

FINANCIAL GUIDANCE AND CLAIMS BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Financial Guidance and Claims Bill [HL] as brought from the House of Lords on 22 November 2017 (Bill 131).

- These Explanatory Notes have been prepared by the Department for Work and Pensions and HM Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill's focus is on ensuring members of the public are able to access free and impartial money guidance, pensions guidance and debt advice. It also ensures that they are able to access high-quality claims handling services by strengthening the regulation of claims management companies.
- 2 To enable this the Bill provides in two areas:
 - a. Creation of a Single Financial Guidance Body and provision for the funding of debt advice in the devolved administrations
 - b. Transfer of claims management regulation from the Claims Management Regulation Unit in the Ministry of Justice to the Financial Conduct Authority.
- 3 The Bill also makes provision for two connected purposes:
 - a. Creation of a debt respite scheme (also known as a 'Breathing Space' scheme) by secondary regulations
 - b. Introduction of a ban on cold-calling by secondary regulations
- 4 The above regulations may only be made by the Secretary of State following receipt of advice on these matters from the single financial guidance body.

Policy background

Single Financial Guidance Body

- 5 The Financial Guidance and Claims Bill builds on a Government commitment to ensure that members of the public can access good-quality, free-to-client, impartial financial guidance and debt advice. These services are currently provided by a number of different organisations, including financial services firms, and the utilities and charity sectors.
- 6 Government-sponsored pensions guidance, money guidance and debt advice is currently provided by the Money Advice Service, the Pensions Advisory Service, and the Department for Work and Pensions under the 'Pension Wise' banner.
- 7 In October 2015 the Government launched a review of public financial guidance provision in the United Kingdom. The review, *Public financial guidance consultation*¹, sought views on how publicly funded pensions guidance, debt advice and money guidance (including financial capability) could best be structured to help people make effective financial decisions.
- 8 In March 2016 the Government set out proposals to replace the Money Advice Service with a new, streamlined money guidance body, and to bring together the Pensions Advisory Service and 'Pension Wise' into a new pensions guidance body (*Public financial guidance review: proposal for consultation*²). Whilst stakeholders were generally supportive of the Government's aims,

¹ [Consultation: public financial guidance - GOV.UK](#)

² [Public financial guidance review: proposal for consultation - GOV.UK](#)

concerns were raised over how the two bodies would work together, and whether a single body could provide a better, more streamlined service.

- 9 In October 2016, the Government took the decision to create one single financial body instead of two, and in December 2016 HM Treasury and the Department for Work and Pensions published a further consultation, *Public financial guidance review: consultation on a single body*³, setting out proposals for a single financial guidance body that could provide more joined up debt advice, money guidance and pensions guidance, support the development of a national strategy to improve financial capability and debt management, and co-ordinate the provision of financial education to children and young people. This consultation closed in February 2017.
- 10 During the progress of the Bill through the House of Lords, additional provisions were included which will allow the body as part of its consumer protection function to consider and advise the Secretary of State on bans of cold calling products and services and then make regulations. There has also been added provision which will allow the Secretary of State to seek advice from the body on the establishment of a debt respite scheme and make regulations.

Claims Management Services

- 11 Claims management companies are businesses which provide advice and / or other services in relation to the making of compensation claims for personal injuries, financial products and services, employment issues, industrial and criminal injuries and housing disrepair. There are currently around 1,400 authorised claims management companies in operation.
- 12 The Claims Management Regulation Unit was established in the Ministry of Justice in April 2007, and regulates claims management companies active in England and Wales. This was intended to be an interim measure.
- 13 However, there is evidence of malpractice in the sector and a number of complaints have been leveled at claims management companies. Common complaints included poor value for money, misrepresentation of the service offered to consumers, and reliance on nuisance tactics, such as unsolicited calls and texts. As a result, consumers have become distrustful of claims management companies, with 76% of the public having reported that they are not confident that the companies tell the truth to their customers.
- 14 At Summer Budget 2015, the Government commissioned an independent review, led by Carol Brady⁴, to examine claims management regulation and make recommendations to improve conduct in the sector. Following this review, the Government announced at Budget 2016 its intention to establish a tougher regulatory regime for claims management companies by transferring supervisory responsibility from the Ministry of Justice to the Financial Conduct Authority.
- 15 These clauses will make amendments to the Financial Services and Market Act 2000 to enable the Financial Conduct Authority to regulate claims management company activity as a 'regulated activity' under the Act.

³ [Public financial guidance review: consultation on a single body - GOV.UK](#)

⁴ [Claims management regulation review: final report - GOV.UK](#)

- 16 These clauses also provide for the transfer of complaints-handling responsibility from the Legal Ombudsman to the Financial Ombudsman Service. This will allow the Financial Ombudsman Service to take over jurisdiction to investigate and determine consumer complaints about the service provided by the claims management companies.
- 17 The Financial Conduct Authority will also be given power to impose a cap on the fees that claims management companies can charge for their services, and a duty to exercise this power in respect of financial services firms.
- 18 These clauses also provide for the introduction of an interim fee cap on payment protection insurance (PPI) claims, in order to ensure consumers are protected against excessive fees before the Financial Conduct Authority implements its financial services fee cap. This is especially pertinent given the PPI complaints deadline in August 2019 and preceding communications campaign, during which time complaints volumes are expected to rise.
- 19 The clauses will also include a power on the Ministry of Justice to put into place a transfer scheme for assets and liabilities of the Claims Management Regulation Unit to the Financial Conduct Authority, and a scheme providing for the transfer of staff.

