

LEGISLATIVE CONSENT MEMORANDUM
FINANCIAL GUIDANCE AND CLAIMS BILL

Background

1. This memorandum has been lodged by Keith Brown, Cabinet Secretary for Economy, Jobs and Fair Work, under Rule 9.B.3.1(a) of the Parliament's Standing Orders. The Financial Guidance and Claims Bill was introduced in the House of Lords on 22 June 2017. The Bill can be found at:

<https://services.parliament.uk/bills/2017-19/financialguidanceandclaims.html>

Content of the Financial Guidance and Claims Bill

2. The Financial Guidance and Claims Bill makes provision for the:

- establishment of a new financial guidance body – the Single Financial Guidance Body (SFGB);
- funding of debt advice in Scotland, Wales and Northern Ireland; and
- regulation of claims management services in England and Wales and Scotland.

3. More specifically, the Bill:

- establishes the SFGB, which shall be accountable to Parliament, with responsibility for coordinating the provision of debt advice, money guidance and pension guidance;
- enables the SFGB's activities to be funded through existing levies on pension schemes and the financial services industry;
- dissolves the consumer financial education body, which is also known as the Money Advice Service (MAS) and makes provision for the transfer of its staff, property, rights, liabilities and functions to the SFGB;
- makes provision for the transfer of staff, property, rights and liabilities from the Secretary of State and the Pensions Advisory Service¹ to the SFGB;
- transfers the regulation of claims management services in England and Wales to the Financial Conduct Authority (FCA) and transfers complaints-handling responsibility in England and Wales to the Financial Ombudsman Service; and
- ensures the FCA has the necessary powers to implement a claims management regulatory regime across Great Britain. This will include a new power that will allow the FCA to cap the fees that Claims Management Companies (CMCs) charge consumers, as well as ensuring a more robust authorisation process for new companies who wish to enter the market.

¹ UK Government-sponsored pensions guidance, money guidance and debt advice is currently provided by the MAS (established under Part 1 of the Financial Services and Markets Act 2000), the Pensions Advisory Service, and DWP under the 'Pension Wise' banner (under same Act of 2000).

Provisions that relate to Scotland

4. In relation to Scotland, the Bill:

- devolves the levy funding for debt advice to the Scottish Government;
- creates a statutory objective on the SFGB to work closely with the Scottish Government on the provision of information, guidance and advice (covering pensions, money and debt) to Scottish citizens;
- requires the SFGB to work with the Scottish Government in co-ordinating the development of a national strategy to improve: the financial capability of Scottish citizens; their ability to manage debt; as well as the provision of financial education to children and young people;
- requires the SFGB to establish a committee with membership drawn from representatives from each of the devolved administrations, thereby embedding the Scottish Government in SFGB governance arrangements, providing influence and ensuring that collaborative working is achieved in practice across money and pensions guidance; and
- introduces the regulation of CMCs by the FCA to Scotland.

5. All of these arrangements shall apply in each of the nations of the UK, except for claims management regulation which will not extend to Northern Ireland.

Reasons for seeking a legislative consent motion

6. An LCM is required on account of the:

- a. SFGB's core functions;
- b. provisions that will make it a criminal offence to pretend to provide information, guidance or advice on behalf of the SFGB when this is not the case; and
- c. the introduction to Scotland of regulation of CMCs by the FCA.

SFGB's core functions

7. Firstly, and taking each of the SFGB's core functions in turn, it has been established and agreed that in relation to:

- i. **Pensions guidance:** occupational and personal pensions are a reserved matter, therefore there is no requirement for an LCM.
- ii. **Debt advice:** although financial services and markets are reserved, the provision of debt advice is devolved, as it is fundamentally concerned with problems of debt that arise for a variety of reasons and the provision of advice about debt collection, court procedures and personal insolvency, which are all generally within devolved competence. An LCM is therefore required on account of the new body's debt advice function.
- iii. **Money guidance:** some of money guidance function falls within the competence of the Scottish Parliament, whilst other aspects remain within the exclusive competence of the UK Parliament. While the Scottish Government is persuaded that money guidance should be delivered by the SFGB on a UK-wide basis – ensuring guidance is consistent and of an

appropriate quality and in keeping with the UK Government's overall financial services and markets strategy – the Scottish Government recognises the fact that some aspects of this function will not relate to financial services products and will instead cover matters such as general budgeting which will be devolved matters. Consequently, an LCM is required to cover these aspects of the SFGB's money guidance function.

- iv. **Consumer protection:** the SFGB's strategic consumer protection function relates **exclusively** to 'cold calling' and is a reserved matter by virtue of C7 of Schedule 5 of the Scotland Act 1998, which reserves the power to regulate the sale and supply of goods and services – effectively the power to set and enforce consumer law – therefore there is no requirement for an LCM.
- v. **Strategic financial capability:** the SFGB's strategic financial capability function is also mixed. For example, where this function relates to occupational and **personal** pensions or financial services products, it will be a reserved matter. However, promoting this function outside these specialist areas is devolved and an LCM is therefore required.

