FINANCIAL GUIDANCE AND CLAIMS BILL

Supplementary Memorandum from the Department for Work and Pensions & HM Treasury to the Delegated Powers and Regulatory Reform Committee

A. INTRODUCTION

1. This memorandum has been prepared for the Delegated Powers and Regulatory Reform Committee to assist with its scrutiny of the Financial Guidance & Claims Bill ("the Bill"). It supplements the memorandum provided on the 30th June 2017. The Bill was introduced in the House of Lords on the 22nd June.

2. This memorandum outlines an additional two clauses which have been proposed through two Government amendments at Commons report stage of the Bill. The new clauses are as follows:

   a) An additional clause to enable the Government to quickly bring forward a ban on pensions cold-calling through making regulations via statutory instrument.
   b) An additional clause enabling the Government to place bans on other forms of consumer financial products and services cold-calling through making regulations via statutory instrument.

These clauses replace the regulation-making powers that currently exist in clause 4 of the Bill. This memorandum explains why the amendments have been proposed and how the Secretary of State will be expected to use this regulation-making power.

B. ADDITIONAL DELEGATED POWERS

Amendment to insert new clauses – "Unsolicited direct marketing: pensions" and "Unsolicited direct marketing: other consumer financial products etc"
Power conferred on: Secretary of State
Power exercised by: Regulations made by statutory instrument
Parliamentary Procedure: Affirmative procedure

<u>Context and purpose</u>

3. The Government committed to banning pensions cold-calling in a consultation response on pension scams in August 2017. The rationale for this policy is to make it illegal for scammers to contact individuals to induce them to transfer their pension savings into inappropriate or fraudulent investments. Pension cold-calling can cause considerable consumer detriment. Pension savings are often an individual's largest asset, but there are low levels of consumer engagement and fraudsters have found pension savings to be a lucrative target in recent years.

4. Clause 4 of the Bill currently provides for the new Single Financial Guidance Body (SFGB) – which will be created by the Financial Guidance and Claims Bill – to advise the Government on a ban on cold-calling in relation to financial services (which would include pensions) should it believe there to be significant consumer detriment which results from such cold-calling. On the back of this advice, the Clause enables the Secretary of State to introduce a ban on such cold calling through regulations.

5. However, the need to wait for advice from the SFGB means that the power is exercised slowly – with the Government estimating that any ban on cold-calling made under this power would only come into force in 2020. However, given the significant risk of consumer detriment surrounding pensions cold-calling, the Government is committed to implementing a pensions cold-calling ban to a much quicker timetable. We made this commitment to speedy implementation in our response to a Work and Pensions Select Committee report, published in December, on preventing pension scams.

6. The Government has therefore proposed the two new clauses. The two new clauses on unsolicited direct marketing should be read together. The first clause '*Unsolicited direct marketing: pensions*' allows the Government to implement a ban on cold-calling in relation to pensions through regulations – fulfilling our commitment to enact the ban to a quicker timetable. The second clause '*Unsolicited direct marketing: other consumer financial products etc*' replicates a power already existing in clause 4, through enabling the Government to lay regulations to ban cold-calling in relation to other consumer financial services and products should it believe this would be beneficial to consumers.

Justification for delegation

7. In relation to the **pensions cold calling ban**, the development of this ban is complex and the government is still refining the details of how a ban will work in practice. As outlined when the Government responded to a consultation on pension scams which included proposals on banning pensions cold-calling, there are difficult policy details, such as defining the types of calls which are banned, and the circumstances in which there should be exclusions for legitimate business activities – including where an existing relationship exists. These issues need careful and detailed work with stakeholders, which we are currently undertaking, to ensure that a ban is robust and effective for consumers.

8. It would be a mistake to pre-judge this policy-making process by setting out specific details of the ban in primary legislation at this stage before the different options available can be properly assessed, including during consultation with stakeholders.

9. The Government is also keen to ensure that the ban on pensions cold-calling is flexible and can respond to emerging threats to consumers. Although the scope

of the proposed ban is broad, fraudsters could find new ways to circumvent a ban, and the Government feels it sensible to ensure that a ban can be future-proofed through further changes to regulations. This was a view which was repeated strongly in the response to the government's consultation on a pensions cold calling ban.

10. In relation to the **cold calling ban on other consumer financial products**, the Government also believes it to be necessary to have a regulation making power to introduce any further such bans. This is for two reasons:

    a) Debates on the Bill have shown that there are concerns over cold-calling in relation to other, non-pension, consumer financial products and service. The Government has therefore made provision in the Bill for this issue to be kept under review via the SFGB's consumer protection function. On the back of any further evidence gathered here, it is important we have the power to introduce such bans.

    b) The proposed regulation-making power will enable the Government to protect consumers by responding quickly and effectively to emerging areas of consumer detriment in this area. This is important given the significant prospect of consumers being harmed by such cold-calling.

Justification for procedure

11. The Regulations are subject to the affirmative procedure in both Houses of Parliament. The affirmative procedure is appropriate in this case as it affords sufficient parliamentary scrutiny for these powers. In particular, the amendment contains a Henry VIII regulation-making power. This enables the regulations to make incidental, supplementary, consequential, transitional or saving provision to Acts of Parliament. The power is limited in that it will only be used for the purposes of establishing a cold-calling ban on pensions or other consumer financial products and services. However, this power does not include provision that limits such a power to legislation passed before or later in the same session as the Bill itself. This is because it may be necessary to amend Acts passed later than 2018, because there is no time limit as to when the Government has to make regulations to ban cold-calling in relation to pensions or other consumer financial services.

Department for Work and Pensions & HM Treasury

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