

*Draft Order laid before Parliament under section 15 (7) of the Compensation Act 2006, for approval by resolution of each House of Parliament.*

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DRAFT STATUTORY INSTRUMENTS

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**2006 No. [ ]**

**CONSUMER PROTECTION,  
ENGLAND AND WALES**

**The Compensation (Exemptions) Order 2006**

*Made - - - - -*

*Coming into force in accordance with article 2*

This Order is made in exercise of the powers conferred by section 6 of the Compensation Act 2006<sup>(1)</sup>.

A draft of this Order has been laid before Parliament in accordance with section 15(7) of that Act and approved by a resolution of each House of Parliament.

Accordingly, the Secretary of State makes the following Order:

**Citation**

1. This Order may be cited as the Compensation (Exemptions) Order 2006.

**Commencement**

2. This Order comes into force on the day after the day on which it is made.

**Definition—“the Act”**

3. In this Order, “the Act” means the Compensation Act 2006.

**Legal practitioners**

4.—(1) Section 4(1) of the Act does not prevent the provision of a regulated claims management service in the circumstances that—

- (a) the service is provided—
  - (i) by a legal practitioner;

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(1) 2006 c. 29.

- (ii) by a firm, organisation or body corporate that provides the service through a legal practitioner; or
  - (iii) by an individual who provides the service at the direction, and under the supervision, of a legal practitioner who is—
    - (aa) his employer or fellow employee; or
    - (bb) a director of a company, or a member of a limited liability partnership, that provides the service and is his employer; and
  - (b) the legal practitioner acts in the normal course of practice in a way permitted by the professional rules to which he is subject.
- (2) In paragraph (1), “legal practitioner” means—
- (a) a solicitor, barrister or advocate of any part of the United Kingdom;
  - (b) a Fellow of the Institute of Legal Executives;
  - (c) a European lawyer, as defined in the European Communities (Services of Lawyers) Order 1978<sup>(2)</sup>;
  - (d) a registered foreign lawyer, as defined in section 89(9) of the Courts and Legal Services Act 1990<sup>(3)</sup>; or
  - (e) any other member of a legal profession, of a jurisdiction other than England and Wales, that is recognised by the Law Society or the General Council of the Bar as a regulated legal profession.

#### **Persons providing services regulated under the Financial Services and Markets Act 2000**

5.—(1) Section 4(1) of the Act does not prevent the provision of a regulated claims management service by a person if in providing that service, he is carrying on a regulated activity for the purposes of section 19 of the Financial Services and Markets Act 2000<sup>(4)</sup> (“FSMA”), or would be doing so except that—

- (a) he is an exempt person (that is, a person who is exempt from the general prohibition under FSMA), or
  - (b) he has the benefit of an exclusion under the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(5)</sup>.
- (2) In paragraph (1)(a), “general prohibition” has the meaning given by FSMA.
- (3) References in paragraph (1) to a regulated activity carried on by a person must be read with—
- (a) section 22 of FSMA;
  - (b) any relevant order under that section; and
  - (c) Schedule 2 to FSMA.

#### **Charities and not-for-profit advice agencies**

6.—(1) Section 4(1) of the Act does not prevent the provision of a regulated claims management service by a not for profit body, that is, a body that, by or under its constitution—

- (a) is required to apply the whole of its net income, and any expendable capital, after payment of outgoings for charitable or public purposes; and

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(2) S.I. 1978/1910, as amended by the European Communities (Services of Lawyers) (Amendment) Order 2004 (SI 2004/1117).

(3) 1990 c. 41.

(4) 2000 c. 8.

(5) S.I. 2001/544.

(b) subject to paragraph (2), is prohibited from distributing, directly or indirectly, any part of its net income by way of profits, or its assets, among any of its members.

(2) A body is not prevented from being a not-for-profit body for the purposes of paragraph (1) if its constitution permits:

(a) the payment, out of the body's funds, of reasonable and proper remuneration for goods or services supplied to the body by a member;

(b) in the case of a not-for-profit body that is a charity, the payment to a member of a benefit to which he is entitled because he is a beneficiary of the charity; or

(c) the purchase, out of the body's funds, of indemnity insurance for trustees of the body.

### **Independent Complaints Reviewers**

7. Section 4(1) of the Act does not prevent the provision of a regulated claims management service by a person appointed from time to time by a statutory or other public body as an Independent Complaints Reviewer or Independent Case Examiner in the course of carrying out her duties under the appointment.

### **Motor Insurers Bureau**

8. Section 4(1) of the Act does not prevent the provision of a regulated claims management service by the Motor Insurers Bureau (being the company limited by guarantee mentioned in section 95(2) of the Road Traffic Act 1988<sup>(6)</sup>).

### **Medical Protection Society and medical defence unions**

9. Section 4(1) of the Act does not prevent the provision of a regulated claims management service—

(a) by the Medical Protection Society Limited to its members;

(b) by The Medical Defence Union Ltd to its members; or

(c) by The Medical and Dental Defence Union of Scotland Limited to its members.

