

**GOVERNMENT RESPONSE TO
CONSULTATION ON DRAFT
REGULATIONS**

**THE DRAFT FINANCIAL ASSISTANCE SCHEME
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2010**

January 2010

Introduction

Between 12 August 2009 and 6 October 2009, the Department for Work and Pensions (DWP) undertook a consultation exercise on the draft Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 and associated Impact Assessment. The draft Regulations and Impact Assessment were made available on the DWP website.

DWP received 42 responses to the formal consultation of which 21 responses were received from organisations with an interest in the pensions field, which included trustees, actuaries and pension lawyers. DWP also received responses from those directly affected by the policy proposals and their representatives. The Pensions Action Group (PAG) provided a formal response, with six individuals responding in support of the PAG view, some identifying themselves as PAG members. A list of respondents is included at Annex A.

In addition to the published consultation, stakeholder meetings were held with the Trustee Advisory Panel¹, PAG and individuals who will be directly affected by the changes, to talk through the policy proposals and invite comments.

DWP is grateful for the contributions received. Draft Regulations have been laid before Parliament and will come into force in due course, subject to Parliamentary approval.

This document presents the main points made by respondents and provides the Government's response. The draft Regulations have been laid before Parliament and will be available on the Office of Public Sector Information's website at: <http://www.opsi.gov.uk/si/dsis2010>

¹ The FAS Trustee Advisory Panel is an informal body comprising a number of trustees of, and other professionals involved with, FAS schemes. It meets on an ad-hoc basis to assist the Department for Work and Pensions in designing the practical implementation of the extensions to the FAS.

If approved by Parliament the finalised Regulations and accompanying Explanatory Memorandum will be available on the Office of Public Sector Information's website at:

<http://www.opsi.gov.uk/si/si-2010-index>

Paper copies of this document can be obtained from:

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The Consultation

1. The consultation explained the Government's proposals to implement the remaining changes to the Financial Assistance Scheme (FAS) resulting from the Government's December 2007 announcement of a package of extensions.
2. These remaining elements cover:
 - The transfer of remaining assets of relevant pension schemes to government;
 - The FAS making payments to members of qualifying pension schemes where payments would previously have been made by scheme trustees, in particular:
 - the making of payments to members whose share of scheme assets would have been sufficient to pay pensions in excess of standard FAS assistance;
 - allowing certain members to commute part of their assistance for lump sum calculated broadly in line with tax legislation for pension commencement lump sums and restricted to the amount of the member's share of scheme assets.

Overview of Consultation Responses

3. Responses to the issues subject to consultation concentrated mainly on the level and nature of the FAS assistance that would be paid in respect of the assets of qualifying schemes which transfer to government. Comments in relation to the transfer of assets mainly focused on the proposals for the valuation of assets and liabilities and the proposed treatment of additional voluntary contributions (AVCs). Respondents also raised the need for communication of forecasts of assistance amounts.
4. In general, responses from pension professionals and those pension scheme members affected by the changes recognised that the Government had made a real effort to ensure that the proposals were fair.
5. The Government's response to general comments about the FAS, which fell outside of the consultation, can be found at the end of this document.

Section 2: Introduction

6. There were few comments on the general questions. Where individual responses raised issues which are addressed later, they are covered under that question.

Section 3: Preparation and Transfer of FAS qualifying schemes to government.

7. The Government anticipated that the proposals for the FAS in this section would be of particular interest to trustees and other pensions professionals. This has proven to be the case.
8. In the main, responses to the consultation were supportive of the Government's proposals. However, particular concerns related to:
 - the potential complexity and costs of the proposals relating to the FAS valuation of liabilities and members' asset shares – the

Government has provided more information in this response on potential easements that might be applied in practice;

- the barriers faced by trustees in discharging remaining liabilities where members had received a partial discharge payment during wind up – the Government has made some changes to its original proposals in response to these concerns; and
- the Government’s proposals on defined benefit additional voluntary contributions (AVCs) – in response to these concerns, the Government has revised its proposals to allow trustees the option of separately discharging defined benefit AVC liabilities prior to the transfer of other scheme assets.

9. Further details on these and other issues raised during the consultation and the Government’s response are provided in this section.

10. Where common issues have been raised under more than one question the following summary and Government response has considered certain questions together to aid explanation. Some questions will therefore be presented non-consecutively.

Question 1: The Government welcomes comments on its proposed approach to identifying the schemes and assets which will transfer to government.

9 responses: from 8 organisations and 1 individual.

Preparing for the valuation and transfer of assets

11. The text accompanying this question set out the key stages of the transfer process, including a summary of what would be expected of trustees in preparing for the transfer of assets. Most of these tasks resemble those normally undertaken as part of wind up. Many respondents agreed with this proposed approach.

12. Some respondents wanted to know whether trustees should complete any equalisation requirements as part of this preparation activity.

Identifying schemes subject to the valuation and transfer provisions

13. Not all the FAS qualifying schemes would be transferring assets to government and the consultation document set out how the schemes subject to the asset transfer provisions would be identified. The proposal was that the valuation and asset transfer provisions would not apply to a FAS qualifying scheme in which all defined benefit liabilities have been discharged or where the FAS scheme manager thinks they are likely to be discharged by:

- annuity purchase (whether because of a binding commitment to purchase annuities or an approval to purchase annuities under section 286A of the Pensions Act 2004);
- payment of transfers or relevant discharge lump sums; or
- buy-back into the State Scheme (permissible in certain limited circumstances).

14. Respondents did not express any significant concerns over these scheme-level exclusions, with many stating they felt it was a sensible approach. Concerns focused on lessening the demands of the FAS valuation process on those schemes which would be subject to the provisions. The Government's response to these concerns are covered in more detail in the valuation section.

15. One respondent drew attention to the position of small schemes where the cost per member, or the cost relative to the size of the scheme assets, of preparing assets for transfer may potentially erode funds to an extent that there would be no additional value to be gained by transferring the assets. They felt that such schemes should be allowed to purchase annuities and be excluded from the transfer requirements.

The Government's Response

16. The Government wants to make sure that the data it receives from schemes is as accurate as possible but it is also keen to ensure that rules and processes to enable the transfer of assets to government are kept to a minimum in order to best preserve the value of those assets.

17. The Government is also keen to ensure that outcomes for members will be broadly consistent with those they may have expected had their scheme wound up by the purchase of annuities. Where appropriate, the Government has followed conventional winding up processes and those used in relation to schemes in Pension Protection Fund (PPF) assessment periods. This means that pension scheme trustees and other professionals will already have some familiarity with the steps leading to transfer. The Government has also provided flexibility within the Regulations for the valuation process to be adapted where appropriate.
18. FAS caseworkers will work closely with schemes to ensure that processes will be tailored to fit the circumstances of individual schemes. For example, where a scheme can demonstrate that there would be cost saving by purchasing annuities for its members rather than transferring assets to government, the Government would expect the FAS scheme manager to work with the scheme to enable annuities to be purchased.

Question 2: The Government welcomes views on its proposed approach to partial discharge cases and in particular:

- **whether there might be any circumstances in which member liabilities may have been partially discharged by annuity purchase but where a binding commitment would not apply to any future payment to discharge remaining liabilities; and**
- **whether there may be any obstacles to trustees discharging partial liabilities that may impede the transfer of remaining defined benefit assets.**

14 responses: from 12 organisations and 2 individuals.

Partial discharge cases

19. During the winding up process, pension schemes sometimes arrange for liabilities to be partially discharged by the purchase of annuities, or by buying back contracted-out State Scheme entitlements. In other cases

transfer payments might be made to members on the understanding that further assets might be allocated to those members at the end of wind up.

20. The Government proposed that in all such cases where members had received a partial discharge payment, trustees would complete the discharge of liabilities in respect of these members and not transfer additional assets to government.
21. Respondents acknowledged that this was a pragmatic proposal for some cases. However, they also highlighted a number of obstacles to the completion of the discharge of remaining member liabilities, for example:
 - in State Scheme Premium (SSP) and part-annuity cases, where there is a small additional amount allocated to the member, it might be difficult to find an annuity provider who would take on the business on cost-effective terms; and
 - where a partial transfer had taken place and the member has retired or died since the original transfer payment was made, or where the receiving arrangement has closed or has limits on the benefits that can be transferred in (for example, it is not a contracting-out arrangement and the member's Guaranteed Minimum Pension liability remains within the original scheme).
22. More generally, respondents suggested that the Government should consider whether it might be more cost effective, where partial discharge had taken place, if it sought to take assets in rather than insist trustees complete the discharge of liabilities.
23. Some respondents stated that where schemes had purchased annuities to cover part of a member's liabilities, there would not be a binding commitment with the same insurer to increase those annuities at the end of wind up, should additional assets be allocated to relevant members. It was considered that trustees would need to 'go to market' in such cases, which would require further expenditure. Again, it was suggested that in such circumstances the Government might prefer to take in the assets.

24. Some trustees asked whether the PPF's arrangement with the Spinnaker Master Trust, which provides a further option for trustees to discharge liabilities linked to small amounts of assets, will be available to FAS qualifying schemes.

The Government's Response

25. The Government is grateful for the responses received on the issue of partial discharge cases. These responses have proved very useful in developing revised proposals in this area which are set out below.

State Scheme Premium (SSP) and partial transfer cases

26. After further consideration the Government has concluded that where additional assets would be allocated to members whose liabilities have been partially discharged by way of a SSP or a partial transfer payment, it is appropriate for those assets to transfer to government. This will overcome the practical barriers identified by trustees, avoid multiple payment sources and make the best use of scheme funds.
27. To deliver this change, the Regulations provide for members who have received partial discharge payments by way of a SSP or a transfer payment to be included in the valuation. This will enable residual asset shares and notional pensions to be calculated for such members. This in turn will allow the FAS assistance to be calculated and, where relevant, for FAS lumps sums to be payable.

Partial annuities

28. After further consideration, the Government has decided to maintain the position proposed in the consultation document where liabilities have already been partially discharged through the purchase of an annuity. Therefore, the Government will continue to expect trustees to discharge remaining liabilities to these scheme members and not transfer relevant assets to government.

29. The Government understands that most partial annuity cases are likely to be in respect of pensioner members for whom annuities have already been purchased to cover flat-rate pensions. In these cases, any additional assets allocated to those members would be used to provide indexation. The Government has considered whether it should take in assets allocated for cost of living increases and then seek to pay that indexation, but has decided that this would add significant complexity to the administration of the FAS. On balance, the Government considers that in general any benefit that could be gained from taking in these assets would be outweighed by the cost and complexity required to calculate and administer such payments.
30. However, the Government also recognises that there are some cases in which members would not stand to gain from further annuity purchase. It is expected that the FAS scheme manager will seek to identify such cases and consider whether it would be appropriate for relevant assets to transfer rather than be used to purchase further annuities. Further information on such cases is provided in the FAS valuation paragraphs in the Government's response to question seven.
31. The Government understands that the Spinnaker Master Trust may provide an alternative option for trustees to discharge liabilities (although this would not allow indexation to be added to an existing flat-rate pension). Trustees can approach their FAS caseworker concerning the potential options offered by Spinnaker or visit Spinnaker's website at: www.thespinnakermastertrust.co.uk
32. Overall, the Government believes that the changes it has made in response to the consultation will overcome many of the practical obstacles that were identified. Where additional assets are allocated to members who have already had annuities purchased for them, the Government acknowledges that trustees may need to go to the market to seek options for completing the discharge. However, the Government believes that allowing such cases to be discharged separately will

ensure that a further layer of complexity is not required within the FAS calculation process. Should it prove that insurmountable barriers remain to discharging such liabilities, the Government will consider whether further support might be provided.

Question 3: The Government welcomes comments on its proposed approach to managing assets during the preparation period.

8 responses: from 6 organisations and 2 individuals.

Question 4: The Government welcomes comments on its proposed approach to liquidation of scheme assets, and where liquidation might be prevented by particular arrangements.

8 responses: from 7 organisations and 1 individual.

