

Sample Act of Parliament: Compensation Act 2006

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Compensation Act 2006

CHAPTER 29

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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: –

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.

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 –
- (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 –
- (a) replicate or apply (with or without modification) a provision of the Financial Services Compensation Scheme;
 - (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 Financial Services 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.
- (9) Provision made by virtue of subsection (8)(a) shall cease to have effect when the Financial Services Compensation Scheme is amended by the Financial Services Authority by virtue of subsection (8)(f).
- (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 Production Act 1975 (c. 75), or
 - (ii) applies the Financial Services Compensation Schemes 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.

Part 2

Claims Management Services

4 Provision of regulated claims management services

- (1) A person may not provide regulated claims management services unless –
 - (a) he is an authorised person,
 - (b) he is an exempt person,
 - (c) the requirement for authorisation has been waived in relation to him in accordance with regulations under section 9, or
 - (d) he is an individual acting otherwise than in the course of a business.
- (2) In this Part –
 - (a) “authorised person” means a person authorised by the Regulator under section 5(1)(a),
 - (b) “claims management services” means advices or other services in relation to the making of the claim,
 - (c) “claim” means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made –
 - (i) by way of legal proceedings,
 - (ii) in accordance with a scheme of regulation (whether voluntary or compulsory), or
 - (iii) in pursuance of a voluntary undertaking,
 - (d) “exempt person” has the meaning given by section 6(5), and
 - (e) services are regulated if they are –

- (i) of a kind prescribed by order of the Secretary of State, or
 - (ii) provided in cases or circumstances of a kind prescribed by order of the Secretary of State.
- (3) For the purposes of this section –
- (a) a reference to the provision of services includes, in particular, a reference to –
 - (i) the provision of financial services or assistance,
 - (ii) the provision of services by way of or in relation to legal representation,
 - (iii) referring or introducing one person to another, and
 - (iv) making inquiries, and
 - (b) a person does not provide claims management services by reason only of giving, or preparing to give, evidence (whether or not expert evidence).
- (4) For the purposes of subsection (1)(d) an individual acts in the course of a business if, in particular –
- (a) he acts in the course of an employment, or
 - (b) he otherwise receives or hopes to receive money or money's worth as a result of his action.
- (5) 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.
- (6) The Secretary of State may specify a benefit under subsection (5) only if it appears to him to be a United Kingdom social security benefit designed to provide compensation for industrial injury.

5 The Regulator

- (1) The Secretary of State may by order designate a person (“the Regulator”) –
- (a) to authorise persons to provide regulated claims management services,
 - (b) to regulate the conduct of authorised persons, and
 - (c) to exercise such other functions as are conferred on the Regulator by or under this Part.
- (2) The Secretary of State may designate a person only if satisfied that the person –
- (a) is competent to perform the functions of the Regulator,
 - (b) will make arrangements to avoid any conflict of interest between the person's functions as Regulator and any other functions, and
 - (c) will promote the interests of persons using regulated claims management services (including, in particular, by –
 - (i) setting and monitoring standards of competence and professional conduct for persons providing regulated claims management services,
 - (ii) promoting good practice by persons providing regulated claims management services, in particular in relation to the provision of information about charges and other matters to persons using or considering using the services,
 - (iii) promoting practices likely to facilitate competition between different providers of regulated claims management services, and
 - (iv) ensuring that arrangements are made for the protection of persons using regulated claims management services (including arrangements for the handling of complaints about the conduct of authorised persons).

- (3) If the Secretary of State thinks that no existing person (whether an individual or a body corporate or unincorporate) is suitable for designation under subsection (1), he may by order establish a person for the purpose of being designated.
- (4) The Regulator shall –
 - (a) comply with any directions given to him by the Secretary of State;
 - (b) have regard to any guidance given to him by the Secretary of State;
 - (c) have regard to any code of practice issued to him by the Secretary of State;
 - (d) try to meet any targets set for him by the Secretary of State;
 - (e) provide the Secretary of State with any report or information requested (but this paragraph does not require or permit disclosure of information in contravention of any other enactment).
- (5) The Secretary of State shall lay before Parliament any code of practice issued by him to the Regulator.
- (6) The Secretary of State may pay grants to the Regulator (which may be on terms or conditions, including terms and conditions as to repayment with or without interest).
- (7) A reference in this Part to the Regulator includes a reference to a person acting on behalf of the Regulator or with his authority.
- (8) The Secretary of State may by order revoke a person's designation under subsection (1).
- (9) While no person is designated under subsection (1) the Secretary of State shall exercise functions of the Regulator.
- (10) The Secretary of State may by order transfer (whether for a period of time specified in the order or otherwise) a function of the Regulator to the Secretary of State.

