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	Date: 11 February 2009	

Dear Sir or Madam

**Consultation on draft Regulations - The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009**

This consultation document seeks views on the draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, which are being introduced to implement further elements of the extension to the Financial Assistance Scheme (FAS) announced on 17 December 2007 by the then Secretary of State for Work and Pensions.

They include measures to implement all the remaining enhancements to the calculation of the amount of assistance for those who are not members of FAS qualifying schemes whose assets will be transferred to government. They also make certain changes to the administration of FAS, including a proposal to confer responsibility for managing the FAS on the Board of the Pension Protection Fund.

The consultation document also sets out proposals for implementing the remaining parts of the changes announced in December 2007, including the taking into government of the remaining assets in FAS schemes and making the payments associated with them. There will be further formal consultation on the latter proposals when draft Regulations to implement them are published later this year.

## **Where can I find the consultation document?**

The consultation document is available on the Department's website at:

## **Timing**

The consultation period begins on 11 February 2009 and runs until 25 March 2009.

Government guidance provides that consultations should normally last for at least 12 weeks. However, the guidance suggests that in certain circumstances Departments may depart from this.

The Department has already undertaken considerable informal consultation with a number of outside stakeholders who have assisted us in developing these detailed proposals. These include groups representing the members of affected pension schemes, in particular the Pensions Action Group and the trade unions, in particular the GMB, Unite and Community. Both officials and Ministers have held a number of meetings with these groups. Officials also have regular contact with a number of trustees and insurers who have given us the benefit of their extensive knowledge of occupational pension schemes.

The Government has sought to reflect their views in this consultation document and made them aware in advance of the timing, content and intentions behind the draft Regulations.

Taking account of the wider consultation that has already taken place, and the desire to bring in as soon as possible the remaining increases to the amount of Assistance qualifying members can receive, Ministers have decided that a formal written consultation period of 6 weeks will allow for meaningful consultation. Further meetings will be offered to stakeholder groups during this period.

## **How can I respond to the consultation?**

The Government would be grateful for your comments on any of the points covered by the draft Regulations. Please ensure that your response reaches us by the closing date.

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

Please send consultation responses to:

E-mail fas-responses@dwp.gsi.gov.uk

Post: Financial Assistance Scheme Consultation  
Department for Work and Pensions  
Private Pensions Policy  
Adelphi  
3rd Floor  
1-11 John Adam Street  
London  
WC2N 6HT

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

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

If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Charles Cushing  
Department for Work and Pensions, Adjudication and Constitutional Issues,  
Information Policy Division,  
Freedom of Information Unit,  
1-11 John Adam Street,  
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Phone: 0207 962 8581  
Email: charles.cushing@dwp.gsi.gov.uk or carol.smith14@dwp.gsi.gov.uk

More information about the Freedom of Information Act can be found on the website of the Ministry of Justice.

## **What will the Government do after the consultation?**

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

Whilst it is Government policy that regulations which have an impact, however minor, on the private sector should, wherever possible, come into force on just two agreed dates: the 6th April and 1st October, Ministers believe that it is in the public interest to implement these Regulations quickly to help ensure people receive revised assistance as soon as possible.

## **The consultation process**

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

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Yours faithfully,

***Pam Bryson***

**Policy and Legislation - Financial Assistance Scheme**

**Copied to:**

Age Concern  
Association of British Insurers  
Association of Consulting Actuaries  
Association of Pension Lawyers  
Auditing Practices Board  
Board for Actuarial Standards  
British Chambers of Commerce  
Community the Union  
Confederation of British Industry  
Department for Business,  
Enterprise & Regulatory Reform  
Engineering Employers' Federation  
Federation of Small Businesses  
Financial Services Authority  
GMB Union  
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HM Treasury (MOCOP)  
Independent Pensions Research  
Group  
HM Revenue & Customs  
Institute of Chartered Accountants  
in England and Wales  
Institute of Chartered Accountants  
in Scotland  
Institute of Directors  
Institute of Payroll and Pensions  
Management  
Investment Management  
Association

National Association of Pension  
Funds  
National Consumer Council  
National Pensioners' Convention  
The Pensions Advisory Service  
Pensions Action Group  
Pensions Ombudsman  
Pension Protection Fund  
Pensions Regulator  
Regulatory Impact Unit  
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Social Security Policy and  
Legislation Division, DSD, Northern  
Ireland  
Small Business Service  
The Association of Corporate  
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The Faculty of Actuaries  
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The Pensions Management  
Institute  
The Scottish Executive  
The Society of Pension  
Consultants  
The Welsh Assembly  
Trades Union Congress  
UNISON  
Unite  
Unite the Union

We have also sent copies of the consultation document to private individuals who have expressed an interest in participating in the consultation exercise.

<b>Department for Work and Pensions</b>	
	<b>CONSULTATION</b>
	<b>The draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009</b>

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# SECTION 1: Introduction

# The Financial Assistance Scheme

## Background

### **The original scheme**

1. The Financial Assistance Scheme (FAS) was designed to help those who had suffered significant losses to their pensions as a consequence of employer insolvency between 1 January 1997 and 5 April 2004. It was first announced on 14 May 2004 but, since then, has been successively extended a number of times, covering more people and offering increased benefits.
2. An operational unit based in York opened for business on 1 September 2005 to administer the FAS - the FASOU.

### **The December 2007 announcement**

3. On Monday 17 December 2007 the then Secretary of State announced a significant extension to the FAS. The extension provided that:
  - the proportion of accrued pension covered by FAS would be increased from 80 to 90 per cent
  - this amount would be subject to a cap of £26,000 the value of which would be protected
  - payments derived from post-1997 service would be increased in line with inflation, subject to a 2.5 per cent limit
  - assistance would be paid from the scheme's normal retirement age, subject to a lower age limit of 60
  - those who are unable to work due to ill-health would be able to apply for access from the age of 60, subject to actuarial reduction
  - where the share of scheme funds allows, people would be able to commute some portion of their assistance to a lump sum
  - FAS would be extended to members of schemes which wound up underfunded where the employer is still solvent.

This extension would be part-funded by taking into government the assets remaining in the schemes. The additional cost of this package takes the total government commitment to £2.9 billion Net Present Value (£12.5 billion in cash terms).

A copy of the statement made on 17 December can be found on this link: <http://www.dwp.gov.uk/lifeevent/penret/penreform/fas/pensions-hoc-statement-17-12-07.pdf>

## **The future scheme**

4. Taking in the scheme assets has significant implications for the way the FAS operates. At present scheme trustees proceed to wind-up their schemes in the normal manner<sup>1</sup>, identifying the share of the remaining assets that the individual member is entitled to and using this share to discharge the scheme liability to the member, usually by buying an annuity for him from an insurance company. The FAS then provides top-up Assistance payment which mean the member gets 90 per cent of their accrued pension.

5. When the Government takes in the assets remaining in the pension schemes, no annuity will be purchased and the FAS will take on responsibility for making the complete payment for the relevant scheme members. The Government estimates that around half of the schemes eligible for the FAS will transfer at least some of their assets to government.

## **Changes already implemented**

### Assistance

6. Given these complexities, the Government has implemented the changes in stages, to give priority to those elements which offered the most help to the FAS members. These key elements of the Announcement have already been implemented through two sets of regulations which came into force in 2008.<sup>2</sup>

- The proportion of the pension accrued at the date of wind-up covered by the FAS has been increased from 80 to 90 per cent.
- Assistance is now paid from the scheme's normal retirement age, subject to a lower age limit of 60 and an upper limit of 65.
- Those who are unable to work due to ill-health are able to apply for access up to five years before their normal retirement age (rather than from the age of 60 as announced in December 2007), subject to actuarial reduction.
- the FAS has been extended to members of schemes which wound up underfunded where the employer is still solvent.

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<sup>1</sup> The Government has stopped annuitisation where schemes have not entered a binding agreement with an annuity provider or obtained DWP approval. These schemes will eventually transfer their assets to government.

<sup>2</sup> The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 (SI 1432 of 2008); The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 (SI 1903 of 2008)

7. In addition, the Government has recently laid Regulations<sup>3</sup> before Parliament to allow for early access, without actuarial reduction, where a qualifying member has a progressive disease and, as a consequence, has a reduced life expectancy.

8. Further regulations have been made to make an exception to the FAS scheme qualifying conditions to capture those pension schemes where the employer's insolvency event was before 6<sup>th</sup> April 2005 and the pension scheme started to wind up after 5<sup>th</sup> April 2005 - members of such schemes previously failed to qualify for either the FAS Assistance or Pension Protection Fund (PPF) compensation. The FAS Scheme Manager can now consider whether such schemes can qualify for the FAS.<sup>4</sup>

9. It is now the case that all affected people who have reached their normal retirement age are eligible to be paid 90 per cent of the pension they had accrued at the point their scheme began to wind-up (where relevant, restricted to the level of the cap) as either a final or an initial payment. As at 30 January 2009, the FASOU had qualified 793 schemes for the FAS and assessed 12,526 people for payment. Of these 10,169 people are receiving payments, 566 will be paid once they have confirmed their personal details, and a further 1,791 will be paid when they reach their normal retirement age. 51 people are being paid early under the ill-health provisions.

### Administration

10. From 17 July 2008 Regulations provided for the Board of the PPF to help schemes that had not yet wound up to prepare for the transfer of their assets and liabilities to the Government and for providing advice to inform the development of the long-term administrative arrangements.

### **The remaining changes**

11. In parallel with implementing these changes, the Government has been developing the policy to implement the remainder of the December 2007 announcement. The Government envisages these elements being implemented in two phases:

- a package of Regulations that are the subject of this consultation and that the Government plans to introduce this Summer (the Summer Regulations); and
- a further package of Regulations to be consulted on in detail later this year, but details of which are included in this consultation on a preliminary basis (the further Regulations).

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3 The Financial Assistance Scheme and Incapacity benefit (Miscellaneous Amendments) Regulations 2009 laid before Parliament on 11 February 2009.

4 The Financial Assistance Scheme (Amendment) Regulations 2008. SI 2008/3069

## **The Summer Regulations**

12. The Summer Regulations are the subject of this consultation and would make changes to both the Assistance structure and the management and administration of the FAS.

13. The draft Regulations seek to implement the remaining parts of the Assistance structure for those FAS qualifying members whose schemes will not be transferring assets to government. These are:

- the indexation of payments derived from post-97 service;
- maintaining the value of the cap;
- treatment of different tranches of accrued pension (covering split retirement ages); and
- extending survivors' rights to dependent children and surviving partners.

14. The most significant change to the administration proposed here is to confer on the Board of the PPF the functions of the FAS scheme manager, now exercised by the Secretary of State for Work and Pensions. These draft Regulations also seek to make some changes to some FAS administrative procedures, which operational experience has demonstrated would be useful.

15. Throughout the development of these proposals the Government has tried to apply certain principles. These are to:

- achieve a broadly consistent outcome for all FAS members, regardless of whether they have an annuity, took a transfer from their scheme or are members of schemes which will be transferring their assets to government;
- implement the detail of the December 2007 announcement;
- have regard to the overall cost to the taxpayer; and
- take account of the characteristics of the compensation offered by the PPF.

16. Where any of the proposed changes would otherwise result in reducing final payments, transitional arrangements are proposed to protect the amount of Assistance being paid to those already receiving such final payments at the point the new Regulations come into force. (See section on transitional protection later.)

17. These proposed changes will require the introduction of new actuarial factors and the amendment of existing ones. Section four of this Document covers this issue.

## **Further Regulations**

18. The Summer Regulations would not finalise the position of those who are members of schemes which will transfer their remaining assets to government. The Government has, however, described in this consultation document how we intend to

structure their Assistance, so that readers can see the full picture before commenting on the changes we plan to implement in the Summer Regulations.

19. It is important to note that members of these schemes who are over, or who reach, their normal retirement age before the transfer of assets occurs, will continue to be eligible for payments from their scheme and/or initial payments from the FAS, so they will be paid at least 90 per cent of their expected pension. In addition, those who qualify for interim ill health payments will receive these payments from the FAS and members who are assessed as being terminally ill will receive initial payments from the FAS and/or interim payments from their scheme.

20. Finally, this document includes a section, which aims to give an early indication of the Government's initial ideas on proposals to implement the transfer of the assets remaining in FAS qualifying schemes to government.

General issues

***Q1. The Government would be interested in whether anyone thinks there could be an adverse impact on the position of disabled people from these changes.***

***Q2. The Government would be interested in whether anyone thinks there could be an adverse impact on the position of men or women from these changes.***

***Q3. The Government would like any comments in relation to whether the draft regulations achieve the expressed intentions.***

## SECTION 2: The Government's proposals in the structure of the Assistance

# Assistance Structure

## CURRENT POSITION

1. A member or former member of a pension scheme has to be a qualifying member of a qualifying scheme in order to be eligible for the FAS. Once this condition has been met, the amount of Assistance due is 90 per cent of the expected pension, capped if necessary to a maximum level, less the amount payable by the scheme.

2. The FAS also provides survivor Assistance for a spouse or surviving civil partner.

### *Scheme qualification*

3. Legislation currently sets out the qualifying conditions that schemes have to satisfy to be eligible for the FAS. These conditions generally include the requirement that:

- they are not money purchase schemes; and
- they began to wind up between 1 January 1997 and 5 April 2005.

4. Certain exceptions have been introduced to allow those schemes which previously failed to meet the FAS and the PPF qualifying conditions, due to conflicting insolvency and winding up dates, to now qualify for the FAS.

5. Further, the sponsoring employer of the scheme must either be:

insolvent: that is have had an insolvency event or be considered by the FAS scheme manager as unlikely to continue as a going concern; or

solvent: where the FAS scheme manager is satisfied that:

- an appropriate proportion of the debt will be discharged;
- the employer has discharged its Section 75 debt to the value of the Minimum Funding Requirement;
- the employer would have been unable to pay its debts and it was reasonable that the debt was not discharged; or
- a valid compromise agreement was made.

6. These draft Regulations are making no changes to the scheme qualifying conditions. This is an area which the Government continues to monitor in view of its aim that the FAS should be available to members of all appropriate schemes.

7. At present scheme trustees proceed to wind-up their schemes in the normal manner<sup>5</sup>. Part of this involves identifying the share of the assets that the individual

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<sup>5</sup> The Government has stopped annuitisation where schemes have not entered a binding agreement with an annuity provider nor have DWP approval. These schemes will eventually transfer their assets to government.

member is entitled to and then using this asset share to discharge the scheme liability to the member. The trustees can buy an annuity for the member from an insurance company, transfer the asset share into another pension vehicle or, if the amount is below the threshold set by Her Majesty's Revenue and Customs, commute the benefits payable. Where the scheme was contracted-out of the State system, the trustees may have the option to use all or part of the asset share to reinstate the member back into the State system retrospectively.

8. Where a pension scheme qualifies for the FAS the scheme will provide the FASOU with relevant information about individual members to allow the FASOU to calculate the level of Assistance due.

### ***Member qualification***

9. A member of a qualifying scheme qualifies for the FAS if they belonged to that scheme immediately before the scheme started to wind-up and the scheme was not able to fully cover their accrued rights. This can include:

- (i) people in receipt of a pension based on their contributions into the scheme when wind-up began (pensioner members);
- (ii) people who were still contributing into the scheme when wind-up began (active members);
- (iii) those who had left the scheme, but still had accrued rights held by it (deferred members);
- (iv) those with rights in the scheme as a consequence of a divorce settlement (pension credit members);
- (v) someone being paid because they meet the survivor conditions in the scheme.

### ***Payments***

10. Assistance is payable from either the qualifying member's Normal Retirement Age (NRA) or from 14 May 2004, whichever is the later<sup>6</sup>. For the purposes of FAS, a person's NRA is defined as "*the age specified in the rules of that scheme at which that member will normally retire*". Where the NRA is lower than age 60, normal entitlement will begin at 60; where the NRA is higher than age 65, entitlement will normally begin at 65.

11. There is no entitlement for any period prior to 14 May 2004, when the FAS was first announced. So, for instance, if a scheme began to wind up in 1998 and a member reached normal retirement age in 2000, they would not receive any Assistance in respect of the period between 2000 and 2004 - although the scheme is likely to have made relevant payments during that time.

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<sup>6</sup> Regulation 17 of the Financial Assistance Scheme Regulations 2005.

12. When a qualifying member reaches his date of entitlement the FASOU check to see if they have sufficient information to enable the calculation of the qualifying member's final entitlement (Annual Payment).

13. Where such information is available the FASOU assesses the amount of assistance due. The basic calculation is broadly:

(i) the expected pension is calculated up to wind-up using the scheme's own rules;

(ii) this amount is then revalued to the date of entitlement to Assistance, if the scheme offered revaluation. The revaluation rate is the Retail Price Index or 5 per cent per annum compound, whichever is the lower;

(iii) the result of this sum is reduced to 90 per cent;

(iv) where the result of this sum is more than the cap, it is reduced to the cap amount.

14. This gross Assistance is then reduced by the amount of any pension paid to the member from their scheme.

15. The full information needed to calculate final entitlement (the Annual Payment) is normally only available when the scheme reaches the point where they can discharge their liability towards the individual (ie. is ready to annuitise or make some other payment to the member). In the meantime the FASOU can make initial payments - payments on account of entitlement to an Annual Payment. The scheme may also be making payments on account to the member (an interim pension) prior to discharging its liabilities as described above. In that case, the FASOU will top up this interim pension to 90 per cent of the expected pension.

16. Since both FAS initial payments and scheme interim pensions are made on account of entitlement, they need to be reconciled when the scheme discharges its liabilities to each member and Annual Payments can be calculated.

## **PROPOSALS**

### ***Date payment begins***

Different payment ages

17. The Government has been asked to consider paying with reference to a different age. Examples were quoted where schemes allowed for earlier retirement with an unreduced pension where the member was made redundant or where the employer or trustees consented.

18. It is the Government's intention to recognise an earlier retirement age where the scheme's rules provided for earlier retirement based on length of service or age plus service (subject, of course, to the normal limitation of a lower limit of age 60).

However, the Government is not proposing to recognise retirement ages based on other contingent factors, such as redundancy or employer consent, as any such provisions in the scheme rules fall away when a scheme begins to wind up.

19. The Government has been asked to consider circumstances where some individuals report that their scheme operated a system whereby members were permitted to take an unreduced scheme pension at an earlier age than in the scheme rules but where scheme rules were not changed (perhaps because there had been no desire to commit to the change long-term or to incur costs). The Government is not proposing to recognise such unofficial agreements. This is because it would be difficult to establish, with any degree of certainty, which practices were sufficiently well-established to be recognised and it could lead to inconsistent results across the FAS membership. In addition it could result in taxpayers paying more than the scheme was legally required to provide.

#### Pre-14 May 2004 FAS announcement

20. The Government has been asked to consider whether entitlement to the FAS could be backdated for those individuals who reached their NRA earlier than 14 May 2004. The Government committed itself to consider this issue again,<sup>7</sup> but, after looking at the arguments, still believes that paying only from the date the FAS was first announced - 14 May 2004 - is right. Assistance is not designed to replace all lost scheme entitlements and this proposal was not part of the final settlement as set out in the December 2007 announcement. In addition, in relevant cases the expected pension is currently revalued from the date of wind-up to the date Assistance is payable from - i.e. 14 May 2004.

#### Early access

21. Some schemes allow members to take their accrued pension at an age earlier than NRA, albeit at a price - the scheme normally applies a reduction to recognise that the pension was likely to be paid over a longer period. Sometimes this early access was unconditional after a certain age and sometimes it would only be possible with employer and/or trustee consent (and consent was less likely to be given where the scheme was in financial difficulty). This type of early access has never been an aspect of the FAS, but the Government has been asked to consider whether reduced early access to Assistance could be provided for anyone who requests it. However, while paying reduced Assistance over an individual's lifetime would be cost-neutral, it would bring costs forward (an important issue for an assistance scheme like the FAS which operates on a pay-as-you-go basis). The additional value generated by bringing into government the assets remaining in schemes will help fund the improvements to the FAS announced in December 2007. Unrestricted early access was not a part of that announcement and the Government is not proposing to change this.

22. However, the Government has put in place Regulations which allow access to Assistance earlier than NRA in exceptional circumstances:

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<sup>7</sup> In the Government's response to the responses to the consultation on the draft Financial Assistance (Miscellaneous Provisions) Regulations 2008, published on 29 April 2008.

- ill-health: Where a qualifying member is unable to work due to ill-health, will remain so unable until his NRA and is within five years of his NRA, he can obtain access to his Assistance. The amount is actuarially reduced to reflect the fact that payment is being made earlier and potentially longer than expected.
- terminal illness: Any qualifying member who has been diagnosed as terminally ill - that they have a progressive disease and death as a result of that disease can reasonably be expected within six months - is given access to their Assistance from the day they notify the FAS administrators. It is paid without any early access reduction.

23. In addition the Government has today laid before Parliament draft Regulations which would allow any qualifying member to access their Assistance early where they are over age 55, unable to work due to ill-health and have a progressive disease and as a consequence they may reasonably be expected to die within five years. Assistance will be paid without any early access reduction.

24. These provisions are not affected by the proposed changes in these draft Regulations. Where an individual is given early access and has tranches due at different ages the Government intends to uplift/reduce the expected pension based on the NPA of the tranches, in the same manner as is described above.

***Q4. Opinions are sought on the Government's approach to deciding when entitlement should begin.***

***The expected pension***

Rights accrued at different dates

25. There is an outstanding issue with regard to the NRA which the Government promised to consider at this stage.<sup>8</sup> Some qualifying members have built up part of their pension rights based on an age that was earlier or later than their NRA. This can occur when, for instance, a scheme increases its pension age: the accrued service up to that point is still payable by reference to the earlier age.

26. Prior to 6 April 2006 tax rules required a person to take their pension in full, regardless of the differences described above. Schemes generally adjusted the various tranches actuarially to the date the pension was put into payment. The PPF takes a different approach and currently pays compensation based on each tranche, at each payable date. However, such an approach brings costs forward - not a particular issue for a funded system such as the PPF, but important where a system is, like the FAS, being operated on a pay-as-you-go basis. It also leads to many small payments being made for a short period prior to the main retirement date, with disproportionate administrative costs. The Government believes that using limited funds to pay tranches as they fall due (which could only be funded by cutting the FAS benefits somewhere else) would not be the best use of those funds.

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<sup>8</sup> In the Government's response to the responses to the consultation on the draft Financial Assistance (Miscellaneous Provisions) Regulations 2008, published on 29 April 2008.

27. Instead the Government intends to recognise the value of these tranches actuarially. Assistance will still be payable at the single NRA, but where an individual had a tranche of scheme pension accrued to an earlier date, the amount used in the calculation of Assistance will be uplifted to acknowledge that date. Similarly where a person had accrued part of their scheme pension to a later date, that part will be paid as a reduced amount at the earlier NRA.

28. These adjustments will be done using actuarial factors which are intended to achieve actuarial neutrality. The example below demonstrates how this will work.

### **Example 1**

Anne was age 50 when her scheme went into wind up. She has an NRA of age 65. In her scheme she had built up some pension entitlement based on a pension age of 60 and some with a pension age of 65. Revalued to the date that wind-up started these were £1,000 a year and £3,000 a year respectively. FAS will pay Assistance at the NRA of 65.

The first tranche of accrued pension of £1,000 is revalued from the date of start of wind-up to age 65 which produces an amount of £1,500. A factor is applied to this amount which increases the figure to £1,759.50 a year because this tranche was built up on the basis of the earlier pension age.

The second tranche of £3,000 is revalued from the date of start of wind-up to age 65 which produces an amount of £4,500.

These two figures are added together to get the total expected pension of £6,259.50 a year. Assistance is 90% of this amount which is £5,633.55 a year. FAS will pay Anne the rate of Assistance, less the amount of any annuity being paid.

### ***Q5. Comments are invited on this method of reflecting past entitlement to different tranches of accrued rights.***

#### Step-ups and Step-downs (bridging pensions)

29. Most pension scheme members have the amount of their pension set at retirement and the only change is where indexation is applied. However, a few schemes have a more complex arrangement of “step downs” (sometimes known as bridging pensions) or “step ups” built into the scheme rules. The most common example is where a man who retires at age 60 is paid a higher pension which then goes down once the state retirement pension comes into payment at 65.

30. At present FAS takes no account of any prospective changes to the expected pension, but is 90 per cent of the pension due at normal retirement age (NRA). Thus an individual with a “step down” expected pension will, at age 65, be getting more than 90 per cent of the pension they could have expected to get from the scheme at

that age. Conversely someone with a “step up” will not receive FAS based on the higher expected pension at the point of the step up.

31. When schemes with such rules come to buy their members annuities they take two different approaches. They either:

- (i) reflect the change in the annuity, so that payments go up or down at the relevant time; or
- (ii) smooth the changes across the lifetime of the annuity. In the case of a step down structure, this results in lower payments before the step down would have occurred, but higher payments afterwards.

32. The Government is proposing that, for FAS qualifying members who are being annuitised, Assistance will follow the approach taken by the scheme where there is a step down. That is:

- (a) where the scheme has reflected the step down in the annuity structure, Assistance will be based on the expected pension at NRA and then go down to reflect the expected pension at the point the step down applies in the annuity;
- (b) where the scheme has smoothed the changes across the annuity, the Assistance will also be smoothed into the future, using actuarial neutrality.

#### *Step ups*

33. The Government understands that it is very uncommon for schemes rules to apply step-ups to members’ rights. However, where such a scheme comes into the FAS, we intend to take account of it in the manner previously described for tranches.

#### ***Q6. Comments would be welcomed on the treatment of pension step-ups and step-downs in the FAS***

#### ***Assistance calculation***

34. The basic structure of Assistance will not change. The underlying principle remains that qualifying members will:

- to the day before wind-up, have their accrued pension calculated under the rules of the scheme (including, where relevant, the contracted-out rules); and
- from the day of wind-up, FAS rules apply.

