



Financial Services and Markets Act 2000

2000 CHAPTER 8

[^{F1}PART 20A

PENSIONS GUIDANCE

Textual Amendments

- F1** Pt. 20A inserted (3.3.2015) by [Pension Schemes Act 2015 \(c. 8\)](#), s. 89(1)(a), [Sch. 3 para. 2](#) (with s. 87, [Sch. 3 para. 18\(1\)](#))

333A Introduction and definitions

- (1) This Part is about the giving of pensions guidance.
- (2) “Pensions guidance” means guidance given for the purpose 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.
- (3) In this Part—
 - “flexible benefit” has the meaning given by section 74 of the Pension Schemes Act 2015;
 - “pensions guidance” has the meaning given by subsection (2);
 - “pension scheme” has the meaning given by section 1(5) of the Pension Schemes Act 1993;
 - “survivor” has the meaning given by section 76 of the Pension Schemes Act 2015.

Status: Point in time view as at 03/03/2015.

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Giving of pensions guidance

333B Treasury's role in relation to pensions guidance

- (1) The Treasury must take such steps as they consider appropriate to ensure that people have access to pensions guidance.
- (2) The Treasury may—
 - (a) seek to increase awareness of the availability of the guidance;
 - (b) undertake or commission research relating to the giving of the guidance.

333C Giving of pensions guidance

- (1) The bodies listed in subsection (2) are to give pensions guidance in accordance with arrangements made with the Treasury.
- (2) Those bodies are—
 - (a) the Pensions Advisory Service Limited;
 - (b) the National Association of Citizens Advice Bureaux;
 - (c) the Scottish Association of Citizens Advice Bureaux;
 - (d) the Northern Ireland Association of Citizens Advice Bureaux.
- (3) The bodies listed in subsection (2) may give pensions guidance by arranging for it to be given by another person (including another listed body).
- (4) The National Association of Citizens Advice Bureaux, the Scottish Association of Citizens Advice Bureaux and the Northern Ireland Association of Citizens Advice Bureaux may jointly carry out their functions of giving pensions guidance.
- (5) The Treasury may by regulations repeal one or more of paragraphs (a) to (d) of subsection (2).
- (6) Regulations under subsection (5) may make consequential amendments of this Act.

333D Financial assistance to bodies involved in giving pensions guidance

- (1) The Treasury may make grants or loans or give any other form of financial assistance to—
 - (a) the Pensions Advisory Service Limited;
 - (b) the Northern Ireland Association of Citizens Advice Bureaux.

(For the power to make grants to the National Association of Citizens Advice Bureaux and the Scottish Association of Citizens Advice Bureaux see section 40A of the Consumers, Estate Agents and Redress Act 2007.)

- (2) Any grant, loan or other form of financial assistance under subsection (1)—
 - (a) is to be made or given for the purpose of enabling the body to carry out its functions under section 333C(1), and
 - (b) may be made or given subject to such other terms as the Treasury consider appropriate.

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Designation of guidance providers

333E Designation of providers of pensions guidance

- (1) In this Part “designated guidance provider” means—
 - (a) the Pensions Advisory Service Limited,
 - (b) the National Association of Citizens Advice Bureaux,
 - (c) the Scottish Association of Citizens Advice Bureaux,
 - (d) the Northern Ireland Association of Citizens Advice Bureaux, or
 - (e) a person designated by the Treasury as someone who must, in giving pensions guidance, comply with standards set by the FCA under section 333H.
- (2) Before designating a person under subsection (1)(e), the Treasury must—
 - (a) consult the FCA,
 - (b) notify the person to be designated, and
 - (c) consider any representations made.
- (3) The Treasury may revoke a designation under subsection (1)(e).
- (4) The Treasury must give notice in writing of a designation under subsection (1)(e) or the revocation of a designation under subsection (3) to the person designated or (as the case may be) the person whose designation has been revoked.
- (5) The Treasury must send a copy of a notice given under subsection (4) to—
 - (a) all other designated guidance providers, and
 - (b) the FCA.
- (6) The Treasury must from time to time publish, in such manner as they consider appropriate, a list of the persons who are designated under subsection (1)(e).

Co-operation and information sharing

333F Co-operation and information sharing

- (1) The following must co-operate with one another in matters relating to the giving of pensions guidance—
 - (a) each designated guidance provider;
 - (b) the Treasury.
- (2) Designated guidance providers and the Treasury may share information for the purposes of subsection (1).

