

FINANCIAL GUIDANCE & CLAIMS BILL

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”). The Bill was introduced in the House of Lords on 22 June 2017. This memorandum identifies the provisions of the Bill that confer powers to make delegated legislation. It explains in each case why the power has been taken and explains the nature of, and the reason for, the procedure selected.

B. PURPOSE AND EFFECT OF THE BILL

2. This is a two-topic Bill. It establishes a new arms-length body to replace the Money Advice Service, the Pensions Advisory Service, and the Department for Work and Pensions’ ‘Pension Wise’, and makes provision for the funding of debt advice in the devolved administrations. It also enables the transfer of Claims Management Companies regulation from the Ministry of Justice to the Financial Conduct Authority. Where appropriate, the effect of the measures and any delegated powers have been considered separately for each part of the Bill.

Financial Guidance

3. Levels of financial capability in the United Kingdom are low and many people face significant challenges when it comes to managing money, avoiding debt, building up savings in the short term, and balancing this with saving money for retirement.

4. Against a backdrop of broader Government reforms and initiatives, such as Automatic Enrolment and the pensions flexibilities, there has been a significant increase in people looking for high-quality, impartial financial and debt guidance.

5. Free-to-client and impartial guidance is currently provided by three publicly funded services – the Money Advice Service, the Pensions Advisory Service, and Pension Wise. However, following a series of consultations, the Government has concluded that the best way of addressing the issue is to create a new statutory

body that will provide pensions and money guidance for people in the UK, and debt advice for people in England. It will also work closely with the devolved administrations (who will be responsible for the provision of debt advice in their own nations), to ensure that there is a coherent strategy for the delivery of pensions and money guidance across the UK.

6. Stakeholders had fed back that having three separate services causes confusion for consumers and that the three services did not co-ordinate their strategies and guidance provision. At present, they have independent strategies and business plans, resulting in duplication of content as well as inefficiencies across the Government's provision of guidance. Stakeholders also noted that the Money Advice Service also duplicated content available from third sector and industry providers.

7. The Government believes that having one single body responsible for all public financial guidance, which would be able to join up information and guidance on debt, money and pensions, would provide better clarity and simplicity for members of the public. It would also improve efficiency by reducing the duplication of services and delivering value for money through efficiency savings that could be redirected to front line provision or to levy payers.

8. The Bill will:

- Establish a new arm's-length body, accountable to Parliament, with four core functions: provision of debt advice, provision of money guidance, provision of pension guidance, and supporting the development and delivery of a UK wide strategy to improve levels of financial capability, reduce problem debt and coordinate private and third sector financial education projects and initiatives.
- Enable the new body's activities to be funded through levies on pension schemes and the financial services industry.
- Effect the closure of the Money Advice Service and facilitate the transition of services from the Money Advice Service, the Pensions Advisory Service and Pension Wise to the new body.
- Provide for HM Treasury to fund the devolved administrations debt advice activities through a levy on the financial services industry.

Claims Management Regulation

9. Claims management companies are businesses which provide advice or other services to consumers in relation to the making of compensation claims for

financial products and services, personal injuries, employment issues, criminal and industrial injuries and housing disrepair.

10. At present, the Ministry of Justice's Claims Management Regulation Unit is responsible for directly regulating the activities of businesses providing claims management services. At Budget 2016, the Chancellor announced that responsibility for regulating claims management companies will be transferred from the Claims Management Regulation Unit to the Financial Conduct Authority, to implement a tougher regulatory regime and to hold key individuals accountable for the actions of their firms.

11. The Bill will:

- Amend the Financial Services and Markets Act 2000 to enable the Financial Conduct Authority to regulate specified activities in relation to claims management companies.
- Provide powers for transfer schemes to be made in connection with the transfer of the regulation of claims management companies to the Financial Conduct Authority. The transfer schemes may transfer property, rights, liabilities and staff from the Claims Management Regulation Unit to the Financial Conduct Authority and from the Office for Legal Complaints to the Financial Ombudsman Service.
- Enables the Financial Conduct Authority to make rules restricting the amount which claims management companies can charge for their services, and requiring the Financial Conduct Authority to do so in those cases where the services are provided in connection with a claim relating to financial products or services.

C. DELEGATED POWERS

Part 1: Financial Guidance

Clause 1, subsections (3), (4) and (5): The single financial guidance body

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Negative procedure

Context and Purpose

12. Subsection (3) will allow the Secretary of State to make regulations to name the single financial guidance body.

13. The purpose of the provision is so that the body is not named on the face of the Bill but, instead, named nearer to the time that the body is launched. The Government has said that this will be no earlier than Autumn 2018.