Legal background

Single Financial Guidance Body

- 20 At present Government-sponsored pension guidance, money guidance and debt advice is currently provided by the Money Advice Service (established under Part 1 of the Financial Services and Markets Act 2000), the Pensions Advisory Service (which is incorporated as a not-for-profit company limited by guarantee) and the Department for Work and Pensions under the 'Pension Wise' banner (under Part 20A of the Financial Services and Markets Act 2000).

Claims Management Services

- 21 At present the functions of the claims management regulator are carried out by the Secretary of State for Justice (through officials at the Claims Management Regulation Unit), under Part 2 of the Compensation Act 2006⁵ (and secondary legislation made under it). These provisions will be repealed, as part of the transfer of functions.
- 22 The Financial Services and Markets Act 2000 sets out the legislative basis and remit of the Financial Conduct Authority. It provides the legislative framework for the Authority to authorise entities undertaking "regulated activities" and "controlled activities". The clauses in this Bill amend the 2000 Act, and provide for certain requirements and powers on the Financial Conduct Authority and the Secretary of State, to enable the transfer of regulation from the Ministry of Justice to the Financial Conduct Authority. The clauses will be supplemented by secondary legislation made under powers in the 2000 Act.
- 23 Complaints by consumers about the service provided by regulated claims management companies will also be transferred from the Legal Ombudsman to the Financial Ombudsman Service. The clauses will also permit the Secretary of State to put in place a transfer scheme for

⁵ Compensation Act 2006: <http://www.legislation.gov.uk/ukpga/2006/29/contents>

staff, assets and liabilities of the Claims Management Regulation Unit to the Financial Conduct Authority.

Territorial extent and application

Single Financial Guidance Body

- 24 The single financial guidance body will deliver its pensions function, money guidance function and strategic function UK-wide.
- 25 The single financial guidance body's debt advice function will only apply to England.
- 26 A cold-calling ban created through regulations may apply to the United Kingdom.
- 27 A debt respite scheme created through regulations may apply in England only, England and Wales, England and Northern Ireland or in England, Wales and Northern Ireland.
- 28 The full detail of the territorial extent and application of the clauses, and whether or not a legislative consent motion is needed, is set out at Annex A.

Claims Management Services

- 29 The Financial Conduct Authority will regulate claims management services being provided within Great Britain only, and Part 2 of the Bill, which deals with claims management services, will therefore extend to England, Scotland and Wales with the exception of clause 20(12) and Schedule 4, and clause 21 (PPI claims: restriction on charges before the transfer of regulation to the FCA) which deal with matters relating to claims management services under the current regulatory regime that is limited to England and Wales only.
- 30 Clauses 20 and 21 relate to competition and consumer protection which are reserved matters under the Scotland Act 1998 and so outside the legislative competence of the Scottish Parliament except for the provision that enables a designated consumer body to make a complaint to the Financial Conduct Authority in relation to the claims management market in clause 20(4). As this falls within the consumer advocacy exception to the C7 consumer protection reservation, it is the Government's view that a legislative consent motion is triggered in respect of that provision only.
- 31 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

Commentary on provisions of Bill

Part 1: Financial Guidance

Establishment of the single financial guidance body

Clause 1: The single financial guidance body

- 32 Subsection (1) establishes a new non-departmental public body, which will be referred to as the single financial guidance body until it is named.

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- 33 Subsection (2) introduces Schedule 1 which contains further provisions regarding the governance and accountability of the body.
- 34 Subsection (3) gives the Secretary of State the power to make regulations to name the body.
- 35 Subsection (4) allows the regulations that name the body to replace 'single financial guidance body' with the actual name of the body in Part 1 of the Bill and in Acts amended by Part 1.
- 36 Subsection (5) requires that power to make these regulations is exercisable by statutory instrument under the negative resolution procedure.
- 37 Subsection (6) dissolves the consumer financial education body, which is also known as the Money Advice Service.
- 38 Subsection (7) introduces Schedule 2 which makes provision for the transfer of staff, property, rights and liabilities firstly from the Secretary of State and the Pensions Advisory Service to the single financial guidance body; and secondly from the consumer financial education body, which is also known as the Money Advice Service, to the single financial guidance body. Such transfers are effected by a 'transfer scheme'.

Schedule 1: The single financial guidance body

- 39 Schedule 1 provides for membership of the single financial guidance body and how it exercises its functions. The content of Schedule 1 is self-explanatory. In particular it provides for the following.
- 40 Paragraph 2 contains provisions which define the composition of the single financial guidance body's board and how those members will be appointed.
- 41 Paragraph 3 contains provisions related to the terms and conditions of appointments of non-executive members.
- 42 Paragraph 4 requires the Secretary of State to be satisfied that a person does not have any conflict of interest before appointing that person to be a non-executive member.
- 43 Paragraph 5 allows the single financial guidance body to pay non-executive members remuneration, allowances or gratuities as determined by the Secretary of State. It also provides for the single financial guidance body to pay compensation to a non-executive member if they cease to hold office before their term of office has expired.
- 44 Paragraph 6 requires the Secretary of State to appoint the initial executive members of the single financial guidance body, including the first Chief Executive. Subsequently, all executives will be appointed by the body, with the approval of the Secretary of State.
- 45 Paragraph 9 allows the single financial guidance body to establish committees to carry out its functions, or to provide advice on matters relating to the exercise of its functions. It allows the body to pay remuneration or expenses to members of a committee who are neither a member of the body's board nor an employee of the body. It also allows committees to establish a sub-committee.
- 46 Paragraph 10 allows the single financial guidance body, in carrying out its functions, to delegate any of its functions to members, employees and committees. A committee may delegate any functions delegated to it to a sub-committee, to a member of a committee, a member of the body's board or an employee of the body.
- 47 Paragraph 11 allows the single financial guidance body to regulate its own procedures and any procedures established in relation to its committees and sub-committees.
- 48 Paragraph 14 requires the single financial guidance body to prepare an annual report on the