35. What this means is that:

(i) someone who was a *pensioner* before wind-up will generally have their Assistance based on the amount in payment the day before wind-up (which will include any increases applied by the scheme for indexation);

(ii) someone who was a *non-pensioner member* at wind-up will have their accrued rights revalued under scheme rules to the date of wind-up. Where the scheme would have revalued part, or all, of the accrued rights, the FAS will continue revaluation of the same proportion, but at RPI capped at 5 per cent per annum compound generally to the date Assistance begins.

(iii) someone who reached their NRA before 14 May 2004 will have their accrued rights revalued from the later of NRA and the start of wind up to 14 May 2004. This revaluation will be at full RPI.

36. The approach to revaluation described above at paragraph 35(ii) is long-standing, having been in place since the establishment of the FAS. It is designed to offer partial protection in deferment of the value of the accrued rights at wind-up, where the scheme would have offered such protection. The Government has been asked to consider the position of those who, had their scheme been fully funded at the point of wind-up, would have benefited from a higher level of protection and which may have been of particular value to the younger members of the scheme. While Assistance is based on what schemes offered, where schemes did not follow a consistent pattern the Government considers that it is necessary to standardise, to ensure some consistency of outcomes for all qualifying members and to keep the cost of administration as low as possible. Revaluation is one of these areas. The Government has no proposals for changing the FAS approach to revaluation, which is also the approach used by the PPF.

### **Example 2**

Susan has an expected pension of £4,400 a year when her scheme enters wind-up and has ten more years until she reaches her normal retirement age. Under the scheme rules half her expected pension was revaluable.

Therefore the FAS revalues this half from the date wind-up begins to the date Susan reaches her NRA. At retirement the value of that half of her expected pension is £2,800. The other half has not been revalued and remains at £2,200.

At retirement, Susan's total expected pension is £5,000 (£2,800 + £2,200). The FAS pays £4,500 (i.e. 90% x £5,000).

## Actual pension

37. Qualifying members of a scheme which discharges its liabilities to the member in the normal way receive sufficient Assistance to bring up their total (or assumed) income from an annuity policy and/or lump sum from their scheme (their “actual pension”) to the specific FAS level. This includes those:

- who have been annuitised by the scheme;
- who transferred their share of scheme assets out of the scheme;
- who had their remaining asset share trivially commuted;
- who were reinstated into the State Additional Pension.

38. The core of the FAS structure is a comparison of the expected pension and the actual pension the qualifying member will get. The original FAS was a limited scheme which had to operate without imposing unnecessary administrative burdens on either schemes or the Government. Thus the amount of “actual pension” used in the calculation of Assistance was based on the annuity rate quoted to the scheme by the provider. This quote would be made by reference to different dates (such as the date of wind-up or the date the member left the scheme) and is referred to as the “certification date”. The result is that Assistance paid may vary for individuals whose circumstances are otherwise the same, depending on the certification date used in their calculation.

39. In making the final calculation of Assistance (the Annual Payment) the Government intends to address this inconsistency. It intends to identify the actual amount of annuity in payment and reduce the gross Assistance by this amount. Those already in receipt of Annual Payments will have their assistance re-assessed under the amended regulations. Where this re-assessment reduces the amount due, the Government is proposing to protect the amount of that Annual Payment so that no one experiences a reduction in the amount they are getting.

### **Example 3**

James, who has not reached his NRA, has accrued an expected pension of £3,000 a year when his pension scheme enters wind up significantly underfunded. When his pension scheme completes wind up it purchases a deferred annuity with his share of scheme assets that increases by 3% each year. The rate of the annuity is £1,000 a year when it is purchased, but the amount is revalued up to his NRA when it starts to be paid.

When James reaches NRA his revalued expected pension is £3,600 a year and his revalued deferred annuity is £1,300. The FAS makes a top-up payment of £1,940, which makes James’ total income £3,240 (i.e. 90% x £3,600).

40. Where a qualifying member has not been annuitised by the scheme (or has taken a retirement lump sum with a reduced annuity) a notional annuity is calculated based on the lump sum received by the member, using actuarial factors designed to replicate the amount of annuity that could have been bought for him by his scheme, on bulk annuity terms, at the time the lump sum is taken. This will continue, where appropriate. The factors will be updated to take account of the proposed changes described in this document.

***Q7. Comments would be welcomed on this approach.***

**The Cap**

41. Assistance payments have always been subject to a maximum limit. When FAS first began the cap was £12,000. Amending regulations were passed increasing this cap to £26,000<sup>9</sup>. The FAS cap is absolute: for instance, it is not affected by the age at which the Assistance is paid. In the December 2007 announcement the Government said it would protect the value of the cap. It is proposing to do this by relating it to the increase in prices - the Retail Price Index (RPI) - measured annually from September to September.

42. The current £26,000 cap was announced in March 2007. It is our intention to increase this amount from April 2007 and then from April 2008 and April 2009. Anyone who had the £26,000 cap applied to their Assistance when they retired during these years will have their payment increased. If, as the Government proposes, the cap is increased by RPI, this would give a cap of:

- (a) £26,000 for anyone whose entitlement begins before 1 April 2007
- (b) £26,936 for anyone whose entitlement begins between 1 April 2007 and 31 March 2008
- (c) £27,987 for anyone whose entitlement begins between 1 April 2008 and 31 March 2009
- (d) £29,386 for anyone whose entitlement begins between 1 April 2009 and 31 March 2010.

Subsequent increases will depend on the level of RPI in following years.

***Q8. Comments are invited on the Government's intention to increase the FAS cap from 1 April 2007 and to re-assess Assistance for any individual already capped.***

43. The Government has also legislated for a cap on PPF compensation. While both the PPF and the FAS apply the cap in the same manner - once at the point of entitlement - the PPF cap operates differently to the FAS cap. For instance it is set at age 65 - anyone who takes their compensation earlier than this, for whatever reason, has a lower cap applied, in order to put them in the same situation as a similar individual who receives their compensation at an earlier age. Furthermore, the PPF

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<sup>9</sup> The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007 SI 2007/3581.

cap is applied before the reduction to 90 per cent, while under FAS the cap applies afterwards. Finally, because the PPF was designed for future pensioners who can still be accruing entitlement in their schemes, the compensation cap is increased annually by the rate of the general level of earnings.

44. The Government is not proposing to align the operation of the FAS cap with that in the PPF. It believes they are operating in two different arenas and therefore need to apply differently. The proposed approach in the FAS means that the Government is delivering what it committed to in the December 2007 announcement - that FAS members will get 90 per cent of their accrued pension at NRA, subject to a cap of £26,000 the value of which will be maintained. Using the PPF approach could mean that some individuals with an NRA below 65 would get less than this amount. However, this proposal does mean there will be situations where someone receiving Assistance will have a different cap applied than they would have had applied to their PPF compensation had they been eligible for the PPF rather than the FAS. This cap could be both higher or lower, depending on the NRA of the individual and the differences between the Retail Price Index and National Average Earnings in the future.

***Q9. Comments are invited as to whether a fixed cap increased by RPI, or a cap which varies according to age at which Assistance is paid and increased by NAE, is the appropriate approach for the FAS.***

Indexation

45. In the December 2007 announcement the Government committed to annual indexation of payments derived from post-1997 service in line with inflation, subject to a 2.5 per cent limit. This means that where a qualifying member had accrued entitlement on or after 6 April 1997 in their expected pension, the relevant proportion of their Assistance will be increased annually. The increase will be based on the RPI, up to a maximum of 2.5 per cent per annum. This is the amount that on-going, defined benefit occupational pension schemes are currently required to provide on current accrual.

46. The Government has carefully considered how to implement this commitment in a way which will deliver a fair and consistent outcome for all members – those who will receive an annuity from their scheme topped up by Assistance and those whose schemes will be transferring assets to government and who will, therefore, receive Assistance alone. For this latter group it will be relatively straightforward to ensure that their Assistance indexes the whole of their payment derived from post-97 service, as example 4 shows.

#### Example 4

Amira has Assistance of £5,000 a year, and no actual pension from her scheme. Her Assistance is based on a pension that she earned entirely after 5 April 1997.

In the first year after she starts getting Assistance payments the RPI is 4%, but the cost of living increase is capped at 2.5%. This means her Assistance increases by 2.5% to £5,125 a year. (=102.5% x £5,000).

In the second year the RPI is 1.5%. This is below the cap and so Amira receives the full 1.5% increase, which takes her Assistance to 5,202 a year (=101.5% x £5,125).

47. This same approach can be applied where, as described above, a notional annuity has been calculated. The Government is proposing to calculate (or re-calculate) notional annuities assuming the annuity is indexed in line with its proposals. Therefore a qualifying member with such a notional annuity will get their full indexation entitlement through the FAS top-up.

48. However, the situation where the member will receive an annuity from the scheme is different. The Government understands that some scheme trustees have chosen to use members' asset shares to purchase lower annuities with indexation, while others have bought higher annuities which are flat rate. Ignoring this difference would mean:

- If a member were to have an annuity secured without indexation and we were only to pay post-1997 indexation across the balance of the FAS assistance, then such members could receive significantly less scheme-related income than a comparable member who received all of that income from FAS. The Government estimates that, for a member with all service after 1997 and where inflation was at least 2.5 per cent in each year, a member could receive around 22 per cent less income than a counterpart after 10 years of revaluation.
- Some annuities will contain more indexation than the post-1997 increases a member would stand to get if their assets were transferred to government. If we were to ignore this, such members would get significantly more indexation than a comparable member. The Government estimates that a member with all service pre-1997, but with an annuity increasing at 5 per cent a year fixed, could receive around 39 per cent more overall after 10 years of revaluation.

49. In addition, the impact could be variable across individuals in similar situations. For instance, two individuals could have had the same asset share, but end up with different outcomes, because one scheme chose to buy indexation in its annuities and the other did not.

50. The Government is, therefore, proposing to pay increases for post-April 1997 service on the gross Assistance, including any part secured by an annuity. To balance this, it is also proposing to offset any additional annuity indexation above the amount that would be derived from post-1997 service, from the amount of Assistance payable. However, for those qualifying members with annuities from their scheme who are in receipt of Assistance when these proposals come into force, it is the Government's intention to provide transitional protection on the amount in payment at that point: as a result their Assistance payments will continue to be paid at the existing rate until any future increases (such as could arise from the application of post-97 indexation) overtake the amount in payment.

#### **Example 5**

Alan is retired and has an expected pension of £3,000 a year based on service after 1997 when his pension scheme enters wind-up. His pension scheme purchased an annuity that pays him £1,000 a year, with no indexation, using his asset share from the wind-up.

The FAS make a top-up payment of £1,700, which makes Alan's total income £2,700 (i.e. 90% x £3,000).

In the first year inflation is 3%. However increases are capped at 2.5%, so a 2.5% increase is applied to his total income of £2,700 which gives a new total income of £2,767.50 (= 102.5% x £2,700). His new total income, less his annuity of £1,000, gives a top-up payment of £1,767.50.

In the second year inflation is 1.5%. A 1.5% increase is applied to Alan's total income of £2,767.50 which gives a new total income of £2,809.01 and therefore his top-up payment increases to £1,809.01 (= £2,809.01 - £1,000).

#### **Example 6**

Jo has an expected pension of £3,000 a year, which she built up entirely before 1997. She is not, therefore, entitled to increases from the FAS. Her total income should be £2,700. She has an annuity of £1,000 a year with a fixed rate of increase at 3% each year. Her Assistance is £1,700 a year which does not increase.

In the first year, her annuity increases to £1,030, which means her Assistance reduces to £1,670, maintaining her total income at £2,700.

51. The Government has been asked to consider whether Assistance could be fully indexed. The Government acknowledges that some FAS qualifying schemes had rules providing for a higher level of indexation than it is proposing, but others offered only the statutory minimum (perhaps with discretionary increases above that level). To "round up" indexation would increase costs significantly as well as putting some qualifying members in a better position than they would have been had their scheme not wound up and also in a better position than those in the PPF. Further, while

Assistance is based on what schemes offered, where schemes did not follow a consistent pattern the Government considers that it is necessary to standardise, to ensure some consistency of outcomes for all qualifying members and to keep the cost of administration as low as possible. Therefore the Government is proposing to provide indexation only in line with the December 2007 announcement.

***Q10. Comments are invited on the above method of indexing Assistance and, in particular, on the issue of taking account of the level of indexation secured by the annuity and the method proposed to do so.***

***Q11. The method proposed in the draft Regulations assumes that annuities purchased for members will either be flat rate or indexed so as to produce only increases. The Government would welcome evidence of cases where annuities could potentially decrease as a result of deflation.***

### ***Assistance for survivors***

52. At present a widow, widower or surviving civil partner will be paid Assistance on the death of the qualifying member. The amount is:

(a) where the member dies on or after the day on which the pension scheme discharges its liabilities in respect of that member **either**

- half the amount of the final Assistance payable to the member immediately before death; **or**
- if no final Assistance payment was yet payable, half the amount which would have been payable to the member if the member had reached FAS payment age;

**or**

(b) where the member dies before the day on which the pension scheme discharges its liabilities in respect of that member, half the gross Assistance (ie. expected pension x 90 per cent) due to the deceased qualifying member, less whatever income paid to the survivor by the scheme.

53. The December announcement did not refer to any changes in this area. However, the Government has been asked to consider the situation of those who may have expected to get something from the schemes, but were excluded from the FAS. After considering the issue carefully, and taking account of the fact that assets are being transferred to government, the Government is proposing to extend these survivor benefits to certain other categories:

(a) surviving partners; and

(b) dependent children.

Surviving partners

54. Where a qualifying member on death had a surviving partner that partner may be paid Assistance where:

(a) the scheme rules allowed for such payments (including where the scheme rules gave trustees discretion to make such payments); **and**

(b) the partner had been living with the qualifying member immediately before the qualifying member's death; **and**

(c) the partner was either nominated by the qualifying member **or**, *except where the qualifying member had a surviving spouse or civil partner*, can demonstrate financial dependency or inter-dependency with the deceased.

55. Where a qualifying member at his death had both a spouse or civil partner and a surviving partner, the Government is proposing to allocate the survivor payment as follows:

(1) the person nominated in writing by the qualifying member;

(2) where no nomination exists, the spouse or civil partner.

56. The qualifying survivor will get, as now, the half payment described above. Payments will, as now, continue until the death of the recipient. The payment will be indexed, if the qualifying member would have met the qualifying conditions described under the indexation paragraphs.

#### *Nomination process*

57. As described above, the Government intends the FAS to pay a survivor payment to an unmarried partner where a nomination exists. It intends the FAS to accept valid nominations made by the member to either:

- the trustees of the scheme; or
- the FAS scheme manager.

58. This approach should be straightforward in the case of schemes still winding up, where trustees will be able to pass relevant data on the scheme nominations to the FAS. However, in the case of schemes which have already fully wound up, access to scheme data will be difficult and, in some cases, impossible.

59. It is the Government's intention that the FAS will try to contact members of all fully wound up schemes which had rules allowing the payment of unmarried partners, asking if they wish to nominate a partner to receive the FAS survivor Assistance. Where a FAS qualifying member has already died, the FAS will consider any available evidence to show that a deceased member had made a scheme nomination in favour of an unmarried partner before the scheme wound up.

60. The FAS nomination form will be:

- available to download from the FAS website;
- included as part of a welcome pack for new members; and
- issued with standard letters when obtaining member information.

Trustees of schemes which are still winding up will be notified about the proposed change, in advance of these draft Regulations coming into force.

*Past entitlement and transitional provision*

61. As with other extensions to FAS, the extended survivor Assistance will be payable for past periods to newly eligible beneficiaries back to the day after the member's death or 14 May 2004, if later.

62. Where a member has already died in the period before these draft Regulations introducing the new entitlement come into force, and that member had a surviving partner who would be entitled to Assistance as a result of the proposed changes, it is possible that a spouse or civil partner may already have been awarded survivor Assistance under the current Regulations. The Government proposes to provide transitional protection to such spouses and civil partners so they will continue to be eligible for survivor Assistance payments, in addition to the newly eligible partner.

63. Where FAS pays a surviving spouse or civil partner after the Regulations come into force, only to find later that a surviving partner instead qualifies for Assistance, the payment to the spouse will have been made in error. In such a case the Government proposes to pay the eligible surviving partner from the day after the member's death and to stop future payments to the non-eligible surviving spouse or civil partner. The erroneous payments may be recovered.

64. The Government intends to mitigate against the likelihood of this situation arising by encouraging members to make FAS nominations as soon as possible. In addition where FAS makes awards to survivors, the accompanying letter will make clear the basis on which the award is being paid and the circumstances which might lead to it being reviewed and/or overpayments arising.

***Q12. Comments are invited on whether surviving partners of deceased qualifying members should qualify for survivor payments and, if so, whether the conditions should be as described.***

Dependent children

65. Any dependent child of the deceased qualifying member will also be entitled to Assistance. In this context child includes the qualifying member's natural born, adopted, not yet born at date of death and any other child that was financially dependent on the qualifying member.

66. Dependency is assumed for any child under the age of 18. After that age, the child will only be accepted as dependent if they are in full-time education or unable to

work due to a disability. Payment will continue for as long as the child meets the conditions or until age 23, whichever is the earlier.

67. The amount payable depends on whether a payment is due to a spouse/partner and the number of children. The overriding principle is that total payments should not exceed 100 per cent of what was paid or due to be paid to the deceased FAS member. Therefore, entitlement is as follows:

<b>Number of children</b>	<b>Survivor benefits in payment to a spouse, civil partner, partner</b>	<b>No survivor benefits in payment to a spouse, civil partner, partner</b>
One	25%	50%
Two or more	50% divided equally	100% divided equally

Where the member dies without the pension scheme having discharged its liabilities towards that member, the FAS payment for any surviving dependant will take account of any actual pension payable to that surviving dependant by the scheme in the usual way.

68. Where a survivor or dependant ceases to be eligible (for instance in the case of a dependent child, by reaching age 18 or 23) their proportionate payment will be re-distributed amongst the remaining children.

69. As for the survivor payments described above, the payment will be indexed, if they met the qualifying conditions described under the indexation paragraphs.

***Q13. Comments are invited on whether dependent children should qualify for survivor payments and, if so, whether the conditions should be as described.***

Polygamous marriages

70. Where a qualifying member dies and was a party to a legally recognised polygamous marriage, the Government proposes to share the survivor Assistance that would have been payable if there was a sole survivor equally between the member’s spouses. The Government believes this is the approach taken by schemes which have the discretion in their scheme rules to provide for such marriages.

***Q14. Comments are invited on whether all legal spouses of a polygamous marriage should qualify for an equal share of a single survivor’s Assistance.***

***Transitional protection***

71. In a number of places the possibility of a reduction in current payments has been noted as a consequence of the changes we are proposing. Where this might occur it is the Government’s intention to apply transitional protection to those

payments where any qualifying member or survivor is in receipt of Annual Payments at the point the legislation comes into force. The intention is that:

- (i) all current recipients' entitlement will be re-assessed under the amended provisions;
- (ii) the amount of entitlement will be compared to the amount currently in payment; and
- (iii) where the latter is higher and an instalment of an Annual Payment has already been made, this amount will form the protected amount.

72. The Government proposes that this protected amount will not be increased. However, where applicable, the underlying Assistance entitlement will be re-determined as and when appropriate (for instance, where indexation is due). When the amount of the entitlement overtakes the protected amount, the qualifying member will be paid the higher amount. For example:

#### **Example 7**

Fred had been entitled to a FAS annual payment of £300 a year from June 2004. The new regulations came into force in July 2009 and in September 2009, his entitlement was re-assessed under the amended regulations. His new entitlement from June 2004 is £290. Part of his Assistance is indexed.

Although under the new regulations he would have been entitled to £290 in respect of the period June 2004 to December 2004, the transitional protection applies, meaning that he was entitled to the payments of £300 a year already paid.

This continues to be the case when determining the Assistance due and received during 2005, 2006, 2007 and 2008. However, indexation increases between June 2004 and January 2009 increase his entitlement to £300.50. As his entitlement is now higher than his protected amount, he is entitled to the higher amount for the period from January 2009. His payment in September 2009 will include an amount for the past period.

73. The Government does not intend to provide transitional protection to members receiving initial payments whose payments go down as a result of the changes proposed in these draft Regulations<sup>10</sup>. Initial payments are payments made on account of final entitlement to an Annual Payment and can vary for a number of reasons. As a result, the beneficiary cannot have the same expectation of them continuing at any particular level compared with someone who has received a final Annual Payment determination.

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<sup>10</sup> A small number of people have received transitional protection in relation to the initial payments they were receiving when The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 (SI 1432 of 2008) came into force. Provision is made in these draft Regulations to carry forward that transitional protection.

74. We expect that the members receiving initial payments who are most likely to be affected will be those who have a tranche of pension accrued to a later pension age than their NRA.

***Q15. The Government would be interested in any comments on the proposal to offer transitional protection where these draft Regulations would result in a lower entitlement for any qualifying member or survivor who is in receipt of Annual Payments.***

## **Future plans**

75. As mentioned, the Government will be bringing forward proposals for a further set of draft Regulations dealing with the issues raised by the decision to transfer the remaining scheme funds into government. This includes the mechanisms to bring in the assets and proposals relating to payments which depend on the amount of the member's share of the pension scheme assets (eg. lump sums).

76. In order to allow the reader to see the full picture, this Consultation Document includes a brief description of how it is proposed to deal with these matters. Although a separate, formal, consultation on these matters will be conducted when the relevant draft Regulations are published, views are now invited, on a preliminary basis, to help inform the development of the final proposals.

### ***Early retirees***

77. If the Government had not decided to take over the scheme assets a scheme member who had taken early retirement before the scheme went into wind-up and had not reached his NRA before that point could have expected his scheme trustees to pay him an interim pension and then to buy him an annuity with his remaining assets, which would begin paying immediately. Although the FAS would normally only pay someone before their NRA on ill-health grounds, it is the Government's intention to pay people in this position Assistance from wind-up or 14 May 2004 (whichever is the later) instead of waiting until NRA.

78. The Government does not believe there are significant numbers in this position and therefore a separate administrative procedure to pay them only what would be produced by their asset share (i.e. what they would have got had the scheme proceeded to annuitise) until NRA and Assistance thereafter is unwarranted.

### ***Scheme members with high asset shares***

79. Currently a scheme member with an asset share that is sufficient to buy an annuity providing 90 per cent or more of their expected pension is not entitled to any Assistance. However, when schemes transfer their remaining assets into government, this situation will have to change.

80. Where a qualifying members' asset share would have provided an annuity of less than Assistance, no new issues arise.

81. However, it is likely that some people's asset share could have bought them an annuity above the normal 90 per cent Assistance.<sup>11</sup> Where individuals are in this position the Government believes it would not be fair to pay them an amount of Assistance based on the same rules as all other qualifying members. The Government intends, therefore, to reflect the higher level of asset share in the payments made.

82. For these people the Government considered two approaches:

- (a) paying an uplifted amount of Assistance to the full value of the asset share; or
- (b) paying an Assistance payment calculated under the qualifying members' scheme rules to the full value of the asset share when they reach their NRA.

83. The approach at (a) is administratively easier and would produce consistency of treatment. However, since the Government expects most of these individuals already to be receiving their pensions, such an approach could alter the shape of the pension and/or ancillary benefits which they are currently receiving, and which they might reasonably have expected to continue to receive.

84. The Government believes, however, that different arguments prevail for those individuals who have an asset share higher than the value of Assistance calculated under the standard rules but who are not in receipt of their pension. Firstly, they will not have the same expectation of a certain structure of benefits and, secondly, allowing them access to the different options available from a scheme when they reach NRA is significantly more complex.

85. Therefore, it is the Government's intention that any qualifying member who is:

- (i) in receipt of a pension from their scheme at the point the relevant regulations come into force, will be paid Assistance based on the rules of their scheme; **and**
- (ii) not in receipt of a pension from their scheme at this point will get Assistance calculated in line with the normal rules, but to the full value of their asset share.

Such members will not have the FAS cap applied to their Assistance.

### ***Lump sums***

86. In the December 2007 announcement the Government said "where the share of scheme funds allows, people [will be] able to commute some portion of their assistance to a lump sum". It was the Government's intention that this lump sum would be the same as that which would have been available had the qualifying member's asset share been annuitised.

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<sup>11</sup> This is most likely to occur with those who were already in receipt of their scheme pension when their scheme began to wind up and whose scheme was able to afford to continue to pay their full pension during wind up, because of the way the priority orders are applied at wind-up.

87. However, it has been found that there is little consistency in the approach taken by trustees when purchasing annuities on the amount of lump sum which can be taken. This is particularly the position where trustees have to deal with contracted-out rights. For instance, some schemes allow for the commutation of 25 per cent of the value of the full annuity, but others exclude from this commutation any part of the annuity that represents contracted-out rights.

88. Therefore the Government is proposing to take a straightforward approach which does not include any restrictions the trustees might have made on the amount of the lump sum to take account of contracted-out rights. The Government proposes to allow a qualifying member whose scheme has not discharged its liability towards them and transfers relevant assets to government to take a lump sum when they first access their Assistance. This lump sum will be the lower of:

(a) the value of 25 per cent of the Assistance payable; or

(b) the amount of the asset share calculated at the point their scheme's assets are transferred to government, revalued between that date and the date of retirement.

89. Where a qualifying member decides to take a lump sum, their entitlement to ongoing payments of Assistance will be reduced by an amount that takes account of the lump sum paid on an actuarially neutral basis.

