

Department for Work and Pensions

Consultation

The draft Financial Assistance Scheme
(Miscellaneous Amendments)
Regulations 2008



The Pensions Group

Part of the Department for Work and Pensions

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Date 28th March 2008

Dear Sir or Madam

Consultation on draft regulations - The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008

This consultation document seeks views on the draft Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008, which are being introduced to implement further elements of the extension to the Financial Assistance Scheme (FAS) announced on 17 December 2007 by the Rt Hon Peter Hain, the then Secretary of State for Work and Pensions.

Under the terms of the December 2007 announcement, all qualifying members will be guaranteed 90% of their accrued pension (subject to the cap), which will be paid from the later of the scheme's 'normal retirement age' (NRA) and age 60¹. For most people these changes will mean that the amount of FAS assistance they receive will be comparable to that they would have received had their scheme been eligible for protection by the Pension Protection Fund (PPF). We have already completed our consultation on the draft Regulations aimed at delivering these comparatively simple, but very important enhancements. We intend to bring them before Parliament in May 2008 in order to ensure that eligible members receive payment at the revised levels as soon as possible.

Our second set of draft Regulations, launched for consultation today, set out provisions for more complex elements of the FAS extension, including early access for those unable to work due to ill health, the inclusion of certain schemes with solvent employers and various measures to allow us to monitor and maintain the value of scheme assets. We intend to bring this second package of Regulations before Parliament in June 2008.

There will be a third package of draft Regulations, for consultation later in the year, aimed at delivering all the remaining parts of the extension, which will

¹ With an upper age limit of 65.

move the FAS to a position where all financial assistance payments are calculated on a basis which is broadly comparable to that of the PPF.

Target audience

This consultation is primarily aimed at pension industry professionals and others with an interest in defined benefit occupational pension schemes. These draft Regulations have been prepared following discussions and consultation with affected schemes, trustees, other pension professionals and affected scheme members and their families.

Where can I find the consultation document?

The consultation document is available via the FAS website:

<http://www.dwp.gov.uk/fas>.

How can people respond to this consultation?

The consultation period begins on 28 March 2008 and runs until 9 May 2008. Where proposals have been stimulated by previous consultation or debate, Cabinet Office guidance provides that a shorter consultation period may be more appropriate than the standard 12 weeks.

We have been in regular contact with stakeholders concerning the provisions in these regulations. Stakeholders are aware of the timing, content and aims behind the regulations. There have been meetings with the Pensions Action Group, the Unions who represent pension scheme members, trustees, and the Pension Protection Fund where we have discussed the issues in the package which relate to each group.

This consultation document will be sent directly to the main trustees dealing with the majority of FAS qualifying pension schemes – we have already discussed with these main trustees key measures in the package, including the ill health provisions.

Taking account of these factors, and the wish to bring in these improvements to the FAS as soon as possible - especially early access to FAS for members unable to work due to ill health - Ministers believe that a consultation period of six weeks will ensure there is adequate consultation and ensure the changes happen in good time.

We 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.

Please send consultation responses to:

Financial Assistance Scheme Consultation
Department for Work and Pensions
Private Pensions Policy
Adelphi
3rd Floor

1-11 John Adam Street
London
WC2N 6HT
E-mail - fas-responses@dwp.gsi.gov.uk

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

Ministers believe that it is in the public interest to implement these Regulations quickly to help ensure that those affected can receive assistance as soon as possible.

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

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

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

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,
London
WC2N 6HT
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.

The consultation criteria

The consultation is being conducted in line with the Code of Practice on Consultation. The six consultation criteria are as follows, and the full version can be accessed at the Cabinet Office website:

- Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
- Be clear about who may be affected, what questions are being asked, and the timescale for responses.
- Ensure that your consultation is clear, concise and widely accessible.
- Give feedback regarding the responses received and how the consultation process influenced the policy.
- Monitor your department's effectiveness at consultation, including through the use of a designated Consultation Co-ordinator.
- Ensure your consultation follows better regulation best practice, including carrying out an Impact Assessment if appropriate.

What will we do after the consultation?

The Government's response to the consultation (including the next steps to be taken) will be published online (and linked from the same FAS web page as above) when we lay the final Regulations before Parliament. Paper copies will be available on request.

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:

Roger Pugh
Department for Work and Pensions' Consultation Coordinator,
Room 2A,
Britannia House,
2 Ferensway,
Hull
HU2 8NF
Phone: 01482 609571
Email: roger.pugh@dwp.gsi.gov.uk

Yours faithfully

Mike Le Brun

Programme Manager - Financial Assistance Scheme

Copied to:

Age Concern
Amicus
Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
Auditing Practices Board
British Medical Association
Board for Actuarial Standards
British Chambers of Commerce
Community the Union
Confederation of British Industry
Department for Business,
Enterprise & Regulatory Reform
Department of Health
Engineering Employers' Federation
Federation of Small Businesses
Financial Services Authority
GMB Union
Help the Aged
HM Treasury (MOCOP)
Independent Pensions Research
Group
HM Revenue & Customs
Independent Trustee Services
Institute of Chartered Accountants
in England and Wales
Institute of Chartered Accountants
in Scotland
Institute of Directors
Institute of Payroll Professionals
Investment Management
Association
National Association of Pension
Funds
National Consumer Council
National Pensioners' Convention
Office of Fair Trading

The Pensions Advisory Service
Pensions Action Group
Pensions Ombudsman
Pension Protection Fund
Pensions Regulator
R3, the Association of Business
Recovery Professionals
Better Regulation Executive
SAGA
Social Security Policy and
Legislation Division, DSD, Northern
Ireland
Small Business Service
T&G Union
The Association of Corporate
Trustees
The Faculty of Actuaries
The Insolvency Service
The Institute of Actuaries
The Law Society
The Law Society of Scotland
The Pensions Management
Institute
The Scottish Executive
The Society of Pension
Consultants
The Welsh Assembly
Trades Union Congress
UNISON
Which?

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

THE FINANCIAL ASSISTANCE SCHEME
(MISCELLANEOUS AMENDMENTS) REGULATIONS 2008

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SECTION ONE - POLICY AND LEGISLATIVE BACKGROUND

The original scheme

1. The Financial Assistance Scheme (FAS) was announced on 14 May 2004 as a means to help those closest to retirement who had suffered significant losses to their accrued pension rights as a consequence of employer insolvency. Under the original scheme the Government committed £400 million in cash terms over 20 years to help an estimated 15,000 people.

The extensions to the FAS

2. Since 2004, the FAS has been significantly extended². The most recent extension was announced by the then Secretary of State for Work and Pensions in December 2007.
3. The Financial Assistance Scheme Review of Assets was set up in April 2007 to consider whether an alternative treatment of the residual funds in affected pension schemes could supplement the committed Government funding of the FAS. The review was led by Andrew Young of the Government Actuary's Department. The final report of the Young Assets Review was published in December 2007.
4. Acting on the recommendations of that report the then Secretary of State for Work and Pensions announced on 17th December 2007 that Government would absorb all the available residual assets in the affected schemes and make associated payments as they fall due. A range of changes were also announced to the scheme including:
 - All scheme members will be guaranteed 90% of their accrued pension at the date of commencement of wind-up, revalued to their retirement date (subject to a cap of £26,000 a year, the value of which will be protected).
 - Payment of assistance derived from post-1997 service will be increased each year in line with inflation (subject to a 2.5% a year limit).
 - Assistance will be paid from the scheme's normal retirement age (NRA) subject to a lower age limit of 60.
 - People who are unable to work due to ill health will also be able to apply for early access to their payments from the age of 60, subject to actuarial reduction.
 - Where their share of scheme funds allows, members will be able to commute some portion of their pension to a lump sum.
 - Assistance will be extended to members of schemes which wound up under-funded (after 1st January 1997 and before the employer was required to meet the full buy-out cost) where the employer is still solvent.

² Details of the extensions can be found at:
[Hwww.dwp.gov.uk/lifeevent/penret/penreform/fas/news.asp#consultation](http://www.dwp.gov.uk/lifeevent/penret/penreform/fas/news.asp#consultation)

5. The additional cost of this package takes the total Government commitment to £12.5 billion in cash terms (£2.9 billion NPV)³.
6. In implementing the latest extension to the FAS our priority has been to first increase assistance to 90% and to make payments from NRA. Our first package of draft Regulations focusing on these elements was consulted upon in early March. We expect to lay those Regulations before Parliament in May.

Key proposals in these draft Regulations

7. This second set of draft FAS Regulations makes provision for further elements of the package announced in December 2007, and other consequential changes needed to ensure the efficient running of the extended scheme. They include:
 - Provision for early reduced payment where a member is unable to work due to ill health.
 - Provision to allow certain pension schemes which started winding-up with solvent employers to qualify.
 - Measures aimed at speeding up initial FAS payments to members.
 - Measures aimed at monitoring and maintaining the value of scheme assets during the winding-up process until FAS is able to take them in.
 - Allowing the Board of the Pension Protection Fund (PPF) to advise on operational aspects of the new FAS scheme, in particular how the FAS works with pension scheme trustees in the run up to the Government taking on residual scheme assets.
 - The removal of the option for FAS qualifying members to be reinstated into the State Additional Pension.
8. Once the consultation is complete, we expect to bring these Regulations before Parliament in June.
9. There will be a third package of Regulations to be considered later in the year to bring forward the remaining parts of the extension package, such as indexing FAS payments relating to post-1997 service. Once these changes are made and in force FAS payments will be calculated on a basis which is broadly comparable to those made by the PPF.

Further detail

Early reduced payment on ill health grounds where a member is unable to work due to ill health and is likely to continue to be so unable to work until NRA.

Background

10. The FAS was established to help members whose final salary pension scheme benefits have been or will be significantly cut-back as a result of their under-funded schemes starting to wind-up prior to the introduction of the PPF.

³ The Minister's statement can be found on this link:
<http://www.dwp.gov.uk/lifeevent/penret/penreform/fas/pensions-hoc-statement-17-12-07.pdf>

11. The rules of many occupational pension schemes allow members to take their benefits early where they are in ill health (sometimes without actuarial reduction) or for general early retirement (usually with actuarial reduction). These options typically fall away once a scheme has started to wind-up.
12. The reforms to the FAS announced in December 2007 included provision to allow members unable to work due to ill health to be able to apply for early access to their FAS payments subject to actuarial reduction⁴.
13. Where payments are made early with an actuarial reduction to take account of the earlier payment, there is no overall increase in costs, but there is a bringing forward of those costs. This is not an issue where the costs are funded (the loss of future investment growth being one of the factors which can be taken into account in calculating the appropriate actuarial reduction). But it can be a significant factor where payments are paid on the “pay-as-you-go” basis which applies to payments of FAS assistance⁵.
14. So in determining what is affordable within the overall costs of the extension of the FAS, the Government has to take account of the need to manage any consequent increase in short-term costs. In the extension to FAS announced in December, the Government proposed the early payment of assistance to those unable to work due to ill health who were aged over 60 and below their normal retirement age (NRA).
15. Whilst this approach would have extended access to FAS payments to those whose NRA was over 60, it would not have allowed any greater access to those whose NRA was 60. This issue was highlighted during early meetings with stakeholders including Trade Unions, the Pensions Action Group and trustees of qualifying schemes. For consistency, and in light of concerns expressed by these groups, we have included provision in these draft Regulations for members who are within five years of their NRA (or of age 60 where NRA is below that age) to apply for early reduced payment. This means that members whose NRA is 60 or below will be able to apply for early reduced payments where they are unable to work due to ill health from the age of 55.
16. Extending this provision to those within five years of their NRA will increase the short-term costs being brought forward by approximately an additional 20 per cent, but the Government believes this to be just containable within current short-term cost estimates.

We invite responses in respect of any members unable to work due to ill health who may be excluded under our proposal.

⁴ There are already provisions for the early payment of FAS in cases where a member of any age is not expected to live more than six months as a consequence of a progressive disease. FAS payments made on grounds of terminal illness are made without actuarial reduction.

⁵ The PPF, for example, allows all those age 50 and over to access their compensation earlier on actuarially reduced terms. This is cost neutral in a funded arrangement.

Numbers affected

17. There is considerable uncertainty around the numbers likely to apply for ill health payments and a lack of comparable data on which to base estimates. FAS qualifying members may be more likely than members of ongoing schemes to seek ill health payments; for example the nature of their previous occupation and/or the lack of less physically demanding alternatives making continued employment a more difficult prospect. Alternatively the amount available after actuarial reduction may make some less likely to seek early payment where other benefits, such as means tested social security benefits, might be affected.
18. We estimate that there are around 23,000 qualifying members within five years of their NRA and that between 10 per cent and 20 per cent (2,300 – 4,600) of them may successfully apply for ill health payments, with an additional 500-1,000 successful applicants annually thereafter.

