



# Financial Guidance and Claims Act 2018

## 2018 CHAPTER 10

### PART 1

#### FINANCIAL GUIDANCE ETC

VALID FROM 01/10/2018

#### *Establishment of the single financial guidance body*

#### **1 The single financial guidance body**

- (1) A body corporate with functions relating to financial guidance is established (the “single financial guidance body”).
- (2) Schedule 1 makes further provision about the single financial guidance body.
- (3) The name of the new body is to be determined by regulations made by the Secretary of State.
- (4) The regulations may—
  - (a) amend any provision of this Part, or of any Act amended by this Part, so as to replace the words “single financial guidance body” with the name of the body;
  - (b) make incidental, supplementary and consequential provision.
- (5) The power to make regulations under subsection (3) is exercisable by statutory instrument; and an instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament.
- (6) The consumer financial education body is dissolved.
- (7) Schedule 2 makes provision about schemes for the transfer of staff, property, rights and liabilities—

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- (a) from the Secretary of State and the Pensions Advisory Service Limited to the single financial guidance body;
- (b) from the consumer financial education body to the single financial guidance body and the devolved authorities.

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*Objectives and functions of the single financial guidance body*

## 2 Objectives

- (1) The objectives of the single financial guidance body are—
  - (a) to improve the ability of members of the public to make informed financial decisions,
  - (b) to support the provision of information, guidance and advice in areas where it is lacking,
  - (c) to secure that information, guidance and advice is provided to members of the public in the clearest and most cost-effective way (including having regard to information provided by other organisations),
  - (d) to ensure that information, guidance and advice is available to those most in need of it (and to allocate its resources accordingly), bearing in mind in particular the needs of people in vulnerable circumstances, and
  - (e) to work closely with the devolved authorities as regards the provision of information, guidance and advice to members of the public in Scotland, Wales and Northern Ireland.
- (2) The single financial guidance body must have regard to its objectives when it exercises its functions.
- (3) In this section “information, guidance and advice” means—
  - (a) information and guidance on matters relating to occupational and personal pensions,
  - (b) information and advice on debt, and
  - (c) information and guidance designed to enhance people's understanding and knowledge of financial matters and their ability to manage their own financial affairs.

## 3 Functions

- (1) The single financial guidance body has the following functions—
  - (a) the pensions guidance function;
  - (b) the debt advice function;
  - (c) the money guidance function;
  - (d) the consumer protection function;
  - (e) the strategic function.
- (2) The single financial guidance body also has the function of providing—
  - (a) advice and assistance to the Secretary of State on matters relating to the functions listed in subsection (1), and

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- (b) advice to the Secretary of State on the establishment of a debt respite scheme (see section 6).
- (3) The single financial guidance body may do anything that is incidental or conducive to the exercise of its functions.
- (4) The pensions guidance function is to provide, to members of the public, free and impartial information and guidance on matters relating to occupational and personal pensions.
- (5) The debt advice function is to provide, to members of the public in England, free and impartial information and advice on debt.
- (6) The money guidance function is to provide, to members of the public, free and impartial information and guidance designed to enhance people's understanding and knowledge of financial matters and their ability to manage their own financial affairs.
- (7) The consumer protection function is—
- (a) to notify the FCA where, in the exercise of its other functions, the single financial guidance body becomes aware of practices carried out by FCA-regulated persons (within the meaning of section 139A of the Financial Services and Markets Act 2000) which it considers to be detrimental to consumers, and
  - (b) to consider the effect of unsolicited direct marketing on consumers of financial products and services, and, in particular—
    - (i) from time to time publish an assessment of whether unsolicited direct marketing is, or may be, having a detrimental effect on consumers, and
    - (ii) advise the Secretary of State whether to make regulations under section 22 (unsolicited direct marketing: other consumer financial products etc).
- (8) Where the single financial guidance body provides information, guidance or advice to a person in pursuance of one of the functions mentioned in subsection (1)(a) to (c), it must consider whether the person would benefit from receiving information, guidance or advice in pursuance of any other of those functions (and it must ensure that SFGB delivery partners are under a similar duty).
- (9) The strategic function is to develop and co-ordinate a national strategy to improve—
- (a) the financial capability of members of the public,
  - (b) the ability of members of the public to manage debt, and
  - (c) the provision of financial education to children and young people.
- (10) In developing and co-ordinating the national strategy, the single financial guidance body must work with others, such as those in the financial services industry, the devolved authorities and the public and voluntary sectors.

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#### **4 Specific requirements as to the pensions guidance function**

- (1) As part of its pensions guidance function, the single financial guidance body must provide information and guidance for the purposes of helping a member of a

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pension scheme, or a survivor of a member of a pension scheme, to make decisions about what to do with the flexible benefits that may be provided to the member or survivor.

(2) In subsection (1)—

- (a) references to a member, or a survivor of a member, of a pension scheme include a member, or a survivor of a member, of a pension scheme for which the PPF has assumed responsibility under Part 2 of the Pensions Act 2004 or Part 3 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), but
- (b) in relation to such a member or survivor, the reference to the flexible benefits that may be provided is to be read as a reference to the money purchase benefits that may be provided by the PPF by virtue of sections 161 and 170 of that Act or Articles 145 and 154 of that Order.