90. It has been suggested that the Government should allow for qualifying members simply to take 25 per cent of their Assistance, without any maximum. The Government has considered this but has decided against it, because it brings forward significant costs to government. This is not an issue with a funded scheme such as the PPF, but it is an important factor in a pay-as-you-go taxpayer-funded scheme. In addition making such a provision for only those who are qualifying members from asset transfer schemes would put them in a much more advantageous position in relation to those who have been annuitised.

### **Tax and Assistance payments**

91. FAS payments are subject to income tax under the Pay As You Earn (PAYE) system. The rate of income tax which is charged on a member's Assistance will depend on their individual tax code.

92. As a result of these proposed changes some FAS members may receive payments which include an amount for a past period. In circumstances where this past period covers more than one tax year, tax will be charged as if the payment related to the current tax year only. This may result in an overpayment or underpayment of tax. Members will be able to request that HMRC spread their Assistance payment over the related tax years and adjust the tax charges accordingly.

## SECTION 3: Administrative Changes

## Improvements to Operations

1. Some changes to the administration rules are required to take account of the proposed changes to the Assistance structure and in preparation for the taking in of scheme assets. For instance, as the Government is proposing to pay a survivor payment to dependent children who meet the eligibility rules, there will be a need to allow for a responsible adult to deal with the payments.

2. In addition, the Government intends to take this opportunity to make certain changes to the administrative rules applying to the FAS which operational experience has shown would offer some useful flexibility. Changes include:

(i) allowing Assistance to be paid at intervals other than monthly where it seems appropriate. At present Assistance has to be paid monthly. This can mean making very small payments (for instance, under 50 pence) which is administratively expensive.

(ii) to allow for payment in advance and arrears or at a different period, where it seems appropriate. It may be useful to align the payment of Assistance with, for instance, payments made of an annuity.

(iii) to provide for entitlement to be for a full month, where an individual dies during that month. At present a qualifying members' entitlement stops on the day he dies and where that day is after the FAS payment day (the 21st) this creates an overpayment from the date of death to the end of the month. Seeking to recover such an overpayment from a recently bereaved family seems to be unnecessarily insensitive. In addition, where it may not be possible to put any survivor entitlement into payment immediately, a family can be left without financial support. The Government is therefore proposing to allow for the payment of a full month's Assistance for the month of death. Any survivor entitlement will still begin on the day after the death.

3. Finally, these draft Regulations contain amendments to the information,<sup>12</sup> review<sup>13</sup> and appeal<sup>14</sup> Regulations which are a consequence of the proposed changes to the Assistance.

***Q16. The Government would be interested in any comments you would like to make about the proposals described above***

### Reconciling payments made on account

4. As mentioned earlier, the FAS makes initial payments to members who have reached their NRA (or who cannot work due to ill health) and whose schemes are still

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12 Financial Assistance Scheme ( Provision of Information and Administration of Payments) Regulations 2005/2189

13 Financial Assistance Scheme ( Internal Reviews) Regulations 2005/1994

14 Financial Assistance Scheme ( Appeals) Regulations 2005/3273

winding up and cannot, therefore, send all the information needed to calculate the member’s final entitlement. These initial payments are payments “on account” of FAS final entitlement, in the same way as interim pensions which may be paid by the scheme during wind up are on account of a person’s final scheme pension.

5. When the FAS calculates a member’s final entitlement (when the scheme has purchased any annuity, or paid a transfer value or winding up lump sum for that member) it does not currently take into account the actual payments made earlier. Instead it calculates final entitlement (based only on the amount that the member receives from that scheme when it discharges its liability to them) and then applies that amount in respect of any past period. This is mainly for historical reasons. When FAS was first set up it was a very limited scheme for those close to retirement and any initial payments were made at a lower rate which meant that final entitlement was almost always higher and arrears would be paid. However, because this meant some members waiting a long time on lower payments while scheme was winding up, FAS initial payments were increased to the same top up level as annual payments.

6. The current approach leads to some members receiving less FAS overall and some more. The following examples show how this can happen.

<b>Example 8(i)</b>	
Graham’s expected pension (EP) is	£100
Graham’s scheme pays an interim pension of	£50
FAS pays initial Assistance top-up to 90 per cent x EP	£40
<u>At end of wind up</u>	
Graham’s scheme buys an annuity of	£60
FAS pays final Assistance top-up of	£30
FAS applies amount of £30 to start of entitlement meaning that Graham can be required to repay part of the Assistance he received prior to end of wind up although he only received a total of 90 per cent x EP during that period.	
<b>Example 8(ii)</b>	
Malcolm’s expected pension (EP) is	£100
Malcolm’s scheme pays an interim pension of	£50
FAS pays initial Assistance top-up to 90 per cent x EP	£40
<u>At end of wind up</u>	
Malcolm’s scheme buys an annuity of	£40
FAS pays final Assistance top-up of	£50
FAS applies amount of £50 to start of entitlement meaning that Malcolm has been underpaid prior to end of wind up, and is due FAS arrears for the past period, although he has already received a total of 90 per cent x EP during that period.	

7. In many cases these differences are relatively small, but in others they can be very significant. The broad scenarios are complicated further depending on whether or not schemes pay arrears or seek to recover overpayments of scheme interim pension for the past periods. Trustees have a wide discretion as to what interim payments they make during wind-up and what form of annuity they purchase for members. However, they must ensure that the total value of interim payments made and the value of the annuity purchased do not exceed the member's share of assets. Typically whilst a scheme might pay arrears, if it determined that an underpayment had been made during wind-up, it would look to recover overpayments by buying the member a lower annuity than would otherwise be the case. Further anomalies arise where a scheme pays above FAS levels (more than 90 per cent of expected pension or over the cap) and subsequently cuts pensions back.

8. When a scheme transfers its assets to government on completion of wind-up, we will have the opportunity to determine the level of payments that the member should have received while the scheme was winding up and to take this into account when calculating the member's final Assistance payments. However, the anomalies will continue for members whose schemes have bought or will still be buying annuities (because they have binding agreements with annuity providers to do so). We are, therefore, proposing to change the way in which final Assistance is calculated so that broadly speaking all members receive 90 per cent of their expected pension over the whole period of their entitlement to Assistance (but see paragraph 14 below).

9. The draft Regulations provide a power for the FAS scheme manager to be able to take into account all scheme interim pension and other payments, such as arrears, from the start of the member's entitlement to Assistance. This reconciliation will show whether members have received less or more than their FAS entitlement for the period before their final Assistance payments can be calculated.

10. The Government proposes that where the reconciliation shows that the member has received, from scheme and the FAS combined, less than 90 per cent of expected pension from the start of FAS entitlement until final FAS assessment, the FAS will generally pay arrears for the past period.

11. The Government proposes that where the reconciliation shows that the member has received, from scheme and FAS combined, more than 90 per cent of expected pension from the start of FAS entitlement until final FAS assessment, the FAS will generally:

- adjust future payments of Assistance to take the excess payments into account over time (on an actuarial basis taking account of remaining average life expectancy) for those with continuing entitlement to Assistance; and
- seek to recover the overpayment of FAS Assistance direct from those with no ongoing entitlement to Assistance (for instance those whose scheme is able to purchase an annuity above FAS levels at wind up despite having paid lower interim pensions which resulted in initial payments being paid by the FAS).

**Example 9: payments balance**

Caroline's expected pension (EP)	£1,000 a year
Her scheme pays an interim pension	£600 a year
The FAS pays her an initial payment	£300 a year

At the point of discharge - three years later

Caroline's scheme buys an annuity of	£550 a year
FAS full Assistance (EP x 90 per cent – AP)	£350 a year

The reconciliation of the interim period shows

Gross entitlement of £900 x 3	£2,700
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Received:

total interim payments from her scheme of	£1,800
total FAS initial payments of	£900

Which equals £2,700

Caroline is entitled to £350 Assistance for the future. She has received the correct amount over the interim period.

If however her scheme had recovered overpayments from her for the higher interim pension paid there would have been a net underpayment which the FAS would pay as arrears.

### Example 10: net overpayment - ongoing entitlement

Deborah's expected pension (EP)	£1,000 a year
Her scheme pays an interim pension	£600 a year
The FAS pays her an initial payment	£300 a year

#### At the point of discharge three years later

The reconciliation of the interim period shows:

Gross entitlement £900 x 3	£2,700
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Deborah received

Total interim pension from her scheme of	£1,500
Total FAS initial payments of	£1,200
At discharge the scheme paid Deborah arrears of	£300

Total payment:	£3,000
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Therefore Deborah has been overpaid for this period by	£300
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The scheme buys an annuity of	£600 a year
FAS Full Assistance (EP x 90 per cent – AP)	£300 a year

The £300 overpayment is converted into a notional annuity using actuarial factors designed to determine the additional annuity which could have been secured for the member using the amount of the excess payment. If this were calculated to be £20 a year:

net ongoing Assistance would be	£280 a year
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### Example 11: net overpayment - no ongoing entitlement

Edward's expected pension (EP)	£1,000 a year
His scheme pays an interim pension	£600 a year
The FAS pays him an initial payment	£300 a year

#### At the point of discharge three years later

The scheme paid Edward arrears of	£1,350
The reconciliation of the interim period shows:	
Gross entitlement £900 x 3	£2,700
Received:	
Total interim payments from his scheme of	£2,400
Total FAS initial payments of	£300
Therefore Edward has been overpaid by	£300
Edward receives an annuity of	£950 a year

Following wind up Edward has no ongoing entitlement to Assistance as he is receiving more from his annuity than 90 per cent of his EP. His total scheme payments in the three years prior to wind up are also more than 90 per cent of the EP for those three years. Therefore the Assistance he received during those three years is a recoverable overpayment.

12. As with other changes to the Assistance calculation, the Government intends that these changes should apply to those who have already had their final assessment of Assistance calculated on the current basis. However, the change will affect only those who would be better off as a result, as transitional protection will be given to those who would otherwise be worse off.

13. The proposed power for the FAS scheme manager to take into account scheme payments made from the start of entitlement is a discretionary one. Whilst it is expected that the FAS scheme manager will exercise this discretionary power in the ways outlined above, and in accordance with the principles set out in *Managing Public Money*<sup>15</sup>, in all but exceptional cases, the Government believes that it is appropriate to allow some flexibility to consider the specific circumstances of individual scheme and payments.

14. For instance, there are a small number of members who reached their NRA before their scheme wound up where that scheme started to wind up after 14 May

15 "Managing Public Money" published October 2007 by HM Treasury.

2004. As FAS entitlement generally arises when a member reaches the later of NRA or 14 May 2004, such members can have an entitlement date prior to the start of wind up, and for a period when they will have been receiving their pensions in full from their scheme. In such cases the payment reconciliation will need to take into account that these members were entitled to receive 100 per cent of their expected pension from their scheme up to the point of wind up.

15. The Government intends to work with the trustees of those schemes which will still be winding up in the usual way, to ensure that they take our proposed approach on reconciling payments into account when purchasing annuities and thus minimise the effect on their members.

***Q17. Views are invited on the proposal to reconcile payments made by schemes and FAS from the start of FAS entitlement and prior to wind up.***

***Q18. Views are also invited on the exceptional circumstances in which it might be appropriate for the FAS scheme manager not to bring payments made by the scheme to account in determining future FAS entitlement or recoverable overpayments – these will assist in drawing up the necessary clear and objective criteria against which the FAS scheme manager will exercise the discretionary power.***

#### **Information required from scheme trustees**

16. To calculate the enhanced payments, the Government proposes to require scheme trustees, or insurers where appropriate, to provide additional information relating to:

- annuities secured;
- tranches of payments including details of revaluation and indexation;
- transfer payments made;
- interim pension payments made;
- lump sums paid;
- amounts paid to restore state scheme rights.

The Government understands that the provision of this information will not be an onerous task for trustees, administrators or insurers.

***Q19. Comments are welcomed on whether this would be an onerous task for trustees, administrators, managers, insurers and others holding relevant information to undertake.***

17. The Government proposes that trustees provide, on a quarterly basis, details of scheme expenditure. In addition, the Government proposes that, by exception, trustees also provide details of any significant changes in the investment of the scheme's assets. For example, any re-allocation of assets or change to asset classes.

18. These information requirements will assist the FAS in supporting schemes through wind up and in the planning for the intended transfer of assets to government.

***Q20. The Government would welcome comments on the requirement to obtain quarterly details of scheme expenditure against budget and exception reports of significant changes to investment of the scheme's assets.***

19. The Government also proposes to require trustees to notify the FAS if they are:

- involved in, or are considering taking, any legal action or proceedings;
- entering, or in, arbitration;
- entering, or involved in, dispute negotiations; and/or
- involved in, or considering, negotiations intending to lead to a settlement or compromise of any legal action.

This requirement will enable the FAS scheme manager to be aware of any cost impact on the scheme and any potential delay in completing wind-up.

***Q21. The Government would welcome views on this requirement.***

### ***Timings for the Provision of Information***

20. At present there are a number of requirements on schemes and others to provide certain information to the FAS scheme manager within certain time limits set in legislation. The Government proposes to change the existing timescales for the provision of information to include an additional requirement for accurate information to be provided as soon as possible after these Regulations come into force. This requirement will speed up the process of making payments of Assistance.

21. The Government proposes that, within one month of the death of a qualifying member, information is provided in relation to any annuity which had been purchased in respect of any survivor or which includes a survivor benefit. This information is needed to determine the amount of Assistance payable to the survivor. This timescale is proposed to ensure that where immediate payments are due they can be processed as quickly as possible. However, where it is not possible or not appropriate for any reason to supply the information required in the specified timescales, the FAS scheme manager will be able to set a deadline that he considers appropriate.

22. It is also proposed that the timescale for providing information in relation to any legal proceeding, arbitration and dispute resolution procedures is within:

- (i) 28 days of the regulations coming into force; or
- (ii) 14 days if the scheme qualifying for FAS; or
- (iii) 14 days of the appropriate person becoming aware that the action is being contemplated;

whichever is relevant.

***Q22. The Government would welcome your comments on the timescales in which information should be provided. In particular, whether the provision of information within one month of a qualifying member's death is reasonable.***

## **Reviews and Appeals**

23. It is the Government's proposal that the existing reviewable determinations are extended to cover determinations in respect of the eligibility of surviving partners and dependent children. The right of internal review on these determinations will, as with all other reviewable determinations, carry the right to appeal the review decision to the Pension Protection Fund Ombudsman.

***Q23. The Government would be happy to accept any comments on these issues.***

## SECTION 4: Actuarial Factors

## Actuarial Factors

1. The changes proposed in this consultation document will require the introduction of new actuarial factors and the amendment of existing ones. The proposal to uplift or reduce tranches of pension payable earlier or later than a member's NRA will require new factors. The introduction of indexation on Assistance derived from pension entitlement accrued after 6 April 1997 means that the notional annuity factors need to be amended as do the actuarial reduction factors applied when a member gets early access to Assistance on the grounds of ill health. The proposal to spread the recovery of any overpayments made to members during wind-up across future Assistance payments will also require use of the notional annuity factors.

2. Under current arrangements the actuarial factors are calculated by the Government Actuary's Department on behalf of the Secretary of State in his capacity as FAS scheme manager. Given the limited changes required to the annuity factors to implement the revisions to the FAS made by these draft Regulations the Government does not intend to transfer responsibility for setting the actuarial factors to the PPF at this time. In the future the Government may consider it appropriate for the PPF to take on this function and a number of changes to regulations are proposed in the draft Regulations that would facilitate this change should it be pursued.

### Actuarial Assumptions

3. The existing notional annuity factors were consulted on during 2008<sup>16</sup>. The 2008 consultation document described the actuarial assumptions used to derive the factors. We propose that these assumptions will continue to be used for the new factors required following the introduction of the changes to Assistance described in this consultation.

4. The introduction of indexation on post-6 April 1997 accrual requires a further assumption to be adopted for the expected rate of indexation each year on the part of Assistance that is indexed. For actuarial calculation purposes, it is more convenient to express this as the yield after retirement in excess of indexation, from which the assumed rate of indexation can be derived. The central assumption for the yield after retirement in excess of indexation is 2.0 per cent a year less a margin of 0.5 per cent a year. Combined with the central assumption of a gross yield in retirement of 4.0 per cent a year, this implies an expected rate of indexation of just under 2.5 per cent a year. This assumption has been chosen to be consistent with the other assumptions already adopted.

5. The market value adjustment (MVA) used for the notional annuity factors is based on both index-linked and fixed interest gilt yields since the indexation is index-linked but subject to a fixed cap. The MVA is chosen with reference to the higher of:

- fixed interest gilt yield less 2.5 per cent (reflecting the cap on indexation); or

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16 <http://www.dwp.gov.uk/publications/dwp/2008/revision-of-annuity-factors-in-FAS.pdf>

- index-linked gilt yield.

Where this is higher than 2 per cent, then the notional annuity factors are higher; where this is lower than 2 per cent, then the notional annuity factors are lower.

6. For simplicity, the same uplift and early retirement factors are used for indexed and non-indexed pensions. For these factors, it is assumed that the ratio of indexed to non-indexed assistance is 20:80. This ratio is based on analysis of the scheme data that is used for internal forecasting purposes.

### **Revisions to factors in the future**

7. The actuarial factors may be reviewed in the future and amended if expectations of longevity and investment returns change significantly. It is intended that factors revised for these reasons will apply only to subsequent calculations of Assistance.

### **Impact of new factors on amounts of Assistance payable – Early Access on the Grounds of Ill Health**

8. As noted above, the same early retirement reduction will be applied to indexed and non-indexed pension. The new early retirement factors will mean a slightly larger reduction in Assistance is applied on ill health than currently. This takes into account the fact that many members would now be receiving indexation on their Assistance. However, if a member is already receiving ill health payments from the FAS at the date that these draft Regulations come into force, then the factor that was used to calculate the Assistance will not be changed for that member.

### **Impact of new factors on amounts of Assistance payable – Notional Annuities**

9. The notional annuity deemed to be deducted from Standard Assistance for a member who received a lump sum from their scheme will in future have an indexed component if the member had any post-1997 service. The proportion of the notional annuity that is indexed will be the same as the proportion of the member's total service in their pension scheme that was accrued from 6 April 1997. This ensures that the notional annuity increases in the same way as Standard Assistance and avoids the notional annuity initially being lower than Standard Assistance and then exceeding it, or the notional annuity initially being higher than Standard Assistance and then Standard Assistance subsequently exceeding the notional annuity. The proportion of indexation paid to capped members will be determined in the same way so the same applies to members subject to the cap.

10. There is a significant difference between notional annuity factors for indexed and non-indexed payments, so a new set of factors will be used for the indexed component of notional annuities.

11. If a member previously received a lump sum, then the notional annuity will be recalculated using the new factor if the member had any post-1997 service. This will

increase the Assistance initially payable at Normal Retirement Age, all other things being equal, since the initial rate of the notional annuity will be smaller. However, indexation on the notional annuity means that after some years, the notional annuity will be higher than under the current procedure. The actuarial value of the notional annuity payments will be the same as under the current procedure.

## SECTION 5: The Future Operation of the Financial Assistance Scheme

# Operation of Scheme

## Current position

1. At present the FAS is administered by the FAS Operational Unit (FASOU), part of the Department for Work and Pensions. As outlined in earlier sections, the Government is intending to make some fundamental changes to the FAS. In particular:

- extending the Assistance structure;
- taking the remaining assets of qualifying pension schemes into government; and
- becoming responsible for the full payment of some qualifying members.

These changes will require a much closer working relationship with the relevant qualifying schemes and involvement in their winding-up.

2. Whilst the FASOU has developed an expertise in dealing with Assistance payments, neither it, nor the Department generally, has the skills or experience in handling the winding-up of occupational pension schemes or the managing of the transfer of pension scheme assets.

## Options for the future delivery of the Financial Assistance Scheme

3. The Government has reviewed how the FAS is administered and managed and considered a number of different options for the future delivery of the FAS. It is considered that the objectives of any administration must be that it can:

(a) amend current payments to reflect the extended Assistance and set up processes to make increased payments to all qualifying members as quickly as possible; and

(b) put in place processes to take in assets from schemes to government as quickly as possible, while ensuring that any losses in asset values are minimised.

4. The provider should also be able to deliver:

(a) a single point of contact for the public and qualifying members; and

(b) appropriate working arrangements with scheme trustees and administrators, so that schemes can be wound up as soon as possible.

5. The Government has considered three options:

Option 1 – DWP Administration.

This would involve the DWP administering all aspects of the FAS through the current Operational Unit. However, as mentioned above, the skills needed to handle scheme wind-up and the management of scheme assets and their transfer to government are not generally available within the Government. Recruiting individuals with these skills and establishing appropriate operational processes would require a long period before the Operational Unit could be effective, creating an unacceptable level of risk to members and their payments.

It is also significant that such FAS work is time-limited, as the qualifying conditions for the FAS mean that there are a finite number of schemes eligible for Assistance. It would therefore appear likely to be uneconomic to equip the Government with the skills needed for this task, for a limited period of time. In practice DWP would be likely to have to recruit consultants to reduce the risk to the operation of the new FAS. This is also unlikely to be the most cost-effective approach.

Option 2 - Split responsibility.

This might involve the DWP continuing to determine Assistance and make the payments, with another organisation managing the winding-up of the schemes and the transfer of assets to government. This option limits disruption to current operations and payments. However the disadvantages appear considerable:

- (a) there is potential for confusion among both the public and scheme trustees over which organisation to approach on a specific issue;
- (b) decision making could become inconsistent;
- (c) effective financial control and reporting would be more difficult; and
- (d) asking a scheme to deal with two organisations increases the risk of something going wrong.

While other ways of dividing the work could be designed, the same disadvantages would apply.

Option 3 - delivery through an alternative organisation.

While our initial consideration of this option made no assumptions about the identity of any organisation, it became clear that there is a considerable overlap between the work currently undertaken by the Board of the Pension Protection Fund (PPF) and the new functions required of the new FAS.

The PPF is a public corporation which has the responsibility for dealing with defined benefit (final salary) occupational pension schemes with insolvent sponsoring employers that started to wind-up underfunded from 6 April 2005. The PPF takes in

the assets of eligible schemes and pays compensation to the members of those schemes.

Whilst in 2005 the PPF was a new and untested organisation, it is now established with a strong reputation for delivery, devising successful working processes for assisting pension schemes to complete wind-up quickly and transfer schemes' assets efficiently. In addition, it has experience in ensuring compensation payments are calculated and paid accurately and efficiently.

The FAS will, in the future, undertake broadly similar functions to those performed by the PPF in respect of FAS qualifying schemes and the operational processes required in the new FAS will be similar to those used by the PPF. Therefore its staff, particularly at a management level, already have the skills and experience needed to implement and operate the new FAS structure.

6. As the PPF already has the established operational processes, experience and skills required, the Government proposes that the responsibility for managing the new FAS should be conferred on the Board of the PPF with the PPF becoming the FAS scheme manager.

7. This would include taking on responsibility for the work currently undertaken by the FASOU. The FASOU currently provides a well-regarded service to qualifying members. The Government believes that the best way of maintaining the level of service to members in the FAS already is for these DWP staff to be offered secondments to the PPF on a time-limited period.

8. Should the Board of the PPF become the scheme manager for the FAS we propose that it would:

- (i) be the organisation a scheme has to notify to apply to be a qualifying scheme;
- (ii) determine whether a scheme is a qualifying scheme;
- (iii) give directions to qualifying schemes;
- (iv) determine whether an individual is a qualifying member;
- (v) determine whether an individual meets the ill-health conditions for early access;
- (vi) be the organisation to whom information should be provided;
- (vii) determine the manner and format of that information;
- (viii) determine the relevant amount of FAS payments and the date from which they will start;
- (ix) undertake internal reviews of determinations;

- (x) recover overpayments;
- (xi) suspend payments.

9. The cost of both the Assistance payments and all the administration involved would continue to be fully funded by the Government. Stringent and separate accounting arrangements would ensure that no FAS costs fall on the PPF levy payers or vice versa. These accounting arrangements would be subject to the existing PPF audit structure, which provides for independent scrutiny by the National Audit Office.

10. In line with existing FAS reporting requirements, the Board of the PPF, as FAS scheme manager, would be required to include in its annual report details of the number of people who have received Assistance payments and the total amount of those payments.

***Q24. The Government would welcome views on whether the Board of the PPF should become the FAS scheme manager, including taking on responsibility for administering the FAS.***

### ***Delegation by the Board***

11. In taking on the role of the FAS scheme manager and undertaking FAS work, the Government believes it would be appropriate for the Board of the PPF to decide how it organises its work - this may include the use of a commercial provider for certain FAS tasks.

12. It is the Government's intention to allow the Board to delegate its FAS functions to its staff and Committees. It is also the Government's intention to allow delegation of some tasks to someone other than the Board's staff (ie. a third party provider). This delegation would, however, be limited. The Board will thus be able to delegate tasks such as the calculation and payment of FAS assistance following the determination (by the Board or its staff) of a scheme's and member's qualification and determination of entitlement.

13. The PPF already has the power to work with FAS qualifying schemes during wind-up to help them to prepare for the future transfer of assets to government. To provide the Board with the necessary flexibility to manage this work effectively, particularly given the increase in work the FAS schemes represent for the PPF, the Government intends to allow the PPF to delegate this work should they consider this best meets their business needs. Indeed, as the PPF is a public corporation, it would be inappropriate for the Government to restrict its management flexibility.

14. If any of the FAS work is so delegated, the Board will remain responsible for the provider's actions and for ensuring a high standard of service.

