

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

D R A F T S T A T U T O R Y I N S T R U M E N T S

2010 No.[]

PENSIONS

**The Financial Assistance Scheme (Miscellaneous Amendments)
Regulations 2010**

Made - - - - - *2010*

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 190, 286, 315(2) and (4) and 318(1) of the Pensions Act 2004(a).

In accordance with section 316(2)(n) of the Pensions Act 2004, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of the Pensions Act 2004.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

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

(a) 2004 c.35. Section 190 is modified in its application to the financial assistance scheme by paragraph 5 of Schedule 1 to S.I. 1005/1986. Section 286 was amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and by section 124 of the Pensions Act 2008 (c.30). 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 meanings given to “prescribed” and “regulations”.
(b) S.I. 2005/3273 as amended by S.I. 2006/3370, 2008/1903, 2008/2683, 2009/792 and 2009/1851.

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

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

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

PART 2

Amendment of the FAS Regulations

Amendment of the FAS Regulations

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

Amendment of Part 1

4. In regulation 2 (interpretation)—

- (a) after the definition of “the Commissioners of HMRC” insert—

“the Ombudsman” means the PPF Ombudsman or any person appointed under section 210(1) (deputy PPF Ombudsmen) to act as a deputy to the PPF Ombudsman;”;
- (b) in the definition of “annual payment”, for “regulation 17 or 17C and Schedule 2” substitute “regulation 17, 17C or 17E and Schedule 2, 3 or 4”;
- (c) after the definition of “annual payment” insert—

“appointed actuary” has the meaning given in regulation 22(4);”;
- (d) for the definition of “beneficiary” substitute—

“beneficiary” means—

 - (a) a qualifying member or, after that qualifying member’s death, the survivor and surviving dependants of that qualifying member; and
 - (b) any person entitled to a payment in accordance with regulation 17G(1);

“calculation date” shall be the last day of the month during which the scheme manager appoints an appointed actuary in order to obtain a valuation under regulation 22 in relation to a qualifying pension scheme;”;
- (e) in the definition of “ill health payment” for “Schedule 2A” substitute “Schedules 2A to 2C”;
- (f) after the definition of “multi-employer scheme” insert—

“notional pension” means the annual rate of annuity determined in accordance with regulation 27(1)(a);”;
- (g) after the definition of “qualifying pension scheme” insert—

“relevant accounts” for the purposes of identifying and valuing the assets of a scheme, means the audited accounts for the scheme which—

 - (a) are in such manner and form as the scheme manager may request;
 - (b) show a true and fair view of—
 - (i) the financial transactions of the scheme during the period to which the accounts relate (“the accounting period”);

(a) S.I. 2005/3275 as amended by S.I. 2006/3370, 2008/1903, 2008/2683, 2009/792 and 2009/1851.

(b) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349, 2006/3370, 2008/1903, 2009/792 and 2009/1851.

(c) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581, 2008/1432, 2008/1903, 2008/3241, 2009/792 and 2009/1851.

- (ii) the amount and disposition of the assets at the end of the accounting period; and
- (iii) the liabilities of the scheme, other than the liabilities to pay pensions and benefits, after the end of the accounting period;
- (c) include a report by the auditor in writing as to whether or not in his opinion the requirements in paragraphs (a) and (b) above are satisfied; and
- (d) are prepared in respect of the period ending with the calculation date;”;
- (h) after the definition of “scheme manager” insert—
 - ““scheme rules” means the rules of the qualifying pension scheme;”;
- (i) after the definition of “survivor” insert—
 - ““survivor notional pension” means the annual rate of annuity determined in accordance with regulation 27(1)(c);”; and
- (j) after the definition of “tax approved scheme” insert—
 - ““transfer notice” means the notice given under regulation 29;”.

Amendment of regulation 4

- 5.** In regulation 4 (application of Parts 1 and 2 of the Act)—
- (a) after paragraph (2)(bf) insert—
 - “(bg) sections 135 and 136 (provisions restricting winding up, discharge of liabilities etc.);
 - (bh) section 165 (guaranteed minimum pensions);”;
 - (b) in paragraph (2)(d) omit “(except section 202)”; and
 - (c) in paragraph (5) for “201 and 203” substitute “201 to 203”.

Amendment of regulation 15

- 6.** In regulation 15 (qualifying members)—
- (a) for paragraph (1) substitute—
 - “(1) A member or a former member of a qualifying pension scheme is a qualifying member of that scheme for the purposes of—
 - (a) section 286A (restriction on purchase of annuities); and
 - (b) these Regulations,

where the conditions in paragraphs (2) to (3A) are satisfied in relation to that member or former member or would have been satisfied in relation to that member or former member had that member or former member not died before the coming into force of these Regulations.”; and
 - (b) after paragraph (3) insert—
 - “(3A) The condition in this paragraph is that the scheme’s pension liabilities have not been satisfied in full in respect of that member.”.

Amendment of Part 4

- 7.** Omit regulations 15A (qualifying members for the purposes of section 286A) and 16 (insufficient assets).

Amendment of regulation 17

- 8.** In regulation 17 (annual payments)—
- (a) in each place it occurs omit “determined in accordance with Schedule 2”;

- (b) in paragraph (1) for “Schedule 2 makes” substitute “Schedules 2, 3 and 4 make”;
- (c) after paragraph (7), add—
 - “(8) Subject to regulation 17E, where a beneficiary is entitled to an annual payment in accordance with this regulation, that annual payment shall be determined in accordance with—
 - (a) Schedule 2, where none of sub-paragraphs (b) to (i) apply;
 - (b) Schedule 3, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
 - (iii) the revalued notional pension in relation to the qualifying member is higher than the amount of the annual payment to which that qualifying member would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3)(ab) of that Schedule were omitted;
 - (c) Schedule 3, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a survivor or surviving dependant; and
 - (iii) the qualifying member was entitled to an annual payment in accordance with Schedule 3 immediately before the death of the member;
 - (d) Schedule 3, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a survivor or surviving dependant;
 - (iii) the qualifying member in respect of that beneficiary was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
 - (iv) the qualifying member died—
 - (aa) before becoming entitled to an annual payment; and
 - (bb) on or after the calculation date; and
 - (v) one half of the revalued notional pension is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraph 2(3)(ab) of that Schedule were omitted;
 - (e) Schedule 3, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a survivor or surviving dependant;
 - (iii) neither the qualifying member in respect of that beneficiary nor the beneficiary were receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
 - (iv) the qualifying member died—
 - (aa) before becoming entitled to an annual payment; and
 - (bb) before the calculation date; and

- (v) the survivor notional pension is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied;
- (f) Schedule 4, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a qualifying member who was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
 - (iii) the notional pension in relation to that qualifying member is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied;
- (g) Schedule 4, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a survivor or surviving dependant;
 - (iii) the qualifying member in respect of that beneficiary—
 - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
 - (bb) died before the calculation date; and
 - (iv) the survivor notional pension determined in respect of the beneficiary is higher than the amount of the annual payment to which that beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied;
- (h) Schedule 4, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a survivor or surviving dependant who was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
 - (iii) the survivor notional pension determined in respect of the beneficiary is higher than the amount of the annual payment to which that beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied; or
- (i) Schedule 4, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a survivor or surviving dependant;
 - (iii) the qualifying member in respect of that beneficiary—
 - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
 - (bb) died on or after the calculation date; and
 - (iv) the amount which is so much of the notional pension which relates to that beneficiary is higher than the amount of the annual payment to which the beneficiary would be entitled in accordance with Schedule 2 if that Schedule applied.

(9) In paragraph (8)(b)(iii) and (d)(v), “the revalued notional pension” means the aggregate of—

- (a) the notional pension; and
- (b) the revaluation amount for the period—
 - (i) beginning on the calculation date; and
 - (ii) ending on the earlier of—
 - (aa) the day on which the beneficiary becomes entitled to an annual payment; or
 - (bb) the day which is the day on which the qualifying member died.

(10) The revaluation amount for the period referred to in paragraph (9) is—

- (a) where that period is less than one month, nil; or
- (b) in any other case, the revaluation percentage of the notional pension.

(11) In paragraph (10), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (9); and
- (b) the maximum revaluation rate.

(12) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (9) is—

$$(100 \times (A \div B)) - 100$$

where—

- (a) A is the level of the retail prices index for the month which falls two months before the month in which the day from which the beneficiary is entitled to an annual payment falls; and
- (b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls.

(13) In paragraph (11)(b), “the maximum revaluation rate” is—

- (a) if that period is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in paragraph (11)(b) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.”.

Amendment of regulation 17A

9. In regulation 17A (ill health payments)—

- (a) in paragraph (1) omit “in accordance with paragraph 2 of Schedule 2A”;
- (b) in paragraph (6B) omit “determined in accordance with Schedule 2A”;
- (c) for paragraph (8) substitute—

“(8) Subject to regulation 17F, where a beneficiary is entitled to an ill health payment in accordance with this regulation, that ill health payment shall be determined in accordance with—

- (a) Schedule 2A, where none of sub-paragraphs (b) to (e) applies;
- (b) Schedule 2B, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the

- coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
- (iii) the product of C multiplied by the revalued notional pension in relation to the qualifying member is higher than the amount of the ill health payment to which that qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied and paragraph 2(3)(ab) of that Schedule were omitted;
- (c) Schedule 2B, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a survivor or surviving dependant; and
 - (iii) the qualifying member was entitled to an ill health payment in accordance with Schedule 2B immediately before the death of the member;
 - (d) Schedule 2B, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a survivor or surviving dependant and—
 - (aa) neither the beneficiary nor the qualifying member in respect of that beneficiary was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
 - (bb) the beneficiary was receiving an ill health payment or interim ill health payment immediately before the calculation date; and
 - (iii) the survivor notional pension in relation to that beneficiary is higher than the amount of ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied; and
 - (e) Schedule 2C, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a qualifying member who was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
 - (iii) the notional pension in relation to that qualifying member is higher than the amount of ill health payment to which the qualifying member would be entitled in accordance with Schedule 2A if that Schedule applied;
 - (f) Schedule 2C, where—
 - (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
 - (ii) the beneficiary is a survivor or surviving dependant who was receiving—
 - (aa) a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
 - (bb) an ill health payment or interim ill health payment immediately before the calculation date; and
 - (iii) the survivor notional pension in relation to that beneficiary is higher than the amount of ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied; and
 - (g) Schedule 2C, where—

- (i) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29;
- (ii) the beneficiary is a survivor or surviving dependant;
- (iii) the qualifying member in respect of that beneficiary—
 - (aa) was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;
 - (bb) died on or after the calculation date; and
 - (cc) was receiving an ill health payment or interim ill health payment when the qualifying member died; and
- (iv) the amount which is so much of the notional pension which relates to that beneficiary is higher than the amount of the ill health payment to which the beneficiary would be entitled in accordance with Schedule 2A if that Schedule applied.