(3) In this section—

“flexible benefit” has the meaning given by section 74 of the Pension Schemes Act 2015;

“money purchase benefits”—

(a) in relation to England and Wales and Scotland, has the meaning given by section 181(1) of the Pension Schemes Act 1993, and

(b) in relation to Northern Ireland, has the meaning given by section 176(1) of the Pension Schemes (Northern Ireland) Act 1993;

“pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act 1993;

“PPF” means the Board of the Pension Protection Fund;

“survivor” has the meaning given by section 76(1) of the Pension Schemes Act 2015.

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## **5 Delegation of functions to delivery partner organisations**

(1) The single financial guidance body may arrange for another person (a “primary SFGB delivery partner”) to carry out any of the following functions on its behalf—

- (a) the pensions guidance function;
- (b) the debt advice function;
- (c) the money guidance function.

(2) A primary SFGB delivery partner may arrange for another person (a “secondary SFGB delivery partner”) to carry out any of the functions it is carrying out on behalf of the single financial guidance body.

(3) A secondary SFGB delivery partner may arrange for another person to carry out any of the functions it is carrying out on behalf of the single financial guidance body, but only with the consent of the single financial guidance body.

(4) Arrangements under this section may include provision as to payment to the SFGB delivery partner.

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- (5) Arrangements under this section must include provision requiring an SFGB delivery partner to disclose information to the single financial guidance body or the FCA when requested to do so to enable the single financial guidance body or the FCA to exercise the functions set out in section 10 (monitoring and enforcement of standards).

## **6 Debt respite scheme: advice to the Secretary of State**

- (1) The Secretary of State must, within three months of the establishment of the single financial guidance body, seek advice from the body on the establishment of a debt respite scheme.
- (2) A debt respite scheme is a scheme designed to do one or more of the following—
- (a) protect individuals in debt from the accrual of further interest or charges on their debts during the period specified by the scheme,
  - (b) protect individuals in debt from enforcement action from their creditors during that period, and
  - (c) help individuals in debt and their creditors to devise a realistic plan for the repayment of some or all of the debts.
- (3) The matters on which the Secretary of State may seek advice include (but are not limited to)—
- (a) the appropriate person to administer the scheme (and the single financial guidance body may recommend the creation of a new body for this purpose);
  - (b) whether the scheme should apply in England only, or whether it should also apply in Wales or Northern Ireland (or both);
  - (c) the scope and design of the scheme, for example—
    - (i) the types of debtors and the types of debts it should cover;
    - (ii) the types of protections it should give;
    - (iii) the time period for which the protections should apply;
    - (iv) what the obligations on debtors and creditors should be during any period for which protections apply, including any period of a repayment plan;
    - (v) the consequences of a failure by a debtor or a creditor to comply with a repayment plan;
  - (d) how the scheme should work, for example—
    - (i) how an application should be made for the protections given by the scheme;
    - (ii) suitable arrangements to keep creditors informed;
    - (iii) whether there should be a central register of persons admitted to the scheme;
  - (e) how the scheme should be implemented.
- (4) The single financial guidance body must provide the advice sought within 12 months of its establishment.
- (5) The Secretary of State must publish the advice.

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## **7 Debt respite scheme: regulations**

- (1) As soon as reasonably practicable after receiving advice from the single financial guidance body under section 6, the Secretary of State must consider whether to make regulations under this section.
- (2) After receiving advice from the single financial guidance body under section 6, the Secretary of State may make regulations establishing a debt respite scheme.
- (3) The regulations must take the advice into account.
- (4) The regulations may provide for the scheme to apply—
  - (a) in England only,
  - (b) in England and Wales,
  - (c) in England and Northern Ireland, or
  - (d) in England, Wales and Northern Ireland.
- (5) Regulations under this section may—
  - (a) make different provision for different purposes,
  - (b) make different provision for different areas,
  - (c) make incidental, supplemental, consequential, transitional or saving provision, and
  - (d) apply to obligations entered into, or debts due to be repaid, before the regulations come into force.
- (6) Provision under subsection (5)(c) may amend any provision made by or under—
  - (a) an Act of Parliament,
  - (b) in the case where the regulations provide for the scheme to apply in Wales, a Measure or Act of the National Assembly for Wales, and
  - (c) in the case where the regulations provide for the scheme to apply in Northern Ireland, Northern Ireland legislation.
- (7) Regulations under this section are to be made by statutory instrument.
- (8) An instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of—
  - (a) each House of Parliament,
  - (b) in the case where the regulations provide for the scheme to apply in Wales, the National Assembly for Wales, and
  - (c) in the case where the regulations provide for the scheme to apply in Northern Ireland, the Northern Ireland Assembly.

