

Financial Guidance and Claims Bill [HL]

EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department for Work and Pensions and HM Treasury, are published separately as HL Bill 1 – EN.

EUROPEAN CONVENTION ON HUMAN RIGHTS

Baroness Buscombe has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the Financial Guidance and Claims Bill [HL] are compatible with the Convention rights.

Financial Guidance and Claims Bill [HL]

CONTENTS

PART 1

FINANCIAL GUIDANCE

Establishment of the single financial guidance body

- 1 The single financial guidance body

Functions and objectives of the single financial guidance body

- 2 Functions and objectives
- 3 Specific requirements as to the pensions guidance function
- 4 Delegation of functions to delivery partner organisations
- 5 Guidance and directions from the Secretary of State

Standards set by the single financial guidance body

- 6 Setting standards
- 7 Monitoring and enforcement of standards

Funding of the single financial guidance body

- 8 Financial assistance from the Secretary of State
- 9 Levies under Pension Schemes Act 1993 and Pension Schemes (NI) Act 1993
- 10 Levy under FSMA 2000 for expenses of single financial guidance body

Funding of debt advice in Scotland, Wales and Northern Ireland

- 11 Levy under FSMA 2000 for debt advice expenses of devolved authorities

Miscellaneous

- 12 Disclosure of information
- 13 Minor and consequential amendments
- 14 Power to dissolve the single financial guidance body
- 15 Interpretation of Part 1

PART 2

CLAIMS MANAGEMENT SERVICES

- 16 Transfer to FCA of regulation of claims management services
- 17 Power of FCA to make rules restricting charges for claims management services

PART 3

GENERAL

- 18 Extent
- 19 Commencement
- 20 Short title

-
- Schedule 1 – The single financial guidance body
 - Schedule 2 – Transfer schemes under section 1
 - Schedule 3 – Minor and consequential amendments relating to Part 1
 - Schedule 4 – Regulation of claims management services: transfer schemes
 - Part 1 – Application and interpretation
 - Part 2 – Transfer of property and staff from the Regulator to the FCA
 - Part 3 – Transfer of property and staff from the OLC to the FOS
 - Schedule 5 – Regulation of claims management services: transitional provision

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B I L L

TO

Make provision establishing a new financial guidance body; to make provision about the funding of debt advice in Scotland, Wales and Northern Ireland; and to make provision about the regulation of claims management services.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART 1

FINANCIAL GUIDANCE

Establishment of the single financial guidance body

1 The single financial guidance body

- | | | |
|-----|--|----|
| (1) | A body corporate with functions relating to financial guidance is established (the “single financial guidance body”). | 5 |
| (2) | Schedule 1 makes further provision about the single financial guidance body. | |
| (3) | The name of the new body is to be determined by regulations made by the Secretary of State. | |
| (4) | The regulations may – | 10 |
| | (a) amend any provision of this Part, or of any Act amended by this Part, so as to replace the words “single financial guidance body” with the name of the body; | |
| | (b) make incidental, supplementary and consequential provision. | |
| (5) | The power to make regulations under subsection (3) is exercisable by statutory instrument; and an instrument containing such regulations is subject to annulment in pursuance of a resolution of either House of Parliament. | 15 |
| (6) | The consumer financial education body is dissolved. | |

- (7) Schedule 2 makes provision about schemes for the transfer of staff, property, rights and liabilities –
- (a) from the Secretary of State and the Pensions Advisory Service Limited to the single financial guidance body;
 - (b) from the consumer financial education body to the single financial guidance body. 5

Functions and objectives of the single financial guidance body

2 Functions and objectives

- (1) The single financial guidance body has the following functions – 10
- (a) the pensions guidance function;
 - (b) the debt advice function;
 - (c) the money guidance function;
 - (d) the strategic function.
- (2) The single financial guidance body also has the function of providing advice and assistance to the Secretary of State on matters relating to the functions listed in subsection (1). 15
- (3) The single financial guidance body may do anything that is incidental or conducive to the exercise of its functions.
- (4) The pensions guidance function is to provide, to members of the public, information and guidance on matters relating to occupational and personal pensions. 20
- (5) The debt advice function is to provide, to members of the public in England, information and advice on debt.
- (6) The money guidance function is to provide, to members of the public, information and guidance designed to enhance people’s understanding and knowledge of financial matters and their ability to manage their own financial affairs. 25
- (7) The strategic function is to support and co-ordinate the development of a national strategy to improve – 30
- (a) the financial capability of members of the public,
 - (b) the ability of members of the public to manage debt, and
 - (c) the provision of financial education to children and young people,
- by working with others in the financial services industry, the devolved authorities and the public and voluntary sectors.
- (8) In exercising its functions, the single financial guidance body must have regard to its objectives, which are – 35
- (a) to improve the ability of members of the public to make informed financial decisions,
 - (b) to support the provision of information, guidance and advice in areas where it is lacking, 40
 - (c) to secure that information, guidance and advice is provided to members of the public in the clearest and most cost-effective way (including having regard to information provided by other organisations),

- (d) to ensure that information, guidance and advice is available to those most in need of it (and to allocate its resources accordingly), and
 - (e) to work closely with the devolved authorities as regards the provision of information, guidance and advice to members of the public in Scotland, Wales and Northern Ireland. 5
- (9) In this section “the devolved authorities” means –
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers, and
 - (c) the Department for Communities in Northern Ireland.
- 3 Specific requirements as to the pensions guidance function 10**
- (1) As part of its pensions guidance function, the single financial guidance body must provide information and guidance for the purposes of helping a member of a pension scheme, or a survivor of a member of a pension scheme, to make decisions about what to do with the flexible benefits that may be provided to the member or survivor. 15
- (2) In subsection (1) –
- (a) references to a member, or a survivor of a member, of a pension scheme include a member, or a survivor of a member, of a pension scheme for which the PPF has assumed responsibility under Part 2 of the Pensions Act 2004 or Part 3 of the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), but 20
 - (b) in relation to such a member or survivor, the reference to the flexible benefits that may be provided is to be read as a reference to the money purchase benefits that may be provided by the PPF by virtue of sections 161 and 170 of that Act or Articles 145 and 154 of that Order. 25
- (3) In this section –
- “flexible benefit” has the meaning given by section 74 of the Pension Schemes Act 2015;
 - “money purchase benefits” –
 - (a) in relation to England and Wales and Scotland, has the meaning given by section 181(1) of the Pension Schemes Act 1993, and 30
 - (b) in relation to Northern Ireland, has the meaning given by section 176(1) of the Pension Schemes (Northern Ireland) Act 1993;
 - “pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act 1993; 35
 - “PPF” means the Board of the Pension Protection Fund;
 - “survivor” has the meaning given by section 76(1) of the Pension Schemes Act 2015.
- 4 Delegation of functions to delivery partner organisations 40**
- (1) The single financial guidance body may arrange for another person (a “primary SFGB delivery partner”) to carry out any of the following functions on its behalf –
- (a) the pensions guidance function;
 - (b) the debt advice function; 45
 - (c) the money guidance function.

