



# Financial Guidance and Claims Act 2018

## 2018 CHAPTER 10

### PART 1

#### FINANCIAL GUIDANCE ETC

##### *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;

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- (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
  - (b) the [<sup>F1</sup>Money and Pensions Service].”
- (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);”.

#### Textual Amendments

- F1** Words in s. 18(4) substituted (6.4.2019) by [The Financial Guidance and Claims Act 2018 \(Naming and Consequential Amendments\) Regulations 2019 \(S.I. 2019/383\)](#), reg. 1(1), [Sch. para. 11](#)

#### Commencement Information

- I1** S. 18(1) in force at 1.1.2019 for specified purposes by [S.I. 2018/1330](#), [reg. 3\(b\)](#)
- I2** [S. 18\(1\)](#) in force at 5.7.2021 for specified purposes by [S.I. 2021/764](#), [reg. 2\(a\)](#)
- I3** [S. 18\(2\)](#) in force at 5.7.2021 for specified purposes by [S.I. 2021/764](#), [reg. 2\(b\)](#)
- I4** [S. 18\(3\)-\(6\)](#) in force at 5.7.2021 by [S.I. 2021/764](#), [reg. 2\(c\)](#)
- I5** S. 18(7) in force at 1.1.2019 by [S.I. 2018/1330](#), [reg. 2\(f\)](#)

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## **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;
  - (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,

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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—

**“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);

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- (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;
  - “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 ”.

#### Commencement Information

- I6** S. 19(1) in force at 5.7.2021 for specified purposes by S.I. 2021/764, reg. 2(d)
- I7** S. 19(2)(3) in force at 5.7.2021 for specified purposes by S.I. 2021/764, reg. 2(e)
- I8** S. 19(4) in force at 5.7.2021 by S.I. 2021/764, reg. 2(f)
- I9** S. 19(6) in force at 15.3.2022 for specified purposes by S.R. 2022/107, art. 2(a)
- I10** S. 19(7)(8) in force at 15.3.2022 for specified purposes by S.R. 2022/107, art. 2(b)
- I11** S. 19(9) in force at 15.3.2022 by S.R. 2022/107, art. 2(c)

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

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

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**“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—
  - (a) the Secretary of State,
  - (b) the Treasury, and
  - (c) 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.”

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**Commencement Information**

**I12** S. 20 in force at 1.1.2019 by [S.I. 2018/1003, reg. 2\(b\)](#)

**Status:**

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**Changes to legislation:**

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