

# Financial Guidance and Claims Bill [HL]

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SECOND  
MARSHALLED  
LIST OF AMENDMENTS  
TO BE MOVED  
ON REPORT

*The amendments have been marshalled in accordance with the Order of 19th October 2017, as follows –*

Clause 1	Clause 14 to 16
Schedules 1 and 2	Schedules 4 and 5
Clause 2 to 13	Clause 17 to 20
Schedule 3	Title

*[Amendments marked ★ are new or have been altered]*

Amendment  
No.

**After Clause 2**

LORD STEVENSON OF BALMACARA  
BARONESS ALTMANN  
LORD SHARKEY

22★

Insert the following new Clause –

**“Debt respite scheme**

- (1) As part of its debt advice function, the single financial guidance body must operate a debt respite scheme (“the scheme”) under which authorised debt advice providers who approach the single financial guidance body for further advice or guidance in relation to a specific case may receive statutory protections for their clients in respect of the relevant debts for the period during which advice or guidance is being sought.
- (2) The Secretary of State must make regulations by statutory instrument detailing the operation of the scheme by the single financial guidance body under subsection (1).
- (3) The regulations must limit access to the scheme to persons who have received debt advice from a debt advice provider who has been authorised by the FCA.
- (4) The regulations must make provision about the length of a period or periods where the protections under the scheme will apply.
- (5) The regulations must set out the terms of the scheme, including but not limited to –
  - (a) the nature of relevant debts for the purpose of the scheme;

**After Clause 2 - continued**

- (b) the process and conditions of eligibility under which FCA authorised debt advice providers are able to apply for statutory protections for their clients under the scheme;
  - (c) the criteria under which FCA authorised debt advice providers will be authorised to advise persons on the scheme, support applications to the scheme, and operate designated debt management plans for persons while under the statutory protections of the scheme;
  - (d) the limitations to be placed on actions that may be taken by creditors against persons in receipt of statutory protection under the scheme;
  - (e) the method for determining the level and timing of debt repayments by a person while under the statutory protections of the scheme;
  - (f) safeguards to protect the integrity of the scheme;
  - (g) the arrangements to be made to create a central register of persons admitted to the scheme; and
  - (h) the arrangements to be made to ensure that creditors of persons on the scheme are kept informed.
- (6) A statutory instrument containing regulations under subsection (2) may not be made unless a draft instrument has been laid before, and approved by a resolution of, each House of Parliament.
- (7) The Secretary of State must make regulations under subsection (2) within 12 months of the commencement of this section, subject to subsection (6).
- (8) This section commences on the day on which this Act is passed.”

23

[Withdrawn]

**Clause 3**

LORD SHARKEY  
 BARONESS ALTMANN  
 LORD MCKENZIE OF LUTON  
 THE EARL OF KINNOULL

24★

Page 3, line 15, at end insert –

- “( ) In Schedule 3 to the Pensions Schemes Act 2015 (pensions guidance), after paragraph 6(3) insert –
- “(3A) In determining what provision to include in the rules, the FCA must include a requirement for the trustees or managers of a relevant pension scheme to ask members of the scheme or survivors of members of the scheme at the point at which they require access to or individual transfer of their pension assets, if they have received the information and guidance available under section 3 of the Financial Guidance and Claims Act 2017 (specific requirements as to the pensions guidance function); and if they have not received such information and guidance the FCA may require the relevant trustee or manager to provide access to such information and guidance before proceeding.””

**Clause 6**

BARONESS BUSCOMBE

25 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

26 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

BARONESS DRAKE

BARONESS ALTMANN

27 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.
- (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.”

28 Insert the following new Clause—

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

**Before Clause 12 - continued**

- (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,
 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

29 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);

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

LORD SHARKEY

BARONESS ALTMANN

LORD MCKENZIE OF LUTON

THE EARL OF KINNOULL

*As an amendment to Amendment 29*

29A★ After subsection (2) insert –

“( ) The FCA must make general rules requiring specified authorised persons to refer persons of a specified description for financial guidance.

( ) The rules must specify the manner and circumstances in which the duty to refer applies.”

### Schedule 3

BARONESS BUSCOMBE

30 Page 24, line 31, at end insert –

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

31 Page 24, line 38, at end insert –

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

**Schedule 3 - continued**

- 32 Page 25, line 3, at end insert—  
“( ) before “, 137SA”(inserted by paragraph (a)), insert “, 137FC”;

BARONESS ALTMANN  
BARONESS KRAMER

- 33 Page 27, line 5, leave out paragraph 33

**Clause 14**

BARONESS BUSCOMBE

- 34 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.”

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

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

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

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

**After Clause 14**

BARONESS BUSCOMBE

- 39 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.