Question 13: The Government welcomes comments on the proposed approach to liquidating assets after the valuation date is reached and, in particular, whether there may be any obstacles to the liquidation of gilt holdings prior to transfer.

7 responses: from 7 organisations.

Asset management

33. The consultation document set out the Government's asset management proposals, both in the period leading up to the valuation of assets and liabilities and from the valuation calculation date up to the transfer of assets. It was proposed that scheme assets would remain under the control and management of trustees until the assets of the scheme are transferred to government. However, the FAS scheme manager would continue to monitor investment and liquidation strategies prior to the transfer of assets.

Preparing to liquidate assets

34. In consultation the Government stated that scheme assets should, wherever possible, be switched into cash or gilts before the valuation is undertaken. Some respondents felt the approach proposed by the Government was sensible and reasonable and it rested with the Government to decide whether the risks associated with such an approach were acceptable. However, some respondents indicated that

there is a need for further guidance on trustees' responsibilities in relation to managing and switching assets. Some respondents called for specific direction by the FAS scheme manager.

35. A respondent was concerned that some trustees may have been planning to use the equity Minimum Funding Requirement (MFR) basis in order to value certain liabilities. If so, trustees may be concerned that investing in gilts will mean that they are no longer able to apply that basis – and instead must apply the gilt-matching basis – when valuing those liabilities.
36. A respondent was of the opinion that it would be better if all schemes transferred assets to government in their existing form rather than in cash, to allow the Government to consider the most efficient way to release the funds represented by these assets.

Liquidation of assets once the valuation calculation date has been reached

37. To minimise the risk of assets decreasing in value as a result of market changes after valuation, it is expected that schemes would complete the liquidation of relevant assets into cash as soon as possible after the valuation calculation date.
38. Some respondents questioned the Government's intention to convert gilts into cash following the valuation but before assets are transferred to government. Others were concerned about potential dilution of value if dates for the liquidation of assets post-valuation were inflexible.
39. There were also some concerns over how cash should be held after liquidation; that is, whether sums should be spread amongst different bank accounts to protect against loss. A comment was also made on the cost of advice for trustees on setting up bank accounts. An alternate suggestion was that the Government should provide a Bank of England account for this purpose.

The Government's Response

Asset management, pre-valuation

40. The Government appreciates that during wind up trustees are conscious of their fiduciary duty to members and are likely to want to remain invested in assets that match their defined benefit liabilities at least until such time as the calculation date for the valuation is reached.
41. The FAS scheme manager's expectations regarding the management of assets prior to their transfer to government should already be familiar to trustees from guidance and updates and trustees can discuss any concerns with their FAS caseworker.
42. The FAS scheme manager will continue to monitor the trustee's investment and liquidation strategies prior to the transfer of assets. This will help to determine when it would be appropriate to undertake the valuation and will also ensure that decisions taken are appropriate and do not create undue risk for the taxpayer.

Impact of investing in gilts on the basis used by schemes to value liabilities

43. The MFR states that the valuation basis for relevant liabilities depends on the last statement in respect of the scheme under section 35 of the Pensions Act 1995, known as the Statement of Investment Principles (SIP). If that statement states that a gilts-matching approach has been adopted then the gilts-matching basis must apply. For the purposes of FAS valuations and asset transfer, the Government considers it is possible for schemes to switch into gilts without the SIP saying that a gilts-matching policy has been adopted and thus for an equity MFR basis to apply.
44. In practice, the Government will expect that schemes will, where relevant, provide the SIP and state which MFR basis they have used when completing the FAS valuation.

Asset management, post-valuation

45. Liquidating scheme assets prior to transfer to government minimises financial risk to taxpayers. The Government believes that trustees are, in general, best placed to realise assets during this period.
46. The conversion of gilts into cash after the valuation but before the transfer of assets to government is to facilitate their onward transfer to the Exchequer. The Government does not generally take ownership of gilts except in certain limited circumstances as this would involve the Government holding its own debt, effectively cancelling out the value of the assets. Additionally, it is not general policy for Government departments to hold marketable gilts. Thus, any marketable gilts held by schemes would need to be switched to a non-marketable equivalent and held in an account at the Debt Management Office. This would require additional legislation and would incur transaction costs.
47. With respect to the possible dilution of the value of assets prior to transfer, the Government does not expect that the liquidation of the assets would itself affect market conditions. This is due to the wider market terms, the comparatively small amounts of assets held and the likelihood of schemes having different calculation dates and consequently different liquidation timetables.
48. However, the Government expects that FAS caseworkers will discuss and timetable liquidation approaches with trustees to help identify and manage any potential dilution risks.
49. On the concerns regarding the procurement of suitable bank accounts for holding cash, the Government expects trustees to be mindful of risk when considering such matters, as they would have been had they not been transferring assets to government, and to seek financial advice where appropriate.

Question 5: The Government welcomes comments on its proposed approach to obtaining relevant scheme valuations.

11 responses: from 10 organisations and 1 individual.

Question 6: The Government welcomes comments on this proposal to give the scheme manager the power to decide it isn't appropriate to obtain asset share calculations in relation to some particular categories of person and on whether there are any other circumstances where it would not be appropriate for asset shares to be calculated.

7 responses: from 6 organisations and 1 individual.

Question 7: The Government welcomes further views on this approach.

6 responses: from 6 organisations.

Valuation of assets and liabilities

50. The consultation set out proposals for a valuation of assets and liabilities to be undertaken by an actuary in order that member asset shares could be determined by reference to which FAS payments could be calculated.
51. The Government recognised that there are likely to be occasions in which full valuations would not be necessary or appropriate. This was anticipated, for example, where a scheme's funding position was such that all residual assets would be allocated to pensioner members, none of whom would stand to receive payments that would otherwise be above the FAS levels. To allow for flexibility, the draft Regulations provided for the FAS scheme manager to be able to limit certain valuation requirements for FAS purposes.

Actuary to undertake the valuation

52. Respondents broadly agreed with the Government's proposal which would, in the majority of cases, mean that the scheme actuary would undertake the FAS valuation. It was commented that trustees would not expect the existing scheme actuary to be replaced if the trustees were happy with the existing arrangement.
53. A common concern was that the consultation document did not make it clear to whom the actuary would be contracted. Concerns were also

raised regarding the potential additional cost of appointing another actuary, should the FAS scheme manager consider it appropriate, when such costs would ultimately be borne by scheme funds.

The FAS valuation

54. In general, responses expressed concern at the potential complexity and cost of the valuation but welcomed the flexibility provided by the draft Regulations to waive elements of the FAS valuation.
55. Many respondents felt that the administrative burden would be lessened if the FAS valuation made more use of previous valuations undertaken by schemes.
56. Some respondents questioned the need to calculate asset shares purely in order to determine lump sums. This would apply where the scheme funding level was such that members would not stand to receive payments above standard FAS levels but where they would stand to receive a FAS lump sum. It was suggested that a more standardised approach to FAS lump sums should be adopted, rather than looking at individual asset shares on a case by case basis.
57. A respondent also suggested that, where appropriate, a valuation could merely consist of a statement by the actuary that no members would have received benefits above FAS levels had the scheme purchased annuities.

The Government's Response

Actuary to undertake the valuation

58. The draft Regulations provided that an actuary would be appointed by the FAS scheme manager, but in practice it was expected that the trustees would contract with the actuary in order to obtain the valuation. In light of the responses, the Government recognises that the original draft Regulations did not make this intent clear and has amended the Regulations for clarity. Under the amended Regulations, the FAS

scheme manager will instruct the trustees or managers of the scheme to obtain a valuation of the assets and liabilities of the pension scheme. The draft Regulations set out that it is the valuation actuary who will conduct the valuation; and that this valuation must be given to the FAS scheme manager.

59. The Government continues to expect that in most cases existing scheme actuaries will carry out the valuation. However, the draft Regulations continue to provide the FAS scheme manager with the power to intervene in the process in order that an alternative actuary could be appointed to the task. The Government will expect the FAS scheme manager to consider the issue of cost when approving actuaries to undertake FAS valuations.
60. There has been a further change to the draft Regulations as a consequence of the amendment described above. The draft Regulations had previously referred to the FAS scheme manager sending a copy of the valuation to the trustees or managers of the relevant scheme alongside the notification of the approval of the valuation. As the draft Regulations now provide that trustees will be required to obtain the valuation, providing trustees with a copy of the valuation as a matter of course when the valuation is approved would be superfluous.

The FAS valuation

61. The Government is grateful for respondents raising further scenarios in which full valuations may not be necessary or appropriate. The Government expects the FAS scheme manager to work with trustees to actively identify such cases and ensure that valuations are appropriately adapted to fit scheme circumstances.
62. The Government continues to consider that, in general, new valuations will be required in order to ensure that asset shares are calculated that are consistent with asset levels and market conditions at the calculation date; and to minimise the effect of market movements between the

valuation and asset transfer date. However, it anticipates that previous valuations will provide useful information to the FAS scheme manager in considering whether full valuations are required.

Question 8: The Government welcomes views on the proposed approach to 'calculation dates' included in the draft Regulations.

4 responses: from 4 organisations.

The calculation date for the valuation

63. The Government proposed to set valuation calculation dates on a prospective, monthly basis.
64. One respondent felt that trustees should retain an element of control over the valuation date as they might not be able to meet a timescale set by the FAS scheme manager. Another respondent queried why calculation dates were to be prescribed when there was no obvious efficiency gain from narrowing the choice of dates. It was suggested that the choice of date should be left open, to be decided between trustees and the FAS scheme manager, which would enable the selection of a date to fit in with existing accounting schedules.
65. Concerns were also expressed concerning the ability of trustees to produce audited accounts within a reasonable period of time to meet the valuation requirements.

The Government's Response

The calculation date for the valuation

66. The Government continues to consider that the use of prospective monthly dates will help manage the financial risk to government from assets changing in value before transfer and prevent unnecessary delay to the transfer of assets. Furthermore, introducing a process to allow trustees and the FAS scheme manager to agree a calculation date could itself cause delay.

67. In practice, FAS caseworkers will be liaising with trustees to decide when it is appropriate to proceed with the valuation. However, the possibility of asset values changing with time means that leaving the selection of the calculation date to scheme trustees might unnecessarily delay the transfer of assets. This could, for example, arise if trustees were of the view that the value of assets might increase at some future point.

Audited accounts to support the valuation

68. With regard to audited accounts, the Government is mindful that there are various existing requirements on trustees to obtain annual audited accounts within certain timescales and that these can place demands on the resources of schemes at certain points in the year. The Government expects that the FAS scheme manager will work with schemes, accountants and auditors to help ensure timely and efficient production of relevant accounts. The Government does not consider it appropriate to postpone a valuation in order to fit in with the accounting timetable and trustees may need to adjust accounting periods to coincide with the valuation date.
69. As a result of responses received the Government anticipates that there may be circumstances where it may not be necessary for new audited accounts to be prepared. For example, this may apply in relation to schemes where asset shares are waived in respect of all members.
70. Therefore, a change has been made to the draft Regulations to provide the FAS scheme manager with some flexibility in his approach to such cases. The draft Regulations now provide the FAS scheme manager with the discretion to allow the valuation actuary to determine the value of the assets as at the calculation date on the basis of such information as the FAS scheme manager considers appropriate.
71. It is not anticipated that this flexibility will be used often and it should be noted that this provision does not remove statutory requirements in

respect of audited accounts linked to the requirements of the Pensions Regulator.

Question 9: The Government welcomes views on whether the proposed approach to DB AVCs is reasonable and appropriate in all cases.

11 responses: from 8 organisations and 3 individuals.