False claims when giving pensions guidance

333G Offence of falsely claiming to be giving pensions guidance under Treasury arrangements

- (1) It is an offence for a person who is not giving pensions guidance under arrangements made with the Treasury—
 - (a) to describe himself (in whatever terms) as a person who is doing so, or

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- (b) to behave, or otherwise hold himself out, in a manner which indicates (or which is reasonably likely to be understood as indicating) that he is doing so.
- (2) For the purposes of subsection (1), pensions guidance given by a designated guidance provider is given under arrangements made with the Treasury.
- (3) In proceedings for an offence under this section it is a defence for the accused to show that the accused took all reasonable precautions and exercised all due diligence to avoid committing the offence.
- (4) A person guilty of an offence under this section is liable on summary conviction—
 - (a) in England and Wales, to imprisonment for a term not exceeding 51 weeks or a fine, or both;
 - (b) in Scotland, to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale, or both;
 - (c) in Northern Ireland, to imprisonment for a term not exceeding 6 months or a fine not exceeding level 5 on the standard scale, or both.
- (5) In relation to an offence committed before section 281(5) of the Criminal Justice Act 2003 comes into force, the reference in subsection (4)(a) to 51 weeks is to be read as a reference to 6 months.
- (6) In relation to an offence committed before section 85(1) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 comes into force, the reference in subsection (4)(a) to a fine is to be read as a reference to a fine not exceeding level 5 on the standard scale.

Standards for giving of pensions guidance by designated guidance providers

333H Standards for giving of pensions guidance by designated guidance providers

- (1) The FCA must from time to time set standards for the giving of pensions guidance by designated guidance providers.
- (2) A failure by a designated guidance provider to comply with a standard set under this section is actionable at the suit of a private person who suffers loss as a result of the failure, subject to the defences and other incidents applying to actions for breach of statutory duty.
- (3) In subsection (2) “private person” has the same meaning as in section 138D.
- (4) Standards set under this section may provide for subsection (2) not to apply to a failure to comply with a specified provision of the standards.
- (5) Standards set under this section—
 - (a) may make different provision for different cases and may, in particular, make different provision in respect of different classes of designated guidance providers or different types of pensions guidance;
 - (b) may include incidental, supplemental, consequential or transitional provision.
- (6) The procedural provisions of this Act in the first column of the table apply to the setting of standards under this section as if references in those provisions to the making of rules (however expressed) were references to the setting of standards and with the additional modifications in the second column.

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<i>Procedural provisions of this Act</i>	<i>Additional modifications</i>
Sections 138G and 138H	Treat the references to a rule-making instrument as references to a standard-making instrument.
Section 138I	Treat— (a) subsection (1)(a) as if it were omitted; (b) subsection (2)(d) as if it referred to an explanation of the FCA's reasons for believing that setting the proposed standards would secure an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.
Section 138L	Treat the reference in subsection (1) to consumers (as defined in section 425A) as a reference to recipients of pensions guidance from designated guidance providers.

333I Monitoring of compliance with standards by designated guidance providers

- (1) The FCA must maintain arrangements for monitoring compliance by designated guidance providers with the standards set under section 333H.
- (2) Sections 165 and 167 apply for the purpose of enabling the FCA to monitor compliance but as if—
 - (a) references to an authorised person or a former authorised person (other than in section 165(11)(d)) were references to a designated guidance provider or a former designated guidance provider;
 - (b) section 165(7)(b) to (d) were omitted;
 - (c) the reference in section 167(5A)(b) to the FCA or the PRA were a reference to the FCA.
- (3) Section 175 applies as if a power that the FCA or an investigator has by virtue of subsection (2) were a power under Part 11.
- (4) Section 177 applies as if a requirement imposed by virtue of subsection (2) were a requirement imposed under Part 11.
- (5) References in a provision of Part 11 to section 165, 167, 175 or 177 include the relevant section as applied with modifications by this section.

333J Failure by designated guidance providers to comply with standards: FCA recommendations

- (1) If the FCA considers that a designated guidance provider has failed to comply with a standard set under section 333H the FCA may—
 - (a) recommend steps that the designated guidance provider might take to prevent the continuance or recurrence of the failure or to make redress to those affected by the failure, and

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- (b) having made such a recommendation, recommend that the Treasury give a direction under section 333M.
- (2) The FCA must publish a recommendation made under subsection (1)(b) unless the FCA considers that to do so—
 - (a) would be against the public interest, or
 - (b) would be inappropriate for some other reason.
- (3) If the condition in subsection (2)(a) or (b) is satisfied in relation to a recommendation but would not be satisfied if the FCA published part only of the recommendation, the FCA may publish that part.
- (4) If the power conferred by section 333E(3) to revoke a designation is exercised before the power in subsection (1) the reference in subsection (1) to a designated guidance provider is to be read as a reference to a person who, at the time of the failure to comply, was a designated guidance provider.

