

FINANCIAL GUIDANCE AND CLAIMS BILL [HL]

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Financial Guidance and Claims Bill [HL] as introduced in the House of Lords on 22 June 2017 (HL Bill 1).

- These Explanatory Notes have been prepared by the Department for Work and Pensions and HM Treasury in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The Bill's focus is on ensuring members of the public are able to access free and impartial money guidance, pensions guidance and debt advice. It also ensures that they are able to access high-quality claims handling services by strengthening the regulation of claims management companies.
- 2 To enable this the Bill provides in two areas:
 - Creation of a Single Financial Guidance Body
 - Transfer of claims management regulation from the Claims Management Regulation Unit of the Ministry of Justice to the Financial Conduct Authority.

Policy background

Single Financial Guidance Body

- 3 The Financial Guidance & Claims Bill builds on a Government commitment to ensure that members of the public can access good-quality, free-to-client, impartial financial guidance and debt advice. These services are currently provided by a number of different organisations, including financial services firms, and the utilities and charity sectors.
- 4 Government-sponsored pensions guidance, money guidance and debt advice is currently provided by the Money Advice Service, the Pensions Advisory Service, and the Department for Work and Pensions under the 'Pension Wise' banner.
- 5 In October 2015 the Government launched a review of public financial guidance provision in the United Kingdom. The review, *Public financial guidance consultation*¹, sought views on how publicly funded pensions guidance, debt advice and money guidance (including financial capability) could best be structured to help people make effective financial decisions.
- 6 In March 2016 the Government set out proposals to replace the Money Advice Service with a new, streamlined money guidance body, and to bring together the Pensions Advisory Service and 'Pension Wise' into a new pensions guidance body (*Public financial guidance review: proposal for consultation*²). Whilst stakeholders were generally supportive of the Government's aims, concerns were raised over how the two bodies would work together, and whether a single body could provide a better, more streamlined service.
- 7 In October 2016, the Government took the decision to create one single financial body instead of two, and in December 2016 HM Treasury and the Department for Work and Pensions published a further consultation, *Public financial guidance review: consultation on a single body*³, setting out proposals for a single financial guidance body that could provide more joined up debt advice, money guidance and pensions guidance, support the development of a national strategy to improve financial capability and debt management, and co-ordinate the provision of financial education to children and young people. This consultation closed in February 2017.

¹ [Consultation: public financial guidance - GOV.UK](#)

² [Public financial guidance review: proposal for consultation - GOV.UK](#)

³ [Public financial guidance review: consultation on a single body - GOV.UK](#)

Claims Management Services

- 8 Claims management companies are businesses which provide advice and / or other services in relation to the making of compensation claims for personal injuries, financial products and services, employment issues, industrial and criminal injuries and housing disrepair. There are currently around 1,400 authorised claims management companies in operation.
- 9 The Claims Management Regulation Unit was established in the Ministry of Justice in April 2007, and regulates claims management companies active in England and Wales. This was intended to be an interim measure.
- 10 However, there is evidence of malpractice in the sector and a number of complaints have been leveled at claims management companies. Common complaints included poor value for money, misrepresentation of the service offered to consumers, and reliance on nuisance tactics, such as unsolicited calls and texts. As a result, consumers have become distrustful of claims management companies, with 76% of the public having reported that they are not confident that the companies tell the truth to their customers.
- 11 At Summer Budget 2015, the Government commissioned an independent review, led by Carol Brady⁴, to examine claims management regulation and make recommendations to improve conduct in the sector. Following this review, the Government announced at Budget 2016 its intention to establish a tougher regulatory regime for claims management companies by transferring supervisory responsibility from the Ministry of Justice to the Financial Conduct Authority.
- 12 These clauses will make amendments to the Financial Services and Market Act 2000 to enable the Financial Conduct Authority to regulate claims management company activity as a ‘regulated activity’ under the Act.
- 13 These clauses also provide for the transfer of complaints-handling responsibility from the Legal Ombudsman to the Financial Ombudsman Service. This will allow the Financial Ombudsman Service to take over jurisdiction to investigate and determine consumer complaints about the service provided by the claims management companies.
- 14 The Financial Conduct Authority will also be given power to impose a cap on the fees that claims management companies can charge for their services.
- 15 The clauses will also include a power on the Ministry of Justice to put into place a transfer scheme for assets and liabilities of the Claims Management Regulation Unit to the Financial Conduct Authority, and a scheme providing for the transfer of staff.