exercise of its functions, and on anything else directed to be included by the Secretary of State. The Secretary of State must lay both the annual report from the single financial guidance body and also the report by the Comptroller and the Auditor General on the statement on the accounts of the single financial guidance body before Parliament.

- 49 Paragraph 14 also requires the single financial guidance body to keep proper accounts and prepare an annual statement on the accounts for each financial year. This statement on the accounts must be sent to the Secretary of State and the Comptroller and the Auditor General. The Comptroller and the Auditor General must then examine the statement of accounts and compose a report on it, which must be sent to the Secretary of State.

Schedule 2: Transfer of schemes under section 1

- 50 Paragraph 1 provides the Secretary of State with the power to make schemes transferring the property, rights and liabilities of The Pensions Advisory Service, the Secretary of State, or the consumer financial education body to the single financial guidance body.
- 51 Paragraph 3 provides the Secretary of State with the power to modify a transfer scheme with the proviso that, if the scheme has already come into effect, such a modification can only be made with the agreement of the person or persons affected. A modification takes effect from the date specified by the Secretary of State.

Objectives and functions of the single financial guidance body

Clause 2: Objectives

- 52 Subsections (1) and the definition in subsection (3) set out the objectives of the single financial guidance body. The contents are self-explanatory.
- 53 Subsection (2) requires the body to have regard to the objectives when carrying out its functions.

Clause 3: Functions

- 54 Subsection (1) gives the single financial guidance body five of its functions. These are the pensions guidance function, the debt advice function, the money guidance function, the consumer protection function and the strategic function. They are described in greater detail later on in the clause.
- 55 Subsection (2) confers the additional function on the single financial guidance body of providing the Secretary of State with advice and assistance on matters relating to any of its functions and on the establishment of a debt respite scheme.
- 56 Subsection (3) makes provision for the body to perform any activities incidental or conducive to the exercise of its functions.
- 57 Subsection (4) to (7) and subsection (9) provide a description of each of the five functions that are listed in subsection (1).
- 58 The debt advice function (subsection (5)) applies to England only. The devolved authorities will be responsible for the provision of information on debt and debt advice for individuals in Scotland, Wales and Northern Ireland. This does not form part of this Bill but note clause 11 which makes provision for funding debt advice in the devolved authorities.
- 59 Subsection (8) requires the body to consider the needs of individuals across its pensions, money and debt advice functions when either it, or its delivery partners, is providing information, guidance, or advice in one of these areas.

- 60 Subsection (10) stipulates that in providing the strategic function the body should work with others, for example those in the financial services industry, the devolved authorities and those in the public and voluntary sectors.

Clause 4: Cold calling

- 61 Subsection (1) requires the body to consider the effect of cold-calling on consumer protection. The subsection requires it to make and publish an annual report of consumer detriment caused by cold-calling.
- 62 Subsection (2) requires the body to advise the Secretary of State to institute a ban on cold-calling, and the commercial use of data obtained through cold-calling, if it considers that there are products or services where a ban on cold-calling would help it in the exercise of its functions.
- 63 Subsection (3) gives the Secretary of State the power to make regulations to introduce a ban on cold-calling, and the commercial use of data collected via cold-calling. The Secretary of State may make the regulations only after receiving the advice from the body.
- 64 Subsection (4) explains that any regulations made under Section 4 are subject to the affirmative procedure.
- 65 Subsection (5) defines cold-calling for the purposes of Section 4.

Clause 5: Specific requirements as to the pensions guidance function

- 66 Clause 5 requires the single financial guidance body to provide information and guidance for the purposes of helping a pension scheme member or survivor of a member to make decisions about what to do with the 'flexible benefits' that may be provided to a member of a pension scheme or the survivor of a member of a pension scheme. Subsection (3) ensures that this includes members and survivors of schemes for which the Pension Protection Fund (PPF) has assumed responsibility. Where this is the case, references to flexible benefits are to be read as references to the money purchase benefits that may be provided by the PPF.
- 67 Subsection (2) requires the FCA to make rules ensuring that pension scheme managers or trustees check whether members and survivors of members looking to access or transfer their 'flexible benefits' have received the guidance specified in subsection (1). Subsection (2) also allows the FCA to require the trustee or manager of the scheme to provide access to the guidance before proceeding with any request.

Clause 6: Delegation of functions to delivery partner organisations

- 68 Clause 6 enables the single financial guidance body to make arrangements for another person (a SFGB delivery partner) to carry out its pensions guidance, money guidance and debt advice functions. These functions can be further delegated to a secondary delivery partner, but any further delegation must be with the consent of the single financial guidance body.