Conditions to be satisfied for members to qualify for early payment

19. The draft Regulations allow for early payment to be made to members within five years of their NRA where the scheme manager⁶ is satisfied that that the qualifying member is unable to work due to ill health and that they are likely to continue to be so unable until their NRA. We intend that decisions taken under this provision will be made by the FAS operational unit (FAS OU) on the basis of evidence provided by the member that shows that they are not working or should not be working due to an ill health condition which is likely to continue until they reach their NRA (or 60 where their NRA is below that age).
20. Whilst we will need to establish that a member is in ill health and unable to work we do not want to impose burdensome or overly prescriptive evidence requirements. Rather we would like members to be able to provide evidence that is readily available to them. For example, to show that they are not working or should not be working we anticipate that members might provide the following type of evidence:
 - a P45;
 - a letter from a doctor or other health professional indicating that they should refrain from work;
 - a letter from a former employer; or
 - evidence of entitlement to relevant benefits.

And to show that their being unable to work is a consequence of their ill health and that they are likely to continue being unable to work due to ill health until their NRA, we anticipate that the following type of evidence might be provided:

⁶ The FAS scheme manager is defined in The Financial Assistance Scheme Regulations (S.I 2005/1986) as “the Secretary of State acting in his capacity as manager of the financial assistance scheme.” The role of the scheme manager is delegated to the FAS operational unit (FAS OU).

- GP's medical certificate, for example supplied for other reasons such as a claim for benefits or Social Security credits;
- a letter from a consultant or occupational therapist;
- other details of medical treatment such as hospital appointments; or
- receipt of an ill health related scheme pension or relevant state benefit.

We invite responses on these potential evidence sources and in particular whether the medical evidence listed above is likely to be readily available to relevant FAS members and / or whether there may be alternative readily available evidence of a person's ill health that could be provided.

21. In forming a decision on whether a member is unable to work due to ill health and whether that is likely to continue until NRA the FAS OU will consider the evidence provided by the member and may seek further evidence where the evidence provided is unclear or insufficient to make a determination.
22. Further information on the application and decision-making process will be provided on the FAS website and on request from the FAS OU after the Regulations come into force.
23. The decision-making process, including the type of evidence that might be provided to support applications, will be kept under review in light of operational experience. We will consult on any significant future changes we may consider making to processes including evidence requirements. Further information on the rationale for our intended approach and other alternative approaches we have considered can be found in **Annex A**.

Date from which ill health payments will be payable.

24. Once the FAS OU is satisfied that the qualifying member meets the conditions then, if the member is within five years of their NRA a reduced FAS payment will be payable from the date that the scheme manager was first notified that the member is unable to work due to ill health and that is likely to continue until NRA. If the member is not within five years of their NRA (or 60 where later), payments will start when they reach that age if the evidence provided is sufficient. In practice we intend the date of notification to be the date at which an application form is received by the FAS OU from the member (the "notification date").
25. We do not intend to make any ill health related payments for periods prior to the notification to the FAS OU. We have considered making such a provision, but have rejected it for the following reasons. Firstly it would be difficult to establish what might be an appropriate period for such "back-dating", especially given the need for the member to provide contemporaneous evidence of not working due to ill health. Secondly, even in those cases where such a period could be established, a further reduction would have to be applied to ongoing payments to account for the earlier date of entitlement. Thirdly, further costs would be brought forward. For these reasons we have not provided for the payment of ill health related payments before the "notification date".

However, we invite responses on this approach and in particular if potential beneficiaries might prefer greater arrears payments at the expense of larger ongoing payments, how entitlement for an appropriate past period should be determined and how the problems about contemporaneous evidence could be overcome.

Determining amounts of ill health payments.

Reduction factors

26. In line with the announcement made in December 2007, payments made to those unable to work due to ill health will be determined on a cost neutral basis. This will involve the application of annuity factors to reduce the amount of FAS assistance payable to reflect its early payment. The actuarial reduction will be based on factors calculated for the purpose by the Government Actuary's Department (GAD).
27. The factors will reduce the amount of assistance paid to reflect the fact that it is being taken earlier. They will take account of the member's NRA and age at date of notification in years and whole months. They will not make any allowance for impaired life expectancy since it is not intended to require members who apply for early payment to demonstrate impaired life expectancy, but only that the ill health makes them unable to work.
28. Draft factors for a given age and scheme NRA have been derived by considering the ratio of the cost of a deferred pension payable from scheme NRA to a person of that age to the cost of an immediate pension payable from that age. The ratio is calculated using the annuity factors which it is proposed to use for the determination within FAS OU of rates of "actual" pension for the calculation of assistance where lump sums have been taken. **Annex B** of this document provides a table containing the draft factors that will be used for determining the actuarial reduction.
29. As the reduction factors are derived from assumptions of longevity which can change over time it may be necessary for us to review the factors periodically. We intend that any such reviews will be subject to public consultation.
30. For further information on the use of annuity factors by the FAS OU to convert lump sums into rates of notional pension to facilitate the calculation of FAS assistance, and the basis on which revised factors are being proposed for these purposes please refer to the consultation document published on the 6th March which can be found on the DWP website:
<http://www.dwp.gov.uk/publications/dwp/2008/revision-of-annuity-factors-in-FAS.pdf>; or alternatively on the FAS website:
<http://www.dwp.gov.uk/lifeevent/penret/penreform/fas/>

Calculation

31. The reduction factors will be applied to the amount of FAS assistance calculated 'as at' the date from which payments will start to be made and the calculation of the unreduced FAS payment will reflect the process that is followed for other FAS payments to active and deferred members (broadly, those members who had not reached their NRA before the scheme started to wind-up).
32. As such, the member's scheme pension accrued up to the date they left their scheme will be revalued up to the date of payment in line with:
 - scheme and statutory rules from the date the member left the scheme up to the date scheme wind-up started; and then
 - the rise in prices capped at 5% a year compound thereafter.

Once the member's 'expected pension' is thereby established, any scheme pension will be deducted from 90% of that 'expected pension' to provide a full (i.e. unreduced) FAS payment, to which the relevant reduction factor will be applied. **Annex C** of this document contains an example of how we intend to calculate an ill health related payment under the draft Regulations.

Operation of the cap

33. It should be noted that the calculation of ill health and interim ill health payments will be subject to the application of the FAS cap of £26,000 that applies to all other FAS payments. In common with the way in which the cap applies to other FAS payments we intend to apply the cap for ill health payments to the product of the calculation '0.9 x expected pension'.
34. We have not provided in the draft Regulations for the cap to be applied at a lower rate than £26,000 despite the fact that the 'expected pension' will typically be revalued to an earlier date in relation to ill health payments (and therefore the cap would be less likely to apply than if the member was taking their assistance at their NRA).
35. As part of the changes to the FAS announced in December 2007 the Government clarified that it is intended that the cap will keep its value over time. We are considering how that commitment might best be implemented and will include detail of our intended approach in the further package of legislative changes planned for the end of the year. In the interim we did not consider it appropriate to seek to amend the operation of the cap in relation to ill health payments (whether interim or final), as allowing the cap to apply at the 'full' £26,000 rate will aid speedy implementation of ill health payments using existing operational systems.

Interaction of FAS payments with pension payments made by schemes or insurers.

36. Under current FAS rules, final FAS payments (known as 'annual payments') cannot be determined until final scheme settlements are determined - typically

when annuities are purchased. Before then, initial payments can be made on account of final entitlement. These initial payments top-up 'interim pensions' paid out of scheme assets during wind-up.

37. In order to reflect the different circumstances of members who may apply for ill health payments and to reflect the current division between annual and initial payments, the draft Regulations contain provision for 'interim ill health payments' to be payable to members in wind-up and for 'final ill health payments' to be payable to relevant members for whom final scheme pensions can be determined, where applicable.
38. Under the consultation draft of the draft Regulations, interim ill health payments will be calculated as top-ups to interim pensions and final ill health payments as top-ups to annuities⁷. It should be noted that where annuities have been secured for deferred members, schemes currently provide FAS with information on rates of annuity expressed in terms of the rate of pension payable at NRA (quoted as at a date before the NRA at a rate which allows for the addition of revaluation until NRA). In practice, members may choose to take their annuity before or after their NRA (subject to limits) and the insurer will adjust payments accordingly.
39. Under current rules and processes FAS is not generally made aware of the actual amount of annuity that comes into payment or the date from which it is paid. Thus, a member may appear to receive a FAS top-up that takes them to less than 90% of their original expected pension payable from NRA if they choose to take the annuity early or to more than 90% of their original expected pension payable from NRA if they take their annuity late. However, their total income from their annuity and FAS top-up combined across their retirement should be of broadly equal actuarial value at the time their scheme benefits come into payment.
40. In order to ensure that we can use the information currently held in relation to schemes that have wound up, and to allow for ease of implementation, we do not plan to change this approach in relation to ill health payments. Those payments will therefore be calculated as top-ups to annuity rates payable at NRA. If members wish to gain access to their annuity as well as their FAS payment before their NRA we understand that insurers will generally allow them to do so, subject to the usual reductions that will apply for early payment.
41. Where schemes are winding-up we do not expect that pensions will commonly be in payment before a member reaches their NRA. This is because most scheme rules do not allow ill health payments to be made during wind-up unless a member is suffering from a terminal illness. Therefore we expect that FAS ill

⁷ For the time being FAS rules reflect the fact that payments are calculated as top-ups to scheme pensions. However, as a result of the reforms announced in December 2007 most members' assets are likely to be taken into Government rather than used to secure a scheme pension. Therefore, in time most members will only receive payments from FAS and not from their scheme. Current rules reflecting the top-up system will be retained until rules and processes are devised for taking in assets and making associated payments.

health payments paid to members of schemes in wind-up will generally constitute the only payment received by the member.

42. In normal circumstances, and subject to funding positions, trustees would be likely to start to pay interim pensions to such members at their NRA. Without intervention this could result in members receiving excess FAS payments until such time as FAS payments could be adjusted to take account of the scheme pension.
43. In order to avoid these complications we will seek consent from members to ask trustees to consider either not paying interim pensions to members who will be paid ill health payments from FAS (perhaps where FAS will be taking over the assets of the scheme), or to advise FAS of the amount of interim pension they are proposing to pay in advance of payment so that FAS payment changes can be synchronised (perhaps where schemes have a binding commitment to purchase annuities and therefore where a reassessment will ultimately be required when the member's annuity is secured with an insurance company).
44. It should be noted that in common with our approach to initial payments, we intend the payment of interim ill health payments to be discretionary. The operation of discretion in making such payments is intended to help prevent significant overpayments from arising.
45. Making interim ill health payments discretionary allows the scheme manager to choose not to make payments where there might be a significant risk of such overpayments arising. Delaying payments through the use of these discretionary powers would also allow us to work with scheme trustees to explore whether appropriate scheme pensions could be put into payment which would also mitigate the risk of significant overpayments arising.

Reconciling interim and final ill health payments

46. To reflect current rules and processes relating to initial payments and 'annual payments', interim ill health payments will be paid 'on account' of final ill health payments. Thus, when ill health payment arrears (paid back to the 'notification date') are determined, any interim ill health payments already paid will be recovered from the amount of any arrears and any 'excess' interim ill health payments paid are recoverable.
47. When reconciling FAS payments made during and after wind-up we will consider the particular circumstances of the member especially in relation to the amounts of scheme pension in payment to members across FAS payment periods when considering whether recovery of any excess interim ill health payments is appropriate.

Payments to survivors

48. Under FAS rules, widows, widowers and surviving civil partners are eligible for FAS assistance. The draft Regulations provide for the survivors of members

who had qualified for ill health payments or interim ill health payments to receive assistance based on the member's early payment rate.

49. Current FAS rules have been designed to accommodate the different scheme benefits survivors typically receive depending on when in the wind-up process their spouse/civil partner died. If members die on or after the day on which annuities have been purchased then survivors tend to receive 50% of the annuity payment that was being made to the member (or that would have been made had the member reached retirement age before their death). Under paragraph 6 of Schedule 2 to the current FAS Regulations FAS pays 50% of the assistance that was in payment to such members at the time of their death to their survivor. Thus survivors in these circumstances will typically receive 50% of the combined income that the member would have received from FAS and their scheme.
50. If, on the other hand, members die during wind-up, schemes tend to use the asset share that would have been allocated to the member to secure a survivor's pension for the survivor. So if a member had an asset share that would have provided 50% of their expected scheme benefits, this might secure for the survivor the full survivor's pension (50% of the member's pension) that the survivor had expected. Paying survivors FAS assistance at half the members rate in these circumstances would mean survivors could receive significantly more than they would have received under the scheme rules and would be inconsistent with the treatment of survivors of members who die after annuities have been secured. In light of this, FAS rules provide that assistance for survivors of members whose liabilities have not been discharged is calculated taking into account the amount that the survivor receives from the member's scheme (paragraphs 2, 5(3) and 10 of Schedule 2 to the Financial Assistance Scheme Regulations (S.I 2005/1986) refer).
51. We are maintaining these differences in approach in relation to survivors of members who received ill health early payments before their death and intend also to reflect the actuarial reduction that applies to the member's payment in the payment to their survivors.
52. Survivors of members who were in receipt of final ill health payments, will simply receive one half of the ill health payment which was payable to the member immediately before their death.
53. Survivors of members who received interim ill health early payments before their death will receive payments based on half of the member's 'expected pension' and reduced to reflect the early payment to the member.