Legal background

Single Financial Guidance Body

- 16 At present Government-sponsored pension guidance, money guidance and debt advice is currently provided by the Money Advice Service (established under Part 1 of the Financial Services and Markets Act 2000), the Pensions Advisory Service (which is incorporated as a not-for-profit company limited by guarantee) and the Department for Work and Pensions under the ‘Pension Wise’ banner (under Part 20A of the Financial Services and Markets Act 2000).

⁴ [Claims management regulation review: final report - GOV.UK](#)

Claims Management Services

- 17 At present the functions of the claims management regulator are carried out by the Secretary of State for Justice (through officials at the Claims Management Regulation Unit), under Part 2 of the Compensation Act 2006⁵ (and secondary legislation made under it). These provisions will be repealed, as part of the transfer of functions.
- 18 The Financial Services and Markets Act 2000 sets out the legislative basis and remit of the Financial Conduct Authority. It provides the legislative framework for the Authority to authorise entities undertaking “regulated activities” and “controlled activities”. The clauses in this Bill amend the 2000 Act, and provide for certain requirements and powers on the Financial Conduct Authority and the Secretary of State, to enable the transfer of regulation from the Ministry of Justice to the Financial Conduct Authority. The clauses will be supplemented by secondary legislation made under powers in the 2000 Act.
- 19 Complaints by consumers about the service provided by regulated claims management companies will also be transferred from the Legal Ombudsman to the Financial Ombudsman Service. The clauses will also permit the Secretary of State to put in place a transfer scheme for staff, assets and liabilities of the Claims Management Regulation Unit to the Financial Conduct Authority.

Territorial extent and application

Single Financial Guidance Body

- 20 The SFGB will deliver its pensions function, money guidance function and strategic function UK-wide.
- 21 The SFGB’s debt advice function will only apply to England.
- 22 The full detail of the territorial extent and application of the clauses, and whether or not a legislative consent motion is needed, is set out at Annex A.

Claims Management Services

- 23 The Financial Conduct Authority will regulate claims management services being provided within England and Wales only, and Part 2 of the Bill, which deals with claims management services, only extends to England and Wales.
- 24 See the table in Annex A for a summary of the position regarding territorial extent and application in the United Kingdom. The table also summarises the position regarding legislative consent motions and matters relevant to Standing Orders Nos. 83J to 83X of the Standing Orders of the House of Commons relating to Public Business.

⁵ Compensation Act 2006: <http://www.legislation.gov.uk/ukpga/2006/29/contents>

Commentary on provisions of Bill

Part 1: Financial Guidance

Chapter 1: Establishment of the single financial guidance body

Clause 1: The single financial guidance body

- 25 Subsection (1) establishes a new non-departmental public body, which will be referred to as the single financial guidance body until it is named.
- 26 Subsection (2) introduces Schedule 1 which contains further provisions regarding the governance and accountability of the body.
- 27 Subsection (3) gives the Secretary of State the power to make regulations to name the body.
- 28 Subsection (4) allows the regulations that name the body to replace 'single financial guidance body' with the actual name of the body in Part 1 of the Bill and in Acts amended by Part 1.
- 29 Subsection (5) requires that power to make these regulations is exercisable by statutory instrument under the negative resolution procedure.
- 30 Subsection (6) dissolves the consumer financial education body, which is also known as the Money Advice Service.
- 31 Subsection (7) introduces Schedule 2 which makes provision for the transfer of staff, property, rights and liabilities firstly from the Secretary of State and the Pensions Advisory Service to the single financial guidance body; and secondly from the consumer financial education body, which is also known as the Money Advice Service, to the single financial guidance body. Such transfers are effected by a 'transfer scheme'.

