

PENSIONS: THE FINANCIAL ASSISTANCE SCHEME

Consultation on Draft Regulations

The Financial Assistance Scheme (Miscellaneous
Amendments) Regulations 2006

A CONSULTATION DOCUMENT

July 2006



The Pensions Group

Part of the Department for Work and Pensions

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Date

24 July 2006

Dear Sir or Madam

Consultation on draft regulations - The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006

Since the Financial Assistance Scheme (FAS) opened on 1st September 2005 the Government has continued to receive representations from those concerned about the limitations of the scheme and Ministers have met affected scheme members and their representatives on many occasions. Whilst the focus of some of these representations has been to increase the level of help provided, the main concern has been that help should be extended to more people.

Following a review of the scheme, the Government announced in its White Paper on Pensions - *Security in retirement: towards a new pensions system*¹ - its intention to extend assistance to those in qualifying pension schemes who were up to 15 years from the normal retirement age (NRA) for their scheme at 14th May 2004. It estimates the scheme will now help around 40,000 people and considers that this provides an acceptable level of certainty to those people who have lost part or all of their pensions and who could not necessarily be expected to make up the shortfall before their planned retirement.

The Government considers this to be a reasonable approach to ensuring that those who suffer most through loss of their pension are eligible for significant assistance. It believes this provides a fair settlement of this difficult issue.

This consultation document seeks views on the draft Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006, which are being introduced to implement the extension and provide for other changes to the operation of the scheme. The proposed regulations amend provisions in the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986), the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994) ("FAS

Internal Review Regulations”) and the Financial Assistance Scheme (Appeals) Regulations (S.I. 2005/3273) (“FAS Appeals Regulations”).

As these Regulations are due to be made more than six months after the coming into force of the provisions of the Pensions Act 2004 under which they are made, the Secretary of State is required to consult such persons as he considers appropriate before making them.

Target audience

These regulations have been drafted following informal consultation with affected schemes, trustees, other pension professionals and affected members and their families. Although this consultation is primarily aimed at pension industry professionals and others with an interest in defined benefit occupational pension schemes, views from the wider public are also welcome.

DWP website

The consultation document is available on the Department’s website at: <http://www.dwp.gov.uk/consultations/2006/index.asp> or alternatively the FAS website: <http://www.dwp.gov.uk/fas>

How to respond

The consultation period starts on 24th July 2006 and closes on 17th September 2006. The period of this consultation strikes a reasonable balance between time for respondents to contribute, and bringing in the rules to allow payments to be issued. Where proposals have been stimulated by previous consultation, Cabinet Office guidance provides that a shorter consultation period may be appropriate. Taking account of all these factors, Ministers have decided that a consultation period of 8 weeks is appropriate.

We would be grateful for your comments on any of the points covered by the regulations. Please ensure that your response reaches us by that date. Please send consultation responses to:

Financial Assistance Scheme Consultation
Department for Work and Pensions
Private Pensions Policy
Adelphi
3rd Floor
1-11 John Adam Street
London
WC2N 6HT
E-mail (fas-responses@dwp.gsi.gov.uk)

This consultation applies best practice from the Cabinet Office Code of Practice on consultation.

Whilst it is Government policy that regulations which have an impact, however minor, on the private sector should, wherever possible, come into force on just two agreed dates: the 6th April and 1st October, Ministers believe that it is in the public interest to implement the extension to the scheme by the end of the year as this will allow us to make payments arising from the extension as soon as possible. The parliamentary timetable (and requirement to consult) precludes a coming into force date in early October this year.

If you have questions about the draft regulations, please write or e-mail them to the above addresses.

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents and (where applicable) how the views of members were assembled.

A list of those to whom this document has been sent is attached. If you have any suggestions of others who may wish to be involved in this process, please contact us.

Because of the Freedom of Information Act (2000), all information contained in your response, including personal information, may be subject to publication or disclosure. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality even if your IT system claims it automatically.

More information about the Freedom of Information Act can be found on our website http://www.dwp.gov.uk/pub_scheme/. The relevant departmental contact point on FOI is Sheena.M.Taylor@dwp.gsi.gov.uk. More information is also available at the website of the Department for Constitutional Affairs - <http://www.dca.gov.uk/foi/guidance/exguide/index.htm>

Summary of responses

A summary of responses (including the next steps to be taken) will be published online (and linked from the same web page as above). Paper copies will be available on request.

DWP values feedback on how well it consults. If you have any comments about the way in which this consultation exercise is being conducted please contact:

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Yours faithfully

Mike Le Brun

Head of Policy and Legislation - Financial Assistance Scheme

Copied to:

Age Concern
Amicus
Association of British Insurers
Association of Business Recovery Professionals
Association of Consulting Actuaries
Association of Pension Lawyers
Auditing Practices Board
British Chambers of Commerce
Community the Union
Confederation of British Industry
Consumers' Association
Department of Trade and Industry
Engineering Employers' Federation
Federation of Small Businesses
Financial Services Authority
GMB Union
Help the Aged
HM Treasury (MOCOP)
Independent Pensions Research Group
Industry-wide Pension Schemes Group
Inland Revenue
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Scotland
Institute of Directors
Institute of Payroll and Pensions Management
Investment Managers' Association
National Association of Pension Funds
National Consumer Council
National Pensioners' Convention
Office of Fair Trading
The Pensions Advisory Service
Pensions Action Group
Pensions Ombudsman
Pension Protection Fund
Pensions Regulator
R3, the Association of Business Recovery Professionals

Regulatory Impact Unit
SAGA
Social Security Policy and Legislation Division, DSD, Northern Ireland
Small Business Service
T&G Union
The Association of Corporate Trustees
The Faculty of Actuaries
The Insolvency Service
The Institute of Actuaries
The Law Society
The Law Society of Scotland
The Pensions Management Institute
The Scottish Executive
The Society of Pension Consultants
The Welsh Assembly
Trades Union Congress
UNISON

We have also sent copies of the consultation document to the schemes of which the FAS Operational Unit is aware which may be affected by the proposed changes to FAS' notification and insolvency rules, and to private individuals who have expressed an interest in participating in the consultation exercise.

THE FINANCIAL ASSISTANCE SCHEME
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2006

CONTENTS

- **Section One** – Policy and legislative background
- **Section Two** – Commentary on the draft regulations
- **Section Three** – The draft regulations

SECTION ONE - POLICY AND LEGISLATIVE BACKGROUND

1. On 14th May 2004 Ministers announced the Financial Assistance Scheme (FAS) to help some people who have lost out on their final salary occupational pension because their scheme was under funded when it started to wind up, and their employer has been unable to make up the shortfall because it is insolvent or no longer exists.
2. The Government recognised that in some cases wind-ups have imposed severe hardship. From the outset, Ministers' priority has been to get help to those facing the most urgent difficulties, that is, those being closest to, or already at, retirement age and therefore less able to make provision to replace their lost pensions. The FAS offers help to those worst affected.
3. The structure of the scheme was designed in close consultation with an Industry Working Group representing pension interests.
4. An operational unit based in York, which opened for business on 1st September 2005, administers the FAS. The operation of FAS is currently under review and the outcome will be announced by the end of July 2006.
5. The announcement of FAS complemented proposals already contained in the Pension Bill to introduce a Pension Protection Fund (PPF) to compensate members whose pension schemes started winding up with an insolvent employer and were under funded. The PPF started from 6th April 2005. The FAS covers schemes that started winding up between 1st January 1997 and 5th April 2005, the day before the PPF was due to come into operation.
6. Whilst the PPF is funded by a levy on pension schemes and the assets of those schemes that enter the PPF, and administered by a new non-departmental public body, the FAS is funded by the taxpayer and administered by the Department for Work and Pensions.
7. Ministers initially committed £400 million to FAS over 20 years, with a commitment to review the scheme after 3 years. This would have coincided with the Comprehensive Spending Review (CSR) in 2007. In March, the Prime Minister said that the Government would expedite its review, and proposals for extending the scheme were announced in the Pensions White Paper on 25th May. Regulations that will implement these proposals are now set out for consultation, alongside more minor changes.

