



The Scottish Parliament
Pàrlamaid na h-Alba

Published 1 February 2018
SP Paper 273
2nd Report, 2018 (Session 5)

**Economy, Jobs and Fair Work Committee
Comataidh Eaconomaidh, Dreuchdan is Obair
Chothromach**

**Legislative Consent Memorandum on
the Financial Guidance and Claims Bill
(LCM(S5)11)**



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Economy, Jobs and Fair Work Committee

To consider and report on matters falling within the responsibility of the Cabinet Secretary for Economy, Jobs and Fair Work.



<http://www.scottish.parliament.uk/parliamentarybusiness/CurrentCommittees/economy-committee.aspx>



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Background

1. [The Financial Guidance and Claims Bill](#) ("the Bill") was introduced in the House of Lords on 22 June 2017.
2. The Bill proposes change in 2 main areas:
 - it would merge the functions of the Money Advice Service, the Pensions Advisory Service and Pension Wise by creating a new "single financial guidance body" for consumers; and
 - it would provide for the regulation of claims management firms by the Financial Conduct Authority.
3. The LCM highlights three areas in which the provisions of the Bill will deal with matters within the devolved competence of the Scottish Parliament. These are:
 - some of the functions of the single guidance body;
 - the creation of a criminal offence of pretending to act on behalf of the single financial guidance body (again, some aspects of this will be reserved and some will be devolved); and
 - the regulation of claims management companies.
4. The functions of the single financial guidance body cover both reserved and devolved issues. For example, pensions guidance and guidance on financial products would be reserved. Debt advice is devolved. Some aspects of money guidance and financial capability will be reserved (eg. guidance on getting a mortgage), while some will be devolved (eg. dealing with council tax).

Merging provision of money advice and pensions guidance

5. The Money Advice Service currently provides: guidance on money matters; funding for debt advice; and strategic direction on improving financial capability. The Pensions Advisory Service provides guidance on pensions options. Pension Wise is operated by the Department for Work and Pensions and provides guidance for those over 50 with defined-contribution pensions. All services are funded by the UK Government, with the costs recouped from levies on financial services and pensions providers.

Provisions in the Bill

6. Under the provisions in the Bill, the single financial guidance body would have the following functions (see clause 3):
 - to provide free, impartial information and guidance on occupational and personal pensions;
 - to provide free, impartial debt advice in England only;

- to provide free, impartial information and guidance designed to enhance people's financial capability (referred to as money guidance);
- to pass to the Financial Conduct Authority information from consumers suggesting inappropriate approaches or conduct from those providing related services (referred to as the consumer protection function);
- to develop a national strategy to improve financial capability, debt management and the delivery of financial education to children and young people; and
- to provide advice to the Secretary of State on matters within its remit.

Impact in Scotland

7. Guidance from all the services discussed above is accessible to people in Scotland. Where appropriate, guidance is tailored to address differences in the law between Scotland and England and Wales. The single financial guidance body is required to work closely with the devolved administrations to deliver information, guidance and advice (clause 2(1)(e)), so this can be expected to continue.
8. The primary funders of advice (including debt advice) in Scotland are local authorities. The Scottish Government, as well as various other grant funders, also provide some funding.
9. The Money Advice Service currently funds advice provision in Scotland (in conjunction with the Scottish Government) through the Scottish Legal Aid Board's grant funding programme. There are various strands to this funding programme, addressing debt, financial capability, housing issues and social security entitlement.
10. The Bill proposes that the single financial guidance body would not continue the Money Advice Service's role in funding debt advice provision in Scotland. Instead, money from a levy on financial services providers would be used directly by the Scottish Government to fund debt advice.
11. The process which the Bill would set up for doing this is controlled by The Treasury (clause 15 of the Bill). The Treasury would notify the Financial Conduct Authority of the sum expected to be incurred by the devolved administrations in relation to debt advice. The Financial Conduct Authority would then be responsible for making rules to recover this amount from financial services providers through a levy.

Regulation of claims management firms

12. Claims management companies handle legal claims on behalf of individuals, usually on the basis of charging a percentage of any compensation received. They are very active in the fields of personal injury and financial services (such as payment protection insurance (PPI)).

Provisions in the Bill

13. Under the Bill's provisions, responsibility for the regulation of claims management companies will move from the Ministry of Justice to the Financial Conduct Authority.

Impact in Scotland

14. The vast majority of claims management companies are based in England and Wales. They have been regulated there since 2006, under the auspices of the Ministry of Justice. The Bill's provisions for the regulation of claims management companies by the Financial Conduct Authority originally extended only to England and Wales.
15. Claims management companies are not currently regulated in Scotland. The Scottish Government had intended that this matter would be considered in more detail by its independent Review of the Regulation of Legal Services. This is due to report in mid-2018.
16. During its scrutiny of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill, the Scottish Parliament's Justice Committee heard calls for claims management companies to be regulated in Scotland as a matter of urgency.ⁱ
17. Stakeholders argued that reforms in England were making it less attractive for claims management companies to operate there. They provided some evidence that claims management companies were establishing in Scotland and suggested that, without regulation, this could be detrimental to consumers.
18. On the basis of this information, the Scottish Government agreed to explore whether provision for the regulation of claims management companies by the Financial Conduct Authority could be extended to Scotland. This was achieved by amendments to the Bill in the House of Lords, as confirmed by a [letter](#) from the Minister for Community Safety and Legal Affairs to the Convener of the Justice Committee.ⁱⁱ

