



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 20A

PENSIONS GUIDANCE

[^{F1}Standards for giving of pensions guidance by designated guidance providers

Textual Amendments

- F1** Pt. 20A inserted (3.3.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(1)(a), [Sch. 3 para. 2](#) (with s. 87, [Sch. 3 para. 18\(1\)](#))

333H Standards for giving of pensions guidance by designated guidance providers

- (1) The FCA must from time to time set standards for the giving of pensions guidance by designated guidance providers.
- (2) A failure by a designated guidance provider to comply with a standard set under this section is actionable at the suit of a private person who suffers loss as a result of the failure, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (3) In subsection (2) “private person” has the same meaning as in section 138D.
- (4) Standards set under this section may provide for subsection (2) not to apply to a failure to comply with a specified provision of the standards.
- (5) Standards set under this section—
 - (a) may make different provision for different cases and may, in particular, make different provision in respect of different classes of designated guidance providers or different types of pensions guidance;
 - (b) may include incidental, supplemental, consequential or transitional provision.

Status: Point in time view as at 13/01/2018.

Changes to legislation: Financial Services and Markets Act 2000, Cross Heading: Standards for giving of pensions guidance by designated guidance providers is up to date with all changes known to be in force on or before 16 August 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (6) The procedural provisions of this Act in the first column of the table apply to the setting of standards under this section as if references in those provisions to the making of rules (however expressed) were references to the setting of standards and with the additional modifications in the second column.

<i>Procedural provisions of this Act</i>	<i>Additional modifications</i>
Sections 138G and 138H	Treat the references to a rule-making instrument as references to a standard-making instrument.
Section 138I	Treat— (a) subsection (1)(a) as if it were omitted; (b) subsection (2)(d) as if it referred to an explanation of the FCA's reasons for believing that setting the proposed standards would secure an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.
Section 138L	Treat the reference in subsection (1) to consumers (as defined in section 425A) as a reference to recipients of pensions guidance from designated guidance providers.

333I Monitoring of compliance with standards by designated guidance providers

- (1) The FCA must maintain arrangements for monitoring compliance by designated guidance providers with the standards set under section 333H.
- (2) Sections 165 and 167 apply for the purpose of enabling the FCA to monitor compliance but as if—
 - (a) references to an authorised person or a former authorised person (other than in section 165(11)(d)) were references to a designated guidance provider or a former designated guidance provider;
 - (b) section 165(7)(b) to (d) were omitted;
 - (c) the reference in section 167(5A)(b) to the FCA or the PRA were a reference to the FCA.
- (3) Section 175 applies as if a power that the FCA or an investigator has by virtue of subsection (2) were a power under Part 11.
- (4) Section 177 applies as if a requirement imposed by virtue of subsection (2) were a requirement imposed under Part 11.
- (5) References in a provision of Part 11 to section 165, 167, 175 or 177 include the relevant section as applied with modifications by this section.

333J Failure by designated guidance providers to comply with standards: FCA recommendations

- (1) If the FCA considers that a designated guidance provider has failed to comply with a standard set under section 333H the FCA may—

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- (a) recommend steps that the designated guidance provider might take to prevent the continuance or recurrence of the failure or to make redress to those affected by the failure, and
 - (b) having made such a recommendation, recommend that the [^{F2}Secretary of State] give a direction under section 333M.
- (2) The FCA must publish a recommendation made under subsection (1)(b) unless the FCA considers that to do so—
 - (a) would be against the public interest, or
 - (b) would be inappropriate for some other reason.
- (3) If the condition in subsection (2)(a) or (b) is satisfied in relation to a recommendation but would not be satisfied if the FCA published part only of the recommendation, the FCA may publish that part.
- (4) If the power conferred by section 333E(3) to revoke a designation is exercised before the power in subsection (1) the reference in subsection (1) to a designated guidance provider is to be read as a reference to a person who, at the time of the failure to comply, was a designated guidance provider.