***Q25. The Government would welcome your views on the proposal to allow the Board of the PPF to delegate certain functions to a commercial provider.***

***Information sharing***

15. If it takes on the role of the FAS scheme manager, the Board would need to have access to relevant information to enable it to continue and progress the work of the FAS without affecting schemes or members. In addition to existing information held by the FASOU, the PPF would need ongoing access to information held by the Government. These are, as follows:

*15.1 One-off transfer of data currently held by the FASOU:* The Government proposes that the information currently held by the FASOU will be transferred, as a one-off activity, to the PPF where the information is both necessary and relevant to the Board's FAS work. This will enable the PPF to continue delivery of the FAS work smoothly, understand decisions that have already been made, for example where there is a request to review a previous decision, and complete work that is already underway. A sift of the information already held by the FAS will be undertaken to ensure that any information transferred is necessary to the fulfilment of the FAS functions.

*15.2 Ongoing access by PPF to social security information:* The Government is exploring further whether the Board should be able to, on an on-going basis, obtain social security information on FAS scheme beneficiaries and potential beneficiaries which is held by DWP, where it is relevant and necessary to progress the FAS work. This information is currently available to the FASOU in order to, for example, make speedy decisions on entitlement to Assistance on the grounds of ill health, severe ill health and terminal illness, or to enable correct addresses to be used which ensure FAS communications reach members. In addition, access to social security information by the Board will enable the prevention of overpayments of social security benefits - for example where an individual is due a payment from the FAS for a past period and a social security benefit has been paid which would not have been had the FAS payment been made at the right time.

*Further access requirements*

16. The Government recognises that the PPF, if it takes on the role of the FAS scheme manager, will need to be able, on an on-going basis, to obtain information from the National Insurance records system (NIRS2) where it is both relevant and necessary to its FAS work and where the information is unavailable from other sources. For example, information may be obtained from NIRS2 to determine periods of employment necessary to identify periods of contracting out of the State pension scheme. This will assist in the calculation and payment of Assistance. Accordingly the Government is exploring how such access can be given lawfully, while ensuring the data is appropriately safeguarded.

17. That exploration will continue during the written consultation period. If the conclusion is that such data can be accessed by the PPF securely and lawfully from

the date these draft Regulations come into force, then the Government proposes that the draft Regulations include provisions which create suitable legal gateways to facilitate such access. There is already an information sharing provision with the PPF which covers tax information at Section 202 of the Pensions Act 2004. The Government will consider whether this needs to be supplemented by any further similar information sharing power in relation to FAS-related functions.

#### *Ensuring the security of transferred/shared data*

18. There are clear Government standards for the safe-handling of personal customer and other sensitive information. The PPF must meet these standards in the handling, processing, storing and transferring of personal/sensitive information (regardless of the media used). In addition, information systems that process, store or transmit personal or sensitive information - whether owned by the PPF or by a commercial provider - must already be assessed to provide assurance that the system meets acceptable security standards and does not present an unacceptable level of risk. Information systems should meet recognised Government and International security standards.

#### *Third party providers*

19. The PPF employs a third party provider to administer PPF payments. As the Board may adopt this approach for FAS Assistance payments, the Government intends that the PPF and any third party provider will be able to have access to existing FAS information and ongoing social security information and other member information, but only where it is both relevant and necessary - for example, to prevent overpayments from being made where social security benefits have already been paid for the same period as FAS Assistance is due. Any third party provider would be required to comply with the policies outlined above which apply to the PPF itself.

***Q26. The Government would welcome your views on the sharing of relevant information with the Board of the PPF and any third party provider.***

#### **Payments to Schemes**

20. The Government is aware that some FAS qualifying schemes may run out of available funds before they complete wind-up. The Government proposes to allow the Board of the PPF, at its discretion, to make payments to pension scheme trustees and managers to enable them to:

- (a) complete the wind-up of the scheme;
- (b) assist the scheme in keeping any reduction in assets to a minimum; or
- (c) increase the scheme's assets;

where the scheme has no available funds to complete or undertake this work.

21. Payments would be made on such terms as the Board thinks fit - including terms specifying what the payment could be used for. The Government would expect the Board to prevent scheme trustees and managers from using the money to pay for scheme benefits, as any reduction in the benefits paid to members will be addressed by the payment of initial Assistance (up to 90 per cent of the member's expected pension). The Government would also expect the Board to prevent the payment from being used to pay insurance companies for the provision of information, as these companies are under a legal obligation to provide information.

22. The Department will set out objectives for the Board of the PPF to take into consideration when making payments in these circumstances.

***Q27. The Government would welcome your views on the Board of the PPF being able to make payments to pension scheme trustees and managers at its discretion, where schemes have run out of available funds to for the purposes given above.***

## SECTION 6: The Transfer of Scheme Assets to Government

## Introduction

1. The December 2007 announcement included a commitment to take in all residual assets of FAS qualifying schemes that had yet to fully wind-up and to make associated payments as they fall due. The additional value obtained from the assets transferred part-funds the enhanced payments offered by the FAS.

2. The Government estimates that around half of the total number of FAS schemes will transfer at least some of their assets to Government<sup>17</sup>. Other schemes will have already purchased annuities for their beneficiaries or discharged liabilities by some other method.

3. The Government intends to bring forward a draft set of regulations to provide for the transfer of residual assets for consultation later this year. In the meantime, this consultation document sets out and seeks views on the Government's initial proposals for the transfer process ahead of formal consultation on those draft regulations.

4. Also included in this consultation document is information about proposed processes to facilitate the transfer of assets. Not all of these processes will be prescribed in legislation but will rather be included in guidance. Where appropriate some of these processes may be introduced before the final regulations on asset transfer are in place to facilitate early delivery of final policy.

5. The Government expects these proposals will be of particular interest to trustees, other pension professionals and members of schemes in respect of which assets may be transferred. *Feedback is welcomed on any aspect of these initial proposals but particularly early views from scheme professionals on their practicability.*

6. The guiding principles in developing proposals towards the transfer of assets are to seek to ensure:

- continuity of payment to eligible FAS beneficiaries (that any change in the provider of payments is seamless);
- consistency between FAS members (for example, that the outcomes for those members where assets are transferred into government should be broadly consistent with those of members whose schemes purchased annuities);
- control of timeliness (that rules and processes should aim that asset transfer and the delivery of final payments to members are not unnecessarily delayed);

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<sup>17</sup>The Government legislated to prevent schemes from purchasing annuities in September 2007. From that time trustees could only purchase annuities for beneficiaries where they had an existing binding commitment to do so or where the FAS scheme manager agreed to their purchase. Thus partial transfer may arise where schemes had already discharged or committed some of their assets before the moratorium on annuitisation applied.

- control of cost (that costs are minimised to ensure best value is obtained from the assets transferred).

### **Period over which transfers will take place**

7. In the report “Speeding up Winding up Occupational Pension Schemes: a report of the Government’s review” published in November 2006 the Government stated that it is reasonable that the key activities of winding up of a pension scheme should be completed within two years. As is described in this consultation document, most of the activities that relevant FAS schemes will be required to complete in order to transfer their assets to Government reflect the key activities of winding-up. Given that many FAS schemes will already have been winding-up for some time they should already have completed most of these activities. The Government therefore expects the vast majority of FAS schemes to transfer assets within 2 years of relevant regulations coming into force, and expects some schemes to transfer early in this period.

8. However, the Government recognises that there may be exceptional circumstances in which asset transfer may be unavoidably delayed (for example where legal action is outstanding and must run its course before the final funding position of a scheme can be established). Caseworkers from the PPF will be working with schemes to help identify potential obstacles to transfer.

### **Interaction of asset transfer and payments to beneficiaries**

9. Under current arrangements scheme payments are made to eligible FAS beneficiaries out of scheme funds whilst schemes are winding-up. Where required those scheme pensions are topped up by FAS payments. The Government intends to retain this top-up approach until assets transfer into government at which point FAS will take over sole payment to relevant beneficiaries.

10. The Government’s intention is that scheme assets will be transferred to Government at a prescribed point decided by the FAS scheme manager once the necessary preparatory work to allow the FAS to take over payments to members has been completed by the scheme.

11. Once assets are transferred trustees will be discharged of responsibility for paying pensions by way of a transfer notice similar to the notice that applies in comparable circumstances in respect of the PPF. Further information on proposals for this discharge process is provided later in this section.

### **Preparing for the valuation and transfer of assets**

12. Before reaching the transfer point the Government expects trustees, administrators and scheme actuaries to undertake a number of preparatory tasks aimed towards establishing the final asset position and the underlying liabilities of the qualifying scheme.

13. These tasks will resemble the key functions undertaken by schemes during wind up:

- serving a debt on the employer (and where feasible obtaining that debt);
- data cleansing including GMP reconciliation;
- surrendering the contracting out certificate;
- member tracing;
- resolving any ambiguities in the scheme's benefits, including equalisation of benefits on account of GMP differences between men and women;
- identifying and managing assets;
- undertaking the final valuation and allocation of assets.

There will be some further tasks required of FAS schemes which do not form part of the 'normal' wind-up process:

- liquidating assets to cash where appropriate; and
- transferring cash and – in some circumstances – other assets to government.

15. As mentioned previously, caseworkers will work with schemes to prepare for the transfer of assets and monitor progress towards finalising assets and liabilities. The Government would expect trustees to undertake the tasks listed above with due diligence to protect the remaining assets in the scheme. The caseworkers will work with trustees to help them achieve these objectives<sup>18</sup>.

### **Valuation and allocation of assets**

16. The valuation and allocation of assets is a key activity in the 'preparation period' for the transfer of assets.

17. As described elsewhere in this consultation document, the share of assets allocated to the beneficiary will be used to determine whether a person stands to receive payments higher than standard FAS levels. It will also impact on the amount of Assistance some members might take as a tax-free lump sum.

18. In addition, Government's liabilities to beneficiaries will effectively crystallise at the point at which agreed valuations apply.

19. The Government is, therefore, keen to ensure that in so far as is practicable, the risk of assets decreasing in value from the valuation point is minimised.

### **Appointment of actuary to perform valuation**

20. It is the Government's intention that the FAS scheme manager will have the power to appoint an appropriately qualified actuary to perform the valuation once the necessary preparation tasks have been completed<sup>19</sup>. The Government expects that in most cases the existing scheme actuary will be appointed to perform this task. Exceptions may arise, for example where caseworkers are of the view that the accuracy or timeliness of the valuation may not meet required standards.

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<sup>18</sup>FAS stewardship processes will be modelled on those used by the PPF  
<sup>19</sup>A Fellow of the Faculty of Actuaries or a Fellow of the Institute of Actuaries.

## Separating out relevant assets from the valuation

### *Assets relating to defined contribution (money purchase) benefits*

21. The FAS only provides Assistance payments in respect of defined benefit (DB) pension rights. Some FAS schemes provide a combination of DB and defined contribution (DC) rights. In the vast majority of cases the Government does not intend to take in assets relating to any DC rights, rather these will be discharged outside of the FAS transfer process. More details on the proposals for the discharge of these rights are contained in the section titled 'Discharging defined contribution assets' below.

### *Sectionalised schemes*

22. Some pension schemes are divided into different sections in which assets and liabilities are segregated. In circumstances where a section of such a scheme qualifies for the FAS but another section of that scheme does not the Government intends only to take in assets relating to the section of the scheme that qualifies for FAS.

***Q28. The Government is keen to learn of any circumstances in which difficulties in separating 'FAS assets' from 'non-FAS assets' are foreseen.***

## The liquidation of assets

23. All FAS schemes are in wind-up and most have been winding-up for some time. On commencing wind-up trustees generally take actuarial advice on the financial implications for the scheme in order to review the scheme's investment strategy and to consider liability matching and liquidation of assets to facilitate the discharge of liabilities.

24. Research undertaken as part of, and subsequent to, the Young Review<sup>20</sup> confirmed that many FAS schemes had already adopted a 'winding-up investment strategy'. The Review estimated that over 80% of residual FAS scheme assets were held in a readily realisable form.

25. The Government does not intend to hold an extensive portfolio of assets in respect of the FAS. Rather it intends that assets should be switched into a readily realisable form (e.g. bonds, gilts, redeemable pooled vehicles) by schemes before the final valuation of assets and liabilities where this is practicable. In the majority of cases, the Government would then expect these to be liquidated into cash following the final sign off of the valuation by the FAS scheme manager and prior to the transfer point.

26. The Government would also expect most other assets such as property to be liquidated into cash before transfer. However the Government recognises that there may be some situations where early liquidation may have a significant impact on the

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<sup>20</sup> "The Financial Assistance Scheme (FAS) Review of Assets: Final Report." published December 2007.

value of particular assets, for example it is understood that some FAS schemes hold insurance policies with low surrender values or subject to significant market value adjustments.

27. The Government envisages that in such cases, the caseworker will explore with the trustees of the scheme their liquidation strategy and whether non-cash assets might be transferred to Government. In doing so caseworkers might require information on:

- the amounts and nature of the illiquid asset/s, and
  - the implications of early liquidation
- from which the caseworker will assess whether the implications are such that liquidation should be delayed and if so whether:
- the transfer of assets should be delayed to allow a particular period for the scheme to liquidate the asset/s; or
  - the transfer of the non-cash asset/s should be permitted.

### **Valuing assets**

28. In cases where the transfer of an illiquid asset is permitted, a value will need to be attached to it in order to allow assets to be allocated amongst beneficiaries.

29. The Government understands there are well established techniques for experts (actuaries, surveyors, auctioneers, corporate finance and insolvency experts) to value illiquid assets and we envisage that trustees will use this expertise to arrive at a suitable value for the assets (assuming reasonable fees for such services have been agreed). However, the Government would expect that the value allotted to assets in the scheme accounts should be in the context of the scheme not being a going concern, i.e. at realisation values. The Government understands that the Statement of Recommended Practice on Financial Reports of Pension Schemes already covers the impact on scheme asset values when the going concern basis is no longer appropriate.

### *Debts*

30. Where appropriate, the Government would expect debts owed to schemes to have been recovered before transfer. However, it is understood that some FAS schemes have arrangements with ongoing employers in which debts are payable over future periods (for example a 'with profits' arrangement with a solvent employer that forms part of an agreement to compromise the employer debt payable on scheme wind-up).

31. The Government understands that some such arrangements may have a comparatively short period to run and that they will therefore have been completed by the time the scheme is otherwise ready to transfer their assets. However, in other cases, agreements may not be time-limited but rather be extinguished when payments reach a certain threshold. It is also understood that in some cases fixed payment amounts are agreed, whilst in others payments are dependent on other factors such as the profits of an employer.

32. In recognition of the varying nature of these arrangements the Government intends to provide for flexibility in their treatment. Where agreements have some time to run the Government intends to provide for any such payments to be made into government rather than into the scheme to avoid lengthy delay to transfer.

33. In such circumstances an agreement will need to be reached on the estimated value of any future payments as part of the asset valuation. The value of those payments will take account of the risk of default and the period across which the agreement runs. This approach will also be followed in relation to any amounts due under contribution notices, financial support directions or restoration orders.

34. Where outstanding payment periods are comparatively short the Government intends that outstanding payments should be made into the scheme before assets are transferred.

#### *Other issues relating to asset values*

35. The Government envisages that regulations will need to provide for where it is appropriate to exclude assets from the valuation for example, where a debt is unlikely to be recovered or where it would be prohibitively expensive to recover<sup>21</sup>.

36. The Government anticipates that caseworkers will work with trustees and other scheme representatives where the value of an asset is uncertain. However, it is envisaged that the scheme manager will be provided with the power to determine the value of any asset that forms part of the valuation if required.

#### ***Q29. Comments would be welcomed on whether specific further accounting guidance will be needed to support this valuation process.***

#### **Approval of the valuation**

37. The actuarial valuation of assets and liabilities will be subject to approval by the FAS scheme manager.

#### **The 'effective date' for the valuation of assets and liabilities**

38. As the value of pension scheme liabilities and assets change over time, the effective date as at which a scheme valuation is undertaken affects the share of assets allocated to a beneficiary.

39. The Government understands that in a conventional wind-up, the scheme actuary would be asked by the trustees to undertake a final valuation of assets and liabilities towards the end of the winding-up period (once the various data cleansing, reconciliation, debt recovery, and relevant liquidation tasks have been completed and liabilities have been established).

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<sup>21</sup> We understand that in such cases trustees would normally have made a provision for non-recovery in scheme accounts.

40. The Government envisages, therefore, that the valuation of assets and liabilities in schemes subject to the transfer provisions will be undertaken by reference to an effective date towards the end of the preparation period to reflect typical wind-up processes and ensure subsequent movement in asset values is minimised.

41. However, the Government is concerned that leaving the selection of the effective date entirely in the hands of trustees could unnecessarily delay the transfer of assets. This might, for example, arise if trustees were of the view that the value of assets might increase at some future point.

42. In order to mitigate this risk a fixed effective date could be provided for all schemes (which could for example be the date relevant regulations come into force). However, as indicated earlier in this document some schemes might not be in a position to transfer their assets for some time after the relevant regulations come into force. A significant period between the effective date and the date of transfer would increase the risk of movement in the value of assets and thus increase the associated risks to either members or to government. For this reason the Government does not believe a fixed date for all schemes would be appropriate.

43. Instead, the Government is considering providing for fixed quarterly effective dates starting from a date close to the date the relevant regulations come into force. The relevant preceding quarterly date will apply as a matter of course once the caseworker is satisfied that the necessary preparatory tasks have been completed<sup>22</sup>. The Government considers that this approach will help manage the risk of delay to transfer whilst broadly reflecting the outcomes that could reasonably have been expected had the scheme wound-up by purchase of annuities.

***Q30. Views on this proposal for rolling quarterly valuation dates would be welcomed.***

### **Preparation of accounts**

44. The Government understands that in preparing any actuarial valuation, the actuary would normally start by taking the value of scheme assets directly from the audited accounts for the scheme. These accounts are usually prepared annually (as required by the relevant audited accounts and disclosure regulations).

45. As the proposed valuation date for FAS schemes will be controlled by legislation and by the PPF caseworker rather than by trustees, the usual accounting/valuation cycle will be disrupted. The Government is proposing that caseworkers will work with schemes during the preparation period to ensure that the audited accounts necessary to deliver the new valuation are produced at the relevant time. As part of this interaction caseworkers could suggest that schemes adjust their accounting cycles to fit in with the envisaged valuation date to avoid schemes incurring additional expense.

46. Caseworkers will also discuss with trustees whether closing accounts for the scheme, covering the period up to and including the date of transfer of assets and

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<sup>22</sup> These tasks are likely to encompass the standard wind-up activities listed in paragraph [11].

liabilities, need to be prepared, in accordance with best practice documented in the Statement of Recommended Practice “Financial Reports of Pension Schemes”. Where the scheme is sectionalised and one or more sections are continuing outside of FAS, it is our current view that it is in the best interests of both the trustees and of FAS for audited accounts to the transfer date to be prepared.

***Q31. Views would be welcomed on this approach.***

**Review and information requirements before the valuation becomes binding**

47. It is anticipated that a right of review of the valuation will be provided to the FAS scheme manager and the trustees of the scheme. The right of review for the scheme manager would allow for a new valuation to be undertaken if material issues arose that indicated that the valuation may not be accurate.

48. The Government is also considering what information and review rights should be provided to members in respect of the asset share allocated in respect of their liabilities in the valuation.

49. It is envisaged that the FAS valuation will not be binding until:
- it is approved by the FAS scheme manager, and
  - any review period has expired, and
  - where relevant, appeals have been resolved by the Ombudsman.

**Timescales between the valuation point and the transfer of assets**

50. As mentioned previously, the Government hopes to ensure that the ‘transition period’ between the completion of the valuation by the scheme actuary and transfer of assets is as short as possible to minimise the risk of potential movement in asset values. This is particularly important because the Government will expect schemes to continue to pay interim pensions and to make other benefit payments during the transition period. And accurate estimates of expenditure on benefit payments and fees will be expected between the valuation and transfer points to be factored into the valuation.

51. For these reasons the Government would not expect to delay the valuation being made binding except in exceptional circumstances, for example where an issue came to light which had a significant material impact on the valuation. In such cases, the Government may require a further valuation to be undertaken once the necessary activity to address the problem had been completed.

**Additional activity required before issue of transfer notice**

52. Before issuing the transfer notice -
- final member data will need to be transferred to the FAS scheme manager in preparation for the FAS assuming responsibility for making payments; and

- the FAS scheme manager will have validated the scheme data to ensure he is satisfied that the FAS will be in a position to meet payments as they fall due to members once the trustees cease interim pensions from the scheme.

53. In practice, the Government expects the completion of these tasks to evolve from the ongoing process of exchange and examination of data during the latter stages of the preparation period as caseworkers work with schemes to reach the transfer point. It is not expected that these tasks would prolong the transfer period significantly.

54. Once these tasks have been completed, the FAS scheme manager will issue a formal “transfer notice” at which point the handover of assets (and responsibilities) will take place.

### **The receiving mechanism**

55. A DWP bank account will be established for receipt of cash from FAS schemes, details of which will be made available to trustees as part of the transfer process. Cash assets will flow from this DWP account to the Exchequer. A DWP custodian account will also be put in place to receive non-cash assets and to collect any income arising from such assets (e.g. rent). The PPF will manage the liquidation of any non-cash assets that have been approved for transfer to Government, on DWP’s behalf. Once liquidated into cash these assets will transfer to the Exchequer from DWP.

### **Discharging defined contribution (DC) assets**

56. We are seeking to avoid taking in any DC assets wherever possible, although we recognise that taking in some ‘orphan’ assets in relation to lost beneficiaries’ DC rights may be necessary.

57. Where schemes are able to discharge DC assets by annuity purchase, applications to annuitise are required by the FAS halting annuitisation legislation. The Government would be inclined to look favourably on any such applications. However, it is understood that trustees can face difficulties finding an annuity provider in relation to small amounts of DC assets.

58. Her Majesty’s Revenue and Customs (HMRC) rules allow some DC assets to be discharged as a winding up lump sum. HMRC allow for ‘winding up lump sums’ of up to £16,500 (tax year 2008/9) to be paid, however it is understood that such sums can only be paid where they extinguish all of a member’s rights under a scheme (and various other requirements are met). Whilst this may provide an option for discharging these small DC pots for some schemes, it will only be possible for trustees to discharge such small DC pots by payments of the winding lump sum after any DB assets in relation to the member have been transferred into Government.

59. Where such an option is available, the Government intends to allow for this process to be followed by providing for DB assets to be transferred while relevant DC

assets and liabilities remain and for the final FAS discharge notice to apply after those DC liabilities have been discharged.

60. In practice, the Government would want schemes to discharge DC liabilities immediately after the DB transfer notice takes effect so that a final discharge notice can be issued and the scheme can be considered wound up.

61. The Government is also exploring the potential for discharge of DC assets via other options.

***Q32. Comments would be welcomed on these proposals and an indication of a suitable period over which DC liabilities might be discharged.***

### **Other assets that may be transferred into Government**

62. The Government understands that in certain circumstances schemes that have otherwise discharged member liabilities can be left with small amounts of assets, originally allocated to expenses but unspent during the wind-up process. The Government is considering taking in these residual assets where trustees can demonstrate that it would not be cost-effective to allocate these residual assets to beneficiaries in line with their statutory obligations and fiduciary duties.

63. Given that it would not be cost-effective to allocate these residual assets to individual beneficiaries the Government does not intend to make reciprocal payments against these assets. Rather the assets will be used to help meet the cost of providing enhanced FAS payments across the FAS membership.

64. The Government is also considering taking in certain 'orphan assets' relating to lost beneficiaries some of which may have related to defined contribution rather than defined benefit rights (here too the Government may not make reciprocal payments unless the beneficiary is later traced).

***Q33. Views would be welcomed on whether it is reasonable to take in relevant assets in these circumstances.***

### **Halting Transfers and Winding-up lump sums**

65. In order to preserve the residual assets of FAS schemes that will be transferring assets to government, the Government intends to prevent qualifying pension schemes from allowing members to transfer out of the scheme from the date regulations providing for the transfer of assets to Government are expected to come into force (in winter 2009). Members will still have an opportunity to transfer before that time.

66. To further protect the assets in schemes, the Government does not intend to allow winding-up lump sums to be offered in relation to Defined Benefit assets that would otherwise be transferred to Government. Halting the provision of winding-up lump sums will also provide administrative savings and help speed up the transfer of

assets (because relevant periods allowing for members to exercise options to take such lump sums after the valuation point will not be required).

67. It is understood that in a conventional wind-up, winding-up lump sums are not offered to members until the end of wind-up when assets and liabilities have been finalised. Given this, the Government does not see a need to legislate in this area until the transfer of assets and related discharge activity is provided for.

68. In line with the lump sum proposals described elsewhere in this document, members who have not yet reached retirement and who would have received a winding-up lump sum if their scheme had wound-up outside of FAS will be able to receive part of their benefits, as a tax-free lump sum when they reach NRA subject to their asset share.

***Q34. Comments would be welcomed on the proposal to prevent transfers out of schemes and to prevent winding-up lump sums being offered in relation to DB assets.***

## SECTION 7: List of questions

## **General**

1. The Government would be interested in whether anyone thinks there could be an adverse impact on the position of disabled people from these changes.
2. The Government would be interested in whether anyone thinks there could be an adverse impact on the position of men or women from these changes.
3. The Government would like any comments in relation to whether the draft regulations achieve the expressed intentions.

