



# Bank of England and Financial Services Act 2016

## 2016 CHAPTER 14

### PART 2

#### FINANCIAL SERVICES

##### *Pensions*

#### **F1 32 Pensions guidance**

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#### **Textual Amendments**

**F1** S. 32 omitted (1.1.2019) by virtue of [Financial Guidance and Claims Act 2018 \(c. 10\)](#), s. 37(5), [Sch. 3 para. 32](#); S.I. 2018/1330, [reg. 2\(g\)\(vii\)](#)

#### **33 Advice about transferring or otherwise dealing with annuity payments**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 137FB insert—

#### **“137FBA FCA general rules: advice about transferring or otherwise dealing with annuity payments**

- (1) The FCA must make general rules requiring specified authorised persons to check that an individual—
  - (a) who has a right to payments under a relevant annuity, and
  - (b) if the Treasury make regulations under subsection (3), who is not an exempt person by virtue of those regulations,

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has received appropriate advice before transferring or otherwise dealing with the right to those payments.

- (2) The reference in subsection (1) to a right to payments under a relevant annuity does not include a contingent right to such payments.
  - (3) The Treasury may by regulations provide that an individual whose financial circumstances meet criteria specified in the regulations is an exempt person for the purposes of subsection (1)(b).
  - (4) Regulations made under subsection (3) may (amongst other things) specify criteria based on the proportion of the individual's financial resources that is represented by the payments under the relevant annuity or the value of that annuity.
  - (5) The rules made by virtue of subsection (1) may include provision—
    - (a) about what specified authorised persons must do to check that an individual has received appropriate advice for the purposes of those rules;
    - (b) about when the check must be carried out.
  - (6) For the purposes of this section—
    - (a) “relevant annuity” means an annuity specified (by type, value or otherwise) as a relevant annuity in regulations made by the Treasury;
    - (b) “appropriate advice” means advice specified (by reference to the person giving the advice or otherwise) as appropriate advice in regulations made by the Treasury;
    - (c) “specified authorised person” means an authorised person of a description specified in rules made by virtue of subsection (1).
  - (7) If regulations under subsection (3) or (6)(a) make provision about the value of an annuity, the regulations may also make provision about the basis on which the value of an annuity is to be calculated.”
- (3) In section 138F(2) (notification of rules) after “137FB,” insert “137FBA,”.
- (4) In section 138I (consultation by the FCA)—
- (a) in subsection (6), after paragraph (aa) insert—
 

“(ab) section 137FBA;”;
  - (b) in subsection (10)(a) after “137FB,” insert “137FBA,”.
- (5) In section 429(2B) (regulations subject to affirmative procedure)—
- (a) after paragraph (a) (inserted by section 22) insert—
 

“(b) provision made under section 137FBA(3);”;
  - (b) the words from “provision made under section 410A,” to the end become paragraph (c).

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**Commencement Information**

**II** S. 33 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(x\)](#)

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### 34 Independent advice on conversions and transfers of pension benefits: appointed representatives

- (1) The Pension Schemes Act 2015 is amended as follows.
- (2) In section 48(8) (independent advice in respect of conversions and transfers: Great Britain), in paragraph (a) of the definition of “authorised independent adviser”, after “Secretary of State,” insert “or is acting as an appointed representative (within the meaning given by section 39(2) of that Act) in relation to a regulated activity so specified,”.
- (3) In section 51(8) (independent advice in respect of conversions and transfers: Northern Ireland), in paragraph (a) of the definition of “authorised independent adviser”, after “Northern Ireland,” insert “or is acting as an appointed representative (within the meaning given by section 39(2) of that Act) in relation to a regulated activity so specified,”.
- (4) The Financial Services and Markets Act 2000 (Appointed Representatives) Regulations 2001 (S.I. 2001/1217) are amended as follows.
- (5) In regulation 2(1) (descriptions of business for which appointed representatives are exempt) after sub-paragraph (cca) insert—
 

“(ccb) an activity of the kind specified by article 53E of that Order (advising on conversion or transfer of pension benefits);”.
- (6) In regulation 3 (requirements applying to contracts between authorised persons and appointed representatives) after paragraph (3G) insert—
 

“(3GA) A representative is also to be treated as representing other counterparties for the purposes of paragraph (1) where the representative gives advice (in circumstances constituting the carrying on of an activity of the kind specified by article 53E of that Order) on behalf of other counterparties.”
- (7) The amendments made by subsections (4) to (6) do not affect the power to make further subordinate legislation amending or revoking the amended regulations.

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#### Commencement Information

**I2** S. 34 in force at 6.7.2016 by [S.I. 2016/627](#), [reg. 2\(1\)\(y\)](#)

### 35 Early exit pension charges

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) After section 137FBA (as inserted by section 33) insert—

#### “137FBB FCA general rules: early exit pension charges

- (1) The FCA must make general rules prohibiting authorised persons from—
  - (a) imposing specified early exit charges on members of relevant pension schemes, and
  - (b) including in relevant pension schemes provision for the imposition of specified early exit charges on members of such schemes.

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- (2) The rules must be made with a view to securing, so far as is reasonably possible, an appropriate degree of protection for members of relevant pension schemes against early exit charges being a deterrent on taking, converting or transferring benefits under the schemes.
- (3) The rules may specify early exit charges by reference to charges of a specified class or description, or by reference to charges which exceed a specified amount.
- (4) The rules made by virtue of subsection (1)(a) must prohibit the imposition of the charges after those rules come into force, whether the relevant pension scheme was established before or after those rules (or this section) came into force.
- (5) In relation to a charge which is imposed, or provision for the imposition of a charge which is included in a pension scheme, in contravention of the rules, the rules may (amongst other things)—
  - (a) provide for the obligation to pay the charge to be unenforceable or unenforceable to a specified extent;
  - (b) provide for the recovery of amounts paid in respect of the charge;
  - (c) provide for the payment of compensation for any losses incurred as a result of paying amounts in respect of the charge.
- (6) Subject to subsection (8) an early exit charge, in relation to a member of a pension scheme, is a charge which—
  - (a) is imposed under the scheme when a member who has reached normal minimum pension age takes the action mentioned in subsection (7), but
  - (b) is only imposed, or only imposed to that extent, if the member takes that action before the member's expected retirement date.
- (7) The action is the member taking benefits under the scheme, converting benefits under the scheme into different benefits or transferring benefits under the scheme to another pension scheme.
- (8) The Treasury may by regulations specify matters that are not to be treated as early exit charges for the purposes of this section.
- (9) For the purposes of this section—
 

“charge”, in relation to a member of a pension scheme, includes a reduction in the value of the member's benefits under the scheme;

“expected retirement date”, in relation to a member of a pension scheme, means the date determined by, or in accordance with, the scheme as the date on which the member's benefits under the scheme are expected to be taken;

“normal minimum pension age” has the same meaning as in section 279(1) of the Finance Act 2004;

“relevant pension scheme” has the same meaning as in section 137FB;

and a reference to benefits includes all or any part of those benefits.”
- (3) In section 138E(3) (contravention of rules which may make transaction void or unenforceable)—

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- (a) omit the “or” at the end of paragraph (a);
- (b) at the end of paragraph (b) insert “or
- (c) rules made by the FCA under section 137FBB.”

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**Commencement Information**

**I3** S. 35 in force at 6.7.2016 by [S.I. 2016/627](#), **reg. 2(1)(z)**

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2019/1136 by [S.I. 2020/929 reg. 2](#)