The treatment of defined benefit additional voluntary contributions

72. Where schemes do not transfer assets to government, FAS is paid as a top-up to the scheme pension. In general, this top-up payment disregards any income received from AVCs, which means that such members receive the AVC on top of any assistance payable by the FAS.
73. The Government consulted on a different approach for members of schemes which would be transferring assets to government. To avoid practical issues that might otherwise have arisen, it was proposed that defined benefit AVC assets would be transferred to government and that FAS assistance would be paid in respect of the AVC benefit. Any defined contribution AVCs would continue to be separated from defined benefit assets.
74. This approach could lead to different outcomes between members depending on whether they were in a scheme which had transferred assets or whether they were receiving FAS assistance as a top-up to an annuity payment.
75. In general, respondents disagreed with the Government's proposals. It was felt that the proposal was unfair given the potentially differing outcomes. Concerns were also raised that the FAS beneficiaries who have their entitlement capped would be particularly disadvantaged by this arrangement as their AVCs would effectively offset some of the assistance that would otherwise be paid.
76. In addition, some respondents considered that AVCs were separate savings made by an individual and it would not be right to take these contributions into account when considering FAS payments.

The Government's Response

77. The Government has taken the comments made into consideration and decided to amend the draft Regulations and intended processes. The Government intends that trustees will be provided with the option of separately discharging defined benefit AVCs prior to the transfer of assets to government. This will ensure outcomes for members are broadly consistent regardless of whether the scheme is transferring assets to government or not.
78. As a consequence, the draft Regulations have been amended to provide for those assets that will be used to satisfy liabilities in respect of AVCs to be excluded from the valuation.

Question 10: The Government welcomes comments on the proposals for the valuation of assets including debts, in particular whether there are other types of debts or circumstances where specific provisions might be needed to allow appropriate valuations to be undertaken.

6 responses: from 6 organisations.

Assets excluded from the valuation

79. Not all the assets within qualifying FAS schemes will be included in the valuation for FAS purposes. The consultation document set out the proposed exemptions contained in the draft Regulations.

Debts owed to the scheme

80. Some schemes will have assets that relate to debts that are owed to the scheme. These may be debts owed by employers, by members or other beneficiaries who have been overpaid by the scheme, or by other parties, perhaps as a consequence of legal proceedings.
81. Where such debts will have a material impact on members, the FAS scheme manager will generally expect them to have been recovered before proceeding with the valuation and for these assets to be included in the valuation. However, in recognition of the varying nature of such arrangements and the time needed for them to reach their conclusion,

the draft Regulations provide for flexibility in the treatment of debts for valuation purposes.

82. Where debt agreements have some time to run and, in the opinion of the FAS scheme manager it is appropriate to proceed with the valuation and transfer of assets, the FAS scheme manager will instigate the valuation. In such circumstances the draft Regulations provide for the actuary to place a value on any future payments as part of the asset valuation, in line with FAS guidance. The value of those payments will take account of the risk of default and the period across which the agreement runs.
83. One respondent felt it was unreasonable for the actuary to make such a judgement. It was felt that this would require the actuary to assess the legal implications of recouping an asset and to decide the level of risk on behalf of the FAS scheme manager, neither of which the actuary will be qualified to do. It was suggested the decision on whether or not to exclude or reduce the value of the relevant asset should lie with the FAS scheme manager alone.

The Government's Response

Assets excluded from the valuation

84. Although respondents did not express any concerns in respect of exemptions from the valuation of assets, the Government has decided to make a change to this section of the draft Regulations.
85. As part of the consultation document, the Government stated that guidance would provide for the disregard of expenses that will be incurred by the scheme to complete the process of asset transfer, including any expenses incurred that have not yet been paid. After further consideration, the Government has decided that for the sake of clarity, a disregard in respect of such expenses should be provided for on the face of the draft Regulations alongside the other exemptions.

Debts owed to the scheme

86. The Government envisages that in the majority of cases trustees would resolve issues around outstanding debts before the valuation is undertaken. The Government appreciates the concerns expressed by respondents and will provide further proposals on the process for the treatment of debts through consultation on draft guidance to support asset transfer.

Question 11: The Government welcomes comments on its proposed approach to insurance products.

10 responses: from 8 organisations and 2 individuals.

Scheme-level insurance policies

87. Some FAS qualifying schemes have taken out insurance contracts, held in the name of the trustees, to provide for member benefits. Respondents indicated that such contracts tend to be held in relation to pre-wind up pensioner liabilities.
88. Respondents generally welcomed the Government's proposal that where such products have surrender values that are low in comparison with the value at maturity – and such contracts can be assigned to individual members – trustees should seek permission to purchase annuities for these members. Respondents agreed that it would be more effective to do this (and then for the FAS to pay top-up payments) than to transfer such assets to government.
89. However, respondents expressed concern that the Government's proposed approach to determining whether contracts should transfer to government might be unnecessarily burdensome. The consultation document proposed a sifting process whereby a contract's surrender value should be compared to the liabilities covered. Some respondents' experience was that many contracts – even those entered into after 1997 – do not have standard surrender values and obtaining such information from insurers may be time consuming and costly.

90. There were also concerns that some contracts will have a clause preventing assignment to another trustee or manager. Concern was raised that the legislation would need to be able to overrule such a restriction (where that would not result in a loss to the insurer).
91. One respondent highlighted a situation where an insurance policy had been secured to provide a member with 100 per cent of their liabilities, but this was subsequently found to be an over-provision as the scheme funding level would not support this level of payment. They suggested that such policies should transfer to government.

The Government's Response

92. The Government envisages that FAS caseworkers will discuss the handling of insurance contracts with trustees in the lead up to the valuation. It is anticipated that the caseworkers will take a pragmatic approach in deciding the need to assess whether the value of liabilities covered is higher than the surrender value, keeping in mind the potential costs of obtaining information on surrender values.
93. Where insurance contracts transfer to government, the draft Regulations already provide for them to be amended so that they become payable to the Secretary of State. The Government does not consider that further change is necessary to facilitate reassignment.
94. The Government has considered the scenario where an insurance policy had been secured to provide member benefits higher than the scheme funds can subsequently support. The Government expects that where the terms of those contracts cannot be amended, the policy will be transferred to government. Such policies will need to be included in the valuation and supporting guidance will provide detail of the method for valuing such assets.

Question 12: The Government welcomes views on its proposals for alternative values to be placed on assets in certain circumstances.

4 responses: from 4 organisations.

Overarching powers to include and place an alternative value on an asset in the valuation

95. The draft Regulations allow the appointed actuary to include and place an alternative value on an asset in the valuation. The Government anticipated that such powers might be used where:
- a surrender value has been placed on an insurance contract in the audited accounts but that contract is transferring to government – in such circumstances the appointed actuary will place a value on that asset in line with guidance; or
 - new assets come to light (which will not have had a value placed upon them) between the production of the audited accounts and the valuation being undertaken by the appointed actuary, or the valuation being approved by the FAS scheme manager.
96. In such circumstances, when considering the valuation the actuary would place a value on these assets as at the calculation date. No respondents expressed objections to this approach.
97. The draft Regulations also provide the FAS scheme manager with the power to require the valuation actuary to amend the value of an asset in the valuation.
98. The Government anticipated that this power might be used if there were a significant decrease in the value of an asset between the calculation date and the date that the valuation is approved. One respondent thought that it was only fair for positive or incremental changes to be taken into account in similar circumstances. Another respondent felt that placing an alternative value on some assets for changes in market conditions, but leaving another part of the valuation unchanged, was inconsistent with established actuarial guidance.

The Government's Response

99. In practice, the Government envisages that the amending power would only be used exceptionally. The draft Regulations allow adjustments to be made to reflect both increases and decreases in value.

Question 14: Whilst these proposals do not form part of the draft Regulations and are not essential to the consideration of the proposals in the consultation document, the Government welcomes comments on its intentions that:

- **a consistent synthetic buy-out basis should be employed for all relevant FAS functions; and**
- **that the basis employed under current FAS functions will be reviewed before the Regulations come into force.**

7 responses: from 6 organisations and 1 individual.

Valuing pension liabilities and calculating asset shares

100. In undertaking the FAS valuation, the valuation actuary will need to place a value on scheme liabilities and calculate asset shares for relevant beneficiaries. Actuarial guidance will set out the calculation process in detail.

101. The responses received during the consultation broadly welcomed the Government's proposals on the valuation method. However, there were concerns that the use of FAS factors to determine notional pensions may see some members receiving less than they expected.

102. The use of new synthetic buy-out rates was also queried by one respondent, who believed the existing rates, set in 2008, would be appropriate for FAS purposes.

The Government's Response

103. The Government continues to consider it is appropriate for a consistent synthetic buy-out basis to be used in the valuation and in the calculations of relevant assistance payments and that the current basis should be reviewed to ensure that it reflects recent market conditions. It is intended that a consultation on Actuarial Guidance will be published

later this month and this will provide an opportunity to comment on the synthetic basis and its effect on payments.

Question 15: The Government welcomes comments on its proposals in respect of the approval of the valuation and subsequent notifications.

4 responses: from 4 organisations.

Question 17: The Government welcomes comments on this approach and on the proposed content of the binding notice.

3 responses: from 3 organisations.

The approval of the valuation by the FAS scheme manager

104. The draft Regulations require that the FAS scheme manager must approve the valuation provided by the actuary. Once approved, the FAS scheme manager will use the valuation to establish the notional pension derived from the asset share for each beneficiary. This is to determine whether the beneficiary would have received benefits higher than basic FAS levels, had the scheme not been transferring its assets to government.

105. One respondent suggested that if a valuation is signed off by the relevant actuary, this should provide sufficient assurance without a formal approval process by the FAS scheme manager.

Finalisation of the valuation before proceeding with the transfer of assets

106. The FAS scheme manager cannot proceed with the transfer of assets until the valuation is binding. The draft Regulations provide that a valuation is not binding until it has been approved by the FAS scheme manager and the subsequent review period, within which the approval of that valuation may be reviewed by trustees or pension scheme managers, has expired.

107. Respondents were supportive of the Government's proposals in this area.

The Government's Response

Approval of the valuation by the FAS scheme manager

108. Whilst the Government envisages that there will be regular communication between the actuary and FAS scheme manager during the valuation, the formal approval process provides some protection to government and scheme interests. It will allow the FAS scheme manager to ensure that the valuation has been undertaken appropriately and that the information needed to calculate notional pensions and the subsequent FAS assistance is accurate and complete. The approval process also includes a right of review for trustees should they disagree with the valuation, although in practice it is envisaged that any concerns will have been discussed and dealt with prior to the point at which the valuation is submitted for approval.

Question 16: The Government welcomes comments on its proposals and approaches in respect of reconciliation of under and overpayments from the later of the start of wind up and the start of a beneficiary's entitlement to pension payments.

11 responses: from 10 organisations and 1 individual.

Reconciliation of scheme payments made during wind up

109. As a consequence of transferring scheme assets to government, feedback was sought on proposals to extend the current reconciliation powers to account for the period from the later of the start of wind up and a beneficiary's entitlement to pension payments. Responses were also sought on whether this period of reconciliation should be undertaken by the FAS scheme manager or pension scheme trustees.

110. Proposals in respect of reconciliation received support from respondents, the majority of whom believed that the reconciliation of FAS payments should be undertaken by the FAS scheme manager, rather than the trustee, as the FAS scheme manager will have access to

all the relevant and necessary information to carry out this work. A concern was raised that pension scheme members who had taken early retirement should not be unduly penalised and a suggestion was made that, in cases where an overpayment is identified, consideration should be given to those who may suffer hardship as a result.

The Government's Response

111. The Government welcomes the support for its reconciliation policy proposals that are principally aimed at ensuring members receive the correct amount from their scheme and from the FAS reflecting the full value of their asset share and their correct entitlement to assistance. The proposals allow the FAS scheme manager, when calculating the FAS annual payment, to take into account any interim pension payments made by the pension scheme and, where appropriate, any initial assistance payments made or due from the FAS. The interim payments taken into account are those made from the start of wind up or from the point the member is entitled to a payment from their pension scheme, whichever is the later.
112. Reconciliation provisions have been clarified across a wide range of scenarios and these are now reflected in the appropriate Schedules to the draft Regulations, including where someone had started to receive a scheme pension before becoming entitled to assistance (see also the response to question 12 below). Where someone has received less or more interim pension from their scheme in any year than the amount of their notional pension, provisions in the Schedules allow the FAS scheme manager to make lump sum payments of arrears, or to adjust ongoing payments at the level of the notional annuity or assistance as appropriate.
113. A new regulation has been added to allow the FAS scheme manager to make good any underpayments by the scheme by way of a payment to the beneficiary's estate, where someone entitled to scheme payments

during wind up dies between the valuation calculation date and asset transfer, and before they become entitled to assistance.