Application of indexation to ill health payments

54. The reforms to the FAS announced on the 17 December last year included provision for payment of assistance derived from post-1997 service to be increased in line with inflation (subject to a 2.5% limit). As described earlier in this document the extensions announced in December are being implemented

in stages and we intend to include provisions relating to indexation and other more complex aspects of the reforms in a further package of Regulations to be issued for consultation later this year.

55. In that package we intend to ensure that appropriate rates of indexation will be provided in relation to all FAS payments including those made in circumstances of ill health. For payments to members this is likely to mean that a proportion of the reduced assistance payable in circumstances of ill health will be increased relative to the amount of post-1997 service a member had within their qualifying scheme (so if a member had 3 years of pre-1997 and 1 year of post-1997 service 25% of their reduced FAS assistance would be updated).
56. For payments to survivors we intend to provide the same 'pro-rata' indexation as applied to the qualifying member. So extending the example above the survivor who received half of the member's reduced rate would receive year-on-year indexation on 25% of half of the reduced payment payable to the member at the time of their death (thus including indexation paid up to that date). Where liabilities to the member had not been discharged at the time of their death (and thus where the survivor's scheme pension is taken into account in assessing FAS assistance to the survivor) we intend to increase the 'expected pension' against which the survivor's ill health payment will be calculated by the compounded amount of indexation that applied across the period that the member was eligible for ill health payments. The resulting amount of any assistance payable to the survivor would be increased year-on-year according to the proportion of post-1997 service of the qualifying member.

Reviews and appeals

57. The draft Regulations amend the Financial Assistance Scheme (Internal Review) Regulations (S.I 2005/1994) in order to make determinations of eligibility on ill health grounds and the amounts of ill health payments reviewable determinations. This will enable such decisions to be subject to the same internal review processes as currently apply in relation to member eligibility, member assessment and terminal illness eligibility and allow the appeals process to be followed in respect of any review decisions. All internal reviews are conducted internally within the FAS OU and any resulting appeals are heard by the PPF Ombudsman or a Deputy PPF Ombudsman.
58. It should be noted that determinations of the amount of any interim ill health payment will not be reviewable determinations. This is in keeping with the approach taken in relation to other FAS payments made to members and survivors in pension schemes that are still winding-up. In such circumstances schemes are unable to provide definitive information on the amount of pension that may be secured for a member or survivor. Until such time as definitive information on scheme settlements can be provided a definitive FAS payment cannot be established. Thus it would not be appropriate for interim ill health payments to be reviewable. They will become reviewable when they are reassessed as ill health payments.

59. Although beneficiaries will not have the formal power to request a review of an interim ill health payment the FASOU would always seek to answer any queries on how payments have been determined and would revise those payments if they had been determined incorrectly (if, for example, incorrect information had been provided and used in assessing the amount of interim ill health payment made).

Solvent Employers

60. FAS was originally set up to provide assistance to members of qualifying schemes which started winding-up underfunded between 1st January 1997 and 5th April 2005 and where the employer has been unable to make up the shortfall because it is insolvent or no longer exists. The Government subsequently announced an extension to the FAS to cover members of schemes that began winding-up within the same timescales set out above, where a compromise agreement is in place, and where enforcing the full statutory debt against the employer would have forced the employer into insolvency.
61. However, following the publication of the FAS Review of Scheme Assets (the 'Young Review') in December 2007, the Government announced that it would extend the FAS to members of schemes which began to wind-up under-funded - after 1st January 1997 and before the employer was required to meet the full buy-out cost - where the employer is still solvent.
62. In the past the levels of debt that the employer was required to pay to the pension scheme would not necessarily guarantee the benefits members were expecting when assets were used to secure benefits with an insurer at wind-up. For example, the Minimum Funding Requirement (MFR) level of debt which solvent employers were required to pay between 6th April 1997 and 10th June 2003 aimed to give deferred members a cash amount which, if placed in a personal pension, would give them at least an even chance of getting benefits equivalent to those they would have received from their scheme had it been fully funded. The level of assets required by the MFR was not intended to ensure that there would be sufficient assets in the event of the scheme winding-up to buy deferred annuities to fully protect the accrued rights of younger scheme members.
63. The draft Regulations allow schemes - which started winding-up between 1st January 1997 and 10th June 2003 - to be eligible for FAS where the employer has paid the relevant statutory debt. Our aim is to include schemes where the employer has discharged their legal responsibilities to the scheme, but the scheme is left under-funded because the regulatory framework of the time did not require the employer to pay full buy-out levels of debt.
64. From 11th June 2003, trustees have been able to enforce a requirement for solvent employers seeking to wind-up a scheme to do so on a full buy-out basis.

We believe, therefore, that members of schemes with solvent employers which began to wind-up on or after this date should generally:

- either receive their accrued pension in full and therefore should not qualify for FAS; or
- their employer would have entered into a compromise agreement, which would mean their scheme should seek to qualify under existing FAS rules introduced in December 2007.

However, we invite representations from any schemes - that started winding-up with solvent employers - that believe they may still be ineligible under these draft Regulations.

65. We are also aware that multi-employer schemes can have complex arrangements concerning which employer will pay the debt in the event of a scheme wind-up. The draft regulations contain definitions of the 'employer' which would be required to have paid the debt to the scheme (by making references to the definitions in the current FAS Regulations S.I.2005/1986). It is possible that this definition may not capture the employer who was obliged to pay the debt under the rules of some multi-employer schemes.

We invite comments from trustees or other representatives from multi-employer schemes – especially if they think that the statutory debt from the employer to the scheme was paid, but not by the 'employer' which is the employer for FAS purposes.

Speeding up initial FAS payments to members

66. Currently, initial payments of FAS assistance can be made to qualifying members where a scheme is still winding-up, these payments are made before the members final share of scheme assets is known, and hence before a final assessment (leading to payments known as 'annual payments') can be established.
67. The FAS Regulations (S.I.2005/1986) allow the FAS scheme manager to make an initial payment only after he has received a written request for such a payment from a trustee or scheme manager. As part of our aim of speeding up the payment process, we intend to amend the FAS Regulations so that the FAS scheme manager is able to consider making initial payments, once he has the relevant data, without having to wait for the trustee or manager of the qualifying scheme to formally apply in writing.
68. We will also be making changes to the periods allowed for trustees or scheme managers to supply information to the FAS scheme manager. Currently, the FAS (Provision of Information and Administration of Payments) Regulations (S.I. 2005/2189) allow six months, from when the FAS scheme manager requests it, for the trustee or scheme manager to supply the member information which would enable FAS payments to be made.

69. In order to be able to get FAS payments to qualifying members more quickly, we are seeking to revise the period for information to be supplied as follows:

- Where a qualifying member is due to reach his/her scheme NRA more than six months after these regulations come into force, information will be required at least three months, and no more than six months, before the member's NRA. In practice the FAS scheme manager will work with trustees and scheme managers to ensure that information is obtained at the appropriate time.
- Where a qualifying member reaches his/her scheme NRA within six months of the regulations being in force, information will be required three months from when the FAS scheme manager requests it. This ensures that, where a member's NRA falls quite soon after this change is effective the trustee or scheme manager has at least three months in which to provide the information. This avoids the situation where, for example, the regulation change was effective from 31st July and a member's NRA was 31st December, meaning that the trustee or scheme manager would have just two months – by 31st September, to supply the information - if they were required to supply the information three months before the member's NRA.
- Where the FAS scheme manager requires the information for a survivor of a qualifying member, the information will be required three months from when the FAS scheme manager requests it. This is because the NRA in survivors cases is not relevant, since FAS is paid from the day following the qualifying member's death, with no reference to the NRA.
- Where the FAS scheme manager requires the information for a qualifying member who is terminally ill or is unable to work due to ill health, the period for the information to be supplied will be 14 days from when the FAS scheme manager requests the information. This is to reflect the greater urgency surrounding these cases.
- Where the scheme manager makes subsequent requests for the information, for example, where the scheme manager needs to request fresh data in order to determine annual payments after a scheme has completed wind-up, the period for the information to be supplied will be three months from when the FAS scheme manager requests it, unless it is in respect of a qualifying member who is terminally ill or who is unable to work due to ill health, when the 14 day period will continue to apply.

Managing the transition of pension schemes from their current position to the point where the Government can take on their assets

70. The Young Review of Assets concluded that, to provide a guaranteed benefit level, the best value will come from Government absorbing all the residual assets in schemes which do not have binding commitments to annuitise and then making the associated payments. As the Government will be taking in scheme assets it has a clear interest in monitoring those assets, and ensuring

that they are managed appropriately to avoid, for example, trustees choosing to make high risk investments knowing that the Government will meet the cost of providing assistance to scheme members should the risky investment provide only low returns. The Government also has an interest in ensuring schemes move – in a timely way - towards fully winding-up, and the Government taking in their assets.

71. Provisions to allow the Government to take in assets will be included in the third package of regulations which we intend to publish in draft by the end of the year. However, in the meantime the Government has an interest in working with trustees to understand what form scheme assets take, to ensure they are appropriately managed, and to move them towards a state in which the Government can take them in after the third package of regulations comes into force.
72. For these purposes the current package of regulations contains two measures:
 - First, the regulations allow the scheme manager to direct trustees of qualifying schemes in wind-up, or other appropriate persons, with a view to ensuring that any reduction in the scheme's assets is kept to a minimum or that the scheme's assets are invested in a way which is appropriate in the opinion of the scheme manager. This would, for example, allow the scheme manager to direct trustees not to make high risk investments, or not to take disproportionately expensive advice. This is similar to an existing power of the Board of the PPF.
 - Second, the regulations provide for the Board of the PPF to give advice to the FAS scheme manager in relation to the FAS if requested to do so by the FAS scheme manager.
73. We envisage a transition process similar to that by which the PPF works with pension funds which are going through their assessment process. This process will include monitoring scheme assets in the run up to taking in those assets, working with trustees to clarify scheme benefits, and ensuring that the scheme completes winding-up in a timely and effective manner. The provision to allow the PPF to provide advice to the FAS is important in order to benefit from the experience the PPF has built up through their operations.
74. We envisage these transition arrangements being delivered in two phases:
 - Phase I – where FAS will work with trustees, monitoring assets, clarifying scheme benefits, and moving pension schemes towards a state where they can transfer assets. We envisage this being operational from the end of June 2008.
 - Phase II – at which point FAS would begin taking in assets and liabilities from pension schemes. We expect phase II to be operational from early 2009 when the third set of Regulations comes into force.

75. Final decisions on how the PPF might be involved in the process have yet to be made. The draft regulations in Section 3 of this document are limited to provisions under which the Board of the PPF will advise the FAS scheme manager in relation to the FAS if the scheme manager requests that advice. However, we have also considered options where the PPF would take a more active role in the process; potentially helping with, or taking on responsibility for:
- agreeing action plans with trustees to ensure the schemes complete their winding-up processes as quickly as possible;
 - working with scheme trustees to clarify scheme benefits, and to clean scheme data which will be passed to the FAS;
 - agreeing timescales and processes to achieve the efficient transfer of assets and liabilities to the Government; and
 - taking action to ensure pension scheme trustees maintain and preserve scheme assets.
76. The draft Regulations specify that the Board of the PPF will be paid by the DWP (by grant) for carrying out the FAS-related advice function, should they be asked to undertake them. If further functions were included in the Regulations following consultation, we would expect that grant to apply to those functions too. It is not the Government's intention for money raised by the PPF levy to be used to pay for the development or administration of the FAS.

We invite comment on the role that the Board of the Pension Protection Fund might have in the management of the Financial Assistance Scheme. In particular whether there are elements of the transition process set out above where the PPF's expertise could be used.

Removing the option for FAS qualifying members to buy back into the State Additional Pension.

77. When a person is a member of a contracted-out, defined benefit, occupational pension scheme, they do not build up full rights to the State Additional Pension (formerly known as the State Earnings Related Pension Scheme, SERPS, now superseded by the State Second Pension, S2P). They pay a reduced rate of National Insurance contributions in recognition of the fact that they will not receive full State Additional Pension in respect of the time they are a member of that contracted-out scheme.
78. Deemed Buy Back is a facility, in certain circumstances, to reinstate a member of an under-funded contracted-out pension scheme into the State Additional Pension for the period they were in this scheme. The member is reinstated without having to pay the full cost of buying back into the state system. The remaining money in the scheme allocated to the member is paid to the Government, the shortfall being deemed to have been paid (hence the name 'Deemed Buy Back').⁸

⁸ Since its inception in April 1997 202 people have opted for reinstatement and almost £3 million has been deemed to have been paid.

