
DRAFT STATUTORY INSTRUMENTS

2018 No.

**The Financial Services and Markets Act 2000
(Claims Management Activity) Order 2018**

PART 6

Consequential amendments, revocations and saving and supplemental provisions

CHAPTER 1

Amendment of primary legislation

Courts and Legal Services Act 1990

90. In section 58AA of the Courts and Legal Services Act 1990(1) (damages-based agreements), in subsection (7) for “Part 2 of the Compensation Act 2006 (see section 4(2) of that Act)” substitute “the Financial Services and Markets Act 2000 (see section 419A of that Act)”(2).

Financial Services and Markets Act 2000

91.—(1) The 2000 Act is amended as follows.

(2) In section 1G (meaning of “consumer”), in subsection 1—

- (a) in the words before paragraph (a) omit “who”;
- (b) in each of the paragraphs (a) to (e), at the beginning insert “who”;
- (c) at the end of paragraph (d) omit “or”;
- (d) at the end of paragraph (e) insert—

“; or

- (f) in respect of whom a person carries on an activity which is specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (seeking out etc claims) whether that activity, as carried on by that person, is a regulated activity, or is, by reason of an exclusion provided for under the 2001 Order or the 2000 Act, not a regulated activity.”.

(3) In section 1I (meaning of “the UK financial system”) in paragraph (b) after “activities” insert “(including regulated claims management activities)”.

(4) In section 63E (certification of employees by relevant authorised person) in subsection (8) for the definition of “customer” substitute—

““customer”—

- (a) in relation to an authorised person, means a person who is using, or who is or may be contemplating using, any of the services provided by the authorised person; and

(1) 1990 c. 41. Section 58AA was inserted by the Coroners and Justice Act 2009 (c. 25), section 154.

(2) Section 419A was inserted by the Financial Guidance and Claims Act 2018 (c. 10), section 27(11).

- (b) in relation to an authorised person carrying on a regulated claims management activity, also means (so far as not included in paragraph (a)) a person who has or may have a claim within the meaning of section 419A in respect of which the authorised person is carrying on a regulated claims management activity.”
- (5) In section 327 (exemption from the general prohibition) after subsection (8) insert—
- “(9) The exemption in this section does not apply to the carrying on of a regulated claims management activity in Great Britain.”
- (6) In section 404E (meaning of “consumers”)—
- (a) in subsection (1)—
- (i) in the words before paragraph (a) omit “who”;
- (ii) in paragraphs (a) and (b), at the beginning insert “who”;
- (iii) at the end of paragraph (a) omit “or”;
- (iv) at the end of paragraph (b) insert—
- “; or
- (c) in respect of whom a person carries on an activity which is specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (seeking out etc claims) whether that activity, as carried on by that person, is a regulated activity or is, by reason of an exclusion provided for under the 2001 Order or the 2000 Act, not a regulated activity.”;
- (b) in subsection (2) in paragraph (c) the words from “to engage” to the end become sub-paragraph (i) and at the end of that sub-paragraph insert—
- “; or
- (ii) to engage in claims management activity;”; and
- (c) in subsection (6) after the definition of “credit institution” insert—
- ““engage in claims management activity” has the meaning given by section 21;”.
- (7) In section 425A (consumers: regulated activities etc carried on by authorised persons), in subsection (2)—
- (a) in the words before paragraph (a) omit “who”;
- (b) in paragraphs (a) and (b), at the beginning insert “who”;
- (c) at the end of paragraph (b) omit “or”;
- (d) at the end of paragraph (c) insert—
- “; or
- (d) in respect of whom a person carries on an activity which is specified in article 89G of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 (seeking out etc claims) whether that activity, as carried on by that person, is a regulated activity or is, by reason of an exclusion provided for under the 2001 Order or the 2000 Act, not a regulated activity.”.

Enterprise Act 2002

- 92.** In the Enterprise Act 2002(3)—

- (a) in Schedule 14, omit “Compensation Act 2006 (c. 29).”(4); and
- (b) in Schedule 15 omit “Compensation Act 2006 (c. 29).”.

Compensation Act 2006

- 93. Omit Part 2 of the Compensation Act 2006.