**After Clause 14 - continued**

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

- (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 16**

LORD HUNT OF WIRRAL

**39A★**

Page 12, line 38, at end insert—

“(ba) arranging the provision of temporary replacement motor vehicles,”

**Clause 16 - continued**

- 39B★** Page 12, line 38, at end insert—  
 “(bb) commissioning the obtaining of medical evidence for personal injuries, within the meaning of the Civil Procedure Rules 1998,”

**Clause 17**

LORD HUNT OF WIRRAL

- 39C★** Page 14, line 33, at end insert “, and claims for personal injuries, within the meaning of the Civil Procedure Rules 1998.”

**After Clause 17**

BARONESS MEACHER

- 40** Insert the following new Clause—

**“Interim rules restricting charges for claims management services**

- (1) The Compensation Act 2006 is amended as follows.
- (2) After section 5 (the regulator) insert—

**“5A Power and duty of the regulator to make rules restricting charges for claims management services**

- (1) The power of the regulator to make rules includes the power to make rules prohibiting authorised persons from—
  - (a) entering into a specified regulated claims management agreement that provides for the payment by a person of charges which, taken with charges payable under an agreement treated by the rules as being connected with the regulated claims management agreement (if any), are specified charges, and
  - (b) imposing specified charges on a person in connection with the provision of a service which is, or which is provided in connection with, a specified regulated claims management activity.
- (2) Within two months beginning with the day on which the Financial Guidance and Claims Act 2017 is passed, the regulator must make rules by virtue of subsection (1) in relation to all regulated claims management agreements, and all regulated claims management activities, which concern claims in relation to financial products or services.
- (3) The rules must be made with a view to securing an appropriate degree of protection against excessive charges for the provision of a service which is, or which is provided in connection with, a regulated claims management activity.
- (4) The rules may specify charges by reference to charges of a specified class or description, or by reference to charges which exceed, or are capable of exceeding, a specified amount.
- (5) In relation to an agreement entered into, or charge imposed, in contravention of the rules, the rules may (amongst other things) —



**After Clause 17 - continued**

- (a) provide for the agreement, or obligation to pay the charge, to be unenforceable or unenforceable to a specified extent;
  - (b) provide for the recovery of amounts paid under the agreement or obligation;
  - (c) provide for the payment of compensation for any losses incurred as a result of paying amounts under the agreement or obligation.
- (6) This section is repealed at the beginning of the day on which section 17 of the Financial Guidance and Claims Act 2017 (power of the FCA to make rules restricting charges for claims management services) is implemented by the FCA.”

LORD HOLMES OF RICHMOND  
LORD MCKENZIE OF LUTON  
BARONESS KRAMER

41 Insert the following new Clause—

**“Regulatory principles to be applied in respect of claims management services**

- (1) In relation to the regulation of claims management services, the FCA must act according to the principles that—
  - (a) authorised persons should act honestly, fairly and professionally in accordance with the best interests of consumers who are their clients; and
  - (b) authorised persons should manage conflicts of interest fairly, both between themselves and their clients, and between clients.
- (2) In this section, “authorised person” has the same meaning as in the Financial Services and Markets Act 2000, and “authorised persons” shall be construed accordingly.”

LORD SHARKEY  
BARONESS ALTMANN  
THE EARL OF KINNOULL

42 Insert the following new Clause—

**“Ban on unsolicited real-time direct approaches by, on behalf of, or for the benefit of companies carrying out claims management services and a ban on the use by claims management companies of data obtained by such methods**

- (1) The FCA must, within the period of six months beginning with the day on which this Act comes into force, introduce bans on—
  - (a) unsolicited real-time direct approaches to members of the public carried out by whatever means, digital or otherwise, by, on behalf of, or for the benefit of companies carrying out claims management services or their agents or representatives,
  - (b) the use for any purpose of any data by companies carrying out claims management services, their agents or representatives where they cannot demonstrate to the satisfaction of the FCA that this data does not arise from any unsolicited real-time direct approach to members of the public carried out by whatever means, digital or otherwise.

**After Clause 17 - continued**

- (2) The FCA must fix the appropriate penalties for breaches of subsection (1)(a) and (b) above.”

**Clause 18**

THE EARL OF KINNOULL  
BARONESS ALTMANN  
LORD KIRKWOOD OF KIRKHOPE

- 43 Page 15, line 27, at end insert “and Scotland.”

**Clause 19**

BARONESS BUSCOMBE

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

THE EARL OF KINNOULL  
BARONESS ALTMANN  
LORD KIRKWOOD OF KIRKHOPE

- 46 Page 16, line 12, at end insert –  
“( ) the Scottish Ministers, in relation to Part 2 as it applies in Scotland.”

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*27 October 2017*

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