14. Subsection 4(a) allows the regulations to amend Part 1 of the Bill in order to replace the words “single financial guidance body” with the actual name of the body. This is not a legal requirement but will make the Act more transparent and easier to understand to readers in the future and is therefore necessary.

15. Subsection (4)(b) provides that regulations made under subsection (3) may make incidental, supplementary and consequential provision. General powers in clause 19 provide that regulations bringing the provisions into force may make transitional, transitory or saving provision.

Justification for delegation

16. The delegated power is required because of concerns that naming the body too early may lead the public to believe that that body already exists and cause confusion between it and the existing service providers - the Money Advice Service, Pension Wise and the Pensions Advisory Service. These services will continue to operate until the new body is established and a smooth transition will be best achieved by the body being named at a later date.

17. Deferring the announcement of the name will also help protect the new body’s brand and reduce the likelihood of the setting up of ‘imposter’ websites as a means of deceiving and defrauding the public. Imposter websites could put members of the public at risk. There is evidence that this is the case because imposter websites were an issue when the Pension Wise brand was launched.

18. Such provisions are common in pensions legislation for implementation to work as intended with existing legislation, and to allow for a smooth process during

the early stages of implementation. The provisions do not stand-alone and can only be used in conjunction with the regulation-making power, which is to name the body, and are therefore narrow in scope.

Justification for procedure

19. Subsection (5) states that the regulations made under subsection (3) are exercisable by statutory instrument and that the regulations will follow the negative resolution procedure.

20. While this is a Henry VIII power and that there are reasons for it not to be subject to the affirmative resolution procedure. It is our view that the circumstances in which this power can be exercised are so limited that use of the negative resolution procedure is justified. This power will only be used in relation to naming the body and ensuring that the relevant primary legislation refers to the body by its name. For this reason we think that a negative procedure is appropriate. A precedent for this is the naming Order used for the National Employment Savings Trust (NEST) Corporation which was named via regulations under the negative resolution procedure – The National Employment Savings Trust Corporation Naming and Financial Year Order 2010 (SI 2010/3)¹.

Clause 1 and Schedule 2: The single financial guidance body – transfer schemes

Power conferred on: Secretary of State

Power exercised by: schemes

Parliamentary Procedure: None

Context and Purpose

21. These are the usual provisions commonly found that are essential to enable property, rights and liabilities to be transferred from an existing body to a new one.

Justification for delegation

22. Powers to make transfer schemes are needed as the detail and complexities involved in a transfer of property, rights and liabilities from one body to another are likely to be technical and, as such, more suitable for an instrument made by way of a scheme, rather than in legislation.

Justification for procedure

23. Staff and property transfer schemes in respect of the body abolished by the Bill are, as usual, not subject to any Parliamentary procedure.

¹ The National Savings Trust Corporation Naming and Financial Year Order 2010 (SI 2010/3): <http://www.legislation.gov.uk/ukSI/2010/3/contents/made>

24. The provisions about transfer schemes concern operational matters that are ancillary to the substantive issues in this Bill which Parliament will have scrutinised during its passage.

Clause 5: Guidance and directions from the Secretary of State

Power conferred on: Secretary of State

Power exercised by: guidance and directions

Parliamentary Procedure: none

Context and Purpose

25. Clause 5 provides for the Secretary of State to issue guidance to the single financial guidance body about the exercise of its functions, to which the body must have regard. Clause 5 also provides for the Secretary of State to give directions to the single financial guidance body about the exercise of its functions, with which the body must comply.

26. These powers will enable the Secretary of State to maintain some oversight of the manner in which the single financial guidance body exercises its functions, which is appropriate in view of the extent and nature of these functions.

Justification for delegation

27. In setting up arm's-length bodies, it is important that there is a balance between enabling the sponsoring minister to fulfil his or her responsibilities to Parliament and giving the body the desired degree of independence. Conferring functions on a body involves recognition that operational independence from ministers (in carrying out those functions) is appropriate. Nevertheless, the sponsoring minister remains answerable to Parliament for the activities of the body including any failures, especially in the case of a body which receives public funds. Requirements as to accountability to Parliament are set out in paragraph 14 of Schedule 2.

28. In addition, the single financial guidance body's functions and objectives align closely with: HMT's policy aim of creating a more effective system of financial advice and publicly funded financial guidance to ensure that all consumers have access to good quality, affordable advice when they need it; and DWP's policy aim of giving savers the confidence to save and access their pension pots by providing more information on pensions. As the single financial guidance body is providing operational delivery of departmental policy it is appropriate to provide such a power for the Minister.

