

FINANCIAL ASSISTANCE SCHEME
THE FINANCIAL ASSISTANCE SCHEME (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2007

The Government response to the consultation

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INTRODUCTION

1. On 29th August 2007 the Government launched a consultation on the draft Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007. The consultation period ended on 9th October.
2. This document sets out the main points made in relation to the draft regulations and provides the Government's response.
3. 60 respondents provided their views or those of the organisation they represent. A list of these is at Annex A. The Government is very grateful for their contribution to developing a final draft of the new regulations, which were laid on 20th November 2007 with a view to them coming into force by the end of the year, subject to Parliamentary approval. A copy of the regulations can be found on the FAS website: <http://www.dwp.gov.uk/fas>
4. This document describes the policy underpinning the changes being made to the Financial Assistance Scheme (FAS) regulations. Comments on the regulations should not however be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.

RESPONSE TO CONSULTATION

5. The following proposed changes within the draft regulations attracted particular interest:
 - Increasing the cap on maximum assistance from £12,000 to £26,000;
 - Extending FAS to cover members of schemes that began winding up between 1st January 1997 and 5th April 2005 where a compromise agreement is in place, and when enforcing the debt against the employer would have forced the employer into insolvency.
6. However, many comments were on the broad scope of the scheme rather than the new regulations themselves, covering topics such as the full restoration of pension benefits, payment from scheme retirement age and the non-indexation of FAS payments. Although we appreciate that many respondents feel strongly about these issues, the Government's approach to these areas has been consulted upon previously as part of the original FAS regulations in 2005, and were responded to at that time. We will not, therefore, revisit them in detail here. The Government has, however, noted these comments.

Discussion

Increasing the cap on maximum assistance from £12,000 to £26,000

7. Whilst respondents generally welcomed the raising of the FAS cap to levels comparable with the cap currently imposed on compensation from the Pensions Protection Fund, many of them made the point that without indexation the cap will mean that assistance due to members who will not reach 65 for some time will not retain its value before coming into payment. Most respondents who expressed a concern on this point argued that the FAS cap should be indexed in the same way as that of the PPF

Response

8. The Government agrees that it is not appropriate in the longer term for the FAS cap to remain static. On 21st May 2007 the then Minister for Pensions Reform told the House of Commons that “we intend to ensure that the cap retains its value, even where assessments are made for member who will not be eligible for payment until many years in the future”.
9. The Government believes that the treatment of the cap is best considered in the wider context of any changes to the FAS that may arise from the Young Review of pension scheme assets. Our priority in these regulations is to introduce the changes to the FAS announced in the Budget 2007 that will increase assistance available to members now. As relatively few members are affected by the cap and as any significant effect of non-indexation will not bite for some time, we consider that it makes sense to defer any associated changes to the cap to the new year where they can be considered and consulted upon alongside any other necessary changes to the way in which assistance is calculated.

Extending FAS to cover members of schemes that began winding up between 1st January 1997 and 5th April 2005 where a compromise agreement is in place and when enforcing the debt against the employer would have forced the employer into insolvency

10. The Government specifically invited views on whether proposals for the evidence needed to demonstrate that an employer would have been forced into insolvency had a compromise agreement not been reached were reasonable. We also asked for representations from schemes which might not meet the strict terms of our proposals but which had, nevertheless, reached a compromise agreement.
11. A number of respondents drew our attention to schemes which they believe may qualify for FAS under the new regulations. We are grateful to them for doing so.

12. However, some concerns were raised about the perceived narrowness of the conditions in the draft regulations.

Response

13. After considering these comments, we have amended this regulation so that an insolvency event can be considered to have occurred in relation to an employer if the scheme manager is satisfied that had a compromise agreement not been entered into either the value of the employer's assets would have been less than the amount of its liabilities, taking into account its contingent and prospective liabilities **or** the employer would have been unable to pay its debts as they fall due. This is now a wider test that will be easier for compromise schemes to satisfy in that they will only have to show evidence of one, rather than both aspects of the insolvency test as they were required to do under the previous draft of this regulation.

14. The Government's intention is to help members of pension schemes where there is no legal obligation for the employer to contribute further to the scheme and where the trustees reached a compromise agreement in an attempt to secure maximum advantage for their scheme. We believe that the regulations as now drafted strike the right balance between ensuring that trustees and employers have acted reasonably in reaching a compromise agreement whilst preventing the taxpayer from having to subsidise the failure of unscrupulous employers from meeting their pension promise.

15. The Young Review of pension scheme assets is looking at schemes in similar circumstances which are not covered by these or previous regulations. The recommendations of the Review are expected later this year and the Government will respond in due course.

Other issues of note

Notification

16. One respondent raised a concern that the draft regulations did not extend the period by which notification must happen to mirror the proposed changes to the insolvency cut-off date.