## **8 Guidance and directions from the Secretary of State**

- (1) The Secretary of State may issue guidance and give directions to the single financial guidance body about the exercise of its functions.
- (2) The Secretary of State must publish any directions that are given to the single financial guidance body.
- (3) The single financial guidance body must have regard to guidance, and comply with directions, given to it by the Secretary of State.

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### *Standards set by the single financial guidance body*

#### **9 Setting standards**

- (1) The single financial guidance body must from time to time set standards to be complied with by—
  - (a) persons providing information or guidance in pursuance of the body's pensions guidance function,
  - (b) persons providing information or advice in pursuance of the body's debt advice function, and
  - (c) persons providing information or guidance in pursuance of the body's money guidance function.
- (2) Before finalising the standards, the single financial guidance body must obtain the approval of the FCA.
- (3) In determining whether to approve the standards, the FCA must have regard to the needs of people who are receiving, or who may seek to receive, the information, guidance or advice to which the standards will apply.
- (4) The single financial guidance body must publish the standards.

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#### **10 Monitoring and enforcement of standards**

- (1) The single financial guidance body must monitor its own and SFGB delivery partners' compliance with the standards.
- (2) The FCA must, at least once in every three years, carry out a review of—
  - (a) whether the standards continue to be appropriate, and
  - (b) how the single financial guidance body is monitoring and enforcing the standards.
- (3) As soon as practicable after the FCA has completed its review, it must provide a report on the review to—
  - (a) the single financial guidance body, and
  - (b) the Secretary of State.
- (4) The report may contain recommendations to the single financial guidance body.

### *Funding of the single financial guidance body*

#### **11 Financial assistance from the Secretary of State**

- (1) The Secretary of State may pay grants or make loans, or give any other form of financial assistance, to meet expenditure in connection with the establishment of the

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single financial guidance body (including expenditure incurred or expected to be incurred before the commencement of section 1).

- (2) The Secretary of State may pay grants or make loans, or give any other form of financial assistance, to the single financial guidance body for the purpose of enabling it to carry out its functions.
- (3) Financial assistance may be given under subsection (1) or (2) subject to any conditions the Secretary of State thinks appropriate (including conditions as to repayment).

#### **Commencement Information**

**II** S. 11 partly in force; s. 11(1)(3) in force at Royal Assent, see s. 37(1)(a)

## **12 Levies under Pension Schemes Act 1993 and Pension Schemes (NI) Act 1993**

- (1) In section 175(1) of the Pension Schemes Act 1993 (power to make regulations imposing levies to meet certain expenditure)—
  - (a) omit the “or” at the end of paragraph (c), and
  - (b) after paragraph (d) insert “or
  - (e) under section 11 of the Financial Guidance and Claims Act 2018 (financial assistance from Secretary of State) relating to the single financial guidance body's pensions guidance function (see section 3 of that Act),”.
- (2) In section 170(1) of the Pension Schemes (Northern Ireland) Act 1993 (power to make regulations imposing levies to meet certain expenditure)—
  - (a) omit the “or” at the end of paragraph (c), and
  - (b) after paragraph (d) insert “or
  - (e) under section 11 of the Financial Guidance and Claims Act 2018 (financial assistance from Secretary of State) relating to the single financial guidance body's pensions guidance function (see section 3 of that Act),”.
- (3) References in regulations made under section 175(1) of the Pension Schemes Act 1993 (including regulations in force before the commencement of this section) to “expenditure referred to in section 175(1) of the 1993 Act” are to be read as references to expenditure referred to in section 175(1) of the Pension Schemes Act 1993 as amended by this section.
- (4) References in regulations made under section 170(1) of the Pension Schemes (Northern Ireland) Act 1993 (including regulations in force before the commencement of this section) to “expenditure referred to in section 170(1) of the Act” are to be read as references to expenditure referred to in section 170(1) of the Pension Schemes (Northern Ireland) Act 1993 as amended by this section.

## **13 Levy under FSMA 2000 for expenses of single financial guidance body**

- (1) In the Financial Services and Markets Act 2000, after section 137S, insert—



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### **“137SA Rules to recover expenses relating to the single financial guidance body**

- (1) The Secretary of State may, from time to time, notify the FCA of the amount of—
  - (a) the expenses incurred, or expected to be incurred, by the Secretary of State under section 11 of the Financial Guidance and Claims Act 2018 (financial assistance from Secretary of State to single financial guidance body), and
  - (b) any other expenses incurred, or expected to be incurred, by the Secretary of State in connection with the operation of the single financial guidance body,that the Secretary of State considers should be recovered under this section.
- (2) Where the Secretary of State has notified the FCA of an amount of expenses under subsection (1), the FCA must make rules for imposing levies with a view to recovering—
  - (a) the amount notified, and
  - (b) expenses incurred by the FCA in connection with its functions under this section.
- (3) The rules must require the payment to the FCA of specified sums, or sums calculated in a specified way, by—
  - (a) authorised persons, electronic money issuers or payment service providers, or
  - (b) any specified class of authorised person, electronic money issuer or payment service provider.
- (4) Before the FCA publishes a draft of rules to be made under this section it must consult the Secretary of State.
- (5) The rules may be made only with the consent of the Secretary of State.
- (6) The Secretary of State may notify the FCA of matters that will be taken into account when deciding whether or not to give consent under subsection (5).
- (7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.
- (8) The FCA must pay the Secretary of State the sums it receives under rules made under this section, apart from those paid to recover the expenses mentioned in subsection (2)(b) (which the FCA may keep).
- (9) Subsection (10) applies where—
  - (a) the Secretary of State has notified the FCA under subsection (1) of an amount which included expenses expected to be incurred,
  - (b) the FCA has made rules to recover the amount, and paid sums received under the rules to the Secretary of State, but
  - (c) the expenses expected to be incurred were not in fact incurred.
- (10) The Secretary of State need not arrange for the sums received under the rules to be paid back, but must, when next notifying an amount to the FCA under