Overview of the Current Scheme

Scheme Qualification

8. A pension scheme must successfully go through two stages to qualify for the FAS – notification and qualification
9. Notification is simply the provision of some basic information, including the name of the scheme and the name of any employer in relation to the scheme. The notification period, the period in which trustees and members are able to formally notify FAS of their scheme's basic details so that the schemes can be considered for FAS qualification, began on 1 September 2005 and ended on 28 February 2006. Exceptionally, the scheme manager has discretion to accept late notifications if he considers it reasonable to do so. Proposals linked to notification are discussed in the 'Commentary' section below.
10. The scheme then has to meet the necessary qualifying conditions to be eligible as a qualifying scheme. For example, it must have completed notification as above; not be a money purchase scheme and have started winding up between 1 January 1997 and 5 April 2005. Also, the relevant employer must have experienced an insolvency event in the UK. Amendments linked to insolvency events also form part of our proposed regulations.

Member qualification

11. Currently, a scheme member may be considered for a FAS payment if they belong (or have belonged) to a qualifying pension scheme, and if they were within three years of their pension scheme's normal retirement age (NRA) or older on 14 May 2004 (when the FAS was announced). Under our new proposals assistance will be extended to those in qualifying pension schemes who were 15 years from their NRA at 14th May 2004. These proposals are discussed in more detail in the 'Commentary' section.
12. Surviving spouses and civil partners of qualifying scheme members who died after their scheme started to wind-up may also be eligible for a payment but at a lower rate. Some of those who were in receipt of a survivor's pension before wind-up started may also be eligible for a payment.
13. In general, FAS currently tops up a scheme member's pension to a level broadly equivalent to 80 per cent of their expected core pension (subject to a cap). These payments are known as 'annual payments'.
14. This payment tops up any pension they receive from their scheme up to a maximum of £12,000 a year. This means, for example, that if 80% of their expected core pension is £15,000 and they get a pension of £10,000, the

FAS payment will be £2,000 a year. The FAS does not make payments of less than £520 a year.

15. In most cases FAS payments begin from the 65th birthday. Survivors and qualifying members who are terminally ill may be paid earlier than 65.
16. 'Annual payments' cannot be determined until scheme liabilities in respect of a member have been discharged or the allocation of scheme assets finalised. This usually occurs at the end of the scheme wind-up process, which can take some time.
17. In order to provide some assistance to qualifying members who turn 65 and whose liabilities are not discharged before the end of wind-up, FAS can, at the request of trustees, make discretionary 'initial payments' in anticipation of their eventual receipt of annual payments. Initial payments top up any interim pension the scheme is paying to 60% of expected core pension (subject to a cap). Initial payments can also be made to survivors of qualifying members who have died during wind-up.
18. Under the current rules, it was estimated that 15,000 people would receive FAS payments over the lifetime of the scheme. A fuller explanation of how the scheme has operated since its launch is available in The Financial Assistance Scheme Annual Report: 1st September 2005 – 31st March 2006. This can be found on the Department's website:
<http://www.dwp.gov.uk/lifeevent/penret/penreform/fas/information.asp>

Legislative Background

19. Section 286 of the Pensions Act 2004, which received Royal Assent on 18th November 2004, requires the Secretary of State to make provision by way of regulations for the Financial Assistance Scheme.
20. The Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) established the scheme and prescribed the qualifying criteria for occupational pension schemes and for persons to whom payments could be made. These Regulations received Parliamentary approval in July 2005, and came into force on 1st September of that year.
21. The Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994) ("FAS Internal Review Regulations") and the Financial Assistance Scheme (Appeals) Regulations (S.I. 2005/3273) ("FAS Appeals Regulations") established the arrangements for internal reviews and appeals to an independent external body – The Pensions Ombudsman.
22. These regulations were added to by the Financial Assistance Scheme (Modification and Miscellaneous Amendments) Regulations 2005 (S.I.

2005/3256) which came into force on 24th November 2005, and the Terms and Conditions of Employment the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 which came into force on 15th February 2006.

SECTION TWO – COMMENTARY ON THE DRAFT REGULATIONS

PART 1 - INTRODUCTORY

23. Regulation 1 states the day on which these regulations will come into force, indicates that they extend to Northern Ireland and provides definitions of other legislation referred to in the regulations.

PART 2 - AMENDMENT OF THE FAS REGULATIONS

Amendment of Part 1

Regulation 3

24. Regulation 3, paragraph (a) substitutes a new definition of multi-employer scheme. This is one of a number of amendments (others are contained in paragraphs (2) and (3) of Regulation 4) that are intended to clarify that multi-employer schemes will satisfy the FAS qualification condition relating to employer insolvency if the principal employer of the scheme (or in the case of a sectionalised scheme, the section) has undergone an insolvency event, regardless of the solvency position of any other employer in the scheme.

25. The definitions of multi-employer scheme and employer in the FAS Regulations as they stand mean that a scheme can only be considered a multi-employer scheme if there were more than one employer of active members when active members were last employed in relation to that scheme. This means that a scheme would not currently meet the insolvency qualifying condition if the last employer of active members were 'solvent' but the principal employer 'insolvent'. This runs counter to our policy intent. Whilst we are not aware of any schemes in this position we are proposing to make these changes to ensure that any such schemes that do come forward are not ruled out on a technicality.

26. As the FAS Regulations stand, schemes in which the last employer (or employers) of active members is 'insolvent' meet the insolvency qualifying condition regardless of the solvency status of the principal employer. Under the amendments we propose it is intended that schemes of this type will continue to meet the qualification condition relating to employer insolvency.

27. Paragraph (3)(a) of regulation 4 applies to multi-employer schemes that are sectionalised. Our intention is that such schemes will meet the insolvency condition where either the principal employer in the section is 'insolvent' or the last employer of active members in the section is 'insolvent', or, where there is more than one such employer, all such employers are 'insolvent'.

28. Paragraph (3)(b) applies to multi-employer schemes that are not sectionalised. Our intention is that such schemes will meet the insolvency condition where either the principal employer is 'insolvent' or the last employer of active members is 'insolvent', or, where there is more than one such employer, all such employers are 'insolvent'.
29. We are aware that employers identified as principal employers within scheme rules may not have actually employed members within the scheme. It is our intention that schemes in relation to which such principal employers are insolvent should meet the employer insolvency condition. The changes we propose in paragraph (3)(c)(i) and paragraph (3)(d) of Regulation 4 separate the definition of 'principal employer' from the definition of 'employer' to ensure that such schemes can meet this condition.

Amendment of Part 3

Regulation 4

30. Regulation 4, paragraph (1) sets a date by which an insolvency event must occur. On the 16th February 2006 the Minister of State for Pensions Reform told Parliament that where an extension to the general notification period had been granted, the period by which an insolvency event in relation to an employer must occur would be similarly extended but that the Government intended to impose a definitive cut-off date for insolvency by the end of the calendar year.
31. The Government proposes to set the date by which an insolvency event must occur at 31st December 2006. The scheme manager may, if he chooses to do so, still grant an extension to the period for notification beyond this date but the date by which an insolvency event must have occurred will be the 31st December 2006.
32. Paragraph (4)(b) of regulation 4 provides the scheme manager with an element of discretion to allow him to accept certain schemes as qualifying schemes in relation to which no insolvency event referred to elsewhere in this regulation has occurred to the employer and he is satisfied that the value of the employer's assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities.
33. The scheme manager must also be satisfied that the employer in question was unlikely to continue as a going concern; and that situation applied to that employer on or before the last day of the notification period.
34. The underlying principle of the Financial Assistance Scheme is that it will provide assistance to members of under funded final salary pension schemes where employers are insolvent or they no longer exist. We want to ensure

that schemes that fit all the other scheme qualifying criteria are not excluded on a technicality where their employer does not have sufficient funds available to undergo a FAS qualifying insolvency event and is unlikely to continue as a going concern.

