

FEES (PENSIONS GUIDANCE) INSTRUMENT 2015

Powers exercised

- A. The Financial Conduct Authority makes this instrument in the exercise of the following powers and related provisions in the Financial Services and Markets Act 2000 (“the Act”):
- (1) section 137T (General supplementary powers);
 - (2) section 139A (Power of the FCA to give guidance);
 - (3) section 333R (Funding of Treasury’s pensions guidance costs); and
 - (4) paragraph 23 (Fees) of Schedule 1ZA (The Financial Conduct Authority).
- B. The rule-making powers listed above are specified for the purpose of section 138G (Rule-making instruments) of the Act.

Commencement

- C. This instrument comes into force on 1 April 2015.

Amendments to the FCA Handbook

- D. The Glossary of definitions is amended in accordance with Annex A to this instrument.
- E. The Fees manual (FEES) is amended in accordance with Annex B to this instrument.

Citation

- F. This instrument may be cited as the Fees (Pensions Guidance) Instrument 2015.

By order of the Board of the Financial Conduct Authority
24 March 2015

Annex A

Amendments to the Glossary of definitions

Insert the following new definition in the appropriate alphabetical position. The text is not underlined.

pensions guidance levy the amount payable to the *FCA* by the *firms* to which *FEES 10* (Pensions guidance levy) applies.

Annex B

Amendments to the Fees manual (FEES)

In this Annex, underlining indicates new text and striking through indicates deleted text, unless otherwise stated.

[*Editor's Note:* The text shown in this annex takes account of changes made by the Fees (Payment Systems Regulator) Instrument 2015.]

1 Fees Manual

1.1 Application and Purpose

1.1.1B ...

1.1.1C G *FEES 10 (Pensions guidance levy) relates to the pensions guidance levy.*

2 General Provisions

2.1 Introduction

...

2.1.1A R This chapter does not apply in relation to:

...

(4) a PSR fee; or

(5) the pensions guidance levy.

...

After FEES 9 insert the following new chapter. The text is not underlined.

10 Pensions guidance levy

10.1 Application, purpose and background

Application

10.1.1 R This chapter applies to a *firm* that:

(1) (a) has a *Part 4A Permission*; or

(b) is an *incoming EEA firm* with a *branch* in the *United*

Kingdom; or

- (c) *is an incoming Treaty firm with a branch in the United Kingdom; and*
- (2) *is in one of the following activity groups listed in Part 1 of FEES 4 Annex 1AR:*
 - (a) *A.1 Deposit acceptors;*
 - (b) *A.4 Insurers – life;*
 - (c) *A.7 Portfolio managers excluding Class (1)A firms;*
 - (d) *A.9 Managers and depositaries of investment funds, and operators of collective investment schemes or pension schemes; and*
 - (e) *A.13 Advisors, arrangers, dealers or brokers.*

Where *rules* from other *FEES* chapters are incorporated into this chapter, those *rules* are the *rules* in effect on 1 April 2015.

Purpose

- 10.1.2 G This chapter sets out *rules* governing the amounts payable by *firms* to the *FCA* to fund the Treasury's pensions guidance costs and the related *FCA* collection costs.

Background

- 10.1.3 G The Treasury's pensions guidance costs are defined in subsection 10 of section 333R (Funding of Treasury's pensions guidance costs) of the *Act* as the expenses incurred, or expected to be incurred, by the Treasury:
- (1) *in giving pensions guidance or arranging for it to be given by designated guidance providers;*
 - (2) *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 (Financial assistance to bodies involved in giving pensions guidance) of the Act or otherwise);*
 - (3) *in providing services to designated guidance providers to support them in giving the guidance;*
 - (4) *in increasing awareness of the availability of the guidance;*
 - (5) *in undertaking or commissioning research relating to the availability of the guidance; and*
 - (6) *otherwise in connection with the carrying out of its functions under*

section 333B (Treasury's role in relation to pensions guidance).

- 10.1.4 G (1) Section 333R(1) of the *Act* requires the Treasury to notify the *FCA* of the amount of the Treasury's pensions guidance costs.
- (2) Section 333R(2) requires the *FCA* to make *rules* requiring *authorised persons* to pay amounts, or amounts calculated in a specified way, to the *FCA* with a view to recovering the amounts notified by the Treasury.
- (3) Under subsection 3 such amounts may include a component to cover the expenses of the *FCA* in collecting the payments.
- 10.1.5 G This chapter contains the *rules* referred to in *FEES* 10.1.4G.
- 10.1.6 G Under section 333R(8) of the *Act*, the *FCA* must pay to the Treasury the amounts that it receives under these *rules*, apart from amounts covering its collection costs (which it may keep).
- 10.1.7 G The total amount raised by the *pensions guidance levy* may vary from year to year depending on the amount notified to the *FCA* by the Treasury.
- 10.1.8 G These *rules* were made with the consent of the Treasury pursuant to section 333R(5) of the *Act*.