Tribunals, Courts and Enforcement Act 2007

94. In Schedule 6 to the Tribunals, Courts and Enforcement Act 2007(5), in Part 4 (tribunals for the purposes of section 30 (transfer of functions of certain tribunals)) omit the entry for the Claims Management Services Tribunal.

Legal Services Act 2007

- 95.—(1) The Legal Services Act 2007(6) is amended as follows.
- (2) In section 8 (the Consumer Panel), in subsection (5) for paragraph (e) substitute—
 - “(e) an authorised person (within the meaning given in section 31 of the Financial Services and Markets Act 2000 (authorised persons)) in relation to regulated claims management activity (within the meaning given by section 417(1) of that Act (definitions));”.
- (3) In section 122 (appointment of the Chief Ombudsman and assistant ombudsmen), for subsection (3) substitute—
 - “(3) It is a condition of appointment under subsection (1)(b) that the person appointed must not during the appointment carry on for or in expectation of any fee, gain or reward—
 - (a) any activity which is a reserved legal activity, or
 - (b) a regulated claims management activity (within the meaning given by section 417(1) of the Financial Services and Markets Act 2000 (definitions))”.
- (4) Omit section 161 (extension of Part 6 to claims management services).
- (5) In section 173 (the levy)—
 - (a) in subsection (5) omit paragraph (b); and
 - (b) in subsection (6)(b) omit the words from “or by virtue of” to the end.
- (6) Omit section 174A (OLC expenditure relating to claims management services)(7).
- (7) Omit section 187 and Schedule 19 (amendments of Part 2 of the Compensation Act 2006 (claims management services)).
- (8) In section 206 (Parliamentary control of orders and regulations), in subsection (4) omit paragraph (oa)(8).
- (9) In Schedule 1 (the Legal Services Board)—
 - (a) in paragraph 2—
 - (i) in sub-paragraph (3) for paragraph (b) substitute—
 - “(b) carry on a regulated claims management activity (within the meaning given by section 417(1) of the Financial Services and Markets Act 2000 (definitions)), or”;

(4) Those words were inserted in Schedule 14 and in Schedule 15 by [S.I. 2007/2977](#).

(5) [2007 c. 15](#).

(6) [2007 c. 29](#).

(7) Section 174A was inserted by the Financial Services (Banking Reform) Act 2013 (c. 33), section 140(4) and (5).

(8) Paragraph (oa) of section 206(4) was inserted by the Financial Services (Banking Reform) Act 2013, section 140(4) and (6).

(ii) in sub-paragraph (4) after paragraph (b) insert—

“(ba) an authorised person (within the meaning given in section 31 of the Financial Services and Markets Act 2000 (authorised persons)) in relation to regulated claims management activity (within the meaning given by section 417(1) of that Act (definitions));” and

(b) in paragraph 3, in sub-paragraph (l) for “Part 2 of the Compensation Act 2006 (c. 29)” substitute “section 419A of the Financial Services and Markets Act 2000 (c. 8)”.

(10) In Schedule 15 (the Office for Legal Complaints)—

(a) in paragraph 2, in sub-paragraph (3) after paragraph (a) insert—

“(aa) an authorised person (within the meaning given in section 31 of the Financial Services and Markets Act 2000 (authorised persons)) in relation to regulated claims management activity (within the meaning given by section 417(1) of that Act (definitions));” and

(b) in paragraph 4, in sub-paragraph (i) for “Part 2 of the Compensation Act 2006 (c. 29)” substitute “section 419A of the Financial Services and Markets Act 2000 (c. 8)”.

Legal Aid, Sentencing and Punishment of Offenders Act 2012

96. In the Legal Aid, Sentencing and Punishment of Offenders Act 2012⁽⁹⁾, in section 59 (regulators and regulated persons), in each table omit the entry relating to a person specified in the first column as “the Claims Management Regulator”.

Crime and Courts Act 2013

97. In Schedule 9 to the Crime and Courts Act 2013⁽¹⁰⁾ (single county court in England and Wales), in the list of provisions in paragraph 52(2) omit the entry “Compensation Act 2006: section 8(2)”.

Financial Services (Banking Reform) Act 2013

98.—(1) The Financial Services (Banking Reform) Act 2013⁽¹¹⁾ is amended as follows.

(2) Omit section 139 (power to impose penalties on persons providing claims management services).