35. The scheme manager would need to be made aware of the circumstances as to why the employer has not undergone an insolvency event. He would then need to consider whether it is reasonable for the employer not to have undergone an insolvency event, taking into account any relevant information about their financial situation, in addition to being satisfied that the employer is unlikely to continue as a going concern.
36. We intend for this discretion to be used only in exceptional cases. The number of schemes in situations such as this is expected to be very low. However, we would welcome feedback from any schemes in similar circumstances to develop the policy further. In particular, we would like to hear about employers who have, for financial or other reasons, chosen not to become insolvent and the reasons for this.
37. Paragraph (5)(b) of regulation 4 allows the scheme manager to accept a company's overseas insolvency event as a qualifying insolvency event for the purposes of the Financial Assistance Scheme, where he is satisfied that such an event substantially corresponds to one that the Financial Assistance Scheme already accepts in the UK for qualification purposes.
38. In the first instance we expect the scheme to provide the necessary supporting evidence about the position of the scheme.
39. We do not want schemes that would meet all the other scheme qualification criteria to be excluded on a technicality where there is no reason other than in relation to the FAS for the employer to undergo a UK insolvency event.

Amendment of Part 4

Regulation 5

40. Regulation 5, paragraph (a) inserts a new sub-paragraph (c) into regulation 15(1) of 'the FAS Regulations' (SI 2005/1986). The intention of this amendment is to clarify that a member should be considered a qualifying member even if they died before 1 September 2005, when the FAS Regulations came into force.
41. Regulation 5, paragraph (b) substitutes '2019' for '2007' thereby extending eligibility for help from the Financial Assistance Scheme (FAS) to members of qualifying pension schemes who were within 15 years of their NRA on 14th May 2004. Further amendments are made to specify that those members within 7 years of NRA on 14th May 2004 ('Group 1 members') will benefit

from FAS topping up their pensions to 80% of their 'expected pension' (subject to a de minimis and a cap). Those between 7 and 11 years from NRA ('Group 2 members') will be considered for a top-up to around 65% of their 'expected pension', and 50% for those between 12 and 15 years ('Group 3 members') (again subject to a de minimis and a cap). These further amendments are contained in paragraphs (1), (3)(a) and (4)(a) of regulation 7.

Amendment of Part 5

Regulation 6

42. Paragraph (1) of regulation 6 inserts a new sub-paragraph (b) into paragraph (5A) of regulation 17 of the FAS Regulations. This amendment, together with those amendments contained in paragraph (2)(b) and (e) of regulation 6 clarifies that initial payments are paid on account of annual payments and that initial payments paid may be recovered where the total of those initial payments exceeds the amount of annual payment arrears.
43. Paragraph (2)(a), (c) and (f) of regulation 6 relates to the extension of the FAS to those 15 years from NRA and the conditions that will apply for initial payments to be made to such members. These amendments insert a new paragraph (4A) into regulation 18 of the FAS Regulations to specify that whilst initial payments can be requested on behalf of 'Group 1 members' who reach 64 and can be made to such members from age 65, such payments cannot be requested and made to 'Group 2' and 'Group 3' members.
44. Group 2 and 3 members will not reach 65 until May 2011 at the earliest. We expect all FAS qualifying schemes to have completed wind-up by that date. Therefore, in the main, initial payments will not be appropriate for these groups of members. However, requests for initial payments can be made on behalf of Group 2 and 3 members who may be terminally ill. And such requests can also be made on behalf of survivors of Group 2 and 3 members who die during wind-up. For terminally ill qualifying members of Groups 2 and 3 initial payments will top up any interim pension being paid by the scheme to 50% of 'expected pensions' (paragraph (8)(b) of regulation 7 refers). For survivors of group 2 and 3 members who die during wind-up initial payments will top up any interim pension being paid by the scheme to half of 50% of the member's 'expected pension' (paragraph (8)(c) of regulation 7 refers).
45. It should be noted that the dates from which initial payments are payable have not been changed by these amendments: eligible qualifying members are paid from their 65th birthday or the 14 May 2004 whichever is later; terminally ill qualifying members are paid from the date the scheme manager is first notified that they are terminally ill and survivors of qualifying members

from the day after the death of the qualifying member (or 14 May 2004 if later).

46. Paragraph (2)(d) of regulation 6 inserts a new paragraph (5A) into regulation 18 of the FAS regulations. This change allows the scheme manager to have the discretion to deem an interim pension where an interim pension has been determined by a scheme but not paid for administrative reasons. In operational running we have been made aware of a number of schemes that would have been paying interim pensions but are not paying these for good administrative reasons (for example, where negotiations with insurance companies to secure annuities have been more protracted than expected). The intended effect is to allow us to make initial payments at an appropriate level under such circumstances.

Amendment of Schedule 2

Regulation 7

47. Paragraph (1) of regulation 7 inserts definitions into paragraph 1(2) of Schedule 2 of Group 1, 2 and 3 qualifying members. 'Group 1 qualifying members' includes those who will attain their NRA on or before 14 May 2011; 'Group 2', those who will attain their NRA between 15 May 2011 and 14th May 2015 and 'Group 3', those who will attain their NRA between 15 May 2015 and 14th May 2019. These definitions also clarify that those members who died before they attained their NRA will be treated as qualifying members within appropriate groups as if they had not died before attaining that age.
48. Paragraph (1) of regulation 7 also inserts a definition of 'the crystallisation date', which is referred to in the amendments to paragraphs 3(1) and 4(1) of Schedule 2 described below. As FAS qualifying schemes must have started to wind-up on or before 5th April 2005 the definition of the crystallisation date is taken from relevant Regulations as they stood on that date.
49. Paragraph (2) of regulation 7 amends paragraph 2 of Schedule 2 to clarify that the rate of annuity for annual payments will be determined as if benefits were not commuted even where those benefits have already been commuted.
50. Paragraphs 3(a) and 4(a) of regulation 7 amend paragraphs 3(1) and 4(1) of Schedule 2. Under FAS Regulations as they stand a qualifying member is categorised as either a pensioner member or a deferred (including a formerly active) member according to their status within their pension scheme immediately before wind-up. However, under the Pension Schemes (Winding Up) Regulations 1996/3126 (as in force on 5 April 2005) the status of a member for the purposes of calculating the liabilities of a scheme is fixed at a crystallisation date. In some cases this crystallisation date will be the same as the wind-up date, in others the crystallisation date will precede the date of wind-up. The intended effect of these changes is, therefore, to align the

categorisation of members employed by FAS with the categorisation of members employed by schemes.

51. Paragraph (2) of regulation 7 contains an amendment which we are making as a consequence of this change to the categorisation of qualifying members so that the description of active or deferred scheme members in paragraph 2 (3)(a) of Schedule 2 is consistent with that in paragraphs 3(1) and 4(1).
52. Paragraph (3)(d) of regulation 7 inserts a sub-paragraph (4) into paragraph 3 of Schedule 2 to provide for the scheme manager to determine an 'expected pension' for members in receipt of a pension before the start of wind-up where typical data in relation to the 'expected pension' is unavailable. This could arise in cases where schemes completed wind-up some time in the past and records of pension rights have subsequently been lost. An equivalent provision relating to deferred and active members is already contained in sub-paragraph (4) of paragraph 4 of Schedule 2 of the FAS Regulations.
53. Paragraph (4)(c) to (f) of regulation 7 inserts 3 new sub-paragraphs into paragraph (4) of Schedule 2 of the FAS Regulations to clarify that pensions for active and deferred members fall to be revalued from the date of leaving active service up to the 'certification date' only.
54. The 'certification date' was intended to provide a fixed point at which members' 'actual pensions' and 'expected pensions' could be compared. So if an annuity rate were provided as at a particular date the 'expected pension' could also be revalued to that date and a reasonable comparison be made.
55. However, under the FAS Regulations as they stand, the period for which 'expected pensions' fall to be revalued for active and deferred members is split into two and only one of these periods ends at the certification date - the first period is between the date the member leaves active service and the day before the start date of wind-up and the second between the start date of wind-up and the certification date. So, as things stand, we would revalue the expected pension from the date of leaving service up to the day before the date of wind-up even where the certification date falls before that date. This would skew the comparison of 'expected pension' and 'actual pension', The amendments in paragraph (4)(c) to (f) work to correct this oversight.
56. Paragraph (5)(a) of regulation 7 substitutes sub-paragraph (1) of paragraph (5) of Schedule 2 of the FAS Regulations. The substantive change made by this substitution is to insert a new sub-paragraph (b), which clarifies that survivors of qualifying members will only be considered for a payment if the qualifying member was or would have been entitled to a payment determined under Schedule 2.