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- (2) A primary SFGB delivery partner may arrange for another person (a “secondary SFGB delivery partner”) to carry out any of the functions it is carrying out on behalf of the single financial guidance body.
- (3) A secondary SFGB delivery partner may arrange for another person to carry out any of the functions it is carrying out on behalf of the single financial guidance body, but only with the consent of the single financial guidance body. 5
- (4) Arrangements under this section may include provision as to payment to the SFGB delivery partner.
- (5) Arrangements under this section must include provision requiring an SFGB delivery partner to disclose information to the single financial guidance body or the FCA when requested to do so to enable the single financial guidance body or the FCA to exercise the functions set out in section 7 (monitoring and enforcement of standards). 10
- 5 Guidance and directions from the Secretary of State**
- (1) The Secretary of State may issue guidance and give directions to the single financial guidance body about the exercise of its functions. 15
- (2) The Secretary of State must publish any directions that are given to the single financial guidance body.
- (3) The single financial guidance body must have regard to guidance, and comply with directions, given to it by the Secretary of State. 20
- Standards set by the single financial guidance body*
- 6 Setting standards**
- (1) The single financial guidance body must from time to time set standards to be complied with by –
- (a) persons providing information or guidance in pursuance of the body’s pensions guidance function, 25
- (b) persons providing information or advice in pursuance of the body’s debt advice function, and
- (c) persons providing information or guidance in pursuance of the body’s money guidance function. 30
- (2) Before finalising the standards, the single financial guidance body must obtain the approval of the FCA.
- (3) The single financial guidance body must publish the standards.
- 7 Monitoring and enforcement of standards**
- (1) The single financial guidance body must monitor its own and SFGB delivery partners’ compliance with the standards. 35
- (2) The FCA must, at least once in every three years, carry out a review of –
- (a) whether the standards continue to be appropriate, and
- (b) how the single financial guidance body is monitoring and enforcing the standards. 40

- (3) As soon as practicable after the FCA has completed its review, it must provide a report on the review to—
 - (a) the single financial guidance body, and
 - (b) the Secretary of State.
- (4) The report may contain recommendations to the single financial guidance body. 5

Funding of the single financial guidance body

8 Financial assistance from the Secretary of State

- (1) The Secretary of State may pay grants or make loans, or give any other form of financial assistance, to meet expenditure in connection with the establishment of the single financial guidance body (including expenditure incurred or expected to be incurred before the commencement of section 1). 10
- (2) The Secretary of State may pay grants or make loans, or give any other form of financial assistance, to the single financial guidance body for the purpose of enabling it to carry out its functions. 15
- (3) Financial assistance may be given under subsection (1) or (2) subject to any conditions the Secretary of State thinks appropriate (including conditions as to repayment).

9 Levies under Pension Schemes Act 1993 and Pension Schemes (NI) Act 1993

- (1) In section 175(1) of the Pension Schemes Act 1993 (power to make regulations imposing levies to meet certain expenditure)—
 - (a) omit the “or” at the end of paragraph (c), and
 - (b) after paragraph (d) insert “or
 - (e) under section 8 of the Financial Guidance and Claims Act 2017 (financial assistance from Secretary of State) relating to the single financial guidance body’s pensions guidance function (see section 2 of that Act),”. 25
- (2) In section 170(1) of the Pension Schemes (Northern Ireland) Act 1993 (power to make regulations imposing levies to meet certain expenditure)—
 - (a) omit the “or” at the end of paragraph (c), and 30
 - (b) after paragraph (d) insert “or
 - (e) under section 8 of the Financial Guidance and Claims Act 2017 (financial assistance from Secretary of State) relating to the single financial guidance body’s pensions guidance function (see section 2 of that Act),”. 35
- (3) References in regulations made under section 175(1) of the Pension Schemes Act 1993 (including regulations in force before the commencement of this section) to “expenditure referred to in section 175(1) of the 1993 Act” are to be read as references to expenditure referred to in section 175(1) of the Pension Schemes Act 1993 as amended by this section. 40
- (4) References in regulations made under section 170(1) of the Pension Schemes (Northern Ireland) Act 1993 (including regulations in force before the commencement of this section) to “expenditure referred to in section 170(1) of the Act” are to be read as references to expenditure referred to in section 170(1)

of the Pension Schemes (Northern Ireland) Act 1993 as amended by this section.

10 Levy under FSMA 2000 for expenses of single financial guidance body

- (1) In the Financial Services and Markets Act 2000, after section 137S, insert –
- “137SA Rules to recover expenses relating to the single financial guidance body** 5
- (1) The Secretary of State may, from time to time, notify the FCA of the amount of –
- (a) the expenses incurred, or expected to be incurred, by the Secretary of State under section 8 of the Financial Guidance and Claims Act 2017 (financial assistance from Secretary of State to single financial guidance body), and 10
 - (b) any other expenses incurred, or expected to be incurred, by the Secretary of State in connection with the operation of the single financial guidance body, 15
- that the Secretary of State considers should be recovered under this section.
- (2) Where the Secretary of State has notified the FCA of an amount of expenses under subsection (1), the FCA must make rules for imposing levies with a view to recovering – 20
- (a) the amount notified, and
 - (b) expenses incurred by the FCA in connection with its functions under this section.
- (3) The rules must require the payment to the FCA of specified sums, or sums calculated in a specified way, by – 25
- (a) authorised persons, electronic money issuers or payment service providers, or
 - (b) any specified class of authorised person, electronic money issuer or payment service provider.
- (4) Before the FCA publishes a draft of rules to be made under this section it must consult the Secretary of State. 30
- (5) The rules may be made only with the consent of the Secretary of State.
- (6) The Secretary of State may notify the FCA of matters that will be taken into account when deciding whether or not to give consent under subsection (5). 35
- (7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section.
- (8) The FCA must pay the Secretary of State the sums it receives under rules made under this section, apart from those paid to recover the expenses mentioned in subsection (2)(b) (which the FCA may keep). 40
- (9) Subsection (10) applies where –
- (a) the Secretary of State has notified the FCA under subsection (1) of an amount which included expenses expected to be incurred,
 - (b) the FCA has made rules to recover the amount, and paid sums received under the rules to the Secretary of State, but 45

- (c) the expenses expected to be incurred were not in fact incurred.
- (10) The Secretary of State need not arrange for the sums received under the rules to be paid back, but must, when next notifying an amount to the FCA under subsection (1), take into account the fact that the sums received included an amount representing expenses that were not in fact incurred. 5
- (11) In this section –
- “electronic money issuer” means a person who is an electronic money issuer for the purposes of the Electronic Money Regulations 2011 (S.I. 2011/99) as a result of falling within any of paragraphs (a) to (e) and (h) to (j) of the definition in regulation 2(1); 10
- “payment service provider” means a person who is a payment service provider for the purposes of the Payment Services Regulations 2009 (S.I. 2009/209) as a result of falling within any of paragraphs (a) to (f) of the definition in regulation 2(1).” 15
- (2) The requirements for the FCA to consult, before making rules under section 137SA of the Financial Services and Markets Act 2000, contained in –
- (a) section 137SA(4) of that Act, and
- (b) section 138I(1) of that Act, 20
- may be satisfied by things done before the day on which this Act is passed.
- (3) Rules under section 137SA of the Financial Services and Markets Act 2000 may impose levies with a view to recovering expenses incurred by the FCA before the day on which this Act is passed.
- Funding of debt advice in Scotland, Wales and Northern Ireland* 25

11 Levy under FSMA 2000 for debt advice expenses of devolved authorities

- (1) In the Financial Services and Markets Act 2000, after section 137SA (inserted by section 10), insert –
- “137SB Rules to recover debt advice expenses incurred by the devolved authorities** 30
- (1) The Treasury may, from time to time, notify the FCA of the amount of the 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. 35
- (2) Where the Treasury have notified the FCA of an amount of expenses under subsection (1), the FCA must make rules for imposing levies with a view to recovering –
- (a) the amount notified, and
- (b) expenses incurred by the FCA in connection with its functions under this section. 40
- (3) The rules must require the payment to the FCA of specified sums, or sums calculated in a specified way, by –
- (a) authorised persons, electronic money issuers or payment service providers, or 45

