

FINANCIAL GUIDANCE AND CLAIMS BILL [HL]

EXPLANATORY NOTES ON COMMONS AMENDMENTS

What these notes do

- 1 These Explanatory Notes relate to the Commons Amendments to the Financial Guidance and Claims Bill [HL] as brought from the House of Commons on 24 April 2018.
- 2 They have been prepared by the Department for Work and Pensions in order to assist the reader of the Bill and the Commons Amendments, and to help inform debate on the Commons amendments. They do not form part of the Bill and have not been endorsed by Parliament.
- 3 These Explanatory Notes, like the Commons Amendments themselves, refer to Bill 131, the Bill as first printed for the Commons.
- 4 They need to be read in conjunction with the Commons Amendments and the text of the Bill. They are not, and are not meant to be, a comprehensive description of the Commons Amendments.
- 5 All the Commons Amendments referred to in these Explanatory Notes were tabled in the name of the Minister.

Commentary on Commons Amendments

Part 1: Financial Guidance

Commons Amendment to Clause 1: The single financial guidance body

Commons Amendment 1

- 6 This amendment, together with Amendment 35, would enable transfer schemes under Schedule 2 to transfer staff, property, rights and liabilities from the consumer financial education body to the single financial guidance body and the devolved authorities. This may be necessary in view of the fact that the devolved authorities will be responsible for the provision of debt advice in their areas.

Commons Amendment to Clause 3: Functions

Commons Amendment 2

- 7 Amendment 2 amends the single financial guidance body's consumer protection function. It enables the single financial guidance body to inform the Financial Conduct Authority (FCA) of practices by regulated firms which are detrimental to consumers, and to keep under review the impact of unsolicited direct marketing of consumer financial products.

Commons Amendment to Clause 4: Cold-calling

Commons Amendment 3

- 8 Amendment 3 removes Clause 4 from the Bill. Amendments 10 and 11 instead provide powers for the Secretary of State to make regulations to ban unsolicited direct marketing in relation to pensions, and other consumer financial products and services respectively.

Commons Amendment to Clause 5: Specific requirements as to the pensions guidance function

Commons Amendment 4

- 9 This amendment removes subsection (2) of Clause 5. Subsection (2) requires the FCA to make rules requiring the trustees or managers of personal and stakeholder pension schemes to ask members and survivors whether they have received guidance before accessing or transferring their pension benefits. It also specifies that the rules may require the trustees or managers to provide access to guidance. These requirements are replaced by those proposed in the new clauses inserted by Amendments 7 and 8.

Commons Amendments to Clause 18: Disclosure of information

Commons Amendment 5

- 10 This amendment is consequential upon Amendment 2, which makes changes to the consumer protection function, including requiring the single financial guidance body to pass information to the FCA in certain circumstances. This amendment ensures that disclosure of information in these circumstances is protected by subsection (7) of Clause 18.

Commons Amendment 6

- 11 This amendment changes the reference to the "Data Protection Act 1998" to "data protection legislation" (as defined in Clause 23 as inserted by Amendment 12) to reflect the changes to data protection legislation that are to be made by the Data Protection Bill.

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Commons Amendment to insert a new clause after Clause 18: Personal pension schemes: requirements to refer members to guidance etc

Commons Amendment 7

- 12 This amendment requires the FCA to make rules requiring the trustees or managers of personal and stakeholder pension schemes to refer members and survivors to appropriate guidance, provided by the single financial guidance body or one of its delivery partners, as part of the application process when a member or survivor applies to access or transfer their pension benefits. The rules would also require the trustees or managers to ensure that the member or survivor is provided with an explanation of the nature and purpose of the guidance. The amendment also requires the rules to provide that the member or survivor must have received guidance or opted out of receiving guidance before they can access or transfer their pension benefits.
- 13 The amendment allows the rules to make further provision about these requirements, which could include specifying how confirmation that the member or survivor has received guidance or wants to opt out of receiving guidance must be given. The amendment also includes a power for the rules to include exceptions where these requirements will not apply, for example, where the value of a member's pension benefits is below a certain amount.

