

Financial Guidance and Claims Bill [HL]

AMENDMENTS TO BE MOVED ON REPORT

Clause 2

BARONESS BUSCOMBE

Page 2, line 19, after “public,” insert “free and impartial”

Page 2, line 22, after “England,” insert “free and impartial”

Page 2, line 24, after “public,” insert “free and impartial”

Clause 6

BARONESS BUSCOMBE

Page 4, line 32, at end insert –

“() In determining whether to approve the standards, the FCA must have regard to the needs of people who are receiving, or who may seek to receive, the information, guidance or advice to which the standards will apply.”

Clause 10

BARONESS BUSCOMBE

Page 7, line 15, leave out from “Regulations” to “of” in line 16 and insert “2017 (S.I. 2017/752) as a result of falling within any of paragraphs (a) to (h)”

Before Clause 12

BARONESS BUSCOMBE

Insert the following new Clause –

“False claims about provision of information etc

- (1) It is an offence for a person to hold himself or herself out (or where the person is a body, to hold itself out) as providing information, guidance or advice on behalf of the single financial guidance body when that is not in fact the case.

Before Clause 12 - continued

- (2) It is a defence for a person charged with an offence under this section to prove that the person took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (3) A person guilty of an offence under this section is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine, or both;
 - (b) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both;
 - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both.
- (4) In relation to an offence committed before the commencement of section 281(5) of the Criminal Justice Act 2003, the reference in subsection (3)(a) to 51 weeks is to be read as a reference to 6 months.
- (5) Proceedings for an offence under this section may be instituted in England and Wales only by or with the consent of the Director of Public Prosecutions.
- (6) Proceedings for an offence under this section may be instituted in Northern Ireland only by or with the consent of the Director of Public Prosecutions for Northern Ireland.”

Insert the following new Clause—

“Offences under section (*False claims about provision of information etc*) committed by bodies corporate etc

- (1) If an offence under section (*False claims about provision of information etc*) committed by a body corporate is proved—
 - (a) to have been committed with the consent or connivance of an officer of the body, or
 - (b) to be attributable to any neglect on the part of such an officer,
 the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.
- (2) In subsection (1) “officer”, in relation to a body corporate, means—
 - (a) a director, member of the committee of management, chief executive, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity;
 - (b) an individual who is a controller of the body.
- (3) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as if the member were a director of the body corporate.
- (4) If an offence under section (*False claims about provision of information etc*) committed by a partnership is proved—
 - (a) to have been committed with the consent or connivance of a partner, or
 - (b) to be attributable to any neglect on the part of the partner,

Before Clause 12 - continued

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

- (5) In subsection (4) “partner” includes a person purporting to act as a partner.
- (6) If an offence under section (*False claims about provision of information etc*) committed by an unincorporated association other than a partnership is proved –
- (a) to have been committed with the consent or connivance of an officer of the association or a member of its governing body, or
 - (b) to be attributable to any neglect on the part of such an officer or member,

the officer or member, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

- (7) Proceedings for an offence under section (*False claims about provision of information etc*) must be brought –
- (a) where the offence is alleged to have been committed by a partnership, against the partnership in the firm name;
 - (b) where the offence is alleged to have been committed by any other type of unincorporated association, against the association in its own name.
- (8) Rules of court relating to the service of documents have effect in relation to such proceedings as if the partnership or unincorporated association were a body corporate.”

After Clause 12

BARONESS BUSCOMBE

Insert the following new Clause –

“FCA general rules: information about the availability of guidance

After section 137FBB of the Financial Services and Markets Act 2000 insert –

“137FC FCA rules: disclosure of information about the availability of financial guidance

- (1) The FCA must make general rules requiring specified authorised persons to provide information about the availability of financial guidance to the descriptions of persons specified in the rules.
- (2) The rules may specify the circumstances in which the duty to provide the information applies.
- (3) Before the FCA publishes a draft of any rules to be made by virtue of this section, it must consult –
 - (a) the Secretary of State,
 - (b) the Treasury, and
 - (c) the single financial guidance body.
- (4) In this section –

“financial guidance” means information, guidance or advice provided in pursuance of the single financial guidance body’s pensions guidance, debt advice or money guidance function (see section 2 of the Financial Guidance and Claims Act 2017);

After Clause 12 - continued

“specified authorised person” means an authorised person of a description specified in rules made by virtue of this section.””

