



# Compensation Act 2006

## 2006 CHAPTER 29

An Act to specify certain factors that may be taken into account by a court determining a claim in negligence or breach of statutory duty; to make provision about damages for mesothelioma; and to make provision for the regulation of claims management services. [25th July 2006]

BE IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **Modifications etc. (not altering text)**

- C1** Act modified (E.W.S.) (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\)](#), arts. 1(2)(3), **84(4)(5)**

## **PART 1**

### STANDARD OF CARE

#### **1 Deterrent effect of potential liability**

A court considering a claim in negligence or breach of statutory duty may, in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions against a risk or otherwise), have regard to whether a requirement to take those steps might—

- (a) prevent a desirable activity from being undertaken at all, to a particular extent or in a particular way, or
- (b) discourage persons from undertaking functions in connection with a desirable activity.

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## 2 Apologies, offers of treatment or other redress

An apology, an offer of treatment or other redress, shall not of itself amount to an admission of negligence or breach of statutory duty.

## 3 Mesothelioma: damages

- (1) This section applies where—
  - (a) a person (“the responsible person”) has negligently or in breach of statutory duty caused or permitted another person (“the victim”) to be exposed to asbestos,
  - (b) the victim has contracted mesothelioma as a result of exposure to asbestos,
  - (c) because of the nature of mesothelioma and the state of medical science, it is not possible to determine with certainty whether it was the exposure mentioned in paragraph (a) or another exposure which caused the victim to become ill, and
  - (d) the responsible person is liable in tort, by virtue of the exposure mentioned in paragraph (a), in connection with damage caused to the victim by the disease (whether by reason of having materially increased a risk or for any other reason).
- (2) The responsible person shall be liable—
  - (a) in respect of the whole of the damage caused to the victim by the disease (irrespective of whether the victim was also exposed to asbestos—
    - (i) other than by the responsible person, whether or not in circumstances in which another person has liability in tort, or
    - (ii) by the responsible person in circumstances in which he has no liability in tort), and
  - (b) jointly and severally with any other responsible person.
- (3) Subsection (2) does not prevent—
  - (a) one responsible person from claiming a contribution from another, or
  - (b) a finding of contributory negligence.
- (4) In determining the extent of contributions of different responsible persons in accordance with subsection (3)(a), a court shall have regard to the relative lengths of the periods of exposure for which each was responsible; but this subsection shall not apply—
  - (a) if or to the extent that responsible persons agree to apportion responsibility amongst themselves on some other basis, or
  - (b) if or to the extent that the court thinks that another basis for determining contributions is more appropriate in the circumstances of a particular case.
- (5) In subsection (1) the reference to causing or permitting a person to be exposed to asbestos includes a reference to failing to protect a person from exposure to asbestos.
- (6) In the application of this section to Scotland—
  - (a) a reference to tort shall be taken as a reference to delict, and
  - (b) a reference to a court shall be taken to include a reference to a jury.
- (7) The Treasury may make regulations about the provision of compensation to a responsible person where—