10.2 Pensions guidance levy

Obligation to pay pensions guidance levy

- 10.2.1 R A *firm* must pay the *pensions guidance levy* applicable to it:
- (1) in full and without deduction; and
- (2) in accordance with this chapter.

Time of payment

- 10.2.2 R (1) A *firm* must pay the *pensions guidance levy* applicable to it within 30 days of the date of the invoice to which that sum relates, unless any of (2) to (5) apply.
- (2) If the *firm* has applied to cancel its *Part 4A permission* under *SUP* 6.4.5D (Cancellation of permission), the *firm* must pay the *pensions guidance levy* applicable to it on the date of its application.
- (3) If the *FCA* has exercised its *own-initiative powers* to cancel a *firm's Part 4A permission*, the *firm* must pay the *pensions guidance levy* applicable to it immediately before cancellation takes effect.
- (4) If the *firm* receives or extends its *permission* during the fee year, the

firm must pay the *pensions guidance levy* applicable to it within 30 *days* of that date.

- (5) If:
- (a) the due date falls during an emergency period as set out in *GEN* 1.3.2R (Emergencies); and
 - (b) the *firm* has reasonable grounds to believe that those circumstances impair its ability to pay the *pensions guidance levy* applicable to it;

the *firm* must pay the *pensions guidance levy* applicable to it on or before the fifth *business day* after the end of that emergency period.

Calculation of pensions guidance levy

- 10.2.3 R The *pensions guidance levy* applicable to a particular *firm* is calculated as follows:
- (1) identify each of the activity groups in *FEES* 10.1.1R(2) that apply to the business of the *firm* for the relevant period;
 - (2) calculate the amount payable under *FEES* 10.2.4R for each of those activity groups;
 - (3) modify the result in accordance with *FEES* 10.2.5R if applicable; and
 - (4) apply any payment charge in *FEES* 4.2.4R.
- 10.2.4 R The amount payable for a particular activity group is calculated as follows:
- (1) (a) calculate the size of the *firm's* tariff base for the activity group using:
 - (i) the tariff base calculations in Part 3 of *FEES* 4 Annex 1AR; and
 - (ii) the valuation date requirements in Part 5 of *FEES* 4 Annex 1AR;
 - (b) exclude *mathematical reserves* in the calculation for fee block A4;
 - (2) use the figure in (1) to calculate the levy applicable for each band in *FEES* 10 Annex 1R;
 - (3) add together the sums for each applicable band under (2); and
 - (4) the amount in (3) is the amount payable by the *firm* for that activity group.

- 10.2.5 R For the first *fee year* during which *FEES* 10 applies to a *firm's permission* to carry on a *regulated activity*, the *pensions guidance levy* applicable to that *permission* must be modified using the formula in *FEES* 4.2.6R.
- 10.2.6 R For *FEES* 10.2.4R, a *firm* may apply the relevant tariff bases and rates to its non-UK business, as well as to its UK business, if:
- (1) it has reasonable grounds for believing that the cost of identifying the *firm's UK* business separately from its non-UK business is disproportionate to the difference in the *pensions guidance levy* payable by it; and
 - (2) it notifies the *FCA* in writing:
 - (a) at the same time as it provides the information concerned under *FEES* 4.4 (Information on which fees are calculated); or
 - (b) if earlier, at the time it pays the *pensions guidance levy* applicable to it.
- 10.2.7 R The *pensions guidance levy* is calculated using the same information that is used to calculate a *firm's* periodic fee under *FEES* 4.
- 10.2.8 R Where a *firm* which has not complied with *FEES* 4.4.2R (Information on which fees are calculated) in relation to a particular *fee year* the *pensions guidance levy* for that *firm* for that *fee year* is calculated using (where relevant) the valuation(s) of business used to calculate the *pensions guidance levy* for that *firm* for the previous *fee year*, multiplied by the factor of 1.10.

Value-added tax (VAT)

- 10.2.9 R (1) All levies payable under *FEES* 10 are stated net of VAT.
- (2) Where VAT is applicable, this must also be included.

10.3 Late payments and recovery of unpaid levies

Late payments

- 10.3.1 R If a *firm* does not pay the total amount of the *pensions guidance levy* before the end of the date on which it is due, it must pay:
- (1) an administrative fee of £250; plus
 - (2) interest on any unpaid part of the levy at an annual rate of 5% above the Official Bank Rate from time to time in force, accruing daily from the date on which the amount concerned became due.

- 10.3.2 G (1) The *FCA* expects to issue invoices at least 30 *days* before the date on which the relevant amounts fall due.
- (2) Accordingly, a *firm* will usually have at least 30 *days* from the issue of the invoice before an administrative fee becomes payable.

Recovery of levies

- 10.3.3 G (1) The *FCA* may recover the *pensions guidance levy* as a debt owed to the *FCA* under paragraph 23(8) of Schedule 1ZA of the *Act*.
- (2) The *FCA* will consider taking action for recovery (including interest) through the civil courts.
- 10.3.4 G (1) In addition, the *FCA* may be entitled to take regulatory action for the non-payment of the *pensions guidance levy*.
- (2) What action (if any) is taken by the *FCA* will be decided by the particular circumstances of the case.