6 Exemptions

- (1) The Secretary of State may by order provide that section 4(1) shall not prevent the provision of regulated claims management services by a person who is a member of a specified body.
- (2) The Secretary of State may by order provide that section 4(1) shall not prevent the provision of regulated claims management services –
 - (a) by a specified person or class of person,
 - (b) in specified circumstances, or
 - (c) by a specified person or class of person in specified circumstances.
- (3) Provision by virtue of subsection (1) or (2) may be expressed to have effect subject to compliance with specified conditions.
- (4) Section 4(1) shall not prevent the provision of regulated claims management services by a person who is established or appointed by virtue of an enactment.
- (5) For the purposes of this Part a person is “exempt” if, or in so far as, section 4(1) does not, by virtue of this section, prevent him from providing regulated claims management services.

7 Enforcement; offence

- (1) A person commits an offence if he contravenes section 4(1).

- (2) A person who is guilty of an offence under subsection (1) shall be liable –
- (a) on conviction on indictment –
 - (i) to imprisonment for a term not exceeding two years,
 - (ii) to a fine, or
 - (iii) to both, or
 - (b) on summary conviction –
 - (i) to imprisonment for a term not exceeding 51 weeks,
 - (ii) to a fine not exceeding level 5 on the standard scale, or
 - (iii) to both.
- (3) Until the commencement of section 281(4) and (5) of the Criminal Justice Act 2003 (c. 44) (51 week maximum term of sentences) the reference in subsection (3)(b)(i) above to 51 weeks shall have effect as if it were a reference to six months.

8 Enforcement: the Regulator

- (1) The Regulator may apply to the court for an injunction restraining a person from providing regulated claims management services if he is not –
- (a) an authorised person,
 - (b) an exempt person, or
 - (c) the subject of a waiver in accordance with regulations under section 9.
- (2) In subsection (1) “the court” means the High Court or a county court.
- (3) The Regulator may –
- (a) investigate whether an offence has been committed under this Part;
 - (b) institute criminal proceedings in respect of an offence under this Part.
- (4) For the purpose of investigating whether an offence has been committed under this Part the Regulator may require the provision of information or documents.
- (5) 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 to enter and search premises on which a person conducts or is alleged to conduct regulated claims management business, for the purposes of investigating whether an offence has been committed under this Part.
- (6) The Regulator may take copies of written or electronic records found on a search by virtue of subsection (5) for a purpose specified in subsection (3)(a) or (b).
- (7) In subsections (4) to (6) a reference to the Regulator includes a reference to a person authorised by him in writing.
- (8) The Secretary of State shall make regulations –
- (a) specifying 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 subsection (5), and
 - (b) regulating the exercise of a power under or by virtue of subsection (4) or (5) (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).

9 Regulations

- (1) The Secretary of State shall make regulations about –
 - (a) authorisations under section 5(1);
 - (b) the functions of the regulator.
- (2) The Schedule specifies particular provision that may be made by the regulations.
- (3) Transitional provision of regulations under this section may, in particular, make provision about the extent to which functions under this Part or under the regulations may be exercised in respect of matters arising before the commencement of a provision made by or by virtue of this Part.