(9) In paragraph (8)(b)(iii)—

“the revalued notional pension” means the aggregate of—

- (a) the notional pension; and
- (b) the revaluation amount for the period—
 - (i) beginning on the calculation date; and
 - (ii) ending on the day on which the qualifying member becomes entitled to an ill health payment; and

“C” means the actuarial factor to be applied in respect of the beneficiary.

(10) The revaluation amount for the period referred to in the definition of “the revalued notional pension” in paragraph (9) is—

- (a) where that period is less than one month, nil; or
- (b) in any other case, the revaluation percentage of the notional pension.

(11) In paragraph (10), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (9); and
- (b) the maximum revaluation rate.

(12) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with paragraph (9) is—

$$(100 \times (A \div B)) - 100$$

where—

- (a) A is the level of the retail prices index for the month which falls two months before the month in which the day from which the qualifying member is entitled to an ill health payment falls; and
- (b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls.

(13) In paragraph (11)(b), “the maximum revaluation rate” is—

- (a) if that period is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in paragraph (11)(b) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.”.

Amendment of Part 5

10.—(1) After regulation 17C insert—

“Lump sum payments

17D.—(1) This regulation applies where the qualifying member—

- (a) is a qualifying member to whom Part 7 applies;
- (b) is a qualifying member of a qualifying pension scheme in respect of which a transfer notice has been given in accordance with regulation 29;
- (c) is not regarded as a qualifying member by virtue of regulation 15(5);
- (d) was not receiving a present payment under scheme rules before the day on which the transfer notice was given;
- (e) has made a written request to commute a portion of the annual payment or ill health payment to which that qualifying member is entitled for a lump sum no later than—
 - (i) the day on which the qualifying member becomes entitled to an annual payment or ill health payment; or
 - (ii) such later day by which the scheme manager may determine that it will accept a written request in the case of any particular member; and
- (f) the notional pension determined for the qualifying member is more than nil.

(2) Where this regulation applies a qualifying member shall be entitled to commute a portion of the payments payable or which may become payable to and in respect of that qualifying member under these Regulations for a lump sum, immediately before the day on which that member becomes entitled to an annual payment or ill health payment in accordance with these Regulations.

(3) The portion commuted for a lump sum under paragraph (2) shall not exceed the lower of—

- (a) 25 per cent of the annual payment or ill health payment which would be determined in accordance with Schedule 2, 2A, 2B or 3 in respect of the qualifying member if paragraph 2(3)(ab) of Schedule 2 were omitted; and
- (b) the revalued notional pension determined in accordance with regulation 17(9) or, where the qualifying member is entitled to an ill health payment, regulation 17A(9).

(4) The lump sum payable under paragraph (2) is the actuarial equivalent of the commuted portion of payments to be made in respect of the qualifying member in accordance with these Regulations.

(5) The scheme manager shall only be bound to make a determination in relation to entitlement to an annual payment or an ill health payment after the date referred to in paragraph (1)(e)(i) or (ii).

(6) Where the scheme manager determines that it will accept a written request for a lump sum at a later day referred to in paragraph (1)(e)(ii), it shall take all reasonable steps to notify the qualifying member of that determination.

Redetermination of an annual payment previously determined in accordance with Schedule 4

17E.—(1) This regulation applies where, on an indexation date following the date on which the beneficiary first became entitled to an annual payment determined in accordance with Schedule 4, the aggregate of the amounts referred to in paragraph (2) is lower than the aggregate of the amounts referred to in paragraph (3).

(2) The amounts in this paragraph are—

- (a) the amount of the annual payment determined in accordance with Schedule 4; and
 - (b) the amount of any annual increases to which the beneficiary was entitled in accordance with paragraph 7 of Schedule 4 on the indexation date.
- (3) The amounts in this paragraph are—
- (a) the amount of an annual payment which would be determined in accordance with Schedule 2 in respect of the beneficiary; and
 - (b) the amount of any annual increases to which the beneficiary would be entitled in accordance with paragraph 9 of Schedule 2,

if the beneficiary were entitled to an annual payment determined in accordance with Schedule 2.

- (4) Where this regulation applies—
- (a) the scheme manager shall redetermine the amount of the annual payment; and
 - (b) the beneficiary shall, from the indexation date—
 - (i) be entitled to an annual payment determined in accordance with Schedule 2; and
 - (ii) cease to be entitled to an annual payment determined in accordance with Schedule 4.

Redetermination of an ill health payment previously determined in accordance with Schedule 2C

17F.—(1) This regulation applies where, on an indexation date following the date on which the beneficiary first became entitled to an ill health payment determined in accordance with Schedule 2C, the aggregate of the amounts referred to in paragraph (2) is lower than the aggregate of the amounts referred to in paragraph (3).

- (2) The amounts in this paragraph are—
- (a) the amount of the ill health payment determined in accordance with Schedule 2C; and
 - (b) the amount of any annual increases to which the beneficiary was entitled in accordance with paragraph 7 of Schedule 2C on the indexation date.
- (3) The amounts in this paragraph are—
- (a) the amount of an ill health payment which would be determined in accordance with Schedule 2A in respect of the beneficiary; and
 - (b) the amount of any annual increases to which the beneficiary would be entitled in accordance with paragraph 9 of Schedule 2A,

if the beneficiary were entitled to an ill health payment determined in accordance with Schedule 2A.

- (4) Where this regulation applies—
- (a) the scheme manager shall redetermine the amount of the ill health payment;
 - (b) the beneficiary shall, from the indexation date—
 - (i) be entitled to an ill health payment determined in accordance with Schedule 2A; and
 - (ii) cease to be entitled to an ill health payment determined in accordance with Schedule 2C.

Payments to beneficiaries other than qualifying members, survivors and surviving dependants.

17G.—(1) This regulation applies where—

- (a) a notional pension has been determined in accordance with regulation 27 in respect of any person who—
 - (i) is not a qualifying member, a survivor or surviving dependant; but
 - (ii) is a person in respect of whom the qualifying pension scheme would have continued to have a liability to provide a pension or other benefit had the trustees or managers not been discharged from their liability to provide that pension or other benefit when a transfer notice was given under regulation 29; and
 - (b) a transfer notice has been given in respect of the qualifying pension scheme in accordance with regulation 29.
- (2) Where this regulation applies, that person shall be entitled to a payment, payable in respect of a year, which is the amount determined in accordance with Schedule 5.
- (3) A person entitled to a payment under paragraph (2) shall be entitled to that payment—
- (a) from the day on which the transfer notice in respect of the qualifying pension scheme is received by the trustees or managers of the qualifying pension scheme; and
 - (b) until the day on which entitlement to a payment from the scheme would have ended in accordance with the rules of the scheme.
- (4) The year in respect of which the payment referred to in paragraph (2) is to be made shall be the year starting on the day on which an instalment of the payment is first payable to the qualifying member by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.
- (5) Where the qualifying member dies or ceases to be entitled to a payment under this regulation in accordance with paragraph (3)(b)—
- (a) subject to sub-paragraph (b), any further instalments of such a payment that would have been payable to the qualifying member, in respect of that year, cease to be payable; and
 - (b) any instalment of such a payment which is payable in respect of a period which includes the day on which the qualifying member has died or otherwise ceased to be entitled to a payment shall be payable.

Payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment

- 17H.**—(1) This regulation applies where—
- (a) a transfer notice has been given in respect of a qualifying pension scheme;
 - (b) a qualifying member is not entitled to an annual payment or an ill health payment; and
 - (c) that qualifying member was receiving present payment of a pension under the scheme rules on the day on which the transfer notice is given.
- (2) Where this regulation applies, the qualifying member shall be entitled to a payment, payable in respect of a year, which is the amount determined in accordance with Schedule 5.
- (3) A qualifying member entitled to a payment under paragraph (2) shall be entitled to that payment—
- (a) from the day on which the transfer notice in respect of the qualifying pension scheme is received by the trustees or managers of the qualifying pension scheme; and
 - (b) until the day before the day on which the qualifying member becomes entitled to an annual payment or an ill health payment.

(4) The year in respect of which the payment referred to in paragraph (2) is to be made shall be the year starting on the day on which an instalment of the payment is first payable to the qualifying member by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

(5) Where the qualifying member dies or ceases to be entitled to a payment under this regulation in accordance with paragraph (3)(b)—

- (a) subject to sub-paragraph (b), any further instalments of such a payment that would have been payable to the qualifying member, in respect of that year, cease to be payable; and
- (b) where the member dies before becoming entitled to an annual payment or ill health payment, any instalment of such a payment which is payable in respect of a period which includes the day on which the qualifying member has died or otherwise ceased to be entitled to a payment shall be payable.”.

Amendment of regulation 19

11. In regulation 19 (time and manner of payment: general provisions)—

- (a) in paragraph (1), after “ill health payment” insert “, a payment under regulation 17G or 17H”; and
- (b) in paragraph (3) after sub-paragraph (b) insert—
 - “(ba) the beneficiary becomes entitled to a payment under regulation 17G or 17H;”.

Insertion of Parts 7 to 9

12. After Part 6 (administration of payments), insert Parts 7 (valuation of assets and liabilities), 8 (scheme manager functions after valuation) and 9 (transfer of property, rights and liabilities) as set out in Schedule 1 to these Regulations.