## **The Government's Proposals on the Structure of the Assistance**

### ***Date payment begins***

4. Opinions are sought on the Government's approach to deciding when entitlement should begin. (paragraphs 17 to 24)

### ***Rights accrued at different dates***

5. Comments are invited on the Government's proposed method of reflecting past entitlement to different tranches of accrued rights by uplifting/reducing to the single normal retirement date. (paragraphs 25 to 28)

### ***Step-ups and step-downs***

6. Comments would be welcomed on the treatment of pension step-ups and step-downs in the FAS. (paragraphs 29 to 33)

### ***Actual Pension***

7. Opinions would be welcomed on our intention to bring to account the actual annuity in payment. (paragraphs 37 to 40)

### ***The Cap***

8. Comments are invited on the Government's intention to increase the FAS cap from 1 April 2007 and to re-assess Assistance for any individual already capped. (paragraphs 41 to 42)
9. Opinions are sought on the most appropriate method of calculating the Assistance cap. Should it be:
  - (a) a flat rate cap with protection against inflation through increases based on the Retail Price Index; or
  - (b) a proportionate cap, with protection against inflation through increases based on National Average Earnings. (paragraphs 43 to 44)

### ***Indexation***

10. Comments are invited on the above method of indexing Assistance and, in particular, on the issue of taking account of the level of indexation secured by the annuity and the method proposed to do so. (paragraphs 45 to 51)

11. The method proposed in the draft Regulations assumes that annuities purchased for members will either be flat rate or indexed so as to produce only increases. The Government would welcome evidence of cases where annuities could potentially decrease as a result of deflation.

### ***Surviving partners***

12. Comments are invited on whether surviving partners of deceased qualifying members should qualify for survivor payments and, if so, whether the conditions should be as described. (paragraphs 52 to 64)

### ***Dependent children***

13. Comments are invited on whether dependent children should qualify for survivor payments and, if so, whether the conditions should be as described. (paragraphs 65 to 69)

### ***Polygamous marriages***

14. Comments are invited on whether all legal spouses of a polygamous marriage should qualify for an equal share of a single survivor's Assistance. (paragraph 70)

### ***Transitional protection***

15. The Government would be interested in any comments on the proposal to offer transitional protection where these regulations would result in a lower entitlement for any qualifying member or survivor who is in receipt of Annual Payments. (paragraphs 71 to 74)

## **Proposed Administrative Changes**

### ***Changing period of payment etc***

16. The Government would be interested in any comments you would like to make about the proposals to:

(a) allow for payments at periods other than monthly;

(b) allow for payments in advance, arrears or whatever pattern seems appropriate;

(c) allow for entitlement to be for a full payment period where a qualifying member dies during that period. (paragraph 2)

### ***Reconciling payments made on account***

17. Views are invited on the proposal to reconcile payments made by schemes and FAS from the start of FAS entitlement and prior to wind up. (paragraphs 4 to 15)

18. Views are also invited on the exceptional circumstances in which it might be appropriate for the FAS scheme manager not to bring payments made by the scheme to account in determining future FAS entitlement or recoverable overpayments – these will assist in drawing up the necessary clear and objective criteria against which the FAS scheme manager will exercise the discretionary power.

### ***Information required from scheme trustees***

19. Comments would be welcomed on whether it would be an onerous task for trustees, administrators, managers, insurers and others holding relevant information to provide the additional information specified. (paragraph 16)

20. The Government would welcome comments on the requirement to obtain quarterly details of scheme expenditure against budget and exception reports of significant changes to investment of the scheme's assets. (paragraphs 17 to 18)

21. The Government would welcome views on the requirement for the trustees to notify the FAS scheme manager where they are involved in legal or similar action. (paragraph 19)

### ***Timing for the provision of information***

22. The Government would welcome your comments on the timescales in which information should be provided. In particular whether the provision of information within one month of the qualifying member's death is reasonable. (paragraphs 20 to 22)

### ***Reviews and appeals***

23. The Government would be happy to accept any comments on the extension of the right to review and appeal FAS determinations. (paragraph 23)

### **Proposals for the Operation of the Financial Assistance Scheme**

24. The Government would welcome views on whether the Board of the PPF should become the FAS scheme manager, including taking on responsibility for administering the FAS. (paragraphs 1 to 10)

25. The Government would welcome your views on the proposal to allow the PPF to delegate certain functions to a commercial provider. (paragraphs 11 to 14)

### ***Information sharing***

26. The Government would be interested in your views on the sharing of relevant information with the Board of the PPF and any third party provider. (paragraphs 15 to 19)

### ***Payments to schemes***

27. The Government would welcome your views on the Board of the PPF being able to make payments to pension scheme trustees and managers at its discretion, where schemes have run out of available funds for the purposes outlined in the relevant paragraphs. (paragraphs 20 to 22)

### **Initial Proposals for the Transfer of Scheme Assets to Government**

28. The Government is keen to learn of any circumstances in which difficulties in separating 'FAS assets' from 'non-FAS assets' are foreseen. (paragraphs 21 to 22)

29. Comments would be welcomed on whether specific further accounting guidance will be needed to support the valuation process. (paragraphs 28 to 36)

30. Views on the proposal to provide for rolling quarterly valuation dates would be welcomed. (paragraphs 38 to 43)

31. Views would be welcomed on the proposed approach to the preparation of accounts. (paragraphs 44 to 46)

32. Comments would be welcomed on the proposals relating to the discharge of DC liabilities outside the FAS transfer process and views are invited on a suitable period over which DC liabilities might be discharged. (paragraphs 56 to 61)

33. Views would be welcomed on whether it is reasonable to take in "orphan" assets relating to lost members and residual assets from schemes that have annuitised. (paragraphs 62 to 64)

34. Comments would be welcomed on the proposal to prevent transfers out of schemes and to prevent winding-up lump sums being offered in relation to DB assets. (paragraphs 65 to 68)

## SECTION 8: The Draft Regulations

## COMMENTARY ON THE DRAFT REGULATIONS

### Part 1 – Introductory

**Draft Regulation 1** gives the name of the regulations and the date on which they come into force, which is the day after they are made.

**Draft Regulation 2** contains definitions of certain words and phrases used in the draft regulations.

### Part 2 - Amendment of the FAS Regulations

**Draft Regulation 3** says that the Financial Assistance Regulations 2005 are to be amended in accordance with the draft regulations in this Part.

**Draft regulation 4** makes a number of changes to regulation 2 - interpretation - of the FAS Regulations.

**Draft regulation 5** amends regulation 4(2) of the FAS Regulations to substitute regulation 4(2)(ba) with an extended list of sections within Parts 1 and 2 of the Pensions Act 2004 which will apply to the FAS with modification by the FAS Regulations. The sections subject to modification relate to investment of funds, investment principles, borrowing, administration levy, annual reports to the Secretary of State, directions and the Board of the PPF.

**Draft regulation 6** amends regulation 5 of the FAS Regulations to substitute the “Board of the Pension Protection Fund” for “Secretary of State”, thereby making the Board of the PPF the FAS scheme manager. This draft regulation also provides a requirement for the Secretary of State to pay a grant to the FAS scheme manager to pay for the FAS functions it will undertake and prevents the FAS scheme manager from using the grant to pay for the assistance due to FAS beneficiaries.

**Draft regulation 7** amends the FAS Regulations, the FAS Internal Review Regulations, the FAS Appeals Regulations and the FAS Information and Payments Regulations so that references to “he” “his” and “him” which relate to the scheme manager are changed to “it” “its” and “it”. This is as a result of the proposed change in scheme manager from the Secretary of State (he) to the Board of the PPF (it).

**Draft regulation 8** provides that the Secretary of State and the Department for Social Development in Northern Ireland can disclose information held in relation to the FAS or social security to the FAS scheme manager or another party whom the FAS scheme manager has authorised to receive and use such information, for use in connection with FAS functions. The draft regulation also requires that information in relation to FAS which has been obtained by the FAS scheme manager or any authorised person may be disclosed to the Secretary of State or the Department for Social Development in Northern Ireland upon request of the Secretary of State or Department or where disclosure would enable the FAS scheme manager to carry out his functions.

**Draft regulation 9** replaces regulation 6 of the FAS Regulations with new provisions covering arrangements by the Secretary of State to assist the Board of the PPF to carry out their functions (including funding provisions). The draft regulation provides that the Secretary of State must make funding available to -

- the FAS scheme manager; or
- a person authorised by the FAS scheme manager to make FAS payments,

to cover the payments which are made under the FAS Regulations. The funding must be made out of monies provided by Parliament.

In addition, the draft regulation provides that the Secretary of State may make other arrangements as he considers appropriate to enable or assist the FAS scheme manager in carrying out the FAS functions, for example, the Department for Work and Pensions will retain skills and knowledge relating to the FAS and these may be provided to assist with the transition when the PPF becomes FAS scheme manager. This power may also be used by the Secretary of State to determine the actuarial factors required by the FAS scheme manager to carry out its work.

**Draft regulation 10** omits regulations 7 and 8 of the FAS Regulations. These cover the annual report that the Secretary of State, as FAS scheme manager, had to prepare and lay before Parliament on the FAS and the ability for the scheme manager to delegate FAS functions. These topic areas are now covered in other areas of the draft Regulations.

**Draft regulation 11** inserts new Regulation 14A which is similar to regulation 5A(2) in the current FAS Regulations in that it provides for the FAS scheme manager to manage, or make arrangements in relation to the management of the winding up process of schemes that are coming into the FAS. For example, providing help with the preparation of plans and documents, assisting with transfers and auditing data.

This draft regulation also inserts new regulation 14B to provide for the FAS scheme manager, at its discretion and on terms it considers appropriate, to make payments to schemes which have insufficient funds to complete the winding-up process or pay for actions necessary to minimise reductions in the scheme's assets or increase the scheme's assets.

**Draft regulation 12** inserts new regulations 16A and 16B after regulation 16 of the FAS Regulations.

New regulation 16A describes who can qualify as a survivor including new provision for a surviving partner. A spouse or civil partner is a survivor unless there is a nomination by the FAS qualifying member to the pension scheme or the FAS scheme manager to pay a surviving partner and the following conditions are met:

- (a) the rules of the qualifying pension scheme provide for payment to a surviving partner, whether this is on a discretionary basis or otherwise; and
- (b) the surviving partner was living with the qualifying member immediately before the qualifying member's death.

Where there is no nomination, and there is no surviving spouse or civil partner, a surviving partner may still qualify for Assistance by providing the scheme manager with evidence that they were living with the member at the time of death and were financially interdependent with, or dependent on, the member.

Paragraph (3) provides for an exception. This exception applies where a person was in receipt of a survivor's pension from the scheme immediately before it started to wind up and is therefore treated as a qualifying member under regulation 15(5) of the FAS Regulations.

New regulation 16B sets out the qualification criteria to be a surviving dependant.

A person is a surviving dependant if they are a child of the FAS qualifying member's family, financially dependent on the member and:

- (a) under 18: or
- (b) under 23 and attending a qualifying course; or
- (c) under 23 and incapable of full time paid work as a result of having a disability.

Generally a qualifying course is one which is full time, at a recognised educational establishment and involves over 12 hours study or other work a week. The full definition can be found at draft regulation 4(e) and will be inserted into regulation 2 of the FAS Regulations.

New regulation 16B(1)(b) sets out the evidence which must be supplied to the FAS scheme manager for a person to qualify for payments.

Paragraph (2) provides for an exception. This exception applies where a person was in receipt of a survivor's pension from the scheme immediately before it started to wind up and is therefore treated as a qualifying member under regulation 15(5) of the FAS Regulations.

**Draft regulation 13** amends regulation 17 (annual payments) of the FAS Regulations to specify when a qualifying surviving dependant's entitlement to an annual payment determined in accordance with Schedule 2 will start and end.

Entitlement will start from the later of the day after the qualifying member's death or 14 May 2004 (except where a qualifying surviving dependant is born after the member's death, in which case entitlement begins from birth).

Entitlement will end when the surviving dependant ceases to meet the qualifying conditions by reaching age 18, or 23 if attending a qualifying course or incapable of working full-time as a result of having a disability, or dies.

This entitlement does not apply where the surviving dependant is entitled to an ill health payment under regulation 17 A (because the qualifying member was entitled to an ill health payment before they died) or where the surviving dependant is a surviving dependant of a person who is regarded as a qualifying member under regulation 15(5).

New paragraph (4D) provides for entitlement to begin again where a surviving dependant starts or resumes a qualifying course before they reach age 23.

Draft regulation 13(c) amends paragraph (5B) so that no further monthly instalments of an annual payment are payable after the end of the month in which the beneficiary dies (rather than the day after death).

Draft regulation 13(d) makes consequential changes to regulation 17.

**Draft regulation 14** amends regulation 17A (ill health payments) of the FAS Regulations to make changes to ill health payments which correspond with the changes we are making to all other full FAS payments.

**Draft regulation 15** amends regulation 17B (interim ill health payments) of the FAS Regulations to make changes to interim ill health payments which correspond with the changes we are making to FAS initial payments.

**Draft regulation 16** amends regulation 18 of the FAS Regulations, which makes provision in relation to FAS initial payments.

Paragraph (a) removes regulation 18(1) from the FAS Regulations. This provision meant that initial FAS assistance could only be considered up to one year before normal retirement age before the qualifying member's NRA. This is removed so that decisions can be made by the scheme manager at any stage. The date from which the payments themselves can be made does not change as a result of this amendment.

Paragraphs (b) to (d) make special provision in relation to survivors where the qualifying member who has died was a party to a polygamous marriage. In such cases the scheme manager would have the discretion to make 'a shared initial payment' to each surviving spouse. The shared initial payment can be made in anticipation of annual payments being made, in the same way as initial payments are, and are paid from the later of 14 May 2004 and the day after the day on which that qualifying member died.

Paragraph (h) amends regulation 18(7) of the FAS Regulations to make provision as to when initial payments to surviving dependants cease to be paid. Such payments will end when:

- a) annual payments start to be made; or
- b) the surviving dependant no longer meets the qualifying conditions to receive an annual payment as a surviving dependent; or
- c) the surviving dependent dies.

This draft regulation 16 also makes consequential amendments to regulation 18 of the FAS Regulations as a result of these changes.

### ***Draft regulation 17***

Paragraph (1) deletes the words in regulation 19(1) which requires payments to be made monthly. It then replaces this by a requirement to make payments in instalments of no more than 52 a year on a day specified by the FAS scheme manager.

Paragraphs (2) and (3) delete the word “monthly” from the various places which refer to the period of instalments in regulations 17, 17A, 17B, 18, 19 and 20 of the FAS Regulations.

***Draft regulation 18*** further modifies Schedule 1 of the FAS Regulations. It prevents the grant paid for FAS functions from being invested other than in an interest bearing bank account, removes the requirement to produce a statement of investment principles in respect of the FAS grant invested in an interest bearing bank account, prevents any borrowing against FAS funds and prevents the administering of a levy in relation to the FAS. The draft regulation also requires that the annual report produced by the PPF must include details of the FAS, including the number of persons who have received FAS payments and the total amount of those payments. The draft regulation requires inclusion of FAS matters in the annual report from the date the draft Regulations come into force to the end of the financial year (31<sup>st</sup> March) and annually thereafter.

Paragraph (c) modifies paragraph 18(2) of Schedule 5 of the Pensions Act 2004 to allow the FAS scheme manager to delegate some of its FAS functions to a person authorised by the FAS scheme manager. These functions are:

- the receipt of information relating to notification;
- working with qualifying schemes through the wind up process;
- the determination of the amount of payments to beneficiaries;
- paying instalments of payments to beneficiaries including non payment where the FAS scheme manager has decided to suspended payment or the commencement of payments where the FAS scheme manager decides to lift suspension of a payment;
- receiving information in relation to notification requirements;
- the collection and provision of information, except notification following the determination of whether a scheme is a qualifying scheme and making the decision to suspend FAS payments;
- notifying review decisions and reviewable determinations, and dealing with matters arising out of a review decision; and
- taking or refraining from taking steps directed by the Ombudsman.

This paragraph also modifies paragraph 22(7)(a) of Schedule 5 of the Pensions Act 2004 to require accounts in respect of the PPF to include details of the FAS from the date the FAS draft Regulations come into force.

***Draft regulation 19*** changes certain definitions in paragraph 1(2) of Schedule 2. Specifically it:

- deletes the definition of crystallisation date; and

- inserts the definition of indexation date, which is the 1 January after a beneficiary became entitled to an annual payment and every subsequent 1 January.

**Draft regulation 20** makes certain changes to the way the actual pension amount used in the Assistance calculation is determined.

Paragraph (a) changes the point at which the actual pension is determined to the later of the day on which entitlement to Assistance begins or the day on which the qualifying scheme began to wind-up.

Paragraph (b) makes a number of changes to how the actual pension should be determined to takes account of other amendments. It first inserts a cross-reference to the new paragraph 2A; secondly changes the day on which a qualifying member is to be judged to be a deferred or active member of a scheme as the day before the scheme begins to wind-up, and thirdly it inserts a reference to a surviving dependant into sub-paragraph (3)(b).

Paragraph (c) allows for reconciling payments made by both the qualifying scheme and the FAS during the interim period against the full entitlement to Assistance, once it is determined.

**Draft regulation 21** inserts a new paragraph - paragraph 2A - into Schedule 2 of the FAS Regulations. which allows for annual re-determinations of the Assistance in payment, where an annuity paid to the beneficiary increases over time. The annual redetermination will occur on the indexation date - defined as the 1st January each year. This definition is inserted into Schedule 2, paragraph 1 by draft regulation 19. The new sub-paragraph 2A(4) allows the scheme manager discretion to determine the annual rate of the annuity to be used in the calculation, where it is not possible to establish the actual amount.

**Draft regulation 22** amends the calculation of Assistance for a pensioner qualifying member.

Paragraph (a) replaces the date on which a qualifying member is to be judged a pensioner, so that the determination is made on the day before the day on which the scheme entered wind-up.

Paragraph (b) amends the date on which the pensioner's expected pension is determined so that it becomes the day before the day on which the scheme began to wind-up. It also provides for the revaluation of the expected pension from that date to 14 May 2004, when the date of wind-up is before 14 May 2004. Finally, it provides the method of calculating the amount of the revaluation to be applied.

Paragraph (c) applies where the amount of the actual pension includes an amount that is due to be paid for a shorter period than the balance but the annuity provided to the beneficiary does not provide for such a decrease. It allows the scheme manager to determine the expected pension having regard to the annuity purchased and any other relevant matters.

**Draft regulation 23** amends paragraph 4 of Schedule 2 which provides for the calculation of Assistance for active and deferred qualifying members.

Paragraph (a) replaces the date on which a qualifying member is adjudged to be an active or deferred member so that the determination is made on the day before the day the scheme entered wind-up.

Paragraph (b) allows for the revaluation of the qualifying member's expected pension from the NRA to the 14 May 2004 where 14 May 2004 is later than the day the scheme began to wind-up and the member's NRA. In addition it makes certain consequential changes.

Paragraph (c) provides for the determination of the expected pension where part of the qualifying member's expected pension was payable for a shorter period than the rest, but the scheme has discharged its liabilities towards that member in a way that does not reflect the shorter payment period.

Paragraph (i) governs the calculation of the revaluation required under paragraph (b) above.

This draft regulation also makes certain consequential changes.

**Draft regulation 24** inserts two new paragraphs - paragraphs 4A and 4B into Schedule 2.

The new paragraph 4A specifies how the Assistance calculation deals with the situation where part of the beneficiary's expected pension was payable for a shorter period of time to the balance and the purchased annuity falls to a lower annual rate at the point this portion of the expected pension stops. The paragraph allows for a redetermination at the date the part-pension ceases. From the date the Assistance is to be redetermined in the normal manner, but with the amount of the part-pension excluded from the expected pension calculation. Any indexation awarded before the redetermination which is attributable to the amount of the new expected pension should be added in. Finally, paragraph 4A(4) allows the scheme manager to determine any of the amounts needed to apply this paragraph, taking account of whatever matters it considers relevant where it is not possible to determine any of these amounts from the information available.

The new paragraph 4B specifies how Assistance should be calculated where any part of the expected pension would have been payable to a qualifying member without adjustment at an age other than the person's NRA, excepting where it would happen as a consequence of scheme rules allowing for early payment on ill-health grounds or any other reason. The calculation rules are amended so that each part of the expected pension that would have been payable at a different date is calculated to that date. It then provides for an actuarial factor to be applied to the amounts referred to when calculating the amount of the member's expected pension. Finally it requires each of the parts to be added together to reach the full expected pension in this situation.

**Draft regulation 25** amends paragraph 5 of Schedule 2 to the FAS Regulations (Survivors of qualifying members) to make changes to the calculation of annual payments payable to survivors which correspond with the changes being made to all other final FAS payments

It also inserts new paragraphs (6A) which provides for the amount of an annual payment to survivors of a qualifying member who was in a polygamous marriage to be an equal share of the amount which would have been paid to a single survivor. New paragraph (6B) provides for the redetermination of the annual payment where one of these survivors dies.

**Draft regulation 26** inserts new paragraph 5B (Surviving dependants of qualifying members) into Schedule 2 setting out the amount of an annual payment to a surviving dependant according to whether there is a survivor and/or other surviving dependants:

Where there is also an annual payment payable to a survivor (new paragraph (5B)(2)), the annual payment to:

- (i) a single surviving dependant will be 50 per cent of the amount payable to the survivor;
- (ii) two or more surviving dependants will be the amount payable to the survivor divided equally between the surviving dependants.

Where there is no survivor (new paragraph (5B)(3)), the annual payment to:

- (iii) a single surviving dependant will be the amount which would have been payable to a survivor;
- (iv) two or more surviving dependants will be twice the amount payable which would have been payable to a survivor divided equally between the surviving dependants.

New paragraph 5B(4) provides that where a survivor dies or a person ceases to be surviving dependant dies, the annual payment payable to any surviving dependant of that qualifying member shall be re-determined. This means that the amount of the annual payment which had been payable to the survivor or surviving dependant could be redistributed between any surviving dependants in accordance with new paragraph (5B)(3). This does not apply where the survivor is a person treated as a survivor under the transitional provisions in regulation 36 of these draft Regulations.

**Draft regulation 27** amends paragraph 7 of schedule 2 of the FAS Regulations which relates to the FAS cap. The substituted sub-paragraph provides that where 90 per cent of the expected pension is an amount higher than the FAS cap then the FAS cap amount shall be used for that part of the FAS calculation. The regulation also inserts new sub-paragraphs (3), (4) and (5) into paragraph 7:

Sub-paragraph (3) lists the amounts of the FAS cap for each year up to 31 March 2010 and allow for subsequent caps to be calculated in accordance with paragraph 7(4).

Sub-paragraph (4) provides for the cap to be increased by the annual rate of the RPI, measured to 31 September each year or by 0 per cent where RPI has not increased.

Sub-paragraph (5) requires the amount of the cap to be rounded up to the nearest pound.

**Draft regulation 28** replaces paragraph 9 in Schedule 2 to provide for an annual increase to annual payments. It provides for an increase to be made to the underlying rate on the indexation date by the appropriate percentage. The underlying rate is defined as 90 per cent of the expected pension, attributable to service in the scheme that accrued after 6 April 1997, plus any indexation. The appropriate percentage is defined as the lesser of 2.5 per cent or the increase in the RPI for the year ending 31 May each year.

Sub-paragraph (3) allows the scheme manager to determine the amount of the attributable service for indexation purposes taking account of any relevant matters, where it is not possible to determine from the information available.

**Draft regulation 29** inserts new paragraph 10A into Schedule 2. It provides for the amount of a shared initial payment under draft regulation 18(4B) (polygamous marriage) to two or more survivors to be the amount of an initial payment to a single survivor divided equally between the survivors.

**Draft regulation 30** amends Schedule 2A (which sets out how to calculate FAS ill health payments and interim ill health payments) of the FAS Regulations to make changes to the calculations which correspond with the changes being made to the way FAS annual payments and initial payments are calculated.

Draft regulation 30(d) amends paragraph 5 of Schedule 2A of the FAS Regulations to remove the obligation on the Secretary of State (formerly the FAS scheme manager) to determine the actuarial factor that should be used in ill health determinations. This approach enables flexibility in relation to who determines the actuarial factor used in ill-health determinations.

### **PART 3 - Amendment of the FAS Information and Payments Regulations**

**Draft regulation 31(1)** states that the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations S.I.2005/2189 (the FAS Information and Payments Regulations) are amended in accordance with this draft regulation.

#### **Interpretation**

**Draft regulation 31(2)(a)(i – iv)** inserts new abbreviated references into the FAS Information and Payments Regulations so that “the Act” refers to the Pensions Act 2004 and “the 2009 Regulations” refers to these draft Regulations (once enacted). It also removes the current definition of appointed representative and replaces the existing definition of survivor with a definition of surviving dependant in accordance

with regulation 16B and a definition of survivor in accordance with regulation 16A of the FAS Regulations.

**Draft regulation 31(2)(b)** extends the meaning of “appointed representative” contained in the FAS Information and Payments Regulations to include the parent of, or person with parental responsibility for a beneficiary or possible beneficiary who is under 18 of years of age. This supports the extension of FAS Assistance to surviving dependent children of qualifying scheme members.

### **Information to be provided by, and to, appropriate person**

**Draft regulation 31(3)(a) to (d)** amend regulations 3(3)(a), 4, 5 and 6(1) of the FAS Information and Payments Regulations to allow the FAS scheme manager to authorise persons to receive information on the scheme manager’s behalf. This will enable the Board of the Pension Protection Fund, as FAS scheme manager, to appoint another person, such as a commercial provider, to receive information for the FAS on behalf of the PPF.

### **Information to be provided by beneficiaries and potential beneficiaries and their personal representatives**

**Draft regulation 31(4)** makes a technical amendment to regulation 6(1) of the FAS Information and Payments Regulations to replace the words “he may” with the words “the scheme manager may” to reflect the fact that the FAS scheme manager is the Board of the Pension Protection Fund and no longer the Secretary of State.

### **Recovery of Overpayments**

**Draft regulation 31(5)** provides in regulation 7 of the FAS Information and Payments Regulations for any amount of FAS Assistance recovered as an overpayment by the Board of the Pension Protection Fund as FAS scheme manager must be paid to the Secretary of State.