10 Obstructing the Regulator

- (1) A person commits an offence if without reasonable excuse he obstructs the Regulator in the exercise of a power –
 - (a) under section 8(4) to (6), or
 - (b) by virtue of paragraph 14 of the Schedule.
- (2) A person who is guilty of an offence under subsection (1) shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

11 Pretending to be authorised, &c.

- (1) A person commits an offence if he falsely holds himself out as being –
 - (a) an authorised person,
 - (b) an exempt person, or
 - (c) the subject of a waiver in accordance with regulations under section 9.
- (2) A person commits an offence if –
 - (a) he offers to provide regulated claims management services, and
 - (b) provision by him of those services would constitute an offence under this Part.
- (3) For the purposes of subsection (2) a person offers to provide services if he –
 - (a) makes an offer to a particular person or class of person,
 - (b) makes arrangements for an advertisement in which he offers to provide services, or
 - (c) makes arrangements for an advertisement in which he is described or presented as competent to provide services.
- (4) A person who is guilty of an offence under sub section (1) or (2) shall be liable –
 - (a) on conviction on indictment – to imprisonment for a term not exceeding two years, to a fine, or to both, or
 - (i) to imprisonment for a term not exceeding two years,
 - (ii) to a fine not exceeding level 5 on the standard scale, or
 - (iii) to both.
 - (b) on summary conviction – to imprisonment for a term exceeding 51 weeks, to a fine not exceeding level 5 on the standard scale, or to both.
 - (i) to imprisonment for a term not exceeding 51 weeks,
 - (ii) to a fine, or

(iii) to both, or

- (5) Where a person commits an offence under this section by causing material to be displayed or made accessible, he shall be treated as committing the offence on each day during any part of which the material is displayed or made accessible.
- (6) Until the commencement of section 281(4) and (5) of the Criminal Justice Act 2003 (c. 44) (51 week maximum term of sentences) the reference in subsection (4)(b)(i) above to 51 weeks shall have effect as if it were a reference to six months.

12 The Claims Management Services Tribunal

- (1) There shall be a tribunal to be known as the Claims Management Services Tribunal.
- (2) The Tribunal shall be constituted as follows –
 - (a) members of the Financial Services and Markets Tribunal shall also be members of the Claims Management Services Tribunal,
 - (b) the President of the Financial Services and Markets Tribunal shall also act as President of the Claims Management Services Tribunal,
 - (c) the Deputy President of the Financial Services and Markets Tribunal shall also act as Deputy President of the Claims Management Services Tribunal, and
 - (d) the panel of chairmen of the Financial Services and Markets Tribunal shall also be the panel of chairmen of the Claims Management Services Tribunal.
- (3) An appeal or reference to the Tribunal shall be heard by a member of the panel of chairmen –
 - (a) selected in accordance with arrangements made by the President, and
 - (b) sitting alone or, in accordance with those arrangements, with one or two members of the lay panel;and a chairman who sits with one other member shall have a casting vote.
- (4) The Lord Chancellor may make rules about the proceedings of the Tribunal; and the rules –
 - (a) shall include provision about timing of references and appeals,
 - (b) shall include provision for the suspension of decisions of the Regulator while an appeal could be brought or is pending,
 - (c) shall include provision about the making of interim orders,
 - (d) shall enable the Tribunal to suspend or further suspend (wholly or partly) the effect of a decision of the Regulator,
 - (e) shall permit the Regulator to apply for the termination of the suspension of a decision of his,
 - (f) may include provision about evidence,
 - (g) may include provision about any other matter of a kind for which rules under section 132 of the Financial Services and Markets Act 2000 (c. 8) (the Financial Services and Markets Tribunal) may make provision,
 - (h) may include transitional, consequential or incidental provision,
 - (i) may make provision generally or only for specified cases or circumstances,
 - (j) may make different provision for different cases or circumstances,
 - (k) shall be made by statutory instrument, and

(l) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(5) The following provisions of Schedule 13 to the Financial Services and Markets Act 2000 shall have effect, with my necessary modifications, in relation to the Claims Management Services Tribunal –

- (a) paragraph 5 (remuneration and allowances),
- (b) paragraph 6 (staff),
- (c) paragraph 7(3) and (4) (composition),
- (d) paragraph 8 (sittings),
- (e) paragraph 10 (practice directions),
- (f) paragraph 11 (evidence), and
- (g) paragraph 12(1) to (3) (decisions).

