) Regulations 2006^(b).

Amendment of the 2006 Regulations

2.—(1) The 2006 Regulations are amended as follows.

(2) In regulation 3 (definitions) before the definition of “code of practice” insert—

““business day” means any day other than a Saturday, Sunday, Christmas Day, Good Friday or a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971^(c)”.

(3) In regulation 5 (use of electronic communication) omit paragraph (3).

^(a) 2006 c. 29. Section 9 was amended by paragraphs 1 and 7 of Schedule 19 to the Legal Services Act 2007 (c. 29) and sections 139 and 140 of the Financial Services (Banking Reform) Act 2013 (c. 33). Section 15 was amended by Schedule 23 to the Legal Services Act 2007 and S.I. 2014/892. The Schedule was amended by paragraphs 1 and 11 of Schedule 19 to the Legal Services Act 2007 and sections 139 and 140 of the Financial Services (Banking Reform) Act 2013. There are other amendments to the Compensation Act 2006 that are not relevant to the subject matter of these Regulations.

^(b) S.I. 2006/3322. Regulations 40 and 43 of the 2006 Regulations, which are referred to in the amendments made by regulation 2 of these Regulations, were amended by S.I. 2008/1441. There are other amendments to the 2006 Regulations that are not relevant to the subject matter of these Regulations.

^(c) 1971 c. 80.

(4) In regulation 14 (surrender of authorisations)—

- (a) in paragraph (1), for “An authorised person” substitute “Subject to paragraphs (3), (4) and (5), an authorised person”; and
- (b) after paragraph (2) insert—

“(3) If an authorised person has been given a notice in writing by the Regulator stating that the authorised person is the subject of an investigation by the Regulator, the authorised person may not surrender the authorisation without the Regulator’s written consent unless the Regulator has given a notice under regulation 14A.

(4) If an authorised person has been given a notice by the Regulator under regulation 36, the authorised person may not surrender the authorisation without the Regulator’s written consent unless the Regulator has given a notice under regulation 14A.

(5) If—

- (a) a warrant is issued under regulation 40; and
- (b) the authorised person whose alleged failure to comply with a condition of authorisation gave rise to the warrant has been given a notice in writing by the Regulator stating that the warrant has been issued,

the authorised person may not surrender the authorisation without the Regulator’s written consent unless the Regulator has given a notice under regulation 14A.”.

(5) After regulation 14 insert—

“Notice lifting a restriction on surrender

14A.—(1) Subject to paragraph (2), the Regulator may give a notice under this regulation if the Regulator considers it is appropriate for the restriction concerned to cease to apply.

(2) The Regulator must give a notice under this regulation following the Regulator’s decision to take action against the authorised person under Part 10 or 11, or to take no action, in respect of (as the case may be)—

- (a) the investigation by the Regulator;
- (b) the notice under regulation 36; or
- (c) the warrant issued under regulation 40,

that gave rise to the restriction.

(3) The requirement to give a notice under paragraph (2) must be complied with no later than 7 business days after the date of the Regulator’s decision.

(4) Paragraphs (5) to (9) apply where the Regulator gives a notice under this regulation.

(5) The notice must be in writing.

(6) The notice must identify the restriction concerned.

(7) The notice must state that the restriction concerned ceases to apply.

(8) The Regulator must give a notice for each restriction on surrender that applies.

(9) In this regulation “restriction” means the restriction on surrender of authorisation that applies under regulation 14(3), (4) or (5)”.

(6) After regulation 47 (procedure for cancellation etc.) insert—

“PART 11

FINANCIAL PENALTIES

Requirement to pay a penalty

48.—(1) If, after investigation of an alleged or suspected failure by an authorised person to comply with a condition of authorisation that applies by virtue of regulation 12(5)(a), (b), (d), (h) or (i), the Regulator is satisfied that the authorised person has failed to comply with the condition the Regulator may require the authorised person to pay a penalty.

(2) If an authorised person does not comply with a notice given by the Regulator under regulation 36, the Regulator may require the authorised person to pay a penalty.

(3) Paragraph (4) applies where a warrant has been issued under regulation 40 by virtue of an application under regulation 37.

(4) If an authorised person obstructs an attempt to—

- (a) enter and search premises in accordance with the warrant;
- (b) take possession of written or electronic records in accordance with an authorisation under regulation 40(4); or
- (c) take copies of written or electronic records in accordance with regulation 43,

the Regulator may require the authorised person to pay a penalty.

(5) In a case where the Regulator requires an authorised person to pay a penalty under paragraph (2) or (4) the authorised person required to pay the penalty may not at any time be convicted of an offence under section 10 of the Act in respect of the act or omission giving rise to the penalty.

Determining the amount of a penalty

49.—(1) The Regulator must determine the amount of any penalty that an authorised person is required to pay under regulation 48 in accordance with this regulation and regulation 50.

(2) The amount of the penalty must be—

- (a) for an authorised person whose business has a relevant turnover of less than £500,000, no more than £100,000;
- (b) for an authorised person whose business has a relevant turnover of £500,000 or more, no more than 20 per cent of that turnover.

(3) The amount of the penalty may be the same as or greater or less than the proposed amount set out in the notice under regulation 51(1)(b).

(4) When determining the amount of the penalty that an authorised person is required to pay under regulation 48(1), (2) or (4) the Regulator must have regard to—

- (a) the nature and seriousness of the acts or omissions giving rise to the Regulator’s decision to exercise the power to require the authorised person to pay a penalty; and
- (b) the relevant turnover of the business of the authorised person.

Relevant turnover

50.—(1) In this Part “relevant turnover” means the figure determined by the Regulator in accordance with this regulation.