-
- (b) any specified class of authorised person, electronic money issuer or payment service provider.
- (4) Before the FCA publishes a draft of rules to be made under this section it must consult the Treasury.
- (5) The rules may be made only with the consent of the Treasury. 5
- (6) The Treasury may notify the FCA of matters that will be taken into account when deciding whether or not to give consent under subsection (5).
- (7) The FCA must have regard to any matters notified under subsection (6) before publishing a draft of rules to be made under this section. 10
- (8) The FCA must pay the Treasury the sums it receives under rules made under this section, apart from those paid to recover the expenses mentioned in subsection (2)(b) (which the FCA may keep).
- (9) Subsection (10) applies where –
- (a) the Treasury have notified the FCA under subsection (1) of an amount which included expenses expected to be incurred, 15
 - (b) the FCA has made rules to recover the amount, and paid sums received under the rules to the Treasury, but
 - (c) the expenses expected to be incurred were not in fact incurred.
- (10) The Treasury need not arrange for the sums received under the rules to be paid back, but must, when next notifying an amount to the FCA under subsection (1), take into account the fact that the sums received included an amount representing expenses that were not in fact incurred. 20
- (11) In this section – 25
- the “devolved authorities” means –
 - (a) the Scottish Ministers,
 - (b) the Welsh Ministers, and
 - (c) the Department for Communities in Northern Ireland; - “electronic money issuer” and “payment service provider” have the same meanings as in section 137SA.” 30
- (2) The requirements for the FCA to consult, before making rules under section 137SB of the Financial Services and Markets Act 2000, contained in –
- (a) section 137SB(4) of that Act, and
 - (b) section 138I(1) of that Act, 35
- may be satisfied by things done before the day on which this section comes into force.
- (3) Rules under section 137SB of the Financial Services and Markets Act 2000 may impose levies with a view to recovering expenses incurred by the FCA before the day on which this section comes into force. 40

Miscellaneous

12 Disclosure of information

- (1) The single financial guidance body may disclose information to the Secretary of State, and the Secretary of State may disclose information to the single financial guidance body, provided that the disclosure (in either case) is for the purpose of enabling or facilitating the exercise of –
 - (a) a function of the single financial guidance body, or
 - (b) a function of the Secretary of State that –
 - (i) relates directly to the single financial guidance body, or
 - (ii) is the same as, or in a similar area to, a function of the single financial guidance body.
- (2) The single financial guidance body may disclose information to a devolved authority, and a devolved authority may disclose information to the single financial guidance body, provided that the disclosure (in either case) is for the purpose of enabling or facilitating –
 - (a) the exercise of a function of the single financial guidance body, or
 - (b) the provision of information and advice on debt to members of the public in Scotland, Wales or Northern Ireland.
- (3) The single financial guidance body may disclose information to the FCA, and the FCA may disclose information to the single financial guidance body, provided that the disclosure (in either case) is for the purpose of enabling or facilitating the exercise of –
 - (a) a function of the single financial guidance body, or
 - (b) a function of the FCA that –
 - (i) relates directly to the single financial guidance body, or
 - (ii) is in a similar area to a function of the single financial guidance body.
- (4) A devolved authority may disclose information to the FCA, and the FCA may disclose information to a devolved authority, provided that the disclosure (in either case) is for the purpose of enabling or facilitating –
 - (a) the provision of information and advice on debt to members of the public in Scotland, Wales or Northern Ireland, or
 - (b) the exercise of a function of the FCA that relates to the provision of information or advice on debt.
- (5) The single financial guidance body may disclose information to an SFGB delivery partner, and an SFGB delivery partner may disclose information to the single financial guidance body, provided that the disclosure (in either case) is for the purpose of enabling or facilitating the exercise of a function that the SFGB delivery partner is carrying out on behalf of the single financial guidance body.
- (6) The single financial guidance body must disclose information –
 - (a) to the Secretary of State, where requested to do so by the Secretary of State;
 - (b) to the FCA, where the FCA requests information for the purposes of a review under section 7 (monitoring and enforcement of standards).
- (7) A disclosure of information which is authorised or required by this section does not breach –

- (a) an obligation of confidence owed by the person making the disclosure, or
 - (b) any other restriction on the disclosure of the information (however imposed).
- (8) But nothing in this section authorises the making of a disclosure which— 5
- (a) contravenes the Data Protection Act 1998, or
 - (b) is prohibited by any of Parts 1 to 7 or Chapter 1 of Part 9 of the Investigatory Powers Act 2016.
- (9) In this section, “a devolved authority” means— 10
- (a) the Scottish Ministers,
 - (b) the Welsh Ministers, or
 - (c) the Department for Communities in Northern Ireland.

13 Minor and consequential amendments

Schedule 3 contains amendments that relate to this Part.

- ### 14 Power to dissolve the single financial guidance body 15
- (1) The Secretary of State may by regulations made by statutory instrument provide for the dissolution of the single financial guidance body.
- (2) The regulations may in particular make provision about—
- (a) the transfer of the functions of the single financial guidance body to the Secretary of State or any other person; 20
 - (b) the transfer of property, rights or liabilities of the single financial guidance body to the Secretary of State or any other person;
 - (c) the creation and extinguishment of interests, rights and liabilities, in connection with provision made under paragraph (b);
 - (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. 25
- (3) The regulations—
- (a) may transfer rights and liabilities relating to employees, but
 - (b) may not affect the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246). 30
- (4) The regulations may—
- (a) amend or repeal any provision of this Part;
 - (b) make incidental, supplementary, consequential, transitional or saving provision. 35
- (5) Subsection (4)(b) includes the power to amend any provision made by or under—
- (a) an Act of Parliament,
 - (b) an Act of the Scottish Parliament,
 - (c) a Measure or Act of the National Assembly for Wales, or 40
 - (d) Northern Ireland legislation.

- (6) A statutory instrument containing regulations under this section may not be made unless a draft of the instrument has been laid before and approved by a resolution of each House of Parliament.

15 Interpretation of Part 1

- (1) In this Part— 5
- the “FCA” means the Financial Conduct Authority;
 - the “debt advice function” has the meaning given in section 2(5);
 - the “money guidance function” has the meaning given in section 2(6);
 - the “pensions guidance function” has the meaning given in section 2(4);
 - “standards” means standards set under section 6; 10
 - the “strategic function” has the meaning given in section 2(7);
 - “SFGB delivery partner” means a person with whom arrangements are made under section 4(1), (2) or (3).
- (2) In this Part, other than in section 1(7)(a) and paragraph 1(1) of Schedule 2, references to the Secretary of State are to be read as references to the Secretary of State or the Treasury. 15

PART 2

CLAIMS MANAGEMENT SERVICES

16 Transfer to FCA of regulation of claims management services

- (1) The Financial Services and Markets Act 2000 is amended as follows. 20
- (2) In section 21 (restrictions on financial promotion)—
- (a) in subsection (1)—
 - (i) the words from “to engage” to the end become paragraph (a), and
 - (ii) at the end of that paragraph insert “, or 25
(b) to engage in claims management activity.”,
 - (b) after subsection (10) insert—
 - “(10A) “Engaging in claims management activity” means entering into or offering to enter into an agreement the making or performance of which by either party constitutes a controlled claims management activity. 30
 - (10B) An activity is a “controlled claims management activity” if—
 - (a) it is an activity of a specified kind,
 - (b) it is, or relates to, claims management services, and
 - (c) it is carried on in England or Wales.”, and 35
 - (c) after subsection (12) insert—
 - “(12A) Paragraph 25 of Schedule 2 applies for the purposes of subsection (10B) with the references to section 22 in subparagraph (3) of that paragraph being read as references to subsection (10B).” 40
- (3) In section 22 (regulated activities)—