Schedule 1: The single financial guidance body

- 32 Schedule 1 provides for membership of the single financial guidance body and how it exercises its functions. The content of Schedule 1 is self-explanatory. In particular it provides for the following.
- 33 Paragraph 2 contains provisions which define the composition of the single financial guidance body's board and how those members will be appointed.
- 34 Paragraph 3 contains provisions related to the terms and conditions of appointments of non-executive members.
- 35 Paragraph 4 requires the Secretary of State to be satisfied that a person does not have any conflict of interest before appointing that person to be a non-executive member.
- 36 Paragraph 5 allows the single financial guidance body to pay non-executive members remuneration, allowances or gratuities as determined by the Secretary of State. It also provides for the single financial guidance body to pay compensation to a non-executive member if they cease to hold office before their term of office has expired.
- 37 Paragraph 6 requires the Secretary of State to appoint the initial executive members of the single financial guidance body, including the first Chief Executive. Subsequently, all executives will be appointed by the body, with the approval of the Secretary of State.
- 38 Paragraph 9 allows the single financial guidance body to establish committees to carry out its functions, or to provide advice on matters relating to the exercise of its functions. It allows the body to pay remuneration or expenses to members of a committee who are neither a member of the body's board nor an employee of the body. It also allows committees to establish a sub-committee.

- 39 Paragraph 10 allows the single financial guidance body, in carrying out its functions, to delegate any of its functions to members, employees and committees. A committee may delegate any functions delegated to it to a sub-committee, to a member of a committee, a member of the body's board or an employee of the body.
- 40 Paragraph 11 allows the single financial guidance body to regulate its own procedures and any procedures established in relation to its committees and sub-committees.
- 41 Paragraph 14 requires the single financial guidance body to prepare an annual report on the exercise of its functions, and on anything else directed to be included by the Secretary of State. The Secretary of State must lay both the annual report from the single financial guidance body and also the report by the Comptroller and the Auditor General on the statement on the accounts of the single financial guidance body before Parliament.
- 42 Paragraph 14 also requires the single financial guidance body to keep proper accounts and prepare an annual statement on the accounts for each financial year. This statement on the accounts must be sent to the Secretary of State and the Comptroller and the Auditor General. The Comptroller and the Auditor General must then examine the statement of accounts and compose a report on it, which must be sent to the Secretary of State.

Schedule 2: Transfer of schemes under section 1

- 43 Paragraph 1 provides the Secretary of State with the power to make schemes transferring the property, rights and liabilities of The Pensions Advisory Service, the Secretary of State, or the consumer financial education body to the single financial guidance body.
- 44 Paragraph 3 provides the Secretary of State with the power to modify a transfer scheme with the proviso that, if the scheme has already come into effect, such a modification can only be made with the agreement of the person or persons affected. A modification takes effect from the date specified by the Secretary of State.

Chapter 2: Functions and objectives of the single financial guidance body

Clause 2: Functions and objectives

- 45 Subsection (1) sets out the functions of the single financial guidance body. In delivering its functions, the body must have regard to the objectives set out at subsection (8).
- 46 Subsection (2) confers the additional function on the single financial guidance body of providing the Secretary of State with advice and assistance on matters relating to any of its functions.
- 47 Subsection (3) makes provision for the body to perform any activities incidental or conducive to the exercise of its functions.
- 48 Subsection (4) defines the body's pensions guidance function.
- 49 Subsection (5) defines the debt advice function which applies to England only. The devolved authorities will be responsible for the provision of information on debt and debt advice for individuals in Scotland, Wales and Northern Ireland. This does not form part of this Bill but note clause 11 which makes provision for funding debt advice in the devolved authorities.
- 50 Subsection (6) defines the body's money guidance function.
- 51 Subsection (7) defines the body's strategic function and stipulates that in providing this function the body should work with others in the financial services industry, the devolved authorities and the public and voluntary sectors.

- 52 Subsection (8) sets out the objectives of the single financial guidance body. The body must have regard to these objectives when carrying out its functions. The objectives include a requirement to work closely with the devolved authorities as regards to the provision of information, guidance and advice to members of the public in Scotland, Wales and Northern Ireland.