Clause 7: Debt respite scheme: advice to the Secretary of State

- 69 Subsection (1) requires the Secretary of State to seek advice from the single financial guidance body on the establishment of a debt respite scheme, within three months of the single financial guidance body's establishment.
- 70 Subsection (2) describes what the debt respite scheme is designed to do. It can do one or more of a) protect indebted individuals from further interest and charges, b) protect indebted individuals from enforcement action from their creditors, or c) ensure that debtors and creditors can devise a plan to repay some or all of their debts affordably.
- 71 Subsection (3) states what kind of issues the Secretary of State may request the single financial

guidance body provide advice on, in respect of the design, operation and implementation of the scheme. The Secretary of State may also ask for advice on aspects of a debt respite scheme that are not listed in the sub-section.

72 Subsection (4) states that the single financial guidance body must provide the advice sought by the Secretary of State within 12 months of its establishment.

73 Subsection (5) states that the Secretary of State must publish the advice.

Clause 8: Debt respite scheme: regulations

74 Subsection (1) states that the Secretary of State must consider whether to make regulations for the establishment of a debt respite scheme as soon as is reasonably practicable, after receiving advice from the single financial guidance body on the scheme's design, operation and implementation.

75 Subsection (2) enables the Secretary of State to make regulations establishing a debt respite scheme.

76 Subsection (3) details that the regulations must take into account the advice on the scheme given by the single financial guidance body.

77 Subsection (4) details that the regulations can ensure the scheme applies to England only, a combination of England, and Wales or Northern Ireland, or for the regulations to apply across England, Wales and Northern Ireland.

78 Subsection (5) provides that the regulations for the debt respite scheme can make different provision for different geographical areas, and for different purposes. It also allows for the regulations to make incidental, supplemental, consequential, transitional or saving provision. As well, the regulations allow for obligations entered into or debts due to be repaid before the regulations come into force to be included in a debt respite scheme.

79 Subsection (6) states that any provision that is incidental, supplemental, consequential, transitional or saving can amend any provision made under an Act of Parliament, a Measure or Act of the National Assembly of Wales should the debt respite scheme apply in Wales, and Northern Ireland legislation should the scheme apply in Northern Ireland.

80 Subsection (7) states that regulations to establish a debt respite scheme will be made through a statutory instrument.

81 Subsection (8) states that the regulations can only be put into force should they be approved by a resolution of each House of Parliament, the National Assembly of Wales should the debt respite scheme apply in Wales, and the Northern Ireland Assembly, should the scheme apply in Northern Ireland.

Clause 9: Guidance and directions from the Secretary of State

82 This clause gives the Secretary of State the power to give the single financial guidance body guidance and direction on the way it exercises its functions.

83 Subsection (2) specifies that any directions must be published and subsection (3) specifies that the body must take note of guidance and comply with directions.

Standards set by the single financial guidance body

Clause 10: Setting standards

84 Clause 10 requires the single financial guidance body to set standards from time to time which

must be complied with by those who deliver its functions. As such these standards will apply to both the body itself and to the body's delivery partners. The standards which the body has proposed must be approved by the Financial Conduct Authority (FCA) before they are finalised and must be published.

- 85 When deciding whether to approve the proposed standards the FCA must take into account the needs of the people who are using, or who may use, the information, guidance and advice services which will be provided by the body and its partners.

Clause 11: Monitoring and enforcement of standards

- 86 Clause 11 requires the single financial guidance body to monitor and ensure compliance with the standards. It also requires the FCA to review and assess the body's standards and its monitoring and enforcement regime at least once every three years. The Financial Conduct Authority must provide a report on its review to the body and the Secretary of State.

Funding of the single financial guidance body

Clause 12: Financial assistance from the Secretary of State

- 87 This clause allows the Secretary of State to pay grants, make loans or provide other forms of financial assistance to the single financial guidance body to meet expenditure in connection with both the establishment of the body and for the purpose of enabling the body to carry out its functions. Such financial assistance may be subject to conditions set by the Secretary of State.

Clause 13: Levies under Pension Schemes Act 1993 and Pension Schemes (NI) Act 1993

- 88 This clause amends the provision of the Pension Schemes Act 1993 which enables the Secretary of State to make regulations imposing levies to meet specified types of expenditure. This amendment adds expenditure under clause 8 to the list of types of expenditure that levies can be imposed to meet. This will enable the Secretary of State to recover a proportion of the funding of the single financial guidance body and makes equivalent provision in relation to the Pension Schemes (Northern Ireland) Act 1993.

Clause 14: Levy under FSMA 2000 for expenses of single financial guidance body

- 89 Clause 14 inserts a new section 137SA into the Financial Services and Markets Act 2000. This allows the Financial Conduct Authority to make rules to recover a proportion of the Secretary of State's funding for the single financial guidance body from the Financial Service Levy.
- 90 The new section 137SA enables two processes. Firstly, it gives the Secretary of State the power to notify the Financial Conduct Authority of expenses incurred or expected to be incurred in connection with the single financial guidance body. Secondly, it provides that the FCA must then make rules to impose levies to cover those expenses and its own expenses. Subsections (3) to (11) of new section 137SA impose various requirements on these processes, such as a requirement for the Financial Conduct Authority to consult the Secretary of State before it publishes drafts of rules.
- 91 Clause 14 (2) provides that things done by the Financial Conduct Authority before the Act is passed may satisfy specific consultation requirements.
- 92 Clause 14 (3) provides that the rules made under the new section 137SA can impose levies to recover expenses incurred by the Financial Conduct Authority before the day on which the Act is passed.