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subsection (1), take into account the fact that the sums received included an amount representing expenses that were not in fact incurred.

(11) In this section—

“electronic money issuer” means a person who is an electronic money issuer for the purposes of the Electronic Money Regulations 2011 (S.I. 2011/99) as a result of falling within any of paragraphs (a) to (e) and (h) to (j) of the definition in regulation 2(1);

“payment service provider” means a person who is a payment service provider for the purposes of the Payment Services Regulations 2017 (S.I. 2017/752) as a result of falling within any of paragraphs (a) to (h) of the definition in regulation 2(1).”

(2) The requirements for the FCA to consult, before making rules under section 137SA of the Financial Services and Markets Act 2000, contained in—

- (a) section 137SA(4) of that Act, and
- (b) section 138I(1) of that Act,

may be satisfied by things done before the day on which this Act is passed.

(3) Rules under section 137SA of the Financial Services and Markets Act 2000 may impose levies with a view to recovering expenses incurred by the FCA before the day on which this Act is passed.

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*Funding of debt advice in Scotland, Wales and Northern Ireland*

**14 Levy under FSMA 2000 for debt advice expenses of devolved authorities**

(1) In the Financial Services and Markets Act 2000, after section 137SA (inserted by section 13), insert—

**“137SB Rules to recover debt advice expenses incurred by the devolved authorities**

(1) The Treasury may, from time to time, notify the FCA of the amount of the expenses incurred, or expected to be incurred, by the devolved authorities in connection with the provision of information and advice on debt to members of the public in Scotland, Wales and Northern Ireland.

(2) Where the Treasury have notified the FCA of an amount of expenses under subsection (1), the FCA must make rules for imposing levies with a view to recovering—

- (a) the amount notified, and
- (b) expenses incurred by the FCA in connection with its functions under this section.

(3) The rules must require the payment to the FCA of specified sums, or sums calculated in a specified way, by—

- (a) authorised persons, electronic money issuers or payment service providers, or

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- (b) any specified class of authorised person, electronic money issuer or payment service provider.
- (4) Before the FCA publishes a draft of rules to be made under this section it must consult the Treasury.
- (5) The rules may be made only with the consent of the Treasury.
- (6) The Treasury may notify the FCA of matters that will be taken into account when deciding whether or not to give consent under subsection (5).
- (7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.
- (8) The FCA must pay the Treasury the sums it receives under rules made under this section, apart from those paid to recover the expenses mentioned in subsection (2)(b) (which the FCA may keep).
- (9) Subsection (10) applies where—
  - (a) the Treasury have notified the FCA under subsection (1) of an amount which included expenses expected to be incurred,
  - (b) the FCA has made rules to recover the amount, and paid sums received under the rules to the Treasury, but
  - (c) the expenses expected to be incurred were not in fact incurred.
- (10) The Treasury need not arrange for the sums received under the rules to be paid back, but must, when next notifying an amount to the FCA under subsection (1), take into account the fact that the sums received included an amount representing expenses that were not in fact incurred.
- (11) In this section—
  - the “devolved authorities” means—
    - (a) the Scottish Ministers,
    - (b) the Welsh Ministers, and
    - (c) the Department for Communities in Northern Ireland;
  - “electronic money issuer” and “payment service provider” have the same meanings as in section 137SA.”
- (2) The requirements for the FCA to consult, before making rules under section 137SB of the Financial Services and Markets Act 2000, contained in—
  - (a) section 137SB(4) of that Act, and
  - (b) section 138I(1) of that Act,may be satisfied by things done before the day on which this section comes into force.
- (3) Rules under section 137SB of the Financial Services and Markets Act 2000 may impose levies with a view to recovering expenses incurred by the FCA before the day on which this section comes into force.

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*Offence of impersonating the single financial guidance body*

**15 False claims about provision of information etc**

- (1) It is an offence for a person to hold himself or herself out (or where the person is a body, to hold itself out) as providing information, guidance or advice on behalf of the single financial guidance body when that is not in fact the case.
- (2) It is a defence for a person charged with an offence under this section to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (3) A person guilty of an offence under this section is liable on summary conviction—
  - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine, or both;
  - (b) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both;
  - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both.
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (3)(a) to 51 weeks is to be read as a reference to 6 months.
- (5) Proceedings for an offence under this section may be instituted in England and Wales only by or with the consent of the Director of Public Prosecutions.
- (6) Proceedings for an offence under this section may be instituted in Northern Ireland only by or with the consent of the Director of Public Prosecutions for Northern Ireland.