Clause 3: Specific requirements as to the pensions guidance function

- 53 Clause 3 requires the single financial guidance body to provide information and guidance to pension scheme members and survivors of members with a right or entitlement to cash balance benefits or other money purchase benefits. The guidance given will be for the purpose of helping the individual to make decisions about what to do with the 'flexible benefits' that may be provided to a member of a pension scheme or the survivor of a member of a pension scheme.

Clause 4: Delegation of functions to delivery partner organisations

- 54 Clause 4 enables the single financial guidance body to make arrangements for a primary delivery partner to carry out its pensions guidance, money guidance and debt advice functions. These functions can be further delegated to a secondary delivery partner but any further delegation must be with the consent of the single financial guidance body.

Clause 5: Guidance and directions from the Secretary of State

- 55 This clause gives the Secretary of State the power to give the single financial guidance body guidance and direction on the way it exercises its functions.
- 56 Subsection (2) specifies that any directions must be published and subsection (3) specifies that the body must take note of guidance and comply with directions.

Chapter 3: Standards set by the single financial guidance body

Clause 6: Setting standards

- 57 Clause 6 requires the single financial guidance body to set standards from time to time which must be complied with by those who deliver its functions. As such these standards will apply to both the body itself and to the delivery partners. The standards which the body has proposed must be approved by the Financial Conduct Authority before they are finalised and must be published.

Clause 7: Monitoring and enforcement of standards

- 58 Clause 7 requires the single financial guidance body to monitor and ensure compliance with the standards. It also requires the Financial Conduct Authority to review and assess the body's standards and its monitoring and enforcement regime at least once every three years. The Financial Conduct Authority must provide a report on its review to the body and the Secretary of State.

Chapter 4: Funding of the single financial guidance body

Clause 8: Financial assistance from the Secretary of State

- 59 This clause allows the Secretary of State to pay grants, make loans or provide other forms of financial assistance to the single financial guidance body to meet expenditure in connection with both the establishment of the body and for the purpose of enabling the body to carry out its functions. Such financial assistance may be subject to conditions set by the Secretary of State.

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

- 60 This clause amends the provision of the Pension Schemes Act 1993 which enables the Secretary of State to make regulations imposing levies to meet specified types of expenditure. This amendment adds expenditure under clause 8 to the list of types of expenditure that levies can be imposed to meet. This will enable the Secretary of State to recover a proportion of the funding of the single financial guidance body and makes equivalent provision in relation to the Pension Schemes (Northern Ireland) Act 1993.

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

- 61 Clause 10 inserts a new section 137SA into the Financial Services and Markets Act 2000. This allows the Financial Conduct Authority to make rules to recover a proportion of the Secretary of State's funding for the single financial guidance body from the Financial Service Levy.
- 62 The new section 137SA enables two processes. Firstly, it gives the Secretary of State the power to notify the Financial Conduct Authority of expenses incurred or expected to be incurred in connection with the single financial guidance body. Secondly, it provides that the FCA must then make rules to impose levies to cover those expenses and its own expenses. Subsections (3) to (11) of new section 137SA impose various requirements on these processes, such as a requirement for the Financial Conduct Authority to consult the Secretary of State before it publishes drafts of rules.
- 63 Clause 10 (2) provides that things done by the Financial Conduct Authority before the Act is passed may satisfy specific consultation requirements.
- 64 Clause 10 (3) provides that the rules made under the new section 137SA can impose levies to recover expenses incurred by the Financial Conduct Authority before the day on which the Act is passed.

Chapter 5: Funding of debt advice in Scotland, Wales and Northern Ireland

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

- 65 Clause 11 sets out similar provisions to clause 10 in the context of a levy for debt advice expenses of devolved authorities. It inserts a new section 137SB into the Financial Services and Markets Act 2000. This allows the Financial Conduct Authority (FCA) to make rules to recover expenses incurred or expected to be incurred by the devolved authorities in connection with debt advice from the Financial Service Levy.
- 66 The new section 137SA enables two processes. Firstly it gives the Secretary of State the power to notify the FCA of the relevant expenses of the devolved authorities. Secondly it provides that the FCA must then make rules to impose levies to cover those expenses and its own expenses. Subsections (3) to (11) of new section 137SB impose various requirements on these processes, such as a requirement for the FCA to consult the Secretary of State before it publishes drafts of rules.
- 67 Clause 11 (2) provides that things done by the FCA before this Act is passed may satisfy specific consultation requirements.
- 68 Clause 11 (3) provides that the rules made under the new section 137SB can impose levies to recover expenses incurred by the FCA before the day on which this Act is passed.

