

*These notes refer to the Compensation Act 2006 (c.29)
which received Royal Assent on 25 July 2006*

COMPENSATION ACT 2006

EXPLANATORY NOTES

INTRODUCTION

1. These explanatory notes relate to the Compensation Act 2006 which received Royal Assent on 25 July 2006. They have been prepared by the Department for Constitutional Affairs in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.

2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

OVERVIEW

3. The Compensation Act contains provisions in relation to the law on negligence and breach of statutory duty, damages for mesothelioma, and the regulation of claims management services.

4. The explanatory notes are divided into parts reflecting the structure of the Act. In relation to each Part, there is a summary and background section. Commentary on particular sections is then set out in number order, with the commentary on the various schedules included with the section to which they relate.

5. The Act is divided into 3 parts:

Part 1: Standard of Care

- Part 1 contains provisions relating to the law of negligence, breach of statutory duty and damages for mesothelioma.

Part 2: Claims Management Services

- Part 2 contains provisions relating to the regulation of Claims Management Services.

Part 3: General

- Part 3 contains technical provisions including provisions about commencement and extent.

PART 1: STANDARD OF CARE

SUMMARY

6. Part 1 of the Act contains provisions relating to the law on negligence, breach of statutory duty and damages for mesothelioma.

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BACKGROUND

Negligence and Breach of Statutory Duty

7. The purpose of this provision is to address what was suggested by the Better Regulation Task Force (BRTF) report of May 2004 (*Better Routes to Redress*) to be a common misperception, that can lead to a disproportionate fear of litigation and consequent risk-averse behaviour.

8. Under the current law, for a claim in negligence or for breach of a statutory duty involving a standard of care to succeed there must be a duty of care owed by the defendant to the claimant; a breach of that duty by the defendant; and loss or injury suffered by the claimant which is causally connected with the breach. Section 1 concerns a particular aspect of the current law, relating to the second component: whether there is a breach of the duty of care.

9. The question whether there has been a breach of the duty of care involves two elements: how much care is required to be taken (the standard of care) and whether that care has been taken. The ordinary standard of care is "reasonable care"; and the question whether or not that standard has been met - whether reasonable care has been taken - is a question of fact for the court to decide, having regard to all the circumstances of the case. What amounts to reasonable care in any particular case will vary according to the circumstances. In some cases, what would be required to prevent injury of the kind suffered may be such that to demand it of the defendant would be to demand more than is reasonable.

10. This provision is intended to contribute to improving awareness of this aspect of the law; providing reassurance to the people and organisations who are concerned about possible litigation; and to ensuring that normal activities are not prevented because of the fear of litigation and excessively risk-averse behaviour.

11. This provision is not concerned with and does not alter the standard of care, nor the circumstances in which a duty to take that care will be owed. It is solely concerned with the court's assessment of what constitutes reasonable care in the case before it. It only affects statutory duties which involve a standard of care, such as those owed under the Occupiers' Liability Acts of 1957 and 1984. It does not extend to other forms of statutory duty, such as cases where there is an absolute statutory duty involving strict liability in the event of failure; cases which concern what is reasonable in a context other than carelessness; or cases where infringement of a right is actionable as a breach of statutory duty which does not depend on carelessness.

12. Part 1 also contains a provision to the effect that in claims in negligence or breach of statutory duty, an apology, offer of treatment or other redress shall not of itself amount to an admission of liability.

Damages for Mesothelioma

13. In the 2002 case of *Fairchild v Glenhaven Funeral Services Ltd and others* [2002] UKHL 22, the House of Lords decided that a person who had contracted mesothelioma after wrongful exposure to asbestos at different times by more than one negligent person could sue any of them, notwithstanding that he could not prove which exposure had actually caused the disease – because all had materially contributed to the risk of him contracting the disease. *Fairchild* did not resolve whether liability should be joint and several, although it was

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presumed by the parties that this would be the rule and this was the approach taken in practice. However, in *Barker v Corus UK Ltd (and conjoined cases)* [2006] UKHL 20, the House of Lords decided that the damages were instead to be apportioned among those responsible for the wrongful exposure according to their relative degree of contribution to the chance of the person contracting the disease.

14. That decision did not impose a limit on the damages which could be recovered from those responsible for the exposure to asbestos. But it did mean that the risk of any of them being insolvent and unable to pay the appropriate share would fall on the claimant, and that in practice the claimant would have to trace all relevant defendants, as far as this was possible, before liability could be apportioned and full compensation paid, or alternatively to issue multiple claims to recover damages on a piecemeal basis. The practical effects of this decision (which their Lordships were not asked to consider) were that claims could take much longer to be concluded, and would be much more difficult and time-consuming for claimants in circumstances where they and their families are already under considerable pain and stress. The Act reverses the effects of the *Barker* judgment to enable claimants, or their estate or dependants, to recover full compensation from any liable person. It will then be open to the person who has paid the compensation to seek a contribution from other negligent persons.