57. Paragraph (5)(b) of regulation 7 amends sub-paragraph (3) of paragraph (5) of Schedule 2 of the FAS Regulations to specify how the amount of annual payment survivors of qualifying members could receive will be determined. This sub-paragraph and sub-paragraph (d) also clarify that annual payments to survivors will be determined using different methods depending on whether qualifying members die before or after relevant pension scheme liabilities are discharged. If a qualifying member dies **after** liabilities are discharged, their survivor would simply receive half of the amount that the qualifying member was receiving, or would have received, from the FAS. If a qualifying member dies **before** liabilities are discharged, the amount of assistance payable to their survivor will be 50% of the member's 'expected pension' multiplied by 0.8, 0.65 or 0.5 (depending on the group in which the qualifying member would fall), minus the 'actual pension' that the survivor will receive from the member's scheme.
58. Under the FAS regulations as they stand the method of survivor assessment is dependent on whether the member dies before or after the 'certification date'. The different FAS assessment methods provided by these amendments reflect the approach that pension schemes tend to follow when discharging liabilities to and in respect of members. This amendment will help ensure that our methods more closely correspond to the approach of pension schemes and ensure that survivors receive no less than 50% of the amount that the member would have received (from the FAS and their scheme combined) had that member lived.
59. Paragraph (5)(c) of regulation 7 amends paragraph 5(4) of Schedule 2 of the FAS Regulations to clarify that the expected pension on which a survivor's payment is based is determined in accordance with the status of the qualifying member who has died. In line with our general approach to the categorisation of members the status of the member will be fixed at the crystallisation date. So if the qualifying member was not entitled to be in receipt of a pension at that time the expected pension in relation to the survivor will be determined according to the method that applies to deferred members. If, on the other hand, the member was in receipt of a pension at that time then the expected pension will be determined according to the method that applies to pensioner members.
60. Paragraph (6) of regulation 7 deletes sub-paragraphs (2)(c) and (3) of paragraph 6 of Schedule 1. The intention of this amendment is to ensure that members for whom state scheme premiums (SSPs) have been paid are treated in the same way as members who have had their liabilities discharged by deemed buyback (DBB). In both SSP and DBB cases assets available to the member at the end of wind-up are transferred to the state in order to reinstate rights in the state scheme.

61. Under the regulations as they stand, in cases where SSPs have been paid the amount of the member's GMP is disregarded from the FAS 'expected pension' and the amount that was paid for the premium is disregarded from the 'actual pension'. Any excess above the GMP is then considered. This contrasts with our treatment of those whose rights have been reinstated through DBB. In such cases we take the assets used to buy the member back into the state scheme into account by converting those assets into a 'notional annuity rate' through the application of actuarial factors. We then provide assistance that can top up that notional annuity to 80% of 'expected pension' (including GMP). Our intention in amending these regulations is to use the same methodology in SSP cases as we currently use in DBB cases
62. Paragraph (7) of regulation 7 amends paragraph (7) of Schedule 2 of the FAS Regulations. The intended effect of this amendment is to ensure that the cap that is applied in relation to FAS payments is applied to and in respect of all qualifying members, including those brought in by the extension of the FAS.
63. Currently paragraph (7) of Schedule 2 of the FAS Regulations provides for a cap to be applied to 80% of the 'expected pension' (or 60% in the case of initial payments). Where the 'expected pension' is more than £12,000, the calculation is carried out as though the figure were £12,000. Where the amount of 'actual pension' exceeds £12,000 (and therefore is greater than 80% or 60% of the "expected pension") the member will not receive a payment.
64. We intend to apply the cap in the same way and at the same level to group 2 and 3 qualifying members and their survivors for both annual payments and, where appropriate, for initial payments. Effectively this will mean that members may receive FAS payments topping up scheme pensions to a maximum of £12,000 (before those FAS payments are revalued); and survivors may receive FAS payments topping up scheme pensions to a maximum of £6,000 (also before those payments are revalued).
65. Paragraph (8)(a) of regulation 7 inserts a sub-paragraph (2A) into paragraph 9 of Schedule 2 of the FAS Regulations. This amendment clarifies that revaluation will not be applied to a survivor's annual payment where the qualifying member was in receipt of an annual payment at the time of his death.
66. Paragraph (8)(b) of regulation 7 removes a typographical error contained in Schedule 2, paragraph 9(3)(a), which incorrectly refers to the second revaluation period.
67. Paragraph (9)(a) of regulation 7 substitutes paragraph 10(a) of Schedule 2 of the FAS Regulations to clarify that the rate of interim pension that is topped up by an initial payment will be determined as if benefits were not commuted.

The intended effect of this regulation is to allow FAS to take lump sums that members have taken into account when calculating initial payments. This will align the methods of calculating initial payments and annual payments and help ensure that overpayments are not made.

68. The substituted paragraph 2(3) provides for the scheme manager to determine an annual rate of interim pension by considering the amount of scheme assets provisionally allocated to the member. The intended effect of this amendment is to allow initial payments to be made to those members who have taken partial transfers during wind-up (i.e. transfers that may be topped up at the end of wind-up). In such circumstances there is no interim pension in payment and, instead initial payments will top-up a notional interim pension amount derived from the amount of the partial transfer converted by application of actuarial factors. This corresponds with the method that FAS employs to provide annual payments to those who have taken final transfers during wind-up.

Detailed consultation on changes to the method used for assessing FAS payments.

69. In light of our intention to extend the FAS to those who will reach their scheme NRA on or before 14 May 2019, we are minded to amend Schedule 2 of the FAS Regulations 2005 to help ensure that annual payments are determined consistently and in line with our policy intent to provide 80% of 'core pension benefits' to qualifying members. We welcome your comments on the proposed amendments we have outlined to achieve this objective.

70. Schedule 2 applies for the purposes of determining the amounts of initial payments and annual payments paid by the FAS to qualifying members. Annual payments payable to those members are broadly determined by subtracting the 'actual pension' - which typically is the rate of annuity they receive after their scheme's liabilities to them have been discharged - from 80% of their 'expected pension'. This refers to the core components of the pension that a scheme member would broadly have received each year had his scheme been able to meet its liabilities to him in full. It does not reflect additional benefits which may be offered by schemes such as indexation or pensions for dependent children...

71. Under Schedule 2, revaluation may apply to qualifying members' 'expected pensions'. And revaluation may apply to their actual annuities before they come into payment, or indexation apply after that time. To help ensure that assistance is determined fairly, 'expected pensions' and 'actual pensions' are compared as at the same date. This date of comparison is termed the 'certification date'.

72. The 'certification date' is determined by information that is held and provided on a qualifying member's or eligible survivor's annuity. In developing FAS assessment policy we were made aware that annuity rates tend to be quoted as at specific dates and that those dates are not necessarily consistent either in or between schemes. For example, in some schemes the rate of annuity is quoted at the date a member left that scheme whilst in other cases the rate of annuity is quoted at the date the annuity is or was due to come into payment. The definition of certification date contained in Schedule 2 provides the flexibility to allow annuity rates to be provided as at the date that they are known and apply.

73. However, the flexibility that is allowed by the certification date, when considered together with the FAS expected pension revaluation rules; the operation of the FAS cap; the type of annuity that is purchased for members and the intended extension of the scheme, means that assistance payable may vary for individuals whose circumstances are otherwise the same, depending on the certification date that is provided. Reasons for the potential differences in assistance levels are as follows:

- FAS expected pension revaluation rules. Sub-paragraph 4(3) of Schedule 2 provides that 'expected pensions' for and in respect of active and deferred members are determined by applying revaluation to the rate of pension accrued when the member left pensionable service. Where appropriate, scheme-specific revaluation is applied between the date a member left service and the day before the scheme started to wind-up whilst revaluation at RPI capped at 5% is applied between the day the scheme started to wind-up and the certification date. As a consequence of this two-phase revaluation the certification date at which the annuity is quoted could affect the amount of annual payment assistance that some members receive.
- The cap. Paragraph 7 of Schedule 2 provides for a cap to be applied to 80% of the 'expected pension' as at the certification date. The 'actual pension' is subtracted from the capped amount at the time assistance is calculated to provide the annual payment amount. If the member stands to receive an annual payment then that payment is revalued from the certification date to the date at which it comes into payment (generally when the member reaches 65). No additional cap is applied at age 65 to the amount of FAS payable. If members have 'expected pensions' close to the level of the cap then the certification date at which the annuity is quoted is likely to affect the amount of annual payment assistance they may receive.
- Annuity-type. Indexed annuities may be secured for some beneficiaries. Flat-rate annuities may be secured for other beneficiaries. The type of annuity secured may affect the amount of

annual payment assistance members stand to receive. The effects could be exacerbated by the certification date at which the annuity is quoted.