10.4 Relieving provisions

Reductions, remission or repayment of levy

- 10.4.1 G The *FCA* may reduce or remit all or part of the *pensions guidance levy* applicable to a *firm* if it appears to the *FCA* that, in the exceptional circumstances of a particular case, paying all or part of it would be inequitable.
- 10.4.2 G The *FCA* may refund all or part of the *pensions guidance levy* applicable to a *firm* if it appears to the *FCA* that, in the exceptional circumstances of a particular case, retaining all or part of the *pensions guidance levy* applicable to that *firm* would be inequitable.
- 10.4.3 G (1) A poor estimate or forecast by a levy payer, when providing information relevant to an applicable tariff base, is unlikely to be an exceptional circumstance under *FEES* 10.4.1G or *FEES* 10.4.2G.
- (2) By contrast, a mistake of fact or law by a levy payer may give rise to such a claim.
- 10.4.4 G The *FCA* is entitled not to consider a claim under *FEES* 10.4.1G or *FEES* 10.4.2G to refund any overpaid amounts due to a mistake of fact or law by the fee paying *firm* if the claim is made more than two years after the beginning of the period to which the *pensions guidance levy* subject to the claim relates.

10.5 Application of FEES 4 to the pensions guidance levy

- 10.5.1 G (1) The *Handbook* provisions relating to the *pensions guidance levy* are meant to follow closely the provisions relating to the payment of periodic fees payable by an *authorised person* under *FEES 4*.
- (2) As such, the table in *FEES 10.5.4R* lists *rules* in *FEES 4* that also apply, in a modified form, to the *pensions guidance levy*.
- 10.5.2 R The *rules* in the table in *FEES 10.5.4R* and any other *rules* in *FEES* included in *FEES 10* by cross-reference apply to the *pensions guidance levy* in the same way as they apply to periodic fees payable under *FEES 4*.
- 10.5.3 R A reference to a periodic fee in a *FEES 4 rule* incorporated into *FEES 10* must be read, for the purposes of applying that *rule* to the *pensions guidance levy*, as a reference to the *pensions guidance levy*.
- 10.5.4 R Table of *rules* in *FEES 4* that also apply in *FEES 10*.

FEES 4 incorporated into FEES 10	Description	Modifications
<i>FEES 4.2.4R</i>	Method of payment	none
<i>FEES 4.2.7BR</i>	Calculation of periodic fees and tariff base for a <i>firm's</i> second financial year	none
<i>FEES 4.2.7CG</i>	Application of <i>FEES</i>	none
<i>FEES 4.2.8R</i>	How <i>FEES 4.2.7R</i> applies to an <i>incoming EEA firm</i> or an <i>incoming Treaty firm</i>	none
<i>FEES 4.2.9G</i>	Fee payers ceasing to hold relevant status or reducing the scope of their permission after start of relevant period	Reference to column (1) of the table in <i>FEES 4.2.11R</i> is a reference to <i>FEES 10.1.2R</i> .
<i>FEES 4.3.7R</i>	Groups of <i>firms</i>	Reference to <i>FEES 4.2.1R</i> is a reference to <i>FEES 10.2.1R</i> .
<i>FEES 4.3.13R</i>	<i>Firms</i> applying to cancel or vary permission before start of period	Reference to <i>FEES 4.2.1R</i> is a reference to <i>FEES 10.2.1R</i> .
<i>FEES 4.3.15R</i>	<i>Firms</i> acquiring businesses from other <i>firms</i>	Reference to <i>FEES 4.2.6R</i> and <i>FEES 4.2.7R</i> is a reference to <i>FEES 10.2.5R</i> Reference to <i>FEES 4.2.1R</i> is

		a reference to <i>FEES</i> 10.2.1R
<i>FEES</i> 4.4.1R to <i>FEES</i> 4.4.6R	Information on which fees are calculated	none

10 Annex 1R Pensions guidance levy for the period 1 April 2015 to 31 March 2016

Activity Group	Pensions guidance levy payable	
A.1	Band width (£ million of modified eligible liabilities (MELs)) >10	Fixed sum (£/£m or part £m of MELs) tbc
A.4	Band width (£ million of adjusted annual gross premium income (AGPI) >1	Fixed sum (£/£m or part £m of AGPI) tbc
A.7	For class 1(B), 1 (C), (2) and (3) firms: Band width (£ million of funds under management (FuM)) >10	Fixed sum (£/£m or part £m of FuM) tbc
A.9	Band width (£ million of gross income (GI)) >1	Fixed sum (£/£m or part £m of GI) tbc
A.13	Band Width (£ thousands of annual income (AI)) >100	Fixed sum (£/£ thousand or part of £ thousand of AI) tbc