Justification for procedure

29. In these circumstances, providing a general power for the minister to be able to issue guidance to the single financial guidance body in how it exercises its functions and to be able to give directions that must be complied with if necessary is appropriate.

Clause 6: Standards set by the single financial guidance body

Power conferred on: the single financial guidance body

Power exercised by: published standards

Parliamentary Procedure: none

Context and Purpose

30. Clause 6 provides for the single financial guidance body to set standards. Standards are a set of criteria that the single financial guidance body and its delivery partners must meet when providing information, guidance and debt advice to members of the public and they form part of a quality assurance process. The standards are written by the single financial guidance body, but have to be approved by the Financial Conduct Authority before being finalised. The single financial guidance body will be required to monitor and enforce the standards.

31. These standards must be complied with by a person carrying out the single financial guidance body's pensions guidance, debt advice and money guidance functions.

32. A similar system of setting standards is currently in operation for "pensions guidance" given by the Secretary of State under Part 20A of the Financial Services and Markets Act. This "pensions guidance" will be provided by the single financial guidance body which is a requirement in Clause 3 of this Bill.

Justification for delegation

33. It is appropriate for these to be set by the single financial guidance body, rather than Parliament, as it is the responsibility of the body to ensure that its functions are carried out to an appropriate standard. The requirement that the standards have approval of the Financial Conduct Authority enables the Financial Conduct Authority to carry out its review and monitoring functions under Clause 7.

Justification for procedure

34. Standards set by the single financial guidance body are not made by way of parliamentary procedure.

Clause 9: Levies under Pensions Schemes Act 1993 and Pension Schemes (Northern Ireland) Act 1993

Power conferred on: not applicable (see below)

Power exercised by: not applicable (see below)

Parliamentary Procedure: not applicable (see below)

Context and Purpose

35. The Bill amends existing delegated powers under the Pensions Schemes Act 1993 and the Pension Schemes (Northern Ireland) Act 1993 in order to enable levies which are currently raised in regulations made under those Acts to be used to fund the single financial guidance body. The levies raised by the regulations under the Acts are currently being used to recover funds used to fund a range of pensions arm's length bodies including The Pensions Advisory Service.

36. Section 175(1) of the Pension Schemes Act 1993 (the 1993 Act) provides for a power on the Secretary of State to provide for levies to meet expenditure in respect of prescribed occupational or personal pension schemes. This power is made by regulations and is subject to the negative resolution procedure (section 186 of the 1993 Act). Before making the regulations the Secretary of State is required to consult such persons as he considers appropriate (section 185 of the 1993 Act).

37. Clause 9(1) amends section 175(1) to include in the purposes for which levies can be provided, expenditure incurred in relation to the single financial guidance body's pensions guidance function. Clause 9(2) makes equivalent provision in relation to the Pension Schemes (NI) Act 1993.

38. Clause 9(3) provides for references to expenditure referred to in section 175(1) of the 1993 Act in regulations made under that section, including regulations already in force, to include expenditure incurred for this purpose. This avoids the need to make additional regulations which do this. Clause 9(4) makes equivalent provision in relation to the Pension Schemes (NI) Act 1993.

Justification for delegation

39. There are no new powers being conferred in this Clause. Instead, existing delegated powers, both exercised by negative resolution, are being widened in scope to include the single financial guidance body.

Justification for procedure

40. It is appropriate to amend and use the current levy regime and its legislative framework because it is already being successfully used to fund similar functions,

albeit the functions will be carried out by a new body. The existing arrangements are familiar to levy payers and operating successfully.

Clauses 10 and 11: Levies under FSMA 2000 for expenses of single financial guidance body and for debt advice expenses of devolved authorities

Power conferred on: the Financial Conduct Authority

Power exercised by: rules

Parliamentary Procedure: none

Context and Purpose

41. Clauses 10 and 11 amend the Financial Services and Markets Act 2000 under which there is an existing regime in which the Financial Conduct Authority may make rules to recover the costs incurred in funding Pension Wise and MAS. In this Bill we are inserting new provisions into this legislation. This will enable the Financial Conduct Authority to make rules and raise levies to recover the costs incurred by both the Secretary of State in respect of the single financial guidance body and the Treasury in respect of the devolved administrations and debt advice.

42. Clause 10 amends FSMA to insert new section 137SA, which provides for the Financial Conduct Authority to make rules for imposing levies with a view to recover expenses incurred or expected to be incurred by the Secretary of State under this provision. The rules may also provide for the Financial Conduct Authority to recover its expenses in connection with this. New section 137SA(5) provides that the rules may only be made with the consent of the Secretary of State.