15. The Act also confers a power for HM Treasury to make provisions that would facilitate the speeding up of payment of claims to mesothelioma victims. These provisions would enable responsible persons to claim money back from the Financial Services Compensation Scheme in specified circumstances (that is, in circumstances in which previously only the claimant would have had such a right), when another responsible person and their insurer are both insolvent and thus unable to pay their own share of compensation payments.

COMMENTARY ON SECTIONS: PART 1

Provisions relating to the law of negligence and breach of statutory duty

Section 1: Considering a claim in negligence or breach of statutory duty

16. Section 1 provides that in considering a claim in negligence or breach of statutory duty, a court may, in determining whether the defendant should have taken particular steps to meet a standard of care (whether by taking precautions or otherwise), have regard to whether a requirement to take those steps might prevent an activity which is desirable from taking place (either at all, to a particular extent, or in a particular way), or might discourage persons from undertaking functions in connection with the activity.

17. This provision reflects the existing law and approach of the courts as expressed in recent judgments of the higher courts.

Section 2: Apologies, offers of treatment or other redress

18. Section 2 provides that an apology, an offer of treatment or other redress shall not of itself amount to an admission of negligence or breach of statutory duty. This provision is intended to reflect the existing law.

Section 3: Mesothelioma: Damages

19. Section 3 contains provisions establishing joint and several liability in cases where a person has contracted mesothelioma as a result of being negligently exposed to asbestos.

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20. Subsection (1) sets out the conditions that must be satisfied before the substantive provisions of the section will apply. The conditions are that someone contracts mesothelioma from exposure to asbestos, that they were exposed to asbestos as a result of negligence by a person (defined as the ‘responsible person’) and that it is not possible to prove whose negligent act caused them to become ill. Paragraph (d) indicates that the final condition is that the responsible person must be liable in tort.

21. Subsection (2) provides that where the conditions in subsection (1) are met, the responsible person is liable for all of the damage caused by the mesothelioma. The provision establishes that it makes no difference whether or not someone else also could have caused the disease; whether the person could have contracted the disease from environmental exposure; or whether the responsible person would not be liable in tort for some of the periods of exposure. Paragraph (b) indicates that, if there is more than one responsible person, the liability is joint and several. That means that the victim (or any dependants if the victim is dead) may proceed against any of the responsible persons and that any person proceeded against is responsible for paying the full amount of compensation, and for recovering contributions from the others.

22. Subsection (3) confirms that contributions from other responsible persons may subsequently be sought by the responsible person who has paid the compensation (or by any who have jointly done so). The subsection also makes clear that if the victim is found to have negligently exposed himself to asbestos then the damages may be reduced accordingly under the principle of contributory negligence (as is currently the case).

23. Subsection (4) provides that a court shall, when deciding the level of contributions, have regard to the relative lengths of exposure, unless the responsible persons agree to approach the apportionment differently or the court thinks another approach is more appropriate. This will assist parties in agreeing the basis on which contributions are to be made without going to court.

24. Subsection (5) makes it clear that the provision covers failure to protect someone from exposure to asbestos.

25. Subsection (6) makes provision in relation to the application of the section in Scotland.

26. Subsections (7) to (11) confer power on Her Majesty’s Treasury to make regulations about the provision of compensation to a responsible person or an insurer of a responsible person in specified circumstances. These provisions would enable responsible persons to claim money back from the Financial Services Compensation Scheme when a liable employer and insurer are both insolvent. The power includes the ability to deal with situations arising prior to the establishment of the Financial Services Compensation Scheme that were settled under the Policyholders Protection Act 1975. The provisions would only come into effect once Treasury has laid the necessary regulations and the FSA has made the relevant rules. However, the power provides that rules could permit the liable party to claim contributions in respect of claims dealt with from the date of Royal Assent.

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PART 2: CLAIMS MANAGEMENT SERVICES

SUMMARY

27. Part 2 of the Act sets out the framework for the regulation of claims management services.

BACKGROUND

28. The Better Regulation Task Force (BRTF) report: *Better Routes to Redress* published in May 2004 found that the “compensation culture” is a myth but that it is a damaging myth that needs to be tackled. The BRTF identified the activities of claims intermediaries as contributing to a ‘have a go culture’ and recommended that claims intermediaries should be subject to statutory regulation, if self-regulation did not work.