79. In other words, any individual who opts for reinstatement will be paid their State Additional Pension from State Pension Age on the same basis as if they had not been contracted-out while they were a member of that scheme. In these circumstances payments from the FAS are calculated as a top-up to a notional pension that could have been secured by way of bulk annuity purchase for the member with their share of scheme assets. The amount of the State Additional Pension 'bought back' which the member receives from State Pension Age is not taken into account.
80. As the Young Review has pointed out, (chapter 4, page 71, paragraphs 9 to 13) this can produce anomalies. For instance, in a few cases individuals who have opted for reinstatement have ended up with more than a 100 per cent replacement of their lost pension. It is also possible (although we are unaware of any FAS cases where this has occurred) that some people could end up with less than the intended percentage, if the reinstated State Additional Pension turns out to be less than the notional pension used in the top-up calculation.
81. It is intended therefore to eliminate these uncertainties by excluding those who qualify for FAS payments from the Deemed Buy Back system. Instead they will be guaranteed 90 per cent of their accrued pension through FAS. However, anyone who has been offered the option of reinstatement at the date these Regulations are effective will be able to take up that option, if they then apply to HMRC for their state rights to be restored. In these cases, as at present, a notional pension will be calculated and the FAS payments will be paid, as described above.

Legislative Background

82. Section 286 of the Pensions Act 2004, which received Royal Assent on 18th November 2004, requires the Secretary of State to make provision by way of regulations for the Financial Assistance Scheme. Section 286 is amended by section 18(1) to (3) of the Pensions Act 2007.
83. The Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) ("the FAS Regulations") established the scheme and prescribed the qualifying criteria for occupational pension schemes and for persons to whom payments could be made. These Regulations received Parliamentary approval in July 2005, and the main FAS provisions came into force on 1st September of that year.
84. The Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994) ("FAS Internal Review Regulations") and the Financial Assistance Scheme (Appeals) Regulations 2005 (S.I. 2005/3273) ("the FAS Appeals Regulations") established the arrangements for internal reviews and appeals to an independent external body – the PPF Ombudsman. The Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (S.I. 2005/2189) set out the information to be provided by and to appropriate persons in order for the FAS to complete its role.
85. These regulations were added to by the Financial Assistance Scheme (Modifications and Miscellaneous Amendments) Regulations 2005 (S.I. 2005/3256) which came into force on 24th November 2005, and the

Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349) which came into force on 16th February 2006.

86. The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/3370), came into force on 16th December 2006 to implement the changes announced that year.
87. Section 18 of The Pensions Act 2007, which received Royal Assent on 26th July, amended section 286 of the Pensions Act 2004. These changes reflected the extension announced on 21st March 2007 and amongst other things committed the Secretary of State to introduce regulations to ensure all qualifying members received 80% of their 'expected pension'. The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/3581), which came into force on 19th December 2007 delivered that commitment and completed the implementation of the full package of changes announced in March 2007.

SECTION TWO – COMMENTARY ON THE DRAFT REGULATIONS

PART 1 – INTRODUCTORY

88. Draft regulation 1 states the day on which the Regulations will come into force, which will be the day after the day that they are made.
89. Draft regulation 2 sets out the definitions of words and phrases used in the Regulations.
90. Draft regulation 3 states that regulation 20 (amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996) does not apply to Northern Ireland. The equivalent instrument which does apply to Northern Ireland is amended at regulation 21.

PART 2 - AMENDMENT OF THE FAS REGULATIONS

91. Draft regulation 4 states that the FAS Regulations (S.I.2005/1986) are amended in accordance with Part 2 of the draft Regulations.

Amendments to Part 1 - General

Interpretation

92. Draft regulation 5(1)(a) inserts a definition of an ill health payment in regulation 2 (interpretation) of the current FAS Regulations.
93. Draft regulation 5(1)(b) inserts a definition of an interim ill health payment in regulation 2 (interpretation) of the FAS Regulations .It also inserts a definition of

interim pension which aligns with the meaning given in paragraph 2 of Schedule 2 to the FAS Regulations as modified in paragraph 10 of that Schedule.

94. Draft regulation 5(2) provides for section 134 (directions) of the Pensions Act 2004 to apply for the purposes of the FAS Regulations with the modifications set out in Schedule 1 to the FAS Regulations (regulation 12 of these draft Regulations).
95. The modified section 134 will allow the FAS scheme manager to direct a relevant person (for example the trustees of the pension scheme, or the employer) in relation to FAS qualifying schemes. More information on this provision is contained in paragraphs 115 and 116.

Amendments to Part 2 - Establishment of the Financial Assistance Scheme

Function of the Board of the Pension Protection Fund (PPF)

96. Draft regulation 6 inserts in Part 2 of the FAS Regulations a new regulation (regulation 5A). This regulation provides for the Board of the PPF to give advice in relation to the FAS if requested to do so by the FAS scheme manager. New regulation 5A(2) specifies that the Secretary of State will pay the Board of the Pension Protection Fund for any work they undertake arising from this function.
97. This measure is intended to allow the FAS scheme manager to take advantage of the expertise and experience of the PPF Board in implementing and putting into practice the changes to the FAS announced in December 2007.

Amendments to Part 3 – Qualifying Pension Schemes

Solvent schemes

98. The existing regulation 9(1)(c) of the FAS Regulations includes a qualifying condition that the employer in relation to a scheme satisfies the conditions set out in regulation 11, or regulation 12 in relation to multi-employer schemes. The condition in each of these regulations is that an insolvency event has to have occurred (or be treated as having occurred) in relation to the employer.
99. Draft regulation 7 substitutes the existing regulation 9(1)(c) with a revised 9(1)(c) which adds further conditions in draft regulation 9(1)(c)(iii) and (iv), in order to allow certain schemes with solvent employers to qualify for FAS. Schemes with solvent employers which started winding-up between 1st January 1997 and 10th June 2003, whose employer(s) meets the relevant condition can be a qualifying pension scheme if all the other conditions are met.
100. Draft regulation 7 provides for new regulations 12A and 12B of the FAS Regulations, which set out the conditions which solvent employers must satisfy in order for the scheme to be a qualifying pension scheme for the purposes of the FAS, and the definitions of the employer which needs to meet the conditions. Draft regulation 12A sets out the condition for employers in single

employer schemes, draft regulation 12B sets out the condition for employers in multi-employer schemes.

101. The provisions provide that to qualify the employer must have discharged the debt required under:

- section 144 of the Pension Schemes Act 1993 for schemes which started winding-up before 6th April 1997; or
- section 75 of the Pensions Act 1995 for schemes which started winding-up between 6th April 1997 and 10th June 2003.

Amendments to Part 5 – Annual and Initial Payments

102. Draft regulation 8 makes changes to regulation 17 of the FAS Regulations so that annual payments are not payable to members and survivors for whom ill health payments are payable.

103. Draft regulation 9 inserts two new regulations into the FAS Regulations: regulation 17A, relating to 'ill health payments' and regulation 17B relating to 'interim ill health payments'.

104. Under current FAS rules, final FAS payments (known as 'annual payments') cannot be determined until final scheme settlements can be determined, typically when schemes purchase annuities from insurance companies. Before this time, initial payments can be made by FAS on account of those 'annual payments'.

105. In order to reflect the different circumstances of members who may apply for ill health payments and to reflect the current division between annual and initial payments, 'interim ill health payments' will be payable to members and survivors in schemes that are winding-up and 'ill health payments' will be payable to members and survivors for whom final scheme pensions can be determined.

106. Draft regulations 17A and 17B provide that relevant payments will be determined in accordance with a new Schedule 2A inserted into the FAS Regulations by draft regulation 14. Further information on the conditions that must be satisfied by members in order to qualify for payments in circumstances of ill health and how such payments will be calculated under the draft Regulations is contained in section 1 of this document and the information provided in that section should be referred to alongside this commentary for a full understanding of how we intend to apply the draft provisions.

107. Draft regulation 17A provides that where the scheme manager is satisfied that a qualifying member is unable to work due to ill health and is (in the opinion of the scheme manager) likely to continue to be so until NRA, that qualifying member will be eligible for an ill health payment from the day on which the scheme manager is first notified that the member is in those circumstances, or the day on which the member reaches the age five years before NRA whichever is the later. This regulation will also make provision for eligible survivors of members

who were receiving ill health payments before their death to receive ill health payments.

108. Draft regulation 17A also reflects relevant provisions contained in regulation 17 of the current FAS Regulations which provides for annual payments to be payable, for example to stipulate:
- that ill health payments are payable for life (and to specify the day on which the payments cease after death) (in draft regulation 17A(5) and (6), *cf* regulation 17(6) of the current FAS Regulations);
 - that any interim ill health payments paid during wind-up are deducted from the amount of any ill health payment arrears;
 - and that any ‘excess’ interim ill health payments are recoverable (in draft regulation 17A(4), *cf* 17(5A) of the current FAS Regulations).
109. Draft regulation 17B provides that where a qualifying pension scheme is winding-up and the scheme manager is notified and is satisfied that a qualifying member is unable to work due to ill health and is likely to continue to be so until NRA, the scheme manager may in his discretion make an interim ill health payment to that qualifying member on account of a “final” ill health payment. Like ‘final’ ill health payments, interim ill health payments are payable from the day on which the scheme manager is first notified that the member is in those circumstances or the day on which the member reaches the age five years before NRA whichever is the later. Draft regulation 17B also makes provision for eligible survivors of members who were receiving interim ill health payments before their death to receive interim ill health payments in their own right.
110. Draft regulation 17B reflects relevant provisions contained in regulation 18 of the current FAS Regulations which provide for initial payments to be payable. These include:
- specifying the extent of the scheme manager’s discretion (in draft regulation 17B(3), *cf* 18(5) of the current FAS Regulations);
 - providing for interim pensions to be deemed to be in payment in certain circumstances (in draft regulation 17B(4), *cf* 18(5A) of the current FAS Regulations);
 - the dates up to which interim ill health payments are payable (in draft regulation 17B(6) and (7), *cf* 18(7) and (8) of the current FAS Regulations);
 - providing for the interim ill health payment to be redetermined if the amount being paid may be incorrect (in draft regulation 17B(8), *cf* 18(9) of the current FAS Regulations);
 - ensuring that the power to redetermine covers circumstances in which interim pensions change (in draft regulation 17B(9), *cf* 18(9ZA) of the current FAS Regulations); and
 - ensuring that any ill health interim payments already paid are recoverable in the event that they are redetermined as not being payable (in draft regulation 17B(10), *cf* 18(9A) of the current FAS Regulations).

Initial payments

111. Draft regulation 10 amends regulation 18 of the FAS Regulations to allow the FAS scheme manager to make initial payments without having to wait for the trustee or manager of the qualifying scheme to apply for them. The power is a discretionary power, in anticipation of an annual payment and on account of such a payment.

Amendments to Part 6 - Administration of payments

Time and Manner of Payment Provisions: General Provisions

112. Draft regulation 11 makes some consequential amendments to regulation 19 of the FAS Regulations (which provides for the administration of FAS payments) in relation to ill health payments and interim ill health payments. These amendments allow for payments on ill health grounds to be paid in monthly instalments on the day of the month specified by the scheme manager and provides for the monthly instalments to start on the first day as soon as reasonably practicable after the day on which the beneficiary becomes entitled to the payment.

Amendments to Schedule 1 - Modification of certain provisions of parts 1 and 2 of the Act

Protecting pension scheme assets during the transitional period

113. Draft regulation 12 amends Schedule 1 to the FAS Regulations S.I. 2005/1986 to modify section 134 of the Pensions Act 2004 in relation to the FAS. The existing section 134 enables the Board of the PPF to direct trustees or scheme managers, employers in relation to the scheme, or others as prescribed. The purpose of this PPF power is to ensure that scheme assets are protected and liabilities are not increased beyond what is necessary during the assessment period for PPF, and could mean an active involvement in decisions on investment, expenditure, legal proceedings and other matters as prescribed.
114. The application and modification of section 134 to the FAS will enable the FAS scheme manager to fulfil a similar function, ensuring that scheme assets are appropriately protected during wind-up. These directions can be given to trustees or managers of schemes, professional advisers to schemes, others who may carry out activities relevant to the use of the assets of the scheme, and employers in relation to schemes.

Amendments to Schedule 2 – Determination of annual and initial payments

Initial Payments

115. Draft regulation 13 makes a consequential amendment following the changes to initial payments.

New Schedule 2A - Determination of ill health payments and interim ill health payments.

