

PENSION SCHEMES ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4 Pension Flexibilities

Section 47: Pensions guidance

Schedule 3: Pensions guidance

158. [Section 47](#) introduces Schedule 3 to the Act.
159. [Schedule 3](#) contains amendments to the Financial Services and Markets Act 2000, and other legislation, about the giving of pensions guidance to pension scheme members and survivors of members with a right or entitlement to cash balance benefits or other money purchase benefits.
160. [Paragraphs 1](#) and [2](#) of Schedule 3 provide that the amendments that follow are to be inserted as a new Part 20A in the Financial Services and Markets Act 2000 after section 333 of that Act.
161. New section 333A introduces the new Part and defines, for the purposes of new Part 20A of the Financial Services and Markets Act 2000, relevant terms including, in subsection (2) the term “pensions guidance”.
162. New section 333B provides for the Treasury’s role in relation to pensions guidance. It places a duty on the Treasury to make arrangements for a pensions guidance service.
163. New section 333C provides that bodies listed in subsection (2) – the Pensions Advisory Service and the three national associations of Citizens Advice Bureaux – are to give pensions guidance in accordance with arrangements made with the Treasury and that these bodies may make arrangements with third parties to discharge their duty. Subsection (4) provides that the Citizens Advice associations may jointly carry out their functions: this is analogous to section 1(3) of the Consumers, Estate Agents and Redress Act 2007.
164. Subsections (5) and (6) provide that the Treasury may repeal the reference to any of the bodies listed in subsection (2) and may make such consequential amendments – for example, to section 333E – as are appropriate.
165. New section 333D provides that the Treasury may make grants or loans to the Pensions Advisory Service and Citizens Advice in Northern Ireland. There is no reference to the other national Citizens Advice associations as there is an existing power in section 40A of the Consumers, Estate Agents and Redress Act 2007. This power to grant fund is limited to funding to enable the giving of pensions guidance and the grant may be given subject to other terms as specified by the Treasury.
166. New section 333E concerns the designation of guidance providers. In addition to the bodies in section 333C which have a statutory function of giving pensions guidance, the Treasury has a power to designate other persons (and to revoke such designations).

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The Treasury must give notice where a person is designated or a designation is revoked and has a duty to publish a list of persons who are designated. The section sets out the conditions that must be met before the Treasury designates a person.

167. New section 333F provides for a duty on designated guidance providers and the Treasury to co-operate in the giving of pensions guidance and for the sharing of information in pursuit of this requirement.
168. New section 333G provides for a criminal offence of falsely claiming to be giving pensions guidance under Treasury arrangements. A person commits the offence if they describe themselves as giving pensions guidance by arrangement with the Treasury, or if they behave or hold themselves out to be giving guidance by arrangement with the Treasury, when they are not. Persons who are designated guidance providers are deemed to be giving pensions guidance under arrangement with the Treasury. There is a defence for those who take all reasonable precautions and undertake all due diligence to avoid committing the offence. Subsection (4) provides that the offence is to be tried summarily and sets out the penalties in the different criminal jurisdictions in the UK. Subsections (5) and (6) provide for modifications to subsection (4)(a) pending the coming in to force of certain reforms to sentencing in the Criminal Justice Act 2003 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012.
169. New section 333H provides that the FCA must set standards for the giving of pensions guidance. Where a private person (as defined in subsection (3)) suffers a loss as a result of a breach of the standards they will be able to take action in the courts to recover damages for that loss, although the FCA may specify that breach of certain standards will not be actionable. The FCA has the flexibility to make different standards for different classes of designated guidance providers and for incidental, supplemental, consequential and transitional standards. Certain procedural provisions of the Financial Services and Markets Act 2000 which apply to the FCA's setting of rules, are applied (with modifications) to its setting of standards.
170. New section 333I provides that the FCA must monitor the compliance of designated guidance providers with the standards it sets under section 333H. Subsections (2) to (5) concern the application – with modification – of parts of Part XI of the Financial Services and Markets Act 2000 concerned with the FCA's powers to gather information and conduct investigations.
171. New section 333J establishes that the FCA may make recommendations to designated guidance providers if it considers that they have failed to comply with one or more standards set under section 333H, and thereafter, make recommendations to the Treasury that the Treasury give a direction under section 333M. There is a rebuttable presumption that a recommendation made to the Treasury will be made public unless in the FCA's view, to do so would be against the public interest or otherwise inappropriate. The FCA may make a recommendation even where a designation has been revoked by the Treasury, providing the failure to comply with the standards was at a time when the designation was in effect.
172. New section 333K provides that the FCA must issue a statement of its policy with respect to the making of recommendations under section 333J. Subsections (2) to (5) concern various matters in consequence of the issuing of the FCA's policy statement, including regarding the altering or replacement of the statement and requirements that the Treasury must consent before a statement is issued and that the FCA must publish the statement in such a way as to bring it to the attention of the public. The FCA may charge a reasonable fee for providing copies of the statement.
173. New section 333L concerns the procedure that the FCA must follow when preparing and issuing a policy statement under section 333K.
174. New section 333M provides that the Treasury has a power to issue directions to a designated guidance provider where the Treasury considers the provider has failed to