- (a) after subsection (1A) insert –
- “(1B) An activity is also a regulated activity for the purposes of this Act if it is an activity of a specified kind which –
- (a) is carried on by way of business in England or Wales, and
- (b) is, or relates to, claims management services.”, and
- (b) in subsection (3) for “subsection (1) or (1A)” substitute “subsections (1) to (1B)”.
- (4) In section 234C (complaints to the FCA by consumer bodies) –
- (a) in subsection (1), after “financial services” insert “or of a market in England and Wales for claims management services”, and
- (b) in subsection (5) –
- (i) in paragraph (a), at the end insert “(and “market in England and Wales” is to be construed accordingly)”, and
- (ii) in paragraph (b), after “financial services” insert “, or of a market in England and Wales for claims management services,”.
- (5) In section 234I (FCA’s functions under Part 4 of the Enterprise Act 2002) –
- (a) in subsection (2)(b), after “services” insert “or to the provision of claims management services in England and Wales”, and
- (b) in subsection (6)(a), after “financial services” insert “or in England and Wales of claims management services”.
- (6) In section 234J(2) (FCA’s functions under the Competition Act 1998), after “financial services” insert “or relate to the provision of claims management services in England and Wales”.
- (7) In section 234M(1) (function of keeping market under review), after “services” insert “and the market in England and Wales for claims management services”.
- (8) In section 417(1) (definitions), at the appropriate place insert –
- ““regulated claims management activity” means activity of a kind specified in an order under section 22(1B) (regulated activities: claims management services);”.
- (9) After section 419 insert –
- “419A Claims management services**
- (1) In this Act “claims management services” means advice or other services in relation to the making of a claim.
- (2) In subsection (1) “other services” includes –
- (a) financial services or assistance,
- (b) legal representation,
- (c) referring or introducing one person to another, and
- (d) making inquiries,
- but giving, or preparing to give, evidence (whether or not expert evidence) is not, by itself, a claims management service.
- (3) In this section “claim” means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or

- in respect of an obligation, whether the claim is made or could be made—
- (a) by way of legal proceedings,
 - (b) in accordance with a scheme of regulation (whether voluntary or compulsory), or
 - (c) in pursuance of a voluntary undertaking.
- (4) The Treasury may by order provide that a claim for a specified benefit is to be treated as a claim for the purposes of this section.
- (5) The Treasury may specify a benefit under subsection (4) only if it appears to the Treasury to be a social security benefit, payable under the law of any part of the United Kingdom, designed to provide compensation for industrial injury.
- 419B Carrying on claims management activity in England or Wales**
- (1) The Treasury may by order make provision as to the circumstances in which a person is, or is not, to be treated as carrying on—
- (a) a regulated claims management activity, or
 - (b) an activity of a kind specified in an order under section 21(10B), in England or Wales.
- (2) Subsections (2) to (5) of section 419 apply in relation to an order under subsection (1) as they apply in relation to an order under subsection (1) of that section, but as if the references to regulated activities in subsection (2) of that section were references to regulated claims management activities or, as the case may be, to activities of a kind specified in an order under section 21(10B).”
- (10) In section 429 (parliamentary control of statutory instruments)—
- (a) in subsection (1)(a) (orders subject to affirmative procedure), for “or 419” substitute “, 419 or 419B”,
 - (b) in subsection (4)—
 - (i) in paragraph (e), for “or (10)” substitute “, (10) or (10B)”,
 - (ii) omit the “or” at the end of paragraph (f), and
 - (iii) after paragraph (g) insert “; or
 - (h) it adds one or more activities to those that are controlled claims management activities for the purposes of section 21.”, and
 - (c) after subsection (7) insert—
 - “(7A) An order to which, if it is made, subsection (7B) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
 - (7B) This subsection applies to an order under section 419A(4) if—
 - (a) it is the first order to be made, or to contain provisions made, under that subsection; or
 - (b) it adds one or more benefits to those that are specified benefits for the purposes of section 419A.”
- (11) In Schedule 2 (regulated activities)—
- (a) in paragraph 25 (order making power), in sub-paragraph (1)—
 - (i) in the opening words for “or (1A)” substitute “to (1B)”;

-
- (ii) in paragraph (f) at the end insert “, including provision which applies (with or without modification) provision in this Act or other primary or subordinate legislation that relates to investment activity or financial services to a regulated activity that does not relate to investment activity or financial services.”, and 5
- (b) in paragraph 26 (parliamentary control), in sub-paragraph (1) for “or (1A)” substitute “to (1B)”.
- (12) Schedule 4 contains provision about transfer schemes where an order is made under section 22(1B) of the Financial Services and Markets Act 2000 (inserted by subsection (3)(a)). 10
- (13) Schedule 5 contains transitional provision relating to this section.
- 17 Power of FCA to make rules restricting charges for claims management services**
- (1) The Financial Services and Markets Act 2000 is amended as set out in subsections (2) and (3). 15
- (2) After section 137FBB insert –
- “137FC FCA general rules: charges for claims management services**
- (1) The power of the FCA to make general rules includes power to make rules prohibiting authorised persons from – 20
- (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 25
- (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) The FCA 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. 30
- (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. 35
- (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. 40
- (5) In relation to an agreement entered into, or charge imposed, in contravention of the rules, the rules may (amongst other things) –
- (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; 45

- (c) provide for the payment of compensation for any losses incurred as a result of paying amounts under the agreement or obligation.
- (6) The provision that may be made under subsection (5) includes provision corresponding to that made by section 30 (enforceability of agreements resulting from unlawful communications). 5
- (7) In this section –
 - (a) “regulated claims management agreement” means an agreement, the entering into or performing of which by either party is a regulated claims management activity, and 10
 - (b) “specified” means specified in the rules, but “specified amount” means an amount specified in or determined in accordance with the rules.”
- (3) In section 138E(3) (contravention of rules which may make transaction void or unenforceable) – 15
 - (a) omit the “or” at the end of paragraph (b), and
 - (b) at the end of paragraph (c) insert “or
 - (d) rules made by the FCA under section 137FC.”

PART 3

GENERAL 20

18 Extent

- (1) This Act, other than the provisions mentioned in subsections (2) to (4), extends to England and Wales, Scotland and Northern Ireland.
- (2) In section 9 –
 - (a) subsections (1) and (3) extend to England and Wales and Scotland; 25
 - (b) subsections (2) and (4) extend to Northern Ireland.
- (3) Part 2 extends to England and Wales.
- (4) Paragraph 25 of Schedule 3 extends to England and Wales and Scotland.

19 Commencement

- (1) The following provisions come into force on the day this Act is passed – 30
 - (a) section 8(1) and (3);
 - (b) section 9;
 - (c) section 10;
 - (d) the following paragraphs of Schedule 3 (and section 13 so far as it relates to those paragraphs) – 35
 - (i) paragraph 5,
 - (ii) paragraph 14(a),
 - (iii) paragraph 15(1), (2)(a) and (3)(a), and
 - (iv) paragraph 22(1), (5)(a)(i) and 22(5)(b)(iii);
 - (e) section 16(13) and Schedule 5; 40
 - (f) this Part.

- (2) The other provisions of this Act come into force on a day appointed by regulations.
- (3) Regulations may make transitional, transitory and saving provision in connection with the coming into force of any provision of Part 1 or 2.
- (4) Regulations under subsection (2) or (3) may make— 5
 - (a) incidental and supplementary provision, and
 - (b) different provision for different purposes.
- (5) Regulations under subsection (2) or (3) are to be made by statutory instrument by— 10
 - (a) the Secretary of State, in relation to any provision of Part 1, other than section 11;
 - (b) the Treasury, in relation to section 11 and any provision of Part 2.

20 Short title

This Act may be cited as the Financial Guidance and Claims Act 2017.

SCHEDULES

SCHEDULE 1

Section 1

THE SINGLE FINANCIAL GUIDANCE BODY

Status

- 1 (1) The single financial guidance body is not to be regarded – 5
- (a) as a servant or agent of the Crown, or
 - (b) as enjoying any status, immunity or privilege of the Crown.
- (2) The members and employees of the single financial guidance body are not to be regarded as Crown servants.

Members: general 10

- 2 (1) The single financial guidance body is to consist of –
- (a) a chair (who is to be a non-executive member of the body) appointed by the Secretary of State,
 - (b) other non-executive members appointed by the Secretary of State, and 15
 - (c) executive members, appointed in accordance with paragraph 6.
- (2) The Secretary of State and the non-executive members must ensure, so far as practicable, that the number of non-executive members is at all times greater than the number of executive members.