Funding of debt advice in Scotland, Wales and Northern Ireland

Clause 15: Levy under FSMA 2000 for debt advice expenses of devolved authorities

- 93 Clause 15 sets out similar provisions to clause 150 in the context of a levy for debt advice expenses of devolved authorities. It inserts a new section 137SB into the Financial Services and Markets Act 2000. This allows the Financial Conduct Authority (FCA) to make rules to recover expenses incurred or expected to be incurred by the devolved authorities in connection with debt advice from the Financial Service Levy.
- 94 The new section 137SA enables two processes. Firstly it gives the Secretary of State the power to notify the FCA of the relevant expenses of the devolved authorities. Secondly it provides that the FCA must then make rules to impose levies to cover those expenses and its own expenses. Subsections (3) to (11) of new section 137SB impose various requirements on these processes, such as a requirement for the FCA to consult the Secretary of State before it publishes drafts of rules.
- 95 Clause 15 (2) provides that things done by the FCA before this Act is passed may satisfy specific consultation requirements.
- 96 Clause 15 (3) provides that the rules made under the new section 137SB can impose levies to recover expenses incurred by the FCA before the day on which this Act is passed.

Miscellaneous

Clause 16: False claims about provision of information etc

- 97 The context of clauses 16 and 17 is the need to protect the public and the integrity of the single financial guidance body from those who seek to defraud the public by impersonating the body.
- 98 Clause 16 makes it an offence for a person to create the impression that they are providing information, guidance or advice on behalf of the body when this is not the case. There is a defence available to those who can prove that they took reasonable steps to avoid committing the offence, for example by ensuring that their employees were aware that they must not suggest any connection with the single financial guidance body.

Clause 17: Offences under section 16 committed by bodies corporate etc

- 99 Clause 17 is designed to make it easier to prosecute individual members of organisations where the offence is committed by an organisation. This clause makes provision as to the circumstances in which partners in a partnership and directors and officers of bodies corporate and unincorporated associations may be found guilty of an offence under clause 16 where an offence has been committed by the relevant partnership, body or association.
- 100 The clause also ensures that court procedures and rules will operate effectively in such cases.

Clause 18: Disclosure of information

- 101 Clause 18 contains gateways for the disclosure of information relating to the single financial guidance body. The content of this provision is self-explanatory.

Clause 19: FCA general rules: information about the availability of guidance

- 102 Clause 19 inserts a new section 137FC into the Financial Services and Markets Act 2000. This requires the Financial Conduct Authority to make general rules requiring specified authorised

persons to signpost persons specified in the rules to financial guidance. The FCA must consult the Secretary of State, the Treasury, and the single financial guidance body before publishing the rules.

Clause 20: Minor and consequential amendments

- 103 This clause introduces Schedule 3, which makes minor and consequential amendments to existing legislation to reflect the establishment of the single financial guidance body.

Schedule 3: Minor and consequential amendments relating to Part 1

- 104 Paragraphs 1 to 4 insert a reference to 'the single financial guidance body' into the relevant Schedules of the Public Records Act 1958, the Parliamentary Commissioner Act 1967, the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975.
- 105 Paragraphs 5 to 23 make consequential amendments to the Financial Services and Markets Act 2000, including the removal of legislation relating to the consumer financial education body, known as the Money Advice Service.
- 106 Paragraphs 24 to 25 amend the Freedom of Information Act 2000 and the Equality Act 2010 to ensure that the single financial guidance body conforms to these provisions.
- 107 Paragraphs 26 to 33 amend current legislation in the areas of financial services and pensions guidance. They remove Part 20A of Financial Services and Markets Act 2000, which places a duty on the Secretary of State to provide access to the pensions guidance that is known as 'Pension Wise'. This guidance will be given by the single financial guidance body, with the exception of guidance on the secondary annuities market.

Clause 21: Power to dissolve the single financial guidance body

- 108 Clause 21 requires the Secretary of State to keep under review the question of whether the single financial guidance body should be dissolved and gives the Secretary of State the power to dissolve the single financial guidance body through regulations. Before laying any draft regulations, the Secretary of State must carry out a public consultation beginning at least 12 weeks before any draft regulations are laid.
- 109 Clause 21 specifies that the regulations may make provision for the transfer of various matters, including the body's functions and assets, to the Secretary of State or any other person. It also makes provision for the Secretary of State to compensate anyone who suffers financially as a result of the dissolution of the body.

Clause 22: Regulations dissolving the new single financial guidance body: procedure

- 110 Clause 22 describes the procedure for making regulations to dissolve the single financial guidance body. It provides that the Secretary of State can only make the regulations if both Houses of Parliament approve the draft regulations within 40 days of them being laid, which is referred to as the '40-day affirmative procedure'. It also sets out the circumstances in which the 'super-affirmative procedure' should apply.
- 111 This enhanced procedure provides an extended timescale of 60 days within which both Houses of Parliament must approve the regulations before they can be made. During this 60 day period the Secretary of State must have regard to matters raised by representations, resolution of either House of Parliament or recommendation of a committee of either House charged with reporting on the draft regulations.
- 112 If the Secretary of State wishes to make any material changes to the draft regulations once they have been approved under the 'super-affirmative procedure' then revised regulations may be

laid in Parliament along with a statement summarising the changes.