43. Clause 11 amends FSMA to insert new section 137SB which provides for the Financial Conduct Authority to make rules for imposing levies with a view to recovering 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. The rules may also provide for the Financial Conduct Authority to recover its expenses in connection with this. The rules must be made with the consent of the Treasury.

Justification for delegation

44. Two new delegated powers are conferred in Clauses 10 and 11. It should be noted that the approach that is being taken in conferring powers on the Financial Conduct Authority replicates and supplements the existing approach that is currently taken under the Financial Services and Markets Act 2000. It is appropriate for these powers to be given to the Financial Conduct Authority in view of the fact that it already raises levies in these matters and this is effectively extending an existing regime.

Justification for procedure

45. The Financial Conduct Authority's power for making rules with no parliamentary procedure is not in this Bill but under Part 9A of the Financial Services and Markets Act 2000. We consider it appropriate to rely on this existing process for the reasons given above.

Clause 14: Power to dissolve the single financial guidance body

Power conferred on: Secretary of State

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: Affirmative procedure

Context and Purpose

46. This power will allow the Secretary of State to dissolve the single financial guidance body.

47. Subsection (1) gives the Secretary of State the power to provide for the dissolution of the body through regulations made by a statutory instrument.

48. Subsection (2) enables regulations made under subsection (1) to make provisions 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 other persons;
- c. the creation and extinguishment of interests, rights and liabilities associated with the transfer at (b); and
- 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.

49. Regulations may transfer rights and liabilities relating to employees, but may not affect the Transfer of Undertakings (Protection of Employment) Regulations 2006².

50. Subsection (4)(a) allows the regulations to amend or repeal any provision of this Part. This is essential to give effect to the Secretary of State's power to wind up.

² Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246): <http://www.legislation.gov.uk/uksi/2006/246/contents/made>

Without this the primary legislation would continue to be in force and the regulations would be ineffective.

51. Subsection (4)(b) provides that regulations made under subsection (1) may make incidental, supplementary, consequential, transitional, transitory or saving provision. Subsection (5) makes it clear that the powers at 4(b) include the ability to change primary legislation.

52. Such provisions are common in pensions legislation and are required to make provisions that enable this power to work if exercised. The provisions do not stand-alone and can only be used in conjunction with the regulation-making power, which is to dissolve the body, and are therefore narrow in scope.

53. Subsection (6) provides that draft regulations must be approved by both Houses of Parliament (i.e. through the affirmative resolution procedure) before a statutory instrument containing these regulations can be made.

Justification for delegation

54. While this is a significant power, which allows the Secretary of State to dissolve a body that was set up by Parliament, it is appropriate for the Secretary of State to have this power. This stems from the fact that the single financial guidance body provides the operational delivery of policies that would otherwise be carried out by the Secretary of State and the Treasury.

55. The extent to which the body is carrying out departmental policies is further exemplified by the fact that the single financial guidance body's functions and objectives align with HMT's policy aim of, "*creating a more effective system of financial advice and publicly funded financial guidance to ensure that all consumers have access to good quality, affordable advice when they need it*", (HMT's Single Departmental Plan 2015 to 2020) and DWP's policy aim of, "*giving savers the confidence to save and access their pension pots by providing more information on pensions*" DWP's Single Departmental Plan 2015 to 2020.

56. A further consideration is that the Bill does not provide for a fixed lifetime for the new single financial guidance body. This clause is therefore in line with the Cabinet Office guidance relating to setting up new arm's-length bodies, which states that:

"The legislation setting up a new Public Body should contain powers to permit winding up at a later date and for finalising and auditing the closing accounts, if a fixed lifetime is not established at the outset. Departmental legal advisers would need to be involved in this process. Difficulties have occurred in past cases where sponsor Departments have not been able to wind up statutory bodies when their work has been completed due to problems in securing a

Parliamentary slot to amend the primary founding legislation. The bodies therefore continue to exist as legal entities even though there is no longer a requirement for them.”

57. Regular assurance and challenge for good governance and efficiency of public bodies is central to the government’s public bodies transformation programme. Departments are required to undertake tailored reviews of their arm’s-length bodies at least once in the lifetime of a Parliament. Tailored reviews must cover ensuring public bodies remain fit for purpose, are well governed and are properly accountable for what they do.