29. One of the concerns identified by the BRTF was that while there were established complaints mechanisms and bodies to help people who are unhappy with the way they have been treated by solicitors or insurers, there has been no clear-cut equivalent in the case of claims intermediaries. It has been suggested that as a result, more claims for redress have been brought against solicitors and insurers because there has been no regulatory way to proceed against anyone else.

30. The Government published a consultation and responses paper on the simplification of conditional fee agreements (CFAs) in June 2004 *Making Simple CFAs a Reality* which included a discussion of the widespread concern over claims intermediaries’ activities and work underway to try to produce a self regulatory solution. The Government responded to the BRTF’s report in November 2004 accepting the recommendation that regulation of claims intermediaries should be considered if self-regulation failed.

31. The legislative framework is flexible and allows the Secretary of State to designate a body to regulate claims management services, to establish a body to regulate (where he thinks that no existing body is suitable for designation) or to regulate himself. The Act provides the outline regulatory framework to authorise providers who would be required to comply with rules and codes of practice. The Act also includes power for the Regulator to investigate unauthorised activities and to prosecute those who try to evade regulation.

32. If the Secretary of State designates a body to regulate claims management services he will retain oversight responsibility for the body. He will have the power to issue directions, provide guidance, require the body to try to meet regulatory targets and to provide information on its regulatory responsibility. It is anticipated that the regulation of claims management services will in due course be integrated into the proposed new regulatory framework for legal services set out in the Draft Legal Services Bill (Cm 6839).

COMMENTARY ON SECTIONS: PART 2

Section 4: Provision of regulated claims management services

33. This section prohibits the provision of regulated claims management services by those who are not authorised, exempted from authorisation or subject to a waiver, or an individual acting otherwise than in the course of a business. *Subsection 1(d)* makes it clear that the prohibition does not apply to individuals who offer claims management services on a voluntary basis (for example a friend offering advice on a claim for compensation). It would,

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however, apply to voluntary or not-for-profit organisations (although not to individual volunteers providing their services through such an organisation).

34. *Subsection 2* defines “authorised person” as a person authorised by the Regulator. This would also allow the Regulator to authorise claims management companies (as “person” also applies to a body corporate or unincorporate (Schedule 1 to the Interpretation Act 1978)). Thus employees or members of a company or other organisation would be covered by the authorisation granted to the ‘parent’ company or organisation for which they are providing claims management services, avoiding the need for specific authorisation of each individual (natural) person. This subsection also defines claims management services as “advice or other services in relation to the making of a claim”. The claim may be for compensation, restitution, repayment or other remedy or relief in respect of loss or damage, or in respect of an obligation - whether pursued through the courts or by other means (for example the Employment Tribunals, Criminal Injuries Compensation Scheme or complaints to insurers or the Financial Ombudsman, about the mis-selling of financial products such as endowment policies). Only those claims management services that the Secretary of State prescribes by order under section 4(2)(e) will be subject to regulation. The Secretary of State can therefore target regulation in areas where he considers there to be a particularly high risk to consumers.

35. *Subsection 3* gives examples of activities which constitute the provision of services (where they are connected with a claim). The list, which is not exhaustive, includes financial services (for example assisting with the purchase of insurance or loans); legal representation (for example acting on a claimants behalf in pursuing a claim); referring or introducing one person to another (for example referring a claim to a solicitor); and making inquiries (for example contacting witnesses in the course of investigating a claim). The provision of advice does not extend to the preparation or giving of evidence. For example, if a person were asked to give evidence in a personal injury claim (whether or not expert evidence) this would not amount to providing claims management services.

36. *Subsection 4* sets out the circumstances in which, for the purposes of sub-section 1(d), an individual acts in the course of a business. Individuals acting in the course of employment or who otherwise receive or hope to receive reward (directly or indirectly) as a result of the provision of services will need to apply for authorisation unless they are exempt or subject to a waiver. Individuals who are not acting in the course of a business will fall within sub-section 1(d) and will not need to be authorised.

37. *Subsection 5* provides that the Secretary of State may by order provide that a claim for a specified benefit shall be treated as a claim for the purposes of this Part. Such an order would allow claims management services provided in relation to specified benefits to be regulated in an order under subsection 2(e).

38. *Subsection 6* requires that the Secretary of State only specify a benefit under subsection 5 if it appears to him to be a United Kingdom social security benefit designed to provide compensation for industrial injury.

Section 5: The Regulator

39. *Subsection 1* permits the Secretary of State to designate by order an existing individual or body to carry out regulatory functions, including:

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- authorising persons to provide claims management services,
- regulating the conduct of authorised persons (for example by prescribing mandatory rules and codes of practice),
- other functions which are conferred on the Regulator by or under Part 2 of the Act (for example additional functions which the Secretary of State specifies in regulations under section 9).