**16 Offences under section 15 committed by bodies corporate etc**

- (1) If an offence under section 15 committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of an officer of the body, or
  - (b) to be attributable to any neglect on the part of such an officer,
 the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In subsection (1) “officer”, in relation to a body corporate, means—
  - (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity;
  - (b) an individual who is a controller of the body.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

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- (4) If an offence under section 15 committed by a partnership is proved—
  - (a) to have been committed with the consent or connivance of a partner, or
  - (b) to be attributable to any neglect on the part of the partner,the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (5) In subsection (4) “partner” includes a person purporting to act as a partner.
- (6) If an offence under section 15 committed by an unincorporated association other than a partnership is proved—
  - (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
  - (b) to be attributable to any neglect on the part of such an officer or member,the officer or member, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (7) Proceedings for an offence under section 15 must be brought—
  - (a) where the offence is alleged to have been committed by a partnership, against the partnership in the firm name;
  - (b) where the offence is alleged to have been committed by any other type of unincorporated association, against the association in its own name.
- (8) Rules of court relating to the service of documents have effect in relation to such proceedings as if the partnership or unincorporated association were a body corporate.

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### *Information exchange*

#### **17 Disclosure of information**

- (1) The single financial guidance body may disclose information to the Secretary of State, and the Secretary of State may disclose information to the single financial guidance body, provided that the disclosure (in either case) is for the purpose of enabling or facilitating the exercise of—
  - (a) a function of the single financial guidance body, or
  - (b) a function of the Secretary of State that—
    - (i) relates directly to the single financial guidance body, or
    - (ii) is the same as, or in a similar area to, a function of the single financial guidance body.
- (2) The single financial guidance body may disclose information to a devolved authority, and a devolved authority may disclose information to the single financial guidance body, provided that the disclosure (in either case) is for the purpose of enabling or facilitating—
  - (a) the exercise of a function of the single financial guidance body, or
  - (b) the provision of information and advice on debt to members of the public in Scotland, Wales or Northern Ireland.

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- (3) The single financial guidance body may disclose information to the FCA, and the FCA may disclose information to the single financial guidance body, provided that the disclosure (in either case) is for the purpose of enabling or facilitating the exercise of—
  - (a) a function of the single financial guidance body, or
  - (b) a function of the FCA that—
    - (i) relates directly to the single financial guidance body, or
    - (ii) is in a similar area to a function of the single financial guidance body.
- (4) A devolved authority may disclose information to the FCA, and the FCA may disclose information to a devolved authority, provided that the disclosure (in either case) is for the purpose of enabling or facilitating—
  - (a) the provision of information and advice on debt to members of the public in Scotland, Wales or Northern Ireland, or
  - (b) the exercise of a function of the FCA that relates to the provision of information or advice on debt.
- (5) The single financial guidance body may disclose information to an SFGB delivery partner, and an SFGB delivery partner may disclose information to the single financial guidance body, provided that the disclosure (in either case) is for the purpose of enabling or facilitating the exercise of a function that the SFGB delivery partner is carrying out on behalf of the single financial guidance body.
- (6) The single financial guidance body must disclose information—
  - (a) to the Secretary of State, where requested to do so by the Secretary of State;
  - (b) to the FCA, where—
    - (i) the disclosure is for the purpose of enabling or facilitating the exercise of the consumer protection function, or
    - (ii) the FCA requests information for the purposes of a review under section 10 (monitoring and enforcement of standards).
- (7) A disclosure of information which is authorised or required by this section does not breach—
  - (a) an obligation of confidence owed by the person making the disclosure, or
  - (b) any other restriction on the disclosure of the information (however imposed).
- (8) But nothing in this section authorises the making of a disclosure which—
  - (a) contravenes the data protection legislation, or
  - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.

*Status:* Point in time view as at 02/07/2018. This version of this part contains provisions that are not valid for this point in time.

*Changes to legislation:* There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, PART 1. (See end of Document for details)