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- (a) he claims, or would claim, a contribution from another responsible person in accordance with subsection (3)(a), but
  - (b) he is unable or likely to be unable to obtain the contribution, because an insurer of the other responsible person is unable or likely to be unable to satisfy the claim for a contribution.
- (8) The regulations may, in particular—
- <sup>F1</sup>(a) .....
  - (b) replicate or apply (with or without modification) a transitional compensation provision;
  - (c) provide for a specified person to assess and pay compensation;
  - (d) provide for expenses incurred (including the payment of compensation) to be met out of levies collected in accordance with section 213(3)(b) of the Financial Services and Markets Act 2000 (c. 8) (the Financial Services Compensation Scheme);
  - (e) modify the effect of a transitional compensation provision;
  - (f) enable the [<sup>F2</sup>Financial Conduct Authority or the Prudential Regulation Authority] to amend the Financial Services Compensation Scheme;
  - (g) modify the Financial Services and Markets Act 2000 in its application to an amendment pursuant to paragraph (f);
  - (h) make, or require the making of, provision for the making of a claim by a responsible person for compensation whether or not he has already satisfied claims in tort against him;
  - (i) make, or require the making of, provision which has effect in relation to claims for contributions made on or after the date on which this Act is passed.
- <sup>F3</sup>(9) .....
- (10) In subsections (7) and (8)—
- (a) a reference to a responsible person includes a reference to an insurer of a responsible person, and
  - (b) “transitional compensation provision” means a provision of an enactment which is made under the Financial Services and Markets Act 2000 and—
    - (i) preserves the effect of the Policyholders Protection Act 1975 (c. 75), or
    - (ii) applies the Financial Services Compensation Scheme in relation to matters arising before its establishment.
- (11) Regulations under subsection (7)—
- (a) may include consequential or incidental provision,
  - (b) may make provision which has effect generally or only in relation to specified cases or circumstances,
  - (c) may make different provision for different cases or circumstances,
  - (d) shall be made by statutory instrument, and
  - (e) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.

**Textual Amendments**

**F1** S. 3(8)(a) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 109\(2\)\(a\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, Sch.

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- F2** Words in s. 3(8)(f) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 109\(2\)\(b\)](#) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F3** S. 3(9) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\), s. 122\(3\), Sch. 18 para. 109\(3\)](#) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

## F<sup>4</sup>PART 2

### CLAIMS MANAGEMENT SERVICES

#### Textual Amendments

- F4** Pt. 2 omitted (29.11.2018 for specified purposes, 1.4.2019 in so far as not already in force) by virtue of [The Financial Services and Markets Act 2000 \(Claims Management Activity\) Order 2018 \(S.I. 2018/1253\), arts. 1\(2\)\(3\), 93](#) (with arts. 39-83, 106, 108)

## PART 3

### GENERAL

#### 16 Commencement

- (1) The preceding provisions of this Act, other than sections 1, 2 and 3, shall come into force in accordance with provision made by order of the Secretary of State.
- (2) An order under subsection (1)—
  - (a) may make provision generally or only for specified purposes,
  - (b) may make different provision for different purposes,
  - (c) may make transitional, consequential or incidental provision, and
  - (d) shall be made by statutory instrument.
- (3) Section 3 shall be treated as having always had effect.
- (4) But the section shall have no effect in relation to—
  - (a) a claim which is settled before 3rd May 2006 (whether or not legal proceedings in relation to the claim have been instituted), or
  - (b) legal proceedings which are determined before that date.
- (5) Where a claim is settled on or after that date and before the date on which this Act is passed, a party to the settlement may apply to a relevant court to have the settlement varied; and—
  - (a) a court is a relevant court for that purpose if it had, or would have had, jurisdiction to determine the claim by way of legal proceedings,
  - (b) an application shall be brought as an application in, or by way of, proceedings on the claim, and
  - (c) a court to which an application is made shall vary the settlement to such extent (if any) as appears appropriate to reflect the effect of section 3.

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- (6) Where legal proceedings are determined on or after that date and before the date on which this Act is passed, a party to the proceedings may apply to the court to vary the determination; and—
- (a) “the court” means the court which determined the proceedings,
  - (b) the application shall be treated as an application in the proceedings, and
  - (c) the court shall vary the determination to such extent (if any) as appears appropriate to reflect the effect of section 3.

#### Subordinate Legislation Made

- P1** [S. 16\(1\)](#) power partly exercised: 1.12.2006 appointed for specified provisions by [{S.I. 2006/3005}](#), art. 3; 23.1.2007 for specified provisions by [{S.I. 2007/94}](#), art. 3; 23.4.2007 for specified provisions by [{S.I. 2007/922}](#), art. 3

## 17 Extent

- (1) This Act shall extend to England and Wales only.
- (2) But section 3 (and section 16(3) to (6)) shall extend to—
- (a) England and Wales,
  - (b) Scotland, and
  - (c) Northern Ireland.