58. It is desirable in these circumstances, for the Bill to contain powers to permit winding up at a later date and for finalising and auditing the closing accounts. If there is ever a need to dissolve the single financial guidance body, this provision provides a range of options and sufficient flexibility to be able to transfer functions, property rights and assets without recourse to primary legislation and it is appropriate to do so because it is carrying out departmental policies.

Justification for procedure

59. As the single financial guidance body has been provided for in primary legislation, it is important that there is adequate parliamentary scrutiny if it is to be dissolved, so the regulations must be approved by a resolution of each House of Parliament.

60. The powers include a Henry VIII power. The circumstances in which this power can be exercised are limited, in that it will only be used for the purposes of winding up the new single financial guidance body. The affirmative procedure is appropriate for this because it affords sufficient parliamentary scrutiny.

Part 2: Claims Management Services

61. The Bill includes six delegated powers in relation to claims management services.

Clause 16(2): Regulation of claims management services

Power conferred on: Treasury

Power exercised by: Order made by statutory instrument

Parliamentary Procedure: Affirmative

(i) Controlled claims management activity

Context and Purpose

62. Consumers are influenced by, and rely on, the information they get from financial promotions when making purchasing decisions about products and services. This is a particular risk in the financial services sector because of the complex nature of financial products and services. Restrictions on the making of financial promotions therefore is governed by section 21 of the Financial Services and Markets Act 2000³ and is intended to address this risk.

63. Section 21 of the Financial Services and Markets Act 2000⁴ contains the financial promotions regime which prohibits an unauthorised person from communicating an invitation or inducement to engage in a controlled activity. Clause 16 amends the Financial Services and Markets Act 2000⁵ to create a new controlled activity in relation to claims management services.

64. Specifically, clause 16(2) amends section 21 of the Financial Services and Markets Act 2000⁶ to apply the existing restrictions on financial promotion under that section to invitations or inducements to engage in 'claims management activity'. The effect is to prohibit the communication of such an invitation or inducement by any person not authorised by the Financial Conduct Authority.

65. Clause 16(2)(b) inserts a new section 21(10A) and (10B), which taken with section 21(15) allows the Treasury to, by order, specify certain 'controlled claims management activities' which will constitute 'claims management activity' under section 21.

³ The Financial Services and Markets Act 2000:
<http://www.legislation.gov.uk/ukpga/2000/8/contents>

⁴ The Financial Services and Markets Act 2000:
<http://www.legislation.gov.uk/ukpga/2000/8/contents>

⁵ The Financial Services and Markets Act 2000:
<http://www.legislation.gov.uk/ukpga/2000/8/contents>

⁶ The Financial Services and Markets Act 2000:
<http://www.legislation.gov.uk/ukpga/2000/8/contents>

Justification for delegation

66. 'Controlled activity' is defined in Schedule 1 to the Financial Services and Markets Act (Financial Promotions) Order 2005⁷. The Order specifies the kind of activities which are controlled for the purpose of section 21 of the Financial Services and Markets Act 2000⁸. The precedent therefore is for controlled activities to be specified by Order rather than on the face of the Bill. In these circumstances, as has been done previously, a delegated power is inserted into the Bill for the scope of regulation in relation to financial promotions to be set out in secondary legislation.

Justification for procedure

67. Clause 16(10) amends section 429(4)(e) FSMA to provide the Parliamentary procedure for this Order: the first Order and any subsequent Order containing new provisions will be subject to the affirmative procedure, otherwise the Order will be made under the negative procedure.

Clause 16(3): Regulation of claims management services

Power conferred on: Treasury

Power exercised by: Order made by Statutory Instrument

Parliamentary Procedure: Affirmative

(ii) Regulated claims management activity

Context and Purpose

68. Section 19 of the Financial Services and Markets Act 2000⁹ states that a person must not carry on a regulated activity in the UK unless they are an authorised or exempt person. Under section 22 of the Financial Services and Markets Act 2000 an activity is a regulated activity if it is an activity of a specified kind that is carried on by way of business and relates to a specified investment or property of any kind.

69. A specified activity is one that has been specified as such in the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001¹⁰. Clause 16(3) amends the Financial Services and Markets Act 2000¹¹ to create a new regulated activity in relation to claims management services.

⁷ S.I. 2005/1529

⁸ The Financial Services and Markets Act 2000:
<http://www.legislation.gov.uk/ukpga/2000/8/contents>

⁹ The Financial Services and Markets Act 2000:
<http://www.legislation.gov.uk/ukpga/2000/8/contents>

¹⁰ S.I. 2001/544

¹¹ The Financial Services and Markets Act 2000:
<http://www.legislation.gov.uk/ukpga/2000/8/contents>

70. Subsection (3) inserts a new section 22(1B), which taken with section 22(5) allows the Treasury to, by order, specify activity which will be 'regulated claims management activity' under section 22.

