



# Financial Guidance and Claims Act 2018

## 2018 CHAPTER 10

### PART 2

#### CLAIMS MANAGEMENT SERVICES

##### *Transfer of regulation of claims management services to FCA*

#### **27 Transfer to FCA of regulation of claims management services**

- (1) The Financial Services and Markets Act 2000 is amended as follows.
- (2) In section 1H (interpretation provisions for FCA's objectives)—
  - (a) in subsection (2), at the end of paragraph (c) insert “or to engage in claims management activity”, and
  - (b) in subsection (8), at the appropriate place insert—

““engage in claims management activity” has the meaning given in section 21;”.
- (3) In section 21 (restrictions on financial promotion)—
  - (a) in subsection (1)—
    - (i) the words from “to engage” to the end become paragraph (a), and
    - (ii) at the end of that paragraph insert “, or  
(b) to engage in claims management activity.”,
  - (b) after subsection (10) insert—

“(10A) “Engaging in claims management activity” means entering into or offering to enter into an agreement the making or performance of which by either party constitutes a controlled claims management activity.

(10B) An activity is a “controlled claims management activity” if—

    - (a) it is an activity of a specified kind,
    - (b) it is, or relates to, claims management services, and

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- (c) it is carried on in Great Britain.”, and
- (c) after subsection (12) insert—
- “(12A) Paragraph 25 of Schedule 2 applies for the purposes of subsection (10B) with the references to section 22 in subparagraph (3) of that paragraph being read as references to subsection (10B).”
- (4) In section 22 (regulated activities)—
- (a) after subsection (1A) insert—
- “(1B) An activity is also a regulated activity for the purposes of this Act if it is an activity of a specified kind which—
- (a) is carried on by way of business in Great Britain, and
- (b) is, or relates to, claims management services.”, and
- (b) in subsection (3) for “subsection (1) or (1A)” substitute “subsections (1) to (1B)”.
- (5) In section 137R (financial promotion rules)—
- (a) in subsection (1), omit the “or” at the end of paragraph (a) and after that paragraph insert—
- “(aa) to engage in claims management activity, or”, and
- (b) in subsection (6), for “has” substitute “and “engage in claims management activity” have”.
- (6) In section 234C (complaints to the FCA by consumer bodies)—
- (a) in subsection (1), after “financial services” insert “or of a market in Great Britain for claims management services”, and
- (b) in subsection (5)—
- (i) in paragraph (a), at the end insert “(and “market in Great Britain” is to be construed accordingly)”, and
- (ii) in paragraph (b), after “financial services” insert “, or of a market in Great Britain for claims management services”.
- (7) In section 234I (FCA’s functions under Part 4 of the Enterprise Act 2002)—
- (a) in subsection (2)(b), after “services” insert “or to the provision of claims management services in Great Britain”, and
- (b) in subsection (6)(a), after “financial services” insert “or in Great Britain of claims management services”.
- (8) In section 234J(2) (FCA’s functions under the Competition Act 1998), after “financial services” insert “or relate to the provision of claims management services in Great Britain”.
- (9) In section 234M(1) (function of keeping market under review), after “services” insert “and the market in Great Britain for claims management services”.
- (10) In section 417(1) (definitions), at the appropriate place insert—
- ““regulated claims management activity” means activity of a kind specified in an order under section 22(1B) (regulated activities: claims management services);”.
- (11) After section 419 insert—

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### **“419A Claims management services**

- (1) In this Act “claims management services” means advice or other services in relation to the making of a claim.
- (2) In subsection (1) “other services” includes—
  - (a) financial services or assistance,
  - (b) legal representation,
  - (c) referring or introducing one person to another, and
  - (d) making inquiries,but giving, or preparing to give, evidence (whether or not expert evidence) is not, by itself, a claims management service.
- (3) In this section “claim” means a claim for compensation, restitution, repayment or any other remedy or relief in respect of loss or damage or in respect of an obligation, whether the claim is made or could be made—
  - (a) by way of legal proceedings,
  - (b) in accordance with a scheme of regulation (whether voluntary or compulsory), or
  - (c) in pursuance of a voluntary undertaking.
- (4) The Treasury may by order provide that a claim for a specified benefit is to be treated as a claim for the purposes of this section.
- (5) The Treasury may specify a benefit under subsection (4) only if it appears to the Treasury to be a social security benefit, payable under the law of any part of the United Kingdom, designed to provide compensation for industrial injury.

### **419B Carrying on claims management activity in Great Britain**

- (1) The Treasury may by order make provision as to the circumstances in which a person is, or is not, to be treated as carrying on—
  - (a) a regulated claims management activity, or
  - (b) an activity of a kind specified in an order under section 21(10B),  
in Great Britain.
- (2) Subsections (2) to (5) of section 419 apply in relation to an order under subsection (1) as they apply in relation to an order under subsection (1) of that section, but as if the references to regulated activities in subsection (2) of that section were references to regulated claims management activities or, as the case may be, to activities of a kind specified in an order under section 21(10B).”
- (12) In section 429 (parliamentary control of statutory instruments)—
  - (a) in subsection (1)(a) (orders subject to affirmative procedure), for “or 419” substitute “, 419 or 419B”,
  - (b) in subsection (4)—
    - (i) in paragraph (e), for “or (10)” substitute, “, (10) or (10B)”,
    - (ii) omit the “or” at the end of paragraph (f), and
    - (iii) after paragraph (g) insert “; or

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- (h) it adds one or more activities to those that are controlled claims management activities for the purposes of section 21.”, and
  - (c) after subsection (7) insert—
    - “(7A) An order to which, if it is made, subsection (7B) will apply is not to be made unless a draft of the order has been laid before Parliament and approved by a resolution of each House.
    - (7B) This subsection applies to an order under section 419A(4) if—
      - (a) it is the first order to be made, or to contain provisions made, under that subsection; or
      - (b) it adds one or more benefits to those that are specified benefits for the purposes of section 419A.”
- (13) In Schedule 2 (regulated activities)—
  - (a) in paragraph 25 (order making power), in sub-paragraph (1)—
    - (i) in the opening words for “or (1A)” substitute “to (1B)”;
    - (ii) in paragraph (f) at the end insert “, including provision which applies (with or without modification) provision in this Act or other primary or subordinate legislation that relates to investment activity or financial services to a regulated activity that does not relate to investment activity or financial services.”, and
  - (b) in paragraph 26 (parliamentary control), in sub-paragraph (1) for “or (1A)” substitute “to (1B)”.
- (14) Schedule 4 contains provision about transfer schemes where an order is made under section 22(1B) of the Financial Services and Markets Act 2000 (inserted by subsection (4)(a)).
- (15) Schedule 5 contains transitional provision relating to this section.