Commons Amendment to insert a new clause after Clause 18: Occupational pension schemes: requirements to refer members to guidance etc

Commons Amendment 8

- 14 This amendment requires the Secretary of State to make regulations introducing corresponding requirements on occupational pension schemes in England, Wales and Scotland to those which would be introduced by the FCA under Amendment 7. It does so by inserting a new section 113B into the Pension Schemes Act 1993.
- 15 This amendment also introduces a corresponding requirement on the Department for Communities in Northern Ireland to make equivalent provision in respect of occupational pension schemes in Northern Ireland. It does so by inserting a new section 109B into the Pension Schemes (Northern Ireland) Act 1993.

Commons Amendment to Clause 20: Minor and consequential amendments

Commons Amendment 9

- 16 This amendment makes a minor drafting change to move Clause 20 so that it comes immediately before Clause 23.

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Commons Amendment to insert a new clause after Clause 22: Unsolicited direct marketing: pensions

Commons Amendment 10

- 17 This new clause creates a power for the Secretary of State to make regulations (subject to the affirmative procedure) banning unsolicited direct marketing relating to pensions. If the power is not exercised by June 2018, the Secretary of State must lay a statement before both Houses of Parliament explaining why not and setting a timetable. The same requirement to lay a statement and a timetable will apply every year until regulations are made.

Commons Amendment to insert a new clause after Clause 22: Unsolicited direct marketing: other consumer financial products etc

Commons Amendment 11

- 18 This new clause gives the Secretary of State the power to make regulations (subject to the affirmative procedure) banning unsolicited direct marketing in relation to consumer financial products and services other than pensions.

Commons Amendments to Clause 23: Interpretation of Part 1

Commons Amendment 12

- 19 This amendment inserts a reference to the “consumer protection function” and the “data protection legislation”, which is a term now used in Clause 18 (see Amendment 6) to reflect the changes to be made to the law in this area by the Data Protection Bill.

Commons Amendment 13

- 20 This amendment inserts a definition for “direct marketing” into Clause 23 (using the definition in data protection legislation), a term which is used in the consumer protection function (see Amendments 10 and 11).

Part 2: Claims Management Services

Commons Amendments to Clause 24: Transfer to FCA of regulation of claims management services

Commons Amendment 14

- 21 This amends the Financial Services and Markets Act 2000 so that the references in the FCA’s statutory objectives to “regulated financial services” includes services provided by authorised

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persons in communicating, or approving the communication by others of, invitations to engage in claims management activity.

Commons Amendment 15

- 22 This amends the Financial Services and Markets Act 2000 so that the FCA may make rules about the communication, or the approval of another person's communications by authorised persons, of invitations or inducements to engage in claims management activity.

Commons Amendment to Clause 26: PPI claims and charges for claims management services: general

Commons Amendment 16

- 23 This removes the reference to Clause 28 and inserts a reference to the new clause (*PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*) inserted by Amendment 18.

Commons Amendment 17

- 24 This inserts a new subsection (8)(c) into Clause 26. The new subsection provides that references to "regulated service" in Clause 26 are, for the purposes of the new Clause (*PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*), to be read as referring to a "relevant claims management activity".

Commons Amendment to insert a new clause after Clause 28: PPI claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA

Commons Amendment 18

- 25 Following the transfer of regulation from the Claims Management Regulator to the FCA, this clause requires the Law Society of England and Wales, the General Council of the Bar and the Chartered Institute of Legal Executives to enforce the interim fee cap in respect of charges imposed by those they regulate for certain claims management services provided in connection with a PPI claim.
- 26 Subsection (1) sets out the general prohibition that a legal practitioner must not charge a claimant, or enter into an agreement that would require a claimant to pay, for regulated services an amount that exceeds the interim fee cap.
- 27 Subsection (2) applies subsections (2) to (5) and (7) of Clause 27. Although any breach of subsection (1) would not be actionable as a breach of statutory duty, a claimant would be entitled to recover any payment in excess of the cap and any provision(s) in an agreement to pay in excess of the fee cap would be unenforceable. The duty on the relevant regulators

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under the new clause inserted by Amendment 19 to ensure that they have appropriate arrangements for monitoring and enforcing the interim fee cap and the power enabling them to make rules for the purpose of doing so, if required, apply for the purposes of this new clause.