Non-executive members: tenure 20

- 3 (1) The non-executive members hold and vacate office in accordance with the terms of their appointment (subject to this Schedule).
- (2) A non-executive member may resign by notice in writing to the Secretary of State.
- (3) The Secretary of State may remove a non-executive member from office by notice if the Secretary of State is satisfied that the member – 25
- (a) has a conflict of interest (see paragraph 4),
 - (b) has at any time been the subject of a bankruptcy order or has had his or her estate sequestrated,
 - (c) has at any time made a composition or arrangement with, or granted a trust deed for, his or her creditors, 30
 - (d) has at any time been convicted of any offence involving dishonesty or deception,
 - (e) is unfit for office by reason of misconduct,
 - (f) has failed to comply with the terms of his or her appointment, 35

- (g) has without reasonable excuse failed to discharge the functions of his or her office, or
- (h) is otherwise incapable of discharging, or unfit or unwilling to discharge, the functions of his or her office.

Non-executive members: conflicts of interest 5

- 4 (1) Before appointing a person to be a non-executive member, the Secretary of State must be satisfied that the person does not have a conflict of interest.
- (2) A non-executive member, or a person the Secretary of State proposes to appoint as a non-executive member, must provide the Secretary of State with such information as the Secretary of State requires from the person in order to determine whether the person has a conflict of interest (whether for the purposes of sub-paragraph (1) or paragraph 3(3)(a)). 10
- (3) In this Schedule, “conflict of interest”, in relation to a person, means a financial or other interest which is likely to affect prejudicially the discharge by the person of his or her functions as a member or employee of the single financial guidance body, or as a member of a committee or sub-committee of the single financial guidance body. 15

Non-executive members: remuneration etc

- 5 (1) The single financial guidance body may – 20
- (a) pay to the non-executive members such remuneration, and
 - (b) pay to or in respect of the non-executive members such sums by way of or in respect of allowances and gratuities,
- as the Secretary of State may determine.
- (2) Where – 25
- (a) a person whose term of office as a non-executive member has not expired ceases to hold that office, and
 - (b) the Secretary of State thinks there are special circumstances that make it right for the person to receive compensation,
- the single financial guidance body may make a payment to the person of such amount as the Secretary of State may determine. 30

Executive members: appointment

- 6 (1) Before the date on which the single financial guidance body first starts to provide services to members of the public, the Secretary of State must appoint – 35
- (a) a person to be the chief executive of the single financial guidance body, and
 - (b) other persons to be the executive members of the body.
- (2) Appointments of executive members (including the chief executive) made on or after the date on which the single financial guidance body first starts to provide services to members of the public are to be made by the single financial guidance body, with the approval of the Secretary of State. 40

Executive members: terms and conditions

- 7 (1) The executive members are to be employees of the single financial guidance body.
- (2) Executive members appointed under paragraph 6(1) are to be employed by the single financial guidance body on such terms and conditions, including those as to remuneration, as the Secretary of State may determine. 5
- (3) Executive members appointed under paragraph 6(2) are to be employed by the single financial guidance body on such terms and conditions, including those as to remuneration, as the body may determine, with the approval of the Secretary of State. 10
- (4) The single financial guidance body must—
- (a) pay to or in respect of the executive members such pensions, allowances and gratuities, or
 - (b) provide and maintain for them such pension schemes (whether contributory or not), 15
- as the body may determine, with the approval of the Secretary of State.

Other staff: appointment, terms and conditions

- 8 The single financial guidance body may appoint other employees on such terms and conditions, including those as to remuneration and pension arrangements, as the single financial guidance body may determine. 20

Committees

- 9 (1) The single financial guidance body may—
- (a) establish a committee for the purpose of discharging any of its functions, and
 - (b) establish a committee for the purpose of giving advice to the body about matters relating to the discharge of its functions. 25
- (2) A committee may consist of or include persons who are neither members nor employees of the single financial guidance body.
- (3) But a committee that discharges any functions of the single financial guidance body, by virtue of sub-paragraph (1)(a) or paragraph 10, must include at least one person who is either a member or an employee of the single financial guidance body. 30
- (4) Where a person who is neither a member nor an employee of the single financial guidance body is a member of a committee, the body may pay to that person such remuneration and expenses as it may determine. 35
- (5) A committee may establish a sub-committee.
- (6) A sub-committee must include at least one person who is a member of the committee that established it.
- (7) A sub-committee that discharges any functions of the single financial guidance body must include at least one person who is either a member or an employee of the single financial guidance body. 40

Delegation

- 10 (1) The single financial guidance body may delegate any function conferred on it to –
- (a) a committee,
 - (b) a member, or
 - (c) an employee.
- (2) A committee may delegate any function conferred on it to –
- (a) a sub-committee,
 - (b) a member of the committee,
 - (c) a member of the single financial guidance body, or
 - (d) an employee of the single financial guidance body.

Procedure etc

- 11 (1) The single financial guidance body may regulate its own procedures (including quorum) and the procedures of its committees and sub-committees.
- (2) The single financial guidance body’s procedures must include arrangements for dealing with conflicts of interests of members, employees and members of committees and sub-committees, which must oblige a person who has or may have a conflict of interest –
- (a) to declare any financial or other personal interest relevant to the exercise of a function, and
 - (b) to withdraw from the exercise of the function, unless the single financial guidance body directs otherwise, being satisfied that the interest will not influence the exercise of the function.
- For the meaning of “conflict of interest” in this Schedule, see paragraph 4(3).
- (3) The single financial guidance body must publish details of its procedures and the procedures of its committees and sub-committees.
- (4) The single financial guidance body must make arrangements for the keeping of proper records –
- (a) of its proceedings,
 - (b) of the proceedings of its committees and sub-committees,
 - (c) of anything done by a person to whom functions have been delegated (see paragraph 10).

Validity of acts

- 12 A defect in appointment does not affect the validity of things done by a member of the single financial guidance body.

Authentication of seal

- 13 (1) The application of the single financial guidance body’s seal must be authenticated by the signature of –
- (a) a member of the single financial guidance body, or
 - (b) some other person who has been authorised by the single financial guidance body for that purpose (whether generally or specifically).

- (2) A document appearing to be duly sealed or signed on behalf of the single financial guidance body is to be received in evidence and, unless the contrary is proved, is to be taken to be duly signed or sealed.
- (3) This paragraph does not apply to Scotland.

Reports and accounts

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- 14 (1) As soon as reasonably practicable after the end of each financial year, the single financial guidance body must send to the Secretary of State a report on the exercise of the single financial guidance body’s functions during that year.
- (2) The report must include – 10
 - (a) a report on the proceedings of the single financial guidance body during the year, and
 - (b) such other information as the Secretary of State may direct.
- (3) On receiving the report, the Secretary of State must lay it before Parliament.
- (4) The single financial guidance body must – 15
 - (a) keep proper accounting records, and
 - (b) prepare a statement of accounts in respect of each financial year.
- (5) The statement must be in such form as the Secretary of State may direct.
- (6) The single financial guidance body must send a copy of the statement of accounts to – 20
 - (a) the Secretary of State, and
 - (b) the Comptroller and Auditor General,within the time period directed by the Secretary of State.
- (7) The Comptroller and Auditor General must – 25
 - (a) examine, certify and report on the statement of accounts, and
 - (b) send a copy of the report to the Secretary of State.
- (8) The Secretary of State must lay before Parliament the statement of accounts and the report of the Comptroller and Auditor General.
- (9) In this paragraph, “financial year” means – 30
 - (a) the period beginning with the day on which this Schedule comes into force and ending with the following 31st March, and
 - (b) every subsequent period of 12 months ending with 31st March.