(2) The Regulator must determine such figure as the Regulator considers appropriate for the turnover of the business of the authorised person.

(3) The turnover to be determined is the turnover of the authorised person’s business from regulated claims management services.

(4) The turnover to be determined is for the period of 12 months prior to the date on which the Regulator gives the notice under regulation 51(1).

(5) When determining the relevant turnover of an authorised person under this regulation the Regulator must have regard to—

- (a) any figure for the annual turnover or the expected annual turnover used by the Regulator for the purposes of calculating the authorised person's most recent fee for authorisation;
- (b) any more up to date information on turnover.

(6) When determining the relevant turnover of an authorised person under this regulation the Regulator may estimate amounts.

Notice of proposed penalty and written submissions

51.—(1) Before requiring an authorised person to pay a penalty, the Regulator must give written notice to the authorised person—

- (a) stating that the Regulator proposes to require the authorised person to pay a penalty;
- (b) setting out the proposed amount of the penalty;
- (c) setting out the proposed date by which the penalty would be required to be paid or the proposed date by which each part of the penalty would be required to be paid;
- (d) setting out the figure used by the Regulator for the relevant turnover and the basis on which the Regulator determined that figure;
- (e) setting out the reasons for the Regulator's decision, and a summary of the evidence on which the Regulator relies;
- (f) inviting the authorised person to make a written submission in relation to the matters in the notice; and
- (g) specifying a reasonable period within which the authorised person must do so.

(2) The Regulator must take into account any written submission made by the authorised person within the period allowed under paragraph (1)(g) or any further period allowed by the Regulator—

- (a) in determining whether to require an authorised person to pay a penalty;
- (b) in determining the amount of the penalty; and
- (c) in determining the date by which the penalty is required to be paid or the date by which each part of the penalty is required to be paid.

Procedure for requiring an authorised person to pay a penalty

52.—(1) If the Regulator decides to require an authorised person to pay a penalty the Regulator must give written notice to the authorised person of that decision.

(2) The notice must specify—

- (a) the amount of the penalty;
- (b) the number of payments; and
- (c) the date by which the penalty or each part of the penalty is required to be paid.

Treatment of unpaid penalty as a debt

53. If the whole or any part of a penalty imposed by the Regulator is not paid by the date by which it is required to be paid and either—

- (a) no appeal relating to the penalty has been made under section 13 of the Act during the period within which such an appeal may be made; or

(b) an appeal has been made under that section and has been determined or withdrawn, the Regulator may enforce as a debt due to the Regulator the penalty or that part of it.

Treatment of income from penalties

54. The Regulator shall pay into the Consolidated Fund the income from penalties imposed by the Regulator after the deduction of costs incurred by the Regulator in collecting, or enforcing the payment of, such penalties.

Service of notices under this Part

55. Any notice that may or, as the case may be, must be given under this Part may be served by post, but if so served must be served by a method that provides a record of its delivery.”.

Transitional provision

3.—(1) A restriction on surrender under regulation 14(3) of the 2006 Regulations only applies where the act or omission that gives rise to the investigation of which the authorised person is given notice takes place on or after the date regulation 2(4) comes into force.

(2) A restriction on surrender under regulation 14(4) of the 2006 Regulations only applies where the act or omission that gives rise to the notice under regulation 36 of the 2006 Regulations takes place on or after the date regulation 2(4) comes into force.

(3) A restriction on surrender under regulation 14(5) of the 2006 Regulations only applies where the alleged failure to comply with a condition of authorisation takes place on or after the date regulation 2(4) comes into force.

(4) The power of the Regulator to require an authorised person to pay a penalty under Part 11 of the 2006 Regulations (as inserted by regulation 2(6) of these Regulations) only applies to an act or omission that takes place on or after the date regulation 2(6) comes into force.

(5) For the purpose of paragraph (4), if an act or omission starts before the date regulation 2(6) comes into force but continues on or after that date the Regulator may require an authorised person to pay a penalty only in relation to so much of the act or omission as takes place on or after the date regulation 2(6) comes into force.

Signed by authority of the Secretary of State

8th December 2014

Edward Faulks
Minister of State
Ministry of Justice

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Compensation (Claims Management Services) Regulations 2006 (S.I. 2006/3322) (“the 2006 Regulations”). Regulation 2(4) amends regulation 14 of the 2006 Regulations to provide that in certain circumstances an authorised person (i.e. a person authorised by the Regulator under the Compensation Act 2006 (c. 29) to provide regulated claims management services) may not surrender the authorised person’s authorisation without the consent of the Regulator.

Regulation 2(6) inserts a new Part 11 into the 2006 Regulations to make provision for the Regulator to impose financial penalties on authorised persons. New regulation 48 provides the circumstances in which a penalty may be imposed.

The amount of the penalty must be determined in accordance with new regulations 49 and 50. New regulation 49(2) sets maximum amounts for a penalty. Before imposing a penalty the Regulator must give written notice to an authorised person in accordance with new regulation 51(1).

New regulation 52 requires the Regulator to give an authorised person a notice setting out the penalty being imposed. Under new regulation 53 the Regulator may enforce any unpaid penalty as a debt. Under new regulation 54 income from penalties is to be paid by the Regulator into the Consolidated Fund after deduction of the Regulator's costs in collecting or enforcing penalties.

Regulation 3 provides that the requirement for the Regulator's consent to surrender of authorisation and the new powers to impose financial penalties do not apply to acts or omissions that take place before the dates the regulations relating to those matters respectively come into force.

An impact assessment has not been prepared for this instrument as it has only a minimal impact on business and civil society organisations. It has a negligible impact on the public sector.

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