Ill health payments

116. Draft regulation 14 inserts a new Schedule (Schedule 2A) into the FAS Regulations S.I. 2005/1986 to set out the determination of ill health and interim ill health payments.
117. Draft paragraph 2(1) of new Schedule 2A sets out the formula for determining ill health payments to qualifying members as “ $C((A \times 0.9) - B)$ ”.
118. Draft paragraph 2(2)(a) provides for eligible survivors of qualifying members to receive one half of the ill health payment that was payable to a member at the time of their death where either the member was in receipt of an ill health payment at the time of their death, or where the member was in receipt of an interim ill health payment at the time of their death and the liabilities were discharged in respect of that member before their death. In the latter set of circumstances it is likely that an annuity would have been secured for the member (rather than the survivor), therefore it is appropriate that the survivor receive half of the member’s ill health payment.
119. If a member was not in receipt of an ill health related payment at the time of their death (even if that member had applied for such a payment before that time), their survivor will receive ‘annual payments’ calculated in the normal way for survivors in accordance with Schedule 2 of the FAS Regulations.
120. In keeping with the approach followed in relation to survivors of members who die during scheme wind-up, survivors of members who were in receipt of interim ill health payments at the time of their death and who died before their liabilities had been discharged will receive payments that take account of their (the survivor’s) pension secured at the end of wind-up (typically by annuity purchase). Draft paragraph 2(b) of new Schedule 2A sets out this intention in the formula ‘ $C ((A \times 0.9 / 2) - B)$ ’ (this reflects the formulae used in current Schedule 2 for the purposes of calculating initial payments and annual payments to survivors of members who die during wind-up *cf* Schedule 2, paragraphs 5(3) and 10(e) of the current FAS Regulations).
121. Draft paragraph 2(3) sets out the meaning of the terms used in the formula for determining ill health payments:
- ‘C’ is the actuarial factor determined in accordance with paragraph (4);
 - ‘A’ is the ‘expected pension’ determined by reference to Schedule 2 of the FAS Regulations but modified by new Schedule 2A (refer to section 1 of this document and paragraphs below for further information on how the ‘expected pension’ will be determined); and
 - ‘B’ is the ‘actual pension’ (typically the rate of annuity secured for the member or survivor with the assets of the scheme) determined by reference to Schedule 2 as modified by Schedule 2A.

122. Paragraph 3 of draft Schedule 2A provides for the determination of the amount of interim ill health payments, payable where schemes are winding-up. Paragraph 3(1) contains the intended formula for interim ill health payments to qualifying members, which follows the same formula as for ill health payments but reflecting the fact that members receive 'interim pensions' rather than 'actual pensions' during scheme wind-up. Paragraph 3(2) contains the intended formula for determining payments to survivors of members who have received interim ill health payments: the calculation of such payments takes account of the interim pension payable to the survivor.
123. As with the definition used in relation to ill health payments the definitions of expected pensions and interim pensions used in the formulas for interim ill health payments are drawn from Schedule 2 of the current Regulations but with modifications made by Schedule 2A.
124. The calculations for ill health payments and interim ill health payments are both subject to paragraph 4 (revaluation) and paragraph 7 (the cap).
125. Draft paragraph 4 of new Schedule 2A provides for revaluation to apply where there is one month or more between the certification date and the date on which an ill health related payment is first payable to a beneficiary. In certain circumstances information is provided on a member's scheme pension at a date before their normal retirement age (NRA) (typically when an annuity is secured for the member before that member reaches their NRA). In such circumstances in common with the process applied for annual payments and initial payments revaluation will be applied to the amount of FAS assistance calculated as at the certification date up to the date it comes into payment. The actuarial reduction will then be applied. The provisions in draft paragraph 4 reflect those contained in paragraph 9 of the FAS Regulations. For more information on the calculation of FAS assistance and the 'certification date' refer to the FAS website: <http://www.dwp.gov.uk/lifeevent/penret/penreform/fas/>; or to the recent consultation on other FAS draft Regulations, [http://www.dwp.gov.uk/publications/dwp/2008/FinancialAssistanceScheme\(Miscellaneous Amendments\)Regulations2008.pdf](http://www.dwp.gov.uk/publications/dwp/2008/FinancialAssistanceScheme(Miscellaneous%20Amendments)Regulations2008.pdf)
126. Draft paragraph 5 of new Schedule 2A provides for the scheme manager to determine the actuarial factor that will apply in relation to ill health payments and interim ill health payments. The actuarial reduction will be based on factors calculated for the purpose by the Government Actuary's Department (GAD) with the intention of being cost neutral. The factors will take account of the age of the member and their normal retirement age. Further information on the factors, including an example demonstrating their application can be found in the discussion in section 1 of this consultation document.
127. It should be noted that draft paragraphs 2(3) and 3(3) of new Schedule 2A set out that the 'expected pension' determined in relation to ill health payments and interim ill health payments will be determined in accordance with modifications made to Schedule 2 by draft paragraph 6 of new Schedule 2A. The material change intended in the way that 'expected pensions' are calculated under these modifications is that the amount of pension accrued by the member up to the

date that they left their scheme (or, as the case may be the amount of FAS assistance prior to actuarial reduction) is revalued up to the date at which the member becomes entitled to ill health (or interim ill health) payments, rather than to the member's normal retirement age. These changes reflect the fact that the member is receiving early payment and that revaluation is only applied in relation to FAS payments up to the date that entitlement to payment arises (the discussion in section 1 provides an example of how revaluation will be applied in relation to an ill health payment).

128. This principle is also applied to the calculation of ill health payments and interim ill health payments to survivors under draft paragraphs 2(2)(b) and 3(2) of new Schedule 2A. In relation to such payments, the survivor's assistance will be based on the 'expected pension' determined for the purposes of calculating the member's ill interim ill health payment (and thus revalued up to the date the member's ill health entitlement arose).
129. These intentions are given effect by the modifications made to Schedule 2 by paragraph 6 of draft Schedule 2A. That paragraph modifies the following paragraphs of Schedule 2 for the purposes of paragraphs 2 and 3 of Schedule 2A with the following intended effects:
- paragraph 4(5)(b) and 5(8)(b) to ensure that the first revaluation period for ill health related payments ends on the day before the day on which the scheme started to wind-up. It is possible that these periods in respect of annual payments and initial payments can end on the date on which a member becomes entitled to a FAS payment. Such circumstances can not arise in relation to ill health related payments;
 - paragraph 4(7)(b)(ii) in relation to the second revaluation period for qualifying member payments to ensure that period ends on the date the member becomes eligible for an ill health payment if that date falls before the certification date;
 - paragraph 5(10)(b) in relation to the second revaluation period for survivor payments to ensure that period ends on the date the member became eligible for an ill health payment if that date fell before the certification date.
130. Draft paragraph 6(e) makes corresponding changes to the revaluation that applies to 'expected pensions' for the purposes of determining interim ill health payments. Such payments will be determined by application of paragraph 10 of Schedule 2 of the FAS Regulations as modified by paragraph 6(e).
131. It should also be noted that the calculation of ill health payments and interim ill health payments will be subject to the application of the FAS cap of £26,000 that applies to all other FAS payments. In common with the way in which the cap applies to other FAS payments we intend to apply the cap for ill health payments to the product of the calculation '0.9 x expected pension'. Draft paragraph 7 of new Schedule 2A provides for the cap to apply in this way. The drafting of this paragraph reflects the way in which the cap is described in paragraph 7 of Schedule 2 of the FAS Regulations.

132. Draft paragraph 8 of new Schedule 2A provides for circumstances in which determinations of payments in circumstances of ill health would otherwise result in fractions of pennies. The provision replicates those in paragraph 11 of Schedule 2 of the FAS Regulations to provide that such fractions shall be treated as pennies.

PART 3 – AMENDMENT OF THE FAS INFORMATION AND PAYMENTS REGULATIONS

133. Draft regulation 15 states that the FAS (Provision of Information and Administration of Payments) Regulations (S.I.2005/2189) are amended in accordance with Part 3 of the draft Regulations.

Interpretation

134. Draft regulation 16 amends the definition of normal retirement age in regulation 2(1) of the FAS (Provision of Information and Administration of Payments) Regulations. The existing definition defines NRA as the “age specified in the rules of that scheme at which that member will normally retire”. This amendment makes an exception to this definition for paragraph 1(3) to Schedule 1 of the FAS (Provision of Information and Administration of Payments) Regulations.

135. This exception is made so that the definition of NRA in the FAS Regulations (as we intend to be amended by the draft regulation 5 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008), applies in relation to the new paragraph 1(3) to Schedule 1 to the FAS Information and Payments Regulations inserted by draft regulation 17(b) of these draft Regulations.

136. Using this revised definition ensures that the information needed to assess payments is provided at the appropriate time, for example where the scheme rules say that a person will normally retire at age 58, we need the relevant information three months before age 60 (the FAS payment NRA) rather than three months before the scheme member is 58.

Amendments to Schedule 1 - information to be provided by appropriate persons.

137. Draft regulation 17(a) amends the table “Table of information to be provided by appropriate persons” in Schedule 1 of the FAS (Provision of Information and Administration of Payments) Regulations S.I.2005/2189. The table is revised to reflect that the period during which information is to be provided will no longer be six months from when the scheme manager requested it in all cases. Instead, the period is as set out in the draft new paragraph 1(3) and (4) to Schedule 1. For the majority of potential FAS recipients, information will now be required between three and six months before their NRA, or six months from when the scheme manager requested it.

138. This change is intended to ensure that the data needed to assess FAS payments is provided to the scheme manager at an appropriate time before the payment is due.
139. Draft regulation 17(b) inserts new sub-paragraphs (3), (4) and (5) in paragraph 1 to Schedule 1.
140. Sub-paragraph (3)(a) sets out that the period for information to be supplied will be between three and six months before NRA. Where the scheme manager requests the information (whether or not it has been provided previously, for example in relation to initial payments) then the information must be provided within three months of the request or longer if the scheme manager allows.
141. However, paragraph 3(b) allows schemes three months to provide information relating to:
- qualifying members who have already reached NRA or will do so in the six months after these Regulations come into force; and
 - for survivors of qualifying members.
142. We propose not to apply the ‘three months before NRA’ requirement for these types of cases because:
- for qualifying members who reach NRA in the six months after the date these Regulations come into force, we believe this condition would impose an unreasonable time burden on trustees or scheme managers to provide the information;⁹
 - for survivors, FAS is payable from the day following the qualifying member’s death, so the NRA is irrelevant in these cases.
143. New draft sub-paragraph (4) stipulates that where someone is terminally ill or unable to work due to ill health, the period for information to be provided by the appropriate person is 14 days from when the scheme manager requests it or a longer period if the scheme manager allows for that. This is to allow for the urgent need to make payments in cases of this nature.
144. Sub-paragraph (5) provides for the definitions of normal retirement age and terminal illness in the FAS Regulations to apply in sub-paragraphs (3) and (4).

9. For example, if these regulations were effective from 31st July 2008, we feel it would be unreasonable to expect schemes to provide data within three months for those members with an NRA before 31st July or those with an NRA six months after that (up to 31st January 2009).

PART 4 – AMENDMENT OF THE FAS INTERNAL REVIEW REGULATIONS AND THE FAS APPEALS REGULATIONS

Amendment of the FAS Internal Review Regulations

145. The draft Regulations make consequential changes to amend the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I.2005/1994) to regulations:
- 3(1)(b), which relates to the scheme manager issuing relevant notices;
 - 5(1)(c)(ii), which relates to the time for making an application for a review;
 - 6(1)(b), which specifies who might make an application for a review;
 - 11(2), which relates to providing notice of proposals to review; and
 - 16(1)(b) and 16 (2)(b), which relate to providing notice of a review decision.
146. Draft regulation 18 amends the Financial Assistance Scheme (Internal Review) Regulations so that determinations made in relation to members being unable to work due to ill health and being likely to continue to be so until NRA and the amount of any ill health payments are made reviewable determinations. This will enable such decisions to be subject to the same internal review processes as currently apply in relation to other corresponding determinations and allow the appeals process to be followed in respect of any review decisions. All reviews are conducted internally within the FAS OU and any resulting appeals are heard by the PPF Ombudsman or a Deputy PPF Ombudsman.
147. It should be noted that determinations of the amount of any interim ill health payment will not be reviewable determinations. This is in keeping with the approach taken in relation to other FAS payments made to members and survivors in pension schemes that are still winding-up. In such circumstances schemes are unable to provide definitive information on the amount of pension that may be secured for a member or survivor. Until such time as definitive information on scheme settlements can be provided a definitive FAS payment cannot be established. Thus it would not be appropriate for interim ill health payments to be reviewable. They will become reviewable when they are reassessed as ill health payments.
148. Although beneficiaries will not have the power to request a formal review of an interim ill health payment the FAS OU would always seek to answer any queries on how payments have been determined and would revise those payments if they had been determined incorrectly (if, for example, incorrect information had been provided and used in assessing the amount of interim ill health payment made).

Amendment of the FAS Appeals Regulations

149. Draft regulation 19 makes changes to the Financial Assistance Scheme (Appeals) Regulations by inserting relevant definitions of “ill health eligibility decisions” and “ill health payment decisions”, so that these decisions follow the appeals process provided under the Appeals Regulations.