40. *Subsection 2* sets out the criteria that must be met before the Secretary of State may designate a person as the Regulator. The Secretary of State must satisfy himself (under subsection 2(a)), that the individual or body is competent to carry out the regulatory functions. In considering whether a person meets the criteria, it is likely that the Secretary of State will take into account a wide range of possible factors including:

- an appropriate infrastructure,
- suitable internal governance arrangements,
- adequate financial and staffing resources,
- appropriate regulatory policies.

41. The Secretary of State must also satisfy himself that the proposed Regulator has made arrangements to ensure that there is clear separation between its regulatory functions and any other functions undertaken (such as representative functions). In addition, he must be satisfied that the proposed Regulator will promote the interests of persons using regulated claims management services in order to increase consumer confidence in the sector. This would include:

- setting and monitoring standards of competence and conduct for authorised persons (for example by prescribing rules of conduct and a code of practice);
- promoting good practice by authorised persons, particularly the provision of information about charges and other matters (such as the availability of free, alternative means of pursuing a claim);
- promoting practices likely to facilitate competition between claims management companies (for example by ensuring rules of conduct are not anti-competitive), which should result in more consumer choice and better value for money; and
- ensuring that consumers are protected (including putting in place a mechanism for handling complaints where consumers are dissatisfied with the service they have received).

42. *Subsection 3* gives the Secretary of State the power by order to create a new body (for example a non-Departmental public body) which he may then designate as the Regulator. This power may only be exercised where the Secretary of State thinks that no existing body is suitable for designation under subsection (1).

43. *Subsection 4* places obligations on the Regulator, including the requirement to comply with any directions given to him by the Secretary of State, and to have regard to any guidance or code of practice issued to him. The Regulator must also try to meet any targets set by the Secretary of State (for example targets relating to the handling of complaints). The ability to assess performance against targets would provide the Secretary of State with an indication of

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the body's effectiveness as the Regulator. The Secretary of State could also require the disclosure of other information and reports. For example, he might request an annual report on the Regulator's performance, a copy of any business plan or annual budget estimate or information relating to a specific regulatory activity. The Regulator must not release information to the Secretary of State where disclosure would contravene other legislation such as the Data Protection Act 1998.

44. *Subsection 5* requires the Secretary of State to lay before Parliament any code of practice issued to the Regulator.

45. *Subsection 6* gives the Secretary of State the power to pay grants to the Regulator (for example to assist with the costs of establishing the new regulatory regime or subsidising operational costs). Grants may be subject to terms and conditions, including terms as to repayment.

46. *Subsection 7* makes it clear that the powers and duties of the Regulator may be exercised or undertaken by others acting on his behalf or with his authority.

47. *Subsection 8* makes it clear that the Secretary of State may by order revoke an individual or body's designation as Regulator. The decision to revoke designation would only be taken if the Regulator were persistently failing to carry out his regulatory functions effectively and efficiently, and after careful consideration of the circumstances that led to the failure.

48. *Subsection 9* requires the Secretary of State to exercise functions of the Regulator if no other body or individual is designated, or as an interim measure until a new body is established.

49. *Subsection 10* gives the Secretary of State the power to transfer by order a function of the Regulator to himself, either for a specified period or indefinitely. For example, if the designated Regulator failed to deal adequately with consumer complaints, the Secretary of State could transfer these functions to himself. This would ensure that the Secretary of State had the ability to protect consumers (without revoking designation) in the event that the Regulator failed to properly carry out particular functions.

Section 6: Exemptions

50. *Subsection 1* permits the Secretary of State by order to specify bodies whose members may offer claims management services without the need for authorisation. This sub-section is intended to allow exemptions to be made and therefore avoid the need for duplicate regulation.

51. *Subsection 2* permits the Secretary of State to exempt by order persons or classes of persons from the requirement for authorisation. Any exemption may be restricted or subject to compliance with specified conditions. *Subsection 2(a)* provides a power to exempt by order a specified person or class of person such as charities providing impartial advice to claimants. *Subsection 2(b)* gives a power to exempt individuals and bodies from authorisation in specified circumstances (for example where advice is being given in connection with a particular type of claim). *Subsection 2(c)* gives him the power to exempt persons or classes of person in particular circumstances.

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52. *Subsection 3* gives the Secretary of State the power to attach certain conditions to an exemption (for example he may require an individual or body to have regard to a code of practice).

53. *Subsection 4* makes clear that persons established or appointed by virtue of an enactment (such as statutory Ombudsmen) may provide regulated claims management services without the need for authorisation.

54. *Subsection 5* defines “exempt”. An individual is exempt if orders made by the Secretary of State under this section mean that he is not required to be authorised in order to offer claims management services, and therefore does not contravene section 4(1) by doing so.