Justification for delegation

71. The Bill does not set out which claims management services are to be specified activities for the purpose of claims management services regulation as the scope of activities that are regulated will be specified by order amending the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001¹².

72. The precedent is for regulated activities to be specified by Order rather than on the face of the Bill where the scope of the regulation can be carefully circumscribed and defined in an appropriately clear and specific manner. Therefore, in these circumstances, as has been done previously, it is appropriate for the scope to be set out in secondary legislation. The power gives the flexibility required to enable the Treasury to add or omit activities from scope of regulation. It also gives flexibility to adjust the scope of regulated activity in response to any rapid changes in the financial services market.

Justification for procedure

73. An Order under section 22(1) or (1A) which has the effect of creating a new regulated activity under the Act is currently subject to the affirmative procedure by virtue of paragraph 26 (Parliamentary control) of Schedule 2, to the Financial Services and Markets Act 2000¹³. The amendment in clause 16(10)(b) to paragraph 26 (Parliamentary control) of Schedule 2, to the Financial Services and Markets Act 2000 means an order made under section 22(1B) will also be subject to the affirmative procedure. This is appropriate given the effect of the order is to make claims management services a regulated activity.

¹² S.I. 2001/544

¹³ The Financial Services and Markets Act 2000:
<http://www.legislation.gov.uk/ukpga/2000/8/contents>

Clause 16(9): Regulation of claims management services

Power conferred on: Treasury

Power exercised by: Order made by Statutory Instrument

Parliamentary Procedure: Affirmative

(iii) Specified benefits

Context and purpose

74. Subsection (9) of clause 16 inserts a new section 419A into the Financial Services and Markets Act 2000¹⁴ defining what “claims management services” means for the purposes of that Act. Subsection 419A(1) states that “claims management services” means advice or other services in relation to the making of a claim.

75. Subsection 419A(3) further defines what a “claim” means for the purposes of the new section. Subsection 419A(4) allows the Treasury to provide in an Order that a claim for a specified benefit is to be treated as a claim for the purpose of the new section 419A. This power is limited by subsection 419A(5) as the Treasury can exercise this power only if it is a social security benefit designed to provide compensation for industrial injury payable under the law in any part of the UK.

Justification for delegation

76. Subsections 419A(3) and (4) replicate the provisions under Section 4(4) and (5) of the Compensation Act 2006¹⁵. The delegated power enables the Treasury to provide that a claim for a specified benefit shall be treated as a claim for the purposes of claims management services. The effect of such an order would allow claims management services provided in relation to specified benefits to be regulated.

77. Under the current regulatory regime no order has been made under this power. However, replicating the provision in subsections 419A(3) and (4) ensures that claims management companies cannot in the future provide unregulated services to potentially vulnerable consumers for claims in relation to benefits.

Justification for procedure

78. Clause 16(10) amends section 429 (Parliamentary control of statutory instruments) of the Financial Services and Markets Act 2000¹⁶. It provides that the

¹⁴ The Financial Services and Markets Act 2000:

<http://www.legislation.gov.uk/ukpga/2000/8/contents>

¹⁵ Compensation Act 2006:

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

¹⁶ The Financial Services and Markets Act 2000:

first order made under subsection 419A(4) will be subject to the affirmative procedure.

Clause 16(9): Regulation of claims management services

Power conferred on: Treasury

Power exercised by: Order made by Statutory Instrument

Parliamentary Procedure: Affirmative

(iv) *Carrying on claims management activity in England and Wales*

Context and purpose

79. Under the Compensation Act 2006¹⁷, which governs the current claims management regulatory scheme, claims management activity is regulated only if it is carried on in England and Wales. The intention is for the regulation of claims management activities to retain the current scope of England and Wales regardless of the fact the provisions are being inserted in the UK-wide Act (the Financial Services and Markets Act 2000¹⁸).

80. Subsection (9) inserts a new section 419B into the Act. The new section 419B(1) allows the Treasury to, by Order, make provision as to the circumstances in which a person is, or is not, to be treated as carrying on claims management activity in England and Wales.

81. Activity may only be specified as regulated claims management activity or controlled claims management activity if the activity is carried on in England and Wales. The power will be used to make clear what happens when a company is established in one jurisdiction but operates in another. The power is similar to the existing section 419(1), which provides a power for the Treasury to make clear when a person is, or is not, to be treated as acting by way of business in the Financial Services and Markets Act 2000 (Carrying on Regulated Activities by Way of Business) Order 2001¹⁹.