- Extension of the FAS scheme. As described earlier in this document we intend to extend the FAS to members 15 years from their scheme NRA age at 14 May 2004. This will broaden the range of potential certification dates that are likely to be provided. As a result there will be an increased risk of inconsistent outcomes for beneficiaries depending on the certification date provided.

74. To help ensure that the effects described above are lessened and that annual payments are determined consistently, we propose that we amend Schedule 2 to remove reference to the certification date and that 'expected pensions' and 'actual pensions' are compared instead at a member's normal retirement date (NRD). We also propose to make a similar amendment to ensure that initial payments are determined based on the NRD rather than the certification date. This will help ensure that any unintended discrepancies between the rates of initial and annual payments are avoided.

75. If we made these amendments the data that we would use to calculate the 'expected pension' would be the same as the base data that we currently use – accrued rates of pension quoted at the date of leaving service. Therefore we will not need to obtain any additional data to determine the 'expected pension' at a member's NRD. However we anticipate that there will be a significant number of cases where the exact rate of annuity that was or that will be in payment at a member's NRD can not be provided (for example, in relation to members who reach their NRD during wind-up before the exact rate of annuity has been determined).

76. Furthermore, even if the exact rate of annuity could be provided, using that data to determine annual payments would not address the inconsistencies that may arise as a consequence of the type of annuity that is secured for the member.

77. Instead of using the exact rate of annuity in payment or that which will come into payment at the NRD as the 'actual pension' we are considering using a notional annuity rate determined by applying an annuity factor to the share of scheme assets used to discharge the liability to the member. The actuarial factor would depend on a member's age and use a market adjustment factor based on gilt yields and would therefore seek to approximate closely to non-indexed rates of pension that would be available at the member's NRD.

78. We anticipate that information on the share of assets used to discharge liabilities to members will be relatively easy for pension schemes to provide in the majority of cases.
79. We would welcome your views on how such an approach could most fairly and practically be applied to those members who retire during wind-up (whether early or at their NRA). Such members may receive interim pensions from their scheme. And we understand that any interim pensions paid to such members are taken from the share of assets allocated to them at the end of wind-up.
80. In relation to such members we could, for example
- a) compare 'expected pensions' and notional annuity rates for such members at the end of wind-up using the share of scheme assets adjusted to account for any interim pension paid; or
 - b) compare 'expected pensions' and notional annuity rates at their NRA using the share of scheme assets that would be available were interim pension not being paid
81. It should be noted that any lump sum taken by interim retirees would also be converted into an additional notional annuity rate based on the circumstances that applied at the date the lump sum were taken. The resulting rate would be added to the notional annuity rate derived from the share of assets to provide a final value for the 'actual pension' for such members.
82. We propose that the revaluation of the FAS payment provided for by paragraph 9 of Schedule 2 remain, so that those members whose NRD falls before their FAS payment date continue to have their payment revalued up to the date of payment. However, we are minded to amend Schedule 2, paragraph 9, to apply a cap such that the amount of FAS payment added to the 'actual pension' can not exceed £12,000pa. This will help ensure that payments are determined consistently regardless of members' NRDs.
83. We would welcome views on the application of the caps applied to the expected pension and the FAS payment in light of the extension of the scheme to people up to 15 years from their scheme pension age. We would also appreciate your views on the level of the de minimis in the same context.
84. Additionally, whilst our regulations effectively account for early retirement in the way that payments are calculated for pensioner members they do not similarly account for early retirement in the way that payments are calculated for deferred members (those who have retired early after the start of wind-up). The determination of the FAS expected pension depends whether a member was a 'pensioner' member or a 'deferred' member at the start of wind-up. For

pensioner members (including those who may have taken early retirement before wind-up) the expected pension defined under Schedule 2 paragraph 3 (1) is "the annual rate of the pension which would have been in payment to the qualifying member in respect of rights accrued in a qualifying pension scheme as at the certification date if the scheme had not started to wind up". Under this definition any actuarial reduction to account for early retirement (rather than the funding position of the scheme) is included.

85. However, the way we determine an expected pension for 'deferred members' under paragraph 4(1) of schedule 2 does not allow us to account for any actuarial reduction that would have been applied to account for that early retirement. The FAS is intended to provide assistance in proportion to the amount of pension that a member would broadly have expected to receive had their scheme not started to wind-up and where such a pension would have been actuarially reduced to account for early retirement our intention is that this reduction should be taken into account. We are considering changing our regulations to help ensure that any such actuarial reduction is taken into account and welcome views on whether the approaches we have described above will help meet this intention.

86. Comments are invited on these issues and will be considered before the regulations are formally laid.

PART 3 - AMENDMENT OF THE FAS (INTERNAL REVIEW) REGULATIONS

Amendment of the FAS (Internal Review) Regulations

Regulation 8

87. This regulation amends the FAS (Internal Review) Regulations 2005 (SI 2005/1994) as amended by the FAS (Modifications and Miscellaneous Amendments) Regulations 2005 (SI 2005/3256) and The Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (SI 2006/349) as follows:

88. Regulation 8, paragraph (2) clarifies that, depending on the context, the term "potential beneficiary" in these Regulations (for example in regulation 6) can refer to potential beneficiaries of an occupational pension scheme as well as to potential beneficiaries of the Financial Assistance Scheme (FAS). Currently, as defined, the phrase can only refer to potential beneficiaries of the FAS.

89. Regulation 8, paragraph (3) expands the reviewable determinations set out in regulation 2 of the FAS (Internal Review) Regulations to include the right of review against a decision on whether or not a qualifying member is terminally ill as described in regulations 17 and 18 of the FAS Regulations. This is in line

with similar Social Security provisions (contained in section (1)(a) of the Social Security Act 1998) – that this type of decision for social security purposes is a reviewable determination. This determination will be known as “terminal illness eligibility”.

90. Paragraph (4)(a) to (c) of regulation 8 reflects the consequential amendments arising from the introduction of a reviewable determination for “terminal illness eligibility”. It amends the relevant references in the FAS (Internal Review) Regulations that refer to the existing reviewable matters to include the new reviewable determination.
91. Paragraph (5)(a) to (c) permits the scheme manager to issue a notice on the FAS website in relation to a determination that relates to member eligibility. This amendment is required for administrative ease in situations where it is clear that the majority of members of an occupational pension scheme do not qualify for assistance.
92. The notice will **not** contain the name of any scheme member but will refer to the Pension Scheme and set out the details of the decision. Any member who requests an individual decision will be issued with one.
93. Paragraph (6)(a) of regulation 8 allows beneficiaries of a qualifying pension scheme to request a review. The current wording of regulation 6 of the FAS (Internal Review) Regulations excludes beneficiaries of a pension scheme being able to request a review, as it is currently limited to potential beneficiaries only. This amendment clarifies the original policy intention by amending the wording to include existing members/beneficiaries.

PART 4 - AMENDMENT OF THE FAS (APPEALS) REGULATIONS

Amendment of the FAS (Appeals) Regulations

Regulation 9

94. Regulation 9, paragraph (2), extends the power of the PPF Ombudsman to review a decision made by the scheme manager on terminal illness eligibility as described in regulations 17 and 18 of the FAS Regulations (SI 2005/1986).
95. Regulation 9, paragraph (3), reflects the consequential amendments required to amend references that describe existing reviewable matters to include determinations known as “terminal illness eligibility”.
96. Paragraphs (4) and (5) of Regulation 9, ensure consistency to those provisions which enable the PPF Ombudsman to treat an interested person as a party to the appeal in relation to an appeal against a decision made by the scheme manager of the FAS. Specifically, the interested person can be

treated as a party to the appeal in matters relating to written representations described at regulation 11 and regulation 12 of the FAS (Appeals) Regulations.