Section 7: Enforcement: offence

55. *Subsection 1* creates an offence of providing regulated claims management services in contravention of section 4(1). Any person providing such services when not either authorised, exempt from the requirement for authorisation or subject to a waiver by the Regulator, and who is not an individual acting on a voluntary basis, would be committing an offence under this section.

56. *Subsection 2* specifies the penalty for the offence. On summary conviction, the maximum penalty is 51 weeks imprisonment (six months until the relevant provisions of the Criminal Justice Act 2003 are commenced), a fine or both. For a conviction on indictment, the maximum period of imprisonment is two years. It is envisaged that sentences at the higher end of the scale would only be imposed for the more serious offences (particularly where the offence is repeated).

Section 8: Enforcement: the Regulator

57. *Subsection 1* gives the Regulator (or the Secretary of State where no Regulator is designated) the power to apply to the court for an injunction restraining a person from providing regulated claims management services if they are not authorised, exempted by the Secretary of State or subject to a waiver by the Regulator. This power could be used, for example, to stop an unauthorised claims management company from providing services to a consumer pending a prosecution under section 7(1).

58. *Subsection 2* gives the definition of court as specified in subsection 1 as the High Court or a County Court.

59. *Subsection 3* gives the Regulator the power to investigate whether an offence has been committed (for example investigating whether an unauthorised company is offering regulated claims management services unlawfully). Further details of investigatory powers are given in subsections 4 - 6 (see below). It also gives the Regulator the power to institute criminal proceedings relating to the offences in this part (i.e. offences in sections 7, 10 and 11). This will allow the Regulator to take action directly, without necessarily relying on the involvement of the Crown Prosecution Service.

60. *Subsection 4* gives the Regulator the power to require any person or body to provide information or documents for the purposes of an investigation into whether any of the offences in sections 7, 10 or 11 have been committed. These might be paper records relating to a claim, or electronic records

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61. *Subsection 5* allows the Regulator to apply for a warrant to search any premises where it is suspected that regulated claims management services are being offered or conducted without the Regulator's authority, to determine if an offence has occurred. Such application would need to be made to a judge of the High Court, Circuit judge or justice of the peace.

62. *Subsection 6* grants permission for any documents (either paper or electronic) relating to the investigation to be copied by the Regulator. These could relate to the determining of whether an offence has occurred, or support any criminal proceedings that might result.

63. *Subsection 7* clarifies that the reference to the Regulator in subsections 4 to 6 includes anyone authorised by him in writing, for example an investigator employed to investigate if an offence has occurred.

64. *Subsection 8* requires the Secretary of State to make regulations determining matters to which the judge or justice of the peace should have regard, which might include considerations to be taken into account where the premises are residential. The regulations must also cover the supporting evidence needed by a judge or justice of the peace to satisfy them that a warrant should be issued. This might include the reasons to believe an offence has occurred, the steps taken to procure the evidence needed, and any corroborative evidence available should the complaint stem from an anonymous source.

Section 9 and The Schedule: Regulations

65. This section gives the Secretary of State the power to make regulations about authorisations under section 5(1) and the functions of the Regulator. It also makes clear that transitional provisions may be included in regulations made under this section. The power to include provisions about the extent to which functions may be exercised in respect of matters arising before the commencement of a provision under this Part is intended only to give the Regulator a discretion to investigate complaints relating to an authorised person, where the subject matter of the complaint arose (or arose in part) in the period between the Act receiving Royal Assent and the person receiving authorisation.

The Schedule – Claims management regulation

66. This schedule gives further detail about provisions that may be included in regulations made by the Secretary of State under section 9 (about the authorisation of claims managers and the functions of the Regulator).

Waiver of requirement for authorisation

67. Paragraph 3 allows provision for the Regulator to waive the requirement for authorisation in specified cases or circumstances. The Regulator may only grant a waiver if the Secretary of State intends to exempt the person under section 6. Waivers may only be granted for a single period of no more than six months. In exercising the power to waive the requirement for authorisation, the Regulator might attach conditions such as requiring that due regard is given to a code of practice.

Grant of authorisation

68. Paragraphs 4 – 6 specify matters that may or must be included in regulations about the grant of authorisations. The regulations must specify the procedure for applying to the Regulator for authorisation to provide regulated claims management services. Regulations may require the applicant, or any person who appears to the Regulator to be connected with

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the applicant, to provide relevant information or documents. The Regulator is only able to grant authorisation if he is satisfied of the applicant's competence and suitability to provide the kinds of services to which the application relates. In order to assess this, the Regulator is required to apply the criteria (and have regard to the matters) which are specified in regulations. The Regulator may consider the suitability of persons expected to be employed or engaged by, or otherwise connected with, the applicant. For example, he may require personal information about those individuals who control a company (such as Directors and the Chief Executive). The criteria that the Regulator must apply in assessing the competence and suitability of an applicant may relate to:

- criminal records
- proceedings in any court or tribunal
- proceedings of a body exercising functions in relation to a trade or profession (such as an existing Regulator or Ombudsman)
- financial circumstances (for example measures to maintain solvency)
- management structure (for example a description of roles including responsibility for decision making and financial controls)
- actual or proposed connections or arrangements with other persons (for example a parent company or subsidiary) which might compromise the Regulator's effective supervision of the applicant
- qualifications
- actual or proposed arrangements for training
- arrangements for accounting
- practice or proposed practice in relation to the provision of information about fees (for example information about charges to be made for the provision of claims management services, or information about free alternative means of pursuing a claim)
- arrangements or proposed arrangement for holding client's money (for example the requirement for a separate client account)
- arrangements or proposed arrangements for insurance

The list is not exhaustive. Regulations may also permit the Regulator to grant authorisation subject to terms or conditions, or grant applications only to a specified extent or in relation to specified matters, cases or circumstances. This will enable the Regulator to determine the scope of a grant of authorisation by limiting the authorisation to providing the regulated services in relation to a particular types of claim (for example personal injury); or by specifying what types of services an authorised person may provide (for example prohibiting an authorised person from handling client money).

69. Paragraph 7 specifically relates to regulations concerning fees. Regulations may enable the Regulator to charge fees and set out the consequences of failing to pay fees. Different levels of fees might be charged (which could depend on the business turnover) and the regulations may also permit the waiver, reduction or repayment of fees in specified circumstances. The Secretary of State has a power to prescribe or control the level of fees.

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The regulations may set out accounting and auditing requirements and make provision for the way in which income from fees might be used.

Conduct of authorised persons

70. Paragraph 8 and 9 provide that regulations require the Regulator to make rules, and enable the Regulator to issue a code of practice, about the professional conduct of authorised persons. Regulations may specify the manner in which rules and codes of practice are to be prepared and published, and provide for consultation and approval by the Secretary of State. An authorised person's failure to comply with rules and/or a code of practice could be used as a basis for imposing conditions on, suspending or cancelling authorisations.

71. The rules might cover (for example) consumer protection (including handling clients' money, complaints procedures etc) registration requirements and procedures, advertising requirements, requirement to have indemnity insurance etc., also requirements about competence of individuals providing a claims management service.

72. Codes of practice are likely to cover matters such as organisational standards and behaviour.

73. Paragraph 10 requires regulations to provide for the Regulator to investigate complaints about the conduct of authorised persons. Such an investigation may lead the Regulator to impose conditions on a person's authorisation, suspend a person's authorisation or cancel a person's authorisation.

74. Paragraph 11 enables regulations to require an authorised person to take out professional indemnity insurance to cover any loss caused by his provision of regulated claims management services. Requirements about the level or nature of insurance cover may be included, together with provisions about the consequences of failure to comply. A failure to comply might result in the imposition of conditions, or the suspension or cancellation of authorisation.

75. Paragraph 12 allows regulations to require the Regulator to establish a compensation scheme to cover loss to consumers suffered as a result of the actions of authorised persons. This would only cover circumstances where an authorised person receives money on behalf of a client in settlement of a claim and the client is unable to obtain the money from the authorised person (for example because the authorised person is insolvent). The funding of such a scheme will not be met by the Government.

Enforcement

76. Regulations under paragraph 13 may permit or require the Regulator to take specific action for the purpose of assessing compliance with terms or conditions of authorisation. For example, the Regulator might carry out periodic audits or require authorised persons to provide information at specified intervals.

77. Regulations as described at paragraph 14(1) permit the regulator to take action of a specified kind for the purpose of investigating a complaint about an authorised person or assessing compliance with the terms of authorisation.

78. Paragraph 14(2) allows regulations to provide for the regulator to be able to apply for a warrant, from a judge of the High Court, Circuit judge or justice of the peace, to search

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business premises of authorised persons to investigate complaints and assess compliance with conditions of authorisation.

79. Regulations under paragraph 14(3) may enable the Regulator to take copies of any papers and electronic records that pertain to the investigation of a suspected offence.

80. Paragraph 14(4) allows the Regulations to stipulate that the Regulator can impose penalties on those suspected of improper actions or withholding information relating to compliance. Such penalties would include the withdrawal or cancellation of all or part of an authority, either on a temporary or permanent basis. These penalties will be commensurate with the gravity of the offence.

81. Paragraph 14(5) indicates that references to the Regulator in paragraph 14 include persons authorised by him, in writing. This will enable persons to exercise enforcement powers on his behalf. This might be a private investigator or other relevant professional.