Chapter 6: Miscellaneous

Clause 12: Disclosure of information

- 69 Clause 12 contains gateways for the disclosure of information relating to the single financial guidance body. The content of this provision is self-explanatory.

Clause 13: Minor and consequential amendments

- 70 This clause introduces Schedule 3, which makes minor and consequential amendments to existing legislation to reflect the establishment of the single financial guidance body.

Schedule 3: Minor and consequential amendments relating to Part 1

- 71 Paragraphs 1 to 4 insert a reference to 'the single financial guidance body' into the relevant Schedules of the Public Records Act 1958, the Parliamentary Commissioner Act 1967, the House of Commons Disqualification Act 1975 and the Northern Ireland Assembly Disqualification Act 1975.
- 72 Paragraphs 5 to 23 make consequential amendments to the Financial Services and Markets Act 2000, including the removal of legislation relating to the consumer financial education body, known as the Money Advice Service.
- 73 Paragraphs 24 to 25 amend the Freedom of Information Act 2000 and the Equality Act 2010 to ensure that the single financial guidance body conforms to these provisions.
- 74 Paragraphs 26 to 33 amend current legislation in the areas of financial services and pensions guidance. They remove Part 20A of Financial Services and Markets Act 2000, which places a duty on the Secretary of State to provide access to the pensions guidance that is known as 'Pension Wise'. This guidance will be given by the single financial guidance body, with the exception of guidance on the secondary annuities market.

Clause 14: Power to dissolve the single financial guidance body

- 75 Clause 14 gives the Secretary of State the power to dissolve the single financial guidance body through regulations. It also allows the regulations to make provision to transfer various matters including the body's functions and assets to the Secretary of State or any other person as well as for the Secretary of State to compensate anyone who suffers financially as a result of the dissolution of the body.

Clause 15: Interpretation of Part 1

- 76 Clause 15 defines key terms and that all references made in Part 1 to the "Secretary of State" mean either the Secretary of State or the Treasury other than in section 1(7)(a) and the first subparagraph of paragraph 1 of Schedule 2.
- 77 The specific responsibilities of ministers in the Department for Work and Pensions and the Treasury will be set out in a published memorandum of understanding.

Part 2: Claims Management Services

Clause 16: Transfer to FCA of regulation of claims management services

- 78 Subsection (2) amends Section 21 of the Financial Services and Markets Act 2000 so that a person cannot communicate an invitation or inducement to engage in controlled claims management activity unless authorised. A new subsection (10A) and (10B) is inserted into Section 21. They set out what constitutes a controlled claims management activity. Subsection (2) also amends the reference in Paragraph 25 of Schedule 2 to the Financial Services and Markets Act 2000 so as to enable the order-making power in that paragraph to apply in respect of those provisions only.

These Explanatory Notes relate to the Financial Guidance and Claims Bill [HL] as introduced in the House of Lords on 22 June 2017 (HL Bill 1)