### **Suspension of payments**

**Draft regulation 31(6)** removes the reference to “monthly” in regulation 8(1) of the FAS Information and Payments Regulations to provide that any frequency of instalment of FAS Assistance payments can be suspended.

### **Information to be provided by appropriate person**

**Draft regulation 31(7)** amends Schedule 1 of the FAS Information and Payments Regulations which sets out the information which must be provided to the FAS scheme manager or a person authorised by the FAS scheme manager.

**Draft regulation 31(7)(b)(ii)(aa) to (cc)** extends the existing information requirements contained in Schedule 1 to include information that will be needed from trustees or managers of schemes or insurers to enable calculation of the extended FAS Assistance. The additional information required relates to providing details of a member or former member’s survivor or surviving dependants, annuities secured,

tranches of payments including details of revaluation and indexation, transfer payments made, interim payments paid, lump sums and winding up lump sums paid, and amounts paid to restore State scheme rights. In addition, this draft regulation provides that a requirement that information provided is sufficient to enable a reviewable determination to be made by the FAS scheme manager.

**Draft regulation 31(7)(b)(iii)(aa) to (cc)** inserts that the requirement for the reporting of any changes to information already supplied under Schedule 1 within 14 days of the change.

**Draft regulation 31(7)(b)(iii)(dd) to (ee)** requires that trustees supply on a quarterly basis, or as otherwise agreed with the FAS scheme manager, details of expenditure incurred by the pension scheme. The reporting of this information must take place within 14 days following the end of the period to which this information relates.

**Draft regulation 31(7)(b)(iii)(ff) to (gg)** requires that trustees supply details of any significant changes in the investment of schemes assets or in the level of expenditure incurred by the scheme. This information will assist the FAS in supporting schemes through wind-up and ensuring that scheme assets are safeguarded. The information of any change is required within 14 days beginning on the day the change took place.

**Draft regulation 31(7)(b)(iii)(hh) to (ii)** requires that, where a scheme is already involved in or contemplating legal proceedings, arbitration or dispute resolution procedures or negotiations, the trustee must inform the FAS scheme manager. This approach enables the FAS to consider any cost impact to the scheme or delay to winding up. The provision of this information is required either – within 28 days of these regulations coming into force; within 14 days beginning on the date that the appropriate person is notified that the scheme qualifies for FAS; or within 14 days of the appropriate person becoming aware that any of the actions listed above are being contemplated or actually taking place.

**Draft regulation 31(7)(c)** amends the existing timescales in regulation 3(3) of the FAS Information and Payments Regulations, to provide a two-stage approach to the timescales for the provision of information to the FAS scheme manager. The first stage requires accurate information to be provided to the FAS scheme manager by the appropriate persons as follows:

- for each member or former member who will not have not reached NRA on the date which is 6 months after these draft Regulations come into force, in the period of 3 months ending 3 months before the member's NRA;
- for each member or former member who has reached NRA when these draft Regulations come into force, the period ending 3 months after these draft Regulations come into force;
- for any survivor or surviving dependants for whom an annuity has been purchased and this is in payment before the date these draft Regulations come into force, the period ending 3 months after these regulations come into force;
- for any survivor or surviving dependant of a qualifying member who dies after these draft Regulations come into force, the period ending one month after the day the member died.

The second stage provides for the timescales above to be overridden in certain circumstances. These are:

- where accurate information is obtained earlier than required, the information should be provided as soon as it is available;
- where the FAS scheme manager determines the date by which the information should be provided;
- where the information was requested by the FAS scheme manager before these regulations came into effect, the existing deadline should be used;
- where the member is terminally ill, severely ill or unable to work due to ill health, a requirement to provide information within 14 days of the FAS scheme manager's request.

These timescales will assist in speeding up scheme wind-up and the making of Assistance payments to members or their survivors or surviving dependent children. In addition, this draft regulation provides flexibility, for example, where the provider of information can exceed a deadline or where the FAS scheme manager considers an alternative deadline is appropriate.

**Draft regulation 31(7)(d)** makes a technical amendment to remove regulations (5) and (6) from the FAS Information and Payments Regulations as these regulations made reference to regulations setting out timescales for providing information and those regulations have been substituted by the new draft regulation 31(7)(c).

**Draft regulation 31(8)** provides that, where the FAS scheme manager authorises any other person to receive information on his behalf, the identity of the person authorised shall be communicated in writing to the appropriate persons.

**Draft regulation 31(9)** amends Schedule 2 to the FAS Information and Payments Regulations so that, where the FAS scheme manager authorises another person to receive on its behalf, the identity of the person authorised shall be communicated in writing to the beneficiaries and potential beneficiaries.

#### **PART 4 - Amendment of the FAS Internal Review Regulations and the FAS Appeal Regulations.**

**Draft regulation 32(1)** sets out that the Financial Assistance Scheme (Internal Review) Regulations S.I 2005/1994 (the FAS Internal Review Regulations) are amended in accordance with this draft regulation.

**Draft regulation 32(2)** is a technical amendment to the FAS Internal Review Regulations to include references to the new reviewable determination in respect of survivor eligibility. This extension does not apply to regulation 2(1)(c) of the FAS Internal Review Regulations as this relates to qualifying member determinations. The extension also does not apply to regulation 5(1)(b)(ii) of the FAS Internal Review Regulations as this relates to the timescales in which a determination is made on member eligibility and member assessment where the determination was made

before the coming into force of the Financial Assistance Scheme (Modifications and Miscellaneous Amendments) Regulations S.I 2005/3526.

**Draft regulation 32(3)** adds a definition of surviving dependant as having the meaning given in regulation 2(1) of the draft FAS Regulations.

**Draft regulation 32(4)** adds a new reviewable determination to regulation 2 of the FAS Internal Review Regulations in respect of survivor eligibility and makes corresponding amendments to regulation 2(1)(d) and (f) of those Regulations, which relate to reviewable determinations on the amount of annual payments and amount of ill health payments, to include references to surviving dependants.

**Draft regulation 32(5)** makes amendments which require the FAS scheme manager to publicise reviewable determinations in relation to scheme notification and eligibility on the FAS scheme manager's (the PPF's) FAS website. In addition this amendment extends the provision for the FAS scheme manager to be able to publish on the FAS website determinations in respect of member eligibility to include survivor and surviving dependant eligibility.

**Draft regulation 32(6)** supports the extension of FAS Assistance to surviving dependent children by setting out details of who the FAS scheme manager will accept as a representative on behalf of a child who is under 18 years old. The draft regulation also permits the FAS scheme manager to appoint a person to act on behalf of the child where there is no parent or person with parental responsibility to represent the child who is under 18 years old.

**Draft regulation 33(1)** sets out that the Financial Assistance Scheme (Appeals) Regulations S.I 2005/3273 (the FAS Appeals Regulations) are amended in accordance with this draft regulation.

**Draft regulation 33(2)** extends the reference to survivor in the definitions of beneficiary and member assessment to include a reference to surviving dependant and defines surviving dependant in accordance with regulation 2(1) of the draft FAS Regulations. The draft regulation also inserts into the FAS Appeals Regulations a definition of the survivor eligibility decision which means a review decision made by the FAS scheme manager to determine whether or not a person is a survivor or surviving dependant of a qualifying member.

**Draft regulation 33(3)** adds a reference to survivor eligibility decision to regulation 6(2)(b) of the FAS Appeals Regulations to require that a notice of appeal to the Ombudsman must include the name and address of the beneficiary to whom the survivor eligibility decision relates if the person making the notice of appeal is not the appellant. The draft regulation also adds reference to the survivor eligibility decision to the FAS Appeals Regulation 17(4)(a) which requires that a notice of the time and place of oral hearings must be sent no later than 21 days before the date of the hearing or by any later date agreed to by the parties to the appeal.

## **Part 5 - Amendment of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008**

**Draft regulation 34** omits the transitional provisions included in the Financial Assistance Scheme (Miscellaneous Provisions) Regulation 2008 S.I. 2008/1432. New transitional provisions have been included in these draft Regulations.

## **Part 6 – Transitional Provisions**

**Draft regulation 35** provides that the Secretary of State must prepare a report on the FAS for the period from 1 April 2009 to the day before the day the draft Regulations come into force. This report must cover the operation of the FAS in this period and include the number of persons who have received payments under the FAS and the total amount of those payments. The Secretary of State must lay a copy of the report before Parliament.

**Draft regulations 36** provides for a widow, widower or surviving civil partner of a qualifying member, who would no longer be entitled to Assistance after these draft Regulations come into effect, to be treated as a survivor of a qualifying member where they have received an Assistance payment before these draft Regulations come into force.

**Draft Regulation 37** provides for the transitional protection of certain amounts in payment before the day on which these Regulations come into force.

Paragraph (1) applies (except where paragraph (4) applies) to a person who had the amount of their annual payment or initial payment protected from any decrease which would otherwise have occurred when the FAS (Miscellaneous Provisions) Regulations 2008 came into effect on 4 June 2008. It provides for such a person to continue to receive that protected amount where the amount which would otherwise be payable when these draft Regulations come into force would be lower.

Paragraph (2) provides (except where paragraph (4) applies) that, where a person is in receipt of an annual payment or ill-health payment which, on the day these draft Regulations come into force, is higher than the entitlement which would exist under the FAS Regulations as amended by these draft Regulations, he shall continue to have an entitlement to the higher amount.

Paragraph (3) provides (except where paragraph (4) applies) that, where a person covered by this transitional protection dies, any payments due to a survivor should be based on the amount in payment under this draft regulation.

Paragraph (4) applies where the amount of any annual, initial or ill-health payment due to a person to whom paragraphs (1)-(3) apply, when calculated according to the provisions in these draft Regulations, exceeds the amount of the payment protected under paragraphs 1-3. This means that the person will then receive the new higher amount and the transitional provisions will no longer apply.

Paragraph (5) provides for the amounts of the expected pension and actual pension for a person to whom paragraph (1) or (2) apply to be calculated as if these draft

Regulations had not come into force. This is necessary to give effect to the protection in paragraphs (1) and (2).

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**2009 No.**

**PENSIONS**

**The Financial Assistance Scheme (Miscellaneous Provisions)  
Regulations 2009**

*Made - - - - 2009*

*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 168, 190, 286, 315(2) and (4) and 318(1) of the Pensions Act 2004<sup>(23)</sup>.

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

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

**PART 1**

**Introductory**

**Citation and commencement**

**1.** These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 and shall come into force on the day after the day on which they are made.

**Interpretation**

**2.** In these Regulations—

“annual payment” means the amount payable to a beneficiary in respect of each year determined in accordance with regulation 17 of, and Schedule 2 to, the FAS Regulations;

“beneficiary” means a qualifying member or, after a qualifying member’s death, the survivor and surviving dependants of that qualifying member;

“ill health payment” means a payment made to a beneficiary determined in accordance with regulation 17A of, and Schedule 2A to, the FAS Regulations;

“interim ill health payment” means a payment made to a beneficiary in accordance with regulation 17B of, and Schedule 2A to, the FAS Regulations;

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(23)2004 c.35.

“initial payment” means a payment made to a beneficiary in accordance with regulation 18 of, and Schedule 2 to, the FAS Regulations;

“survivor” shall be construed in accordance with regulation 16A of the FAS Regulations(24);

“the FAS Appeals Regulations” means the Financial Assistance Scheme (Appeals) Regulations 2005(25);

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(26);

“the FAS Internal Review Regulations” means the Financial Assistance Scheme (Internal Review) Regulations 2005(27); and

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(28).

## PART 2

### Amendment of the FAS Regulations

#### Amendment of the FAS Regulations

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

#### Amendment of Part 1

4. In regulation 2 (interpretation)—

(a) at the end of the definition of “beneficiary” insert “and surviving dependants”;

(b) after the definition of “beneficiary” insert—

““employment” means any trade, business, profession, office or vocation;”;

(c) omit the definition of “certification date”;

(d) after the definition of “multi-employer scheme” insert—

““partner” means a person of either sex who was not married to, or in a civil partnership with, the qualifying member who was living with that member—

(a) as if that person and the qualifying member were husband and wife; or

(b) in the case of two adults of the same sex, as if they were civil partners,

and, for the purposes of these Regulations, two adults of the same sex are to be regarded as living together as civil partners if they would have been regarded as living together as husband and wife were they instead two adults of the opposite sex;”;

(e) after the definition of “principal employer” insert—

““qualifying course” means a full time educational or vocational course at a recognised educational establishment where in pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course exceeds 12 hours per week in normal term time, and shall include any gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course;”;

(f) after the definition of “scheme manager” insert—

““shared initial payment” means a payment which is not an initial payment and which is the amount payable to a survivor of a qualifying member who was a party to a polygamous marriage in accordance with regulation 18(4B) and paragraph 5(5A) of Schedule 2;

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(24) Regulation 16A is inserted into the FAS Regulations by these Regulations.

(25) S.I. 2005/3273 as amended by S.I. 2006/3370, 2008/1903 and 2008/2683.

(26) S.I. 2005/2189 as amended by S.I. 2005/3256, 2007/3581 and 2008/1903.

(27) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349, 2006/3370 and 2008/1903.

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

- “surviving dependant” shall be construed in accordance with regulation 16B;”;
- (g) for the definition of “survivor” substitute—  
 ““survivor” shall be construed in accordance with regulation 16A;”;
- (h) in paragraph (7), after “paragraph (8)” insert “and (8A)”;
- (i) after paragraph (8) insert—  
 “(8A) Subject to paragraph (8B), where a beneficiary or a possible beneficiary is a child aged less than 18, the scheme manager shall regard—  
 (a) a parent of the child;  
 (b) a person with parental responsibility within the meaning of section 3 of the Children Act 1989<sup>(29)</sup> in relation to the child;  
 (c) a person with parental responsibility or parental rights under the Children (Scotland) Act 1995<sup>(30)</sup> in relation to the child; or  
 (d) a person with parental responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995<sup>(31)</sup> in relation to the child;  
 as the appointed representative of that child.  
 (8B) Where—  
 (a) no person referred to in paragraph (8A)(a) to (d) is known to the scheme manager, the scheme manager may appoint a person to act as the appointed representative of a child;  
 (b) more than one person referred to in paragraph (8A)(a) to (d) wishes to act as the child’s representative for the purposes of these Regulations, the scheme manager shall appoint one of those persons as the appointed representative of that child.”;
- (j) after paragraph (9) insert—  
 “(10) For the purposes of these Regulations, a qualifying member who has died was “a party to a polygamous marriage” if, at the time the member died, the member—  
 (a) was a party to a marriage entered into under a law which permits polygamy; and  
 (b) had more than one spouse.”.

**5.**In regulation 4(2) (application of Parts 1 and 2 of the Act)—

- (a) for paragraph (ba) substitute—  
 “(ba) section 113 (investment of funds);  
 (bb) section 114 (investment principles);  
 (bc) section 115 (borrowing);  
 (bd) section 117 (administration levy);  
 (be) section 119 (annual reports to Secretary of State);  
 (bf) section 134 (directions);”;
- (b) after paragraph (d)—  
 (i) omit “and”; and  
 (ii) insert—  
 “(da) Schedule 5 (the Board of the Pension Protection Fund); and”.

**Amendment of Part 2 – scheme manager**

**6.**In regulation 5 (scheme manager)—

- (a) in paragraph (1), for “Secretary of State” substitute “Board of the Pension Protection Fund”;

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<sup>(29)</sup> 1989 c.41.  
<sup>(30)</sup> 1995 c.36.  
<sup>(31)</sup> S.I. 1995/755 (N.I.2).

(b) for paragraph (2) substitute—

“(2) References in these Regulations to the scheme manager are to the Board of the Pension Protection Fund acting in its capacity as manager of the financial assistance scheme.

(3) The Secretary of State shall pay a grant to the scheme manager in connection with its functions conferred by these Regulations.

(4) The scheme manager may not use the grant paid by the Secretary of State in accordance with paragraph (3) to make any payments which are required to be made to any beneficiary in accordance with these Regulations.”.

### **Consequential amendment to the FAS Regulations, the FAS Internal Review Regulations, the FAS Appeals Regulations and the FAS Information and Payments Regulations**

7. In—

- (a) the FAS Regulations;
- (b) the FAS Information and Payments Regulations;
- (c) the FAS Internal Review Regulations; and
- (d) the FAS Appeals Regulations,

for each reference to "he", "his" and "him" where that reference relates to the scheme manager, substitute "it" "its" and "it".

### **Amendment of Part 2 – regulation 5A**

8.—○ For regulation 5A (functions of the Board of the Pension Protection Fund in relation to the financial assistance scheme) substitute—

#### **“Use of information relating to the financial assistance scheme**

**5A.**—(1) Information held by the Secretary of State or the Department for Social Development in Northern Ireland for the purposes of any of their functions relating to social security or the financial assistance scheme may be disclosed to—

- (a) the scheme manager; or
- (b) to a person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act (as modified by Schedule 1 to these Regulations) and who is authorised by the scheme manager to receive and use such information,

for use connected with, or incidental to, the exercise of the scheme manager’s functions relating to the financial assistance scheme.

(2) Information obtained by the scheme manager, or a person referred to in paragraph (1)(b), in the exercise of the scheme manager’s functions in relation to the financial assistance scheme—

- (a) may be disclosed to the Secretary of State or the Department for Social Development in Northern Ireland in any case in which disclosure is for the purpose of enabling or assisting the scheme manager to exercise its functions; and
- (b) shall be disclosed to the Secretary of State or the Department for Social Development in Northern Ireland on request by the Secretary of State or, as the case may be, that Department.”.

### **Amendment of Part 2 – funding for payments**

9. For regulation 6 (funding) substitute—

#### **“Financial and other arrangements to enable or assist the Board of the Pension Protection Fund to carry out its functions in relation to the financial assistance scheme**

**6.**—(1) The Secretary of State—

- (a) shall make available such amounts as are necessary to enable—
  - (i) the scheme manager; or
  - (ii) a person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act (as modified by Schedule 1 to these Regulations) to pay instalments of payments to beneficiaries,
 to make any payments which are required to be made in accordance with these Regulations; and
- (b) may make such arrangements as the Secretary of State considers appropriate to enable or assist the scheme manager to carry out its functions in relation to the financial assistance scheme.

(2) The amounts made available in accordance with paragraph (1)(a) shall be made out of monies provided by Parliament.

(3) The arrangements in paragraph (1)(b) may, in particular, include the determination of any actuarial factor which is to be applied by the scheme manager when determining the amount of any payment in accordance with Schedule 2 or 2A.”.

### **Amendment of Part 2**

- 10.** Omit regulations 7 (annual reports) and 8 (delegation).

### **Amendment of Part 3**

- 11.** After regulation 14 (notification of details) insert—

#### **“Working with qualifying pension schemes**

**14A.**—(1) The scheme manager may manage, or make arrangements in relation to the management of, the transfer of any property, rights and liabilities of qualifying pension schemes which have not been fully wound up.

- (2) The power conferred by paragraph (1) includes, but is not limited to—
  - (a) the preparation of plans or other similar preparatory documentation;
  - (b) undertaking work calculated to assist in ensuring any transfer is carried out effectively and efficiently;
  - (c) undertaking work to assess the effect of any action taken in relation to qualifying pension schemes; and
  - (d) the inspection, examination and auditing of data or other information relating to qualifying pension schemes.

#### **Payments to qualifying pension schemes**

**14B.**—(1) Where the scheme manager is satisfied that—

- (a) the trustees or managers of a qualifying pension scheme are not able to pay administration or other costs which have been incurred or which are likely to be incurred in relation to that scheme; and
- (b) paying those administration or other costs is necessary in order to—
  - (i) assist the scheme in winding-up;
  - (ii) to keep any reduction in the scheme’s assets to a minimum; or
  - (iii) to increase the scheme’s assets,

the scheme manager may, on an application by the trustees or managers, pay to them such amounts as it considers appropriate for the purpose of enabling the trustees or managers to pay those costs.

(2) The scheme manager may make a payment under paragraph (1) on such terms as the scheme manager thinks fit.”.

## Amendment of Part 4

### 12. After regulation 16 (insufficient assets) insert—

#### “Survivors

**16A.**—(1) Subject to paragraphs (2) and (3), a person is a survivor of a qualifying member who has died where that person is the qualifying member’s widow, widower or surviving civil partner.

(2) Where the conditions in paragraph (4) are satisfied—

- (a) the qualifying member’s surviving partner is a survivor of that qualifying member; and
- (b) where the qualifying member leaves a widow, widower or surviving civil partner, that widow, widower or surviving civil partner is not a survivor of that qualifying member.

(3) Where a person is regarded as a qualifying member by virtue of regulation 15(5) that person is not a survivor of the former member referred to in regulation 15(5)(b).

(4) The conditions for the purposes of paragraph (2) are that—

- (a) immediately before the qualifying member’s death, the qualifying member had a partner (“the surviving partner”);
- (b) the rules of the qualifying pension scheme include provision (whether discretionary or otherwise) to pay a survivor’s pension to a partner of the qualifying member;
- (c) the scheme manager is satisfied that the surviving partner and the qualifying member were co-habiting at the date of the qualifying member’s death; and
- (d) either—
  - (i) the qualifying member provided the scheme manager with a signed written notice nominating the surviving partner as that member’s survivor;
  - (ii) the qualifying member provided the trustees or manager of the qualifying pension scheme with a valid nomination in accordance with the rules of the qualifying pension scheme to pay a survivor’s pension to the surviving partner; or
  - (iii) where the qualifying member did not leave a widow, widower or surviving civil partner, the scheme manager is satisfied that the qualifying member and the surviving partner were financially interdependent or the surviving partner was financially dependent on the qualifying member.

(5) For the purposes of enabling the scheme manager to be satisfied or not satisfied that the conditions in paragraph (4)(c) or (d)(ii) or (iii) are met, the surviving partner must provide evidence that those conditions are met to the scheme manager.

#### Surviving Dependants

**16B.**—(1) Subject to paragraph (2), a child of the family of a qualifying member is a surviving dependant of that qualifying member for the purposes of these Regulations where—

- (a) the child was financially dependent on the member and is aged—
  - (i) less than 18; or
  - (ii) less than 23 and is—
    - (aa) attending a qualifying course; or
    - (bb) incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995; and
- (b) the scheme manager is provided with—
  - (i) in the case of a natural child or unborn child, a birth certificate demonstrating that the child was the natural child of the member;
  - (ii) in the case of an adopted child, the adoption certificate demonstrating that the child was the adopted child of the member;

- (iii) in the case of any other child who is a dependant of the member at the date of the qualifying member's death, evidence demonstrating to the satisfaction of the scheme manager that the child was a dependent child of the member at the date of the qualifying member's death.

(2) Where a person is regarded as a qualifying member by virtue of regulation 15(5) that person is not a surviving dependant of the former member referred to in regulation 15(5)(b).”.

### **Amendment of Part 5**

**13.** In regulation 17 (annual payments)—

- (a) in paragraph (4), after “applies” insert “and subject to paragraph (4C)”;
- (b) after paragraph (4) insert—

“(4A) Except where regulation 17A(3) applies and subject to paragraph (4C), a surviving dependant of a qualifying member of a qualifying pension scheme shall be entitled to an annual payment determined in accordance with Schedule 2 from—

- (a) 14th May 2004;
- (b) the day after the day on which that qualifying member died; or
- (c) where a surviving dependant is an unborn child on the day on which the qualifying member died, the day on which that surviving dependant is born,

whichever is the latest.

(4B) An annual payment payable to a surviving dependant under paragraph (4A) shall continue, subject to paragraph (5B), until the surviving dependant—

- (a) where sub-paragraphs (b) and (c) do not apply, attains the age of 18;
- (b) where the surviving dependant is attending a qualifying course—
  - (i) attains the age of 23; or
  - (ii) leaves the qualifying course; or
- (c) where the surviving dependant is incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995, attains the age of 23.

(4C) A survivor or surviving dependant of a person who is regarded as a qualifying member under regulation 15(5) is not entitled to an annual payment as a survivor or surviving dependant of that qualifying member.

(4D) Where an annual payment ceases to be payable to a surviving dependant as a result of paragraph (4B)(a) or (b)(ii) and the surviving dependant subsequently—

- (a) attends a qualifying course; or
- (b) becomes incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995,

before attaining the age of 23, that surviving dependant shall be entitled to an annual payment determined in accordance with Schedule 2 from the day on which the scheme manager is satisfied that the surviving dependant satisfies sub-paragraph (a) or (b) until a day determined in accordance with paragraph (4B).”;

(c) in paragraph (5B)—

- (i) for “the day after the day on which” substitute “the end of the month in which”; and
- (ii) after “dies” insert “or otherwise ceases to be entitled to an annual payment”; and

(d) in paragraph (6)—

- (i) for “, (5B) and regulation 17C(8)” substitute “and (5B), regulation 17C(8) and paragraph (2A) of Schedule 2”; and
- (ii) for “beneficiary” substitute “qualifying member or survivor”.

#### **Amendment of regulation 17A (ill health payments)**

##### **14. In regulation 17A (ill health payments)—**

- (a) in paragraph (3)—
  - (i) after “leaves a survivor” insert “or a surviving dependant”; and
  - (ii) after “the survivor” insert “and any surviving dependants”;
- (b) in paragraph (6), for “beneficiary” substitute “qualifying member or survivor”;
- (c) after paragraph (6) insert—

“(6A) Ill health payments which are payable to a surviving dependant under this regulation shall continue until the surviving dependant—

  - (a) attains the age of 18;
  - (b) where the surviving dependant is attending a qualifying course,—
    - (i) attains the age of 23; or
    - (ii) leaves the qualifying course; or
  - (c) where the surviving dependant is incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995, attains the age of 23.