150. Draft regulation 19(2)(b) also seeks to correct what we believe to be an error in the existing FAS Appeals Regulations. Survivors are currently not covered by the definition of “member assessment decision” in regulation 2 of those Regulations so, although a survivor can still make an appeal as a result of regulation 4, certain related provisions in regulations 6(2)(b) and 17(4)(a) which deal respectively with notices of appeals and the time and place of oral hearings do not apply. Amending the definition of “member assessment decision” in regulation 2 of the FAS Appeals Regulations will ensure that survivors are included for the purposes of regulations 6(2)(b) and 17(4)(a).

PART 5 - AMENDMENTS TO THE OCCUPATIONAL PENSION SCHEMES (CONTRACTING OUT) REGULATIONS 1996

Reinstatement into the State Additional Pension

151. Draft regulation 20 of these draft Regulations inserts a new qualifying condition for reinstatement into regulation 49 of the Occupational Pensions Schemes (Contracting out) Regulations 1996. This condition is that a person is not a member of a qualifying FAS pension scheme with an exception described in a new paragraph – paragraph (3A).

152. Draft regulation 20 inserts that new paragraph (3A) into regulation 49 the effect of which is to allow any member of a qualifying FAS scheme who has been notified that they meet the conditions for reinstatement before the date the Regulations come into force, to select that option if they so wish.

Northern Ireland

153. Draft regulation 21 makes identical amendments to the Occupational Pension Schemes (Contracting out) Regulations (Northern Ireland) 1996.

SECTION THREE - THE DRAFT REGULATIONS

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

DRAFT STATUTORY INSTRUMENTS

2008 No.

PENSIONS

The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008

Made - - - - - *2008*

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 section 181(1) of, and paragraph 5(3B) of Schedule 2 to, the Pension Schemes Act 1993⁽¹⁰⁾, paragraph 5(3B) and (4A) of Schedule 1 to the Pension Schemes (Northern Ireland) Act 1993⁽¹¹⁾ and now vested in him⁽¹²⁾ and sections 286, 315(2) and (4) and 318(1) of the Pensions Act 2004⁽¹³⁾.

[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.]

[Except in relation to regulation 21, the Secretary of State has consulted such persons as he considers appropriate in accordance with section 185(1) of the Pension Schemes Act 1993⁽¹⁴⁾ and section 317(1) of the Pensions Act 2004.]

PART 1

Introductory

Citation, commencement and interpretation

1. These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 and shall come into force on the day after the day on which they are made.

⁽¹⁰⁾1993 c.48. Paragraph 5(3B) was inserted by section 141 of the Pensions Act 1995 (c.26). Section 181(1) is cited because of the meanings given to "regulations".

⁽¹¹⁾1993 c.49. Paragraph 5(3B) was inserted by Article 138(2)(b) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I.22)) and amended by paragraph 77(5)(c) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671). Paragraph 5(4A) was added by paragraph 77(5)(d) of Schedule 1 to S.I.1999/671 and is cited for the definition of "regulations".

⁽¹²⁾See paragraph 5(4A) of Schedule 1 to the Pension Schemes (Northern Ireland) Act 1993.

⁽¹³⁾H2004 c.35H. Section 286 is amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993 and 2005/2113). Section 318(1) is cited because of the meanings given to "prescribed" and "regulations".

⁽¹⁴⁾Section 185(1) was amended by paragraph 46 of Schedule 3 to, and paragraph 80(a) of Schedule 5 to, the Pensions Act 1995.

2. In these Regulations—

“the FAS Appeals Regulations” means the Financial Assistance Scheme (Appeals) Regulations 2005(15);

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(16);

“the FAS Internal Review Regulations” means the Financial Assistance Scheme (Internal Review) Regulations 2005(17); and

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(18).

Application

3.—o Regulation 20 does not apply in relation to Northern Ireland.

(1) Regulation 21 applies only in relation to Northern Ireland.

PART 2

Amendment of the FAS Regulations

Amendment of the FAS Regulations

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

Amendment of Part 1

5.—o In regulation 2 (interpretation)—

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

““ill health payment” means the amount payable to a beneficiary in respect of each year determined in accordance with regulation 17A and Schedule 2A;”

(b) after the definition of “initial payment” insert—

““interim ill health payment” means a payment made to a beneficiary in accordance with regulation 17B;

“interim pension” has the meaning given in paragraph 2 of Schedule 2 as modified by paragraph 10 of that Schedule;”.

(2) In regulation 4(2) (application of Parts 1 and 2 of the Act), after paragraph (b) insert—

“(ba) section 134 (directions);”.

Amendment of Part 2

6. After regulation 5 (scheme manager) insert—

“Function of the Board of the Pension Protection Fund in relation to the financial assistance scheme

5A.—(1) The Board of the Pension Protection Fund shall, on the request of the scheme manager, provide advice to the scheme manager in relation to the financial assistance scheme.

(2) The Secretary of State shall pay a grant to the Board of the Pension Protection Fund in connection with the function in paragraph (1).”.

(15) S.I. 2005/3273 as amended by S.I. 2006/3370.

(16) S.I. 2005/2189 as amended by S.I. 2005/3256 and 2007/3581.

(17) S.I. 2005/1994 as amended by S.I. 2005/3256 and 2006/3370.

(18) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370 and 2007/3581.

Amendment of Part 3

7.—o For regulation 9(1)(c) (qualifying pension schemes) substitute—

“(c) either—

- (i) the employer in relation to that scheme satisfied the condition in regulation 11;
- (ii) in relation to a multi-employer scheme, the condition in regulation 12 is satisfied;
- (iii) in relation to a scheme which began to wind up before 6th April 1997, the condition in regulation 12A(1) is satisfied or in relation to a multi-employer scheme which began to wind up before 6th April 1997, the condition in regulation 12B(1) or (2) is satisfied; or
- (iv) in relation to a scheme which began to wind up on or after 6th April 1997 but before 11th June 2003, the condition in regulation 12A(2) is satisfied or in relation to a multi-employer scheme which began to wind up on or after 6th April 1997 but before 11th June 2003, the condition in regulation 12B(3) or (4) is satisfied;”.

(1) In regulation 11(1), for “regulation 9(1)(c)” substitute “regulation 9(1)(c)(i)”.

(2) In paragraphs (1) and (2) of regulation 12, for “regulation 9(1)(c)” substitute “regulation 9(1)(c)(ii)”.

(3) After regulation 12 insert—

“Employer-related condition

12A.—(1) The condition to be satisfied for the purposes of regulation 9(1)(c)(iii) is that the employer discharged the debt due under section 144 of the Pension Schemes Act 1993⁽¹⁹⁾.

(2) The condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that the employer discharged the debt due under section 75 of the Pensions Act 1995⁽²⁰⁾.

(3) In this regulation the reference to the employer shall be interpreted in accordance with regulation 11(2).

Employer-related condition: multi-employer schemes

12B.—(1) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iii) is that the debt due under section 144 of the Pension Schemes Act 1993 was discharged by—

- (a) the principal employer in that section; or
- (b) where either there is no principal employer in that section or, where the principal employer is not an employer, the principal employer has not discharged that debt—
 - (i) the employer in that section; or
 - (ii) where there is more than one employer in that section, all the employers in that section.

(2) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iii) is that the debt due under section 144 of the Pension Schemes Act 1993 was discharged by—

- (a) the principal employer; or
- (b) where either there is no principal employer in that section or, where the principal employer is not an employer, the principal employer has not discharged that debt—
 - (i) the employer; or
 - (ii) where there is more than one employer, all the employers.

(3) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that the debt due under section 75 of the Pensions Act 1995 was discharged by—

- (a) the principal employer in that section; or

⁽¹⁹⁾ 1993 c.48.

⁽²⁰⁾ 1995 c.26. Section 75 is modified in relation to multi-employer schemes by S.I. 1996/3128.

- (b) where either there is no principal employer in that section or, where the principal employer is not an employer, the principal employer has not discharged that debt—
 - (i) the employer in that section; or
 - (ii) where there is more than one employer in that section, all the employers in that section.
- (4) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that the debt due under section 75 of the Pensions Act 1995 was discharged by—
 - (a) the principal employer; or
 - (b) where either there is no principal employer in that section or, where the principal employer is not an employer, the principal employer has not discharged that debt—
 - (i) the employer; or
 - (ii) where there is more than one employer, all the employers.
- (5) In this regulation—
 - (a) the references to the employer (other than in the phrase “principal employer”) in paragraphs (1) and (3) shall be interpreted in accordance with regulation 12(3);
 - (b) the references to the employer (other than in the phrase “principal employer”) in paragraphs (2) and (4) shall be interpreted in accordance with regulation 12(4);
 - (c) the references to the principal employer (who may or may not be an employer in accordance with sub-paragraphs (a) or (b)) in paragraphs (1) to (4) are to the person who was the principal employer immediately before the time when the scheme began to wind up; and
 - (d) “principal employer” and “sectionalised multi-employer scheme” have the meanings given by regulation 12(6).”.

Amendment of regulation 17

8. In regulation 17 (annual payments)—

- (a) in paragraph (2)(**21**), for “paragraph (3) or (3A)” substitute “paragraph (3), (3A) or regulation 17A(1)”; and
- (b) at the beginning of paragraph (4) insert “Except where regulation 17A(2) applies,”.

Insertion of regulations 17A and 17B

9. After regulation 17, insert—

“Ill health payments

17A.—(1) Where the scheme manager is satisfied that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age, that member shall be entitled to a payment (“an ill health payment”) in accordance with paragraph 2 of Schedule 2A from—

- (a) the day on which the scheme manager is first notified that that member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; or
- (b) the day on which the member attains the age which is 5 years less than normal retirement age,

whichever is the later.

(2) Where—

- (a) a qualifying member of a qualifying pension scheme has died and leaves a survivor; and

(21) Paragraph (2) was amended by S.I. 2008/XXXX. [Regulation 17(2) will be amended by the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008, should it be the will of Parliament that those provisions are made].

(b) that qualifying member was receiving an ill health payment when he died, a survivor of that qualifying member shall be entitled to an ill health payment from the day after the day on which that qualifying member died.

(3) The year in respect of which the ill health payment is to be made shall be the year starting on the day on which a monthly instalment of the ill health payment or, as the case may be, an interim ill health payment is first payable to a beneficiary by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

(4) In determining the amount of ill health payment that is payable to, or in respect of, a beneficiary for any previous year or years (“arrears payable”)—

- (a) the total of all monthly instalments of an interim ill health payment that have been made to, or in respect of, the beneficiary for any previous year or years is to be deducted from the amount of arrears payable to that beneficiary; and
- (b) if the total of all such monthly instalments is greater than that amount of arrears payable—
 - (i) the amount to be paid in respect of arrears payable is nil, and
 - (ii) the difference between that total and the amount of arrears payable is recoverable from the member in accordance with regulation 7 of the FAS Information and Payments Regulations (recovery of overpayments).

(5) Subject to paragraph (6), ill health payments which are payable to a beneficiary under this regulation shall continue for life.

(6) From the day after the day on which a beneficiary dies, any further instalments of an ill health payment that would have been payable to that beneficiary, in respect of that year, cease to be payable.

(7) Schedule 2A makes provision for the determination of the amount of ill health payments and the circumstances in which an ill health payment is not payable.

Interim ill health payments

17B.—(1) This regulation applies where a qualifying pension scheme is winding up and—

- (a) the scheme manager has been notified that, and is satisfied that, a qualifying member of that scheme is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; or
- (b) a qualifying member of that scheme—
 - (i) has died and leaves a survivor; and
 - (ii) was receiving an interim ill health payment when he died.

(2) The scheme manager may, in his discretion, make an interim ill health payment, in anticipation of an ill health payment being payable under this Part and on account of such a payment,—

- (a) to the qualifying member with effect from—
 - (i) the day on which the scheme manager is first notified that that member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; or
 - (ii) the day on which the member attains the age which is 5 years less than normal retirement age,whichever is the later; or
- (b) if the qualifying member has died, to a survivor of that qualifying member with effect from the day after the day on which that qualifying member died.