(3) Omit section 140 (recovery of expenditure incurred by Office for Legal Complaints).

(4) In section 147(2) (extent) omit paragraphs (b) and (c).

CHAPTER 2

Amendment of secondary legislation

Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001

99.—(1) The Financial Services and Markets Act 2000 (Disclosure of Confidential Information) Regulations 2001⁽¹²⁾ are amended as follows.

(9) 2012 c. 10.

(10) 2013 c. 22.

(11) 2013 c. 33.

(12) S.I. 2001/2188, as amended by S.I. 2009/2877 and 2012/916. There are other amendments, but they are not relevant.

(2) In Schedule 1 (disclosure of confidential information whether or not subject to single market restrictions), in Part 1 at the end insert—

<i>“Person</i>	<i>Functions</i>
The Information Commissioner	All functions of that person so far as they are exercisable in relation to the provision of claims management services (within the meaning given in regulation 21A of the Privacy and Electronic Communications (EC Directive) Regulations 2003 ⁽¹³⁾)
The General Council of the Bar	(a) Its functions under arrangements which it has, or rules which it makes, in compliance with section 30(4) of the Financial Guidance and Claims Act 2018 (as applied by section 32(2) of that Act), for monitoring and enforcing the prohibitions in section 32(1) of that Act (b) Its functions under rules which it makes in compliance with section 33(1) of that Act
The Law Society of England and Wales	(a) Its functions under arrangements which it has, or rules which it makes, in compliance with section 30(4) of the Financial Guidance and Claims Act 2018 (as applied by section 32(2) of that Act), for monitoring and enforcing the prohibitions in section 32(1) of that Act (b) Its functions under rules which it makes in compliance with section 33(1) of that Act
The Chartered Institute of Legal Executives	(a) Its functions under arrangements which it has, or rules which it makes, in compliance with section 30(4) of the Financial Guidance and Claims Act 2018 (as applied by section 32(2) of that Act), for monitoring and enforcing the prohibitions in section 32(1) of that Act (b) Its functions under rules which it makes in compliance with section 33(1) of that Act”.

(3) In Schedule 2 (disclosure of confidential information not subject to single market restrictions) omit the entry relating to a person specified in the first column as “The Claims Management Regulator”.

Legislative and Regulatory Reform (Regulatory Functions) Order 2007

100. In the Legislative and Regulatory Reform (Regulatory Functions) Order 2007⁽¹⁴⁾, in Part 2 of the Schedule omit the heading “Claims Management Services” and the entry “Part 2 of the Compensation Act 2006”.

⁽¹³⁾ S.I. 2003/2426. Regulation 21A was inserted by the Financial Guidance and Claims Act 2018, section 35.

⁽¹⁴⁾ S.I. 2007/3544, as amended by S.I. 2014/860.

Legal Services Act 2007 (Disclosure of Restricted Information) Order 2011

101. In the Legal Services Act 2007 (Disclosure of Restricted Information) Order 2011(**15**), in Schedule 1 (list of persons to whom information may be disclosed) omit “The Claims Management Regulator”.

Damages-Based Agreements Regulations 2013

102. In the Damages-Based Agreements Regulations 2013(**16**), in regulation 1(2) (interpretation), in the definition of “client”, for “section 4(2)(b) of the Compensation Act 2006” substitute “section 419A of the Financial Services and Markets Act 2000”.

Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013

103. In the Schedule to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Referral Fees) Regulations 2013(**17**) (meaning of referral fees authorised person), in paragraph 3 insert at the end—

“(h) a regulated claims management activity (within the meaning given by section 417(1) of the 2000 Act (definitions)).”.

Economic Growth (Regulatory Functions) Order 2017

104. In the Economic Growth (Regulatory Functions) Order 2017(**18**), in Part 3 of the Schedule, for the entry under the heading “Claims Management Services” substitute “Part 2 of the Financial Guidance and Claims Act 2018(**19**) (Claims Management Services)”.