Amendment of Schedule 1

13. In Schedule 1 (modification of certain provisions of Parts 1 and 2 of the Act)—

- (a) in paragraph 3A—
 - (i) after sub-paragraph (b) insert—
 - “(ba) in subsection (2), after paragraph (b) insert—
 - “(ba) the determination of interim pensions,”;”;
 - (ii) after sub-paragraph (c) insert—
 - “(ca) in subsection (3), before paragraph (a) insert—
 - “(za) “interim pension” has the meaning given by regulations under section 286(1);”;
- (b) after paragraph 3A insert—

“3B. In section 135 (restrictions on winding up, discharge of liabilities etc)—

- (a) in subsection (1), for “there is an assessment period in relation to an eligible scheme” substitute “an occupational pension scheme is a qualifying pension scheme under section 286(2)”;
- (b) omit subsections (2), (3), (5) to (7) and (11);
- (c) in subsection (4)—
 - (i) for the words before paragraph (a) substitute “Except where subsection (4A) applies—”;
 - (ii) in paragraph (a), for “member” substitute “qualifying member”; and
 - (iii) for paragraph (b) substitute—

“(b) no steps may be taken to discharge any liability of the scheme to or in respect of a qualifying member of the qualifying pension scheme by way of making a payment which would be—

(i) a winding-up lump sum under paragraph 10 of Schedule 29 to the Finance Act 2004; or

(ii) a trivial commutation lump sum under paragraph 7 or 7A of Schedule 29 to the Finance Act 2004.”;

(d) after subsection (4) insert—

“(4A) This subsection applies where—

(a) before 26 September 2007 the trustees or managers entered into a binding commitment to purchase an annuity for the qualifying member;

(b) the purchase of an annuity has been approved by the scheme manager under section 286A(2)(b);

(c) the transfer or discharge of liability has been approved by the scheme manager under subsection (4B) on the application of the trustees or managers of the scheme and any condition imposed under subsection (4C) is satisfied;

(d) before the date the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 came into force, the trustees or managers of the scheme offered a trivial commutation lump sum to the qualifying member;

(e) before the date the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 came into force, the trustees or managers of the scheme had transferred, or made a transfer payment in respect of, part of the qualifying member’s rights under the scheme rules which are not rights in respect of money purchase benefits;

(f) before the date the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 came into force—

(i) an application under section 93A of the 1993 Act (salary related schemes: right to statement of entitlement) for a statement of entitlement had been received by the trustees or managers of the scheme for the qualifying member;

(ii) the trustees or managers of the scheme have provided the qualifying member with such a statement; and

(iii) the qualifying member has made, within the three months referred to in section 94 of the 1993 Act (right to cash equivalent), and not withdrawn, an application under section 95 of that Act (ways of taking right to cash equivalent); or

(g) the transfer or discharge of liability relates only to money purchase benefits.

(4B) The scheme manager may approve a transfer referred to in subsection (4)(a) or any steps to discharge any liability of the scheme to or in respect of a qualifying member of the qualifying pension scheme by way of making a payment referred to in subsection (4)(b) if the scheme manager thinks it appropriate to do so.

(4C) An approval under subsection (4B) may be made subject to such conditions (if any) as the scheme manager thinks appropriate.”; and

(e) in subsection (9) for “Board” substitute “scheme manager”.

3C. In section 136 (power to validate contraventions of section 135)—

(a) in each place it occurs, for “Board” substitute “scheme manager”;

(b) in subsection (1) for the words “to do so is consistent” to the end, substitute “it is appropriate to do so”;

- (c) in subsection (2) omit paragraphs (a), (c) and (d);
- (d) after subsection (2) insert—
 - “(2A) The scheme manager may copy the notice under subsection (2) to any other person to whom, in the opinion of the scheme manager, the determination is relevant.”;
- (e) in subsection (3) for “Board’s” substitute “scheme manager’s”; and
- (f) omit subsections (4) and (5).

3D. In section 165 (guaranteed minimum pensions)—

- (a) in subsection (1)—
 - (i) for “Board” substitute “scheme manager”;
 - (ii) for “Commissioners of Inland Revenue” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
 - (iii) for “assuming responsibility for an eligible scheme in accordance with this Chapter” substitute “the trustees or managers receiving a transfer notice under regulation 29 of the Financial Assistance Scheme Regulations 2005”; and
- (b) in subsection (3) for “on the Board of the Pension Protection Fund assuming responsibility for the scheme” substitute “when a transfer notice was received under regulation 29 of the Financial Assistance Scheme Regulations 2005”.”;
- (c) after paragraph 14 insert—

14A. In section 202 (tax information)—

- (a) in each place it occurs, for “the Board” substitute “the scheme manager”;
- (b) in subsection (1) for “tax functions” substitute “a function of the Revenue and Customs”;
- (c) in subsection (2) for “section 182 of the Finance Act 1989 (c.26)” substitute “sections 18 and 19 of the Commissioners for Revenue and Customs Act 2005 (c.11)”;
- (d) in subsection (4) for “Commissioners of Inland Revenue or the Commissioners of Customs and Excise” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
- (e) for subsection (5) substitute—
 - “(5) In subsection (1), “a function of the Revenue and Customs” has the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005.”
 - ; and
- (d) in paragraph 17—
 - (i) in sub-paragraph (a)—
 - (aa) for “Schedules 2 and 2A” substitute “Schedules 2 to 5”; and
 - (bb) after “Financial Assistance Scheme (Appeals) Regulations 2005;” insert—
 - “(gg) regulation 27 of the 2005 Regulations (scheme manager calculations after a valuation);
 - (gh) regulation 30(1)(c) of the 2005 Regulations (effect of transfer);”;
 - (ii) in sub-paragraph (b) for “(gf)” substitute “(gh)”.

Amendment of Schedule 2

14. In Schedule 2—

- (a) in paragraph 1(2), omit the definition of “scheme rules”;
- (b) in paragraph 2—

(i) in sub-paragraph (3), after paragraph (a) insert—

“(ab) where the beneficiary is a qualifying member to whom regulation 17D applies or a survivor or surviving dependant of such a qualifying member, having regard to any lump sum paid and determined in accordance with that regulation;”;

(ii) after sub-paragraph (3A), insert—

“(3B) Where the scheme manager is satisfied that the amount of interim pension paid to a beneficiary in respect of any year—

(a) from the later of—

(i) the day on which the scheme began to be wound up; and

(ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; and

(b) until the day on which the beneficiary becomes entitled to a payment in accordance with these Regulations,

is higher than or lower than the notional pension or survivor notional pension determined in respect of that beneficiary in accordance with regulation 27, the scheme manager may determine how the actual pension is to be calculated for the purposes of this Schedule, having regard to the amount of the notional pension or survivor notional pension and to the matters referred to in sub-paragraph (3A)(b) and (c).

(3C) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before a transfer notice is received in accordance with regulation 29, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the actual pension is to be calculated, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(3D) Where the beneficiary is a qualifying member who has received a payment in accordance with regulation 17H (payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment), the scheme manager may determine how the actual pension is to be calculated, having regard to the amount paid under regulation 17H and to such other matters as the scheme manager considers relevant.”; and

(iii) in sub-paragraph (4)—

(aa) after “sub-paragraph (1)” insert “or the interim pension paid or due to be paid to a beneficiary for the purposes of sub-paragraph (3A) or (3B)”;

(bb) after “it shall determine the annual rate of annuity” insert “or the interim pension paid or due to be paid to a beneficiary”;

(c) in paragraph 3—

(i) at the beginning of sub-paragraph (3)(b) insert “except where paragraph (c) applies,”;

(ii) after sub-paragraph (3)(b) insert—

“; or

(c) where the qualifying member attains normal retirement age after 14th May 2004, the aggregate of—

(i) the annual rate of pension which was or should have been in payment to the qualifying member in accordance with scheme rules in respect of rights accrued in a qualifying pension scheme as at the day on which the qualifying pension scheme began to be wound up; and

(ii) the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on the day on which the qualifying member attains normal retirement age.”;

(iii) in sub-paragraph (3A)—

- (aa) after “sub-paragraph (3)(b)(ii)” insert “and (c)(ii)”; and
- (bb) after “sub-paragraph (3)(b)(i)” insert “or, as the case may be, sub-paragraph (3)(c)(i)”;
 - (iv) in sub-paragraph (3B) after “sub-paragraph (3)(b)(ii)” insert “and (c)(ii)”;
 - (v) after sub-paragraph (3C) insert—

“(3ZD) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with sub-paragraph (3)(c)(ii) is—

$$(100 \times (A \div B)) - 100$$

where—

A is the level of the retail prices index for the month two months before the month during which the qualifying member attains normal retirement age; and

B is the level of the retail prices index for the month two months before the month during which the relevant qualifying pension scheme began to be wound up.”;

- (d) in paragraph 5—
 - (i) for sub-paragraph (7)(d) substitute—

“(d) in any case where—

 - (i) 14th May 2004 is later than—
 - (aa) the day on which the qualifying member died; and
 - (bb) the day on which the qualifying pension scheme began to be wound up;
 - (ii) the qualifying member attained normal retirement age before 14th May 2004 but died after 14th May 2004; or
 - (iii) the qualifying member attained normal retirement age and died before 14th May 2004; or

the revaluation amount for the third survivor period (see sub-paragraphs (12) and (13));”;

 and
 - (ii) in sub-paragraph (12)(a) for “the day after the day on which the qualifying member died” substitute “the day after the day determined in accordance with sub-paragraph (10)(b)”; and
 - (e) in paragraph 5B—
 - (i) in sub-paragraph (4) for “the survivor died or the person ceased to be a surviving dependant” substitute “the event referred to in paragraphs (a) to (c) occurred”;
 - (ii) after sub-paragraph (4)(a), omit “or”; and
 - (iii) after sub-paragraph (4)(b), insert—

“; or

 - (c) another person becomes entitled to an annual payment as a surviving dependant of a qualifying member.”.

Amendment of Schedule 2A

15. In—

- (a) paragraph 2A(4)—
 - (i) for “the survivor died or the person ceased to be a surviving dependant” substitute “the event referred to in paragraphs (a) to (c) occurred”;
 - (ii) after paragraph (a), omit “or”; and
 - (iii) after paragraph (b), insert—

“; or

- (c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member.”;
- (b) paragraph 3A(4)—
 - (i) for “the survivor died or the person ceased to be a surviving dependant” substitute “the event referred to in paragraphs (a) to (c) occurred”;
 - (ii) after paragraph (a), omit “or”; and
 - (iii) after paragraph (b), insert—
 - “; or
 - (c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member.”; and
- (c) paragraph 6, after sub-paragraph (za) insert—
 - “(zab)in paragraph 3(3), (3A) and 3D, for “attains normal retirement age” substitute “becomes entitled to an ill health payment”.”.