## 18 Short title

This Act may be cited as the Compensation Act 2006.

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## SCHEDULE

Section 9

### CLAIMS MANAGEMENT REGULATIONS

#### *Introduction*

- 1        In this Schedule “regulations” means regulations under section 9.
- 2        Regulations made by virtue of a provision of this Schedule may confer a discretion on the Regulator.

#### *Waiver of requirement for authorisation*

- 3        (1) Regulations may permit the Regulator to waive the requirement for authorisation, as mentioned in section 4(1)(c), in specified cases or circumstances.
- (2) Regulations by virtue of this sub-paragraph may permit waiver in relation to a person only—
- (a) if the Secretary of State intends to exempt the person under section 6, and
- (b) for a single period not exceeding six months.
- (3) The regulations may, in particular, permit or require the Regulator to provide for waiver to be subject to a condition of a kind specified in the regulations.

#### *Grant of authorisations*

- 4        (1) Regulations shall prescribe the procedure for applying to the Regulator for authorisation.
- (2) Regulations may, in particular, require the provision of information or documents relating to the applicant or to any person who appears to the Regulator to be connected with the applicant.
- 5        (1) Regulations shall require the Regulator not to grant an application for authorisation unless satisfied of the applicant's competence and suitability to provide regulated claims management services of the kind to which the application relates.
- (2) For that purpose the Regulator shall apply such criteria, and have regard to such matters, as the regulations shall specify.
- (3) Regulations by virtue of sub-paragraph (2) may, in particular—
- (a) refer to a provision of directions, guidance or a code given or issued under section 5(4);
- (b) relate to persons who are or are expected to be employed or engaged by, or otherwise connected with, the applicant;
- (c) relate to—
- (i) criminal records;
- (ii) proceedings in any court or tribunal;
- (iii) proceedings of a body exercising functions in relation to a trade or profession;
- (iv) financial circumstances;
- (v) management structure;
- (vi) actual or proposed connections or arrangements with other persons;

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- (vii) qualifications;
  - (viii) actual or proposed arrangements for training;
  - (ix) arrangements for accounting;
  - (x) practice or proposed practice in relation to the provision of information about fees;
  - (xi) arrangements or proposed arrangements for holding clients' money;
  - (xii) arrangements or proposed arrangements for insurance.
- 6 Regulations may—
- (a) provide for authorisation to be on specified terms or subject to compliance with specified conditions;
  - (b) permit the Regulator to grant authorisation on terms or subject to conditions;
  - (c) permit the Regulator to grant an application for authorisation only to a specified extent or only in relation to specified matters, cases or circumstances.
- 7 <sup>F5</sup>(1) Regulations may—
- (a) enable the Regulator to charge—
    - (i) fees in connection with applications for, or the grant of, authorisation;
    - (ii) periodic fees for authorised persons;
  - (b) specify the consequences of failure to pay fees;
  - (c) permit the charging of different fees for different cases or circumstances (which may, in particular, be defined wholly or partly by reference to turnover or other criteria relating to an authorised person's business);
  - (d) permit the waiver, reduction or repayment of fees in specified circumstances;
  - (e) provide for the amount of fees to be prescribed or controlled by the Secretary of State;
  - (f) make provision for the manner in which fees are to be accounted for;
  - (g) make provision for the application of income from fees (which may, in respect of a time when the Secretary of State is exercising functions of the Regulator under section 5(9) or (10), include provision permitting or requiring payment into the Consolidated Fund).

[<sup>F6</sup>(2) The fees that may be charged by the Regulator by virtue of sub-paragraph (1) include fees in respect of costs incurred by the Regulator for the purposes of meeting any leviable OLC expenditure.]