VALID FROM 01/01/2019

### *Rules etc about financial guidance*

#### **18 Personal pension schemes: requirements to refer members to guidance etc**

- (1) Section 137FB of the Financial Services and Markets Act 2000 (FCA general rules: disclosure of information about the availability of pensions guidance) is amended as follows.
- (2) After subsection (1), insert—
  - “(1A) The FCA must also make general rules requiring the trustees or managers of a relevant pension scheme to take the steps mentioned in subsections (1B) and (1C) in relation to an application from a member or survivor—
    - (a) to transfer any rights accrued under the scheme, or
    - (b) to start receiving benefits provided by the scheme.
  - (1B) As part of the application process, the trustees or managers must ensure that—
    - (a) the member or survivor is referred to appropriate pensions guidance, and
    - (b) the member or survivor is provided with an explanation of the nature and purpose of such guidance.
  - (1C) Before proceeding with the application, the trustees or managers must ensure that the member or survivor has either received appropriate pensions guidance or has opted out of receiving such guidance.
  - (1D) The rules may—
    - (a) specify what constitutes appropriate pensions guidance;
    - (b) make further provision about how the trustees or managers must comply with the duties in subsections (1B) and (1C) (such as provision about methods of communication and time limits);
    - (c) make further provision about how, and to whom, a member or survivor may indicate that they have received or opted out of receiving appropriate pensions guidance for the purposes of subsection (1C);
    - (d) specify what the duties of the trustees or managers are in the situation where a member or survivor does not respond to a communication that is made for the purposes of complying with the duty in subsection (1C);
    - (e) provide for exceptions to the duties in subsections (1B) and (1C) in specified cases.”
- (3) In subsection (2), for “this section” substitute “ subsection (1) ”.
- (4) After subsection (2) insert—
  - “(2A) Before the FCA publishes a draft of any rules to be made by virtue of subsection (1A), it must consult—
    - (a) the Secretary of State, and

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*Changes to legislation: There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, PART 1. (See end of Document for details)*

(b) the single financial guidance body.”

(5) In subsection (3), for “the rules” substitute “ rules to be made by virtue of subsection (1) ”.

(6) After subsection (3) insert—

“(3A) In determining what provision to include in rules to be made by virtue of subsection (1A), the FCA must have regard to any regulations that are for the time being in force under section 113B of the Pension Schemes Act 1993 (occupational pension schemes: requirements to refer members to guidance etc).”

(7) In subsection (4), for the definition of “pensions guidance” substitute—

““pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 4 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes);”.

VALID FROM 05/07/2021

## **19 Occupational pension schemes: requirements to refer members to guidance etc**

(1) The Pension Schemes Act 1993 is amended as set out in subsections (2) to (5).

(2) After section 113A insert—

### **“113B Occupational pension schemes: requirements to refer members to guidance etc**

(1) The Secretary of State must make regulations requiring the trustees or managers of an occupational pension scheme to take the steps mentioned in subsections (2) and (3) in relation to an application from a relevant beneficiary—

- (a) to transfer any rights accrued under the scheme, or
- (b) to start receiving benefits provided by the scheme.

(2) As part of the application process, the trustees or managers must ensure that—

- (a) the beneficiary is referred to appropriate pensions guidance, and
- (b) the beneficiary is provided with an explanation of the nature and purpose of such guidance.

(3) Before proceeding with the application, the trustees or managers must ensure that the beneficiary has either received appropriate pensions guidance or has opted out of receiving such guidance.

(4) The regulations may—

- (a) specify what constitutes appropriate pensions guidance;



**Status:** Point in time view as at 02/07/2018. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:** There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, PART 1. (See end of Document for details)

- (b) make further provision about how the trustees or managers must comply with the duties in subsections (2) and (3) (such as provision about methods of communication and time limits);
  - (c) make further provision about how, and to whom, a beneficiary may indicate that they have received or opted out of receiving appropriate pensions guidance for the purposes of subsection (3);
  - (d) specify what the duties of the trustees or managers are in the situation where a beneficiary does not respond to a communication that is made for the purposes of complying with the duty in subsection (3);
  - (e) provide for exceptions to the duties in subsections (2) and (3) in specified cases;
  - (f) provide for the Secretary of State or another prescribed person to issue guidance for the purposes of this section, to which trustees or managers must have regard in complying with their duties under the regulations.
- (5) In determining what provision to include in the regulations, the Secretary of State must have regard to any rules that are for the time being in force under section 137FB(1A) of the Financial Services and Markets Act 2000.
- (6) In this section—
- “relevant beneficiary”, in relation to a pension scheme, means—
    - (a) a member of the scheme, or
    - (b) another person of a prescribed description,
 who has a right or entitlement to flexible benefits under the scheme;
 

“flexible benefits” has the meaning given by section 74 of the Pension Schemes Act 2015;

“pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 4 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes).”
- (3) In section 115 (powers as respects failure to comply with information requirements), in subsection (1), after “113” insert “, 113B”.
- (4) In section 182(5) (power of Treasury to direct that regulation-making powers are exercisable only in conjunction with them), after “except” insert “regulations under section 113B or”.
- (5) In section 185(2) (consultations about other regulations: exceptions), after paragraph (c) insert—
- “(ca) regulations under section 113B; or”.
- (6) The Pension Schemes (Northern Ireland) Act 1993 is amended as set out in subsections (7) to (9).
- (7) After section 109A insert—

*Status: Point in time view as at 02/07/2018. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, PART 1. (See end of Document for details)*