SECTION FOUR - THE DRAFT REGULATIONS

Draft Regulations laid before Parliament under section 316(2)(n) of the Pensions Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2006 No.

PENSIONS

The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006

Made - - - - - 2006

Coming into force in accordance with regulation 1(1)

CONTENTS

PART 1

Introductory

1. Citation, commencement, extent and interpretation

PART 2

Amendment of the FAS Regulations

2. Amendment of the FAS Regulations
3. Amendment of Part 1
4. Amendment of Part 3
5. Amendment of Part 4
6. Amendment of Part 5
7. Amendment of Schedule 2

PART 3

Amendment of the FAS Internal Review Regulations

8. Amendment of the FAS Internal Review Regulations

PART 4
Amendment of the FAS Appeals Regulations

9. Amendment of the FAS Appeals Regulations

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 286, 315(2) and (4) and 318(1) and (4)(a) of the Pensions Act 2004⁽²⁾.

In accordance with section 316(2)(n) of that Act, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

Before making these Regulations the Secretary of State consulted such persons as he considered appropriate⁽³⁾.

PART 1
Introductory

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Northern Ireland.

(3) In these Regulations—

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005⁽⁴⁾;

“the FAS Internal Review Regulations” means the Financial Assistance Scheme (Internal Review) Regulations 2005⁽⁵⁾;

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005⁽⁶⁾; and

“the FAS Appeals Regulations” means the Financial Assistance Scheme (Appeals) Regulations 2005⁽⁷⁾.

PART 2
Amendment of the FAS Regulations

Amendment of the FAS Regulations

2. The FAS Regulations are amended in accordance with this Part.

(2) 2004 c.35. Section 286 is modified in its application to multi-employer schemes by S.I. 2005/441, amended by S.I. 2005/993 and 2005/2113. Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.

(3) See section 317(1) of the Pensions Act 2004.

(4) S.I. 2005/1986, amended by S.I. 2005/3256.

(5) S.I. 2005/1994, amended by S.I. 2005/3256 and 2006/349.

(6) S.I. 2005/2189, amended by S.I. 2005/3256.

(7) S.I. 2005/3273.

Amendment of Part 1

3. In regulation 2(1) (interpretation)—

- (a) after the definition of “the ICTA”, insert—
 - ““the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005;”;
- (b) for the definitions of ““multi-employer scheme” and “relevant public authority”” substitute—
 - ““multi-employer scheme” means an occupational pension scheme in relation to which there is or has been—
 - (a) a principal employer and at least one employer (who is not the principal employer in relation to that scheme or section of the scheme, as the case may be), or
 - (b) more than one employer,
at the same time;”;
- (c) omit the definition of “notification period”;
- (d) immediately before the definition of “qualifying member” insert—
 - ““principal employer” has the meaning given in regulation 12(6)”;
- (e) after the definition of “qualifying pension scheme” insert—
 - ““relevant public authority” has the meaning given in section 307(4) or, as the case may be, Article 280(4);”.

Amendment of Part 3

4.—(1) In regulations 11(1) (condition to be satisfied by employer), 12(1) and (2) (condition to be satisfied: multi-employer schemes) and 13(2)(b) and (4) (insolvency events), for “the last day of the notification period”, in each place it occurs, substitute “31st December 2006”.

- (2) In regulation 11(2), for “includes every”, in both places it occurs, substitute “is to the”.
- (3) In regulation 12—
 - (a) in paragraph (1), for sub-paragraphs (a), (b) and (c) substitute—
 - “(a) in relation to the principal employer in that section; or
 - (b) where either there is no principal employer in that section or there has been no insolvency event in relation to the principal employer in that section—
 - (i) in relation to the employer in that section; or
 - (ii) where there is more than one employer in that section (disregarding any principal employer), in relation to all the employers in that section.”;
 - (b) in paragraph (2), for sub-paragraphs (a) and (b) substitute—
 - “(a) in relation to the principal employer; or
 - (b) where either there is no principal employer or there has been no insolvency event in relation to the principal employer—
 - (i) in relation to the employer; or
 - (ii) where there is more than one employer (disregarding any principal employer), in relation to all the employers.”;
 - (c) in paragraphs (3) and (4)—
 - (i) after “references to the employer”, in both places it occurs, insert “(other than in the phrase “principal employer”)”;

- (ii) omit “are” in both places it occurs; and
- (iii) for “to the person”, in each place it occurs, substitute “includes every person”; and
- (d) in—
 - (i) paragraph (5)—
 - (aa) after “references to the principal employer” insert “(who may or may not be an employer within the meaning of paragraph (3))”; and
 - (bb) for “paragraphs (1)(b) or (c)” substitute “paragraphs (1)”; and
 - (ii) paragraph (5) and the definition of “principal employer” in paragraph (6), for “the employer” in each place it occurs, substitute “the person”.
- (4) In regulation 13(3)—
 - (a) at the end of sub-paragraph (b) omit “or”; and
 - (b) at the end of sub-paragraph (c) insert—
 - “; or
 - (d) an employer in relation to which no insolvency event referred to elsewhere in this regulation has occurred, but in relation to which the scheme manager is satisfied that the value of its assets is less than the amount of its liabilities, taking into account its contingent and prospective liabilities”.
- (5) In regulation 13(4)(a)—
 - (a) at the end of paragraph (ii) omit “or”; and
 - (b) at the end of paragraph (iii) add—
 - “or
 - (iv) where, in any jurisdiction outside the United Kingdom, the scheme manager is satisfied that an event has occurred in relation to the company which substantially corresponds to any event referred to in paragraph (i), (ii) or (iii) or in the provisions referred to in paragraph (1);”.

Amendment of Part 4

- 5. In regulation 15 (qualifying members)—
 - (a) in paragraph (1)—
 - (i) at the end of sub-paragraph (a) omit “or”; and
 - (ii) at the end of sub-paragraph (b) insert—
 - “; or
 - (c) he died before the date of the coming into force of these Regulations, but would have satisfied the condition in either sub-paragraph (a) or (b) and the conditions in paragraphs (2) to (4)”; and
 - (b) in paragraphs (4)(b) and (c) and (5)(d), for “2007” in each place it occurs, substitute “2019”.

Amendment of Part 5

- 6.—(1) In regulation 17 (annual payments), for paragraph (5A) substitute—
 - “(5A) In determining the amount of annual payment that is payable to, or in respect of, a beneficiary for any previous year or years (“arrears payable”)—

- (a) the total of all monthly instalments of an initial payment that have been made to, or in respect of, the beneficiary for any previous year or years is to be deducted from the amount of arrears payable to that beneficiary; and
 - (b) if the total of all such monthly instalments is greater than that amount of arrears payable, then the amount to be paid in respect of arrears payable is nil, and the difference between that total and the amount of arrears payable is recoverable from the beneficiary in accordance with regulation 7 of the FAS Information and Payments Regulations (recovery of overpayments).”
- (2) In regulation 18 (initial payments)—
- (a) in paragraph (1), at the beginning, insert “Subject to paragraph (4A),”;
 - (b) in paragraph (2)(a), after “or his survivor” insert “, and on account of such a payment,”;
 - (c) after paragraph (4), insert—
 - “(4A) Paragraphs (1)(a)(i) and (4)(a)(ii)(aa) do not apply in relation to Group 2 qualifying members or Group 3 qualifying members.”;
 - (d) after paragraph (5), insert—
 - “(5A) Where the scheme has determined the amount of interim pension that would be paid to the qualifying member or the survivor of that qualifying member, but does not propose to pay that interim pension for administrative reasons, the scheme manager may, in exercising his discretion under paragraph (4), deem that member or that survivor to be receiving that interim pension, if in the scheme manager’s opinion it is reasonable to do so.”;
 - (e) after paragraph (9), insert—
 - “(9A) If, having determined that an initial payment may be made under paragraph (4), the scheme manager subsequently determines, in accordance with Schedule 2, that no annual payment is payable to or in respect of that qualifying member or his survivor, then the total of all monthly instalments of an initial payment made to or in respect of that qualifying member or his survivor is recoverable in accordance with regulation 7 of the FAS Information and Payments Regulations.”; and
 - (f) for paragraph (10), substitute—
 - “(10) In this regulation—
 - “Group 2 qualifying member” and “Group 3 qualifying member” have the meanings given in paragraph 1(2) of Schedule 2; and
 - “interim pension” has the meaning given in paragraph 2 of Schedule 2, as modified by paragraph 10(a) of that Schedule.”.