(6B) Where an ill health payment ceases to be payable to a surviving dependant as a result of paragraph (6A)(a) or (b)(ii) and the surviving dependant subsequently—

  - (a) attends a qualifying course; or
  - (b) becomes incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995,

before attaining the age of 23, that surviving dependant shall be entitled to an ill health payment determined in accordance with Schedule 2A from the day on which the scheme manager is satisfied that the surviving dependant satisfies sub-paragraph (a) or (b) until a day determined in accordance with paragraph (6A).”; and
- (d) in paragraph (7)—
  - (i) for “day after the day on which” substitute “end of the month in which”; and
  - (ii) after “dies” insert “or otherwise ceases to be entitled to an ill health payment”.

#### **Amendment of regulation 17B (interim ill health payments)**

##### **15. In regulation 17B (interim ill health payments)—**

- (a) in paragraph (1)—
  - (i) omit “a qualifying pension scheme is winding up and”; and
  - (ii) in sub-paragraph (b)(i) after “a survivor” insert “or a surviving dependant”;
- (b) in paragraph (2)(b) after “a survivor” insert “and any surviving dependants”;
- (c) in paragraph (5)—
  - (i) after “the qualifying member” insert “, any surviving dependants”; and
  - (ii) after “deem that member” insert “, “that surviving dependant”;
- (d) in paragraph (7)—
  - (i) at the end of sub-paragraph (a) omit “and”;
  - (ii) for the full stop at the end of sub-paragraph (b) substitute “; and”; and
  - (iii) after sub-paragraph (b) add—

“(c) in respect of a qualifying member who has died, to a surviving dependant of that qualifying member from the day after the day on which that qualifying member died until the surviving dependant—

- (i) would have been paid, or is paid, the first instalment of an ill health payment in accordance with regulation 19, if an ill health payment were payable, or is payable, to him under this Part; or
- (ii) dies or otherwise ceases to be entitled to an ill health payment in accordance with regulation 17A,  
whichever is the earlier.”;
- (e) in paragraph (8)—
  - (i) for “day after the day on which” substitute “end of the month in which”; and
  - (ii) after “dies” insert “or otherwise ceases to be entitled to an ill health payment”; and
- (f) in paragraph (11)—
  - (i) after “that qualifying member” in the first place it occurs insert “, his surviving dependants”; and
  - (ii) after “that qualifying member” in the second place it occurs insert “, any surviving dependant”.

**Amendment of regulation 18 (initial payments)**

**16. In regulation 18 (initial payments)—**

- (a) omit paragraph (1);
- (b) in paragraph (4)—
  - (i) at the beginning insert “Except where paragraph (4B) applies,”; and
  - (ii) after “qualifying member” in both places it occurs insert “, his surviving dependants”;
- (c) in paragraph (4A)(b) after “a survivor” insert “and any surviving dependants”;
- (d) after paragraph (4A) insert—
 

“(4B) Where a qualifying member who has died was a party to a polygamous marriage the scheme manager may, in its discretion, make a payment (“a shared initial payment”) to each survivor—

  - (a) in anticipation of an annual payment being payable under this Part to those survivors;
  - (b) before any instalment of that annual payment is made; and
  - (c) with effect from whichever is the later of—
    - (i) 14th May 2004; and
    - (ii) the day after the day on which that qualifying member died.

(4C) In exercising its discretion under paragraph (4B), the scheme manager may only have regard to—

  - (a) the amount, if any, of any interim pension that was in payment, is in payment, or is proposed to be paid, from the qualifying pension scheme to the survivor; and
  - (b) any circumstances relating to the scheme which, in the opinion of the scheme manager, are relevant to determining whether a shared initial payment should be made.

(4D) Paragraphs (5A) and (7) to (9A) shall apply to a shared initial payment under paragraph (4B) as they would apply to an initial payment.”;
- (e) in paragraph (5)(a)(ii) after “his survivor” insert “or surviving dependants”;
- (f) in paragraph (5A)—
  - (i) after “the qualifying member” insert “, any surviving dependants”; and
  - (ii) after “deem that member” insert “, “that surviving dependant”;
- (g) in paragraph (6) after “initial payments” insert “and shared initial payments”;
- (h) in paragraph (7)—
  - (i) at the end of sub-paragraph (a) omit “and”;
  - (ii) for the full stop at the end of sub-paragraph (b) substitute “; and”; and

(iii) after sub-paragraph (b) add—

“(c) in respect of a qualifying member who has died, to a surviving dependant of that qualifying member from the day after the day on which that qualifying member died until the surviving dependant—

(i) would have been paid, or is paid, the first instalment of an annual payment in accordance with regulation 19, if an annual payment were payable, or is payable, to him under this Part; or

(ii) dies or otherwise ceases to be entitled to an annual payment in accordance with regulation 17,

whichever is the earlier.”;

(i) in paragraph (8)—

(i) for “day after the day on which” substitute “end of the month in which”; and

(ii) after “dies” insert “or otherwise ceases to be entitled to an annual payment”; and

(j) in paragraph (11)—

(i) after “that qualifying member” in the first place it occurs insert “, his surviving dependants”; and

(ii) after “that qualifying member” in the second place it occurs insert “, that surviving dependant”.

#### **Amendment of provisions for payment by instalment**

**17.**—○ In regulation 19(1), for the words “in equal monthly instalments” to the end substitute “in instalments of no more than 52 in a year on a day specified by the scheme manager for the making of such payments to that beneficiary.”.

(1) In—

(a) regulation 17(3A)(b), (5A)(a) and (b) and (5B);

(b) regulation 17A(5)(a) and (b);

(c) regulation 17B(7)(a)(i) and (b)(i), (8) and (11);

(d) regulation 18(4)(b), (7)(a)(i) and (b)(i), (8) and (9A);

(e) regulation 19(3) and (4); and

(f) regulation 20(1) and (2);

in each place it occurs, omit “monthly”.

(2) In—

(a) regulation 17(5);

(b) regulation 17A(4); and

(c) regulation 19(2);

for “a monthly instalment” substitute “an instalment”.

#### **Amendment of Schedule 1**

**18.** In Schedule 1 (modification of certain provisions of Parts 1 and 2 of the Act)(**32**)—

(a) after paragraph 3 insert—

“**3ZA.** In section 113 (investment of funds)—

(a) at the beginning of subsection (1) insert “Subject to subsection (1A),”; and

(b) after subsection (1) insert—

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(32) Schedule 1 was amended by S.I. 2008/1903.

“(1A) The Board may hold any grant received in accordance with regulation 5(3) of the Financial Assistance Scheme Regulations 2005 in an interest-bearing account but may not otherwise invest any such grant.”.

**3ZB.** After section 114(4) (investment principles) insert—

“(4A) A statement of investment principles need not cover investments made in accordance with section 113(1A).”.

**3ZC.** In section 115(1)(s) (borrowing), after “any of its functions” insert “except its functions relating to the financial assistance scheme”.

**3ZD.** In section 117(1)(b) (administration levy), after “section 116” insert “except where such expenditure relates to the financial assistance scheme.”.

**3ZE.** In section 119 (annual reports to Secretary of State)—

- (a) in subsection (2)—
  - (i) after “the Board” insert “in relation to the financial assistance scheme”;
  - (ii) for “the report” substitute “any part of the report”; and
  - (iii) after “that section” insert “which relates to the financial assistance scheme”;
- (b) in subsection (3), after paragraph (c) insert—

“(d) the operation of the financial assistance scheme including the number of persons who have received payments under the Financial Assistance Scheme Regulations 2005 and the total amount of those payments.”; and
- (c) in subsection (6)(a) for “the date on which the Board is established” substitute “the date on which the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 came into force.”;
- (b) in paragraph 5, for sub-paragraph (a) substitute—

“(a) in subsection (1), for “the Board” substitute “the scheme manager””; and
- (c) after paragraph 16 add—

**17.** In paragraph 18(2) of Schedule 5 (delegation)—

- (a) after sub-paragraph (g) insert—
  - (ga) regulation 9(1)(d) of the Financial Assistance Scheme Regulations 2005 (“the 2005 Regulations”) (receiving notification of the details prescribed in regulation 14);
  - (gb) regulation 14A of the 2005 Regulations (working with qualifying pension schemes);
  - (gc) regulations 17 to 20 of, and Schedules 2 and 2A to, the 2005 Regulations in so far as those provisions relate to—
    - (i) the determination of the amount of payments to beneficiaries;
    - (ii) paying instalments of payments to beneficiaries (including non-payment where the scheme manager decides to suspend payments in accordance with regulation 8 of the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005); or
    - (iii) receiving information pursuant to notification requirements;
  - (gd) the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 except—
    - (i) regulation 3(2) (notification following determination of whether or not a scheme is a qualifying pension scheme); and
    - (ii) regulation 8 (suspension of payments) in so far as that regulation provides for the scheme manager to decide to suspend payments or not continue any such suspension;
  - (ge) regulations 3 (notice of a reviewable determination), 14(d) (dealing with matters arising out of a review decision) and 16 (notice of a review decision or a subsequent

review decision) of the Financial Assistance Scheme (Internal Review) Regulations 2005;

(gf) regulation 23(6) and (8) (taking or refraining from taking such steps as directed by the Ombudsman) of the Financial Assistance Scheme (Appeals) Regulations 2005; and

(b) in sub-paragraph (h), for the words “paragraphs (a) to (g)” substitute “paragraphs (a) to (gf)”.

**18.** In paragraph 22(7)(a) of Schedule 5 (accounts), for “the date on which the Board is established” substitute “the date on which the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 came into force”.

#### **Amendment of paragraph 1 of Schedule 2**

**19.** In paragraph 1(2) of Schedule 2 (introductory)—

(a) omit the definition of “the crystallisation date”; and

(b) after the definition of “guaranteed minimum pension” insert—

““indexation date” means—

(a) the 1st January next falling after a beneficiary first becomes entitled to the annual payment; and

(b) each subsequent 1st January during that beneficiary’s lifetime;”.

#### **Amendment of paragraph 2 of Schedule 2**

**20.** In paragraph 2 of Schedule 2—

(a) for sub-paragraph (1) substitute—

“(1) In this Schedule, “actual pension” means, subject to sub-paragraphs (3), (3A) and (4) and paragraph 2A, the annual rate of annuity which has been, can be or could have been, purchased for the beneficiary as at the later of—

(a) the day from which the beneficiary is entitled to an annual payment in accordance with regulation 17(2), (3) or (3C) or 17C; or

(b) the day on which the qualifying pension scheme began to be wound up,

with the assets available to discharge the liability of the scheme to the beneficiary after that liability has, or had been, determined.”;

(b) in sub-paragraph (3)—

(i) after “sub-paragraph (1)” insert “or, as the case may be, paragraph 2A”;

(ii) in paragraph (a) for “on the crystallisation date” substitute “on the day before the day on which the qualifying pension scheme began to be wound up”;

(iii) in paragraph (b) after “survivor” insert “or surviving dependant”;

(iv) after paragraph (b) insert—

“(ba) where the beneficiary is a survivor or surviving dependant, on the basis that any amount (including any lump sum) payable to that beneficiary as a result of the death of the qualifying member being within a guarantee period beginning on the day on which the member became entitled to a pension from the scheme or, if later, the day on which the pension was first paid, shall not be taken into account;”;

(c) after sub-paragraph (3) insert—

“(3A) Where the scheme manager is satisfied that the amount of interim pension paid to the beneficiary in respect of any previous year or years in which an annual payment was payable to the beneficiary is greater or lower than the annual rate of annuity determined in accordance with this paragraph, the scheme manager may determine how the actual pension is to be calculated for the purposes of determining the annual payment in respect of each year in which an annual payment is payable to the beneficiary, having regard to—

- (a) the annual rate of annuity determined in accordance with this paragraph;
- (b) the amount of any interim pension which was, or is due to be, paid to the beneficiary; and
- (c) such other matters as the scheme manager considers relevant.”; and
- (d) in sub-paragraph (4)—
  - (i) after the words “available to him” insert “and to such other matters as the scheme manager considers appropriate”; and
  - (ii) at the end for the words “and to such other matters” substitute “and of such other matters”.

### **Amendment of Schedule 2 – annual redeterminations**

**21.** In Schedule 2, after paragraph 2 insert—

#### **“Annual redetermination**

**2A.**—(1) This paragraph applies where—

- (a) on the first indexation date following the date on which the beneficiary first became entitled to an annual payment; and
- (b) on any indexation date following that first indexation date;

the annual rate of annuity which has been or could have been purchased for the beneficiary as at that indexation date with the assets available to discharge the liability of the scheme to the beneficiary after that liability has or had been determined, is higher as a result of indexation or revaluation than the annual rate determined in accordance with paragraph 2.

(2) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to that beneficiary with effect from the indexation date.

(3) When redetermining an annual payment under sub-paragraph (2), the actual pension for the purposes of paragraph 3(2) or 4(2) shall be the annual rate of annuity which has been or could have been purchased for the beneficiary as at the indexation date with the assets available to discharge the liability of the scheme to the beneficiary after that liability has, or had been, determined, on the basis of, and having regard to, the matters referred to in paragraph 2(3).

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of annuity for the purposes of this paragraph, it shall determine that annual rate having regard to such matters as it considers relevant.

(5) Where the scheme manager is satisfied that increases have been, are being, or will be made to the annual rate of annuity, and it considers that those increases are not reasonable, it may determine the annual rate of annuity for the purposes of this paragraph on the basis of the sum which would discharge the liability of the scheme to the beneficiary and of such other matters as it considers relevant.”.

### **Amendment of paragraph 3 of Schedule 2**

**22.** In paragraph 3 of Schedule 2—

- (a) in sub-paragraph (1)(a)(ii), for “on the crystallisation date” substitute “on the day which is the day before the day on which the qualifying pension scheme began to be wound up”;
- (b) for sub-paragraph (3) substitute—

“(3) Subject to sub-paragraphs (4) and (5) and paragraphs 4A and 4B, in this paragraph “expected pension” means—

- (a) the annual rate of the pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme as at the day which is the day before the day on which the qualifying pension scheme began to be wound up; or
- (b) where the day on which the qualifying pension scheme began to be wound up is earlier than 14 May 2004, the aggregate of—

- (i) the annual rate of the pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme as at the day on which the qualifying pension scheme began to be wound up; and
- (ii) the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on 14 May 2004.

(3A) In sub-paragraph (3)(b)(ii), the revaluation amount is—

- (a) where that period is less than one month, nil; or
- (b) in any other case, the revaluation percentage of the amount of the annual rate of pension under sub-paragraph (3)(b)(i).

(3B) In sub-paragraph (3A), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with sub-paragraph (3)(b)(ii); and
- (b) the maximum revaluation rate.

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

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

where—

A is the level of the retail prices index for March 2004; and

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

(3D) In sub-paragraph (3B)(b), “the maximum revaluation rate” in relation to the revaluation period is—

- (a) if that period is a period of 12 months, 5%; or
  - (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (3B)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.”; and
- (c) after sub-paragraph (4) add—
- “(5) Where—
- (a) the annual rate of the pension determined for the purposes of calculating the expected pension under sub-paragraph (2) includes an amount which, under the rules of the qualifying pension scheme, was payable for a period of time which is shorter than the period of time in respect of which the remainder of the pension was payable; and
  - (b) the liabilities of the scheme in respect of the beneficiary have been discharged (whether by entry into an annuity contract or by other means) in a manner which does not provide for a reduction in the annual rate of an annuity from the date on which the amount referred to in paragraph (a) would have ceased to be payable under the rules of the pension scheme,

the scheme manager shall determine the expected pension having regard to the expected pension which would have been determined in accordance with paragraph 4A if that paragraph had applied and to such other matters as it considers relevant.”.

#### **Amendment of paragraph 4 of Schedule 2**

**23.** In paragraph 4 of Schedule 2—

- (a) in sub-paragraph (1), for “on the crystallisation date” substitute “on the day before the day on which the qualifying pension scheme began to be wound up”;
- (b) in sub-paragraph (3)—
  - (i) omit “, (3B)”;

- (ii) after paragraph (b) omit “and”;
- (iii) for the full stop at the end of paragraph (c) substitute “; and”; and
- (iv) after paragraph (c) add—
  - “(d) in any case where 14 May 2004 is later than—
    - (i) the day on which the qualifying pension scheme began to be wound up; and
    - (ii) the day on which the qualifying member attained normal retirement age,
 the revaluation amount for the third revaluation period (see sub-paragraphs (13) to (13D)).”;
- (c) for sub-paragraph (3A) substitute—
  - “(3A) Where—
    - (a) the annual rate of the pension determined for the purposes of sub-paragraph (3)(a) includes an amount which, under the rules of the qualifying pension scheme, was payable for a period of time which is shorter than the period of time in respect of which the remainder of the pension was payable; and
    - (b) the liabilities of the scheme in respect of the beneficiary have been discharged (whether by entry into an annuity contract or by other means) in a manner which does not provide for a reduction in the annual rate of an annuity from the date on which the amount referred to in paragraph (a) would have ceased to be payable under the rules of the pension scheme,
 the scheme manager shall determine the annual rate for the purposes of sub-paragraph (3)(a) having regard to the expected pension which would have been determined in accordance with paragraph 4A if that paragraph had applied and to such other matters as it considers relevant.”;
- (d) omit sub-paragraph (3B);
- (e) in sub-paragraph (4), for “sub-paragraph (3), (3A) or (3B)” substitute “sub-paragraph (3) or (3A) or paragraph 4B”;
- (f) in sub-paragraph (5)(b) for the words “the earlier of” to the end substitute “the day before the day on which the qualifying pension scheme began to be wound up.”;
- (g) for sub-paragraph (7)(b)(i) substitute—
  - “(i) the day on which the qualifying member attains normal retirement age;”;
- (h) in sub-paragraph (10) for “the certification date” substitute “the day from which the qualifying member is entitled to an annual payment in accordance with regulation 17(2), (3) or (3C) or 17C”;
- (i) for sub-paragraph (13) substitute—
  - “(13) The third revaluation period is the period—
    - (a) beginning on the day after the day on which the member attained normal retirement age; and
    - (b) ending on 14 May 2004.
  - (13A) The revaluation amount for the third revaluation period is—
    - (a) where that period is less than one month, nil; or
    - (b) in any other case, the revaluation percentage of the aggregate of—
      - (i) the annual rate of the pension under sub-paragraph (3)(a);
      - (ii) the revaluation amount for the first revaluation period under sub-paragraph (6); and
      - (iii) the revaluation for the second revaluation period under sub-paragraph (8).
  - (13B) In sub-paragraph (13A), “the revaluation percentage” means the lesser of—
    - (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with sub-paragraph (13); and
    - (b) the maximum revaluation rate.
  - (13C) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with sub-paragraph (13A) is—

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

where—

A is the level of the retail prices index for March 2004; and

B is the level of the retail prices index for the month two months before the month in which the qualifying member attained normal retirement age.

(13D) In sub-paragraph (13B)(b), “the maximum revaluation rate” in relation to the revaluation period is—

- (a) if that period is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (13B)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.”.

## **Amendment of Schedule 2 – bridging pensions and pension payable at an age other than normal retirement age**

24. After paragraph 4 of Schedule 2 insert—

### **“Bridging pensions**

**4A.**—(1) This paragraph applies where—

- (a) the annual rate of the pension determined for the purposes of calculating the expected pension under paragraph 3(2) or 4(2) includes an amount which, under the rules of the qualifying pension scheme, was payable for a period of time which is shorter than the period of time in respect of which the remainder of the pension was payable; and
- (b) an annuity has been purchased for the beneficiary which is at a lower annual rate from the date on which amount referred to in sub-paragraph (1)(a) would have ceased to be payable under the rules of the pension scheme.

(2) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to that beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable under the rules of the pension scheme.

(3) When redetermining an annual payment under sub-paragraph (2)—

- (a) the annual rate of the pension for the purposes of paragraph 3(3)(a) shall be the annual rate of pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme less the annual amount which was payable for the shorter period of time referred to in sub-paragraph (1)(a), as at the day which is the day before the day on which the qualifying pension scheme began to be wound up;
- (b) the annual rate of the pension for the purposes of paragraph 3(3)(b)(i) shall be the amount which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme less the annual amount which was payable for the shorter period of time referred to in sub-paragraph (1)(a), as at the day on which the qualifying member attained normal retirement age;
- (c) the amount specified in paragraph 4(3)(a) shall be the amount determined in accordance with that paragraph less the amount which is the amount which was payable for the shorter period of time referred to in sub-paragraph (1)(a);
- (d) the amount which was payable for the shorter period of time referred to in sub-paragraph (1)(a) shall be disregarded when determining the revaluation amounts; and
- (e) the beneficiary shall be entitled to so much of the total amount of the annual increases determined in accordance with paragraph 9 payable to the beneficiary as at the date referred to in sub-paragraph (2) as are attributable to the amount of expected pension determined in accordance with this paragraph.

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of pension for the purposes of sub-paragraph (3)(a) or (b) or any one of the amounts for the purposes of sub-paragraph (3)(c) to (e) it shall determine that annual rate or amount, having regard to such matters as it considers relevant.

(5) In sub-paragraph (3)(c) “the revaluation amounts” means—

- (a) the revaluation amount referred to in paragraph 3(3)(b)(ii); and
- (b) the revaluation amounts referred to in paragraph 4(3)(b) to (d).

#### **Pension payable at an age other than normal retirement age**

**4B.**—(1) This paragraph applies where any pension or part of a pension would have been payable to the qualifying member for life without actuarial adjustment under the rules of the qualifying pension scheme (disregarding any rule making special provision as to early payment on the grounds of ill health or otherwise) at an age other than the member’s normal retirement age.

(2) Where this paragraph applies—

- (a) paragraphs 3(3) and 4(3) to (3B) shall have effect as if the amount of pension or part of a pension payable at the age other than the member’s normal retirement age were a separate pension;
- (b) paragraph 4(3)(a) shall have effect as if the reference to normal retirement age were a reference to the age at which the pension or part of a pension would be payable to the qualifying member without actuarial reduction under the rules of the qualifying pension scheme (disregarding any rule making special provision as to early payment on the grounds of ill health or otherwise); and
- (c) “expected pension” in paragraphs 3(2) and 4(2) means, subject to paragraph 4(4), the aggregate of the amounts calculated as the expected pension in accordance with paragraphs 3 and 4 in relation to any pension treated as a separate pension in accordance with paragraph (a).

(3) An actuarial factor, determined having regard to such matters as the person determining the factors considers relevant, shall be applied to any amount determined in accordance with sub-paragraph (2)(a).”.

#### **Amendment paragraph 5 of Schedule 2**

**25.** In paragraph 5 of Schedule 2—

- (a) in sub-paragraph (2) for “sub-paragraph (3) or (6)” substitute “sub-paragraph (3), (6), (6A) or (6B)”;
- (b) at the beginning of sub-paragraphs (3) and (6) insert “Except where sub-paragraph (6A) applies”; and
- (c) in sub-paragraph (4) for “on the crystallisation date” substitute “on the day before the day on which the qualifying pension scheme began to be wound up”;
- (d) after sub-paragraph (6) insert—

“(6A) Where the qualifying member was a party to a polygamous marriage, the annual payment payable to each survivor shall be the amount which would be determined in accordance with sub-paragraph (3) or (6) if this sub-paragraph did not apply, divided equally between the survivors.

(6B) Where a survivor of a qualifying member who was a party to a polygamous marriage dies, the annual payment payable to each survivor of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died.”;

- (e) in sub-paragraph (7)—
  - (i) after paragraph (b) omit “and”;
  - (ii) for the full stop at the end of paragraph (c) substitute “; and”; and
  - (iii) after paragraph (c) add—

- “(d) in any case where 14 May 2004 is later than—
- (i) the day on which the qualifying member died; and
  - (ii) the day on which the qualifying pension scheme began to be wound up, the revaluation amount for the third survivor revaluation period (see sub-paragraphs (12) and (13)).”;
- (f) for sub-paragraph (10)(b) substitute—
- “(b) ending on—
- (i) the earlier of—
    - (aa) the day from which the qualifying member became entitled to an annual payment in accordance with regulation 17(2), (3), (3C) or 17C; or
    - (bb) the day from which the survivor of the qualifying member became entitled to an annual payment under regulation 17(4); or
  - (ii) in any case where 14 May 2004 is later than—
    - (aa) the day on which the qualifying member died; and
    - (bb) the day on which the qualifying pension scheme began to be wound up, the day on which the qualifying member died.”;
- (g) after sub-paragraph (11) add—
- “(12) The third survivor revaluation period is the period—
- (a) beginning on the day after the day on which the qualifying member died; and
  - (b) ending on 14 May 2004
- (13) The revaluation amount for the third survivor revaluation period is the revaluation amount determined in accordance with paragraph 4(13A) to (13D).”.

#### **Amendment of Schedule 2 – surviving dependants of qualifying members**

**26.** After paragraph 5A of Schedule 2 (payment for an entitlement under regulation 17C) insert—

##### **“Surviving dependants of qualifying members**

**5B.**—(1) The annual payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (4).

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

- (a) there is only one surviving dependant, the amount of the annual payment shall be 50% of the amount payable to the survivor in accordance with paragraph 5;
- (b) there are two or more surviving dependants, the amount of the annual payment shall be the amount payable to the survivor in accordance with paragraph 5, divided equally between the surviving dependants.

(3) Where the qualifying member does not have a survivor and—

- (a) there is only one surviving dependant, the amount of annual payment shall be the amount which would be payable to a survivor in accordance with paragraph 5;
- (b) there are two or more surviving dependants, the amount of the annual payment shall be twice the amount which would be payable to the survivor in accordance with paragraph 5, divided equally between the surviving dependants.

(4) Where—

- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor under regulation 36 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, dies; or
- (b) a person ceases to be a surviving dependant of a qualifying member,

the annual payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died or the person ceased to be a surviving dependant.”.

