

# COMPENSATION ACT 2006

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS: PART 2

#### *Section 8: Enforcement: the Regulator*

57. *Subsection 1* gives the Regulator (or the Secretary of State where no Regulator is designated) the power to apply to the court for an injunction restraining a person from providing regulated claims management services if they are not authorised, exempted by the Secretary of State or subject to a waiver by the Regulator. This power could be used, for example, to stop an unauthorised claims management company from providing services to a consumer pending a prosecution under section 7(1).
58. *Subsection 2* gives the definition of court as specified in subsection 1 as the High Court or a County Court.
59. *Subsection 3* gives the Regulator the power to investigate whether an offence has been committed (for example investigating whether an unauthorised company is offering regulated claims management services unlawfully). Further details of investigatory powers are given in subsections 4 - 6 (see below). It also gives the Regulator the power to institute criminal proceedings relating to the offences in this part (i.e. offences in sections 7, 10 and 11). This will allow the Regulator to take action directly, without necessarily relying on the involvement of the Crown Prosecution Service.
60. *Subsection 4* gives the Regulator the power to require any person or body to provide information or documents for the purposes of an investigation into whether any of the offences in sections 7, 10 or 11 have been committed. These might be paper records relating to a claim, or electronic records
61. *Subsection 5* allows the Regulator to apply for a warrant to search any premises where it is suspected that regulated claims management services are being offered or conducted without the Regulator's authority, to determine if an offence has occurred. Such application would need to be made to a judge of the High Court, Circuit judge or justice of the peace.
62. *Subsection 6* grants permission for any documents (either paper or electronic) relating to the investigation to be copied by the Regulator. These could relate to the determining of whether an offence has occurred, or support any criminal proceedings that might result.
63. *Subsection 7* clarifies that the reference to the Regulator in subsections 4 to 6 includes anyone authorised by him in writing, for example an investigator employed to investigate if an offence has occurred.
64. *Subsection 8* requires the Secretary of State to make regulations determining matters to which the judge or justice of the peace should have regard, which might include considerations to be taken into account where the premises are residential. The regulations must also cover the supporting evidence needed by a judge or justice of the peace to satisfy them that a warrant should be issued. This might include the reasons to believe an offence has occurred, the steps taken to procure the evidence needed, and any corroborative evidence available should the complaint stem from an anonymous source.