333K FCA policy on making recommendations under section 333J

- (1) The FCA must prepare and issue a statement of its policy with respect to the making of recommendations under section 333J.
- (2) The FCA may at any time alter or replace a statement issued under this section.
- (3) If a statement issued under this section is altered or replaced, the FCA must issue the altered or replaced statement.
- (4) The FCA may issue a statement under this section only with the consent of the Treasury.
- (5) A statement issued under this section must be published by the FCA in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of the statement.

333L FCA policy on making recommendations under section 333J: procedure

- (1) Before issuing a statement under section 333K, the FCA must—
 - (a) consult the Treasury, and
 - (b) publish a draft of the proposed statement in the way appearing to the FCA to be best calculated to bring it to the attention of the public.
- (2) The draft must be accompanied by notice that representations about the proposal may be made to the FCA within a specified time.
- (3) Before issuing the proposed statement, the FCA must have regard to any representations made to it within the specified time.
- (4) If the FCA issues the proposed statement it must publish an account, in general terms, of—
 - (a) the representations made to it within the specified time, and
 - (b) its response to them.

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- (5) If the statement differs from the draft published under subsection (1)(b) in a way which is, in the opinion of the FCA, significant, the FCA must (in addition to complying with subsection (4)) publish details of the difference.
- (6) The FCA may charge a reasonable fee for providing a person with a copy of a draft published under subsection (1)(b).
- (7) This section also applies to a proposal to alter or replace a statement.

333M Failure by designated guidance providers to comply with standards: Treasury directions

- (1) If the Treasury consider that a designated guidance provider has failed to comply with a standard set under section 333H the Treasury may direct the provider to take such steps as the Treasury consider appropriate—
 - (a) to prevent the continuance or recurrence of the failure;
 - (b) to make redress to those affected by the failure.
- (2) The Treasury may give a direction under subsection (1) only if the FCA has made a recommendation under section 333J(1)(b) (although the terms of the direction need not be the same as that recommended by the FCA).
- (3) The Treasury must—
 - (a) give notice in writing of a direction under subsection (1), and
 - (b) send a copy of the notice to the FCA.
- (4) The notice must inform the designated guidance provider that representations about why the direction should not be published may be made to the Treasury within a specified time.
- (5) Once the time specified under subsection (4) has elapsed, the Treasury must publish the direction unless—
 - (a) the Treasury consider that to do so would be against the public interest;
 - (b) having considered representations made by the designated guidance provider within the specified time, the Treasury consider that it would be inappropriate to do so for some other reason.
- (6) If the condition in subsection (5)(a) or (b) is satisfied in relation to a direction but would not be satisfied if the Treasury published part only of the direction, the Treasury may publish that part.
- (7) A direction under subsection (1) is enforceable, on an application made by the Treasury, by injunction or, in Scotland, by an order for specific performance under section 45 of the Court of Session Act 1988.

333N Directions to designated guidance providers under section 333M: relationship with power to revoke a designation

- (1) The power conferred by section 333M(1) is exercisable in addition to, or instead of, the power conferred by section 333E(3) to revoke a designation.
- (2) If the power in section 333E(3) is exercised before the power in section 333M(1) the reference in section 333M(1) to a designated guidance provider is to be read as

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a reference to a person who, at the time of the failure to comply, was a designated guidance provider.

- (3) Subsection (1) does not limit the grounds on which the power in section 333E(3) may be exercised.

FCA's duties and power to give guidance

333O FCA's duties

- (1) The FCA must discharge its general pensions guidance functions with a view to securing an appropriate degree of protection for recipients of pensions guidance from designated guidance providers.
- (2) In discharging its general pensions guidance functions the FCA must have regard to—
 - (a) its strategic and operational objectives in section 1B(2) and (3), and
 - (b) the regulatory principles in section 3B.
- (3) In this section the FCA's "general pensions guidance functions" means its functions of—
 - (a) setting standards under section 333H,
 - (b) issuing statements under section 333K,
 - (c) giving general guidance under section 333P (see section 333P(9)),
 - (d) making rules under section 333Q, and
 - (e) determining the general policy and principles by reference to which it performs particular functions under this Part.

