

**EXPLANATORY MEMORANDUM TO**  
**THE COMPENSATION (EXEMPTIONS) (AMENDMENT) (No.1)**  
**ORDER 2007**

**2007 No. 1090**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

## **2. Description**

2.1 This Order specifies that the provision of claims management services in relation to a counter claim, including a subrogated claim or a contributory claim, is exempt from the requirement to be authorised. This type of claim falls within the scope of the regulation under the Compensation Act 2006 (“the Act”) and the Compensation (Regulated Claims Management Services) Order 2006. This affects, for example, loss adjusters where insurers have paid compensation to a claimant in connection with a claim that has been caused by the negligence or breach of statutory duty by a third party. The insurer may then want to take further action against the third party and make a subrogated claim.

2.2 This Order amends the Compensation (Exemptions) Order 2007 (“the principal Order”) to introduce a further exemption, and does not remove or restrict an existing exemption. Therefore, although the principal Order was subject to the affirmative procedure, this Order is subject to the negative procedure (see the Act, sections 15(7) to (9)).

## **3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None

## **4. Legislative Background**

4.1 Part 2 of the Act establishes the regulatory framework for claims management services, which gives the Regulator the power to grant authorisation to carry on the regulated activities, to prescribe rules for the professional conduct of authorised persons, to investigate complaints about authorised persons and to take specified enforcement action. Providing a “regulated claims management service” is to be an offence under the Act unless the person who provides the service is authorised under the Act to do so, or is exempted from the obligation to become authorised, or has the benefit of a waiver of the obligation to be authorised. A person who provides the service without authorisation or the benefit of an exemption could be prosecuted and

on indictment the offence is punishable by a maximum prison sentence of up to two years.

4.2 The principal Order is made under the power in section 6(2) of the Act. It exempts persons or bodies whose activities fall within the scope of regulation under the Act but due to the nature of their activities or because they are already regulated they do not need to be authorised. The principal Order exempts, for example, legal practitioners, persons who are regulated under the Financial Services and Markets Act 2000, charities, not for profit organisations and trade unions certified as independent. However, a condition of trade union exemption is compliance with the condition that they act in accordance with a Code of Practice issued by the Secretary of State. The Act permits the exemption of services provided in specified circumstances (section 6(2)(b)).

## **5. Extent**

5.1 The Order applies to England and Wales.

## **6. European Convention on Human Rights**

6.1 The Parliamentary Under-Secretary of State for Constitutional Affairs has made the following statement regarding Human Rights:

In my view the provisions of this Order are compatible with the Convention rights.

## **7. Policy Background**

7.1 Claims management businesses gather cases either by advertising or direct approach. They then act either directly for the client in pursuing the claim, or as an intermediary between the claimant and another person such as a legal professional, insurer or organisation such as the Criminal Injuries Compensation Authority. Claims management businesses make money from several sources—from referral fees from solicitors, from commission for an auxiliary services or from contingency fees. Concerns have grown over the unprofessional conduct by those who are providing the service for commercial gain— particularly as the activities of claims management businesses have extended into many areas of litigation, well beyond personal injury, and even into claims for certain kinds of benefits even though no litigation is involved.

### **Compensation Act 2006**

7.2 Although claims management companies have to comply with a range of general consumer legislation, there was no sector-specific legislation. The Better Regulation Task Force report “Better Routes to Redress” published in May 2004 recommended that the Government give the industry one last chance to clean up its act. The industry failed to implement effective self-regulation and consumers continued to suffer as a result. The Act provides a flexible framework for the

regulation of claims management services to tackle poor practice in the claims management sector and provide additional safeguards for the public against rogue companies. The framework has been developed in accordance with the principles of Better Regulation: the regulation will be proportionate and targets areas where there is the greatest risk of consumer detriment.

7.3 The Secretary of State for Constitutional Affairs is exercising the functions of the Regulator and formal decisions about regulatory matters including authorisations will be taken in his name. A Head of Claims Management Regulation has day to day responsibility for the operation of the regulation and DCA has established a dedicated monitoring and compliance unit to undertake the administrative function. A Regulatory Consultative Group has been established to ensure adequate stakeholder involvement in the development and operation of the regulatory regime. The group comprises representatives from a wide range of interests including the legal profession, trade unions, consumer groups, insurers, solicitors and the claims management industry.

7.4 This Order was shared in draft with all relevant stakeholders. Discussions took place with the representative bodies and interested parties to ensure that the definitions accurately described the activities that will be exempted.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been produced for this Order. However, a full Regulatory Impact Assessment for claims management regulation was published to accompany the Compensation Bill 2006 and this covered the impact of Orders and Regulations to be made under the primary legislation, including the Exemptions Order. The RIA is available at:  
<http://www.dca.gov.uk/legist/compensation.pdf>.

## **9. Contact**

9.1 Jan Farenden at Department for Constitutional Affairs, tel: 020 7210 8847 or e-mail [Jan.Farenden@dca.gsi.gov.uk](mailto:Jan.Farenden@dca.gsi.gov.uk), can answer any queries regarding this Order.