Clause 14

BARONESS BUSCOMBE

Page 10, line 16, leave out subsection (1) and insert –

- “(1) The Secretary of State must keep under review the question of whether the single financial guidance body should be dissolved.
- (1A) If the Secretary of State considers that the single financial guidance body should be dissolved, he or she must carry out a public consultation.
- (1B) If, after the period of 12 weeks beginning with the day on which the consultation began, the Secretary of State still considers dissolution of the single financial guidance body to be appropriate, he or she must lay before Parliament –
- (a) draft regulations, and
 - (b) an explanatory document.”

Page 10, line 18, after “The” insert “draft”

Page 10, line 28, after “The” insert “draft”

Page 10, line 32, after “The” insert “draft”

Page 11, line 1, leave out subsection (6)

After Clause 14

BARONESS BUSCOMBE

Insert the following new Clause –

“Regulations dissolving the new single financial guidance body: procedure

- (1) The 40-day affirmative procedure applies to draft regulations under section 14 unless, within the period of 30 days beginning with the day on which the draft regulations were laid before Parliament –
- (a) either House of Parliament resolves that the super-affirmative procedure should apply, or
 - (b) a committee of either House charged with reporting on the draft regulations recommends that the super-affirmative procedure should apply and the House to which the recommendation is made does not by resolution reject the recommendation within that 30-day period.

In either of those cases the super-affirmative procedure applies.

After Clause 14 - continued

- (2) Under the 40-day affirmative procedure, if after the expiry of the period of 40 days beginning with the day on which the regulations were laid before Parliament, the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (3) Under the super-affirmative procedure, the Secretary of State must—
 - (a) have regard to the matters mentioned in subsection (4), and
 - (b) make the regulations in accordance with subsections (5) to (7).
- (4) The matters are—
 - (a) any representations,
 - (b) any resolution of either House of Parliament, and
 - (c) any recommendation of a committee of either House of Parliament charged with reporting on the draft regulations,made in relation to the draft regulations during the period of 60 days beginning with the day on which the draft regulations were laid before Parliament.
- (5) If, after the expiry of that 60-day period, the draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the draft regulations.
- (6) If, after the expiry of that 60-day period, the Secretary of State wishes to proceed with the draft regulations but with material changes, the Secretary of State may lay before Parliament—
 - (a) revised draft regulations, and
 - (b) a statement giving a summary of the changes proposed.
- (7) If the revised draft regulations are approved by a resolution of each House of Parliament, the Secretary of State may make regulations in the terms of the revised draft regulations.
- (8) Regulations are made in the terms of draft regulations (including revised draft regulations) if the regulations contain no material changes.
- (9) In calculating the periods of time referred to in this section, no account is to be taken of any time during which Parliament is dissolved or prorogued or during which either House is adjourned for more than four days.
- (10) The regulations are to be made by statutory instrument.”

Clause 19

BARONESS BUSCOMBE

Page 16, line 11, after “11” insert “and section (*FCA general rules: information about the availability of guidance*)”

Page 16, line 12, after “11” insert “, section (*FCA general rules: information about the availability of guidance*)”

Schedule 3

BARONESS BUSCOMBE

Page 24, line 31, at end insert –

“() before “, 137SA”(inserted by paragraph (a)), insert “, 137FC”;

Page 24, line 38, at end insert –

“() before paragraph (ac)(inserted by paragraph (a)), insert –
“(aba) section 137FC;”;

Page 25, line 3, at end insert –

“() before “, 137SA”(inserted by paragraph (a)), insert “, 137FC”;

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17 October 2017