ⁱ [Justice Committee, 24th Report, 2017 \(Session 5\): Stage 1 Report on the Civil Litigation \(Expenses and Group Proceedings\) \(Scotland\) Bill](#)

ⁱⁱ http://www.scottish.parliament.uk/S5_JusticeCommittee/Inquiries/20171016MfCSLAtoMM.pdf

Scrutiny of the LCM

19. The Cabinet Secretary for the Economy, Jobs and Fair Work, Keith Brown MSP, lodged LCM(S5)11 on 13 December 2017. The draft motion, which will be lodged by the Cabinet Secretary for the Economy, Jobs and Fair Work is:

That the Parliament agrees that the relevant provisions of the Financial Guidance and Claims Bill, introduced in the House of Lords on 22 June 2017, relating to core functions of the Single Financial Guidance Body (SFGB); provisions that will make it a criminal offence to pretend to be giving financial guidance on behalf of the SFGB; and the introduction of regulation of claims management companies by the Financial Conduct Authority to Scotland, so far as these matters fall within the legislative competence of the Scottish Parliament, should be considered by the UK Parliament.
20. The memorandum was referred to the Economy, Jobs and Fair Work Committee as lead committee by the Bureau on 19 December 2017.
21. At its meeting on 19 December 2017, the Committee agreed to write to the Cabinet Secretary seeking further information on the Scottish Government's position on the Bill and to seek written evidence from relevant stakeholders.
22. In advance of its meeting on 16 January, the Committee received responses from the Scottish Government, Citizens Advice Scotland, Institute of Chartered Accountants, StepChange Scotland and Money Advice Scotland. It also received correspondence from the Justice Committee to help inform scrutiny of the LCM. The Committee welcomed this input from stakeholders and is grateful for the information provided. Full responses and correspondence are included on the Committee's webpage.ⁱⁱⁱ

Economy, Jobs and Fair Work Committee

23. At its meeting on 16 January 2018, the Committee took oral evidence from Keith Brown, Cabinet Secretary for the Economy, Jobs and Fair Work and Scottish Government officials.
24. The Financial Guidance and Claims Bill was introduced at Westminster on 22 June 2017. The Scottish Parliament Standing Orders provide that an LCM will be lodged normally no later than two weeks after the introduction of a bill (rule 9B.3.1(a)). The Cabinet Secretary explained to the Committee that the LCM, lodged on 13 December 2017, was delayed by discussions with the UK Government and other devolved Administrations regarding levy funding.
25. Given that the implementation of the Financial Guidance and Claims Bill overlaps with the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill, the Committee seeks assurances from the Cabinet Secretary that the implementation of both pieces of legislation will be co-ordinated to ensure that there are no gaps in provision.

ⁱⁱⁱ <http://www.parliament.scot/parliamentarybusiness/CurrentCommittees/104211.aspx>

26. Committee members also raised questions about the funding levy and were interested in how the levy will be calculated and sought further information on how the increased revenue would impact debt advice delivery. The Committee notes evidence from the Cabinet Secretary that levy funding will increase from "£2.2 million to more than £4.7 million".^{iv} Citizens Advice Scotland told the Committee that "it is urgent that future funding of debt advice in Scotland is sufficient to ensure adequate coverage and consistency of debt advice services going forward".^v When asked about future funding allocation for debt advice services, the Cabinet Secretary said, "we have a proposal to establish a consumer protection body, so it will depend on how that progresses. If we have more resource, we obviously do not intend to shovel it off to some other function. This is the purpose that we want to put it to, but exactly how it will be disbursed remains to be seen."^{vi}
27. The Committee notes the Cabinet Secretary's commitment to have ongoing discussions with the Treasury to manage how the levy is being allocated and will return to this matter when it scrutinises forthcoming consumer protection legislation.
28. On 25 January, the Committee received a letter from the Cabinet Secretary stating that amendments had been lodged at Westminster which relate to the regulation of claims management companies by the Financial Conduct Authority. The Cabinet Secretary explained that the new measures would "prevent a potential risk of claims management companies trying to avoid Financial Conduct Authority regulation, and fee capping, by becoming an alternative business structure under the Legal Services (Scotland) Act 2010. The aim of the amendments is to ensure that there is regulation of claims management activity regardless of the business structure of the company dealing with the claims.
29. The amendments will provide the Law Society of Scotland with the power to impose a fee cap. The Scottish Government stated that the power will be limited to PPI and similar claims and therefore "any overlap with the provisions contained in the Civil Litigation (Expenses and Group Proceedings) Bill would be very small and could be managed in the detail of any rules of the Law Society of Scotland. Further, HM Treasury will have a delegated power to extend the Law Society's fee capping power by regulations should that prove necessary. In that event, any such regulations would need the consent of Scottish Ministers."^{vii}
30. The regulation of claims management activity is an evolving policy area; the Robertson report on the review of the regulation of legal services and the outcome of the Taylor review (which made recommendations in relation to the capping of fees) will have a bearing on the final position. The Committee notes that the details of the fees cap will be determined by regulations which are likely to go before the Justice Committee and believes that ongoing scrutiny of the implementation of these measures is required.

^{iv} [Economy, Jobs and Fair Work Committee, Official Report of meeting on 16 January 2018.](#)

^v [Written evidence.](#)

^{vi} [Economy, Jobs and Fair Work Committee, Official Report of meeting on 16 January 2018.](#)

^{vii} [Letter from Cabinet Secretary for Economy, Jobs and Fair Work, 25 January 2018.](#)

Recommendation

The Committee recommends that the Parliament agree to a legislative consent motion in the terms outlined in the memorandum.