Insertion of Schedules 2B to 5

- 16.** After Schedule 2A (determination of ill health and interim ill health payments) add—
- (a) Schedule 2B (determination of certain ill health payments);
 - (b) Schedule 2C (determination of ill health payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010);
 - (c) Schedule 3 (determination of certain annual payments);
 - (d) Schedule 4 (determination of annual payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010); and
 - (e) Schedule 5 (determination of payments to early retirees and other beneficiaries),

as set out in Schedule 2 to these Regulations.

PART 3

Amendment of the FAS Information and Payments Regulations

Amendment of the FAS Information and Payments Regulations

17.—(1) The FAS Information and Payments Regulations are amended in accordance with this regulation.

- (2) At the beginning of paragraph 1(2) of Schedule 1 insert “Subject to sub-paragraph (2A),”.
- (3) In the table in paragraph 1(2) of Schedule 1—
 - (a) after the eleventh item insert a twelfth item containing—
 - (i) in the first column, the words “The scheme manager”;
 - (ii) in the second column, the words—
 - “Details of—
 - (a) the assets of the qualifying pension scheme (including any assets representing the value of any rights in respect of money purchase benefits under scheme rules) including the value of those assets;

- (b) the amount of any debt due from the employer under section 75 of the Pensions Act 1995 or Article 75 of the Pensions (Northern Ireland) Order 1995;
 - (c) the amount of any significant debt due to the scheme which is not a debt within paragraph (b);
 - (d) any amounts due to the trustees or managers of the scheme following the issue of a contribution notice under section 38, 47 or 55 of the Act or Article 34, 43 or 51 of the Pensions (Northern Ireland) Order 1995;
 - (e) any financial support direction issued under section 43 of the Act or Article 39 of the Pensions (Northern Ireland) Order 1995 in relation to the scheme;
 - (f) any restoration order made under section 52 of the Act or Article 48 of the Pensions (Northern Ireland) Order 1995 in respect of a transaction involving assets of the scheme; and
 - (g) the amount of any contributions expected to be made towards the scheme and the person from whom the contributions are expected.”;
- (iii) in the third column, the words—
- “The period of 28 days beginning on the later of—
- (a) the day the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 came into force;
 - (b) the notification date;
 - (c) the day on which the appropriate person became aware of any debt referred to in paragraph (c) in the second column or the amount of any contributions referred to in paragraph (g) in the second column.
- or such longer period as the scheme manager may determine for the provision of that information.”;
- (4) After paragraph 1(2) of Schedule 1 insert—
- “(2A) Where the scheme manager is satisfied that some or all of the information to be provided in accordance with the table in sub-paragraph (2) is not relevant to the exercise of its functions, it may determine that any such information need not be provided.”.
- (5) In the third column of the first item in the table in paragraph 1 of Schedule 2 for “6 months” substitute “2 months”.

PART 4

Amendment of the FAS Internal Review Regulations and the FAS Appeals Regulations

Amendment of the FAS Internal Review Regulations

- 18.**—(1) The FAS Internal Review Regulations are amended in accordance with this regulation.
- (2) In regulation 2—
- (a) after paragraph (1)(b) insert—
 - “(ba) the giving of a direction under section 134 of the Act or Article 118 of the Pensions (Northern Ireland) Order 1995 (“section 134 or Article 118 directions”);
 - (bb) the approval by the scheme manager of a valuation in respect of a qualifying pension scheme under regulation 25 (“valuation approval”);
 - (bc) whether or not regulation 17D of the FAS Regulations applies in respect of a qualifying member and the amount of any lump sum determined in accordance with regulation 17D of the FAS Regulations (“lump sum assessment”);

- (bd) the amount of any annual increase to an annual payment or ill health payment determined in accordance with Schedules 2 to 5 to the FAS Regulations (“indexation assessment”);
 - (be) eligibility for a payment in accordance with regulation 17G of the FAS Regulations and the amount of any such payment (“scheme beneficiaries assessment”);
 - (bf) eligibility for a payment in accordance with regulation 17H of the FAS Regulations and the amount of any such payment (“early retiree assessment”); and
- (b) in paragraph (1)(d), for “Schedule 2” substitute “Schedule 2, 3 and 4”;
 - (c) in paragraph (1)(f), for “Schedule 2A” substitute “Schedule 2A to 2C”; and
 - (d) in paragraph (2), after “scheme eligibility, ” insert “section 134 or Article 118 directions, valuation approval, lump sum assessment, indexation assessment, scheme beneficiaries assessment, early retiree assessment.”.
- (3) In regulation 3—
- (a) in paragraph (1)(b) omit “, subject to paragraph (1A),”;
 - (b) omit paragraph (1A);
 - (c) in paragraph (2), omit “or (1A)”;
 - (d) in paragraph (2)(d) after “completed winding up” insert “and a transfer notice has not been given in relation to the scheme in accordance with regulation 29 of the FAS Regulations”.
- (4) In regulation 5—
- (a) for paragraph (1)(a) substitute—
 - “(a) in the case of a reviewable determination which—
 - (i) is made before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
 - (ii) relates to scheme notification or scheme eligibility, before the end of the period of 2 months beginning on the date on which that determination is made;
 - (aa) in the case of a reviewable determination which—
 - (i) is made on or after the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and
 - (ii) relates to scheme notification or scheme eligibility, before the end of the period of 1 month beginning on the date on which that determination is made;
 - (ab) in the case of a reviewable determination which relates to member assessment or ill health payment assessment at any time after the date on which that determination was made;
 - (ac) in the case of a reviewable determination which relates to valuation approval, before the end of the period of 14 days beginning on the date on which that determination is made;”
 - (b) in paragraph (1)(b)(ii) omit “or member assessment”;
 - (c) in paragraph (1)(c)(ii) for “member assessment, ill health payment assessment,” substitute “indexation assessment, section 134 or Article 118 directions, lump sum assessment, early retiree assessment, scheme beneficiaries assessment ;”;
 - (d) in paragraph (3) after “paragraph (1)(a)” insert “, (aa)”.
- (5) In regulation 6—
- (a) in paragraph (1), after sub-paragraph (a) insert—

- “(aa) which relates to section 134 or Article 118 directions may be made by any person to whom a direction under section 134 of the Act or Article 118 of the Pensions (Northern Ireland) Order 1995 has been given;
- (ab) which relates to valuation approval may be made by the trustees or managers of the qualifying pension scheme or a representative of those trustees or managers appointed under regulation 17(1);”;
- (b) in paragraph (1)(b) after “severe ill health eligibility” insert “, indexation assessment, lump sum assessment, scheme beneficiaries assessment, early retirees assessment”

Amendment of the FAS Appeals Regulations

19.—(1) The FAS Appeals Regulations are amended in accordance with this regulation.

(2) In regulation 2—

(a) after the definition of “Deputy PPF Ombudsman” insert—

“early retiree assessment 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 a person is entitled to a payment in accordance with regulation 17H of the FAS Regulations;

(b) in the definition of “ill health payment assessment decisions”, for “Schedule 2A” substitute “Schedule 2A to 2C”;

(c) after the definition of “ill health payment assessment decision” insert—

“indexation assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to the amount of any annual increase determined in accordance with Schedules 2 to 5 to the FAS Regulations;

(d) after the definition of “interested person” insert—

“lump sum assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to the amount of any lump sum determined in accordance with regulation 17D of the FAS Regulations;

(e) in the definition of “member assessment decision”, for “Schedule 2” substitute “Schedule 2, 3 and 4”;

(f) after the definition of “review decision” insert—

“scheme beneficiaries decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to eligibility for and the amount of any payment in accordance with regulation 17G of the FAS Regulations;

(g) after the definition of “scheme notification decision” insert—

“section 134 or Article 118 directions decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to the giving of a direction under section 134 of the Act or Article 118 of the Pensions (Northern Ireland) Order 1995;

(h) after the definition of “terminal illness eligibility decision” insert—

“valuation approval decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to the approval of a valuation in respect of the qualifying scheme under regulation 25 of the FAS Regulations;

(3) In regulation 6(2) (notice of appeal)—

(a) in sub-paragraph (b), after “a severe ill health eligibility decision” insert “, an early retiree assessment decision, a lump sum assessment decision, an indexation assessment decision, a scheme beneficiaries decision”; and

(b) in sub-paragraph (c), after “a scheme notification decision” insert “, a section 134 or Article 118 directions decision, a valuation approval decision”.

(4) In regulation 17(4)(a) (time and place of oral hearings), after “a survivor eligibility decision” insert “, a section 134 or Article 118 directions decision, a valuation approval decision, an early retiree assessment decision, a lump sum assessment decision, an indexation assessment decision, a scheme beneficiaries decision”.

SCHEDULE 1

Regulation 12

Insertion of Parts 7 to 9 of the FAS Regulations

“PART 7

Valuation of assets and liabilities

Application of this Part

- 21.**—(1) This Part applies to a qualifying pension scheme where—
- (a) the qualifying pension scheme has not been fully wound up;
 - (b) the liabilities of that scheme to or in respect of all members and former members have not been discharged; and
 - (c) the liabilities of the scheme for and in respect of all members and former members of the scheme have not been, or in the opinion of the scheme manager are unlikely to be, discharged as a result of—
 - (i) binding commitments to purchase annuities;
 - (ii) the scheme manager having given approval to the trustees of the scheme to purchase annuities under section 286A;
 - (iii) a transfer of, or transfer payment in respect of, members’ rights;
 - (iv) such other method of discharging any liability of the scheme for which the scheme manager has given approval under section 135(4B); or
 - (v) state scheme premiums being paid pursuant to section 55 of the 1993 Act or state scheme rights having been restored under regulation 49 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(a) or the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(b).
- (2) This Part applies to a qualifying member of a qualifying pension scheme where—
- (a) the liabilities of that scheme to or in respect of that member have not been fully discharged; or
 - (b) the liabilities of the scheme for and in respect of that member have not been partially discharged as a result of, or in the opinion of the scheme manager are unlikely to be partially or fully discharged as a result of—
 - (i) a binding commitment to purchase an annuity;
 - (ii) the scheme manager having given approval to the trustees of the scheme to purchase an annuity under section 286A;
 - (iii) a transfer of, or transfer payment in respect of, that member’s rights;
 - (iv) such other method of discharging the liabilities of the scheme in respect of that member for which the scheme manager has given approval under section 135(4B); or

(a) S.I.1996/1172. Regulation 49 was amended by S.I. 2005/3377 and 2008/1903.