Amendment of Schedule 2

- 7.—**(1) In paragraph 1(2) of Schedule 2 (determination of annual and initial payments – introductory)—
- (a) omit the definition of “the FAS Information and Payments Regulations”; and
 - (b) after the definition of “the certification date”, insert—
 - ““the crystallisation date” has the same meaning as in paragraphs (6) and (7) of regulation 4 of the Occupational Pension Schemes (Winding Up) Regulations 1996, as those paragraphs were in force on 5th April 2005⁽⁸⁾;

(8) S.I. 1996/3126; although regulation 4 was substituted by S.I. 2005/706 (as amended by S.I. 2005/2159) that substitution does not have effect in relation to any scheme which was regarded by virtue of regulation 2 of S.I. 1996/3126 or in accordance with the [Pensions Act 1995, s 124\(3A\)–\(3E\)](#), as having begun to be wound up before 6th April 2005 (see regulation 1(2) and (3) of S.I. 2005/706).

“Group 1 qualifying member” means a qualifying member of a qualifying scheme who—
(a) will have attained his normal retirement age for that scheme on or before 14th May 2011, or

(b) died before attaining that age but would have attained that age on or before that date;

“Group 2 qualifying member” means a qualifying member of a qualifying scheme who—

(a) will attain his normal retirement age for that scheme during the period beginning on 15th May 2011 and ending on 14th May 2015, or

(b) died before attaining that age but would have attained that age during that period;

“Group 3 qualifying member” means a qualifying member of a qualifying scheme who—

(a) will attain his normal retirement age for that scheme during the period beginning on 15th May 2015 and ending on 14th May 2019, or

(b) died before attaining that age but would have attained that age during that period;”.

(2) In paragraph 2 of that Schedule (determination of annual and initial payments – actual pension)—

(a) in sub-paragraph (1)—

(i) for “subject to sub-paragraph (3)” substitute “subject to sub-paragraphs (3) to (5)”, and

(ii) after “which has been,” insert “can be”; and

(b) in sub-paragraph (3)—

(i) for “can be” substitute “has been, can be or could have been”,

(ii) after “shall be determined” insert “(or redetermined, as the case may be)”; and

(iii) in paragraph (a), for “immediately before that scheme began to wind up” substitute “on the crystallisation date”.

(3) In paragraph 3 of that Schedule (determination of annual and initial payments – qualifying members receiving pensions from the qualifying pension scheme)—

(a) in sub-paragraph (1)—

(i) omit “immediately before a qualifying pension scheme began to wind up,”; and

(ii) after “under the scheme rules” add “on the crystallisation date”;

(b) for sub-paragraph (2), substitute—

“(2) The annual payment payable to a qualifying member to whom this paragraph applies who is—

(a) a Group 1 qualifying member shall be—

(expected pension x 0.8) – actual pension;

(b) a Group 2 qualifying member shall be—

(expected pension x 0.65) – actual pension; and

(c) a Group 3 qualifying member shall be—

(expected pension x 0.5) – actual pension.”;

(c) in sub-paragraph (3), after ““expected pension” means”, insert “, subject to sub-paragraph (4),”; and

(d) after sub-paragraph (3), add—

“(4) Where the scheme manager is satisfied that it is not possible for him to determine the annual rate of the pension for the purposes of sub-paragraph (3) having regard to all the information available to him, he shall determine that annual rate, having regard to such matters as he considers relevant.”.

(4) In paragraph 4 of that Schedule (determination of annual and initial payments – active and deferred members)—

(a) in sub-paragraph (1)—

- (i) omit “immediately before a qualifying pension scheme began to wind up,”; and
- (ii) after “a deferred member of that scheme” add “on the crystallisation date”;

(b) for sub-paragraph (2), substitute—

“(2) The annual payment payable to a qualifying member to whom this paragraph applies who is—

(a) a Group 1 qualifying member shall be—

(expected pension x 0.8) – actual pension;

(b) a Group 2 qualifying member shall be—

(expected pension x 0.65) – actual pension; and

(c) a Group 3 qualifying member shall be—

(expected pension x 0.5) – actual pension.”;

(c) in sub-paragraph (3), for “sub-paragraph (4)” substitute “sub-paragraphs (3A) and (4)”;

(d) after sub-paragraph (3), insert—

“(3A) In a case to which sub-paragraph (13) applies, “expected pension” means, subject to sub-paragraph (4), the aggregate of the amount specified in sub-paragraph (3)(a) and the revaluation amount for the revaluation period specified in sub-paragraph (13).

(3B) In a case where the certification date is on or before the day on which the qualifying member’s pensionable service ended, “expected pension” means, subject to sub-paragraph (4), the amount specified in sub-paragraph (3)(a).”;

(e) in sub-paragraph (4), after “sub-paragraph (3)” insert “, (3A) or (3B)”;

(f) after sub-paragraph (12), insert—

“(13) This sub-paragraph applies to a case where the certification date is on or before the day before the day on which the scheme began to wind up, and in such a case—

- (a) the revaluation period is the period beginning on the day on which the qualifying member’s pensionable service ended and ending on the certification date; and
- (b) the revaluation amount for the period specified in paragraph (a) shall be calculated in accordance with sub-paragraph (6)(a) and (b).”.

(5) In paragraph 5 of that Schedule (determination of annual and initial payments – survivors of qualifying members)—

(a) for sub-paragraph (1), substitute—

“(1) This paragraph applies where—

(a) immediately before a qualifying pension scheme began to wind up, a qualifying member—

(i) was entitled to present payment of a pension under the scheme rules and that pension was attributable—

(aa) to the member’s pensionable service; or

(bb) (directly or indirectly) to a pension credit to which the member became entitled under section 29(1)(b) of the Welfare Reform and Pensions Act 1999⁽⁹⁾; or

(9) 1999 c.30.

- (ii) was an active member or deferred member of that scheme, and that member dies on or after the day on which the scheme began to wind up; and
- (b) that member—
 - (i) was entitled to an annual payment determined in accordance with this Schedule, or
 - (ii) would have been entitled to such an annual payment had he not died before he became so entitled.”;
- (b) for sub-paragraph (3) substitute—

“(3) Where the qualifying member dies before the date on which the liabilities of the scheme in respect of that member are discharged (whether by entry into an annuity contract or by other means) and—

 - (a) that member is a Group 1 qualifying member, the annual payment payable to his survivor shall be—

$$\frac{(\text{expected pension} \times 0.8)}{2} - \text{actual pension}$$
 - (b) that member is a Group 2 qualifying member, the annual payment payable to his survivor shall be—

$$\frac{(\text{expected pension} \times 0.65)}{2} - \text{actual pension}$$
 - (c) that member is a Group 3 qualifying member, the annual payment payable to his survivor shall be—

$$\frac{(\text{expected pension} \times 0.5)}{2} - \text{actual pension}$$

(c) in sub-paragraph (4), for “immediately before his death”, in both places it occurs, substitute “on the crystallisation date”; and

(d) in sub-paragraph (6), for “after the certification date” substitute “on or after the date on which the liabilities of the scheme in respect of that member were discharged”.

(6) In paragraph 6 of that Schedule (determination of annual and initial payments – exclusion of certain benefits), omit sub-paragraphs (2)(c) and (3).

(7) In paragraph (7) of that Schedule (cap on expected pension and actual pension), after “multiplied by 0.8” in each place it occurs, insert “, 0.65 or 0.5 (as the case may be)”.

(8) In paragraph 9 of that Schedule (determination of annual and initial payments – revaluation)—

 - (a) after sub-paragraph (2) insert—

“(2A) But sub-paragraph (2) does not apply to an annual payment payable to a beneficiary who is the survivor of a qualifying member where that qualifying member was in receipt of an annual payment at the time of his death.”; and
 - (b) in subparagraph (3)(a)—
 - (i) for “second revaluation period determined in accordance with paragraph 4(7)” substitute “period referred to in sub-paragraph (2)”.