82. Regulations under paragraph 14(6) must specify the supporting evidence needed by a judge or justice of the peace to satisfy them that a warrant should be issued. This might include the reasons to believe an offence has occurred, the steps taken to procure the evidence needed, and any corroborative evidence available should the complaint stem from an anonymous source. These regulations must also detail the circumstances in which the powers in paragraphs 14(1), (2) and (3) can be used. This could include the requirement for a formal approach to be made requesting information and a period within which an individual must comply before the power to enter premises can be used. They may also specify conditions to be complied with when these powers are used (for example entry to premises only during office hours).

83. Paragraph 15 permits regulations to be made about the exercise of a power under section 8 (which provides a mechanism for enforcement and investigation of suspected offences by unauthorised persons).

Section 10: Obstructing the Regulator

84. *Subsection 1* makes it a criminal offence to obstruct the Regulator, without reasonable excuse, in the course of investigating whether any of the offences in sections 7 or 11 have been committed. A reasonable excuse might be, for example, that the Regulator was mistakenly pursuing the wrong person. If a person or body refuses to provide information to the Regulator, or obstructs the Regulator when he attempts to enter premises, they could be prosecuted under this section. The offence of obstructing the Regulator would also extend to obstructing a person authorised by the Regulator. In addition, the offence may also be committed by obstructing the Regulator in the course of action taken by virtue of paragraph 14 of the Schedule (for the purpose of assessing compliance of authorised persons with the terms or conditions of authorisation (such as carrying out audits of authorised claims management companies to ensure they operate with the Regulator's rules and code of practice)).

85. *Subsection 2* specifies the penalty for the offence. On summary conviction, the maximum penalty is a fine not exceeding level 5 on the standard scale.

Section 11: Pretending to be authorised, &c.

86. *Subsection 1* makes it a criminal offence for an unauthorised individual or body to pretend they are authorised, exempted by the Secretary of State or subject to a waiver from

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the Regulator. In order to commit this offence an individual or body does not need to have provided regulated claims management services, but merely to have claimed that they are either authorised, exempt or subject to a waiver. If an unauthorised claims management company falsely advertised that they were regulated they could be prosecuted under this part.

87. *Subsection 2* makes it a criminal offence to offer to provide regulated claims management services, where the provision of such services would constitute an offence under Part 2. It is not necessary for a person to make an overt claim to be authorised, exempt, or subject to a waiver or to go on to provide any regulated claims management services in order for the offence to be committed.

88. *Subsection 3* makes it clear that subsection 2 applies to both direct and indirect offers, including an offer made through the medium of advertising in any form by a person making arrangements for an advertisement (including through an intermediary), whether the advertisement contains an offer to provide services or describes him as competent to provide services.

89. *Subsection 4* specifies the penalty for the offence. On summary conviction, the maximum penalty is 51 weeks imprisonment, a fine, or both. For a conviction on indictment, the maximum period of imprisonment is two years. It is envisaged that sentences at the higher end of the scale would only be imposed for the more serious offences (particularly where the offence is repeated).

90. *Subsection 5* provides that an offence is committed each day an advertisement offering claims management services is displayed or made available. This gives the courts the discretion to vary the penalty according to the length of time the advertisement is displayed.

91. *Subsection 6* provides that the maximum penalty of 51 weeks imprisonment under subsection (4)(b)(i) is limited to six months until the relevant provisions of the Criminal Justice Act 2003 are commenced..

Section 12: The Claims Management Services Tribunal

92. Section 12 establishes the Claims Management Services Tribunal and makes provision about its constitution and proceedings.

93. *Subsection 2* provides that the Tribunal will consist of members of an existing Tribunal – the Financial Services and Markets Tribunal. It provides that members of the Financial Services and Markets Tribunal shall also be members of the Claims Management Services Tribunal; that the President and Deputy President of the Financial Services and Markets Tribunal shall also be the President and Deputy President respectively of the Claims Management Services Tribunal; and that the panel of Chairmen of the Financial Services and Markets Tribunal shall also be the panel of Chairmen of the Claims Management Services Tribunal.

94. *Subsection 3* sets out the arrangements for hearings. Hearings will be by a member of the panel of Chairmen, selected in accordance with arrangements made by the President. Hearings may be before a member of the panel of Chairmen sitting alone, or with one or two members of the lay panel. It is anticipated that routine hearings will be heard by a Chairman and two lay members, although in certain circumstances (such as in an emergency) a Chairman might sit alone. In the event that a Chairman sits with one other member, the Chairman will have the casting vote.

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95. *Subsection 4* gives the Lord Chancellor the power to make rules about the proceedings of the Tribunal. The rules will be made by statutory instrument subject to the negative resolution procedure.