- 79 Subsection (3) amends Section 22 of the Financial Services and Markets Act 2000 so that the Treasury is able to specify ‘claims management’ activity as a “specified activity” for the purposes of that Act and the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001⁶. It adds an additional subsection (1B) to Section 22, which clarifies that an activity is a regulated activity for the purpose of the Act if it is an activity of a specified kind which is carried on by way of business and relates to a claim of a specified kind.
- 80 Subsection (4) amends Section 243C (Complaints to the Financial Conduct Authority by consumer bodies) of the financial Services and Markets Act 2000 to enable a designated consumer body to make a complaint to the Financial Conduct Authority in respect of the market in England and Wales for claims management services where the market is damaging the interests of consumers.
- 81 Subsections (5), (6) and (7) amend provisions in the Financial Services and Markets Act 2000 relating to the Financial Conduct Authority’s competition powers. The relevant competition powers under Part 16A of the Financial Services and Markets Act 2000 will apply to claims management services in England and Wales.
- 82 Subsection (8) inserts into Section 417 (definitions) a definition of “regulated claims management activity” for the purpose of the Financial Services and Markets Act 2000.
- 83 Subsection (9) inserts a new Section 419A into the Financial Services and Markets Act 2000 defining claims management services. It also inserts a new Section 419B which enables the Treasury to specify by Order circumstances in which a person is, or is not, carrying on a regulated claims management activity in England and Wales.
- 84 Subsection (10) amends Section 429 to specify that orders made under new Sections 419B and 21(10B) are subject to the affirmative procedure. Subsection (9) also inserts a new subsections (7A) and (7B) which provide that any first order made under section 419A(4) in relation to treating specified benefits as a claim for the purposes of section 419A is subject to the affirmative procedure.
- 85 Subsection (11)(a) clarifies that the power in paragraph 25 of Schedule 2 to the Financial Services and Markets Act 2000 applies to claims management activities as specified under Section 22(1B). This ensures that the Treasury is able to make such consequential, transitional or supplemental provision as it considers appropriate for the purposes of, or connected with, any provision made under the new section 22(1B).
- 86 Subsection (11)(b) amends paragraph 26 of Schedule 2 to the Financial Services and Markets Act 2000 meaning an order made under section 22(1B) is subject to the affirmative procedure.
- 87 Subsection (12) enables the Secretary of State to put into place a transfer scheme for staff, property, assets and liabilities of the Claims Management Regulation Unit to the Financial Conduct Authority and from the Office of Legal Complaints to Financial Ombudsman Service to put into place a similar transfer scheme.
- 88 Subsection (13) introduces the transitional provisions set out in Schedule 5.

Schedule 4: Regulation of claims management services: transfer schemes

- 89 Schedule 4 contains general provisions about transfer schemes. Part 1 refers to the application of the schedule. Part 2 deals with transfers from the Claims Management Regulation Unit to the Financial Conduct Authority (the regulators) and Part 3 deals with the transfers between the Office of Legal Complaints to the Legal Ombudsman Service (the complaints bodies).

⁶ Financial Services and Markets Act 2000 (Regulated Activities) Order 2001:
<http://www.legislation.gov.uk/ukSI/2001/544/contents/made>

- 90 Paragraph 1 provides that the Schedule will apply if the Treasury makes an Order under the new Section 22(1B) of the Financial Services and Markets Act 2000 which has the effect of making an activity a regulated activity for the purposes of that Act, i.e. when the Treasury makes an Order making claims management services a regulated activity.
- 91 Paragraph 2 sets out the interpretation provisions for Part 2. Paragraph 3 provides the Secretary of State for Justice a power to make one or more transfer schemes, with the consent of the Financial Conduct Authority, for the transfer of property, staff, rights and liabilities to be transferred to the Financial Conduct Authority.
- 92 Paragraphs 4, 5, 6 and 7 defines what property, rights and liabilities may be the subject of a transfer scheme. Paragraphs 8 and 9 detail the content of a transfer scheme that can be made by the Secretary of State.
- 93 Paragraphs 10, 11 and 12 deal with the modification of a transfer scheme. The Secretary of State can make a modification with the consent of the Financial Conduct Authority, but a modification can only take effect with the agreement of the person affected. A modification can take effect from a day specified by the Secretary of State and that date may be when the original scheme came into effect.
- 94 Paragraphs 13, 14 and 15 provide the Office of Legal Complaints with a power to make one or more transfer schemes for the transfer of property, staff, rights and liabilities to be transferred to the Financial Ombudsman Service. Any such scheme must have the consent of the Financial Ombudsman Service and Financial Conduct Authority before it is sent to the Treasury and the Lord Chancellor for approval. A scheme will not come into force unless it is approved.
- 95 Paragraph 16 and 17 gives the Lord Chancellor a power to make a transfer scheme in the event the Office of Legal Complaints fails to do so and the Lord Chancellor deems it necessary. The Lord Chancellor may also, with the approval of the Treasury, the Financial Conduct Authority, the Financial Ombudsman Service and the Office of Legal Complaints, make a transfer scheme for the transfer of property, rights and liabilities of the Office of Legal Complaints to Financial Ombudsman Service.
- 96 Paragraphs 18 and 19 deals with the provision of information and assistance by the Office of Legal Complaints to the Lord Chancellor and the Treasury to enable them to exercise their powers under the Schedule.
- 97 Paragraphs 20, 21 and 22 defines what property, rights and liabilities may be the subject of a transfer scheme. Paragraphs 23 and 24 detail the content of a transfer scheme that can be made by the Secretary of State.
- 98 Paragraphs 25, 26, 27, 28 and 29 deal with the modification of a transfer scheme. The Office of Legal Complaints may modify a transfer scheme, but a modification can only take effect with the agreement of the person(s) affected. A modification cannot come into effect without the approval of the Treasury, Lord Chancellor, the Financial Conduct Authority and the Financial Ombudsman Service and any such modification must have the consent of the Financial Ombudsman Service before it is submitted for approval. A modification can take effect from a day specified by the Secretary of State and that date may be when the original scheme came into effect.