(6) In Part 1 of Schedule 1 to the Tribunals and Inquiries Act 1992 (c. 53) (tribunals under supervision of Council) insert at the appropriate place –

“Claims management services The Claims Management Services Tribunal established by the Compensation Act 2006.”

13 Appeals and references to tribunal

(1) A person may appeal to the Claims Management Services Tribunal if the Regulator –

- (a) refuses the person's application for authorisation,
- (b) grants the person authorisation on terms or subject to conditions,
- (c) imposes conditions on the person's authorisation,
- (d) suspends the person's authorisation, or

Regulator may refer to the Tribunal (with or without findings of fact or recommendations)

- (a) a complaint about the professional conduct of an authorised person, or
- (b) the question whether an authorised person has complied with a rule of professional conduct.

(3) On a reference or appeal under this section the Tribunal –

- (a) may take any decision on an application for authorisation that the Regulator could have taken;
- (b) may impose or remove conditions on a person's authorisation;
- (c) may suspend a person's authorisation;
- (d) may cancel a person's authorisation;
- (e) may remit a matter to the Regulator;
- (f) may not award costs.

(4) An authorised person may appeal to the Court of Appeal against a decision of the Tribunal.

14 Interpretation

In this Part –

- “action” includes omission,
- “authorised person” has the meaning given by section 4,
- “claim” has the meaning given by section 4,
- “claims management services” has the meaning given by section 4,
- “exempt person” has the meaning given by section 6(5),
- “regulated claims management services” shall be construed in accordance with section 4(2)(e),
- “specified”, in relation to an order or regulations, means specified in the order or regulations, and
- “the Regulator” means (subject to section 5(7)) the person designated under section 5(1) or; where no person is designated or in so far as is necessary having regard to any order under section 5(10), the Secretary of State.

15 Orders and regulations

- (1) An order or regulations under this Part –
 - (a) may make provision that applies generally or only in specified cases or circumstances,
 - (b) may make different provision for different cases or circumstance, and
 - (c) may include transitional, incidental or consequential provision,
- (2) An order or regulations under this Part shall be made by statutory instrument.
- (3) An order under section 4(2)(e) –
 - (a) may not be made unless the Secretary of State has consulted –
 - (i) the Office of Fair Trading, and
 - (ii) such other persons as he thinks appropriate, and
 - (b) may not be made unless a draft has been laid before and approved by resolution of each House of Parliament.
- (4) An order under section 4(5) may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (5) An order under section 5 may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (6) An order under section 5(3) may include provision –
 - (a) for the appointment of members;
 - (b) for funding;
 - (c) for dissolution (which may include provision enabling the Secretary of State to make provision for the transfer of property, rights and liabilities).
- (7) The first 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.

- (8) An order under section 6 which has the effect of removing or restricting an exemption from section 4(1) may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.
- (9) Any other order under section 6 shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (10) Regulations under section 8 or 9 may not be made unless a draft has been laid before, and approved by resolution of, each House of Parliament.

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.
- (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.

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.

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;
 - (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 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).

Conduct of authorised persons

- 8 (1) Regulations shall require the Regulator to prescribe rules for the professional conduct of authorised persons.
- (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;
- (ii) provision enabling the Regulator to impose conditions on, suspend or cancel authorisations).
- 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.
- (ii) enable the Regulator to impose conditions on, suspend or cancel authorisations).
- 10 (1) Regulations shall provide for the Regulator to investigate complains 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.
- 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 to impose conditions on, suspend or cancel authorisations).
- 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 authorizations.
- 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 to enter and search premises on which a person conducts or is alleged to conduct regulated claims management business, for the purpose of –
 - (a) investigating a complaint about the activities of an authorised person, or
 - (b) assessing compliance with terms and conditions of an authorisation.
 - (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 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).
- 15 Regulations may make provision about the exercise by the Regulator of a power under section 8.

EXPLANATORY NOTES

Hover over the  icons to reveal more information

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.

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 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 I

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 judgements 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.
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.

**Adapted from [The Law Student's Handbook](#) by Steve Wilson and Philip Kenny.
Further details available on the [OUP catalogue](#).**