CHAPTER 3

Revocations

Revocations

105. In consequence of the repeal of Part 2 of the Compensation Act 2006 by article 93 the following statutory instruments are revoked—

- (a) the Compensation (Regulated Claims Management Services) Order 2006(**20**);
- (b) the Compensation (Specification of Benefits) Order 2006(**21**);
- (c) the Compensation (Claims Management Services) Regulations 2006(**22**);
- (d) the Compensation (Exemptions) Order 2007(**23**);
- (e) the Compensation (Exemptions) (Amendment) (No. 1) Order 2007(**24**);
- (f) the Compensation (Claims Management Services) (Amendment) Regulations 2008(**25**);
- (g) the Compensation (Claims Management Services) (Amendment) Regulations 2014(**26**);

(15) S.I. 2011/122.

(16) S.I. 2013/609.

(17) S.I. 2013/1635.

(18) S.I. 2017/267.

(19) 2018 c. 10.

(20) S.I. 2006/3319.

(21) S.I. 2006/3321.

(22) S.I. 2006/3322.

(23) S.I. 2007/209.

(24) S.I. 2007/1090.

(25) S.I. 2008/1441.

(26) S.I. 2014/3239.

- (h) the Legal Services Act 2007 (Claims Management Complaints) (Fees) Regulations 2014(27);
- (i) the Compensation (Claims Management Services) (Amendment) Regulations 2015(28);
- (j) the Legal Services Act 2007 (Claims Management Complaints) (Fees) (Amendment) Regulations 2016(29);
- (k) the Legal Services Act 2007 (Claims Management Complaints) (Fees) (Amendment) Regulations 2017(30).

CHAPTER 4

Saving and supplemental provisions

SECTION 1

General provision

General scope of saving provisions

106.—(1) Paragraphs (3) and (4) apply where, in relation to an enactment which is amended by Chapter 1 or Chapter 2 of this Part or is revoked by Chapter 3 of this Part, it is provided in this Chapter that despite the amendment or the revocation a relevant provision continues to have effect for specified purposes.

(2) “Relevant provision” means, in the case of an amendment, the provision which is amended or a specified provision of the enactment which is amended, and in the case of an enactment which is revoked, a specified provision of that enactment.

(3) The relevant provision continues to have effect—

- (a) only for the specified purposes; and
- (b) with any modification made for those purposes.

(4) Other provisions of the enactment which contains the relevant provision continue to have effect so far as is necessary to give effect to the saving made for the specified purposes.

SECTION 2

Primary legislation

Courts and Legal Services Act 1990

107. Section 58AA of the Courts and Legal Services Act 1990 has effect in relation to any damages-based agreement made before 1st April 2019 without the amendment made by article 90.

Compensation Act 2006

108.—(1) In this article a reference to a numbered section is a reference to the section so numbered in the Compensation Act 2006.

(2) Despite articles 93 and 95(7)—

- (a) sections 7, 10 and 11 (offences) continue to have effect for the purposes of—

(27) S.I. 2014/3316.

(28) S.I. 2015/42.

(29) S.I. 2016/92.

(30) S.I. 2017/22.

- (i) article 55 (investigation and prosecution after 1st April 2019 in relation to conduct before that date) and article 57 (offences under the Compensation Act 2006: continuation of investigation commenced by the Regulator and institution of criminal proceedings) in relation to—
 - (aa) an investigation of a kind specified in article 55(a)(i) or (b) or 57 and the resulting prosecution of any criminal proceedings;
 - (bb) any conviction and sentencing of the defendant in such a prosecution;
- (ii) article 58 (continuation of criminal proceedings instituted by the Regulator) in relation to any criminal proceedings to which that article applies;
- (b) section 8(1) and (2) (power to apply for an injunction) continues to have effect for the purposes of article 59 (continuation of injunction applications made by the Regulator) in relation to any application for an injunction to which that article applies;
- (c) section 8(5), (6) and (7) (power to issue a search warrant) continues to have effect for the purposes of article 60 (continuation of application made by the Regulator for a search warrant) in relation to any application for the issue of a warrant to which that article applies;
- (d) sections 8(8), 9 and 15 and the Schedule to the Compensation Act 2006 (power to make regulations) continue to have effect for the purposes of article 111 (saving and supplemental provision for the Compensation (Claims Management Services) Regulations 2006);
- (e) section 13(1), (1A), (3) and (3A) (appeals and references to Tribunal)—
 - (i) continues to have effect for the purposes of Part 3 of this Order in relation to any appeal to the First-tier Tribunal brought by a person under that section before 1st April 2019;
 - (ii) is to be read for those purposes as if, in subsection (3)(e), the reference to the Regulator, and in subsection (3A)(d), the first reference to the Regulator, were references to the FCA;
- (f) section 13(2) and (3) continues to have effect for the purposes of article 67 (continuation of references made by the Regulator to the First-tier Tribunal) in relation to any reference to which that article applies; and
- (g) Part 2 of the Compensation Act 2006 continues to have effect for the purposes of section 161 of the Legal Services Act 2007 (extension of Part 6 to claims management services) and article 111.