### **“109B Occupational pension schemes: requirements to refer members to guidance etc**

- (1) The Department must make regulations requiring the trustees or managers of an occupational pension scheme to take the steps mentioned in subsections (2) and (3) in relation to an application from a relevant beneficiary—
  - (a) to transfer any rights accrued under the scheme, or
  - (b) to start receiving benefits provided by the scheme.
- (2) As part of the application process, the trustees or managers must ensure that—
  - (a) the beneficiary is referred to appropriate pensions guidance, and
  - (b) the beneficiary is provided with an explanation of the nature and purpose of such guidance.
- (3) Before proceeding with the application, the trustees or managers must ensure that the beneficiary has either received appropriate pensions guidance or has opted out of receiving such guidance.
- (4) The regulations may—
  - (a) specify what constitutes appropriate pensions guidance;
  - (b) make further provision about how the trustees or managers must comply with the duties in subsections (2) and (3) (such as provision about methods of communication and time limits);
  - (c) make further provision about how, and to whom, a beneficiary may indicate that they have received or opted out of receiving appropriate pensions guidance for the purposes of subsection (3);
  - (d) specify what the duties of the trustees or managers are in the situation where a beneficiary does not respond to a communication that is made for the purposes of complying with the duty in subsection (3);
  - (e) provide for exceptions to the duties in subsections (2) and (3) in specified cases;
  - (f) provide for the Department or another prescribed person to issue guidance for the purposes of this section, to which trustees or managers must have regard in complying with their duties under the regulations.
- (5) In determining what provision to include in the regulations, the Department must have regard to any rules that are for the time being in force under section 137FB(1A) of the Financial Services and Markets Act 2000.
- (6) In this section—
 

“relevant beneficiary”, in relation to a pension scheme, means—

  - (a) a member of the scheme, or
  - (b) another person of a prescribed description,

who has a right or entitlement to flexible benefits under the scheme;

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*Changes to legislation:* There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, PART 1. (See end of Document for details)

“flexible benefits” has the meaning given by section 74 of the Pension Schemes Act 2015;

“pensions guidance” means information or guidance provided by any person in pursuance of the requirements mentioned in section 4 of the Financial Guidance and Claims Act 2018 (information etc about flexible benefits under pension schemes).”

- (8) In section 111 (powers as respects failure to comply with information requirements), in subsection (1), after “109” insert “ or 109B ”.
- (9) In section 177(6) (power of Department of Finance to direct that regulation-making powers are exercisable only in conjunction with them), after “except” insert “ regulations under section 109B or ”.

## 20 FCA general rules: information about the availability of guidance

After section 137FBB of the Financial Services and Markets Act 2000 insert—

### “137FC FCA rules: disclosure of information about the availability of financial guidance

- (1) The FCA must make general rules requiring specified authorised persons to provide information about the availability of financial guidance to the descriptions of persons specified in the rules.
- (2) The rules may specify the circumstances in which the duty to provide the information applies.
- (3) Before the FCA publishes a draft of any rules to be made by virtue of this section, it must consult—
- the Secretary of State,
  - the Treasury, and
  - the single financial guidance body.

- (4) In this section—

“financial guidance” means information, guidance or advice provided in pursuance of the single financial guidance body's pensions guidance, debt advice or money guidance function (see section 3 of the Financial Guidance and Claims Act 2018);

“specified authorised person” means an authorised person of a description specified in rules made by virtue of this section.”

### *Unsolicited direct marketing approaches*

## 21 Unsolicited direct marketing: pensions

- (1) The Secretary of State may make regulations prohibiting unsolicited direct marketing relating to pensions.
- (2) The regulations may—

*Status: Point in time view as at 02/07/2018. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, PART 1. (See end of Document for details)*

- (a) make provision about when a communication is to be, or is not to be, treated as unsolicited;
  - (b) make provision for exceptions to the prohibition;
  - (c) confer functions on the Information Commissioner and on OFCOM (including conferring a discretion);
  - (d) apply (with or without modifications) provisions of the data protection legislation or the Privacy and Electronic Communications (EC Directive) Regulations 2003 (S.I. 2003/2426) (including, in particular, provisions relating to enforcement).
- (3) The regulations may—
- (a) make different provision for different purposes;
  - (b) make different provision for different areas;
  - (c) make incidental, supplementary, consequential, transitional or saving provision.
- (4) Regulations under this section are to be made by statutory instrument.
- (5) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (6) If before the end of June in any year the Secretary of State has not made regulations under this section (whether or not in that year), the Secretary of State must—
- (a) publish a statement, by the end of July in that year, explaining why regulations have not been made and setting a timetable for making the regulations, and
  - (b) lay the statement before each House of Parliament.
- (7) In this section, “OFCOM” means the Office of Communications established by section 1 of the Office of Communications Act 2002.

VALID FROM 10/07/2018

## **22 Unsolicited direct marketing: other consumer financial products etc**

- (1) The Secretary of State must keep under review whether a prohibition on unsolicited direct marketing in relation to consumer financial products and services other than pensions would be appropriate.
- (2) If the Secretary of State considers that such a prohibition would be appropriate, the Secretary of State may make regulations applying regulations made under section 21 to other consumer financial products and services (with or without modifications).
- (3) In considering whether to make such regulations, the Secretary of State must take into account any advice received from the single financial guidance body under section 3(7)(b)(ii) (consumer protection function: advice on effect on consumers of unsolicited direct marketing).
- (4) The regulations may—
  - (a) make different provision for different purposes;
  - (b) make different provision for different areas;

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**Changes to legislation:** There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, PART 1. (See end of Document for details)

- (c) make incidental, supplementary, consequential, transitional or saving provision.
- (5) Regulations under this section are to be made by statutory instrument.
- (6) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before, and approved by a resolution of, each House of Parliament.