114. Where an overpayment is identified, the Financial Assistance Scheme Regulations 2005 (as amended) already provide discretion for the FAS scheme manager to decide whether and how to recover the overpayment and such provision is also reflected in the new Schedules.

115. The Government believes that the provisions in the draft Regulations ensure that members will receive no more or less than their entitlement and addresses the concerns raised by respondents.

Questions 18: The Government welcomes views on whether its assumptions in respect of the rights and liabilities held by FAS schemes are reasonable and comprehensive and whether the proposed approach to these rights and liabilities is appropriate.

7 responses: from 6 organisations and 1 individual.

Question 19: The Government invites views on whether the draft Regulations will achieve this intended effect and whether there might be any unintended consequences of this power (for example, whether there might be any rights held by the trustees which should be affected by the discharge of the trustee obligations).

5 responses: from 5 organisations.

Question 20: The Government welcomes views on its proposals in respect of such applications. It would also welcome views on whether there are any other types of applications to any authority which affect trustees and managers of pension schemes which could require specific provisions to ensure they can be continued by or against the Secretary of State and handled by the FAS scheme manager.

7 responses: from 7 organisations.

Question 21: The Government welcomes views on the proposed powers relating to contracts and foreign property, rights and liabilities and in particular whether these powers may present issues in relation to any contracts or holdings of FAS transferring schemes.

4 responses: from 4 organisations.

The impact of the transfer notice on rights and liabilities

116. The decision as to when to proceed with the actual transfer of the assets and when to take on responsibility for making associated payments to qualifying members will rest with the FAS scheme manager.
117. The transfer will be notified and achieved by a formal transfer notice issued electronically by the FAS scheme manager to the trustees or managers of the scheme. This transfer notice will also provide detail of the liabilities from which the trustees will be discharged in accordance with the Regulations.
118. Assets will be transferred to the Secretary of State, rather than the FAS scheme manager, to ensure clear government ownership of the assets.
119. The draft Regulations provide that, on receipt of the transfer notice:
- the property and rights ('assets') held by or vested in the trustees or managers as trustees or managers of the scheme are transferred to the Secretary of State;
 - certain rights and liabilities will transfer to the Secretary of State, whilst others will be discharged or remain with trustees; and
 - trustees will be discharged of remaining defined benefit pension obligations (all other defined benefit pension obligations having already been discharged).
120. The table on pages 40-43 of the consultation document set out in more detail the Government's view of the impact that issuing a transfer notice will have on the various rights and liabilities in relevant pension schemes. Respondents felt that this provided a reasonable summary of such rights and liabilities and were broadly supportive of the Government's proposals.
121. The table included an example where legal proceedings or applications to an authority have been made. This showed that where the settlement of which would result in personal liability of the trustees, that liability will remain with the trustees. In contrast, potential liability in legal

proceedings or applications “not linked to personal liability” will transfer to the Secretary of State (for the FAS scheme manager to handle).

122. A respondent warned that the distinction between these two circumstances may not be quite as clear cut as suggested. It was pointed out that depending on their degree of potential culpability, a claim could be made against trustees that, if successful, could result in the trustees being either personally liable or benefiting from an exoneration or indemnity under the scheme rules. For example, this could be where there has been a breach of the scheme rules and it is a matter for the court to decide whether this was an innocent breach or resulted from wilful default.
123. Respondents welcomed the Government’s proposal that the discharge on transfer of assets to government will also cover liabilities in respect of any missing beneficiaries. Respondents indicated that it is not uncommon for trustees to take out insurance on winding up to cover such potential liabilities or purchase indemnity insurance where the scheme rules allow. One respondent suggested that this needed to be taken into account when considering how liabilities are split between trustees and the FAS scheme manager and that it might be helpful to have the FAS scheme manager being able to direct that such insurance be purchased where scheme rules do not so allow.
124. Respondents, including the Pensions Ombudsman, agreed with the Government’s proposals to allow certain outstanding applications to an authority to survive as part of the transfer process. Other than those to the Pensions Ombudsman, respondents did not identify any other types of applications that might transfer.
125. No objections were raised in respect of proposals to provide for the FAS scheme manager to modify or annul the terms of a contract relating to the property, rights and liabilities of the scheme, where it considers those terms or conditions to be onerous. Nor were any concerns expressed around the provisions to provide the necessary powers to secure the

transfer of foreign property owned by FAS schemes to the Secretary of State, including any relevant rights and liabilities.

The Government's Response

Transfer notice

126. The draft Regulations originally provided for certain rights and liabilities to transfer or extinguish on 'receipt' of the transfer notice. After further consideration, the Government has amended the draft Regulations so that the trigger for such actions and outcomes will be the transfer notice being 'given'. It was felt that this would make clearer the exact point liabilities transfer. It is envisaged that the transfer notice will be issued electronically via email but the FAS scheme manager will, of course, be in contact with trustees to ensure that they are aware of the impending transfer.

Liabilities and rights

127. The Government is grateful for the feedback provided in respect of proposals in this area and is reassured by the responses it has received. Where a legal case or application has a potential material impact, the FAS scheme manager will consider whether it is appropriate to undertake the FAS valuation and subsequent transfer of assets. When considering legal cases against the trustees of a FAS qualifying scheme, the Government also appreciates that it may be difficult to ascertain the level of culpability that will be attached to trustees until a ruling is received. It is envisaged that where the FAS scheme manager has any doubts around an application, the transfer process will be delayed until such matters become clear.

128. Changes have been made to the draft Regulations in respect of handling directions from the Pensions Ombudsman where liabilities in respect of such applications have transferred to the Secretary of State. These amendments are intended to provide further clarity as to the actions that may be taken by the FAS scheme manager where any Ombudsman's

direction in respect of an application has an effect on the underlying data used (or that will be used) to calculate FAS assistance payments.

129. In practice, it is anticipated that most applications will be allowed to run to their conclusion before the valuation and subsequent transfer of assets takes place. The nature of the complaint could have potential impacts on the allocation of assets across the scheme as a whole or relate to scheme administration; and thus need to be concluded whilst trustees retain their responsibility for the scheme.
130. The Government expects that the FAS scheme manager will liaise with the Pensions Ombudsman and trustees before the transfer of assets to agree whether it is suitable for outstanding applications to transfer.
131. Despite limited responses on this issue, the Government has given further consideration to whether there are other types of applications to an authority that might arise in FAS schemes. From its analysis the Government has concluded that such applications will be limited but where they may exist, for example in respect of the Financial Services Compensation Scheme, it would be appropriate for the FAS scheme manager to wait for such applications to reach their conclusion so that members' final asset shares can be established before relevant assets transfer to government.

Missing beneficiary and run-off insurance cover

132. For schemes that will be transferring assets, the Government intends to discharge trustees in a similar way to that undertaken in the PPF regime. This will leave trustees with only those liabilities where they would have been personally liable to meet claims rather than being indemnified from the assets of the scheme.
133. The Government envisages that this approach will mean it is unnecessary for trustees to purchase missing beneficiary or run-off insurance cover in respect of members whose liabilities are fully

discharged by transferring assets to government. Trustees should discuss any concerns with this approach with their FAS caseworker.

134. Where liabilities are being discharged outside of the asset transfer process, trustees may wish to consider purchasing insurance if they have not already done so.

Question 22: The Government welcomes views on these proposals, in particular views from trustees and industry professionals as to whether the approach described will enable trustees to effect the separate discharge of DC benefits where appropriate.

9 responses: from 7 organisations and 2 individuals.

Further issues around the discharge of defined contribution (DC) liabilities and assets

135. The FAS only provides assistance in respect of defined benefit pensions, therefore defined contribution liabilities and assets will need to be identified and discharged separately by FAS qualifying schemes. The consultation document outlined a number of avenues by which scheme administrators could discharge defined contribution pensions, in addition to those generally available to trustees. Trustees of FAS qualifying schemes may, for example, decide to make use of the PPF's arrangement with the Spinnaker Master Trust. Furthermore, winding up lump sums (or winding up lump sum death benefits) might also provide an outlet for trustees to discharge such liabilities.

136. The Government is aware of a small number of schemes where the scheme rules appear to prevent separate discharge of defined benefit and defined contribution liabilities. The draft Regulations allow the trustees or managers of a pension scheme to discharge such defined contribution liabilities in spite of the rules of the scheme on this point. Respondents particularly welcomed this change.

137. One respondent to the consultation asked whether the Government would consider taking in defined contribution assets and liabilities if trustees are unable to discharge such liabilities.

The Government's Response

138. Whilst the draft Regulations provide for the potential transfer of defined contribution assets, the Government would only consider transfers of such assets as a last resort; that is where no other discharge options are available to a scheme. There is no intention for FAS assistance to be paid in respect of defined contribution pensions. Should such assets transfer as a last resort, the FAS scheme manager would seek to discharge any such liabilities through an appropriate provider.

Question 23: The Government welcomes any further views on these proposals, in particular views from trustees and industry professionals as to whether the tests described are relevant and appropriate.

8 responses: from 7 organisations and 1 individual.

Residual assets held by schemes

139. The consultation document set out the Government's proposal to take in certain residual assets left in schemes after trustees have discharged members' liabilities which it would not be cost-effective to allocate against member liabilities. Where members were receiving a pension less than FAS levels and distributing residual assets would still result in FAS top-up payments having to be made, the Government believes it would be more cost-effective to transfer the residual assets to government rather than to distribute them to members. Respondents to previous consultations were supportive of this approach.

140. A response was received asking whether a discharge notice would be issued where a scheme, not subject to the valuation requirements, is transferring only residual assets to government.

141. It was also suggested that trustees should be allowed to use these residual funds to purchase run-off insurance to protect them for the future if any members come forward with unresolved issues.

The Government's Response

142. The Government anticipates that the residual asset provision described above will only be applied where there are no relevant member liabilities; and thus where it would not be necessary or appropriate for discharge to be provided. Regulations have been amended to clarify the circumstances in which this provision will apply.

143. Where there are relevant outstanding liabilities; for example, in a partial discharge case, then the valuation process will be followed. This process will end with the issue of a transfer notice and discharge from defined benefit pension obligations. As noted in earlier paragraphs, the Government is keen for the FAS scheme manager to work with trustees to ensure that the requirements of the valuation are tailored to the circumstances of such schemes.

144. The Government's position on run-off insurance is covered in the Government's response to questions 18 to 21.

Question 24: Comments would be welcomed on the intention to limit schemes providing transfers, winding up lump sums and trivial commutation payments (other than death benefits) in respect of DB rights.

8 responses: from 8 organisations.

Halting the provision of transfers and winding up lump sums in respect of defined benefit liabilities

145. The consultation document set out proposals for restricting the depletion of scheme funds through defined benefit transfers, winding up lump sums or trivial commutation payments. As well as helping to preserve assets, these provisions will provide administrative savings for schemes and help speed up the transfer of assets.

146. Some respondents thought that delaying any halt until the coming into force of the Regulations next year could generate an increase in the number of members wanting to exercise such options before that time.

147. Some trustees indicated that they felt duty-bound to inform members that their options would be limited under the Government's proposals, particularly where either:

- bulk exercises had been promised but delayed because of uncertainty over members' funding positions (perhaps because of unresolved equalisation issues or court cases affecting liabilities); or
- members might benefit from the flexibility offered by transfers (whether through earlier access than FAS provides or through better death benefit provision than FAS would provide).

148. However, it was also noted by one trustee, who had already informed scheme members of the Government's intention to limit transfers, that this had not prompted any significant applications from members wanting to do so.

149. It was also questioned why this proposal applied to the payment of winding up lump sums. The respondent made the point that these sums were very small and generally seen as a convenient way of discharging small benefits.