Justification for delegation

82. The Treasury considers the power is justified having regard to the context and purpose set out above. As claims management companies adjust to the new regulatory framework the power will ensure that the scope can be adjusted to take

<http://www.legislation.gov.uk/ukpga/2000/8/contents>

¹⁷ Compensation Act 2006:

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

¹⁸ The Financial Services and Markets Act 2000:

<http://www.legislation.gov.uk/ukpga/2000/8/contents>

¹⁹ S.I. 2001/1177

into account new ways claims management companies can carry out the regulated activities in England and Wales regardless of where their business is based.

Justification for procedure

83. Clause 16(10)(a) amends section 429 (Parliamentary control of statutory instruments) of the Financial Services and Markets Act 2000²⁰. It provides that an order made under subsection 419B(1)(4) will be subject to the affirmative procedure. This is the appropriate procedure given the power can be used to extend or limit what is meant by the carrying on of a regulated claims management service in England and Wales.

Clause 16(11): Regulation of claims management services

Power conferred on: Secretary of State or the Office of Legal Complaints

Power exercised by: Transfer scheme

Parliamentary Procedure: None – the transfer schemes are not made by way of statutory instrument nor are they subject to any Parliamentary procedure.

(v) Transfer schemes

Context and Purpose

84. Clause 16(12) introduces Schedule 4. Part 1 refers to the application of the Schedule.

85. Part 2 provides the Secretary of State with a power to make provision about the transfer of property, rights and liabilities of the Claims Management Regulation Unit to the Financial Conduct Authority as part of the transfer of regulatory responsibility. Part 3 of Schedule 4 provides the Office for Legal Complaints with a power to make provision about the transfer of property, rights and liabilities of the Office for Legal Complaints to the Financial Ombudsman Service as part of the transfer of responsibility for investigating complaints about claims management companies.

86. Part 3 relates to the transfer of the regulation of claims management companies from the Ministry of Justice / Claims Management Regulation Unit to the Financial Conduct Authority, and provides Secretary of State with a power to make provision about the transfer of staff, property, rights and liabilities of the Ministry of Justice to the Financial Conduct Authority and to the Financial Ombudsmen Service. It makes provision as to the matters which can be included in any such transfer scheme or schemes, and includes the power to make any supplemental, incidental, transitional and consequential provision.

²⁰ The Financial Services and Markets Act 2000:
<http://www.legislation.gov.uk/ukpga/2000/8/contents>

87. The Secretary of State is able to modify a transfer scheme made under Part 2 with the consent of the Financial Conduct Authority. The Office for Legal Complaints has a similar power and can modify a transfer scheme made under Part 3 with the approval of the Lord Chancellor and Treasury and with agreement of Financial Ombudsman Service and the Financial Conduct Authority. A modification made to a scheme under either Part may be back dated to when the original scheme came in to effect, however a modification may only be made with the agreement of the person(s) affected.

88. Paragraph 8(2) provides that an obligation on the Financial Conduct Authority to make a compensation payment under a transfer scheme is to be treated as a qualifying function under Schedule 1ZA (The Financial Conduct Authority) of the Financial Services and Markets Act 2000. This effect of this is that the Financial Conduct Authority is able to add the amount of the compensation payment to the fees it charges to the rules that it makes under Schedule 1ZA.

89. Paragraph 23(2) provides that an obligation on the Financial Ombudsman Service to make a compensation payment under a transfer scheme is to be treated as an operational cost under section 234 (Industry funding) of the Financial Services and Markets Act 2000. This effect of this is that the Financial Conduct Authority is able to add the amount of the compensation payment to the fees charged under the rules that it makes under section 234.

Justification for delegation

90. Powers to make transfer schemes are needed as the detail and complexities involved in a transfer of property, rights and liabilities from one body to another are likely to be technical , and as such more suitable for an instrument made by way of a scheme, rather than in legislation. Delegating the power to Secretary of State and the Office of Legal Complaints to make one or more schemes will also allow for the necessary flexibility, as the precise details of the requirements and subject matter the transfers are yet to be finalised.

91. These powers, which are anticipated to be used only once, to effect a single transfer of responsibility from one body to another, are therefore limited in their practical application. Powers to make such schemes are commonly included in the legislation and relied upon in connection with the transfer of functions. The provisions will also set a number of constraints on how such a power is to be used, e.g. by specifying the matters which can be included in any such transfer scheme and the consents that are needed before any scheme is made.