#### Textual Amendments

- F5** Sch. para. 7(1): renumbered (21.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 140(2)**, 148(3); S.I. 2014/772, art. 2
- F6** Sch. para. 7(2) inserted (21.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), **ss. 140(3)**, 148(3); S.I. 2014/772, art. 2

#### *Conduct of authorised persons*

- 8 (1) Regulations shall require the Regulator to prescribe rules for the professional conduct of authorised persons.

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- (2) Regulations under sub-paragraph (1) shall include provision—
- (a) about the manner in which rules are to be prepared and published (which may, in particular, include provision requiring—
    - (i) consultation;
    - (ii) the submission of a draft to the Secretary of State for approval);
  - (b) about the consequences of failure to comply with the rules (which may, in particular, include—
    - (i) provision for rules to be treated as conditions of authorisations;
    - [<sup>F7</sup>(ia) provision enabling the Regulator to require an authorised person to pay a penalty;]
    - (ii) provision enabling the Regulator to impose conditions on, suspend or cancel authorisations).

**Textual Amendments**

**F7** Sch. para. 8(2)(b)(ia) inserted (21.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 139\(2\), 148\(3\)](#); [S.I. 2014/772](#), [art. 2](#)

- 9 (1) Regulations shall enable the Regulator to issue one or more codes of practice about the professional conduct of authorised persons.
- (2) Regulations under sub-paragraph (1) shall include provision—
- (a) about the manner in which a code is to be prepared and published (which may, in particular, include provision requiring—
    - (i) consultation;
    - (ii) the submission of a draft to the Secretary of State for approval);
  - (b) about the consequences of failure to comply with a code (which may, in particular—
    - (i) provide for compliance with a code to be treated as a condition of authorisations;
    - [<sup>F8</sup>(ia) enable the Regulator to require an authorised person to pay a penalty;]
    - (ii) enable the Regulator to impose conditions on, suspend or cancel authorisations).

**Textual Amendments**

**F8** Sch. para. 9(2)(b)(ia) inserted (21.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 139\(3\), 148\(3\)](#); [S.I. 2014/772](#), [art. 2](#)

- 10 (1) Regulations shall provide for the Regulator to investigate complaints about the professional conduct of an authorised person.
- (2) Regulations under sub-paragraph (1) shall enable the Regulator to—
- (a) impose conditions on a person's authorisation;
  - (b) suspend a person's authorisation;
  - (c) cancel a person's authorisation.
- [<sup>F9</sup>(3) Regulations under sub-paragraph (1) may enable the Regulator to require an authorised person to pay a penalty.]



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#### Textual Amendments

**F9** Sch. para. 10(3) inserted (21.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 139\(4\)](#), [148\(3\)](#); [S.I. 2014/772](#), [art. 2](#)

- 11 (1) Regulations may require, or permit the Regulator to require, an authorised person to take out a policy of professional indemnity insurance in respect of his actions in the course of providing or purporting to provide regulated claims management services.
- (2) Regulations under sub-paragraph (1) may, in particular—
- (a) make provision about the level or nature of insurance cover to be provided by the policy;
  - (b) include provision about failure to comply (which may, in particular, provide for compliance to be treated as a condition of authorisations or enable the Regulator [<sup>F10</sup>to require the payment of a penalty by an authorised person or] to impose conditions on, suspend or cancel authorisations).

#### Textual Amendments

**F10** Words in Sch. para. 11(2)(b) inserted (21.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 139\(5\)](#), [148\(3\)](#); [S.I. 2014/772](#), [art. 2](#)

- 12 (1) Regulations may require the Regulator to establish a scheme to compensate a client of an authorised person where—
- (a) money is paid to the authorised person in complete or partial satisfaction of the client's claim, and
  - (b) the client is unable to obtain all or part of the money because the authorised person becomes insolvent or is otherwise unable or unwilling to pay.
- (2) In particular, regulations may make provision—
- (a) about the purchase of bonds or other forms of insurance or indemnity;
  - (b) about the funding of the scheme (which may include the application of part of fees charged in accordance with paragraph 7 and may not include payments, or other financial assistance, by a Minister of the Crown);
  - (c) about procedure in connection with compensation (including criteria to be applied);
  - (d) about the amount of compensation.