Clause 23: Interpretation of Part 1

- 113 Clause 23 defines key terms and that all references made in Part 1 to the “Secretary of State” mean either the Secretary of State or the Treasury other than the references in section 1(7)(a) and the first subparagraph of paragraph 1 of Schedule 2.
- 114 The specific responsibilities of ministers in the Department for Work and Pensions and the Treasury will be set out in a published memorandum of understanding.

Part 2: Claims Management Services

Clause 24: Transfer to FCA of regulation of claims management services

- 115 Subsection (2) amends Section 21 of the Financial Services and Markets Act 2000 so that a person cannot communicate an invitation or inducement to engage in controlled claims management activity unless authorised. A new subsection (10A) and (10B) is inserted into Section 21. They set out what constitutes a controlled claims management activity. Subsection (2) also amends the reference in Paragraph 25 of Schedule 2 to the Financial Services and Markets Act 2000 so as to enable the order-making power in that paragraph to apply in respect of those provisions only.
- 116 Subsection (3) amends Section 22 of the Financial Services and Markets Act 2000 so that the Treasury is able to specify ‘claims management’ activity as a “specified activity” for the purposes of that Act and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁶. It adds an additional subsection (1B) to Section 22, which clarifies that an activity is a regulated activity for the purpose of the Act if it is an activity of a specified kind which is carried on by way of business and relates to a claim of a specified kind.
- 117 Subsection (4) amends Section 243C (Complaints to the Financial Conduct Authority by consumer bodies) of the financial Services and Markets Act 2000 to enable a designated consumer body to make a complaint to the Financial Conduct Authority in respect of the market in Great Britain for claims management services where the market is damaging the interests of consumers.
- 118 Subsections (5), (6) and (7) amend provisions in the Financial Services and Markets Act 2000 relating to the Financial Conduct Authority’s competition powers. The relevant competition powers under Part 16A of the Financial Services and Markets Act 2000 will apply to claims management services in Great Britain.
- 119 Subsection (8) inserts into Section 417 (definitions) a definition of “regulated claims management activity” for the purpose of the Financial Services and Markets Act 2000.
- 120 Subsection (9) inserts a new Section 419A into the Financial Services and Markets Act 2000

⁶ Financial Services and Markets Act 2000 (Regulated Activities) Order 2001:
<http://www.legislation.gov.uk/uksi/2001/544/contents/made>

defining claims management services. It also inserts a new Section 419B which enables the Treasury to specify by Order circumstances in which a person is, or is not, carrying on a regulated claims management activity in Great Britain.

- 121 Subsection (10) amends Section 429 to specify that orders made under new Sections 419B and 21(10B) are subject to the affirmative procedure. Subsection (9) also inserts a new subsections (7A) and (7B) which provide that any first order made under section 419A(4) in relation to treating specified benefits as a claim for the purposes of section 419A is subject to the affirmative procedure.
- 122 Subsection (11)(a) clarifies that the power in paragraph 25 of Schedule 2 to the Financial Services and Markets Act 2000 applies to claims management activities as specified under Section 22(1B). This ensures that the Treasury is able to make such consequential, transitional or supplemental provision as it considers appropriate for the purposes of, or connected with, any provision made under the new section 22(1B).
- 123 Subsection (11)(b) amends paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000 meaning an order made under section 22(1B) is subject to the affirmative procedure.
- 124 Subsection (12) enables the Secretary of State to put into place a transfer scheme for staff, property, assets and liabilities of the Claims Management Regulation Unit to the Financial Conduct Authority and from the Office of Legal Complaints to Financial Ombudsman Service to put into place a similar transfer scheme. This subsection will extend to England and Wales only.
- 125 Subsection (13) introduces the transitional provisions set out in Schedule 5.

Schedule 4: Regulation of claims management services: transfer schemes

- 126 Schedule 4 contains general provisions about transfer schemes and will extend to England and Wales only. Part 1 refers to the application of the schedule. Part 2 deals with transfers from the Claims Management Regulation Unit to the Financial Conduct Authority (the regulators) and Part 3 deals with the transfers between the Office of Legal Complaints to the Legal Ombudsman (the complaints bodies).
- 127 Paragraph 1 provides that the Schedule will apply if the Treasury makes an Order under the new Section 22(1B) of the Financial Services and Markets Act 2000 which has the effect of making an activity a regulated activity for the purposes of that Act, i.e. when the Treasury makes an Order making claims management services a regulated activity.
- 128 Paragraph 2 sets out the interpretation provisions for Part 2. Paragraph 3 provides the Secretary of State for Justice a power to make one or more transfer schemes, with the consent of the Financial Conduct Authority, for the transfer of property, staff, rights and liabilities to be transferred to the Financial Conduct Authority.
- 129 Paragraphs 4, 5, 6 and 7 defines what property, rights and liabilities may be the subject of a transfer scheme. Paragraphs 8 and 9 detail the content of a transfer scheme that can be made by the Secretary of State.
- 130 Paragraphs 10, 11 and 12 deal with the modification of a transfer scheme. The Secretary of State can make a modification with the consent of the Financial Conduct Authority, but a modification can only take effect with the agreement of the person affected. A modification can take effect from a day specified by the Secretary of State and that date may be when the original scheme came into effect.
- 131 Paragraphs 13 sets out the interpretation provisions for Part 3. Paragraphs 13, 14 and 15 provide the Office of Legal Complaints with a power to make one or more transfer schemes for the

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transfer of property, staff, rights and liabilities to be transferred to the Financial Ombudsman Service. Any such scheme must have the consent of the Financial Ombudsman Service and Financial Conduct Authority before it is sent to the Treasury and the Lord Chancellor for approval. A scheme will not come into force unless it is approved.