SCHEDULE 2

Section 1

TRANSFER SCHEMES UNDER SECTION 1

Power to make transfer schemes

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- 1 (1) The Secretary of State may make one or more schemes providing for the transfer of designated property, rights and liabilities of the Secretary of State and the Pensions Advisory Service Limited to the single financial guidance body.

- (2) The Secretary of State may make one or more schemes providing for the transfer of designated property, rights and liabilities of the consumer financial education body to the single financial guidance body.
- (3) The rights and liabilities that may be transferred by a scheme include rights and liabilities under a contract of employment. 5
- (4) For that purpose –
- (a) an individual who holds employment in the civil service of the State is to be treated as employed by virtue of a contract of employment; and
 - (b) the terms on which the individual holds that employment are to be regarded as constituting the terms of that contract. 10
- (5) In this Schedule –
- “designated” means specified in, or determined in accordance with, the scheme;
 - “property” includes interests of any description. 15

Contents of a scheme

- 2 (1) A scheme under this Schedule may, in particular, make provision –
- (a) for anything done by or in relation to the transferor in connection with any property, rights or liabilities transferred by the scheme to be treated as done, or to be continued, by or in relation to the transferee; 20
 - (b) for references (however expressed) to the transferor in any agreement, instrument or other document relating to property, rights or liabilities transferred by the scheme to be treated as references to the transferee; 25
 - (c) about the continuation of legal proceedings;
 - (d) for transferring property, rights or liabilities which could not otherwise be transferred or assigned;
 - (e) for transferring property, rights or liabilities irrespective of any requirement for consent which would otherwise apply; 30
 - (f) for preventing a right of pre-emption, right of reverter, right of forfeiture, right to compensation or other similar right from arising or becoming exercisable as a result of the transfer of property, rights or liabilities;
 - (g) for dispensing with any formality in relation to the transfer of property, rights or liabilities by the scheme; 35
 - (h) for transferring property acquired, or rights or liabilities arising, after the scheme is made but before it takes effect;
 - (i) for apportioning property, rights or liabilities;
 - (j) for creating rights, or imposing liabilities, in connection with property, rights or liabilities transferred by the scheme; 40
 - (k) for requiring the transferee to enter into any agreement of any kind, or for a purpose, specified in or determined in accordance with the scheme;
 - (l) that is the same as or similar to provision made by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), if those Regulations do not apply to the transfer. 45
- (2) Sub-paragraph (1)(b) does not apply to references in any of the following –

- (a) an Act of Parliament;
 - (b) an Act of the Scottish Parliament;
 - (c) an Act or Measure of the National Assembly for Wales;
 - (d) Northern Ireland legislation;
 - (e) subordinate legislation within the meaning of the Interpretation Act 1978 (see section 21(1) of that Act);
 - (f) an instrument made under legislation of the kind mentioned in paragraph (b), (c) or (d).
- (3) In sub-paragraph (1)(b), “agreement” includes an agreement that is not in writing. 10

Modifications to a scheme

- 3 (1) The Secretary of State may modify a scheme made under this Schedule; but a modification relating to a transfer that has taken effect may be made only with the agreement of the person (or persons) affected by the modification.
- (2) A modification takes effect from such date as the Secretary of State may specify (which may be the date when the original scheme came into effect). 15

Supplementary

- 4 A scheme may –
- (a) contain incidental, supplementary and consequential provisions;
 - (b) make transitory or transitional provision or savings;
 - (c) make different provision for different purposes;
 - (d) make provision subject to exceptions.
- 20

SCHEDULE 3

Section 13

MINOR AND CONSEQUENTIAL AMENDMENTS RELATING TO PART 1

Public Records Act 1958 (c. 51) 25

- 1 In Schedule 1 to the Public Records Act 1958 (definition of public records), in paragraph 3, in Part 2 of the Table, at the appropriate place insert –
“The single financial guidance body.”

Parliamentary Commissioner Act 1967 (c. 13)

- 2 In Schedule 2 to the Parliamentary Commissioner Act 1967 (departments etc subject to investigation), at the appropriate place insert –
“The single financial guidance body.” 30

House of Commons Disqualification Act 1975 (c. 24)

- 3 In Part 2 of Schedule 1 to the House of Commons Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert –
“The single financial guidance body.” 35

Northern Ireland Assembly Disqualification Act 1975 (c. 25)

- 4 In Part 2 of Schedule 1 to the Northern Ireland Assembly Disqualification Act 1975 (bodies of which all members are disqualified), at the appropriate place insert –
- “The single financial guidance body.” 5

Financial Services and Markets Act 2000 (c. 8)

- 5 The Financial Services and Markets Act 2000 is amended as follows.
- 6 In section 1A(6) (functions of the FCA), after paragraph (c) insert –
- “(cza) the Financial Guidance and Claims Act 2017;”.
- 7 In section 1B (FCA’s general duties), omit subsection (7A). 10
- 8 In section 1C (the consumer protection objective), in subsection (2), omit paragraph (g).
- 9 In section 1M (FCA’s general duty to consult), omit the words “and its duties under section 333O”.
- 10 In section 1S (reviews), in subsection (3) omit the words “or its duties under section 333O(1) and (2)(a)”. 15
- 11 In section 3R (arrangements for provision of services), in subsection (4), for paragraph (a) substitute –
- “(a) the single financial guidance body (see Part 1 of the Financial Guidance and Claims Act 2017);”.
- 20
- 12 Omit section 3S (the consumer financial education body).
- 13 In section 137FB (FCA general rules: disclosure of information about the availability of pensions guidance), in subsection (4), for the definition of “pensions guidance” substitute –
- ““pensions guidance” means information or guidance provided by any person in pursuance of the single financial guidance body’s pensions guidance function (see section 2 of the Financial Guidance and Claims Act 2017);”.
- 25
- 14 In section 138F (notification of rules), in subsection (2) (exceptions to notification) – 30
- (a) after “, 137FBA” insert “, 137SA”;
- (b) after “, 137SA” insert “, 137SB”;
- (c) omit “, 333Q, 333R”.
- 15 (1) Section 138I (consultation on rules by FCA) is amended as follows.
- (2) In subsection (6) (exception to requirement to carry out cost benefit analysis) – 35
- (a) after paragraph (ab) insert –
- “(ac) section 137SA;”;
- (b) after paragraph (ac) insert –
- “(ad) section 137SB;”;
- (c) omit paragraphs (ca), (cb) and (e). 40

- (3) In subsection (10) (exception to requirement to consult PRA before making rules) –
- (a) after “137FBA” insert “, 137SA”;
 - (b) after “, 137SA” insert “, 137SB”;
 - (c) omit “, 333Q, 333R”. 5
- 16 In section 138J (consultation on rules by PRA), in subsection (6), omit paragraph (e).
- 17 In section 139A (power of FCA to give guidance), omit subsection (1A).
- 18 In section 140A (competition scrutiny: interpretation), in subsection (1), in paragraph (a) of the definition of “regulating provisions” – 10
- (a) in sub-paragraph (ii), omit “or 333P(9)”;
 - (b) omit sub-paragraphs (v) and (vi).
- 19 In section 168 (appointment of persons to carry out investigations), in subsection (2)(a), omit “or 333G”.
- 20 Omit Part 20A (sections 333A to 333R; pensions guidance). 15
- 21 In section 429 (Parliamentary control of statutory instruments), in subsection (2), omit “, 333C, 333R”.
- 22 (1) Schedule 1ZA (the Financial Conduct Authority) is amended as follows.
- (2) In paragraph 8 (arrangements for discharging functions) –
- (a) in sub-paragraph (3) – 20
 - (i) in paragraph (c)(i), for “, 312J or 333K” substitute “or 312J”;
 - (ii) omit paragraph (e);
 - (b) after sub-paragraph (3), insert –
 - “(3A) In exercising its functions under sections 6(2) and 7 of the Financial Guidance and Claims Act 2017 (approving and reviewing standards set by single financial guidance body), the FCA must act through its governing body.”; 25
 - (c) in sub-paragraph (4), omit “or 333P(9)”.
- (3) In paragraph 11 (annual report), in sub-paragraph (1) –
- (a) omit paragraph (hb); 30
 - (b) omit the “and” at the end of paragraph (i), and after that paragraph insert –
 - “(ia) how, in its opinion, it has complied with its duties under sections 6(2) and 7 of the Financial Guidance and Claims Act 2017, and”; 35
- (4) In paragraph 21 (financial penalty scheme), in sub-paragraph (2) –
- (a) at the end of paragraph (c) insert “and”;
 - (b) omit paragraph (e) (and the word “and” immediately preceding it).
- (5) In paragraph 23 (fees) –
- (a) in sub-paragraph (1) – 40
 - (i) after “sections” insert “137SA,”;
 - (ii) after “137SA” insert “, 137SB”;
 - (iii) omit “, 333Q, 333R”;
 - (b) in sub-paragraph (2ZA) –