(9) In paragraph 10 of that Schedule (determination of annual and initial payments – initial payments)—

 - (a) for sub-paragraph (a), substitute—

“(a) for paragraph 2, substitute—

“Interim pension

2.—(1) In this Schedule, “interim pension” means, subject to sub-paragraphs (2) and (3), the annual rate of pension that was in payment, is in payment, or is proposed to be paid, to a qualifying member, or to a survivor of that qualifying member, from the assets of the qualifying pension scheme of which that qualifying member is, or was, a member—

- (a) on or after the time when the scheme began to wind up; but
- (b) before the day on which the scheme’s liabilities to or in respect of the qualifying member are, or were, discharged.

(2) Where—

- (a) the annual rate of pension referred to in sub-paragraph (1)—
 - (i) was or is in payment, and
 - (ii) was determined following commutation of some of the benefits deriving from the scheme to which that qualifying member is entitled,that annual rate shall be redetermined on the basis that there was no such commutation; and
- (b) the annual rate of pension referred to in sub-paragraph (1) is proposed to be paid, that annual rate shall be determined on the basis that there has been no commutation of benefits.

(3) Where the scheme manager is satisfied that it is not possible for him to determine the annual rate of pension for the purposes of sub-paragraph (1) having regard to the information available to him, he shall determine the annual rate of pension on the basis of that portion of the assets of the qualifying pension scheme (of which the qualifying member is, or was, a member) provisionally allocated to the member, or survivor of that member—

- (a) on or after the time when the scheme began to wind up; but
- (b) before the day on which the scheme’s liabilities in respect of the qualifying member are, or were, discharged,

and such other matters as the scheme manager considers relevant.”.”;

(b) after sub-paragraph (c), insert—

“(ca) for “0.65”, in each place, substitute “0.5”.”; and

(c) for sub-paragraph (e), substitute—

“(e) in paragraph 5—

(i) for sub-paragraph (3) substitute—

“(3) The initial payment payable to a survivor of a qualifying member shall be—

(a) where that qualifying member was a Group 1 qualifying member—

$$\frac{\text{expected pension} \times 0.6}{2}$$
 – interim pension payable to that survivor
2; and

(b) in any other case—

$$\frac{\text{expected pension} \times 0.5}{2}$$
 – interim pension payable to that survivor
2.”; and

(ii) omit sub-paragraphs (2) and (6).”.

PART 3

Amendment of the FAS Internal Review Regulations

Amendment of the FAS Internal Review Regulations

- 8.—(1) The FAS Internal Review Regulations are amended in accordance with this regulation.
- (2) In regulation 1(3) (interpretation), after the words “potential beneficiary”, add “, except where the context otherwise requires,”.
- (3) In regulation 2(1) (reviewable determinations)—
- (a) at the end of sub-paragraph (c) omit “or”; and
 - (b) at the end of sub-paragraph (d), add—
 - “; or
 - (e) whether or not the scheme manager is satisfied that a qualifying member is terminally ill for the purposes of regulations 17(3) (annual payments: terminally ill qualifying member) and 18(1)(a)(ii)(bb) (initial payments: terminally ill qualifying member) of the FAS Regulations (“terminal illness eligibility”).
- (4) In—
- (a) regulation 2(2), for “and member assessment” substitute “, member assessment and terminal illness eligibility”;
 - (b) regulations 3(1)(b), 5(1)(c)(ii), 11(2) and 16(1)(b) and (2)(b), for “or member assessment” substitute “, member assessment or terminal illness eligibility”; and
 - (c) regulation 6(1)(b), for “member assessment or member eligibility” substitute “member eligibility, member assessment or terminal illness eligibility”.
- (5) In regulation 3—
- (a) in paragraph (1)(b), after “the scheme manager must” insert “, subject to paragraph (1A),”;
 - (b) after paragraph (1) insert—
 - “(1A) Where a reviewable determination referred to in paragraph (1) relates to a member eligibility decision, the notice referred to in paragraph (1)(b) may be—
 - (a) issued on the Financial Assistance Scheme website, and
 - (b) addressed to the members, or to a class of members, of a named scheme as a group, rather than to an individual or individualsif in the opinion of the scheme manager it is reasonable to do so.”; and
 - (c) in paragraph (2), for “paragraph (1)(a)(i) or (b)” substitute “paragraphs (1)(a)(i) or (b), or (1A)”.
- (6) In regulation 6(1) (applications for a review of a reviewable determination)—
- (a) in sub-paragraph (a)(i)(aa) and (ii), after “any person who is a”, in each place it occurs, insert “beneficiary or”; and
 - (b) in sub-paragraph (b), after “a potential beneficiary”, omit “of the financial assistance scheme”.

PART 4

Amendment of the FAS Appeals Regulations

Amendment of the FAS Appeals Regulations

- 9.—(1) The FAS Appeals Regulations are amended in accordance with this regulation.
- (2) In regulation 2 (interpretation), after the definition of “survivor”, add—
- ““terminal illness eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not the scheme manager is satisfied that a qualifying member is terminally ill for the purposes of regulations 17(3) (annual payments: terminally ill qualifying member) and 18(1)(a)(ii)(bb) (initial payments: terminally ill qualifying member) of the FAS Regulations.”.
- (3) In regulations 6(2)(b) (notice of appeal) and 17(4) (time and place of oral hearing), after “a member assessment decision” insert “, a terminal illness eligibility decision”.
- (4) In regulation 19(9)(b) (further provisions relating to attendance at oral hearings where appeal relates to scheme notification decision or scheme eligibility decision), after “11(1)(a) and (3),” insert “12(2),”.
- (5) In regulation 26(7)(b) (further provisions relating to combining appeals where appeal relates to scheme notification decision or scheme eligibility decision), after “7(3)(a)(i),” insert “11(1)(a) and (3),”.

Signed by authority of the Secretary of State for Work and Pensions.

2006

Name
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986, as amended) (“the FAS Regulations”), the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994, as amended) (“the FAS Internal Review Regulations”), and the Financial Assistance Scheme (Appeals) Regulations 2005 (S.I. 2005/3273) (“the FAS Appeals Regulations”).

Part 1 makes provision for citation, commencement, extent, and also interpretation.

Part 2 amends the FAS Regulations. In particular it—

- amends the definition of multi-employer scheme (regulation 3),
- makes provision for a scheme that has not formally had an insolvency event to be treated as having had an insolvency event for the purposes of regulation 13 of the FAS Regulations, as long as the scheme manager is satisfied that the value of its assets is less than the amount of its liabilities, and also for a scheme that has had an overseas insolvency event that the scheme manager is satisfied substantially corresponds to a qualifying insolvency event (as set out in

regulation 13 of the FAS Regulations) also to be treated as having had a qualifying insolvency event (regulation 4),

clarifies that a member of a qualifying scheme who satisfies the relevant conditions will still be a qualifying member even if he died before the coming into force of the FAS Regulations, as long as he would have satisfied those conditions, and extends eligibility for FAS assistance to members who were within 15 years of their normal retirement age for their scheme at 14th May 2004 (regulation 5),

clarifies that initial payments are on account of annual payments, clarifies the circumstances under which overpayments will be recoverable, provides that the scheme manager may deem a member or survivor to be receiving an interim pension for the purposes of calculating the amount of initial payments in certain circumstances, and provides that some of the members to whom the extension set out in regulation 5 applies will not be eligible for initial payments (regulation 6), and

amends Schedule 2 to set out how the amount of annual payments is to be calculated for the members and survivors to whom the extension set out in regulation 5 applies, and makes some other amendments in respect of payments to survivors (regulation 7).

Part 3 amends the FAS Internal Review Regulations, in particular to clarify the definition of potential beneficiary, and to provide for a right of review and appeal of a decision as to whether or not a member is terminally ill by adding a new reviewable determination, and provide that the scheme manager may issue certain notices via the FAS website where in his opinion it is reasonable to do so (regulation 8).

Part 4 amends the FAS Appeals Regulations by making some consequential amendments to take account of the new reviewable determination in relation to terminal illness, and to ensure consistency as to when an interested person is to be treated as a party to the appeal (regulation 9).

Before making these Regulations the Secretary of State consulted such persons as he considered appropriate.

A regulatory impact assessment has not been published for this instrument as it has only a negligible impact on business, charities and voluntary bodies.