96. *Subsection 5* gives effect to various provisions of Schedule 13 of the Financial Services and Markets Act 2000 in relation to the Claims Management Services Tribunal. These include provisions about the remuneration of members of the Tribunal, the appointment of staff and procedural matters including practice directions, evidence and decisions.

97. *Subsection 6* amends the Tribunals and Inquiries Act 1992 to add the Claims Management Services Tribunal to the list of Tribunals under the general supervision of the Council on Tribunals.

Section 13: Appeals and references to Tribunal

98. Section 13 specifies the circumstances in which appeals and references may be made to the Tribunal.

99. *Subsection 1* makes clear that a person may appeal to the Tribunal if the Regulator refuses the person's application for authorisation, grants the authorisation on terms or subject to conditions, or imposes conditions on, suspends, or cancels the person's authorisation.

100. *Subsection 2* provides that the Regulator may refer complaints about the professional conduct of an authorised person to the Tribunal, and may also refer to the Tribunal a question about whether an authorised person has complied with a rule of professional conduct.

101. *Subsection 3* outlines the powers of the Tribunal on a reference or appeal under this section. The Tribunal may take any decision on an application for authorisation that the Regulator could have taken. It may also impose or remove conditions on a person's authorisation, suspend or cancel a person's authorisation, or remit a matter to the Regulator.

102. *Subsection 4* provides that an authorised person may appeal to the Court of Appeal against a decision of the Tribunal.

Section 15: Orders and Regulations

103. Section 15 provides general information as to the procedure for making orders and regulations under Part 2, and as such is self-explanatory, with the exception of the subsections mentioned below which do need further explanation.

104. *Subsection 3* requires the Secretary of State to consult the Office of Fair Trading and such other persons as he thinks appropriate before making an order under section 4(2)(e), bringing a sector within the ambit of regulation. Appropriate consultees will vary according to the particular activity under consideration: for example, the Secretary of State might want to consult the President of the Employment Tribunals if he is considering regulation of claims related to employment, or the Chief Executive of the Criminal Injuries Compensation Authority if considering regulation of claims related to criminal injuries compensation.

105. *Subsection 6* applies where the Secretary of State makes an order under section 5(3), establishing a person for the purpose of being designated as Regulator. This subsection permits the Secretary of State to make provision for the appointment of members (where the person established is an unincorporated body). The order might also provide details about dissolution of the person established for the purpose of designation.

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106. *Subsection 7* specifies that the first exemption order made under section 6 may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament. This will provide Parliament with an opportunity to debate the initial exemption order.

PART 3

COMMENCEMENT

107. The provisions in Part 1 of the Act came into force on Royal Assent.

108. Section 3 (*Mesothelioma: damages*) has retrospective effect and applies to cases which had not been settled, or determined by a court, before 3 May 2006 (the date of the judgment in *Barker v Corus* (and conjoined cases)). It provides that where a case was settled, or legal proceedings determined, on or after 3 May 2006 and before commencement, a party to that case or those proceedings may apply to a court to vary the settlement or determination.

109. The provisions in Part 2 shall come into force in accordance with provision made by order of the Secretary of State.

EXTENT

110. The Act extends to England and Wales only, apart from section 3 on mesothelioma, which also extends to Scotland and Northern Ireland.

PARLIAMENTARY STAGES

111. The following table sets out the dates for each stage of this Act's passage through Parliament.

Stage	Date	Hansard Reference
House of Lords		
Introduction	2 November 2005	Vol 675 (no. 53) Col 204
Second Reading	28 November 2005	Vol 676 (no. 68) Col 81
Grand Committee	15 December 2005	Vol 676 (no. 80) Col 183
Grand Committee	20 December 2005	Vol 676 (no. 82) Col 245
Grand Committee	16 January 2006	Vol 677 (no. 87) Col 141
Grand Committee	23 January 2006	Vol 677 (no. 92) Col 291
Grand Committee	25 January 2006	Vol 677 (no. 94) Col 345
Report	7 March 2006	Vol 679 (no. 115) Col 644
Third Reading	27 March 2006	Vol 680 (no. 127) Col 575
House of Commons		
Second Reading	8 June 2006	Vol 447 (no. 162) Col 419
Standing Committee B	Day 1 - 20 June 2006	First Sitting

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	Day 2 - 22 June 2006	Second Sitting (morning) Third Sitting (afternoon)
	27 June 2006	Fourth Sitting
Report & Third Reading	17 July 2006	Vol 449 (no.185) Col 39
Lords consideration of Commons amendments	19 July 2006	Vol 684 (no. 183) Col 1310
Royal Assent	25 July 2006	House of Lords Vol 684 (no.186) Col 1744 House of Commons Vol 449 (no. 190) Col 837

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