The Government's Response

150. The Government will consider whether guidance might be provided to trustees to help them communicate these changes to members.

151. Although individual winding up lump sums may be small, in aggregate the amount involved may be significant. The Government considers it appropriate to take in these assets in order to obtain their additional value. In addition, halting such payments will facilitate the transfer of assets.

Question 25: The Government welcomes views on its proposals to provide that certain functions can be delegated by the FAS scheme manager. The Government would particularly welcome views on whether the FAS scheme manager should be able to delegate additional functions to third parties.

7 responses: from 7 organisations.

Delegation of FAS scheme manager functions relating to asset transfer

152. Current powers allow for the FAS scheme manager to delegate certain functions to third parties, such as the calculation and payment of assistance to beneficiaries. The draft Regulations extend this power to also cover the calculations required following a valuation and the function of exercising the rights, obligations and powers relating to the property, rights and liabilities that have transferred to government.

153. A response to the consultation identified additional FAS scheme manager functions which should be delegable to a third party.

154. One respondent remarked that if the FAS scheme manager is given power to delegate functions during a time that trustees are still responsible for the scheme, the trustees should be consulted.

The Government's response

155. The Government is grateful for responses on these points. In response to these comments, the draft Regulations have been amended to allow the FAS scheme manager to delegate reconciliation functions, the payment of defined contribution benefits and the administration of any foreign assets transferred from schemes to government.

156. All of these functions arise only after assets transfer and thus after trustees have been discharged from their responsibilities for their scheme. Therefore, the Government does not consider it necessary to consult further with trustees on these points.

Question 26: Comments are invited on the proposal to use the scheme's most recent accounts or valuation for the purposes of gathering initial information on the assets held by schemes and their value.

5 responses: from 5 organisations.

Initial information relating to scheme assets and debts

157. When undertaking a valuation in preparation for the transfer of assets to government, feedback was sought on the proposal to use the pension scheme's most recent accounts or valuation to obtain initial information on assets held.

158. All the responses received agreed with this proposal.

The Government's Response

159. The Government welcomes respondents' support for this proposal.

Question 27: Comments are invited on the types of debt in relation to which information should be provided to the FAS scheme manager.

1 response: from 1 organisation.

Initial information relating to scheme assets and debts

160. To assist in the planning for the transfer of scheme assets to government and the monitoring of debt recovery, the Government sought feedback on a proposed list of the debts on which information would be required by the FAS scheme manager.

161. The respondent agreed with this proposal and suggested that the Regulations should be widely drawn to ensure that all significant debts due are included.

The Government's Response

162. The Government believes that the Regulations are already drafted in such a way to ensure that information can be required in relation to any significant debts. An explanation of the meaning of 'significant' will be provided in guidance.

Question 28: Comments are invited on the timing of the collection of information in relation to the value of scheme's assets and debts.

7 responses: from 7 organisations.

Initial information relating to scheme assets and debts

163. To ensure that information on scheme assets and debts is provided efficiently, the Government sought feedback on its proposal that information relating to scheme assets and debts should be provided within a 28-day deadline. The Government proposed that the FAS scheme manager should also have discretion to extend the deadline where considered appropriate.

164. A variety of responses were received to the policy proposal to provide information on scheme assets and debts within 28 days. Whilst some respondents agreed with the proposal others believed the 28-day timescale could be prescriptive and demanding, depending on the size of the scheme and the amount of data to be supplied. Suggestions of alternative timescales were made as well as suggestions that the FAS scheme manager should be able to exercise discretion over the timescale.

The Government's Response

165. The draft Regulations provide that information on a scheme's assets and debts should be provided within a 28-day timescale but also provides that the FAS scheme manager may decide on a longer period to supply

the information where it considers appropriate. This approach provides for information to be provided efficiently to enable scheme wind up to be completed as quickly as possible but also provides flexibility to the deadline where appropriate. The Government expects that, in the vast majority of cases, this requirement will be academic, as a result of the ongoing communication between the FAS scheme manager and trustees in the period leading up to the information being supplied.

Question 29: Comments are invited on the proposal that those whose liabilities have been discharged as a consequence of the transfer of assets should be notified by the FAS scheme manager that relevant responsibilities have passed to the FAS scheme manager and that this notification should be within 28 days of the transfer taking place.

6 responses: from 6 organisations.

Notifying members of transfer

166. To ensure that those individuals whose liabilities have been discharged as a result of the transfer of assets to government are informed of the trustee discharge in a timely manner, feedback was sought on a proposal that the FAS scheme manager should provide notification of the trustee discharge within 28 days of the transfer taking place.

167. All respondents agreed with the proposal to inform members of the transfer of responsibilities to the FAS scheme manager. However, alternative longer timescales were also suggested by some respondents and a concern was raised that, unless trustees also issued a communication along similar lines, members may continue to make contact with the trustee after the trustee's discharge.

The Government's Response

168. The Government welcomes respondents' agreement on this proposal. The Government does not propose to extend the timescale in which to

provide notification of responsibilities passing to the FAS scheme manager as it believes that it is important that members receive notification as soon as possible after the discharge of liabilities.

169. The Government believes that it is for trustees to decide whether they should issue their own communication to members at the time of discharge, in addition to that from the FAS scheme manager.

Question 30: Comments are invited on the proposal that details of the asset share are provided at the same time as the FAS annual payment.

16 responses: from 9 organisations and 7 individuals.

Notifying members of their asset share

170. The Government sought feedback on its proposal that information on the individual's asset share should be provided at the same time as their FAS annual payment award notice.

171. Whilst some respondents agreed with the proposal to provide details of the asset share at the time of the annual payment calculation, the majority of respondents expressed concern that members should be provided with estimates or forecasts of assistance earlier than the point at which they receive their annual payment and that failure to provide estimates or forecasts earlier would prevent retirement planning. Respondents provided various suggestions of when forecasts should be issued including: when assets transfer; when the member's data has been verified; and when the FAS legislation has been completed. Annual pension forecasts which are supplied by pension schemes were cited as an example of what the FAS should emulate, with annual statements five years before retirement, or on request, also suggested.

172. Concerns were also raised about communication with members generally, and the need to check with members that the data held on

them is correct. Respondents considered that both forecasting and the communication and verification of individual member data were crucial in enabling individuals to plan their retirement.

The Government's Response

173. The Government recognises the importance of communicating with members in order that they can plan and be assured of what to expect from the FAS. The Government and the FAS scheme manager has considered the concerns raised and, as a result, the FAS scheme manager will issue data summaries to members before the valuation asking them to verify the data held on them. In addition, the DWP has made it a requirement that the FAS scheme manager provides details of the asset share, together with a forecast of assistance and lump sum entitlement, to individuals shortly after their scheme assets transfer to government. The FAS scheme manager will provide forecasts of assistance annually thereafter.

Question 31: Comments are invited on the proposal for the FAS scheme manager to waive information requirements.

5 responses: from 5 organisations.

Discretion of the FAS scheme manager to waive some or all information requirements

174. In order to prevent the burden of supplying information that is not relevant or necessary, the Government proposed a discretion for the FAS scheme manager to partly or fully waive the information requirements where it considers appropriate to do so.

175. All respondents agreed with the proposal on waiving information requirements. A comment was made that that the discretion should be used carefully, ensuring that the information waived would not be

subsequently required by the FAS scheme manager, at which point it may be more expensive or difficult to obtain.

The Government's Response

176. The Government is pleased that respondents agree with this proposal. The Government confirms that any decisions to waive information would only be taken by the FAS scheme manager after careful consideration of the circumstances of the pension scheme involved.

Question 32: Comments are invited on the proposal to remove the provision to issue “no entitlement” determinations to a particular category or class of members of a scheme on the FAS website.

4 responses: from 4 organisations.

Removing a provision which is no longer required as a result of the changes concerning FAS qualifying members

177. The change in definition of qualifying member renders the existing provision to issue group eligibility decisions on the FAS website redundant. The Government therefore sought feedback on its proposal to remove the existing provision to issue group eligibility decisions on the FAS website.

178. All the respondents agreed with the proposal.

The Government's Response

179. The Government welcomes the support for this proposal.

Question 33: Comments are invited on the proposal that trustees or managers may request a review of their pension scheme valuation and on the proposed deadline for a request for a review to be made.

5 responses: from 5 organisations.

Reviewable determination: approval of the valuation

180. The Government proposed that the timescale in which trustees should be able to request a review of the FAS scheme manager's approval of the valuation should be 14 days from the date that the approval determination is made. This timescale was deemed appropriate as the FAS scheme manager will be expected to work closely with trustees throughout the preparation period and valuation.
181. The majority of respondents welcomed the proposal for this right of review and the deadline in which an application for a review should be made. A comment was made that 14 days might be too short where, for example, the timescale may span a bank holiday or other holiday, and an alternative proposal of 14 'working' days was suggested.

The Government's Response

182. The 14-day deadline was proposed on the basis that there will have been considerable contact between the FAS scheme manager and the trustee in the lead up to the valuation and so there should be little or nothing which is unexpected in the valuation. To that end the number of review requests expected is low, and the 14-day timescale would enable swift progression to asset transfer.
183. However, the Government acknowledges that there may be occasions where the 14-day timescale is difficult to meet and, as a result, the Government intends to revise the deadline in which to request a review, to 21 days. This will address the concerns raised about the timescale spanning bank holidays whilst continuing to acknowledge the considerable contact between the FAS scheme manager and the trustee in the lead up to the valuation.

Question 34: Comments are invited on the ability to request a review of a section 134 or Article 118 direction given by the FAS scheme manager.

4 responses: from 4 organisations.

Reviewable determination In respect of a section 134 (Pensions Act 2004) or Article 118 (Pensions (Northern Ireland) Order 1995) directions

184. As the FAS scheme manager will be able to issue directions under section 134 of the Pensions Act 2004 and the Northern Ireland equivalent, the Government proposed that the person who receives the direction should have the right to request a review of that direction.

185. All respondents agreed with this proposal.

The Government's Response

186. The Government welcomes the support for this proposal.

Section 4: Extension of Assistance

187. The Government anticipated that the proposals on changes to assistance payments would attract interest from scheme members as well as trustees and other pensions professionals. There were 23 responses on issues in this part of the consultation: 10 from individuals and 13 from organisations or representative groups. In addition two meetings were held with members likely to be funded above FAS levels and who will be impacted by the transfer of scheme assets to government. Around 30 people attended these meetings.

188. Departmental officials also received many telephone calls from scheme members who had received an invitation but who were unable to attend. Scheme members were mainly looking for assurance that the interim pensions they are currently receiving from their schemes will not go down when assets transfer. This was a particular concern of those who

took early retirement before their scheme started to wind up and who have not yet reached normal retirement age.

189. The draft Regulations issued for consultation aimed to ensure that members received the full value of their share of scheme assets when a FAS qualifying scheme transferred its assets to government. Responses to the consultation were broadly supportive of the proposals. However, particular concerns were expressed around the proposed rules regarding the payment of lump sums. Many respondents believed that 25 per cent of a member's entitlement should be available to all FAS beneficiaries, regardless of their actual share of scheme assets.

Question 1: The Government would be interested in views on whether this proposed definition covers all the intended categories of scheme members.

5 responses: from 5 organisations.

Qualifying member

190. The consultation proposed changes to the definition of a 'qualifying member' as a consequence of the transfer of assets to government. At present there are some individuals whose schemes can buy out their pensions at a rate above FAS levels. In the future, the FAS will need to be able to pay such people at comparable levels where they are members of schemes transferring assets to government.

191. Four of the five respondents to this question agreed that the proposed definition covered all the intended categories of members. The fifth was not sure whether those who had a contingent right as dependants of members were covered.

The Government's Response

192. The Government believes that the proposed definition of qualifying member covers all relevant members. Individuals with contingent rights, which would become payable on the death of a qualifying member, do not become qualifying members. They are covered by either the FAS survivor definition or the new definition of a scheme rules payment.

Question 2: The Government would be interested to have views on whether it is appropriate to set the dividing line at the point these draft Regulations come into force

8 responses: from 8 organisations.