Schedule 5: Regulation of claims management services: transitional provision

- 99 Schedule 5 contains transitional provisions to allow the Financial Conduct Authority to take steps in preparation for the transfer of functions from the regulator. They include extending the Financial Conduct Authority's information gathering powers, the ability to consult on rules made before an order is made and treat rules made by the outgoing regulator as having been made by the Financial Conduct Authority. It also provides for the provision of information from the outgoing regulator (CMRU) and complaints body to the Financial Conduct Authority and the Financial Ombudsman Service before the making of an order regulating claims management activity.

These Explanatory Notes relate to the Financial Guidance and Claims Bill [HL] as introduced in the House of Lords on 22 June 2017 (HL Bill 1)

Clause 17: Power of FCA to make rules restricting charges for claims management services

100 This clause amends the Financial Services and Markets Act 2000. Subsection (2) inserts a new Section 137FC into Part 9A (Rules and Guidance) of the Act. The new Section gives the Financial Conduct Authority the power to make rules to cap the amount that claims management companies can charge consumers. The Authority must make rules for services provided in relation to the making of a claim in connection with financial products and services.

101 The rules must be made with a view to securing an appropriate degree of consumer protection against excessive charges claims management companies can charge consumers for its services. Subsection 137FC(5) provides that the rules may provide for agreements to be unenforceable, amounts paid under an agreement to be recovered and compensation to be paid for losses where a consumer has been charged in contravention of rules imposing fee caps.

102 Subsection (3) amends Section 138E (3) of the Act which deals with the limits of the effects of contravening Financial Conduct Authority rules. A transaction or contract which contravenes the rules in relation to charges for claims management services made under Section 137FC will be rendered void or unenforceable.

Part 3: General

Clause 18: Extent

103 This provision is self-explanatory.

Clause 19: Commencement

104 This provision is self-explanatory.

Clause 20: Short Title

105 This provision is self-explanatory.

Financial implications of the Bill

106 A summary of the financial effects of the measures of the Bill is provided below. Further detail is provided in the impact assessments.

Single Financial Guidance Body

107 The creation of the single financial guidance body will have a negligible impact on public expenditure. The transition between three services to the single financial guidance body will create short-term costs, which are provisionally anticipated to total £4.49m, excluding costs arising from digital transition and from redundancy, which have not been estimated.

108 Subject to legislative changes, these transitional costs will be met by the financial services and general levies which currently fund the existing services.

Claims Management Company Regulation

109 The measures effecting the transfer of claims management company regulation to Financial Conduct Authority will have a minimal effect on public expenditure, as it is intended that all costs arising as a result of the transfer will be borne by the claims management company market. The provisions relating to fee restrictions will also result in a cost to industry, however the equivalent benefit will be felt by consumers.

Compatibility with the European Convention on Human Rights

110 Section 19 of the Human Rights Act 1998 requires the Minister in charge of a Bill in either House of Parliament to make a statement about the compatibility of the provisions of the Bill with the Convention rights (as defined in section 1 of that Act).