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comply with the FCA's standards. The Treasury may only give a direction where the FCA has made a recommendation under section 333J(1)(b). The Treasury can apply to the Court to have a direction they have given enforced.

175. New section 333N makes provision regarding the relationship between the Treasury's powers regarding the revocation of designation in section 333E(3) and the power to issue a direction in section 333M(1).
176. New section 333O provides that in discharging its general pensions guidance functions (as defined in subsection (3)), the FCA must do so with a view to securing an appropriate degree of protection for recipients of pensions guidance from designated pensions guidance providers. The FCA must also have regard to its strategic and operational objectives and the regulatory principles set out in Part 1A of the Financial Services and Markets Act 2000.
177. Sections 139A and 139B of the Financial Services and Markets Act 2000 provide the FCA with a power to give guidance in the form of information and advice regarding the Act and the FCA's functions under it. New section 333P gives the FCA a similar power to give guidance in the context of its pensions guidance functions (specified in subsection (1)). Where the FCA gives guidance to a class of designated guidance providers in relation to the FCA's standards or the rules regarding the funding of the FCA's pensions guidance costs under section 333Q, the FCA must comply with certain specified procedural requirements unless doing so would be prejudicial to the interests of recipients of guidance. Section 333P also makes provision regarding procedural matters in connection with the giving of general guidance (as defined in subsection (9)).
178. New sections 333Q and 333R concern the funding for the pensions guidance scheme. New section 333Q provides for the FCA to collect amounts from designated guidance providers to cover the FCA's pensions guidance costs (as specified in subsection (4)). The FCA must consult the Treasury before it publishes a draft of the rules. The amounts recovered under this section may include sums to cover the costs the FCA incurs in collecting the payments and to permit the FCA to maintain an adequate reserve.
179. New section 333R concerns the funding of the Treasury's pensions guidance costs (as defined in subsection (10)). The FCA will make rules with a view to collecting from authorised persons the amount the Treasury has notified to the FCA. The money that the FCA collects – minus any portion allocated for the FCA's collection costs – must be paid to the Treasury, who will then pay those funds into the Consolidated Fund.
180. There are specific procedural requirements regarding the rules made under section 333R in addition to the requirements set out in Chapter 2 of Part 9A of the Financial Service and Markets Act 2000. These include requirements that the Treasury has oversight of the rules that the FCA makes made.
181. Subsection (12) provides the Treasury with a power to amend the definition of the "Treasury's pensions guidance costs" in subsection (10) by regulations.
182. [Paragraph 3](#) of Schedule 3 amends section 1B of the Financial Services and Markets Act 2000 (the FCA's general duties) in consequence of the insertion of new section 333O and provides that when the FCA is carrying out its pensions guidance functions it is to be guided by the duties in section 333O and not those in section 1B.
183. [Paragraph 4](#) amends section 1M of the Financial Services and Markets Act 2000 (FCA's general duty to consult) in consequence of the new duty in section 333O.
184. [Paragraph 5](#) amends section 1S of the Financial Services and Markets Act 2000 (reviews by independent person into discharge of FCA's functions) in consequence of the new duty in section 333O to insert references to the relevant parts of that duty.
185. [Paragraph 6](#) inserts a new section 137FB in the Financial Services and Markets Act 2000. New section 137FB provides for a duty on the FCA to make rules requiring

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managers and trustees of FCA regulated pension schemes to flag to their members who have flexible benefits the availability of pensions guidance. Section 113 of the Pensions Schemes Act 1993 provides for the Secretary of State to make regulations in relation to disclosure of information requirements for pension schemes. The FCA must consult the Secretary of State and the Treasury before publishing a draft of the rules and is obliged to have regard to such regulations when setting them.