Textual Amendments

- F2** Words in s. 333J(1)(b) substituted (1.4.2016) by [The Transfer of Functions \(Pensions Guidance\) Order 2015 \(S.I. 2015/2013\)](#), art. 1(2), [Sch. para. 1\(8\)](#) (with art. 4)

333K FCA policy on making recommendations under section 333J

- (1) The FCA must prepare and issue a statement of its policy with respect to the making of recommendations under section 333J.
- (2) The FCA may at any time alter or replace a statement issued under this section.
- (3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.
- (4) The FCA may issue a statement under this section only with the consent of the [^{F3}Secretary of State].
- (5) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

Textual Amendments

- F3** Words in s. 333K(4) substituted (1.4.2016) by [The Transfer of Functions \(Pensions Guidance\) Order 2015 \(S.I. 2015/2013\)](#), art. 1(2), [Sch. para. 1\(9\)](#) (with art. 4)

333L FCA policy on making recommendations under section 333J: procedure

- (1) Before issuing a statement under section 333K, the FCA must—
 - (a) consult the [^{F4}Secretary of State], and

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- (b) publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it within the specified time.
- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it within the specified time, and
 - (b) its response to them.
- (5) If the statement differs from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (7) This section also applies to a proposal to alter or replace a statement.

Textual Amendments

- F4** Words in s. 333L(1)(a) substituted (1.4.2016) by [The Transfer of Functions \(Pensions Guidance\) Order 2015 \(S.I. 2015/2013\)](#), art. 1(2), [Sch. para. 1\(10\)](#) (with art. 4)

333M Failure by designated guidance providers to comply with standards: ^{F5}... directions

- (1) If the [^{F6}Secretary of State][^{F7}considers] that a designated guidance provider has failed to comply with a standard set under section 333H the [^{F6}Secretary of State] may direct the provider to take such steps as the [^{F6}Secretary of State][^{F7}considers] appropriate—
 - (a) to prevent the continuance or recurrence of the failure;
 - (b) to make redress to those affected by the failure.
- (2) The [^{F6}Secretary of State] may give a direction under subsection (1) only if the FCA has made a recommendation under section 333J(1)(b) (although the terms of the direction need not be the same as that recommended by the FCA).
- (3) The [^{F6}Secretary of State] must—
 - (a) give notice in writing of a direction under subsection (1), and
 - (b) send a copy of the notice to the FCA.
- (4) The notice must inform the designated guidance provider that representations about why the direction should not be published may be made to the [^{F6}Secretary of State] within a specified time.
- (5) Once the time specified under subsection (4) has elapsed, the [^{F6}Secretary of State] must publish the direction unless—
 - (a) the [^{F6}Secretary of State][^{F8}considers] that to do so would be against the public interest;

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- (b) having considered representations made by the designated guidance provider within the specified time, the [F6Secretary of State][F8considers] that it would be inappropriate to do so for some other reason.
- (6) If the condition in subsection (5)(a) or (b) is satisfied in relation to a direction but would not be satisfied if the [F6Secretary of State] published part only of the direction, the [F6Secretary of State] may publish that part.
- (7) A direction under subsection (1) is enforceable, on an application made by the [F6Secretary of State], by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

Textual Amendments

- F5** Word in s. 333M heading omitted (1.4.2016) by virtue of [The Transfer of Functions \(Pensions Guidance\) Order 2015 \(S.I. 2015/2013\)](#), art. 1(2), [Sch. para. 1\(11\)\(c\)](#) (with art. 4)
- F6** Words in ss. 333M(1)-(7) substituted (1.4.2016) by [The Transfer of Functions \(Pensions Guidance\) Order 2015 \(S.I. 2015/2013\)](#), art. 1(2), [Sch. para. 1\(11\)\(a\)](#) (with art. 4)
- F7** Word in s. 333M(1) substituted (1.4.2016) by [The Transfer of Functions \(Pensions Guidance\) Order 2015 \(S.I. 2015/2013\)](#), art. 1(2), [Sch. para. 1\(11\)\(b\)](#) (with art. 4)
- F8** Word in s. 333M(5) substituted (1.4.2016) by [The Transfer of Functions \(Pensions Guidance\) Order 2015 \(S.I. 2015/2013\)](#), art. 1(2), [Sch. para. 1\(11\)\(b\)](#) (with art. 4)

333N Directions to designated guidance providers under section 333M: relationship with power to revoke a designation

- (1) The power conferred by section 333M(1) is exercisable in addition to, or instead of, the power conferred by section 333E(3) to revoke a designation.
- (2) If the power in section 333E(3) is exercised before the power in section 333M(1) the reference in section 333M(1) to a designated guidance provider is to be read as a reference to a person who, at the time of the failure to comply, was a designated guidance provider.
- (3) Subsection (1) does not limit the grounds on which the power in section 333E(3) may be exercised.]

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