### **Amendment of paragraph 7 of Schedule 2**

**27.** In paragraph 7 of Schedule 2—

(a) for sub-paragraph (1) substitute—

“(1) Where the amount of a qualifying member’s expected pension determined in accordance with the previous provisions of this Schedule multiplied by 0.9 exceeds the FAS cap—

- (a) the amount of the annual payment payable to, or in respect of, that member under paragraphs 3 to 5 shall be determined on the basis that the product of that calculation was the amount of the FAS cap; and
- (b) the expected pension for the purposes of paragraph (b)(i) in the definition of “underlying rate” in paragraph 9 shall be the amount of the FAS cap;

(b) in sub-paragraph (2), for “£26,000” substitute “the FAS cap”;

(c) after sub-paragraph (2) insert—

“(3) In this paragraph “the FAS cap” is—

- (a) where the beneficiary became entitled to an annual payment before 1st April 2007, £26,000;
- (b) where the beneficiary became entitled to an annual payment in the period beginning on 1st April 2007 and ending on 31st March 2008, £26,936;
- (c) where the beneficiary became entitled to an annual payment in the period beginning on 1st April 2008 and ending on 31st March 2009, £27,987;
- (d) where the beneficiary became entitled, or becomes entitled, to an annual payment in the period beginning on 1st April 2009 and ending on 31st March 2010, £29,386; and
- (e) where the beneficiary becomes entitled to an annual payment in the period after 31st March 2010, the amount determined in accordance with sub-paragraph (4).

(4) For each successive period of 12 months from 1st April 2010, the FAS cap shall be the amount of the FAS cap for the previous period of 12 months increased by the percentage increase of the retail prices index for the period of 12 months ending on the 31st September falling within that previous period of 12 months or by 0% where there is no such percentage increase.

(5) Where the amount of the FAS cap determined in accordance with sub-paragraph (3)(e) results in a fraction of a pound, that fraction shall be treated as a pound.”.

### **Amendment of Schedule 2 – annual increases**

**28.** For paragraph 9 of Schedule 2 substitute—

#### **“Annual increase to an annual payment**

**9.**—(1) A beneficiary entitled to an annual amount determined in accordance with paragraphs 2A to 5B shall be entitled, on the indexation date, to an increase of—

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

(2) In this paragraph—

“appropriate percentage” means the lesser of—

(a) the percentage increase in the retail prices index for the period of 12 months ending with the 31st May last falling before the indexation date or 0% where there is no such percentage increase, and

(b) 2.5%;

“underlying rate” means—

(a) the aggregate of—

(i) the sum of 0.9 multiplied by so much of the expected pension as is attributable to post-1997 service; and

(ii) the amount of annual increase to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; or

(b) where paragraph 7(1) applies, the aggregate of—

(i) so much of the expected pension as is, proportionately, attributable to post-1997 service;

(ii) the amount of annual increase to which the beneficiary is entitled in accordance with sub-paragraph 1 immediately before the indexation date;

“post-1997 service” means—

(a) pensionable service (whether actual or notional) which occurs on or after 6th April 1997; or

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

(3) In any case where the scheme manager is satisfied, having regard to the information available, that it is not possible for the scheme manager to determine the amount of expected pension which is attributable to post-1997 service for the purposes of this paragraph, the scheme manager shall determine that amount, having regard to such matters as the scheme manager considers relevant.”.

## **Amendment of Schedule 2 – shared initial payments**

**29.** After paragraph 10 of Schedule 2, insert—

### **“Shared initial payments**

**10A.** Where two or more survivors of a qualifying member are entitled to a shared initial payment by virtue of regulation 18(4B), the amount of the shared initial payment shall be the amount of the initial payment which would be determined in accordance with this Schedule if a survivor of that qualifying member was entitled to an initial payment, divided equally between the survivors.”.

## **Amendment of Schedule 2A**

**30.** In Schedule 2A—

(a) in paragraph 2—

(i) at the beginning of sub-paragraph (2) insert “Except where sub-paragraph 2E applies”;

(ii) after sub-paragraph (2) insert—

“(2A) The amount of an ill health payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2B) to (2D).

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

(a) there is only one surviving dependant, the amount of the ill health payment shall be 50% of the amount payable to the survivor in accordance with sub-paragraph (2);

(b) there are two or more surviving dependants, the amount of the ill health payment shall be the amount payable to the survivor in accordance with sub-paragraph (2), divided equally between the surviving dependants.

(2C) Where the qualifying member does not have a survivor and—

- (a) there is only one surviving dependant, the amount of the ill health payment shall be the amount which would be payable to a survivor in accordance with sub-paragraph (2);
- (b) there are two or more surviving dependants, the amount of the ill health payment shall be twice the amount which would be payable to the survivor in accordance with sub-paragraph (2), divided equally between the surviving dependants.

(2D)Where—

- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor under regulation 36 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, dies; or
- (b) a person ceases to be a surviving dependant of a qualifying member, the ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died or the person ceased to be a surviving dependant.

(2E) Where there are two or more survivors of a qualifying member who was a party to a polygamous marriage, the amount of an ill health payment payable to each survivor shall be the amount determined in accordance with sub-paragraph (2), divided equally between the survivors.”;

(iii) in sub-paragraph (4) for “paragraphs 4 and 7” substitute “paragraph 7”;

(b) in paragraph 3—

- (i) at the beginning of sub-paragraph (2) insert “Except where sub-paragraph 2E applies”;
- (ii) after sub-paragraph (2) insert—

“(2A) The amount of an interim ill health payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2B) to (2D).

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

- (a) there is only one surviving dependant, the amount of the interim ill health payment shall be 50% of the amount payable to the survivor in accordance with sub-paragraph (2);
- (b) there are two or more surviving dependants, the amount of the interim ill health payment shall be the amount payable to the survivor in accordance with sub-paragraph (2), divided equally between the surviving dependants.

(2C)Where the qualifying member does not have a survivor and—

- (a) there is only one surviving dependant, the amount of the interim ill health payment shall be the amount which would be payable to a survivor in accordance with sub-paragraph (2);
- (b) there are two or more surviving dependants, the amount of the interim ill health payment shall be twice the amount which would be payable to the survivor in accordance with sub-paragraph (2), divided equally between the surviving dependants.

(2D)Where—

- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor under regulation 36 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, dies; or
- (b) a person ceases to be a surviving dependant of a qualifying member, the interim ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died or the person ceased to be a surviving dependant.

(2E)Where there are two or more survivors of a qualifying member who was a party to a polygamous marriage, the amount of an interim ill health payment payable to each survivor shall be the amount determined in accordance with sub-paragraph (2), divided equally between the survivors.”;

(iii) in sub-paragraph (4) for “paragraphs 4 and 7” substitute “paragraph 7”;

- (c) omit paragraph 4;
- (d) in paragraph 5—
  - (i) omit “by the scheme manager”; and
  - (ii) in sub-paragraph (c) for “scheme manager” substitute “person determining the factor”;
- (e) in paragraph 6—
  - (i) before sub-paragraph (a) insert—
    - “(za) in paragraph 4(3)—
      - (i) after paragraph (b) insert “and”;
      - (ii) after paragraph (c) omit “and”; and
      - (iii) omit paragraph (d);”;
    - (ii) in sub-paragraph (a) for “paragraphs 4(5)(b) and” substitute “paragraph”;
    - (iii) for sub-paragraph (b) substitute—
      - “(b) in paragraph 4(7)(b)(i) for “the day on which the qualifying member attains normal retirement age” substitute “the day from which the qualifying member is entitled to an ill health payment in accordance with regulation 17A(1)”;
    - (iv) after paragraph (b) insert—
      - “(ba) in paragraph 4(10) for “annual payment in accordance with regulation 17(2), (3) or (3C) or 17C” substitute “ill health payment on accordance with regulation 17A(1)”;
    - (v) in paragraph (d) for “paragraphs 7 and 9” substitute “paragraphs 2A, 4(13) to (13D), 7, 9 and 10”;
  - (f) in paragraph 7—
    - (i) for sub-paragraph (1) substitute—
      - “(1) Where the amount of a qualifying member’s expected pension determined in accordance with paragraph 2 or 3 multiplied by 0.9 exceeds the FAS cap—
        - (a) the amount of the ill health payment or interim ill health payment payable to, or in respect of, that member under paragraph 2 or 3 shall be determined on the basis that the product of that calculation was the amount of the FAS cap; and
        - (b) the amount “A” under paragraph 2 for the purposes of paragraph (b)(i) in the definition of “underlying rate” in paragraph 9 shall be the amount of the FAS cap;”;
      - (ii) in sub-paragraph (2), for “£26,000” substitute “the FAS cap”;
      - (iii) after paragraph (2) add—
        - “(3) In this paragraph “the FAS cap” is—
          - (a) where the beneficiary became entitled to an annual payment in the period beginning on 1st April 2008 and ending on 31st March 2009, £27,987;
          - (b) where the beneficiary became entitled, or becomes entitled, to an annual payment in the period beginning on 1st April 2009 and ending on 31st March 2010, £29,386; and
          - (c) where the beneficiary becomes entitled to an annual payment in the period after 31st March 2010, the amount determined in accordance with sub-paragraph (4).
        - (4) For each successive period of 12 months from 1st April 2010, the FAS cap shall be the amount of the FAS cap for the previous period of 12 months increased by the percentage increase of the retail prices index for the period of 12 months ending on the 31st September falling within that previous period of 12 months or by 0% where there is no such percentage increase.
        - (5) Where the amount of the FAS cap determined in accordance with sub-paragraph (3)(c) results in a fraction of a pound, that fraction shall be treated as a pound.”;
    - (g) after paragraph 8 add—

### **“Annual increase to an ill health payment**

**9.**—(1) A beneficiary entitled to an amount determined in accordance with this Schedule shall be entitled, on the indexation date, to an increase of—

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

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with the 31st May last falling before the indexation date or 0% where there is no such percentage increase, and
- (b) 2.5%;

“indexation date” means—

- (a) the 1st January next falling after a beneficiary first becomes entitled to the annual payment; and
- (b) each subsequent 1st January during that beneficiary’s lifetime;

“underlying rate” means—

- (a) the aggregate of—
  - (i) the sum of 0.9 multiplied by so much of the expected pension as is attributable to post-1997 service; and
  - (ii) the amount of annual increase to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; or
- (b) where paragraph 7(1) applies, the aggregate of—
  - (i) so much of the amount “A” for the purposes of paragraph 2 as is, proportionately, attributable to post-1997 service;
  - (ii) the amount of annual increase to which the beneficiary is entitled in accordance with sub-paragraph 1 immediately before the indexation date.

“post-1997 service” means—

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

(3) In any case where the scheme manager is satisfied, having regard to the information available, that it is not possible for the scheme manager to determine the amount of the amount “A” which is attributable to post-1997 service for the purposes of this paragraph, the scheme manager shall determine that amount, having regard to such matters as the scheme manager considers relevant.

### **Annual redetermination**

**10.**—(1) This paragraph applies where—

- (a) on the first indexation date following the date on which the beneficiary first became entitled to an ill health payment; and
- (b) on any indexation date following that first indexation date;

the annual rate of annuity which has been or could have been purchased for the beneficiary as at that indexation date with the assets available to discharge the liability of the scheme to the beneficiary after that liability has, or had been, determined, is higher as a result of indexation or revaluation than the annual rate determined in accordance with the preceding paragraphs of this Schedule.

(2) Where this paragraph applies, the scheme manager shall redetermine the ill health payment payable to that beneficiary with effect from the indexation date.

(3) When redetermining an ill health payment under sub-paragraph (2), the actual pension shall be the annual rate of annuity which has been or could have been purchased for the beneficiary as at the indexation date with the assets available to discharge the liability of the scheme to the beneficiary after that liability has, or had been, determined, on the basis of, and having regard to, the matters referred to in paragraph 2(3) of Schedule 2.

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of annuity for the purposes of this paragraph, it shall determine that annual rate having regard to such matters as it considers relevant.

(5) Where the scheme manager is satisfied that increases have been, are being, or will be made to the annual rate of annuity, and it considers that those increases are not reasonable, it may determine the annual rate of annuity for the purposes of this paragraph on the basis of the sum which would discharge the liability of the scheme to the beneficiary and of such other matters as it considers relevant.”.

## PART 3

### Amendment of the FAS Information and Payments Regulations

#### Amendment of the FAS Information and Payments Regulations

**31.**—○ The FAS Information and Payments Regulations are amended in accordance with this regulation.

(1) In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) before the definition of “the FAS Regulations” insert—

“the 2009 Regulations” means the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009;

“the Act” means the Pensions Act 2004;”;

(ii) omit the definition of “appointed representative”;

(iii) at the end of the definition of “beneficiary” insert “and surviving dependants”;

(iv) for the definition of “survivor” substitute—

““surviving dependant” shall be construed in accordance with regulation 16B of the FAS Regulations;

“survivor” shall be construed in accordance with regulation 16A of the FAS Regulations;”;

(b) after paragraph (1) insert—

“(1A) Subject to paragraph (1B) in these Regulations “appointed representative” means a person—

(a) whose name, address and appointment by a beneficiary or potential beneficiary, for the purposes of providing information to the scheme manager under regulation 4, has been notified to the scheme manager in a document signed by the beneficiary or potential beneficiary in question or by the legal representative of the beneficiary or potential beneficiary; and

(b) whose appointment has been consented to by the scheme manager.

(1B) Subject to paragraph (1C), where a beneficiary or a possible beneficiary is a child aged less than 18, the scheme manager shall regard—

(a) a parent of the child;

(b) a person with parental responsibility within the meaning of section 3 of the Children Act 1989 in relation to the child;

(c) a person with parental responsibility or parental rights under the Children (Scotland) Act 1995 in relation to the child; or

- (d) a person with parental responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995 in relation to the child;

as the appointed representative of that child.

(1C) Where—

- (a) no person referred to in paragraph (1B)(a) to (d) is known to the scheme manager, the scheme manager may appoint a person to act as the appointed representative of a child;
- (b) more than one person referred to in paragraph (1B)(a) to (d) wishes to act as the child's representative for the purposes of these Regulations, the scheme manager shall appoint one of those persons as the appointed representative of that child.”.

(2) In—

- (a) regulation 3(3)(a) (information to be provided by, and to, appropriate persons);
- (b) regulation 4 (information to be provided by beneficiaries and potential beneficiaries and their personal representatives);
- (c) regulation 5 (method of providing information); and
- (d) regulation 6(1) (insufficient or unsuitable information),

after “scheme manager” insert “or, as the case may be, a person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act and who is authorised by the scheme manager to be the person to whom information is to be provided in accordance with these Regulations”.

(3) In regulation 6(1), for “he may” substitute “the scheme manager may”.

(4) In regulation 7, after paragraph (3) insert—

“(4) An amount recovered by the scheme manager under paragraph (1) must be paid to the Secretary of State.”.

(5) In regulation 8(1) omit “monthly”.

(6) In paragraph 1 of Schedule 1 (information to be provided by appropriate persons)—

- (a) in paragraph (2) after “the scheme manager” insert “or, as the case may be, a person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act and who is authorised by the scheme manager to be the person to whom information is to be provided in accordance with these Regulations”;

(b) in the table in sub-paragraph (2)—

- (i) in the first column of the first to fifth items after “scheme manager” insert “or, where paragraph 2 applies, the person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act”;

(ii) in the second column of the fourth item in the table in sub-paragraph (2)—

(aa) after paragraph (f) insert—

“(fa) such information as is necessary to determine if the member or former member has a survivor or any surviving dependants;”;

(bb) after paragraph (j) insert—

“(ja) where applicable, the annual rate of annuity which has been purchased for a potential beneficiary, the amount paid for that annuity, the date on which it was purchased and the name, address and telephone number of the annuity provider;

(jb) where applicable, information detailing whether a purchased annuity included revaluation, indexation or payments at or in respect of ages other than normal retirement age and if so, the relevant rate secured and the dates at which such payments or increases are payable;

(jc) where applicable, the amount of any transfer payment, interim pension or lump sum (including any winding-up lump sum) made after the day on which the scheme began to be wound up and the dates on which those amounts were paid;

(jd) where applicable, any amount paid to restore the state scheme rights of a member or former member of the scheme and the date on which that amount was paid;”;

- (cc) in paragraph (l) after “inaccurate in a particular case” insert “or will not be sufficient to enable a reviewable determination to be made”;
- (iii) after the sixth item insert a seventh, eighth, ninth and tenth item containing—
  - (aa) in the first column of each item, the words “The scheme manager or, where paragraph 2 applies, the person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act”;
  - (bb) in the second column of the seventh item, the words “Any changes to information provided in accordance with these Regulations.”;
  - (cc) in the third column of the seventh item, the words “The period of 14 days beginning on the day on which the change took place.”;
  - (dd) in the second column of the eighth item, the words “Details of all expenditure incurred by the scheme in each period of 3 months (or such shorter or longer period as the scheme manager may determine in relation to a qualifying pension scheme), the first such period beginning on the date determined by the scheme manager in respect of the qualifying pension scheme.”;
  - (ee) in the third column of the eighth item, the words “The period of 14 days following the end of the period to which the information relates.”;
  - (ff) in the second column of the ninth item, the words “Details of any significant changes in the investment of the scheme’s assets or in the level of expenditure incurred by the scheme.”;
  - (gg) in the third column of the ninth item, the words “The period of 14 days beginning on the day the change took place.”;
  - (hh) in the second column of the tenth item, the words—
    - “Details of any—
    - (a) legal actions or proceedings;
    - (b) contemplated legal actions or proceedings; or
    - (c) arbitration, dispute resolution procedures or negotiations intending to lead or leading to a settlement or compromise of any legal action or proceeding, relating to a qualifying pension scheme.”;
  - (ii) in the third column of the tenth item, the words—
    - “The latest of—
    - (a) the period of 28 days beginning on the day the 2009 Regulations came into force;
    - (b) the period of 14 days beginning on the notification date; or
    - (c) the period of 14 days beginning on the day when the appropriate person becomes aware of any of the matters in the second column.”;
- (c) for sub-paragraph (3) substitute—
  - “(3) Subject to sub-paragraphs (3A) and (4), the period for information to be provided in relation to each member or former member or any survivor or surviving dependant of a member or former member of a qualifying pension scheme is—
  - (a) in relation to each member or former member who has not attained normal retirement age on the date which is 6 months after the date on which the 2009 Regulations came into force, the period of 3 months ending 3 months before the day on which the member or former member attains normal retirement age;
  - (b) in relation to each member or former member who has attained normal retirement age on the date on which the 2009 Regulations came into force, the period ending 3 months after that date;
  - (c) in relation to any survivor or surviving dependant for or in respect of whom an annuity has been purchased and is in payment before the date on which the 2009 Regulations came into force, the period ending 3 months after those Regulations came into force; or

- (d) in relation to any survivor or surviving dependant of a qualifying member who dies after the date on which the 2009 Regulations came into force, the period ending one month after the day that member died.
- (3A) Where—
  - (a) accurate information of the description specified can be provided before the period determined in accordance with sub-paragraph (3), the period for information to be provided is the period ending as soon as that accurate information can be provided;
  - (b) the scheme manager determines that the information can be, and should be, provided in a period other than the period determined in accordance with sub-paragraph (3), scheme manager may determine the period for the provision of that information; and
  - (c) information has been requested by the scheme manager in accordance with these Regulations before the date on which the 2009 Regulations came into force, the information shall be provided by the date determined by the scheme manager in that request.”;
- (d) omit sub-paragraphs (5) and (6).
- (7) After paragraph 1 of Schedule 1 insert—
 

“2.—(1) This paragraph applies where the scheme manager has made arrangements with a person under paragraph 18 of Schedule 5 to the Act (as modified by Schedule 1 to the FAS Regulations) and the scheme manager has authorised that person to be the person to whom information is to be provided in accordance with these Regulations.

(2) Where this paragraph applies, appropriate persons will be notified of the identity of the person so authorised in writing.”.
- (8) In Schedule 2 (information to be provided by beneficiaries and potential beneficiaries)—
  - (a) in paragraph 1, after “the scheme manager” insert “or, where paragraph 2 applies, the person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act”; and
  - (b) after paragraph 1 insert—
 

“2.—(1) This paragraph applies where the scheme manager has made arrangements with a person under paragraph 18 of Schedule 5 to the Act (as modified by Schedule 1 to the FAS Regulations) and the scheme manager has authorised that person to be the person to whom information is to be provided in accordance with these Regulations.

(2) Where this paragraph applies, beneficiaries and potential beneficiaries will be notified of the identity of the person so authorised in writing.”.

## PART 4

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

#### **Amendment of the FAS Internal Review Regulations**

- 32.**—○ The FAS Internal Review Regulations are amended in accordance with this regulation.
- (1) In each place it occurs (except in regulations 2(1)(c) and 5(1)(b)(ii)), after “member eligibility” insert “, survivor eligibility”.
  - (2) In regulation 1, after the definition of “scheme manager” insert—
 

““surviving dependant” has the meaning given in regulation 2(1) of the FAS Regulations;”.
  - (3) In regulation 2—
    - (a) after paragraph (1)(c) insert—
 

“(ca) whether or not a person is a survivor or surviving dependant of a qualifying member (“survivor eligibility”); and
    - (b) in paragraph (1)(d) and (f), after “a survivor” insert “or surviving dependant”.

- (4) In regulation 3—
- (a) in paragraph (1)(b)(ii), for “or survivor” substitute “, survivor or surviving dependant”;
  - (b) in paragraph (1A)(a) after “issued on the” insert “scheme manager’s”; and
  - (c) in paragraph (1A)(b) after “as a group,” insert “or to their survivors and surviving dependants, or to a class of such survivors or surviving dependants”.
- (5) After regulation 17, insert—

**“Representation of children**

**18.** Where any interested person is a child aged less than 18—

- (a) the scheme manager may treat—
  - (i) a parent of the child;
  - (ii) a person with parental responsibility within the meaning of section 3 of the Children Act 1989 in relation to the child;
  - (iii) a person with parental responsibility or parental rights under the Children (Scotland) Act 1995 in relation to the child;
  - (iv) a person with parental responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995 in relation to the child;
 as a person appointed to act as that child’s representative for the purposes of these Regulations; or
- (b) where no person referred to in paragraph (a) is known to the scheme manager, the scheme manager may appoint a person to act as that child’s representative for the purposes of these Regulations.”.

**Amendment of the FAS Appeals Regulations**

**33.**—o The FAS Appeals Regulations are amended in accordance with this regulation.

- (1) In regulation 2 (interpretation)—
- (a) in the definitions of “beneficiary” and “member assessment decision” after “survivor” insert “or surviving dependant”;
  - (b) after the definition of “subsequent review decision” insert—
 

““surviving dependant” has the meaning given in regulation 2(1) of the FAS Regulations;”;

 and
  - (c) after the definition of “survivor” insert—
 

““survivor eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not a person is a survivor or surviving dependant of a qualifying member;”.
- (2) In regulations 6(2)(b) (notice of appeal) and 17(4)(a) (time and place of oral hearings), after “member eligibility decision” insert “, survivor eligibility decision”.

**PART 5**

**Amendment of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008**

**Amendment of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008**

**34.**In the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 omit Part 4 (transitional provision).

## PART 6

### Transitional provisions

#### **Transitional provision - reporting**

**35.**—○ The Secretary of State must prepare a report on the financial assistance scheme for the period beginning on 1st April 2009 and ending on the day before the day these Regulations come into force.

(1) The report must deal with the operation of the financial assistance scheme in the period to which it relates and in particular—

- (a) the number of persons who have received payments under the FAS Regulations; and
- (b) the total amount of those payments.

(2) The Secretary of State must lay a copy of the report prepared in accordance with paragraph (1) before each House of Parliament.

#### **Transitional provisions – payments to survivors**

**36.** Where—

- (a) the widow, widower or surviving civil partner of a qualifying member has, before the date on which these Regulations come into force, received an instalment of an annual payment, an initial payment, an ill health payment or an interim ill health payment; and
- (b) that widow, widower or surviving civil partner would not otherwise be entitled to that payment following the coming into force of these Regulations;

that widow, widower or surviving civil partner shall be treated as a survivor of a qualifying member for the purposes of the FAS Regulations.

#### **Transitional provisions – payments to beneficiaries**

**37.**—○ Except where paragraph (4) applies, where a beneficiary was a beneficiary to whom regulation 8 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 applied before the coming into force of these Regulations, the amount of that beneficiary's initial payment or annual payment shall be the amount to which the beneficiary was entitled before the coming into force of these Regulations.

(1) Except where paragraph (4) applies, where a beneficiary—

- (a) was not a beneficiary to whom regulation 8 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 applied;
- (b) had received an instalment of an annual payment or ill health payment before the date on which these Regulations came into force; and
- (c) was entitled to a higher annual payment or higher ill health payment before these Regulations came into force,

the amount of that beneficiary's annual payment or ill health payment shall be the amount to which the beneficiary was entitled before the coming into force of these Regulations.

(2) Except where paragraph (4) applies, where a qualifying member to whom paragraph (1) or (2) applies dies, the expected pension and actual pension for the purposes of determining any payment to a survivor or surviving dependant of that qualifying member shall be the amounts which were the expected pension and actual pension for the purposes of the determination of the payment in respect of the qualifying member.

(3) This paragraph applies where the amount of the annual payment, initial payment or ill-health payment to which the beneficiary would be entitled if paragraphs (1) to (3) did not apply would be higher than the amount to which the beneficiary is entitled in accordance with paragraphs (1) to (3).

(4) Where paragraph (1) or (2) applies, the beneficiary's expected pension and actual pension shall be the amounts determined in accordance with the FAS Regulations and regulation 8 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 as if these Regulations had not come into force.

Signatory text

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*