Legal Services Act 2007

109.—(1) In this article a reference to a numbered section is a reference to the section so numbered in the Legal Services Act 2007.

- (2) Despite article 95(4) section 161 continues to have effect—
 - (a) for the purposes of an application to the court made under section 141(2) or (3) in relation to a direction under section 137(2) contained in the determination of any complaint to which article 69 applies (complaints made before 1st April 2019); and
 - (b) in relation to the application, for those purposes, of sections 141 and 142(1) and (2).
- (3) For the purposes of paragraph (2) section 142(2) is to be read as if the reference to “each relevant authorising body” were a reference to the FCA and the scheme operator (as defined in article 68).
- (4) Despite article 95(4) section 161 continues to have effect—

- (a) for the purposes of article 79(2) (information and reports) in relation to any enquiry by the court of a kind referred to in article 79(2)(b); and
 - (b) in relation to the application, for those purposes, of section 149(3), (4) and (7).
- (5) Despite article 95(4) section 161 continues to have effect—
- (a) for the purposes of a decision by the ombudsman under article 74(2) (funding and charges); and
 - (b) in relation to the application, for those purposes, of rules made under section 136(1).

Legal Aid, Sentencing and Punishment of Offenders Act 2012

110.—(1) This article applies for the purposes of article 55 (investigation and prosecution after 1st April 2019 in relation to conduct before that date) in relation to the continuation, taking or commencement by the FCA of any action for monitoring and enforcing the restrictions in section 56(1) and (2) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”).

(2) Section 57 of the 2012 Act (effect of rules against referral fees) is to be read as if subsection (4) were omitted.

- (3) Section 59 of the 2012 Act (Regulators and regulated persons)—
- (a) continues to have effect without the amendment made by article 96; and
 - (b) is to be read as if the reference to the Claims Management Regulator in the first column of each of the tables in subsections (1) and (2) were a reference to the FCA.

SECTION 3

Secondary legislation

Compensation (Claims Management Services) Regulations 2006

111.—(1) In this article a reference to a numbered regulation is a reference to the regulation so numbered in the Compensation (Claims Management Services) Regulations 2006.

(2) Despite article 105(c) regulation 48 continues to have effect for the purposes of consideration by the FCA of whether a person is liable for a relevant default (within the meaning given in article 51(1) (penalties for conduct for which the Regulator has not given notice of proposed penalty)).

(3) Despite article 105(c) regulation 35 continues to have effect for the purposes of the conduct by the FCA of—

- (a) an investigation by the FCA of a kind referred to in article 55(1)(a)(ii) or (iii) (investigation and prosecution after 1st April 2019 in relation to conduct before that date);
- (b) an investigation on the FCA’s behalf of a kind referred to in article 56(2) (unprofessional conduct: continuation of investigation commenced by the Regulator).

(4) Despite article 105(c) regulations 34 and 37 to 45 (search warrants) continue to have effect for the purposes of article 60 (continuation of application made by the Regulator for a search warrant), and for those purposes—

- (a) regulations 40 to 44A are to be read as if regulation 38(2) (definitions) defined a reference to an officer of the Regulator by reference to an officer authorised by the FCA for the purposes of section 165(3) of the 2000 Act;
- (b) regulations 34(2) and (5)(c), 37(1), (2) and (5), 39 and 40(1) and (4) are to be read as if a reference to the Regulator, apart from in a reference to an officer of the Regulator, were a reference to the FCA; and

- (c) regulation 34(2) and (5)(c) is to be read as if a reference to regulation 33 were a reference to section 165 of the 2000 Act (Regulators' power to require information: authorised persons etc).

Damages-Based Agreements Regulations 2013

112. The Damages-Based Agreements Regulations 2013 continue to have effect in relation to any damages-based agreement made before 1st April 2019 without the amendment made by article 102.