186. [Paragraph 7](#) amends section 138F (Notification of rules) of the Financial Services and Markets Act 2000 in consequence of the new rule making powers the FCA is granted by other provisions of this Schedule.
187. [Paragraph 8](#) concerns amendments to section 138I of the Financial Services and Markets Act 2000 (which concerns the FCA’s procedure when making rules) to add the references to the FCA’s new rule making powers.
188. [Paragraph 9](#) amends section 139A of the Financial Services and Markets Act 2000 in consequence of the insertion of section 333O with the effect that when giving guidance regarding the functions specified in section 333P the FCA is guided by the duties in section 333O not section 1B.
189. [Paragraph 10](#) amends section 140A of the Financial Services and Markets Act 2000 to apply the competition scrutiny regime in Chapter 4 of Part 1 of the Financial Services and Markets Act 2000 in the context of the FCA’s pensions guidance functions.
190. [Paragraph 11](#) amends section 168 of the Financial Services and Markets Act 2000 (which concerns the FCA’s power to appoint an investigator). This amendment gives the FCA the same powers to investigate an individual suspected of the new offence in section 333G of falsely claiming to give pensions guidance pursuant to arrangements with the Treasury as it has pursuant to section 24 of the Financial Services and Markets Act 2000 to investigate those suspect of falsely claiming to be authorised.
191. [Paragraph 12](#) amends section 429 of the Financial Services and Markets Act 2000 (which concerns Parliamentary control of statutory instruments under that Act) to provide that regulations made by the Treasury under section 333C (repealing the conferral of functions in that section) or section 333R (adding to, or amending, the definition of “the Treasury’s pensions guidance costs”) are subject to the affirmative procedure.
192. [Paragraphs 13 to 16](#) amend Schedule 1ZA to the Financial Services and Markets Act 2000. Paragraph 13 amends the list the FCA’s new legislative functions which should be exercised by the FCA through its governing body to add references to the FCA’s new functions of making a policy on making recommendations (section 333K) and setting standards (section 333H). Paragraph 13(c) provides that the giving of general guidance in the context of pensions guidance is subject to the same controls as other general guidance issued by the FCA.
193. [Paragraph 14](#) concerns the FCA’s obligation to provide an annual report and amends this obligation to require the FCA to detail its compliance with the overarching duty to protect recipients of pensions guidance (section 333O(1)) in its annual report.
194. [Paragraph 15](#) is consequential on the creation by the new Part 20A of the Financial Services and Markets Act 2000 of a new group of persons – designated guidance providers – that the FCA monitors.
195. [Paragraph 16](#) amends the FCA’s powers to raise fees. These amendments provide that the FCA’s pensions guidance costs are ring-fenced (that is, the fees raised under the FCA’s existing fee raising powers are entirely separate and distinct from the FCA’s pensions guidance costs).

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196. [Paragraph 17](#) amends the list of “legislative functions” in section 85 of the Finance Act 2012 which are not subject to the complaints regime, to add reference to the FCA’s pensions guidance functions.
197. [Paragraph 18](#) makes transitional provision. Sub-paragraph (1) makes provision so that requirements of the Pension Schemes Act 2015 Act can be satisfied by things done before its commencement. Sub-paragraph (2) disapplies certain requirements that are otherwise imposed in connection with the consultation on the standards to be set pursuant to section 333H of the Financial Services and Markets Act 2000 in order that the consultation that the FCA has already undertaken might satisfy the requirements.
198. [Paragraph 19](#) provides that costs that the FCA has incurred in anticipation of its new pensions guidance functions – such as the cost of carrying out consultations and drafting rules – might be recovered by the FCA pursuant to the powers set out in the Schedule.