

**EXPLANATORY MEMORANDUM TO
THE COMPENSATION (EXEMPTIONS) ORDER 2007**

2007 No. 209

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 The Compensation (Exemptions) Order 2007 (the Exemptions Order) specifies the classes of persons and bodies that are exempted from the requirement to be authorised. These are persons or bodies whose activities fall within the scope of regulation under the Compensation Act 2006 but due to the nature of their activities or because they are already regulated they are to be exempt. This includes, for example, legal practitioners and persons whose activities are regulated under the Financial Services and Markets Act 2000. Charities and not-for-profit advice organisations will also be exempt. Independent Trade Unions are also exempt under the Order but a condition of the exemption is compliance with a Code of Practice issued by the Secretary of State. The Code of Practice is annexed to this Memorandum.

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 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. If prosecuted on indictment, the offence is punishable by a maximum prison sentence of two years.

4.2 The Compensation (Exemptions) Order 2007 is made under the power in Section 6 of the Act. The Act exempts from the requirement to be authorised any person established or appointed by virtue of an enactment (s 6(4)). Individuals acting otherwise than in the course of a business, for example a person working in a voluntary capacity in a legal advice centre or where claims management advice is given by a friend, are also exempt from the requirement to be authorised (Act, s 4(1)(d)).

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 the Compensation (Regulated Claims Management Services) Order 2006¹ (S.I. 2006/3319), the Compensation (Specification of Benefits) Order 2006 (S.I. 2006/3321); the Compensation (Exemptions) Order 2007 (S.I. 2007/209) and the Compensation (Claims Management Services) Regulations 2006 (S.I. 2006/3322) 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 a legal professional or insurer. Claims management businesses make money from several sources—from referral fees from solicitors; from commission on auxiliary services; from the sale of after-the-event insurance; and sometimes from loans to their clients. 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 Compensation 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 will be the Regulator and formal decisions about regulatory matters including authorisations will be taken in his name. A Head of Claims Management Regulation will have day to day responsibility for the operation of the regulation and DCA is establishing a dedicated monitoring

¹ The Compensation (Regulated Claims Management Services) Order 2006; the Compensation (Specification of Benefits Order) 2006 and the Compensation (Claims Management Services) Regulations 2006 were laid on 16 November. The explanatory memorandum for these Orders and Regulations is available at http://www.opsi.gov.uk/si/em2006/uksiem_20063319_en.pdf

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 Regulation by the Secretary of State is intended as an interim measure. The Legal Services Bill introduced in the House of Lords on 23 November is intended to establish a new framework for legal services regulation, including the establishment of a Legal Services Board and an Office of Legal Complaints. In particular, provision about the role of the Board can be found in Schedule 19 of the Legal Services Bill, which amends the Compensation Act such that the regulatory functions of the Secretary of State move to the Board.

7.5 The Government consulted on key aspects of the regulatory framework during the summer (6 July – 28 August). The consultation on the Exemptions Order ran from 8 September – 13 October. Discussions also took place with representative bodies and interested parties to ensure that the definitions accurately described the person or classes of person to be exempted. The draft Order has been amended where necessary to reflect stakeholders' comments and views.

7.6 It is not intended to subject any person to double regulation where they are already regulated for an activity that falls within the scope of claims management regulation. If an activity is already regulated the intention is that the Secretary of State will exempt it. The proposed Exemption Order therefore exempts legal practitioners provided they act in the normal course of business permitted by the professional rules to which they are subject. It exempts Trade Unions who are certified as independent by the Certification Officer under the Trade Union and Labour Relations (Consolidation) Act 1992 (subject to their compliance with the Code of Practice issued by the Secretary of State as appended to this memorandum). It also exempts not-for-profit organisations. The Order also provides that persons who provide only referrals and no other regulated claims management service are to be exempt if the provision of referrals is purely incidental to their main business, they refer no more than 25 cases per calendar quarter, and full responsibility for compliance with the Regulator's rules as to obtaining business is taken by the authorised businesses to whom they introduce. Legal practitioners are excluded from the obligation to ensure introducers comply with the Regulator's rules because in practice all such referrals to legal practitioners will be to solicitors, who are bound by the Solicitors' Introduction and Referral Code 1990.

7.7 The exemption from the need to be authorised at article 5 will exempt persons who are carrying out a claims management activity that is regulated by the Financial Services Authority (FSA), have been exempted under the Financial Services and Markets Act 2000 (FSMA) or have the benefit of an exclusion under FSMA. The exemption does not extend to persons who refer uninsured losses to a legal practitioner or authorised person.

7.8 It is envisaged that, in future, exemption orders will be made only occasionally, and to exempt a specific person rather than a class of persons.

8. Impact

8.1 A Regulatory Impact Assessment has not been produced for this statutory instrument. 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 can answer any queries regarding the instruments.

Trade Union Code of Practice



Code of Practice for the provision of
Regulated Claims Management Services
by Trade Unions

28 November 2006

Introduction

This code sets out the key principles, which govern the activities of Trade Unions where they provide regulated claims management services to their members.

Members have the right to expect openness and transparency from their Union about the handling of their claim; and they need to have somewhere to go when things go wrong.

The Compensation Act 2006 requires those providing regulated claims management services to be authorised. The Compensation (Exemptions) Order 2006 (S.I. 2006/xxxx) exempts Trade Unions certified as independent by the Certification Officer from this requirement in respect of services provided to their own members (or retired members).