(3) In exercising his discretion under paragraph (2), the scheme manager shall 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 qualifying member; and

- (b) any circumstances relating to the scheme which, in the opinion of the scheme manager are relevant to determining whether an interim ill health payment should be made.
- (4) Where the trustees or managers have determined the amount of interim pension that would be paid to the qualifying member or the survivor of that qualifying member, but do not propose to pay that interim pension for administrative reasons, the scheme manager may, in exercising his discretion under paragraph (2) and in determining the amount of interim ill health payment under Schedule 2A, deem that member or that survivor to be receiving that interim pension, if in the scheme manager's opinion it is reasonable to do so.
- (5) Schedule 2A makes provision for the determination of the amount of interim ill health payments.
- (6) If the scheme manager determines that an interim ill health payment may be made under paragraph (2), the interim ill health payment is payable—
- (a) to a qualifying member from the relevant day mentioned in that paragraph until the day on which the qualifying member—
- (i) would have been paid, or is paid, the first monthly 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,
- whichever is the earlier; and
- (b) in respect of a qualifying member who has died, to a survivor of that qualifying member from the day after the day on which that qualifying member died until the day on which his survivor—
- (i) would have been paid, or is paid, the first monthly 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,
- whichever is the earlier.
- (7) From the day after the day on which a beneficiary dies, any further monthly instalments of an interim ill health payment that would have been payable to that beneficiary in respect of that year cease to be payable.
- (8) The scheme manager may, at any time before the amount of the ill health payment is determined, determine the amount of any interim ill health payment paid under paragraph (2) if he is satisfied that the amount being paid by way of interim ill health payment, as determined in accordance with Schedule 2A, may be incorrect.
- (9) The power to redetermine the amount of an interim ill health payment under paragraph (8) includes the power to redetermine the amount as a result of a change in the amount of interim pension being paid to the qualifying member.
- (10) If, having determined that an interim ill health payment may be made under paragraph (2), the scheme manager subsequently determines, in accordance with Schedule 2A, that no ill health payment is payable to or in respect of that qualifying member or his survivor, then the total of all monthly instalments of an interim ill health pension made to or in respect of that qualifying member or his survivor is recoverable in accordance with regulation 7 of the FAS Information and Payments Regulations.”.

Amendment of regulation 18

- 10.** In regulation 18 (initial payments)(22)—
- (a) omit paragraphs (2), (3) and (10);
- (b) for paragraph (4) substitute—

(22) Regulation 18 was substituted by S.I. 2005/3256.

“(4) The scheme manager may, in his discretion, make a payment (“an initial payment”) to, or in respect of, a qualifying member or his survivor—

- (a) in anticipation of an annual payment being payable under this Part to the qualifying member or his survivor, and on account of such a payment; and
 - (b) before any monthly instalment of that annual payment is made.
- (4A) An initial payment under paragraph (4) may be made—
- (a) except where sub-paragraph (c) applies, to the qualifying member with effect from whichever is the later of—
 - (i) 14th May 2004; or
 - (ii) the day on which—
 - (aa) the qualifying member attains normal retirement age; or
 - (bb) the scheme manager is first notified that the qualifying member is terminally ill, whichever is the earlier;
 - (b) if the qualifying member has died, to a survivor of that qualifying member with effect from whichever is the later of—
 - (i) 14th May 2004; or
 - (ii) the day after the day on which that qualifying member died; or
 - (c) if the qualifying member is regarded as a qualifying member under regulation 15(5), to that member with effect from whichever is the later of—
 - (i) 14th May 2004; or
 - (ii) the date on which he became entitled to a present payment from the qualifying pension scheme.”.

Amendment of regulation 19

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

- (a) in paragraph (1), after “the annual payment” insert “, the ill health payment, the interim ill health payment”;
- (b) in paragraph (3)—
 - (i) at the end of sub-paragraph (a) omit “or”;
 - (ii) at the end of sub-paragraph (b) insert—

“(c) the beneficiary becomes entitled to an ill health payment under regulation 17A(1) or (2); or
 - (d) the scheme manager determines that an interim ill health payment may be made under regulation 17B(2).”.

Amendment of Schedule 1

12. After paragraph 3 of Schedule 1 (modification of certain provisions of Parts 1 and 2 of the Act) insert—

“**3A.** In section 134 (directions)—

- (a) in subsection (1), for “there is an assessment period in relation to an eligible scheme” substitute “an occupational pension scheme is a qualifying pension scheme under section 286(2) which has not been fully wound up”; and
- (b) in subsection (2) for the words from the beginning to “is kept to a minimum” substitute “With a view to ensuring that any reduction in the scheme’s assets is kept to a minimum or that the assets of the scheme are invested in a way which, in the opinion of the scheme manager, is appropriate”;
- (c) in subsections (2) and (4), for “the Board”, substitute “the scheme manager”; and

(d) in subsection (3), after paragraph (a)(i) insert—

“(ia) a professional adviser to the scheme;

(ib) any other person appearing to the scheme manager to be a person who carries out, or is likely to carry out, activities relevant to the use of the assets of the scheme;”.

Amendment of Schedule 2

13. For paragraph 10(ba) of Schedule 2 (determination of annual and initial payments)(23) substitute—

“(ba) for “regulation 17(2) and (3)” in each place, substitute “regulation 18(4)”;

Insertion of Schedule 2A

14. After Schedule 2 insert—

“SCHEDULE 2A Regulations 17A(7) and 17B(5)

DETERMINATION OF ILL HEALTH AND INTERIM ILL HEALTH PAYMENTS

Introductory

1. This Schedule applies for the purposes of determining the amount of an ill health payment or an interim ill health payment payable to or in respect of qualifying members of qualifying pension schemes who are unable to work due to ill health.

Amount of an ill-health payment

2.—(1) The amount of an ill health payment payable to a qualifying member of a qualifying pension scheme shall be—

$$C((A \times 0.9) - B).$$

(2) The amount of an ill health payment payable to a survivor of a qualifying member of a qualifying pension scheme shall be—

(a) one-half of the ill health payment which was payable to the qualifying member in accordance with sub-paragraph (1) immediately before his death where—

(i) that member was in receipt of an ill health payment at the time of his death; or

(ii) that member was in receipt of an interim ill health payment and dies on or after the date on which the liabilities of the scheme in respect of that member are discharged (whether by entry into an annuity contract or by other means); or

(b) where the qualifying member was in receipt of an interim ill health payment at the time of his death and dies before the date on which the liabilities of the scheme in respect of that member are discharged—

$$C\left(\left(\frac{A \times 0.9}{2}\right) - B\right).$$

(3) In this paragraph—

“A” means the amount of expected pension which would be determined in accordance with Schedule 2 if—

(a) the beneficiary were entitled to an annual payment; and

(23) Paragraph (ba) was inserted by S.I. 2007/3581.

(b) the modifications in paragraph 6 applied.

“B” means the amount of actual pension which would be determined in accordance with Schedule 2 if—

(a) the beneficiary were entitled to an annual payment; and

(b) the modifications in paragraph 6 applied; and

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied.

(4) This paragraph is subject to paragraphs 4 and 7.

Amount of an interim ill health payment

3.—(1) The amount of an interim ill health payment payable to a qualifying member of a qualifying pension scheme shall be—

$$C((A \times 0.9) - D).$$

(2) The amount of an interim ill health payment payable to a survivor of a qualifying member of a qualifying pension scheme shall be—

$$C\left(\left(\frac{A \times 0.9}{2}\right) - E\right).$$

(3) In this paragraph—

“A” means the amount of expected pension which would be determined in accordance with Schedule 2 if—

(a) the beneficiary were entitled to an initial payment; and

(b) the modifications in paragraph 6 applied;

“C” has the meaning given in paragraph 2(3);

“D” means the amount of interim pension which would be determined in accordance with Schedule 2 if—

(a) the qualifying member were entitled to an initial payment; and

(b) the modifications in paragraph 6 applied; and

“E” means the amount of interim pension payable to the survivor which would be determined in accordance with Schedule 2 if—

(a) the survivor were entitled to an initial payment; and

(b) the modifications in paragraph 6 applied.

(4) This paragraph is subject to paragraphs 4 and 7.

Revaluation

4.—(1) Where there is a period of one month or more between the certification date and the date on which the ill health payment or interim ill health payment is first payable to a qualifying member of a qualifying pension scheme in accordance with regulation 17A or 17B, the amount determined in accordance with paragraph 2(1) or 3(1) before the actuarial factor “C” is applied shall be increased by the appropriate revaluation percentage of that amount.

(2) In sub-paragraph (1) the “appropriate revaluation percentage” means the lesser of—

(a) the percentage increase in the general level of prices in Great Britain during the period referred to in sub-paragraph (1); and

(b) the maximum revaluation rate.

(3) The method for determining the percentage increase in the general level of prices in Great Britain during that period is—

$$100 \times \frac{A}{B} - 100$$

where—

“A” is the level of the retail prices index for the month which falls two months before the month in which the ill health payment or interim ill health payment is first payable to the qualifying member under regulation 17A or 17B; and

“B” is the level of the retail prices index for the month two months before the month in which the certification date falls.

- (4) In sub-paragraph (2)(b), “the maximum revaluation rate” in relation to that period is—
- (a) if that period is a period of 12 months, 5%; and
 - (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (2)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.

Actuarial reduction

5. The actuarial factor to be applied in paragraphs 2 and 3 shall be determined by the scheme manager, having regard to—

- (a) the age of the qualifying member;
- (b) the normal retirement age of the qualifying member; and
- (c) such other matters as the scheme manager considers relevant.

Modifications to Schedule 2

6. The following modifications apply for the purposes of paragraphs 2 and 3—

- (a) for paragraphs 4(5)(b) and 5(8)(b) substitute—
 - “(b) ending on the day before the day on which the scheme began to wind up.”;
- (b) in paragraph 4(7)(b)(ii) for “annual payment in accordance with regulation 17(2) or (3)” substitute “ill health payment in accordance with regulation 17A(1)”;
- (c) for paragraph 5(10)(b) substitute—
 - “(b) ending on the day from which the qualifying member became entitled to an ill health payment in accordance with regulation 17A(1).”;
- (d) omit paragraphs 7 and 9; and
- (e) for paragraph 10(ba) substitute—
 - “(ba) for “regulation 17A(1)”, in each place it occurs, substitute “regulation 17B(2)”;
 - (bb) for “ill health payment”, in each place it occurs, substitute “interim ill health payment”
 - (bc) for paragraph 4(7)(b) substitute—
 - “(b) ending on the day from which the qualifying member is entitled to an interim ill health payment in accordance with regulation 17B(2).”.

Cap on expected pension and actual pension

7.—(1) Where the amount of a qualifying member’s expected pension determined in accordance with paragraph 2 or 3 multiplied by 0.9 exceeds £26,000, 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 £26,000.

(2) Where the amount of a qualifying member’s actual pension or interim pension determined in accordance with this Schedule exceeds—

- (a) the amount of the qualifying member's expected pension determined in accordance with paragraph 2 or 3 multiplied by 0.9; or
 - (b) £26,000,
- no ill health payment or interim ill health payment shall be payable to, or in respect of, that member.

Rounding

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

PART 3

Amendment of the FAS Information and Payments Regulations

Amendment of the FAS Information and Payments Regulations

15. The FAS Information and Payments Regulations are amended in accordance with this Part.

Amendment of regulation 2

16. In the definition of “normal retirement age” in regulation 2(1) (interpretation) after “means,” insert “except in paragraph 1(3) of Schedule 1,”.

Amendment of Schedule 1

17. In paragraph 1 of Schedule 1 to the FAS Information and Payments Regulations (information to be provided by appropriate persons) —

- (a) in sub-paragraph (2)—
 - (i) in paragraph (1) in column 2 of the fourth item of the table (which begins “In relation to each member”), after “Schedule 2” insert “or Schedule 2A”; and
 - (ii) for the words contained in column 3 of the fourth item of the table (which begins “The period of 6 months”) substitute “In accordance with sub-paragraphs (3) and (4).”.
- (b) after sub-paragraph (2), insert—

“(3) Subject to sub-paragraph (4), the period for information to be provided in relation to—

 - (a) each member or former member who has not attained normal retirement age on [date, 6 months after the date on which these amendment Regs come into force] is—
 - (i) the period of 3 months ending 3 months before the day on which the member or former member attains normal retirement age; and
 - (ii) where the scheme manager requests the information (regardless of whether or not the information was provided in accordance with paragraph (a)(i)), the period of 3 months beginning on the day on which the request was made,or such longer period as the scheme manager may determine for the provision of that information;
 - (b) each member or former member who has attained normal retirement age on the date referred to in paragraph (a) or any survivor of a member or former member, is the period of 3 months beginning on the day on which the scheme manager requested the information or such longer period as the scheme manager may determine for the provision of that information.

(4) Where the information is to be provided in relation to a person who is terminally ill or unable to work due to ill health, the period is the period of 14 days beginning on the day on which the

scheme manager requested the information or such longer period as the scheme manager may determine for the provision of that information.

(5) In sub-paragraphs (3) and (4), “normal retirement age” and “terminally ill” have the meanings given by the FAS Regulations.”.

PART 4

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

Amendment of the FAS Internal Review Regulations

18.—○ The FAS Internal Review Regulations are amended in accordance with this regulation.

(1) In regulation 2(1) of the FAS Internal Review Regulations (reviewable determinations)—

(a) at the end of sub-paragraph (d), omit “or”;

(b) after sub-paragraph (e), insert—

“(f) the amount of an ill health payment payable to a qualifying member of a qualifying pension scheme or to a survivor of that qualifying member in accordance with regulation 17A (ill health payments) of, and Schedule 2A (determination of ill health and interim ill health payments) to, the FAS Regulations (“ill health payment assessment”); and

(g) whether or not the scheme manager is satisfied that a qualifying member of a qualifying pension scheme is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age for the purposes of regulations 17A(1) (ill health payments) and 17B(1) (interim ill health payments) of the FAS Regulations (“ill health eligibility”).”.