False claims about provision of information etc.

8. As highlighted at paragraph 6(b), the Bill now contains provision to protect the public and the integrity of the SFGB from those who might seek to defraud the public by impersonating the body. 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 SFGB.

9. The intention behind this offence is to replicate and continue the statutory protections offered by the statutory offence which relates to *Pension Wise*², which makes it an offence to pretend to be giving pensions guidance under arrangements made with the Secretary of State (in effect, making it an offence to mimic *Pension Wise* guidance). The offence created by the Bill will apply to the whole of the UK and will trigger an LCM, but only insofar as it relates to the functions of the SFGB which are devolved.

Claims Management Companies

10. CMCs are businesses that offer claims management services to the public, consisting of advice or services in respect of claims for loss or damage, particularly in the field of personal injury, or in respect of some other obligation.

11. There have been until recently very few CMCs operating in Scotland and most of the business has been swept up by those which have been set up by firms of solicitors seeking to avoid the current law that damages based agreements (a kind of "no win, no fee" agreement whereby the provider of legal services retains a

² www.pensionwise.gov.uk

proportion of damages obtained) are unenforceable by solicitors. This prohibition is proposed to be ended by the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill (“the Civil Litigation Bill”).

12. There is, however, anecdotal evidence that CMCs based in England and Wales have recently and increasingly sought business in Scotland and some of these are said to be unscrupulous and seek to take advantage of the lack of regulation in Scotland.

13. The regulation of CMCs was to have been considered as part of the ongoing independent Review of the Regulation of Legal Services, chaired by Esther Roberton, although this is not due to report until the summer of 2018. It was in order to not pre-empt this Review that no provisions were included in the Civil Litigation Bill. Stakeholders giving evidence on the Bill to the Justice Committee have complained that legislation following the Roberton Review (assuming that it recommended regulation) would take some time to come into force and CMCs would remain unregulated in the meantime. They were particularly concerned that the introduction of qualified one way costs shifting for personal injury actions in Scotland by the Civil Litigation Bill would further encourage unscrupulous CMCs to bring forward unmeritorious claims.

14. The Scottish Government takes the view that Part 2 of the Financial Guidance and Claims Bill relates to the management of claims for compensation – facilitating meritorious claims whilst minimising unmeritorious claims, which is within the competence of the Scottish Parliament, and is part of the general scheme of administration of, and access to, justice. An LCM is therefore required. This is with the exception of clause 24(5) to (7) which confers additional functions on the FCA in respect of competition, which the Scottish Government considers to be separate from the principal regulatory provisions, and outwith the competence of the Scottish Parliament.

Consultation

15. As part of preparations for the introduction of an LCM in relation to the Bill, the Scottish Government has been in regular contact with MAS, the FCA, the Scottish Financial Capability Forum and Scottish Legal Aid Board, which currently administer a significant proportion of MAS’ funding in Scotland.

16. The Cabinet Secretary for Economy, Jobs and Fair Work has met with the Chief Executive and Scotland Manager of MAS as part of this series of Scottish Government stakeholder engagements, which are intended to help ensure that there is a seamless transfer of debt advice responsibilities from MAS to the Scottish Government, and that the new SFGB engages effectively and delivers for Scottish consumers from the outset.

17. In advance of the forthcoming transfer of debt advice responsibilities from MAS to the Scottish Government, decisions will be needed on how we wish to deliver debt advice in Scotland so that it is responsive to and reflective of the needs of Scottish consumers. This will require significant engagement with stakeholders and current

delivery partners in the debt, money, consumer and wider advice landscape as well as a formal public consultation.

Financial Implications

18. In devolving responsibility for debt advice to Scotland, the Bill will also see the devolution of the levy funding associated with this debt advice function, the Scottish Government will receive *circa* £4.5 million for the period between the establishment of the SFGB and the next UK Government Spending Review; rising to an estimated average £4.5 million per year for the period 2020-24 (based on current debt advice spending figures).

Conclusion

19. It is the view of the Scottish Government that extending and applying the relevant provisions of the Bill to Scotland, as outlined above, will help meet its purpose targets of increasing Scotland's economic growth and reducing inequalities in economic participation, as well as helping to achieve its strategic objective of making Scotland a wealthier and fairer country.

Draft Legislative Consent Motion

20. The draft motion, which will be lodged by the Cabinet Secretary for Economy, Jobs and Fair Work, is:

"That the Parliament agrees that the relevant provisions of the Financial Guidance and Claims Bill, introduced in the House of Lords on 22 June 2017, relating to core functions of the Single Financial Guidance Body (SFGB); provisions that will make it a criminal offence to pretend to be giving financial guidance on behalf of the SFGB; and the introduction of regulation of claims management companies by the Financial Conduct Authority to Scotland, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament."

Scottish Government

December 2017

This Legislative Consent Memorandum relates to the Financial Guidance and Claims Bill (UK legislation) and was lodged with the Scottish Parliament on 13 December 2017

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