(b) S.R. 1996 No.493. Regulation 49 was amended by S.I. 2005/3377 and 2008/1903.

- (v) a state scheme premium being paid pursuant to section 55 of the 1993 Act or state scheme rights having been restored under regulation 49 of the Occupational Pension Schemes (Contracting-out) Regulations 1996 or the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996.

(3) In this regulation, no account shall be taken of any money purchase benefits when determining the liabilities of the scheme.

Scheme manager to obtain a valuation of assets and liabilities

22.—(1) Where this Part applies, the scheme manager shall, when it considers it appropriate to do so, obtain a valuation of the assets and liabilities of a qualifying pension scheme as at the calculation date.

(2) Subject to paragraph (3), where the scheme manager obtains a valuation under paragraph (1), it shall obtain a valuation of the assets (“the asset share”) available to discharge the liability of the qualifying pension scheme—

- (a) to, or in respect of, each qualifying member to whom this Part applies; and
- (b) to any other person who is not—
 - (i) a qualifying member,
 - (ii) a survivor of a qualifying member; or
 - (iii) a surviving dependant of a qualifying member,to whom the scheme has a liability to provide a pension or other benefit which is not a money purchase benefit.

(3) Where the scheme manager is of the opinion that it is not appropriate that a valuation in accordance with paragraph (2) is obtained in relation to a particular person or category of persons, the valuation shall not include a valuation in relation to such a person or category of persons.

(4) The valuations referred to in paragraphs (1) and (2) shall be—

- (a) prepared and signed by a person (“an appointed actuary”) appointed by the scheme manager who is—
 - (i) a Fellow of the Faculty of Actuaries;
 - (ii) a Fellow of the Institute of Actuaries; or
 - (iii) a person approved by the Secretary of State;
- (b) prepared in accordance with guidance published from time to time by the Secretary of State; and
- (c) presented in such manner and form, and given to the scheme manager with such information, as set out in guidance published from time to time by the scheme manager.

(5) When valuing the assets of the scheme, the appointed actuary shall disregard—

- (a) any property which is, or rights which are, held by or vested in the trustees or managers of the scheme in respect of money purchase benefits;
- (b) any assets or rights the value of which is required to discharge the scheme’s pension liabilities to or in respect of a qualifying member to whom this Part does not apply;
- (c) any debt due, or treated as due, to the trustees or managers which is unlikely to be recouped without disproportionate cost or unlikely to be recovered within a reasonable time;
- (d) an amount in respect of the value of any pre-6th April 1997 contract of insurance if—

- (i) the trustees or managers have taken all reasonable steps to obtain information concerning that contract of insurance (whether by searching the records of the scheme or otherwise); and
 - (ii) the information that they provide concerning that contract of insurance is insufficient, in the opinion of the appointed actuary, to conduct a valuation; and
 - (e) any payments made to the trustees or managers of the qualifying pension scheme under regulation 14B (payments in relation to administration and other costs).
- (6) In paragraph (5)(d), “pre-6th April 1997 contract of insurance” means a contract of insurance—
- (a) which is a relevant contract of insurance within the meaning given by section 161(8) or Article 145(8);
 - (b) which was taken out before 6th April 1997; and
 - (c) of which the trustees or managers are, or should reasonably be, aware.

Valuation of assets

23.—(1) This regulation is subject to regulation 24.

(2) For the purposes of the valuation of the assets of a qualifying pension scheme—

- (a) the value of a contract of insurance shall be—
 - (i) where the contract of insurance is a relevant contract of insurance within the meaning given by section 161(8) or Article 145(8), the value of the liability secured; or
 - (ii) subject to paragraph (3), where the contract of insurance is not a relevant contract of insurance within that meaning, the surrender value of the contract of insurance;
- (b) subject to paragraph (4), where—
 - (i) a contribution notice has been issued under section 38 or 47 or Article 34 or 43;
 - (ii) a financial support direction has been issued under section 43 or Article 39; or
 - (iii) a restoration order has been made under section 52 or Article 48,
 in relation to the qualifying pension scheme, the appointed actuary shall adopt the amount due to the scheme given in the notice, direction or order as the value of the asset;
- (c) where the appointed actuary, in accordance with guidance issued by the Secretary of State, is of the opinion that any debt due, or treated as due, will be recouped in the future, the proportion of the debt that the appointed actuary expects in accordance with any guidance issued by the Secretary of State to be recouped shall be treated as an asset of the scheme; and
- (d) subject to paragraph (5), the appointed actuary shall adopt the given value of the assets of the scheme stated in the relevant accounts as the value of those assets as at the calculation date.

(3) Where a contract of insurance is not a relevant contract of insurance within the meaning given by section 161(8) or Article 145(8) and it appears to the appointed actuary that the surrender value of the contract of insurance does not accurately reflect the actual value at the calculation date, the appointed actuary shall adopt such a value as appears to that actuary, in accordance with guidance issued by the Secretary of State, to be appropriate.

(4) Where—

- (a) an amount is due under a notice, direction or order referred to in paragraph (1)(b); and
- (b) the appointed actuary, in accordance with any guidance issued by the Secretary of State, is of the opinion that the amount due in relation to the notice, direction or order will not be recouped in full by the scheme,

the appointed actuary shall adjust the value of the asset referred to in paragraph (1)(b) to the value which, in the opinion of the appointed actuary, in accordance with any guidance issued by the Secretary of State, is likely to be recouped by the trustees or managers of the qualifying pension scheme.

(5) Where—

- (a) the appointed actuary has been given notice; or
- (b) the—
 - (i) appointed actuary is of the opinion; and
 - (ii) scheme manager agrees with the appointed actuary's opinion,

that the value of any asset set out in the relevant accounts, that is not excluded from the valuation, is substantially different at the calculation date from that set out in the relevant accounts, the appointed actuary shall adjust the value of the asset to the market value of the asset at the calculation date.

(6) Where the appointed actuary has been given notice, or is of the opinion, that, in accordance with any guidance issued by the Secretary of State, there exists an asset of the scheme which is not listed in the relevant accounts and which is not excluded from the valuation, the appointed actuary shall adopt such a value for the asset as appears to that actuary, in accordance with guidance issued by the Secretary of State, to be appropriate.

Power of the scheme manager to determine the value of an asset

24.—(1) Where the scheme manager is of the opinion that any asset in the scheme has a particular value, the scheme manager may determine the value of that asset of the scheme.

(2) Where the scheme manager makes a determination in accordance with paragraph (1), the appointed actuary shall adopt the value determined by the scheme manager as the value of the asset as at the calculation date.

Approval of valuation

25.—(1) Where the scheme manager is satisfied that the valuation has been prepared in accordance with this Part, it must—

- (a) approve the valuation;
- (b) notify the trustees or managers of the qualifying pension scheme of the approval; and
- (c) send a copy of the valuation to the trustees or managers of the qualifying pension scheme.

(2) Where the scheme manager is not so satisfied, it must obtain another valuation under this Part.

(3) Where the scheme manager appoints an actuary in order to obtain another valuation in accordance with paragraph (2), the valuation shall be calculated as at the calculation date determined in relation to the previous valuation.

Binding valuation

26.—(1) A valuation obtained under regulation 22 is not binding until—

- (a) it is approved under regulation 25;

- (b) the period within which an application for a review of the approval of the valuation may be made under regulation 5 of the Financial Assistance Scheme (Internal Review) Regulations 2005 has expired; and
 - (c) where an application referred to in sub-paragraph (b) is made—
 - (i) the internal review;
 - (ii) any appeal to the Ombudsman in respect of the approval; and
 - (iii) any appeal against any determinations or directions given or made by the Ombudsman in respect of such an appeal,
 - has been finally disposed of.
- (2) Where a valuation becomes binding under this regulation the scheme manager must as soon as reasonably practicable give a notice to that effect together with a copy of the binding valuation to—
- (a) the trustees or managers of the qualifying pension scheme; and
 - (b) the Regulator.
- (3) The notice given by the scheme manager under paragraph (2) shall contain—
- (a) a statement that it is a notice under regulation 26 of the Financial Assistance Scheme Regulations 2005;
 - (b) the date on which the notice is given;
 - (c) the name, address and pension scheme registration number of the qualifying pension scheme in respect of which the notice is given;
 - (d) a statement that the valuation under Part 7 has become binding;
 - (e) the date on which the approval of valuation notice was issued;
 - (f) the name of the employer in relation to the qualifying pension scheme in respect of which the notice is issued; and
 - (g) whether the notice issued by the scheme manager contains any restricted information and, if so, the nature of the restriction.