333P Power of the FCA to give guidance

- (1) The FCA may give guidance consisting of such information and advice relating to its functions under sections 333H, 333I, 333J, 333K and 333Q as it considers appropriate.
- (2) Subsection (3) applies where the FCA proposes to give guidance to designated guidance providers generally, or to a class of designated guidance provider, in relation to standards set under section 333H or rules made under section 333Q.
- (3) Where this subsection applies, subsections (1)(b), (2)(e) and (3) of section 138I apply to the proposed guidance as they apply to proposed rules, unless the FCA considers that the delay in complying with those provisions would be prejudicial to the interests of recipients of pensions guidance from designated guidance providers.
- (4) The FCA may—
 - (a) publish its guidance,
 - (b) offer copies of its published guidance for sale at a reasonable price, and
 - (c) if it gives guidance in response to a request made by any person, make a reasonable charge for that guidance.
- (5) On giving any general guidance, the FCA must give written notice to the Treasury without delay.
- (6) If the FCA alters any of its general guidance, it must give written notice to the Treasury without delay.

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- (7) The notice under subsection (6) must include details of the alteration.
- (8) If the FCA revokes any of its general guidance, it must give written notice to the Treasury without delay.
- (9) In this section “general guidance” means guidance given by the FCA under this section which is—
 - (a) given to persons generally, to designated guidance providers generally or to a class of designated guidance provider,
 - (b) intended to have continuing effect, and
 - (c) given in writing or other legible form.

Funding of pensions guidance

333Q Funding of FCA's pensions guidance costs

- (1) For the purpose of meeting the FCA's pensions guidance costs the FCA must make rules requiring designated guidance providers, or any specified class of designated guidance provider, to pay to the FCA specified amounts or amounts calculated in a specified way.
- (2) Before the FCA publishes a draft of the rules it must consult the Treasury.
- (3) The amounts to be paid under the rules may include a component—
 - (a) to cover the expenses of the FCA in collecting the payments;
 - (b) to enable the FCA to maintain an adequate reserve.
- (4) In this section the “FCA's pensions guidance costs” means the expenses incurred, or expected to be incurred, by the FCA in connection with the carrying out of the functions conferred on it by this Part other than by section 333R.

333R Funding of Treasury's pensions guidance costs

- (1) The Treasury must, from time to time, notify the FCA of the amount of the Treasury's pensions guidance costs.
- (2) Having been so notified, the FCA must make rules requiring authorised persons, or any specified class of authorised person, to pay to the FCA specified amounts or amounts calculated in a specified way with a view to recovering the amount notified under subsection (1).
- (3) The amounts to be paid under the rules may include a component to cover the expenses of the FCA in collecting the payments (“collection costs”).
- (4) Before the FCA publishes a draft of the rules it must consult the Treasury.
- (5) The rules may be made only with the consent of the Treasury.
- (6) The Treasury may notify the FCA of matters that they will take into account when deciding whether or not to give consent for the purposes of 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.

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- (8) The FCA must pay to the Treasury the amounts that it receives under rules made under this section apart from amounts in respect of its collection costs (which it may keep).
- (9) The Treasury must pay into the Consolidated Fund the amounts received by them under subsection (8).
- (10) In this section the “Treasury's pensions guidance costs” means the expenses incurred, or expected to be incurred, by the Treasury—
- (a) in giving pensions guidance or arranging for it to be given by designated guidance providers,
 - (b) in meeting the expenses of designated guidance providers incurred in connection with the giving of the guidance (whether by means of the power conferred by section 333D or otherwise),
 - (c) in providing services to designated guidance providers to support them in giving the guidance,
 - (d) in increasing awareness of the availability of the guidance,
 - (e) in undertaking or commissioning research relating to the giving of the guidance, and
 - (f) otherwise in connection with the carrying out of its functions under section 333B.
- (11) For the purposes of subsection (10)(b) “expenses of designated guidance providers”—
- (a) includes expenses incurred by virtue of sections 333H(2), 333J, 333M and 333Q, and
 - (b) where a recommendation or direction has been made by virtue of section 333J(4) or 333N(2), includes expenses of a former designated guidance provider.
- (12) The Treasury may by regulations amend the definition of the “Treasury's pensions guidance costs” in subsection (10).]

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