	(i) omit paragraph (a) (and the word “and” immediately following it);	
	(ii) in paragraph (b), for “sections 333R and 333T” substitute “section 333T”;	
	(iii) after paragraph (b), insert “, and “ (c) its functions under section 137SA.”;	5
	(iv) in paragraph (c) (inserted by sub-paragraph (iii)), for “section 137SA” substitute “sections 137SA and 137SB”.	
23	Omit Schedule 1A (further provision about the consumer financial education body).	10
<i>Freedom of Information Act 2000 (c. 36)</i>		
24	In Part 6 of Schedule 1 to the Freedom of Information Act 2000 (public authorities: general), at the appropriate place insert – “The single financial guidance body.”	
<i>Equality Act 2010 (c. 15)</i>		
25	In Part 1 of Schedule 19 to the Equality Act 2010 (public authorities: general), under the heading “Industry, business, finance etc”, at the appropriate place insert – “The single financial guidance body.”	15
<i>Financial Services Act 2010 (c. 28)</i>		
26	The Financial Services Act 2010 is amended as follows.	
27	In section 2 (enhancing public understanding of financial matters etc), omit subsections (1) and (6).	
28	Omit Schedule 1 (further provision about the consumer financial education body).	25
<i>Financial Services Act 2012 (c. 21)</i>		
29	The Financial Services Act 2012 is amended as follows.	
30	Omit section 45 and Schedule 15 (the consumer financial education body).	
31	In section 85 (relevant functions in relation to complaints scheme) –	
	(a) in subsection (2)(a), after “legislative functions” insert “and its standards review functions”;	30
	(b) in subsection (4) –	
	(i) in paragraph (c)(i), for “, 312J or 333K” substitute “or 312J”;	
	(ii) in paragraph (e), omit “or 333P(9)”;	
	(iii) omit paragraph (f).	35
	(c) After subsection (4) insert –	
	“(4A) For the purposes of subsection (2)(a), the FCA’s standards review functions are the FCA’s functions under sections 6(2) and 7 of the Financial Guidance and Claims Act 2017 (approving and reviewing standards set by single financial guidance body).”	40

Pension Schemes Act 2015 (c. 8)

- 32 In Schedule 3 to the Pension Schemes Act 2015 (pensions guidance), omit paragraphs 2 to 5, 8(b), 9 to 11, 13 to 15 and 17.

Bank of England and Financial Services Act 2016 (c. 14)

- 33 In the Bank of England and Financial Services Act 2016, omit section 32 (amendments to section 333A of FSMA; pensions guidance). 5

SCHEDULE 4

Section 16

REGULATION OF CLAIMS MANAGEMENT SERVICES: TRANSFER SCHEMES

PART 1

APPLICATION AND INTERPRETATION 10

- 1 This Schedule applies if the Treasury make an order under section 22(1B) of the Financial Services and Markets Act 2000 which has the effect that an activity –
- (a) becomes a regulated activity for the purposes of that Act, and
 - (b) ceases to be a regulated service under Part 2 of the Compensation Act 2006 (see section 4(2)(e) of that Act). 15
- 2 In this Schedule –
- “the FCA” means the Financial Conduct Authority;
 - “the FOS” means the body corporate which administers the ombudsman scheme provided for in Part 16 of the Financial Services and Markets Act 2000 (see section 225 of that Act); 20
 - “the OLC” means the Office for Legal Complaints established by section 114 of the Legal Services Act 2007;
 - “the Regulator” means the person designated under section 5(1) of the Compensation Act 2006 or, if no person is so designated, the Secretary of State. 25

PART 2

TRANSFER OF PROPERTY AND STAFF FROM THE REGULATOR TO THE FCA

Power of Secretary of State to make transfer schemes

- 3 The Secretary of State may, with the consent of the FCA, make one or more schemes for the transfer of property, rights and liabilities of the Regulator to the FCA. 30

Transfer of property, rights and liabilities

- 4 The following provisions of this Part of this Schedule apply in relation to schemes under paragraph 3 (“transfer schemes”). 35

- | | | |
|---|---|----|
| 5 | The property, rights and liabilities which are the subject of a transfer scheme are transferred in accordance with the provisions of the scheme on such day as the scheme may specify. | |
| 6 | The property, rights and liabilities that may be the subject of a transfer scheme include – | 5 |
| | <ul style="list-style-type: none"> (a) any that would not otherwise be capable of being transferred or assigned, (b) rights and liabilities under a contract of employment, and (c) amounts in respect of fees paid under the Compensation (Claims Management Services) Regulations 2006 (S.I. 2006/3322). | 10 |
| 7 | For the purpose of paragraph 6(b) – | |
| | <ul style="list-style-type: none"> (a) an individual who holds employment in the civil service of the State is to be treated as employed by virtue of a contract of employment, and (b) the terms on which the individual holds that employment are to be regarded as constituting the terms of that contract. | 15 |

Contents of a transfer scheme

- | | | |
|---|--|----------------|
| 8 | (1) A transfer scheme may – | |
| | <ul style="list-style-type: none"> (a) provide for anything done before the transfer by or in relation to the Regulator in connection with any property, rights or liabilities transferred by the scheme to be treated as having been done by or in relation to the FCA; (b) contain provision for the payment by the FCA of compensation to the Regulator for costs incurred (before or after the transfer) in connection with the transfer or the exercise of functions in relation to the regulation of claims management services; (c) contain provision for the payment of compensation by the FCA to any person whose interests are adversely affected by the transfer scheme; (d) make provision that is the same as or similar to provision made by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), if those Regulations do not apply to the transfer. | 20
25
30 |
| | (2) An obligation of the FCA to make a compensation payment or to meet a liability transferred under provision in a transfer scheme is to be treated for the purposes of paragraph 23 of Schedule 1ZA to the Financial Services and Markets Act 2000 (fees) as a qualifying function conferred on the FCA under that Act. | 35 |

Supplementary

- | | | |
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| 9 | A transfer scheme may – | |
| | <ul style="list-style-type: none"> (a) contain supplementary, incidental and consequential provision; (b) make transitory or transitional provision or savings; (c) make different provision for different purposes; (d) make provision subject to exceptions. | 40 |

Modification of a transfer scheme

- 10 Subject to paragraph 11, the Secretary of State may, with the consent of the FCA, modify a transfer scheme.
- 11 A modification relating to a transfer that has taken effect may be made only with the agreement of the person (or persons) affected by the modification. 5
- 12 A modification takes effect from such date as the Secretary of State may specify, and that date may be the date when the original scheme came into effect.

PART 3

TRANSFER OF PROPERTY AND STAFF FROM THE OLC TO THE FOS 10

Power of OLC to make transfer schemes

- 13 The OLC may make one or more schemes for the transfer of property, rights and liabilities of the OLC to the FOS.
- 14 A scheme made under paragraph 13 is not to be capable of coming into force unless it is approved by the Treasury and the Lord Chancellor. 15
- 15 The OLC may not submit a scheme to the Treasury or the Lord Chancellor for approval under paragraph 14 without the consent of the FOS and the FCA.

