

FINANCIAL GUIDANCE & CLAIMS BILL

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

A. INTRODUCTION

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

2. This memorandum identifies an additional Clause in the Bill which has been proposed by way of a government amendment. The new Clause would require the exercise of an existing rule-making power by the Financial Conduct Authority (“the FCA”) in a particular way. It explains the existing rule-making power, why the amendment has been proposed and how the amendment will change the use of the pre-existing power.

B. ADDITIONAL DELEGATED POWER

Part 1: The Single Financial Guidance Body

3. The government has proposed an amendment to impose a requirement for an existing rule-making power to be exercised by the FCA to require specified persons to ‘signpost’ members of the public to the information, guidance and advice services of the proposed single financial guidance body.

Amendment to insert a new Clause – “FCA general rules: information about the availability of guidance” after Clause 12

Power conferred on: the FCA

Power exercised by: general rules made by the FCA

Parliamentary Procedure: none

4. The new Clause – “FCA general rules: information about the availability of guidance” will be inserted into Part 1 of the Financial Guidance and Claims Bill after Clause 12. The new clause will in turn insert a new section – section “137FC FCA rules: disclosure of information about the availability of financial guidance” – into the Financial Services and Markets Act 2000 (“the FSMA”).

5. Section 137A – “The FCA’s general rules” of the FSMA provides that “(1) *The FCA may make such rules applying to authorised persons— (a) with respect to the carrying on by them of regulated activities, or (b) with respect to the carrying on by them of activities which are not regulated activities, as appear to the FCA to be necessary or expedient for the purposes of advancing one or more of its operational objectives.*” Sub-section (2) provides that “*Rules made under this section are referred to in this Act as the FCA’s general rules.*” Section 138G(1) provides that the power to make general rules is exercisable in writing and section 138G(4) provides that the rules must be published.

6. The new section 137FC would impose a duty on the FCA requiring it to make general rules (by virtue of section 137A) requiring specified ‘authorised persons’ to provide information about the availability of information, guidance or advice provided in pursuance of the single financial guidance body’s debt advice, pensions guidance or money guidance function (as set out in clause 2 of the Bill) to the descriptions of persons specified in the rules in the circumstances specified in them. ‘Authorised persons’ are persons who have been authorised to carry out activities regulated by the FCA under the provisions set out in the FSMA.

7. Section 138I(1)(b), (2)(b) and (3) of the FSMA provides that, before making general rules, the FCA must publish them in draft accompanied by an explanation of their purpose, and that the FCA must have regard to any representations received in response. Section 138L provides that this requirement to consult does not apply if the FCA considers that the delay involved in carrying out the consultation would be prejudicial to the interests of consumers. The proposed section 137FC(3) would also provide that, before the FCA publishes a draft of any rules made under it, the FCA would also be required to consult the Secretary of State, the Treasury and the single financial guidance body.

8. The proposed amendment provides an exception to certain other general requirements which apply to the making of general rules under section 137A – specifically the requirement to notify the Bank of England of the making, alteration or revocation of any rules and the requirement to carry out a cost benefit analysis.

9. The imposition of a requirement on the FCA to exercise its existing rule-making power in section 137A (to create rules requiring ‘signposting’ to the single financial guidance body’s information, guidance and advice services) is required because this ‘signposting’ will help to improve the accessibility of free, impartial money and pensions information and guidance and debt advice to the public. The government and the FCA want to see more people seek such information, guidance and advice, and to see more people seek it at an earlier stage so it can be of the most help to them. The proposed amendment will help to accomplish this objective by, ultimately, requiring specified authorised persons, such as banks, investment companies and credit companies to ‘signpost’ their customers to the services provided by, or on behalf of, the single financial guidance body when considering or taking out financial products.

Department for Work and Pensions & HM Treasury
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