Assistance structure

193. The Government proposed that each member of the relevant schemes would be allocated an asset share from the remaining scheme funds. This asset share would be turned into a 'notional pension' using actuarial factors to approximate the amount of annuity which could have been purchased for the member. This notional pension would then be compared to the amount due under the current, normal FAS assistance rules. The member would then be paid the higher of the two amounts.

194. If this approach was adopted, the structure of the notional pension would be important. The consultation proposal was that anyone receiving a scheme payment at the point the Regulations come into force would have a notional pension structured in line with their pension scheme rules. Those not in this group would have a notional pension structured in line with normal FAS assistance rules.

195. Six respondents were content with the proposal, with one saying that it would be consistent with most members' expectations and another being of the opinion that it was the value of the asset share that was important, not the structure of the payments.

196. However, two respondents did raise certain issues around the proposed cut-off date.
197. One considered that the condition should be whether or not there was an entitlement to a payment from the scheme before the Regulations came into force. They felt that this would cover the situation where a member might have an entitlement to an interim pension, even if the scheme has decided not to make the payment. They also mentioned circumstances, such as on the death of a member, where they felt there would be an expectation of a scheme-shaped pension.
198. The other respondent raised the point that, given the intention is to provide scheme-shaped payments to those who have an expectation of such payments because they are already receiving a scheme pension, a later date (such as the effective date of the valuation or the date of transfer) would be more appropriate. They noted that, where a person reaches their retirement date after the Regulations come into force, the scheme will have a duty to start paying and this person will, therefore, have an expectation.

The Government's Response

199. The Government wants to avoid, wherever possible, a member's payments going down as a consequence of the transfer of the scheme assets to government. It also needs to provide a specific point at which the judgement about the shape of the notional pension can be settled, as changing this at a later stage would be administratively complex. The point at which a member becomes entitled to a scheme pension does not provide this clarity: some individuals do not have their scheme pension put into payment when entitlement first arises and courts could redefine at some point in the future what entitlement means. It is for these reasons that the Government has decided not to use this cut-off date.

200. The Government considered whether it was appropriate to use the transfer date, but decided that it was not a practical option as well as it leading to different outcomes for members according to the length of time before their scheme was in a position to transfer assets. Leaving the calculation of the notional pensions of those already receiving scheme pensions until after the assets had transferred would prevent a seamless transfer of the responsibility for making payments from schemes to the FAS.

201. However, the Government has decided to amend the draft Regulations to put it beyond doubt that the notional pension will be scheme-shaped in circumstances where the member is entitled to payments from the scheme and has confirmed to the scheme that payments are to begin from a date before the Regulations come into force.

202. The issue of the appropriate cut-off point for survivors is addressed in the response to question 8 below.

Question 3: The Government would welcome any comments on the proposal to calculate the notional pension for those yet to retire in this way.

9 responses: from 9 organisations.

The notional pension

203. The consultation proposal was that anyone not receiving a scheme payment at the point the Regulations come into force would have a notional pension structured in line with normal FAS assistance rules.

204. Whilst most considered the proposal reasonable, some commented on specific areas:

- using the FAS factors might disadvantage some individuals; and

- some members of a contracted-out hybrid scheme who could have paid to be reinstated into the State Scheme would have been better off if they had been allowed to do this and then secured the remaining funds outside of the FAS.

The Government's Response

205. The Government is pleased that this proposal received general support. It acknowledges that some individuals in very specific circumstances might have seen an advantage to having their scheme liabilities discharged outside government. However, some degree of standardisation is necessary to have a workable system. Identifying these individuals who may be disadvantaged by the use of FAS factors would be complex, if not impossible. Further, such an outcome may only be apparent some time in the future. For instance, the amount of State Pension an individual could get by being reinstated into the State Pension scheme can only be known when State Pension age is reached.

206. The Government believes that members are best served by the certainty of the current proposals.

207. Some technical changes have been made to the calculation of a FAS-shaped notional pension, including specifying in more detail the nature of the indexation increases to be included in the calculation and the survivor benefits contingent on the death of the member. In addition the draft Regulations now allow any notional pension to be re-determined after the date at which the member's asset share is calculated if the member subsequently commutes part of their scheme pension for a lump sum or starts to receive a scheme pension before becoming entitled to assistance. This will allow for the appropriate comparison to be made between the notional pension and standard assistance when the member becomes entitled to assistance payments.

Question 4: The Government would welcome any comments on the proposal to calculate the notional pension for those receiving scheme pensions on the day the proposed Regulations come into force in this way.

7 responses: from 6 organisations and 1 individual.

Members receiving a scheme pension

208. The proposal was that this group would have a notional pension structured in line with scheme rules.

209. It was generally felt that this was a reasonable approach, although one respondent commented that it was difficult to say whether the notional pension calculations captured all circumstances. Another respondent commented that some members who have chosen to defer retirement from age 60 to 65 could, under the Government's proposals, end up getting a higher payment than normal. They suggested that, in these cases, the FAS scheme manager should be permitted to deem them to have a normal retirement age of 65.

The Government's Response

210. The Government is pleased that respondents were generally supportive of the proposal in this area. It has carefully considered the provisions for calculating the notional pension and made technical changes to the draft Regulations to try to capture all possible combinations of circumstances in line with the policy intent consulted upon. In particular, extensive changes have been made to the provisions in the draft Regulations and their Schedules which apply revaluation and indexation to both scheme-shaped and FAS-shaped notional pensions. These changes are to ensure that, at the point assets transfer, the notional pension is compared on a like-for-like basis with standard assistance, and so that those whose asset share would have secured an annuity higher than FAS levels are paid the appropriate amount. Provision has also been

made for the appropriate comparison where a bridging payment comes to an end under scheme rules.

211. The number of Schedules to the draft Regulations is the same as the number consulted upon but they have been re-numbered and re-ordered. As previously mentioned, the individual Schedules now contain the provisions to reconcile scheme and assistance payments made to beneficiaries between the start of wind up and the date of transfer.

212. The issue of those who postpone taking their scheme pension is a general one and not directly related to the proposals in the draft Regulations. The Government's initial view is that this is a relatively unusual situation which does not warrant specific rules to deal with it. However, the Government will consider this matter further with a view to making changes at a later date if considered necessary. If that happens the Government would consider transitionally protecting any members already receiving final assistance payments if they would be disadvantaged by the future change.

Question 5: The Government would welcome any comments on the proposal for an annual comparison where the notional pension is higher than assistance.

6 responses: from 6 organisations.

Comparison of notional pension with standard assistance

213. Under the proposed approach an individual may be paid at the rate of the amount of the notional pension, because this is higher than normal FAS assistance when the comparison is first made. However, where the notional pension is flat rate and the normal assistance would be indexed, there could come a point in the future where the normal assistance amount would be higher than the notional pension. The Government proposed to deal with this by having an annual comparison made and moving the individual from payments at the notional pension rate to

payments under the normal assistance rules when the latter became the higher amount.

214. Four organisations thought the proposed approach was a reasonable one, although one pointed out that it might increase the number of calculation enquiries received. The two other respondents thought that this proposal was a step too far: such an approach was burdensome and any possible losses experienced by some members should be weighed against the extra security provided by government payments.

The Government's Response

215. The Government has considered the comments made but does not think that the annual comparison is so administratively difficult or costly so as to outweigh the benefit to members. All processes will be automated and all the information required to make the annual comparison, apart from the level of increase in any particular year, will be collected and input at outset.

Question 6: The Government would be interested to receive comments on its suggested approach for comparing assistance on the grounds of ill health with the notional pension.

5 responses: from 5 organisations.

Members entitled to assistance on the grounds of ill health

216. The Government proposed to determine all notional pensions for members who qualify for FAS payments on the grounds of ill health from the earlier of the date that they started to receive their scheme pension and the date they started to receive assistance. The amount of the notional pension would be compared with assistance calculated under the relevant ill health rules and the higher amount paid.

217. Most respondents were either content or unable to identify issues with the Government's approach. One respondent suggested that the Government might want to consider further the different scenarios on early access on ill health grounds to ensure there were no unintended outcomes for members affected by ill health or their survivors.

The Government's Response

218. The Government has undertaken extensive testing of the proposed provisions against a number of scenarios for those who access their scheme pensions and/or assistance payments early on ill health grounds and the entitlement for their survivors. As a result it has made a number of technical changes to the draft Regulations to ensure that the notional pension is calculated and compared with normal assistance appropriately and in line with the approach consulted upon. See also the response to the following related question.

Question 7: The Government would particularly welcome views on whether there are any circumstances where it would not be appropriate to apply a reduction factor to the notional pension of someone entitled to ill health payments who was not receiving a scheme pension when these draft Regulations come into force.

5 responses: from 5 organisations.

Applying a reduction factor to the notional pension

219. The Government proposed that, where someone entitled to an ill health payment was not receiving a scheme pension when the Regulations come into force, a reduction factor should be applied to their notional pension so that the appropriate comparison could be made with normal assistance.

220. Two responses considered the Government's approach as acceptable. A third commented that although it was content to accept a reduction to

the notional pension on early retirement on ill health grounds, they considered that severe ill health might warrant a more generous approach, ranging from no reduction to partial commutation.

221. A further two respondents thought that the distinction should be drawn between those who were entitled to a scheme pension rather than those actually in receipt of a scheme pension.

222. Lastly a respondent queried the rationale for the Government's approach. They considered that reduction for future ill health early retirements should not be made when a reduction is not being applied to those ill health pensions in payment prior to the Regulations coming into force.

The Government's Response

223. The Government believes that its proposals do recognise the circumstances of those who are severely or terminally ill. The draft Regulations ensure that no reduction will be made to the notional pension of any member who becomes entitled to assistance on the grounds of severe ill health or terminal illness.

224. The Government has considered further the circumstances when a reduction needs to be applied to those entitled to early reduced assistance payments on the grounds of ill health. The draft Regulations have been extended to capture further combinations of circumstances and amended so that a reduction factor will only be applied to those members who become entitled to a reduced ill health payment after their asset share has been determined. Where a member is not receiving a scheme payment or assistance payment when their asset share is calculated, their notional pension will be determined as the amount which their asset share could have provided from their normal retirement age. If they become entitled to reduced assistance on the grounds of ill health at an earlier age, the notional pension will also be reduced so that

the comparison between their FAS entitlement and what their asset share could have purchased at that earlier date can be on a like-for-like basis.

225. A reduction factor will not be applied to any notional pension of a survivor or surviving dependant where the member dies before the valuation date and the survivor/dependant is allocated their own asset share at the valuation date. Where a member dies after the valuation date the amount of the notional pension which would be compared with standard survivor assistance will be the proportion of the member's notional pension after any reduction which applied to it.

226. The Government believes that these amended provisions meet the stated policy intention of only applying a reduction factor to the notional pension where it is needed to ensure that it appropriately reflects the amount of payment which could have been purchased for the member at the date that entitlement to a reduced ill health payment began.

Question 8: The Government would welcome any comments on its proposals for calculating the amount of notional pension payable to a survivor or surviving dependant and comparing with assistance calculated under normal rules.

6 responses: from 6 organisations.

The survivor notional pension

227. The Government proposed determining a scheme-shaped notional pension for survivors and surviving dependants if the member or survivor pension was in payment when the Regulations come into force, and a FAS-shaped notional pension where no scheme pension was in payment at that point. Survivors and dependants of members who die before asset shares are allocated at the valuation date will have their own asset shares from which their notional pensions will be calculated. Where the member dies after the valuation date the survivor or

dependant's notional pension will be based on the relevant survivor/dependant's proportion of the member's notional pension.

228. Most organisations that responded were broadly content with the Government's proposals, although some were a little cautious due to the perceived complexity of the different approaches. They saw effective communications to members as a means of mitigating their concerns.

229. One respondent considered that it might be more appropriate for the cut-off date to be the member's date of death and whether this occurred before or after the Regulations come into force, rather than whether a survivor or surviving dependant was receiving a scheme pension at that point. This would ensure that beneficiaries were not treated differently on the basis of how quickly their schemes were able to put payments into place.