(2) In each place it occurs (except in regulation 2(1)(d))(24), after “member assessment” insert “, ill health payment assessment, ill health eligibility”.

Amendment of the FAS Appeals Regulations

19.—○ The FAS Appeals Regulations are amended in accordance with this regulation.

(1) In regulation 2 of the FAS Appeals Regulations (interpretation)—

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

““ill health eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not the scheme manager is satisfied that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age for the purposes of regulations 17A(1) (ill health payments) and 17B(1) (interim ill health payments) of the FAS Regulations;

“ill health payment assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to the amount of an ill health payment payable to a beneficiary in accordance with regulation 17A of, and Schedule 2A (determination of ill health and interim ill health payments) to, the FAS Regulations;” and

(b) in the definition of “member assessment decision”, after “payable to a qualifying member” insert “or a survivor of that qualifying member”.

(2) In regulations 6(2)(b) (notice of appeal) and 17(4)(a) (time and place of oral hearings), after “member assessment decision” insert “, ill health payment assessment decision, ill health eligibility decision”.

(24) In addition to regulation 2(1)(d), the phrase “member assessment” occurs in regulations 2(2), 3(1)(b), 5(1)(c)(ii), 6(1)(b), 11(2), 16(1)(b) and 16(2)(b).

PART 5

Amendment of Contracting-out Regulations

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996

20. In regulation 49 of the Occupational Pension Schemes (Contracting-out) Regulations 1996⁽²⁵⁾ (insolvent schemes)—

- (a) at the end of paragraph (3)(a), omit “and”;
- (b) after paragraph (3)(a), insert—
 - “(aa) except where paragraph (3A) applies, the member is not a qualifying member of a qualifying pension scheme for the purposes of the Financial Assistance Scheme Regulations 2005⁽²⁶⁾; and”;
- (c) after paragraph (3), insert—
 - “(3A) This paragraph applies where—
 - (a) the member has been notified before [date these FAS Amendment Regs come into force] in accordance with regulation 50; and
 - (b) the Commissioners for Her Majesty’s Revenue and Customs⁽²⁷⁾ receive a written application for the member’s state scheme rights to be restored in accordance with this regulation.”.

Amendment of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996

21. In regulation 49 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996⁽²⁸⁾ (insolvent schemes)—

- (a) at the end of paragraph (3)(a), omit “and”;
- (b) after paragraph (3)(a), insert—
 - “(aa) except where paragraph (3A) applies, the member is not a qualifying member of a qualifying pension scheme for the purposes of the Financial Assistance Scheme Regulations 2005⁽²⁹⁾, and”;
- (c) after paragraph (3), insert—
 - “(3A) This paragraph applies where—
 - (a) the member has been notified before [date these FAS Amendment Regs come into force] in accordance with regulation 50, and
 - (b) the Commissioners for Her Majesty’s Revenue and Customs receive a written application for the member’s state scheme rights to be restored in accordance with this regulation.”.

[To be] Signed by authority of the Secretary of State for Work and Pensions.

⁽²⁵⁾S.I. 1996/1172. Regulation 49 is amended by S.I. 2005/3377.

⁽²⁶⁾S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370 and 2007/3581.

⁽²⁷⁾The functions of the Commissioners of Inland Revenue (“the former Commissioners”) were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c.11). *See also* section 50(1) of that Act in relation to the construction of references to the former Commissioners in other enactments.

⁽²⁸⁾S.R. 1996 No. 493. Regulation 49 is amended by S.I. 2005/3377.

⁽²⁹⁾S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370 and 2007/3581.

[signature]

Minister of State,
Department for Work and Pensions

[date]

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986, as amended) (“the FAS Regulations”) which allow for payments to be made to, or in respect of, certain members or former members of certain occupational pension schemes where the liabilities of the scheme to those members are unlikely or unable to be satisfied in full.

They also amend the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (S.I. 2005/2189, as amended), the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994, as amended), the Financial Assistance Scheme (Appeals) Regulations 2005 (S.I.2005/3273, as amended), the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172, as amended) and the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 (S.R. 1996 No.493, as amended) in relation to the financial assistance scheme (“the FAS”).

Part 2 amends the FAS Regulations. In particular it—

(a) inserts a provision under which the Board of the Pension Protection Fund shall advise the FAS scheme manager in relation to the FAS on request of the scheme manager. The Secretary of State shall pay a grant to the Board of the Pension Protection Fund in connection with that function;

(b) provides further conditions which may be satisfied by an employer in order for the pension scheme to which that employer relates to be a qualifying pension scheme for the purposes of the FAS. Regulation 7 provides that employers, including employers in relation to multi-employer schemes, satisfy the condition if they discharged the relevant statutory debt;

(c) makes provision for ill health payments and interim ill health payments to be payable to qualifying members within 5 years of normal retirement age where the scheme manager is satisfied that the qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until their normal retirement age. A new Schedule (Schedule 2A to the FAS Regulations) makes provision for the determination of the amount of ill health payments and interim ill health payments;

(d) removes the requirement in regulation for a written request from the trustees or managers of a pension scheme in order for the scheme manager to use his discretion to make initial payments; and

(e) applies a modified section 134 of the Pensions Act 2004 in relation to the FAS, so that the scheme manager may give a relevant person directions in relation to a qualifying pension scheme which is winding-up.

Part 3 amends the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005. In particular it amends the period during which certain information is to be provided by appropriate persons.

Part 4 amends the Financial Assistance Scheme (Internal Review) Regulations 2005 and the Financial Assistance Scheme (Appeals) Regulations 2005 in order to make provision for the internal review and appeal of certain decisions relating to ill health payments and interim ill health payments and to make an amendment in relation to appeals by survivors.

Part 5 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996 and the corresponding instrument for Northern Ireland, the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996, to amend regulation 49 of those instruments to insert a further condition which must be satisfied in order for a member of a contracted out scheme to have their state scheme rights restored. The condition is that the member is not a qualifying member of a qualifying pension scheme for the purposes of the FAS. Part 5 also makes provision for an exception for such

members who have been notified in accordance with regulation 50 before the date on which these Regulations come into force.

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

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

Approaches considered for assessing ill health and inability to work

We considered four options for assessing entitlement and concluded that decisions taken at the discretion of the scheme manager as described below, being the least prescriptive, was both the least burdensome on business and the medical profession and also the one capable of delivering ill health payments to all eligible members soonest. The four options considered were:

1. Asking trustees to determine eligibility

Ill health payments are typically not made where a scheme is winding-up, so this would add to requirements on the trustees of such schemes. The trustees are bound by the rules of their scheme and, when it is winding-up, by the scheme's funding levels. Asking trustees to make these decisions would therefore extend beyond their role. In addition, there would be no trustees to make the decision for a member whose scheme had completed winding-up.

2. Using a current medical test

We looked at what medical tests were currently available but concluded that none offered a sufficiently close comparator. Using a test developed as appropriate for an entirely separate purpose could prove unnecessarily restrictive in its application as well as imposing potentially unnecessary burdens on both applicants and assessors.

3. Establishing a new test

Whilst a new test could be tailored to the specific policy intentions, it would require a lengthy lead-in time. A new test requiring GP assessment or referral was not considered a proportionate approach to dealing with a relatively small and finite number of cases.

4. FAS scheme manager's discretion

This approach can be legislated for simply as proposed in the draft Regulations, and be implemented speedily once those Regulations have been approved by Parliament. We intend that the scheme manager will issue guidance on the type of evidence which applicants could provide to demonstrate that they were not working due to ill health. The guidance will suggest evidence which is not overly prescriptive and should be readily available to those who are unable to work due to ill health.

As described in the main body of this document evidence that the member is not working might be a P45, a letter from a former employer, or entitlement to relevant benefits. Evidence that the fact they are not working is due to ill health and that their ill health is likely to continue until NRA might be a GP's medical certificate supplied for other reasons such as a claim for benefits or Social Security credits; a letter from a consultant or occupational therapist; other details of medical treatment such as hospital appointments, receipt of an ill health related scheme pension or relevant state benefit. Only where no other evidence is available would we expect a member

to need to approach their GP or other medical practitioner to obtain a medical certificate solely for the purpose of claiming an ill health FAS payment.

Given the uncertainty around the numbers involved and the desire to be able to make payments as soon as possible to those who are too ill to work, we believe that the proposed approach is a proportionate one, at least for the period until the extension to FAS is fully implemented. We will monitor how the approach works in practice with a view to consulting on any necessary changes when we complete the legislation.

Actuarial reduction factors

Age last birthday at notification date*	Normal retirement age					
	65	64	63	62	61	60
55						0.938
56					0.938	0.949
57				0.937	0.949	0.962
58			0.937	0.949	0.961	0.974
59		0.937	0.949	0.961	0.974	0.987
60	0.936	0.949	0.961	0.974	0.987	1.000
61	0.948	0.961	0.974	0.987	1.000	
62	0.960	0.973	0.986	1.000		
63	0.973	0.986	1.000			
64	0.986	1.000				
65	1.000					

* The early retirement factor used depends on the member's NRA and their age in years and complete months at the time of the 'notification' date. This involves interpolating between the relevant factors for the member's current age and the age that they will attain at their next birthday. The example provided in Annex C shows how interpolation might apply.

Example of how an ill health related payment will be calculated

1. A member left pensionable service within their scheme on 7 June 1999. The scheme then started to wind-up on 24 April 2001. At the date of leaving service the member had accrued a pension of £3,500 each year. Of this pension:
 - £500 is Guaranteed Minimum Pension (GMP) in respect of contracted-out service
 - the remaining £3,000 is excess over GMP, all of which is subject to statutory revaluation
2. The member was born on 16 January 1951, and has a scheme NRA of 65. Under the proposals set out in this consultation document they become eligible for ill health early retirement five years before they reach their NRA on their 60th birthday on 16 January 2011.
3. Although the member is in good health at the time of their 60th birthday they fall ill shortly afterwards. On 20 June 2011 they apply successfully for early payment of FAS assistance on grounds of ill health.
4. In order to calculate the member's entitlement to FAS assistance their accrued scheme pension must first be revalued from the date at which they left pensionable service (7 June 1999) to the date at which ill health early payments commence – the 'notification' date (20 June 2011). This is carried out in two stages.
5. First stage of revaluation:

The first stage revalues the pension from the member's date of leaving up to the date that their scheme started to wind-up. The GMP is revalued at a fixed percentage rate for each tax year that passes. Pension in excess of the GMP that is subject to revaluation is increased in line with published statutory revaluation orders. These revaluations mean that, as at the date the scheme started to wind-up, the member's pension was:

 - GMP: £565
 - revaluing excess over GMP: £3,100
6. Second stage of revaluation:

A second stage of revaluation is applied in order to calculate the member's 'expected' pension from which the entitlement to FAS assistance can be calculated. During this stage both the GMP and the revaluing excess are increased in the same way. Revaluations are in line with the increase in the Retail Prices Index (RPI) capped at 5% a year compound. Revaluing the pension from the date of start of wind-up (24 April 2001) to the 'notification'

date (20 June 2011), assuming that the annual increase in the RPI is 2.87% a year from the end of 2007, gives pension amounts of:

- GMP: £760
- revaluing excess over GMP: £4,160
- making a total 'expected' pension as at the notification date of £4,920 a year

(in producing this calculation reasonable assumptions have been made about the future values of the RPI; in practice actual values of the RPI will be available at the time of calculation)

7. The member's scheme has agreed to make early payments of £1,700 a year in respect of this member due to their ill health.
8. Their entitlement to FAS assistance, as at the 'notification' date, is calculated by taking 90% of their 'expected pension' and subtracting the actual payments their scheme has agreed to pay, subject to the cap. This gives a total (unreduced) FAS payment of approximately £2,730 ($90\% \times £4,920 - £1,700 = £2,728$).
9. This amount is then actuarially reduced using an ill health early retirement factor to reflect the fact that it is being paid early. The ill health early retirement factor used depends on the member's NRA and their age in years and complete months at the time of the 'notification' date. This involves interpolating between the relevant factors for the member's current age and the age that they will attain at their next birthday.
10. As shown in annex B to this document for a member with an NRA of 65, the reduction factor for a 60 year old is 0.936 and for a 61 year old it is 0.948. At the time of notification, 20 June 2011, this member was aged 60 years and 5 complete months.
11. We therefore need to take 5/12ths of the age 61 factor as they were 5/12ths of the way to attaining age 61. We combine this with 7/12ths of the age 60 factor to give:
 - $5/12 \times 0.948 + 7/12 \times 0.936 = 0.941$
12. This gives the actuarial reduction factor required to apply to the member's FAS assistance as at the date ill health payments commence, the 'notification' date. The member would therefore be entitled to FAS assistance, paid from 20 June 2011, at the rate of £2,570 ($£2,728 \times 0.941 = £2,567$).