#### *Enforcement*

- 13 Regulations may permit or require the Regulator to take action of a specified kind for the purpose of assessing compliance with terms or conditions of authorisations.
- 14 (1) Regulations may enable the Regulator, for the purpose of investigating a complaint about the activities of an authorised person or for the purpose of assessing compliance with terms and conditions of an authorisation, to require the provision of information or documents.
- (2) The Regulations may provide that on an application by the Regulator a judge of the High Court, Circuit judge or justice of the peace may issue a warrant authorising the Regulator

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- [<sup>F11</sup>(a) to enter and search premises on which a person conducts or is alleged to conduct regulated claims management business, for the purposes of—
- (i) investigating a complaint about the activities of an authorised person, or
  - (ii) assessing compliance with terms and conditions of an authorisation, and
- (b) to take possession of written or electronic records found on the search for the purposes of taking copies in accordance with regulations under sub-paragraph (3).]
- (3) Regulations may enable the Regulator to take copies of written or electronic records found on a search by virtue of sub-paragraph (2) for a purpose specified in that subsection.
- (4) Regulations may enable the Regulator to [<sup>F12</sup>require an authorised person to pay a penalty, or to impose conditions on, suspend or cancel a person's authorisation,] if—
- (a) a requirement imposed by virtue of sub-paragraph (1) is not complied with, or
  - (b) an attempt to exercise a power by virtue of sub-paragraph (2) or (3) is obstructed.
- (5) In this paragraph a reference to the Regulator includes a reference to a person authorised by him in writing.
- (6) Regulations shall—
- (a) specify matters of which a judge or justice of the peace must be satisfied, or to which he must have regard, before issuing a warrant under sub-paragraph (2),
  - (b) regulate the exercise of a power under or by virtue of sub-paragraph (1), (2) or (3) (whether by restricting the circumstances in which a power may be exercised, by specifying conditions to be complied with in the exercise of a power, or otherwise).

**Textual Amendments**

- F11** Words in Sch. para. 14(2) substituted (30.6.2008) by [Legal Services Act 2007 \(c. 29\)](#), ss. 187, 211, [Sch. 19 para. 11\(6\)](#) (with ss. 29, 192, 193); S.I. 2008/1436, [art. 2\(e\)](#)
- F12** Words in Sch. para. 14(4) substituted (21.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 139\(6\)](#), 148(3); S.I. 2014/772, [art. 2](#)

- 15 Regulations may make provision about the exercise by the Regulator of a power under section 8.

*<sup>F13</sup>Penalties: supplementary provision*

**Textual Amendments**

- F13** Sch. para. 16 inserted (21.3.2014) by [Financial Services \(Banking Reform\) Act 2013 \(c. 33\)](#), [ss. 139\(7\)](#), 148(3); S.I. 2014/772, [art. 2](#)

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- 16 (1) This paragraph applies in any case where regulations include provision enabling the Regulator to require an authorised person to pay a penalty.
- (2) The regulations—
- (a) shall include provision about how the Regulator is to determine the amount of a penalty, and
  - (b) may, in particular, include provision specifying a minimum or maximum amount.
- (3) The regulations—
- (a) shall provide for income from penalties imposed by the Regulator to be paid into the Consolidated Fund, but
  - (b) may provide that such income is to be paid into the Consolidated Fund after the deduction of costs incurred by the Regulator in collecting, or enforcing the payment of, such penalties.
- (4) The regulations may also include, in particular—
- (a) provision for a penalty imposed by the Regulator to be enforced as a debt;
  - (b) provision specifying conditions that must be met before any action to enforce a penalty may be taken.]

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