The Government's Response

230. The Government welcomes the broad confirmation that it has proposed an acceptable approach. A number of the extensions to the draft Regulations previously mentioned which have been made to capture particular circumstance apply to survivors. The changes have been made to ensure that notional pensions for survivors and surviving dependants are calculated and compared with standard survivor assistance appropriately.

231. The Government has agreed the suggestion that it is more appropriate for the date for determining whether a survivor should have a scheme-shaped or FAS-shaped notional pension calculated in respect of them, should be the date of the member's death rather than whether or not the survivor was in receipt of a scheme pension when the Regulations came into force. As a result, the draft Regulations have been amended so that a scheme-shaped notional pension will be determined for the

survivor/dependants of a member who was receiving scheme payments and who dies before the Regulations come into force.

Question 9: The Government would welcome views on the circumstances where it does, and does not propose to re-determine payments for surviving dependants.

5 responses: from 5 organisations.

Re-determination of the payments to surviving dependants

232. The Government proposed to re-determine the amount of assistance for remaining surviving dependants (when one of them becomes eligible or ceases to be eligible), if the member was not receiving a scheme pension at the point the draft Regulations come into force and where the notional pension will be shaped according to normal FAS survivor rules.

233. The Government said it did not propose to re-determine payments to surviving dependants where the member was receiving a scheme pension at the date the Regulations come into force and where the notional pension will be shaped according to the survivor provisions in the scheme rules.

234. All respondents were either content or considered the Government's approach as reasonable and consistent with the principles behind the basis used for calculating other payments.

The Government's Response

235. The Government welcomes the confirmation that its proposed approach is appropriate. It has made some minor changes to the calculations to ensure that survivors and surviving dependants receive the correct amount of any indexation when notional pension payments are re-determined. Similar changes have been made where assistance

payments are re-determined following a change in the number of survivors or surviving dependants.

Question 10: The Government would welcome comments on this approach to death benefit guarantees.

7 responses: from 6 organisations and 1 individual.

Guarantee periods

236. The Government proposed that only members who, at date of death, are receiving scheme pensions when the Regulations come into force and whose notional pensions are higher than FAS assistance, will have any remaining death benefit guarantee paid to the beneficiaries in the form specified in the scheme rules. The Government did not propose making any guarantee period payments for those who will be paid normal assistance or at the level of a FAS-shaped notional pension where that is higher than normal assistance.

237. Five respondents generally agreed with the Government's approach. Another questioned the rationale to pay guarantees and considered that by offering such guarantees the FAS would be looking to reflect options which are only available under the existing scheme rules for certain schemes and that the FAS should pay only basic assistance.

238. One respondent commented that paying the outstanding guarantee period where the pension was in payment when the Regulations came into force was consistent with the Government's proposal on the pension shaping cut-off date. This respondent also drew attention to the fact that some schemes would return the member's own pension contributions in the event of death before starting to draw scheme pension.

The Government's Response

239. The Government welcomes the general acceptance of its approach on paying outstanding guarantee periods. Such payments will only be made to those receiving scheme pensions when the Regulations come into force, where they are funded above FAS levels and thus being paid at the level of their notional pension, which will have been calculated to reflect any guarantee period outstanding at the valuation date.

240. A new regulation has been added to the draft Regulations to set out how the FAS scheme manager will make such payments.

241. The Government agrees that, in keeping with the general principles for the funding and calculation of assistance outlined elsewhere, payments following the death of members not receiving scheme pensions when the Regulations come into force should be limited to the relevant payments for any survivors and/or dependants in line with normal assistance rules.

Question 11: The Government would be interested in any comments on the proposed conditions for obtaining a lump sum; the method proposed for calculating it and the proposed reduction in the entitlement of the member and that member's survivors and surviving dependants as a consequence.

18 responses: from 12 organisations and 6 individuals.

Commutation of assistance

242. The Government proposed that certain FAS members should be able to commute part of their assistance into a lump sum. It further proposed that this amount should, subject to normal tax limits, be paid tax free.

243. It proposed that this option should be limited as follows:

- to those who had accrued scheme benefits in their own right; and
- to those who had an asset share allocated to them which was higher than nil; and

- only available if the scheme had not put a pension into payment before the scheme assets were transferred to government; and
- only offered when assistance is first put into payment.

244. The Government proposed that the maximum amount available to be commuted would be calculated broadly in line with tax legislation for pension commencement lump sums: generally speaking a maximum of 25 per cent of the capital value of the pension and lump sum received. Where the member's share of scheme assets is less than this amount, the maximum lump sum which could be taken will be the amount of the member's asset share.

245. If the member decided to commute part of their payment this would have an impact on any survivor payment made subsequently, as the survivor payment would be based on the lower entitlement.

246. All respondents supported the proposal to allow for lump sum commutation, but there were comments on the detail.

247. Eleven respondents objected to the limit on the lump sum commutation to the amount of the individual's asset share. Most thought that the FAS should allow for a lump sum commutation of the value of 25 per cent of the payment due, regardless of the amount of the individual's asset share, although one suggested that the limit should be the overall mean amount of asset share. Various reasons were given, but these respondents generally thought that it was unfair for individuals to be treated differently, based on the level of funding in their scheme. Two respondents thought that the argument on cash flow used in the consultation document was misguided, as the scheme assets will be transferring to government.

248. Two respondents noted that some members might have had a protected right under tax legislation to take a larger proportion of their scheme pension tax free.

249. Three respondents addressed the impact on survivors' payments: one said that the member should not be permitted to commute part of the contingent payment for a survivor; one acknowledged that the proposal was the same as applied in the PPF; and one said that it was important that members were made aware of the consequences for survivors before they made their decision.

The Government's Response

250. The proposal to allow certain members to commute part of their assistance is intended to put them in the same position as the members of schemes which wind up by purchasing annuities rather than transferring assets to government. Members of those schemes which have purchased annuities will have the commutation offered by the annuity provider based on the amount of the annuity, which would reflect the level of the member's asset share.

251. The Government has considered carefully the various issues raised by respondents and, in particular, the strongly-held view that it should allow for lump sum commutation of the value of 25 per cent the payment due, regardless of the amount of the individual's asset share. However, it has decided to make no changes in this area.

252. Whilst, as some respondents have commented, such commutation would be cost neutral over the long-term it does, as the consultation document pointed out, bring costs forward. The value of the assets being transferred to government was taken into account when the Government calculated the affordability of the extensions to the FAS announced in December 2007. It is not therefore available to meet the costs of extending the commutation proposals.

253. The Government recognises that, under the proposed approach, the member's action in commuting part of their assistance will result in any

survivor receiving a payment that is lower as a consequence. It accepts that many schemes would base their survivor payments on the unreduced pension. However, they do this by reducing the commuted amount. Given the strong views on the amount already mentioned, the Government feels that maximising the amount that can be commuted has greater priority (members will have the option of commuting a smaller proportion if they wish). However, the FAS scheme manager will ensure that, before members decide to commute assistance, they will be made fully aware of the impact this will have on any survivor payments.

254. HM Revenue & Customs is planning to bring forward regulations which will, subject to Parliamentary approval, provide tax relief for the assistance lump sum. The new FAS assistance will be liable to the lifetime allowance charge² as with pension payments from a registered pension scheme. The Government recognises that some individuals have protection from this tax charge and this protection will continue. However, the FAS is not paying an individual's scheme pension and, in order to minimise administrative costs and hence increasing funds available for making assistance payments, some standardisation is necessary and other forms of protections from normal tax charges will not apply.

255. Some drafting changes have been made to the draft Regulations to ensure that calculation of the maximum lump sum more closely reflects the tax requirements for pension commencement lump sums.

Question 12: The Government would welcome any comments on how it proposes to deal with early retirees.

6 responses: from 6 organisations.

² The lifetime allowance is an overall ceiling on the amount of tax privileged pension savings that any one individual can draw. The exact figure will be whatever the "standard lifetime tax allowance" for the tax year concerned is, or a multiple of this figure where an individual has certain protection from the lifetime allowance charge. A tax charge arises if a pension or other benefits, including future FAS assistance, exceeds the relevant lifetime allowance when they are first received. This charge is set at a rate designed to recoup tax relief on the excess amount.

Early retirees

256. The Government proposed that the FAS would only pay the amount of the notional pension to those who had taken early retirement in their scheme until they reached their date of entitlement under the FAS rules. At that point their notional pension will be compared to normal assistance and the higher amount paid, as described above.

257. Respondents welcomed this proposal. One commented that they thought this proposal would result in a difference of treatment in the FAS between those with an annuity and those without an annuity.

The Government's Response

258. The Government is pleased with the support shown for this proposal. It has looked carefully at the way in which the notional pension will be calculated and compared with normal assistance and made some technical changes here and in the provisions for reconciling FAS and scheme payments with entitlement. These changes include allowing the FAS scheme manager to take into account interim pension payments, and payments based on the notional pension which are made under the Regulations prior to entitlement to a FAS annual payment or ill health payment, when comparing the notional pension and normal assistance of a member who started to receive their scheme pension before becoming entitled to assistance. These changes should ensure broadly comparable outcomes between different categories of qualifying members, regardless of whether a scheme discharges its liability to an early retiree by purchasing annuities or transferring assets to government.

Question 13: The Government would also welcome comments on circumstances where it may not be appropriate to take account of all payments made before FAS entitlement arises in relation to all members (including those for whom scheme payment may have been made early on account of ill health).

4 responses: from 4 organisations.

Taking account of scheme payments before FAS entitlement

259. The Government had not identified any circumstances where it would not be appropriate to take account of payments made prior to FAS entitlement.

260. Of the four responses received on this question, three did not believe there are any particular circumstances where it would not be appropriate to take account of all payments made before FAS entitlement arises. However, one respondent suggested that the FAS scheme manager should be given discretion to disregard certain payments, subject to close liaison between the FAS caseworker and the scheme trustees.

The Government's Response

261. The Government welcomes support of its policy proposal and as no specific payments have been identified as appropriate to disregard, it does not propose to specify that any payments made before FAS entitlement should be disregarded. When calculating the amount to be paid, the FAS scheme manager will take account of past payments from the scheme to determine if and how future payments of FAS should be adjusted to ensure that the member receives the correct amount of assistance over the whole period of their entitlement. The technical changes to the draft Regulations mentioned in the response to the previous question will help to achieve this.

Question 14: The Government would welcome any comments on the circumstances in which it proposes to make payments to certain survivors who do not come within the FAS survivor definitions.

6 responses: from 6 organisations.

Scheme rules survivors

262. This question concerned individuals who start getting a survivor pension from the scheme after it begins to wind up and who would not qualify as a survivor under the FAS rules for example. The Government proposed that, where this pension was in payment before the asset share amounts were determined, the FAS would continue to make payments at the level of the notional pension for as long as entitlement would have continued under the scheme rules.

263. The respondents were content with the proposals. One commented that it will be necessary for there to be clear communications with schemes and members to ensure all are aware of the cut-off date and the difference between the FAS rules on survivors and what the scheme might have provided.

The Government's Response

264. The Government welcomes the support for this proposal. It will ensure that the FAS scheme manager is fully aware of the need to address this issue in its communications strategy.

Question 15: The Government would welcome any further comments on the extent to which the proposals outlined in this Section give effect to the commitments made in December 2007.

3 responses: from 3 organisations.

Overall approach

265. Two respondents considered the overall approach taken to be reasonable. The other respondent applauded “the diligence which has been applied in attending to the spirit and the letter of the 2007 Statement when drafting the Regulations and composing the Consultation.”

The Government’s Response

266. The Government welcomes the recognition of the steps it has taken to ensure that the draft Regulations deliver effective implementation of the announced extension of the FAS.

267. The Government has made one further change to the provisions calculating assistance payments to reflect the announced intention but which was not hitherto fully reflected in the FAS Regulations. This is a provision for a deferred member’s accrued pension to be revalued up to the start of wind up in line with scheme rules where this is higher than the statutory minimum. Assistance payments will be recalculated for any beneficiaries who will be impacted by this change.