- 132 Paragraph 16 and 17 gives the Lord Chancellor a power to make a transfer scheme in the event the Office of Legal Complaints fails to do so and the Lord Chancellor deems it necessary. The Lord Chancellor may also, with the approval of the Treasury, the Financial Conduct Authority, the Financial Ombudsman Service and the Office of Legal Complaints, make a transfer scheme for the transfer of property, rights and liabilities of the Office of Legal Complaints to Financial Ombudsman Service.
- 133 Paragraphs 18 and 19 deals with the provision of information and assistance by the Office of Legal Complaints to the Lord Chancellor and the Treasury to enable them to exercise their powers under the Schedule.
- 134 Paragraphs 20, 21 and 22 defines what property, rights and liabilities may be the subject of a transfer scheme. Paragraphs 23 and 24 detail the content of a transfer scheme that can be made by the Secretary of State.
- 135 Paragraphs 25, 26, 27, 28 and 29 deal with the modification of a transfer scheme. The Office of Legal Complaints may modify a transfer scheme, but a modification can only take effect with the agreement of the person(s) affected. A modification cannot come into effect without the approval of the Treasury, Lord Chancellor, the Financial Conduct Authority and the Financial Ombudsman Service and any such modification must have the consent of the Financial Ombudsman Service before it is submitted for approval. A modification can take effect from a day specified by the Secretary of State and that date may be when the original scheme came into effect.

Schedule 5: Regulation of claims management services: transitional provision

- 136 Schedule 5 contains transitional provisions to allow the Financial Conduct Authority to take steps in preparation for the transfer of functions from the regulator. They include extending the Financial Conduct Authority's information gathering powers, the ability to consult on rules made before an order is made and treat rules made by the outgoing regulator as having been made by the Financial Conduct Authority. It also provides for the provision of information from the outgoing regulator (CMRU) and complaints body to the Financial Conduct Authority and the Financial Ombudsman Service before the making of an order regulating claims management activity.

Clause 25: Power of FCA to make rules restricting charges for claims management services

- 137 This clause amends the Financial Services and Markets Act 2000. Subsection (2) inserts a new Section 137FD into Part 9A (Rules and Guidance) of the Act. The new Section gives the Financial Conduct Authority the power to make rules to cap the amount that claims management companies can charge consumers. The Financial Conduct Authority must make rules for services provided in relation to the making of a claim in connection with financial products and services.
- 138 The rules must be made with a view to securing an appropriate degree of consumer protection against excessive charges claims management companies can charge consumers for its services. Subsection 137FD(5) provides that the rules may provide for agreements to be unenforceable, amounts paid under an agreement to be recovered and compensation to be paid for losses where a consumer has been charged in contravention of rules imposing fee caps.

- 139 Subsection (3) amends Section 138E(3) of the Act which deals with the limits of the effects of contravening Financial Conduct Authority rules. A transaction or contract which contravenes the rules in relation to charges for claims management services made under Section 137FC will be rendered void or unenforceable.

Clause 26: PPI claims and charges for claims management services: general

- 140 This clause inserts general provisions relating to the interim restrictions on charges claims management companies and the relevant legal service providers can make for regulated services provided in connection with PPI claims. The subsection explains the terms used in the successive two clauses.
- 141 Subsection (3) sets out the maximum fee cap that applies during the interim period before regulation of claims management services is transferred to the Financial Conduct Authority. This has been set at 20% of the amount recovered for a claimant in satisfaction of their PPI claim. Subsection (4), however, does allow a service provider to recover a reasonable amount without breaching the interim fee cap restriction for work done in the event a claimant cancels their service contract after a cooling off period. Subsection (7) clarifies what is meant by the references to amounts recovered for the claimant.
- 142 The remainder of the subsections (i.e. (5), (6), (8), (9), (10), (11), (12) and (13)) sets out the relevant definition and meaning of the terms used.

Clause 27: PPI claims: interim restriction on charges before transfer of regulation to FCA

- 143 This clause deals with the application and enforcement of the fee cap before the transfer of regulation of claims management services to the Financial Conduct Authority. It makes provision to apply the cap to services in relation to PPI claims provided by-
- (a) those authorised to provide regulated claims management services under the Compensation Act 2006; and
 - (b) legal services providers
- 144 Subsection (1) sets out the general prohibition that a regulated person must not charge a claimant, or enter into an agreement that would require a claimant to pay, for regulated services an amount that exceeds the interim fee cap.
- 145 Whilst a breach of subsection (1) is not a breach of statutory duty, under subsection (2) where a breach has occurred a claimant is entitled to recover any payment in excess of the cap and any provision(s) in an agreement to pay in excess of the fee cap unenforceable.
- 146 Subsection (4) imposes a duty on the relevant regulators to ensure they have appropriate arrangements for monitoring and enforcing the fee cap prohibitions and a power to them to make rules for the purpose of doing so, if required.
- 147 Subsections (5), (6) and (7) deal with the meaning of “regulated person”, “relevant regulator”, “regulator” and “reserved legal activity”.
- 148 Subsection (8) states that the prohibition under this clause will only apply to charges imposed, or to agreements that provide for the payment of charges, during the ‘first interim period’. The ‘first interim period’ is defined in subsection (9) and will begin on the day on which the section comes into force until claims management activity becomes a regulated activity and thus regulated by the Financial Conduct Authority.