Power of Lord Chancellor to make transfer schemes

- 16 Paragraph 17 applies if the OLC fails to make a scheme under paragraph 13 in circumstances where the Lord Chancellor considers that it is necessary for such a scheme to be made. 20
- 17 The Lord Chancellor may, with the approval of the Treasury, the OLC, the FOS and the FCA, make a scheme for the transfer of property, rights and liabilities of the OLC to the FOS. 25

Provision of information and assistance by OLC

- 18 The OLC must provide the Treasury and the Lord Chancellor with all such information and other assistance as either of them may reasonably require for the purposes of, or otherwise in connection with, the exercise of their powers under this Part of this Schedule. 30
- 19 Paragraph 18 is subject to any express restriction on disclosure imposed by the Data Protection Act 1998 (ignoring any restriction which allows disclosure if authorised by an enactment).

Transfer of property, rights and liabilities

- 20 The following provisions of this Part of this Schedule apply in relation to schemes under paragraph 13 or 17 (“transfer schemes”). 35
- 21 The property, rights and liabilities which are the subject of a transfer scheme are transferred in accordance with the provisions of the scheme on such day as the scheme may specify.

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| 22 | The property, rights and liabilities that may be the subject of a transfer scheme include— | |
| | (a) any that would not otherwise be capable of being transferred or assigned, and | |
| | (b) rights and liabilities under a contract of employment. | 5 |

Contents of a transfer scheme

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| 23 | (1) A transfer scheme may— | |
| | (a) provide for anything done before the transfer by or in relation to the OLC in connection with any property, rights or liabilities transferred by the scheme to be treated as having been done by or in relation to the FOS; | 10 |
| | (b) contain provision for the payment by the FOS of compensation to the OLC or the Regulator for costs incurred (before or after the transfer) in connection with the transfer or the exercise of functions in relation to claims management services; | 15 |
| | (c) contain provision for the payment of compensation by the FOS to any person whose interests are adversely affected by the transfer scheme; | |
| | (d) make provision that is the same as or similar to provision made by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (S.I. 2006/246), if those Regulations do not apply to the transfer. | 20 |
| | (2) An obligation of the FOS to make a compensation payment or to meet a liability transferred under provision in a transfer scheme is to be treated for the purposes of section 234 of the Financial Services and Markets Act 2000 (industry funding) as a cost of its operation in relation to the compulsory jurisdiction. | 25 |

Supplementary

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| 24 | A transfer scheme may— | |
| | (a) contain supplementary, incidental and consequential provision; | 30 |
| | (b) make transitory or transitional provision or savings; | |
| | (c) make different provision for different purposes; | |
| | (d) make provision subject to exceptions. | |

Modification of a transfer scheme

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| 25 | Subject to paragraphs 26 to 28, the OLC may modify a transfer scheme. | 35 |
| 26 | A modification relating to a transfer that has taken effect may be made only with the agreement of the person (or persons) affected by the modification. | |
| 27 | A modification is not to be capable of coming into effect unless it is approved by the Treasury and the Lord Chancellor. | |
| 28 | The OLC may not submit a scheme to the Treasury or the Lord Chancellor for approval under paragraph 27 without the consent of the FOS and the FCA. | 40 |
| 29 | A modification takes effect from such date as the OLC may specify, and that date may be the date when the original scheme came into effect. | |

SCHEDULE 5

Section 16

REGULATION OF CLAIMS MANAGEMENT SERVICES: TRANSITIONAL PROVISION

FCA information gathering powers

- 1 Part 11 of the Financial Services and Markets Act 2000 (information gathering and investigations) has effect as if – 5
- (a) to the extent that they relate to a notice or authorisation of the FCA, the references in section 165(1), (3) and (7)(a) to an authorised person include a reference to any person who is or at any time was authorised under section 5(1)(a) of the Compensation Act 2006 (provision of regulated claims management services), 10
 - (b) the reference in section 165(4)(a) to the exercise by either regulator of functions conferred on it under the Financial Services and Markets Act 2000 includes a reference to the steps taken, or to be taken, by the FCA in preparation for the conferral of functions on it by virtue of the making of an order under section 22(1B) of that Act (“a regulated claims management activity order”), and 15
 - (c) the reference in section 166(2)(a) to an authorised person includes a reference to a person who is authorised under section 5(1)(a) of the Compensation Act 2006.

FCA preparatory steps 20

- 2 The FCA may, before the making of a regulated claims management activity order, take such steps as the FCA considers necessary or expedient in preparation for the conferral of functions on it as a result of the making of the order.

Consultation requirements 25

- 3 Paragraphs 4 and 5 apply in connection with the making or issuing of any rules or other instrument or document relating to an activity –
- (a) of a kind specified in a regulated claims management activity order, or
 - (b) of a kind specified in an order under section 21(10B) of the Financial Services and Markets Act 2000. 30
- 4 Any requirement imposed on the FCA –
- (a) to publish a draft of the rules or other instrument or document and invite representations about it, or
 - (b) to consult particular persons, 35
- may be satisfied by things done by the FCA before the coming into effect of the order or the passing of this Act.
- 5 Section 138I of the Financial Services and Markets Act 2000 (consultation by the FCA) does not apply in relation to rules which make provision similar to any provision in or made under Part 2 of the Compensation Act 2006. 40

Designation of Regulator’s rules

- 6 After the making of a regulated claims management activity order, rules which –

	(a) were made by the Regulator by virtue of provision in or under Part 2 of the Compensation Act 2006, and	
	(b) are designated by the FCA,	
	are to be treated as having been made by the FCA by virtue of comparable provision in the Financial Services and Markets Act 2000.	5
7	The rules may be modified by the FCA.	
<i>Provision of information by Regulator and OLC</i>		
8	The Regulator may disclose to the FCA or the FOS any information which the Regulator considers that it is necessary or expedient to disclose to the FCA or, as the case may be, the FOS so that the FCA or the FOS can take steps in preparation for the conferral of functions on it as a result of the making of a regulated claims management activity order.	10
9	Section 244 of the Enterprise Act 2002 (considerations relevant to disclosure of information) does not apply in relation to a disclosure under paragraph 8.	
10	The OLC may disclose to the FOS or the FCA any information which the OLC considers that it is necessary or expedient to disclose to the FOS or, as the case may be, the FCA so that the FOS or the FCA can take steps in preparation for the conferral of functions on it as a result of the making of a regulated claims management activity order.	15
<i>Complaints handling</i>		
11	Where a regulated claims management activity order is made which requires the OLC to continue to deal with complaints made to it on or before a date or event identified in the order –	
	(a) the FCA is to reimburse the OLC for the cost it incurs in doing so, and	
	(b) this reimbursement obligation is to be treated for the purposes of paragraph 23 of Schedule 1ZA to the Financial Services and Markets Act 2000 (fees) as a qualifying function conferred on the FCA under that Act.	25
<i>Interpretation</i>		
12	In this Schedule –	30
	“the FCA” means the Financial Conduct Authority;	
	“the FOS” means the body corporate which administers the ombudsman scheme provided for in Part 16 of the Financial Services and Markets Act 2000 (see section 225 of that Act);	
	“the OLC” means the Office for Legal Complaints established by section 114 of the Legal Services Act 2007;	35
	“the Regulator” means the person designated under section 5(1) of the Compensation Act 2006 or, if no person is so designated, the Secretary of State;	
	“regulated claims management activity order” has the meaning given in paragraph 1(b).	40

Financial Guidance and Claims Bill [HL]

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B I L L

To make provision establishing a new financial guidance body; to make provision about the funding of debt advice in Scotland, Wales and Northern Ireland; and to make provision about the regulation of claims management services.

Baroness Buscombe

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