Question 16: The Government would welcome your views on the sharing of relevant information owned by Her Majesty’s Revenue and Customs with the FAS scheme manager, its staff and any third party provider.

4 responses: from 4 organisations.

Information sharing

268. In order to calculate and pay FAS assistance accurately and efficiently, the Government sought feedback on its proposal that data owned by Her Majesty’s Revenue and Customs which is held on the National Insurance Pay As You Earn system should be shared, where relevant and necessary, with the FAS scheme manager, its staff and its commercial provider.

269. All respondents agreed with this proposal.

The Government's Response

270. The Government welcomes respondents' agreement with this proposal.

Question 17: Comments are invited on the proposals to a right of review of the FAS scheme manager's determination in relation to lump sums, indexation, early retiree assessments and scheme beneficiaries assessments and the timescales in which a review can be requested in relation to these matters.

7 responses: from 7 organisations.

Reviews and timings for lump sum, indexation, early retiree and scheme beneficiaries

271. As a result of the changes to the assistance structure, the Government proposed new review rights relating to lumps sums, indexation, early retiree eligibility and scheme beneficiary eligibility and assessments. Feedback was sought on the new review rights and the timescale, of one month from the date of determination, in which to request a review.

272. All respondents agreed with this proposal. However, some respondents felt that a one-month deadline in which to apply for a review would be too short and suggested a two-month period instead. A concern was raised that the proposed rights of review should not result in further requests for information from trustees, managers or former administrators of the pension scheme.

The Government's Response

273. The Government welcomes support of the proposals for new rights of review and appeal and appreciates the concerns expressed. The Government can confirm that provision already exists in the Financial Assistance Scheme (Internal Review) Regulations 2005 for the FAS

scheme manager to extend the period in which the review must be requested up to 12 months where it considers reasonable. The Government believes that this provision will accommodate review requests which have reasonably been made late and therefore it does not propose to change the proposed one-month deadline.

274. It is not possible to say that there would never be a need for further information from trustees, managers or administrators in connection with a review. It may be that the member requires the help of one of the above in order to support their application for review. The Government believes that the likelihood of the FAS scheme manager needing further information from these sources is low as the FAS scheme manager will have made a determination in possession of all the information it considers necessary.

Section 5: Changes to existing timescales for provision of information and internal reviews

275. The draft Regulations aimed to ensure that information, reviews and appeals were relevant and, in light of operational experience, proposed changes to existing information requirements, reviews and appeals. Responses to the consultation were broadly supportive of the proposals. However, particular concerns were expressed around the communication of future assistance entitlement and the communication of the consequences on survivors' benefits of taking a lump sum.

276. Further details on information, review and appeals issues raised during the consultation, and the Government's response, are provided in this section.

Question 1: Comments are invited on the proposal to exclude irrelevant trustee information from annual payment and ill health payment determination notices where the scheme assets have transferred to government and the trustee has been discharged.

6 responses: from 6 organisations.

Information to be provided in a determination notice

277. Where annual payment and ill health payment determinations are made after the trustee has been discharged, proposals were made to exclude the trustee details from the determination of payment as the trustee details will no longer be relevant.

278. All respondents agreed with this proposal.

The Government's Response

279. The Government welcomes respondents' agreement with this proposal.

Question 2: Comments are invited on the proposal to reduce the timescale for provision of information from potential beneficiaries of wound up schemes from six months to two months.

5 responses: from 5 organisations.

Changes to existing timescales relating to information from potential beneficiaries of wound up schemes

280. In light of operational experience, the Government proposed a reduction to the timescale for the providing of information by potential beneficiaries.

281. The majority of respondents agreed with this proposal. However, a suggestion was made that, rather than the timescale for response being reduced, communications to members should make clear that the quicker the response, the quicker that FAS levels of payment would be implemented.

The Government's Response

282. Practical experience of running the FAS has demonstrated that two months is sufficient to obtain information of this nature and the Government believes that this reduction in timescale will avoid wasted time in the process of providing assistance. In cases where the potential beneficiary is unable to meet the proposed two-month deadline, the FAS scheme manager is able, as now, to extend the deadline where it considers reasonable to do so. The Government therefore sees no merit in retaining the existing six-month deadline.

Question 3: Comments are invited on the proposal that the timescale for making a review request should be reduced to one month in relation to scheme notification and qualification determinations.

6 responses: from 6 organisations.

Changes to existing internal review timescales

283. In light of operational experience, the Government proposed a reduction to the existing two-month timescale in which a review can be requested in relation to determinations relating to scheme notification and qualification.

284. Mixed responses were received to this proposal. Whilst some respondents agreed with the proposal others felt that the two-month deadline should be retained, stating reasons that it may be difficult to compile the information needed to support a review in one month, especially if the applicant is dealing with a large number of schemes. Some respondents suggested alternative timescales to the one-month proposal.

The Government's Response

285. Practical experience of running the FAS has demonstrated that a one-month period in which to request a review of the scheme notification and qualification is sufficient in the vast majority of cases. The Government can confirm that a provision already exists for the FAS scheme manager to accept a review request up to 12 months from the date of the decision under review, where the FAS scheme manager considers that a late review request is reasonable.

286. The Government believes the timescale proposed for the review application is reasonable in light of operational experience and existing provisions provide the flexibility to extend the review request timescale. The Government therefore does not intend to change its proposed policy.

Question 4: Comments are invited on the proposal that there should be no time limit for requesting a review of annual payment payable and the amount of ill health payment payable though the request for a review must relate to a reviewable determination.

6 responses: from 6 organisations.

Reviewable determinations – annual and ill health payments

287. The Government sought feedback on its proposal to remove the deadline in which to request a review of determinations relating to annual payments and ill health payments.

288. All respondents were in agreement with the proposal.

The Government's Response

289. The Government welcomes support for this proposal.

General – Consultation Feedback

290. Wider concerns were expressed in the responses that, whilst these proposals implemented the final elements of the December 2007 announcement, the Government had still failed to replicate what pension schemes would have provided if schemes had not begun to wind up underfunded. In summary, wider concerns related to:

- implementation of the Parliamentary Ombudsman's report;
- paying full expected pension;
- 90 per cent means 90 per cent;
- paying full indexation;
- the FAS cap;
- unrestricted early access for all; and
- comparisons with the Government's approach to funding the banks.

Implementation of the Parliamentary Ombudsman's Report

291. Within the responses received in respect of this consultation, comments were made that the Government had not implemented the Parliamentary Ombudsman's findings.

292. The Government does not agree with this view.

293. The case was also considered by the Court of Appeal which agreed with the Government that the maladministration identified by the Ombudsman could not be assumed to be a significant contributory cause of the financial losses of affected members. Neither made any compensation order.

294. The Government believes that the FAS, as extended by the December 2007 announcement, provides an appropriate response to the Ombudsman's report.

Paying Full Expected Pension

295. Respondents commented that they were unhappy that the FAS does not pay 100 per cent of the payments they would have received from their pension scheme, had it not wound up underfunded.

296. The FAS was never designed to replicate all the benefits that an individual scheme may have offered and the Government is aware that the design and funding of a scheme like the FAS will rarely satisfy everyone. In designing the FAS it has been important to balance the commitment to provide benefits to members with the costs on the taxpayer.

90 per cent means 90 per cent

297. Views were expressed that the Government's commitment to provide 90 per cent of an individual's pension is still not being met.

298. In December 2007, when the final extension to the FAS was announced, the Government stated that:

“All scheme members will be guaranteed 90 per cent of their accrued pension at the date of commencement of wind up, revalued to their retirement date.”

299. The statement made it clear that the 90 per cent figure related to the amount of the expected pension “*at the date the scheme began to wind up*”. In the case of revaluation the note to the statement said that revaluation, after wind up began, would be based on FAS rules (revaluation in line with price inflation, capped at 5 per cent per year, compound for that period). The level of indexation announced was also clearly stated as being in accordance with the FAS, not pension scheme, rules.

Full Indexation

300. Several respondents disagreed with indexation being restricted to post 1997 pension accruals. As a statutory requirement for all defined benefit pension schemes to index pensions in payment was not introduced until 1997, not all pension schemes would have paid cost of living increases on pension accruals before then. The Government estimates that, to provide indexation at Retail Price Index capped at 2.5 per cent on all assistance, funding requirements would increase by approximately one third: an extra £856 million (net present value) over the lifetime of the scheme. The Government still believes that the FAS should cover as large a percentage of the expected pension as possible, as this is of immediate benefit, to the largest number of people.

The FAS Cap

301. Some respondents considered that the restriction placed by a cap was unfair on people who had been in pension schemes for many years or were high earners - this is on the basis that their contributions to a scheme were higher.

302. The Government believes that the cap is a necessary part of the FAS structure. The cap which is index linked, currently stands at £29,386 a year. This is nearly three times the average occupational pension. Only around two per cent of people over State Pension age who currently receive an occupational pension receive more than this from any one pension scheme.

Payments Pre 14 May 2004

303. Several respondents raised the issue of payment of assistance not being backdated before May 2004. The FAS was first announced in May 2004 and the Government continues to believe that payments should only be

made from that date. This provides a balance between the commitment to provide assistance and the costs on the taxpayer.

Unrestricted Early Access for All

304. Many respondents commented on the fact that the FAS does not facilitate the early access of pensions.

305. Allowing for unrestricted early access is an area where the Government has been unable to allow for the FAS to follow pension schemes and the PPF. Pension schemes do not always intend to have cost neutral early retirement policies, though it is possible to set early retirement factors which are expected to be cost neutral to the pension scheme. However, the FAS operates a pay-as-you-go system, being funded by the taxpayer and, as a consequence, making payments early, even at reduced amounts, brings costs forward unacceptably. Unrestricted early access could increase assistance payments by about 15-20 per cent over the next few years.

306. However, help is available to those people who have a particular need for early access. Those members who are terminally ill are paid immediately. Members who are within five years of their retirement age and cannot work on health grounds are paid reduced assistance.

307. Early payments may also be made to those whose life expectancy is reduced because of their health. In these circumstances unreduced assistance from age 55 may be paid. In addition, protection is provided to existing early retirees by the payment of the notional pension on transfer.

Government Support for Banks

308. Comments were made about the Government's support to the banking system following its collapse. Objections were raised that this support

has ensured the continuation of defined benefit pension schemes for bank workers whilst those receiving FAS assistance were not fully protected.

309. The Government believes that taking action in respect of the banks was vital to the stability of the economy as a whole. Taking no action would have had greater costs for the taxpayer. The taxpayer will now benefit from money received when the Government's investments are sold.

310. The Government considers the strengthening of these pension schemes to be an inevitable effect of the necessary action taken to protect the country's wider economic interests.

Further Regulations

311. The current draft Regulations deliver the commitments made by the Government in its December 2007 announcement. As the FAS involves a very complex area of policy, it is likely that further regulations will be required in the future. These will refine the operation of the scheme in light of operational experience.

List of Respondents to the Consultation

Association of Pension Lawyers
Beattie, Peter
Bebbington, Sue
Benson, John
Black Disabled People's Association
Buck Consultants Ltd
Burbridge, Graham
Colah, Pahlan
Capita Hartshead
Duffin, Alison (three responses)
Elcena Jeffers Foundation
First Actuarial
GMB
Hammonds LLP
Healy, Philip
Hewitt Associates Ltd
Humphrey, Peter
Hunt, John
Hymans Robertson LLP
Moloney, Patrick
Marnes, Alan
Molley, Kenneth
Nicholl, Richard
Parr, E.A.
Pensions Action Group
Pensions Ombudsman
Pension Protection Fund
Sargent, Patricia
Sovereign Trust
The Society of Pension Consultants
Royal London Group
Ruse, Paul
Trustee Advisory Panel
Waugh, T
Western, B H
Wilson, Brian
Unite
United Engineering Forgings
Xaffinity Paymaster
Stakeholder meeting London
Stakeholder meeting Nottingham