PART 8

Scheme manager functions after a valuation

Scheme manager calculations after a valuation

27.—(1) Subject to paragraph (2), where a valuation has been obtained in accordance with regulation 22, the scheme manager shall determine—

- (a) the annual rate of annuity (“the notional pension”) which could have been payable from the day determined in accordance with paragraphs (3) and (4) if purchased on the calculation date, with the asset share determined in accordance with regulation 22(2), for—
 - (i) each qualifying member of the qualifying pension scheme to whom Part 7 applies; and
 - (ii) any other person who is not—
 - (aa) a qualifying member,
 - (bb) a survivor of a qualifying member; or
 - (cc) a surviving dependant of a qualifying member,
 to whom the scheme has a liability to provide a pension or other benefit which is not a money purchase benefit;

- (b) where a qualifying member, who is not a qualifying member by virtue of regulation 15(5), has not died before the calculation date, the benefits that could have been purchased for a survivor and any surviving dependants with the asset share determined in accordance with regulation 22(2);
 - (c) where a qualifying member to whom Part 7 applies has died before the calculation date, the annual rate of annuity (“the survivor notional pension”) which could have been purchased in respect of each survivor and surviving dependant of that qualifying member with the asset share determined in accordance with regulation 22(2); and
 - (d) any annual increases to the notional pension and the survivor notional pension which could have been purchased with the asset share determined in accordance with regulation 22(2).
- (2) Where the scheme manager is of the opinion that it is not appropriate that a determination in accordance with paragraph (1) is made in relation to a particular person or category of persons, the scheme manager shall not make a determination in accordance with paragraph (1) in relation to such a person or category of persons.
- (3) Subject to paragraph (4), the day referred to in paragraph (1)(a) is—
- (a) where the notional pension is for a qualifying member who, on the calculation date, is neither entitled to an ill health payment nor receiving a present payment from the scheme, the qualifying member’s normal retirement age;
 - (b) where the notional pension is for a qualifying member who is, on the calculation date, entitled to an ill health payment or receiving a present payment from the scheme, the earlier of—
 - (i) the day the qualifying member began to receive a present payment from the scheme in accordance with scheme rules;
 - (ii) the qualifying member’s normal retirement age; and
 - (iii) the day on which the qualifying member became entitled to an ill health payment;
 - (c) where the notional pension is for a person referred to in paragraph (1)(a)(ii), the day on which that person began to receive a present payment from the scheme in accordance with scheme rules; and
 - (d) where a survivor notional pension is being determined, the day after the day on which the qualifying member died.
- (4) Where the day determined in accordance with paragraph (3)(b) is before the day on which the qualifying pension scheme began to be wound up, the day for the purposes of paragraph (1)(a) is the day on which the qualifying pension scheme began to be wound up.
- (5) The scheme manager shall make the determination in paragraph (1) by applying the asset share towards satisfying the amounts mentioned in paragraph (6) and—
- (a) if paragraph (6)(a) applies and the asset share is insufficient to satisfy the amounts referred to in that paragraph in full, then the asset share must be applied first towards satisfying the amounts mentioned in sub-paragraph (i); and
 - (b) if the asset share exceeds the amount needed to satisfy those amounts in full, the remainder shall be applied so as to increase the notional pension.
- (6) The amounts referred to in paragraph (5) are—
- (a) where the notional pension is in respect of a qualifying member who was receiving a present payment from the qualifying pension scheme under the scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010—
 - (i) the pension and other benefits to which the qualifying member was entitled as at the later of—

- (aa) the day on which the qualifying member became entitled to present payment of a pension under the scheme rules; or
 - (bb) the day before the day on which the scheme began to be wound up;
 - (ii) annual increases on the amount determined in accordance with paragraph (i);
- (b) where the notional pension is in respect of a person referred to in paragraph (1)(a)(ii)—
 - (i) the pension or other benefits to which that person was entitled as at the later of—
 - (aa) the day on which that person became entitled to present payment of a pension under the scheme rules; or
 - (bb) the day before the day on which the scheme began to be wound up; and
 - (c) where the notional pension is in respect of a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, the annuity which could be purchased, including annual increases determined in accordance with paragraph 6 of Schedule 3, for and in respect of the qualifying member.
- (7) The survivor notional pension referred to in paragraph (1)(c) shall be determined by applying the asset share towards satisfying the amounts mentioned in paragraph (8) and—
 - (a) if paragraph (8)(a) applies and the asset share is insufficient to satisfy the amounts referred to in that paragraph in full, then the asset share must be applied first towards satisfying the amounts mentioned in sub-paragraph (i); and
 - (b) if the asset share exceeds the amount needed to satisfy those amounts in full, the remainder shall be applied so as to increase the survivor notional pension.
- (8) The amounts referred to in paragraph (7) are—
 - (a) where the survivor, surviving dependant or the qualifying member in respect of the survivor or surviving dependant was receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010—
 - (i) the pension and other benefits to which the survivor or surviving dependant would be entitled as at the day on which the survivor or surviving dependant became entitled to present payment of a pension under the scheme rules; and
 - (ii) annual increases on the amount determined in accordance with paragraph (i); and
 - (b) where the survivor, surviving dependant or qualifying member in respect of the survivor or surviving dependant was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, the annuity which could be purchased, including annual increases determined in accordance with paragraph 6 of Schedule 3, for the survivor or surviving dependant.
- (9) In paragraphs (6)(a)(i) and (8)(a)(i), the pension and other benefits to which the asset share shall be applied in accordance with this regulation are—
 - (a) the annual rate of pension to which the beneficiary was entitled in accordance with the scheme rules;
 - (b) where the beneficiary is a qualifying member, the annual rate of pension to which any survivor or surviving dependant would be entitled in accordance with scheme rules in respect of the qualifying member;
 - (c) any amount (including any lump sum) payable as a result of the death of a member of the scheme being within a period specified in the scheme rules beginning on the

day on which the member became entitled to a pension from the scheme or, if later, the day on which the pension was first paid; and

- (d) any amount which, under the scheme rules, is payable to a beneficiary for a period which is shorter than the period in respect of which the remainder of the pension is payable.

(10) This regulation is subject to regulation 28.

Determination of certain asset shares, notional pensions and survivor notional pensions

28.—(1) Where regulation 22(3) applies in any case, the scheme manager shall determine the asset share for the purposes of these Regulations in respect of any person to which that regulation applies, having regard to such matters as it considers relevant.

(2) Where regulation 27(2) applies in any case, the scheme manager shall determine the notional pension or survivor notional pension for the purposes of these Regulations in respect of any person to which that regulation applies, having regard to such matters as it considers relevant.

(3) Where the scheme manager is satisfied that an amount is owed by the beneficiary to the Secretary of State as a result of the beneficiary owing, before a transfer notice is received in accordance with regulation 29, a debt to a qualifying pension scheme to which Part 7 applies, the scheme manager may determine how the notional pension or survivor notional pension is to be calculated for the purposes of these Regulations, having regard to the amount owed by the beneficiary and to such other matters as the scheme manager considers relevant.

(4) Paragraph (5) applies where the scheme manager is satisfied that the amount of interim pension paid to a beneficiary in respect of any year—

- (a) from the later of—
 - (i) the day on which the scheme began to be wound up; and
 - (ii) the day on which the beneficiary became entitled under the scheme rules to a pension or other benefit; and
- (b) until the day on which the beneficiary becomes entitled to a payment in accordance with these Regulations,

is higher than or lower than the notional pension or survivor notional pension determined in respect of that beneficiary in accordance with regulation 27.

(5) Where this paragraph applies, the scheme manager may—

- (a) determine the notional pension or survivor notional pension in respect of that beneficiary, having regard to—
 - (i) the amount of interim pension which was paid to the beneficiary;
 - (ii) the amount of the notional pension or survivor notional pension; and
 - (iii) such other matters as the scheme manager considers relevant; and
- (b) where the interim pension paid in respect of any year is lower than the notional pension or survivor notional pension determined in respect of the beneficiary, make a payment to the beneficiary, having regard to
 - (i) the amount of interim pension which was paid to the beneficiary;
 - (ii) the amount of the notional pension or survivor notional pension; and
 - (iii) such other matters as the scheme manager considers relevant.

(6) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible to determine the amount of interim pension paid to a beneficiary in respect of any year, it may determine the amount of interim pension in respect of any year for the purposes of paragraph (4) and (5) having regard to such matters as it considers relevant.

PART 9

Transfer of property, rights and liabilities

Transfer of property, rights and liabilities

29.—(1) Where a valuation has become binding under regulation 26 and the scheme manager is satisfied that it is an appropriate time for the notice to be given, the scheme manager must give the trustees or managers of the qualifying pension scheme a notice (a “transfer notice”).

(2) Where a transfer notice is received by the trustees or managers under this regulation—

- (a) the scheme manager—
 - (i) must give a copy of the transfer notice to the Regulator; and
 - (ii) may give a copy of the transfer notice to any other person to whom, in the opinion of the scheme manager, the transfer notice is relevant;
- (b) the property and rights held by or vested in the trustees or managers as trustees or managers of the scheme are transferred to the Secretary of State, without further assurance, with effect from the time the trustees or managers receive the transfer notice;
- (c) any liabilities which—
 - (i) are liabilities of the scheme as a direct result of the rights or property referred to in sub-paragraph (b) being held by or vested in the trustees or managers of the scheme; but
 - (ii) are not liabilities to provide pensions or other benefits,are transferred to the Secretary of State, without further assurance, with effect from the time the trustees or managers receive the transfer notice;
- (d) any liabilities other than—
 - (i) liabilities referred to in sub-paragraph (c); and
 - (ii) liabilities in respect of any money purchase benefits referred to in paragraph (7),shall be treated as discharged;
- (e) the trustees or managers are discharged from their obligations to provide pensions or other benefits to or in respect of any persons (including any obligation to provide guaranteed minimum pensions within the meaning of the Pension Schemes Act 1993) which are not pensions or benefits in respect of money purchase benefits referred to in paragraph (7);
- (f) the trustees or managers of the scheme may discharge their liabilities in respect of money purchase benefits irrespective of any rules of the scheme which may provide that such liabilities must be discharged with benefits which are not money purchase benefits; and
- (g) any contract which does not form part of any rights or liabilities transferred to the Secretary of State shall be treated as terminated.

(3) Subject to paragraph (4), the property, rights and liabilities transferred in accordance with paragraph (2) include—

- (a) property, rights and liabilities that would not otherwise be capable of being transferred or assigned;
- (b) property situated anywhere in the United Kingdom or elsewhere; and
- (c) rights and liabilities under the law of any part of the United Kingdom or of any country or territory outside the United Kingdom.

(4) Where, but for this paragraph, any rights or liabilities under a contract of employment between the trustees or managers of the scheme and an individual would be transferred to the Secretary of State under paragraph (2), this paragraph operates to terminate the contract of employment on the day preceding the day on which the transfer notice is received by the trustees or managers of the scheme.

(5) Subject to paragraph (6) and without prejudice to the generality of paragraph (2), any legal proceedings or applications to any authority pending immediately before the transfer by or against any of the trustees or managers of the scheme in their capacity as trustees or managers shall be continued by or against the Secretary of State.

(6) The liabilities transferred by paragraph (2)(c) do not include any liabilities in respect of an existing or future cause of action against the trustees or managers of the scheme if, disregarding the transfer, the trustees or managers would have been personally liable to meet the claim and would not have been indemnified from the assets of the scheme.