Clause 28: PPI claims: interim restriction on charges after transfer of regulation to FCA

- 149 This clause deals with the application and enforcement of the interim fee cap by the Financial Conduct Authority after the transfer of regulation. Subsection (1) specifies that the prohibition that a person must not charge a claimant, or enter into an agreement that would require a claimant to pay, an amount that exceeds the fee cap (as set out in subsection (2)) is to be treated as a rule made by the Financial Conduct Authority and any functions conferred on the Financial Conduct Authority that apply in relation to general rules (such as section 1A(6) of, and Schedule 1ZA to, the Financial Services and Markets Act) also apply to that rule.
- 150 Whilst a breach of subsection (2) is not a breach of statutory duty, under subsection (3) where a breach has occurred a claimant is entitled to recover any payment in excess of the cap and any provision(s) in an agreement to pay in excess of the fee cap unenforceable.
- 151 Subsection (4) states that the prohibition under this clause will only apply to charges imposed, or to agreements that provide for the payment of charges, from the point from which claims management activity becomes a regulated activity (and thus regulated by the Financial Conduct Authority) until the coming into force of rules made by the Financial Conduct Authority by virtue of clause 21(2) of this Bill.
- 152 Subsection (5) states that the prohibition under this clause will only apply to charges imposed, or to agreements that provide for the payment of charges, during the period after the Financial Conduct Authority takes over regulation and ending when the Financial Conduct Authority have made their own rules under the new s137FD(1). This is known as the 'second interim period' and defined in subsections (6) and (7).

Part 3: General

Clause 29: Extent

- 153 This provision is self-explanatory.

Clause 30: Commencement

- 154 This provision is self-explanatory.

Clause 31: Short Title

- 155 This provision is self-explanatory.

Financial implications of the Bill

- 156 A summary of the financial effects of the measures of the Bill is provided below. Further detail is provided in the impact assessments.

Single Financial Guidance Body

- 157 The creation of the single financial guidance body will have a negligible impact on public expenditure. The transition between three services to the single financial guidance body will create short-term costs, which are provisionally anticipated to total £4.49m, excluding costs arising from digital transition and from redundancy, which have not been estimated.
- 158 Subject to legislative changes, these transitional costs will be met by the financial services and general levies which currently fund the existing services.

- 159 The financial implications of cold-calling and the debt respite scheme are not yet known. Impact assessments will be written and published on the Bill website in due course.

Claims Management Company Regulation

- 160 The measures effecting the transfer of claims management company regulation to Financial Conduct Authority will have a minimal effect on public expenditure, as it is intended that all costs arising as a result of the transfer will be borne by the claims management company market. The provisions relating to fee restrictions will also result in a cost to industry, however the equivalent benefit will be felt by consumers.

Compatibility with the European Convention on Human Rights

- 161 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act).
- 162 In the opinion of the Secretary of State for Work and Pensions, David Gauke MP, the provisions of the Bill are compatible with the Convention rights and he has made a statement to that effect.

Related documents

- 163 The following documents are relevant to the Bill and can be read at the stated locations:

- [Single Financial Guidance Body Impact Assessment](#)
- [Claims Management Company Regulation Impact Assessment](#)
- [Financial Guidance and Claims Bill Delegated Powers Memorandum](#)
- [Claims management regulation review: final report](#)

Annex A - Territorial extent and application in the United Kingdom

164 The table below sets out the extent and application of the Act.

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
1 The Single Financial Guidance Body								
Clause 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 4	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 5	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI)
Clause 6	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 7 and 8	Yes	Yes	No	Yes	N/A	N/A	N/A	Yes (W & NI)
Clauses 9 to 12	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 13	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI)

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Clauses 14 and 15	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI, W & S)
Clauses 16 and 17	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI & S)
Clause 18	Yes	Yes	Yes	Yes	N/A	N/A	N/A	Yes (NI, W & S)
Clause 19	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 20	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clauses 21 and 22	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Clause 23	N/A							
2 Claims Management Services								
Clause 24	Yes	Yes	Yes	No	N/A	N/A	N/A	Yes (Scotland)
Clause 25	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 26	Yes	Yes	Yes	No	N/A	N/A	N/A	No
Clause 27	Yes	Yes	No	No	No	No	No	No
Clause 28	Yes	Yes	Yes	No	N/A	N/A	N/A	No
3 General Clauses 29 to 31	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
4 Schedules								
Schedule 1	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 2	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 3	Yes	Yes	Yes	Yes	N/A	N/A	N/A	No
Schedule 4	Yes	Yes	No	No	No	No	No	No
Schedule 5	Yes	Yes	Yes	No	N/A	N/A	N/A	No

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Minor or consequential effects⁷

In the view of the UK Government, there are no minor or consequential effect outside England, or England and Wales.

Part 1: Financial Guidance

Clause 2: Functions and objectives

There are no minor or consequential impacts in Scotland, Wales or Northern Ireland from the debt advice function being delivered by the single financial guidance body in England only.

Part 2: Claims management services

There are no minor or consequential impacts in Scotland, Wales or Northern Ireland from the regulation of claims management companies being extended to Scotland.

⁷ References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

FINANCIAL GUIDANCE AND CLAIMS BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Financial Guidance and Claims Bill [HL] as brought from the House of Lords on 22 November 2017 (Bill 131).

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