Response

17. The Government believes that a fixed notification period remains desirable for administrative reasons. The period by which notification must occur will be extended on request where the scheme manager has indicated that he will do so. This includes situations where changes to regulations have meant that

schemes that would previously not have qualified for FAS are now likely to qualify.

Data Sharing

18. The issue of the FAS Operational Unit being able to share data on individual members with the trustees of their pension scheme was raised by one respondent. They believe that FAS should be able to share details of the assistance calculated for individuals with the trustees who have provided the data upon which those calculations are based.

Response

19. The Government sympathises with the motive for this proposal and is determined to continue to work as closely as possible with trustees and administrators to facilitate the provision of data and payments to members. Nonetheless, the Government is bound to comply with the Data Protection Act and the rules on disclosure to third parties. We have recently introduced a means by which FAS recipients can indicate if they do not wish us to share their data with relevant third parties and we anticipate that this will allow us to balance data protection considerations against our shared desire to provide a joined-up service to members.

General comments

20. There were also some drafting suggestions and requests for clarification in the legislation. The Government has taken these on board where necessary or desirable.

Annuities purchased with increases

21. The FAS (Halting Annuitisation) Regulations 2007 (SI 2007/2533) came into effect on 26th September this year. Those regulations stop trustees from buying annuities for FAS qualifying members for a period of nine months except where the trustees had entered into a binding commitment to purchase annuities or where, on application, the FAS scheme manager approves the purchase. The purpose of the regulations is to preserve the assets of qualifying schemes following an interim report of a review into pension scheme assets ('the Young Review') which found that additional value might be realised by their alternative use.
22. We have been asked by trustees who are able to buy annuities for qualifying members how we might treat annuities that are bought with a lower initial annuity rate but with enhanced annual increases. Under current FAS rules such an approach could increase Government liabilities and decrease the additional benefits for all that might be realised as a result of the Young

Review. For these reasons we have made a change to the FAS regulations so that the scheme manager has the power to re-determine annuity rates where he considers that those annual increases that have been secured are unreasonable.

23. We are making this change to help ensure a level playing field so that any additional value identified by the Young Review can be used to help all eligible members. We will only re-determine annuity rates where increases secured are unreasonable and members for whom indexation was secured broadly in line with the priority order will not be affected.
24. Given the potential for moral hazard, and given that annuity quotes are often time-bound we have not consulted on this change to regulations on grounds of urgency.

Our thanks

25. We are most grateful to all those who took the time to comment on the draft Regulations.

Mike Le Brun

**Head of Policy and Legislation
Financial Assistance Scheme**

LIST OF RESPONDENTS

Name	Organisation
S.T. Longhorn	N/A
Michelle Lewis	National Association of Pension Funds
David Pressley	N/A
Kenneth Molloy	N/A
Richard Nicholl	N/A
Julian Cowley	N/A
Joseph Freeman	N/A
S(?). Crawford	N/A
Clive Finney	N/A
Nigel Clothier	N/A
Adrian de Segundo	N/A
Robert Balshaw	N/A
Terry Monk	N/A
Katherine Parker	The Insolvency Service
Nigel Goodinson	Allenwest Trustee Limited
Stephen Weblin	Alexander Forbes Trustee Services Ltd
Carole Adderley	Fredk. H. Burgess Limited Pension and Life Assurance Scheme
James D. Anderson	N/A
Pamela Digwood	N/A
Patrick Moloney	N/A
E.G. Lewis	N/A
Mandy Brown	AXA
Peter Humphrey	Pensions Action Group
Thomas Waugh	N/A
Tim Farron MP	N/A
Alan McCreadie	Law Society of Scotland
John Mortimer	The Society of Pension Consultants
Nayiga Tanthuanit	Mercer
Antony Macwhinnie	Law Debenture
Paul Whitton	ADEPT
Katherine Banks	Association of Pension Lawyers
Dr. Brian Marks	Occupational Pensioners' Alliance
Dominic Grimley	Hewitt Bacon and Woodrow
Keith Shilton	N/A
Barry Francis	N/A
R.I. Cotterill	N/A
G. Henley	N/A
Robert B. Thomson	N/A
Patrick Kilduff	N/A
Joe Blair	N/A

John de Marris	N/A
Graham Bugler	N/A
Patrick Comer	N/A
David Cole	N/A
Richard Hisom	N/A
Dave Baker	N/A
Ian MacDougall	N/A
Michael Hull	N/A
Bob Fleck	N/A
Alan Harwood	N/A
Kevin Gaffney	N/A
John McKie	N/A
Mark Houldsworth	N/A
David Kershaw	National Trust for Scotland Retirement and Death Benefits Plan
Alan Marnes	N/A
K.G. Charmer	N/A
A. Dockray	N/A
Derek Kirkland	N/A
Luigi Alessandro	N/A
Name indecipherable	N/A