(7) Paragraph (2)(b) does not transfer any property which is, or rights which are, held by or vested in the trustees or managers of the scheme in respect of money purchase benefits, where the scheme manager is satisfied that appropriate arrangements have been made or are being made for the discharge of the scheme's liabilities relating to money purchase benefits.

(8) Neither paragraph (2)(d) nor (e) affects any right transferred to the Secretary of State in accordance with paragraph (2)(b).

(9) Paragraph (2)(e) does not discharge the trustees or managers of any obligations in respect of any existing or future causes of action against them for which, disregarding the discharge, they would have been personally liable to meet the claim and would not have been indemnified from the assets of the scheme.

(10) Where the trustees or managers have been discharged from their obligations to provide pensions or other benefits to or in respect of any persons in accordance with paragraph (2)(e), the scheme manager shall notify those persons, or where any such person has an appointed representative, that appointed representative, within 28 days of the transfer notice having been given.

Effect of transfer

30.—(1) Where the property, rights and liabilities of an occupational pension scheme are transferred to the Secretary of State in accordance with regulation 29(2)—

- (a) the transfer is binding on all persons even if, apart from this regulation, it would have required the consent or concurrence of any person;
- (b) no person shall have any power, in consequence of the transfer, to terminate or modify any interest or right which was vested in the trustees or managers of the scheme;
- (c) the rights, powers and obligations of the Secretary of State in relation to the property, rights and liabilities are exercisable by the scheme manager without limitation; and
- (d) any reference in any agreement, document or instrument of any description to the trustees or managers of the scheme shall have effect—
 - (i) so far as necessary for the purposes of giving effect to the transfer, as a reference to the Secretary of State; and
 - (ii) so far as necessary for the purposes of giving effect to sub-paragraph (c), as a reference to the scheme manager.

(2) Where, by virtue of paragraph (1)(c), any amount becomes payable, or is to be paid, to the scheme manager, that amount must be paid to the Secretary of State.

(3) Where, by virtue of regulation 29(5), an application to the Pensions Ombudsman under Part 10 of the 1993 Act or, as the case may be, Part 10 of the Pension Schemes (Northern Ireland) Act 1993 shall be continued by or against the Secretary of State, any reference in section 146 of the 1993 Act or, as the case may be, section 142 of the Pension

Schemes (Northern Ireland) Act 1993 to the trustees or managers of an occupational pension scheme shall have effect, so far as necessary for the purpose of giving effect to regulation 29(5), as a reference to the Secretary of State.

(4) Where, as a result of an application to the Ombudsman continued against the Secretary of State by virtue of regulation 29(5), a direction is given by the Ombudsman under section 151 of the 1993 Act or, as the case may be section 147 of the Pension Schemes (Northern Ireland) Act 1993, the scheme manager shall take such steps as are necessary to satisfy the requirements of that direction.

Terms and conditions of contracts

31.—(1) Where a transfer notice has been given to the trustees or managers of a qualifying pension scheme and the scheme manager considers that a contract relating to the property, rights and liabilities of the scheme contains terms or conditions that the scheme manager considers onerous, the scheme manager may—

- (a) disapply any such term or condition; or
- (b) substitute for the term or condition, a term or condition that the scheme manager considers to be reasonable.

(2) Where—

- (a) any rights or liabilities under a relevant contract of insurance are transferred to the Secretary of State by virtue of regulation 29(2); and
- (b) as a result of the transfer, the Secretary of State is required, by reason of a term of that contract, to pay a specified amount or specified amounts to a specified person who, immediately before the time the trustees or managers of the qualifying pension scheme receive the transfer notice, was a member of the scheme or a person entitled to benefits in respect of such a member,

the scheme manager may modify that term of the contract so that benefit under that contract shall be payable to the Secretary of State.

Foreign property, rights and liabilities

32.—(1) The scheme manager must take all such steps as may be required to secure that the vesting in the Secretary of State, by virtue of regulation 29(2), of any foreign property, right or liability is effective under the relevant foreign law.

(2) Until the vesting of any foreign property, right or liability in the Secretary of State is effective under the relevant foreign law, the persons who were the trustees or managers of the scheme immediately before the transfer effected by regulation 29 must hold that property or right for the benefit of, or discharge that liability on behalf of, the Secretary of State.

(3) Nothing in this regulation prejudices the effect under the law of the England and Wales, Scotland or Northern Ireland of the vesting in the Secretary of State in accordance with regulation 29 of any foreign property, right or liability.

(4) In this regulation references to any foreign property, right or liability are references to any property, right or liability as respects which any issue arising in any proceedings would have to be determined (in accordance with the rules of private international law) by reference to the law of a country or territory outside the United Kingdom.

Payments where amounts relating to money purchase benefits are transferred to the Secretary of State

33.—(1) Subject to paragraph (3), where the property transferred to the Secretary of State under regulation 29(2)(b) includes property representing the value of rights in respect of money purchase benefits under the scheme rules, the scheme manager must make

arrangements to facilitate a payment or payments to be made to any person in respect of whom the qualifying pension scheme held the assets.

(2) The scheme manager must be satisfied that the arrangement made under paragraph (1) is made in respect of the full value of the assets transferred as at the date arrangement is made.

(3) Where the person in respect of whom the assets were held has died, the arrangement under paragraph (1) shall be made in respect of the estate of the deceased person.

Transfer of any residual assets to the Secretary of State

34. The trustees or managers of a qualifying pension scheme may transfer any property to the Secretary of State where—

- (a) the trustees or managers notify the scheme manager in writing that they wish to transfer the property to the Secretary of State; and
- (b) the scheme manager is satisfied that—
 - (i) the property can be transferred to the Secretary of State; and
 - (ii) it is appropriate that the property is transferred to the Secretary of State.”.

SCHEDULE 2

Regulation 16

Insertion of Schedules 2B to 5 to the FAS Regulations

“SCHEDULE 2B Regulation 17A(8)(b) to (d)

Determination of certain ill health payments

Introductory

1.—(1) This Schedule applies for the purposes of determining the amount of an ill health payment payable to a beneficiary to whom regulation 17A(8)(b) to (d) applies.

(2) In this Schedule—

“A” means—

- (a) where the qualifying member is a qualifying member to whom regulation 17D applied, the amount by which the qualifying member’s ill health payment has been commuted; and
- (b) in all other cases, nil;

“B” means—

- (a) where the qualifying member in respect of the survivor or surviving dependant was a qualifying member to whom regulation 17D applied, the amount by which the survivor or surviving dependant’s ill health payment has been commuted; and
- (b) in all other cases, nil;

“C” means the actuarial factor to be applied in respect of the beneficiary for the purposes of this Schedule;

“N” means—

- (a) in paragraph 3, the number of survivors of that qualifying member; and
- (b) in paragraph 4, the number of surviving dependants of that qualifying member;

“P” means the aggregate of—

- (a) the revalued notional pension determined in accordance with regulation 17A(9); and
 - (b) the amount of any annual increases determined in accordance with paragraph 6 to which the qualifying member was entitled before the day on which the qualifying member died;
- “R” means the revalued notional pension determined in accordance with regulation 17A(9); and
- “S” means the aggregate of—
- (a) one half of the revalued notional pension determined in accordance with regulation 17A(9); and
 - (b) one half of the amount of any annual increases determined in accordance with paragraph 6 to which the qualifying member was entitled before the day on which the qualifying member died.

Amount of an ill health payment – qualifying members

2. The ill health payment payable to a qualifying member to whom this Schedule applies shall be—

$$(C \times R) - A.$$

Amount of an ill health payment - survivors

3.—(1) Where this Schedule applies, the ill health payment payable to—

- (a) a survivor of a qualifying member shall be—

$$C \left(\frac{P}{2} \right) - B;$$

- (b) a survivor of a qualifying member who was a party to a polygamous marriage shall be—

$$\frac{C(P \div 2)}{N} - B.$$

(2) Where a survivor to whom sub-paragraph (1)(b) applies dies, the annual payment payable to all remaining survivors of the qualifying member shall be redetermined with effect from the day after the day on which the survivor died.

Amount of an ill health payment - surviving dependants

4.—(1) Where this Schedule applies, the ill health payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (4).

(2) Where an ill health payment is also payable to a survivor of a qualifying member and—

- (a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$\frac{C \times S}{2} - B;$$

- (b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{C \times S}{N} - B.$$

(3) Where an ill health payment is not payable to a survivor of a qualifying member and—

- (a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$(C \times S) - B;$$

- (b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{2(C \times S)}{N} - B.$$

(4) Where—

- (a) a survivor of a qualifying member dies;
 (b) a person ceases to be a surviving dependant of a qualifying member; or
 (c) another person becomes entitled to an ill health payment as a surviving dependant of a qualifying member,

the ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

Rounding

5. Where the amount of an ill health payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

Annual increases to an ill health payment

6.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an amount determined in accordance with this Schedule shall be entitled, on the indexation date, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
 (b) where the beneficiary first became entitled to an ill health payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the ill health payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with the 31st May last falling before the indexation date;
 (b) 2.5%;

“underlying rate” means the aggregate of—

- (a) the product of X multiplied by (C x V);
 (b) where the beneficiary is a survivor or a surviving dependant of a qualifying member, the product of X multiplied by W; and

- (c) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date;

“post-1997 service” means—

- (a) pensionable service (either actual or notional) which occurred on or after 6 April 1997; or
- (b) where the pension was payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

“V” means so much of the revalued notional pension as is attributable to post-1997 service;

“W” means the amount of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on the day before the day on which the qualifying member died;

“X” means—

- (a) 1, where the beneficiary is the qualifying member;
- (b) 0.5, where the beneficiary is a survivor who is not a survivor to whom paragraph 3(1)(b) applies;
- (c) the product of 0.5 divided by Y, where the beneficiary is a survivor to whom paragraph 3(1)(b) applies;
- (d) the product of 1 divided by Z, where the beneficiary is a surviving dependant and the qualifying member does not have a survivor; or
- (e) the product of 0.5 divided by Z, where the beneficiary is a surviving dependant and an annual payment is also payable to a survivor of the qualifying member;

“Y” means the number of survivors of the qualifying member; and

“Z” means—

- (a) where there is only one surviving dependant, 2; or
- (b) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

SCHEDULE 2C Regulation 17A(8)(e) to (g)

Determination of ill health payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010

Introductory

1. This Schedule applies for the purposes of determining the amount of an ill health payment payable to a beneficiary to whom regulation 17A(8)(e) to (g) applies.