### **Independent trade unions**

10.—(1) Section 4(1) of the Act does not prevent the provision of a regulated claims management service by an independent trade union to—

(a) a member (including a retired member or a student member) of the trade union;

(b) a member of the family of a member referred to in sub-paragraph (a); or

(c) a former member of the trade union to whom the trade union may, under its rules, provide claims management services, or a member of the family of such a former member.

(2) In paragraph (1), “independent trade union” has the same meaning as in the Trade Union and Labour Relations (Consolidation) Act 1992<sup>(7)</sup>.

(3) For the purposes of paragraph (1)—

(a) subject to sub-paragraph (b), whether a person is or has been a member (including a retired member or a student member) of a trade union is to be decided in accordance with the rules of the trade union;

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(6) 1988 c. 52.

(7) 1992 c. 52.

- (b) “member” of a trade union does not include a person who, under those rules, is a member only for the purpose of pursuing a claim or claims; and
- (c) whether a person is a member of the family of a member of a trade union is to be decided in accordance with the rules of the trade union.

(4) An exemption of a trade union under this article is subject to compliance by the trade union with the condition that the trade union, in providing regulated claims management services, must act in accordance with the code of practice for the provision of regulated claims management services by trade unions issued by the Secretary of State on 28th November 2006.

### **Students’ unions**

**11.** Section 4(1) of the Act does not prevent the provision of a regulated claims management service by a students’ union (as defined in section 20 of the Education Act 1994<sup>(8)</sup>) to a member of the students’ union or (in the case of a students’ union referred to in section 20(3) of that Act) a member of a constituent or affiliated association or body.

### **Certain providers of referrals**

**12.—**(1) In this article, “legal practitioner” has the meaning given by article 4(2).

(2) Section 4(1) of the Act does not prevent the provision of the regulated claims management service of referring details of potential claims or potential claimants to another person if—

- (a) the person who refers those details (“the introducer”) provides no other regulated claims management service;
- (b) the provision of the service is incidental to the introducer’s main business;
- (c) the details are referred to authorised persons or legal practitioners or firms of legal practitioners;
- (d) the introducer refers such details only to persons of those kinds;
- (e) of the cases that the introducer refers to such persons, he is paid, in money or money’s worth, for no more than 25 cases per calendar quarter; and
- (f) subject to paragraph (3), the persons to which the details are referred must be satisfied that the introducer obtains those details in a way consistent with the rules prescribed by the Regulator under paragraph 8 of the Schedule to the Act.

(3) Paragraph (2)(f) does not apply in the case of a referral to a legal practitioner or firm of legal practitioners.

Signed by authority of the Secretary of State

Date

Parliamentary Under Secretary of State  
Department for Constitutional Affairs

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

Part 2 of the Compensation Act 2006 (“the Act”) regulates claims management services.

A person who provides “regulated claims management services” must be authorised under the Act to do so, or be exempted, or have the benefit of a waiver of the obligation to be authorised. Under section 4 of the Act, a regulated claims management service is one declared to be regulated by order by the Secretary of State.

The Compensation (Regulated Claims Management Services) Order 2006<sup>(9)</sup> declares certain kinds of services to be regulated when provided in connection with certain kinds of claim. The services include advertising for claimants, referral of claimants to legal practitioners, advice in relation to claims and investigation of claims. The kinds of claim include: personal injury claims and criminal injuries compensation claims; employment-related claims such as wages, unfair dismissal and discrimination; claims for housing disrepair, claims relating to financial products and services and claims in relation to Industrial Injuries Disablement Benefit.

This Order exempts legal practitioners (barristers, solicitors, advocates, legal executives and foreign lawyers) who are already regulated by their respective professional bodies from the obligation to be authorised.

Article 5 exempts persons who are carrying out a regulated claims management service that is an activity that is regulated by the Financial Services Authority (FSA), have been exempted under 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.

Articles 6 to 12 exempt various other persons that do not provide regulated claims management services for profit, such as charities and not-for-profit advice agencies (article 6), the Independent Complaints Reviewer (article 7), independent trade unions (article 10), students’ unions (article 11); do not provide services to the public generally, such as the Motor Insurers’ Bureau or the medical defence bodies (articles 8 and 9 respectively); or provide the service of referrals only as an adjunct to an unrelated business and only in small numbers (article 12). In the latter case, authorised persons to whom the referrals are provided are obliged to ensure that the “introducer” obtains the referrals in a way consistent with the Regulator’s rules about advertising and marketing.

Legal practitioners are also excluded from the obligation to ensure introducers comply with the Regulator’s rules because in practice the overwhelming majority of such referrals to legal practitioners will be to solicitors, who are bound by the Solicitors’ Advertising and Referral Code 1999<sup>(10)</sup>.

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<sup>(9)</sup> The Compensation (Regulated Claims Management Services) Order 2006, SI 2006/...

<sup>(10)</sup> Made by the Council of the Law Society under section 31 of the [Solicitors’ Act 1974](#) (c. 47).