This exemption is granted by the Secretary of State on condition that independent Trade Unions undertake to act in accordance with this code of practice in the provision of regulated services.

Breaches of the code could lead the Secretary of State to remove the exemption for individual unions, who would then be required to either seek authorisation or cease providing claims management services in any regulated areas.

This is the Secretary of State's code but has been developed with the full co-operation of the Trades Union Congress (TUC) and in consultation with trade unions generally. It sets a benchmark to judge objectively the standard of service that Unions provide. It compliments the requirements of existing general consumer and trade union law.

However this code is not intended to cover advice and assistance from trade unions to their members in resolving problems in the workplace. Such advice and assistance is not intended to be a regulated claims management service but to the extent that it is, unions will be deemed to have complied with the code in any event.

Providing Regulated Claims Management Services

This code consists of six key principles, shown in bold below. The additional detail provided under each principle is intended to add clarity, but is not intended to limit the application of the principle.

Initiating claims

- 1. A Trade Union should give honest, impartial advice to a member about whether to pursue a claim and if so the most appropriate method of doing so. This does not preclude Trade Unions giving collective or individual advice based upon an assessment of the best interests of groups of members or the membership as a whole.**

- 1.1 A Trade Union should base advice to members on the merits of a successful claim, including an assessment of the likelihood of a successful claim.
- 1.2 Trade Unions should advise members not to pursue a claim if doing so would not be in the member's best interests.
- 1.3 For the avoidance of doubt nothing in this code should be taken to oblige a Trade Union to pursue a claim on behalf of a member.

Funding claims

- 2. A Trade Union should give a member relevant information about the funding of their claim, including details of any fees payable by the member and any fees being received by the Trade Union in respect of the claim.**
 - 2.1 If fees are payable by the member in respect of the claim, a Trade Union should disclose to the member how these are to be spent.
 - 2.2 Any referral fees received by the Trade Union in respect of the member's claim should be disclosed to the member.
 - 2.3 Any deductions to be made from a member's compensation payment for the benefit of the Trade Union should be agreed by the member in advance.
 - 2.4 In advising a member in any case where fees are payable by the member in respect of the claim, a Trade Union should ensure alternative methods of funding a claim are considered.

Arrangements with Third Parties

- 3. A Trade Union should inform a member of any relationship between the Trade Union and any third party (including a solicitor, claims management company or any other agency) where such a relationship has a direct bearing on the handling of a claim on behalf of a member.**
 - 3.1 The involvement of any subsidiary companies in handling a member's claims (whether owned wholly or partly by the Trade Union) should be disclosed.
 - 3.2 The information given by a Trade Union to a member about arrangements with third parties should be clear and appropriate to the members needs. Trade Unions do not need to disclose commercially sensitive information. Commercially sensitive information does not include a referral fee received by a trade union. Principle 2.2 requires the disclosure of a referral fee to a member.

Competence employees and workplace representatives

- 4. A Trade Union should take reasonable steps to ensure that any advice given to a member in relation to pursuing a claim is provided by a competent employee, or workplace representative as defined by the Trade Union's rules who has appropriate training and experience. Such advisers**

should conduct themselves with honesty and integrity in dealing with a member's claim.

- 4.1 A Trade Union should ensure that regular training is made available to employees, or workplace representatives who offer advice to members on pursuing a claim.
- 4.2 A Trade Union should take reasonable steps to ensure that such persons operate within the rules of the union.
- 4.3 A Trade Union should take reasonable steps to monitor the quality of advice given to members.

Complaints and Redress

5. **A Trade Union should have in place an effective means for members to pursue a complaint about the service in relation to a claim received directly from the Trade Union. This should include the ability to complain to the Union itself about any fees or charges to members or deductions from a member's damages and if the matter cannot be resolved to the satisfaction of both parties, to a third party. Where unjustifiable fees have been charged, these should be repaid.**
 - 5.1 A Trade Union should take reasonable steps to inform members who receive advice from the union about pursuing a claim about its internal complaints procedure. This applies to advice direct from the union, not advice provided by union appointed solicitors in respect of whom a separate complaints procedure applies.
 - 5.2 Where a complaint cannot be resolved to the satisfaction of the member within a reasonable time, it should be referred to a third party for determination.
 - 5.3 A Trade Union which fails to fulfil its obligations to the member should refund any fees or charges (if any) pre-paid by the member in respect of the claim promptly and in full.
 - 5.4 A Trade Union should not be obliged to consider a complaint about its refusal to pursue a claim (further or at all) on behalf of a member.

Record keeping

6. **A Trade Union should give a member access to records kept by the Union in respect of a claim.**
 - 6.1 Subject to the requirements of the Data Protection Act 1988 and any relevant provision in a Code of Practice issued by the Information Commissioner, a Trade Union should retain its documentary records of claim after the conclusion of the claim.
 - 6.2 Nothing in this Code shall require a trade union to disclose information where not required under the Data Protection Act 1988.

Definitions and scope

Regulated Claims Management Services

The Compensation Act 2006 defines “claims management services” as “advice or other services in relation to the making or a claim”.

Services are regulated only if they are of a type specified in the Compensation (Regulated Claims Management Services) Order 2006.

Members

For the purpose of this code a union member has the same definition as in the Compensation (Exemptions) Order 2006 (S.I. 2006/xxxx). For the avoidance of doubt this includes retired members but not associate members.

Amendments to this code

The Secretary of State has the power to alter this Code after consultation and may do so from time to time in the light of experience gained by the working of the Code in practice.