- 28 Subsections (5) and (7) of Clause 27, which specify the meanings of “regulated person”, “relevant regulator” and “reserved legal activity”, also apply to this clause except that the references to “regulated claims management services” and “regulated persons” should be read as references to “regulated claims management activity” and “legal practitioners” respectively.
- 29 These provisions will apply once the transfer of claims management services regulation to the FCA has taken place, and will last, in the case of legal practitioners for whom the relevant regulator is the Law Society of England and Wales, until the Law Society’s rules on fee capping made under the new clause inserted by Amendment 19 come into force and, in the case of the other two regulators, until 29 April 2020.

Commons Amendment to insert a new clause after Clause 28: Legal services regulators’ rules: charges for claims management services

Commons Amendment 19

- 30 This clause gives the relevant legal services regulators (the Law Society of England and Wales, the General Council of the Bar and the Chartered Institute of Legal Executives) a power to make rules to cap the amount that legal service providers can charge in connection with relevant claims management activities. The Law Society of England and Wales has a duty to make such rules in relation to a relevant claims management activity which concerns claims in relation to financial products or services.
- 31 In subsection (3) the Law Society of Scotland is given a power to make rules in relation to charges for a relevant claims management activity concerning a claim in relation to a financial product or service.
- 32 The rules must be made with a view to securing an appropriate degree of protection against legal service providers making excessive charges for services. However, the rules cannot specify charges for a ‘reserved legal activity’ within the meaning of the Legal Services Act 2007 or for the exercise of the right of audience or conduct of litigation by a Scottish legal practitioner.
- 33 Subsection (10) provides that in relation to agreements entered into, or charges imposed, in contravention of the rules, the rules may provide for such agreements or obligations to pay the charge to be unenforceable, amounts paid under an agreement to be recovered and compensation to be paid for any losses incurred.

- 34 This new clause does not limit any existing power of the Law Society of England and Wales, the Law Society of Scotland, the General Council of the Bar or the Chartered Institute of Legal Executives to make rules.

Commons Amendment to insert a new clause after Clause 28: Extension of power of the Law Society of Scotland to make rules

Commons Amendment 20

- 35 This clause would confer a power on the Treasury to amend the Clause (*Legal services regulators' rules: charges for claims management services*) in order to extend the power of the Law Society of Scotland to make rules imposing a cap on fees charged for claims management services. It provides that the power given to the Law Society of Scotland to make rules in relation to fees charged for claims management services provided in connection with a claim concerning a financial product or service may be extended to apply to all, or any description of, claims management agreement or activity.
- 36 Subsection (2) requires the Treasury to obtain the consent of the Scottish Ministers before making regulations under subsection (1).
- 37 Subsections (3) and (4) specify that draft regulations are to be laid before, and approved by, affirmative resolutions in both Houses of Parliament.

Commons Amendment to insert a new clause after Clause 28: Cold calling about claims management services

Commons Amendment 21

- 38 This clause amends the Privacy and Electronic Communications (EC Directive) Regulations 2003¹. Subsection (3) inserts new regulation 21A which prohibits unsolicited calls for the purposes of direct marketing in relation to claims management services except where the person called has given prior consent to receiving such calls.
- 39 Claims management services are defined in regulation 21A(4) and (5). This definition is based on the definition in Clause 24(9) of the Bill but goes wider to include not only legal representation but where any person is acting on behalf of, or representing, a claimant. This is to ensure that calls made by persons instructed to seek out potential claimants, regardless of whether or not they will be represented by legal professionals or other types of advocate, are captured.

¹ S.I. 2003/2426

Part 3: General

Commons Amendments to Clause 29: Extent

Commons Amendment 22

- 40 This makes a minor drafting change, restructuring Clause 29, in consequence of the changes proposed by Amendment 23 and Amendments 14–17.