Qualifying members

2. Where this Schedule applies, the ill health payment payable to a qualifying member shall be the amount of the notional pension of the qualifying member.

Survivors

3. Where this Schedule applies, the ill health payment payable to a survivor of a qualifying member shall be—

- (a) where regulation 17A(8)(f) applies, the amount of the survivor notional pension; and
- (b) where regulation 17A(8)(g) applies, the amount which is so much of the notional pension which relates to a pension payable to the survivor.

Surviving Dependants

4. Where this Schedule applies, the ill health payment payable to a surviving dependant of a qualifying member shall be—

- (a) where regulation 17A(8)(f) applies, the amount of the survivor notional pension in respect of that surviving dependant; and
- (b) where regulation 17A(8)(g) applies, the amount which is so much of the notional pension which relates to a pension payable to the surviving dependant.

Redetermination

5.—(1) This paragraph applies where the notional pension includes an amount in respect of an amount which under scheme rules—

- (a) would be payable for a period which is shorter than the period in respect of which the remainder of a pension would be payable; or
- (b) would be payable as a result of the death of a qualifying member being within a period specified in scheme rules beginning on the day on which the member became entitled to a pension from the scheme, or the day on which the pension was first paid.

(2) Where this paragraph applies, the scheme manager shall redetermine the ill health payment payable to the beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable, or the period referred to within sub-paragraph (1)(b) would have ended.

(3) When redetermining an ill health payment under sub-paragraph (2), the scheme manager shall redetermine the notional pension or survivor notional pension having regard to the amount referred to in sub-paragraph (1).

Rounding

6. Where the amount of an ill health payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

Annual increases to an ill health payment

7.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31 May last falling before the indexation date, where the asset share determined in respect of the beneficiary was sufficient to be applied to the amounts referred to in regulation 27(6)(a)(ii) or (8)(a)(ii), a beneficiary shall be entitled, on each indexation date after the calculation date, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where the beneficiary first became entitled to an ill health payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the ill health payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with 31 May last falling before the indexation date;
 - (b) 2.5%; and
- “underlying rate” means the aggregate of—
- (a) so much of the ill health payments as the scheme manager determined under regulation 27(6)(a)(ii) or (8)(a)(ii) could be increased; and
 - (b) any annual increases to which the beneficiary is entitled in accordance with subparagraph (1) immediately before the indexation date.

SCHEDULE 3 Regulation 17(8)(b) to (e)

Determination of certain annual payments

Introductory

1.—(1) This Schedule applies for the purposes of determining the amount of an annual payment payable to a beneficiary to whom regulation 17(8)(b) to (e) applies.

(2) In this Schedule—

“A” means—

- (a) where the qualifying member is a qualifying member to whom regulation 17D applied, the amount by which the qualifying member’s annual payment has been commuted; and
- (b) in all other cases, nil;

“B” means—

- (a) where the qualifying member in respect of the survivor or surviving dependant was a qualifying member to whom regulation 17D applied, the amount by which the survivor or surviving dependant’s annual payment has been commuted; and
- (b) in all other cases, nil;

“N” means—

- (a) in paragraph 3, the number of survivors of that qualifying member; and
- (b) in paragraph 4, the number of surviving dependants of that qualifying member;

“P” means the aggregate of—

- (a) revalued notional pension; and
- (b) the amount of any annual increases determined in accordance with paragraph 6 to which the qualifying member was entitled before the day on which the qualifying member died;

“R” means the amount of the revalued notional pension determined in accordance with regulation 17(9); and

“S” means the aggregate of—

- (a) one half of the revalued notional pension determined in accordance with regulation 17(9); and
- (b) one half of the amount of any annual increases determined in accordance with paragraph 6 to which the qualifying member was entitled before the day on which the qualifying member died.

Amount of an annual payment – qualifying members

2. The annual payment payable to a qualifying member to whom this Schedule applies shall be $R - A$.

Amount of an annual payment - survivors

3.—(1) Where this Schedule applies, the annual payment payable to—

(a) a survivor of a qualifying member shall be—

$$\frac{P}{2} - B;$$

(b) a survivor of a qualifying member who was a party to a polygamous marriage shall be—

$$\frac{P \div 2}{N} - B.$$

(2) Where a survivor to whom sub-paragraph (1)(b) applies dies, the annual payment payable to all remaining survivors of the qualifying member shall be redetermined with effect from the day after the day on which the survivor died.

Surviving Dependants

4.—(1) Where this Schedule applies, the annual payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (4).

(2) Where an annual payment is also payable to a survivor of a qualifying member and—

(a) there is only one surviving dependant, the amount of the annual payment shall be—

$$\frac{S}{2} - B;$$

(b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{S}{N} - B.$$

(3) Where an annual payment is not payable to a survivor of a qualifying member and—

(a) there is only one surviving dependant, the amount of the annual payment shall be $S - B$;

(b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{2 \times S}{N} - B.$$

(4) Where—

(a) a survivor of a qualifying member dies;

(b) a person ceases to be a surviving dependant of a qualifying member; or

(c) another person becomes a surviving dependant of a qualifying member,

the annual payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the event referred to in paragraphs (a) to (c) occurred.

Rounding

5. Where the amount of an annual payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

Annual increases to an annual payment

6.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an annual amount determined in accordance with this Schedule shall be entitled, on the indexation date, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where the beneficiary first became entitled to an annual payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the annual payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with the 31st May last falling before the indexation date;
- (b) 2.5%;

“underlying rate” means the aggregate of—

- (a) the product of X multiplied by so much of the revalued notional pension as is attributable to post-1997 service;
- (b) where—
 - (i) the beneficiary is a survivor or a surviving dependant of a qualifying member; and
 - (ii) that qualifying member dies on or after the day on which that qualifying member became entitled to an annual payment,the product of X multiplied by W; and
- (c) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date;

“post-1997 service” means—

- (a) pensionable service (either actual or notional) which occurred on or after 6 April 1997; or
- (b) where the pension was payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

“W” means the amount of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on the day before the day on which the qualifying member died;

“X” means—

- (a) 1, where the beneficiary is the qualifying member;
- (b) 0.5, where the beneficiary is a survivor who is not a survivor to whom paragraph 3(1)(b) applies;

- (c) the product of 0.5 divided by Y, where the beneficiary is a survivor to whom paragraph 3(1)(b) applies;
 - (d) the product of 1 divided by Z, where the beneficiary is a surviving dependant and the qualifying member does not have a survivor; or
 - (e) the product of 0.5 divided by Z, where the beneficiary is a surviving dependant and an annual payment is also payable to a survivor of the qualifying member;
- “Y” means the number of survivors of the qualifying member; and
- “Z” means—
- (a) where there is only one surviving dependant, 2; or
 - (b) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

SCHEDULE 4

Regulation 17(8)(f) to (i)

Determination of annual payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010

Introductory

1. This Schedule applies for the purposes of determining the amount of an annual payment payable to or in respect of qualifying members of qualifying pension schemes to whom regulation 17(8)(f) to (i) applies.

Qualifying members

2. Where this Schedule applies, the annual payment payable to a qualifying member shall be the amount of the notional pension of the qualifying member.

Survivors

3. Where this Schedule applies, the annual payment payable to a survivor of a qualifying member shall be—

- (a) where regulation 17(8)(g) or (h) applies, the amount of the survivor notional pension; and
- (b) where regulation 17(8)(i) applies, the amount which is so much of the notional pension which relates to a pension payable to the survivor.

Surviving Dependants

4. Where this Schedule applies, the annual payment payable to a surviving dependant of a qualifying member shall be—

- (a) where regulation 17(8)(g) or (h) applies, the amount of the survivor notional pension in respect of that surviving dependant; and
- (b) where regulation 17(8)(i) applies, the amount which is so much of the notional pension which relates to a pension payable to the surviving dependant.

Redetermination

5.—(1) This paragraph applies where the notional pension includes an amount in respect of an amount which under scheme rules—

- (a) would be payable for a period which is shorter than the period in respect of which the remainder of a pension would be payable; or
- (b) would be payable as a result of the death of a qualifying member being within a period specified in scheme rules beginning on the day on which the member became entitled to a pension from the scheme, or the day on which the pension was first paid.

(2) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to the beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable, or the period referred to within sub-paragraph (1)(b) would have ended.

(3) When redetermining an annual payment under sub-paragraph (2), the scheme manager shall redetermine the notional pension or survivor notional pension having regard to the amount referred to in sub-paragraph (1).

Rounding

6. Where the amount of an annual payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

Annual increases to an annual payment

7.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31 May last falling before the indexation date, where the asset share determined in respect of the beneficiary was sufficient to be applied to the amounts referred to in regulation 27(6)(a)(ii) or (8)(a)(ii), a beneficiary shall be entitled, on each indexation date after the calculation date, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where the beneficiary first became entitled to an annual payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the annual payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with 31 May last falling before the indexation date;
- (b) 2.5%;

“underlying rate” means the aggregate of—

- (a) so much of the annual payments as the scheme manager determined under regulation 27(6)(a)(ii) or (8)(a)(ii) could be increased; and
- (b) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date.

SCHEDULE 5 Regulations 17G(2) and 17H(2)

Determination of payments to early retirees and other beneficiaries

Introductory

1. This Schedule applies for the purposes of determining the amount of a payment payable to a person to whom regulation 17G or 17H applies.

Amount of the payment

2. Where a person is entitled to a payment in accordance with regulation 17G or 17H, the amount of that payment shall be the amount of the notional pension.

Annual increases

3.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31 May last falling before the indexation date, where the asset share determined in respect of a person to whom an amount is payable in accordance with this Schedule was sufficient to be applied to annual increases, that person shall be entitled, on each indexation date after the calculation date, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date; or
- (b) where that person first became entitled to a payment in accordance with regulation 17G or 17H during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with 31 May last falling before the indexation date;
- (b) 2.5%;

“underlying rate” means the aggregate of—

- (a) so much of the payment as the scheme manager determined under regulation 27(6) could be increased; and
- (b) any annual increases to which the person is entitled in accordance with subparagraph (1) immediately before the indexation date.”.

Signatory text

Date

Name
Minister of State
Department for Work and Pensions