111 In the opinion of the Minister for Work and Pensions (Lords), Baroness Buscombe, the provisions of the Bill are compatible with the Convention rights and she has made a statement to that effect.

Related documents

112 The following documents are relevant to the Bill and can be found in the Printed Paper Office:

- Single Financial Guidance Body Impact Assessment
- Claims Management Company Regulation Impact Assessment
- Financial Guidance and Claims Bill Delegated Powers Memorandum

113 The following review can be found online:

- Independent Review of Claims Management Regulation

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/508160/PU1918_claims_management_regulation_review_final.pdf

Annex A - Territorial extent and application in the United Kingdom

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
1 The Single Financial Guidance Body								
Clause 1, Schedule 1 and Schedule 2	Yes	Yes	Yes	Yes	No	No	No	No
Clause 2 (other than clause 2(5))	Yes	Yes	Yes	Yes	No	No	No	Yes
Clause 2(5)	Yes	No	No	No	No	No	No	No
Clause 3	Yes	Yes	Yes	Yes	No	No	Yes	Yes (for NI)
Clauses 4 to 8	Yes	Yes	Yes	Yes	No	No	No	No
Clause 9	Yes	Yes	Yes	Yes	No	No	Yes	Yes (for NI)
Clauses 10 and 11	Yes	Yes	Yes	Yes	No	No	No	No

These Explanatory Notes relate to the Financial Guidance and Claims Bill [HL] as introduced in the House of Lords on 22 June 2017 (HL Bill 1)

Provision	Extends to E & W and applies to England ?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Would corresponding provision be within the competence of the National Assembly for Wales?	Would corresponding provision be within the competence of the Scottish Parliament?	Would corresponding provision be within the competence of the Northern Ireland Assembly?	Legislative Consent Motion needed?
Clause 12	Yes	Yes	Yes	Yes	No	No	No	Yes
Clause 13 and Schedule 3	Yes	Yes	Yes	Yes	No	No	No	No
Clause 14	Yes	Yes	Yes	Yes	No	No	No	No
2 Claims Management Services								
Clause 16	Yes	Yes	No	No	No	No	Yes	No
Clause 17	Yes	Yes	No	No	No	No	Yes	No
Schedule 4	Yes	Yes	No	No	No	No	Yes	No
Schedule 5	Yes	Yes	No	No	No	No	Yes	No
3 General Clauses 18 to 20	Yes	Yes	Yes	Yes	No	No	No	No

Minor or consequential effects⁷

The following provisions that apply to England have effects outside England, all of which are, in the view of the Government of the United Kingdom, minor or consequential:

Part 1: Financial Guidance

Clause 2: Functions and objectives

There are no minor or consequential impacts on the devolved administrations from the debt advice function being delivered by the single financial guidance body in England only.

⁷ References in this Annex to an effect of a provision being minor or consequential are to its being minor or consequential for the purposes of Standing Order No. 83J of the Standing Orders of the House of Commons relating to Public Business.

Part 2: Claims management services

Clause 16: Transfer to FCA of regulation of claims management services

Part 2 contains a number of provisions relating the regulation of claims management services in England and Wales.

Clause 16 and 17 would in the view of the government be in the legislative competence of the Northern Ireland Assembly as they do not deal with any excepted matters under the Northern Ireland Act 1998.

Clause 16 and 17 relate to competition and consumer protection which are reserved matters under the Scotland Act 1998 and so outside the legislative competence of the Scottish Parliament. These matters are also outside the legislative competence of the Welsh Assembly as they are not subjects the Assembly is able to legislate on under the Government of Wales Act 2006.

Therefore, the government consider that Part 2 of, and Schedule 4 and 5 to, the Bill will require EVEL. The first part of the EVEL test is satisfied because the provisions extend exclusively to England and Wales. With regard to the second part of the test, as set out above, it is the government's view that these provisions fall within the legislative competence of the Northern Ireland Assembly.

FINANCIAL GUIDANCE AND CLAIMS BILL [HL]

EXPLANATORY NOTES

These Explanatory Notes relate to the Financial Guidance and Claims Bill [HL] as introduced in the House of Lords on 22 June 2017 (HL Bill 1).

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