Justification for procedure

92. The provisions about transfer schemes concern operational matters that are ancillary to the substantive issue of the transfer of regulatory and complaints investigation functions *per se*, which Parliament will have scrutinised through the passage of the Bill. As the transfer schemes are not made by way of statutory instrument they are not subject to any Parliamentary procedure.

Clause 17: Power of the Financial Conduct Authority to make rules restricting charges for claims management services

Power conferred on: Financial Conduct Authority

Power exercised by: Rules

Parliamentary Procedure: None – Financial Conduct Authority rules are not made by way of statutory instrument nor are they subject to any Parliamentary procedure.

(vi) *Power on the Financial Conduct Authority to impose a cap on fees*

Context and purpose

93. Clause 17(2) inserts a new section 137FC into Part 9A (Rules and Guidance) of the Financial Services and Markets Act 2000²¹ giving the Financial Conduct Authority a power to make general rules restricting fees claims management companies can charge for their services and a duty to make rules which restrict fees in relation to services provided for financial services and products claims.

94. The new section therefore gives the Financial Conduct Authority the power to make rules to cap the amount that claims management companies can charge customers for its regulated claims management services.

Justification for delegation

95. The Financial Conduct Authority already has a general power to make rules under section 137A of the Financial Services and Markets Act 2000²² in respect of authorised persons carrying out regulated activities. The Financial Conduct Authority also has a power under Section 137C to cap fees in relation to high-cost short-term credit agreements (payday lending). However, these extant powers do not extend to rules which can limit the fees claims management companies can charge for their services.

96. The Financial Conduct Authority, as the market regulator, is the appropriate body to develop and make rules regarding fees claims management companies can

²¹ The Financial Services and Markets Act 2000:
<http://www.legislation.gov.uk/ukpga/2000/8/contents>

²² The Financial Services and Markets Act 2000:
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charge consumers for their services. The Financial Conduct Authority will also then be able to provide further detail and supplementary material as to how they consider the rules will operate. This will provide greater clarity for both the Financial Conduct Authority, regulated firms and those seeking to become regulated in the future. There will also be greater certainty for the regulator to rely on its rules when taking action by reference to its rules against contraventions.

97. Any rules made by the Financial Conduct Authority will be made under the same conditions and safeguards as other rules made by it. When exercising its power the Financial Conduct Authority must have regard to the statutory requirements under sections 138F to 138I, the duty to notify, consult and publish draft rules.

Justification for procedure

98. The Treasury considers that no Parliamentary procedure is required in respect of this power for the Financial Conduct Authority to make general rules about charges for claims management services. Financial Conduct Authority rules are subject to their own statutory rule making procedure which includes a duty to consult on proposed rules as well as notify HM Treasury and the Bank of England of any rules it makes, amends or revokes.

Part 3: General

Clause 19: Commencement

Power conferred on: Secretary of State, in relation to Part 1 other than clause 11; the Treasury, in relation to clause 11 and Part 2.

Power exercised by: Regulations made by Statutory Instrument

Parliamentary Procedure: None

Context and Purpose

99. Clause 19 provides for the commencement of the provisions within the Bill.

100. Clause 19(1) provides that clause 8, subsections (1) and (3) (financial assistance from the Secretary of State), clause 9 (levies under Pension Schemes Act 1993 and Pension Schemes (NI) Act 1993), clause 10 (levy under Financial Services and Markets Act 2000), certain paragraphs in Schedule 3 (minor and consequential amendments relating to Part 1), as well as clause 13 so far as they relate to those paragraphs, clause 16, subsection (13) (regulation of claims management services), Schedule 5 regulation of claims management services: transitional provision), and Part 3, will come into force on Royal Assent.

101. Clause 19(2) provides that the remaining provisions in this Bill will come into force on such day as appointed in regulations.

102. Clause 19(3) provides that regulations under this clause may make transitional or transitory provision or savings in connection with the commencement of any provision in Part 1 or 2 of this Bill.

103. Clause 19(4) provides that regulations made under this clause may make incidental and supplementary provision, and different provision for different purposes.

Justification for delegation

104. It is essential to be able to bring provisions of the Bill into force at the appropriate time.

Justification for procedure

105. In common with commencement provisions in previous legislation, these powers will not be subject to parliamentary procedure. This is considered appropriate because the provisions to which they relate will have been fully debated as part of the Bill. Regulations will relate to the implementation of the commencement of provisions in the Bill which have not already been brought into force, and are therefore largely operational in nature.

Department for Work and Pensions / HM Treasury
30 June 2017