VALID FROM 01/10/2018

### *Miscellaneous*

#### **23 Power to dissolve the single financial guidance body**

- (1) The Secretary of State must keep under review the question of whether the single financial guidance body should be dissolved.
- (2) If the Secretary of State considers that the single financial guidance body should be dissolved, he or she must carry out a public consultation.
- (3) If, after the period of 12 weeks beginning with the day on which the consultation began, the Secretary of State still considers dissolution of the single financial guidance body to be appropriate, he or she must lay before Parliament—
  - (a) draft regulations, and
  - (b) an explanatory document.
- (4) The draft regulations may in particular make provision about—
  - (a) the transfer of the functions of the single financial guidance body to the Secretary of State or any other person;
  - (b) the transfer of property, rights or liabilities of the single financial guidance body to the Secretary of State or any other person;
  - (c) the creation and extinguishment of interests, rights and liabilities, in connection with provision made under paragraph (b);
  - (d) the payment by the Secretary of State or the single financial guidance body of compensation to any person who suffers loss or damage as a result of the dissolution.
- (5) The draft regulations—
  - (a) may transfer rights and liabilities relating to employees, but
  - (b) may not affect the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246).
- (6) The draft regulations may—
  - (a) amend or repeal any provision of this Part;
  - (b) make incidental, supplementary, consequential, transitional or saving provision.
- (7) Subsection (6)(b) includes the power to amend any provision made by or under—
  - (a) an Act of Parliament,
  - (b) an Act of the Scottish Parliament,

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- (c) a Measure or Act of the National Assembly for Wales, or
- (d) Northern Ireland legislation.

#### **24 Regulations dissolving the new single financial guidance body: procedure**

- (1) The 40-day affirmative procedure applies to draft regulations under section 23 unless, within the period of 30 days beginning with the day on which the draft regulations were laid before Parliament—
  - (a) either House of Parliament resolves that the super-affirmative procedure should apply, or
  - (b) a committee of either House charged with reporting on the draft regulations recommends that the super-affirmative procedure should apply and the House to which the recommendation is made does not by resolution reject the recommendation within that 30-day period.

In either of those cases the super-affirmative procedure applies.

- (2) Under the 40-day affirmative procedure, if after the expiry of the period of 40 days beginning with the day on which the regulations were laid before Parliament, the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (3) Under the super-affirmative procedure, the Secretary of State must—
  - (a) have regard to the matters mentioned in subsection (4), and
  - (b) make the regulations in accordance with subsections (5) to (7).
- (4) The matters are—
  - (a) any representations,
  - (b) any resolution of either House of Parliament, and
  - (c) any recommendation of a committee of either House of Parliament charged with reporting on the draft regulations,

made in relation to the draft regulations during the period of 60 days beginning with the day on which the draft regulations were laid before Parliament.
- (5) If, after the expiry of that 60-day period, the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (6) If, after the expiry of that 60-day period, the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—
  - (a) revised draft regulations, and
  - (b) a statement giving a summary of the changes proposed.
- (7) If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.
- (8) Regulations are made in the terms of draft regulations (including revised draft regulations) if the regulations contain no material changes.
- (9) In calculating the periods of time referred to in this section, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.

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**Changes to legislation:** There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, PART 1. (See end of Document for details)

(10) The regulations are to be made by statutory instrument.

## 25 Minor and consequential amendments

Schedule 3 contains amendments that relate to this Part.

### Commencement Information

**I2** S. 25 partly in force; s. 25 in force for specified purposes at Royal Assent, see s. 37(1)(e)

## 26 Interpretation of Part 1

(1) In this Part—

“the consumer protection function” has the meaning given in section 3(7);

“the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act);

“the debt advice function” has the meaning given in section 3(5);

“the devolved authorities” means—

(a) the Scottish Ministers,

(b) the Welsh Ministers, and

(c) the Department for Communities in Northern Ireland;

“direct marketing” means the communication (by whatever means) of advertising or marketing material which is directed to particular individuals;

“the FCA” means the Financial Conduct Authority;

“the money guidance function” has the meaning given in section 3(6);

“the pensions guidance function” has the meaning given in section 3(4);

“SFGB delivery partner” means a person with whom arrangements are made under section 5(1), (2) or (3).

“standards” means standards set under section 9;

“the strategic function” has the meaning given in section 3(9).

(2) In this Part, other than in section 1(7)(a) and paragraph 1(1) of Schedule 2, references to the Secretary of State are to be read as references to the Secretary of State or the Treasury.

**Status:**

Point in time view as at 02/07/2018. This version of this part contains provisions that are not valid for this point in time.

**Changes to legislation:**

There are currently no known outstanding effects for the Financial Guidance and Claims Act 2018, PART 1.