Commons Amendment 23

- 41 This inserts a new subsection (3A) into Clause 29 updating the Clause so that the amendments to the Pensions Schemes Act 1993 proposed in Amendment 8 extend only to England and Wales and Scotland, and the amendments to the Pensions Schemes (Northern Ireland) Act 1993 extend only to Northern Ireland. The new subsection (3B) contains text previously in subsection (6) in consequence of restructuring this clause.

Commons Amendment 24

- 42 This amends Clause 29 and provides that Part 2 of the Bill extends to England, Wales and Scotland except for Clause 24(12) and Schedule 4, Clause 27 and the new Clause inserted by Amendment 18 (*PPI Claims: interim restriction on charges imposed by legal practitioners after transfer of regulation to FCA*), which extend to England and Wales, and the new Clause inserted by Amendment 20 (*Cold calling about claims management services*) which extends to England, Wales, Scotland and Northern Ireland.

Commons Amendment 25

- 43 This makes a minor drafting change consequential upon the proposed restructuring of the extent clause (Clause 29).

Commons Amendments to Clause 30: Commencement

Commons Amendment 26

- 44 This amendment amends Clause 30 so that the new clause on unsolicited direct marketing relating to pensions (inserted by Amendment 10) would come into force on Royal Assent.

Commons Amendment 27

- 45 This provides the Department for Communities in Northern Ireland with the power to bring into force the provisions proposed in Amendment 8, which would amend the Pension Schemes (Northern Ireland) Act 1993, and make related provision.

Commons Amendments 28 and 29

- 46 These amend Clause 30 so that the new clauses proposed by Amendments 11 and 18 come into force two months after the Bill receives Royal Assent.

Commons Amendment 30

- 47 This amends Clause 30 to provide for the new clause proposed by Amendment 8 to be brought into force on a day appointed in regulations made by the Secretary of State.

Commons Amendment 31

- 48 This amendment is consequential on Amendment 21.

Commons Amendment 32

- 49 Commons Amendment 32 is consequential on Amendment 31.

Commons Amendment 33

- 50 This amendment requires the Treasury to obtain the consent of the Lord Chancellor before making regulations for the commencement of the new clause inserted by Amendment 19.

Commons Amendment to Clause 31: Short title

Commons Amendment 34

- 51 This removes the privilege amendment inserted in the Lords.

Schedules

Commons Amendment to Schedule 2: Transfer schemes under section 1

Commons Amendment 35

- 52 This amendment is consequential on Amendment 1.

Commons Amendment to Schedule 3: Minor and consequential amendments relating to Part 1

Commons Amendment 36

- 53 This removes the amendment to section 137FB of the Financial Services and Markets Act 2000 from Schedule 3 because it is dealt with by the new clause inserted by Amendment 7.

Commons Amendments to Schedule 4: Regulation of claims management services: transfer schemes

Commons Amendment 37

- 54 This amendment inserts a definition of “the data protection legislation”, which is a term now used in paragraph 19 of this Schedule (as inserted by Amendment 38) to reflect the changes made by the Data Protection Bill.

Commons Amendment 38

- 55 This amendment changes the reference to “the Data Protection Act 1998” to a reference to the “data protection legislation” to reflect the changes to data protection legislation that are to be made by the Data Protection Bill.

Commons Amendments to Schedule 5: Regulation of claims management services: transitional provision

Commons Amendments 39 and 40

- 56 These amendments make minor drafting changes to Schedule 5 as a consequence of the insertion of new paragraphs 1A and 1B into the Schedule by Commons Amendment 41.

Commons Amendment 41

- 57 This inserts new paragraphs 1A and 1B into Schedule 5. This is to ensure that Part 11 of the Financial Services and Markets Act 2000 (information gathering and investigations) applies to persons providing regulated claims management services under the Compensation Act 2006 in England or Wales and to persons in Scotland who would be regulated under the Compensation Act 2006 if providing those services in England or Wales.

Commons Amendment to the long title of the Bill

Commons Amendments 42 and 43

- 58 These amendments amend the long title in consequence of Amendments 9 and 10.

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