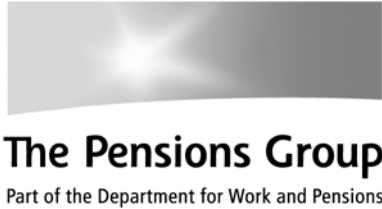


**Pensions Client Directorate**

**Consultation**

The draft Financial Assistance Scheme  
(Miscellaneous Amendments)  
Regulations 2007



Our address            Department for  
Work and Pensions  
3<sup>rd</sup> Floor  
The Adelphi  
1-11 John Adam Street  
London  
WC2N 6HT

Website                [www.dwp.gov.uk/fas](http://www.dwp.gov.uk/fas)  
Date                     29 August 2007

Dear Sir or Madam

### **Consultation on draft regulations - The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007**

In his Budget Statement of 21<sup>st</sup> March 2007, the Chancellor of the Exchequer announced that public funding for the Financial Assistance Scheme would be significantly increased from £2.3 billion to £8 billion in cash terms.

This extra funding will extend the FAS to ensure that the pensions of all eligible members of affected pension schemes are topped up to a level broadly equivalent to 80 per cent of the core pension rights accrued in their scheme.

Under the proposed extension:

- the tapered assistance levels that currently apply will be removed so that 80 per cent assistance is available to all eligible qualifying members at age 65, regardless of their scheme pension age;
- the cap on maximum assistance will be increased from £12,000 to £26,000; and
- the de minimis rule that excludes those whose FAS payment would be £10 or less a week will be removed.

It is estimated that the extension will benefit an additional 100,000 people, 85,000 of whom will be eligible for the first time. Around 15,000 of the 40,000 people who stood to benefit from FAS under the current scheme, will receive more assistance. It is expected that all the estimated 125,000 people who have suffered losses will now receive at least 80% of their expected core pension from either the FAS or their scheme (subject to the raised cap).

In addition, on 18<sup>th</sup> April, the Government announced that it will further extend the FAS to cover members of schemes that began winding up between 1

January 1997 and 5 April 2005 where a compromise agreement is in place and where enforcing the debt against the employer would have forced the employer into insolvency. It is estimated that implementing this proposal will mean that the FAS will help around 8000 members of some 16 schemes.

The Government's extension of the FAS will, for many, provide a substantial replacement of their lost pension, substantially more than most people thought they were likely to receive from their under funded pension scheme.

The Government has also set up a FAS Review of Pension Scheme Assets, led by Andrew Young from the Government Actuary's Department and advised by industry experts, to look at whether better use can be made of the assets remaining in failed pension schemes and whether those funds could be used to pay for even higher levels of benefit.

The review has been asked to deliver its final report in November but it published interim findings on 16th July. These findings suggest that some of the cost of extending the FAS towards 90% of expected core pension could be met by an alternative use of the assets remaining in pension schemes.

To further assist movement towards 90%, the Government has committed to match the extra funds that the review identifies.

In the meantime, the Government has written to trustees to urge them to consider carefully whether purchasing annuities, thereby depleting scheme funds, is in the best interests of all of their members. It is also bringing forward regulations as required by the Pensions Act 2007 (which received Royal Assent on 26<sup>th</sup> July) prohibiting the trustees of relevant pension schemes from purchasing, or agreeing to purchase, annuities on behalf of qualifying members, without the FAS scheme manager's approval.

The final report of the review will be published by the end of November. Any changes to primary or secondary legislation arising from the findings of the Young Review will then be brought forward. They do not form part of these regulations.

This consultation document seeks views on the draft Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007, which are being introduced to implement the extension announced in the Chancellor's budget statement and provide for other changes to the operation of the scheme. The proposed regulations amend provisions in the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) and the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (S.I. 2005/2189).

As these Regulations are due to be made more than six months after the coming into force of the provisions of the Pensions Act 2004 under which they are made, the Secretary of State is required to consult such persons as he considers appropriate before making them.

### **Target audience**

These regulations have been drafted following informal consultation with affected schemes, trustees, other pension professionals and affected members and their families. Although this consultation is primarily aimed at pension industry professionals and others with an interest in defined benefit occupational pension schemes, views from the wider public are also welcome.

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

The consultation document is available on the Department's website at: <http://www.dwp.gov.uk/consultations/2007> or alternatively the FAS website: <http://www.dwp.gov.uk/fas>.

### **How can people respond to this consultation?**

The consultation period begins on 29<sup>th</sup> August 2007 and runs until 9<sup>th</sup> October 2007. Where proposals have been stimulated by previous consultation or debate, Cabinet Office guidance provides that a shorter consultation period may be appropriate. Taking account of these factors, Ministers have decided that a consultation period of 6 weeks is appropriate.

We would be grateful for your comments on any of the points covered by the 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](mailto:fas-responses@dwp.gsi.gov.uk)

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

Whilst it is Government policy that regulations which have an impact, however minor, on the private sector should, wherever possible, come into force on just two agreed dates: the 6th April and 1st October, Ministers believe that it is in the public interest to implement the extension to the scheme by the end of the

year as this will allow us to make payments arising from the extension as soon as possible. The parliamentary timetable (and requirement to consult) precludes a coming into force date in early October this year.

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@dpw.gsi.gov.uk](mailto:charles.cushing@dpw.gsi.gov.uk) or [carol.smith14@dpw.gsi.gov.uk](mailto:carol.smith14@dpw.gsi.gov.uk)

More information about the Freedom of Information Act can be found on the website of the Department for Constitutional Affairs.

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

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

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*

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

**Copied to:**

Age Concern  
Amicus  
Association of British Insurers  
Association of Business Recovery Professionals  
Association of Consulting Actuaries  
Association of Pension Lawyers  
Auditing Practices Board  
British Chambers of Commerce  
Community the Union  
Confederation of British Industry  
Consumers' Association  
Department of Trade and Industry  
Engineering Employers' Federation  
Federation of Small Businesses  
Financial Services Authority  
GMB Union  
Help the Aged  
HM Treasury (MOCOP)  
Independent Pensions Research Group  
Industry-wide Pension Schemes Group  
Inland Revenue  
Institute of Chartered Accountants in England and Wales  
Institute of Chartered Accountants in Scotland  
Institute of Directors  
Institute of Payroll and Pensions Management  
Investment Managers' 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  
Regulatory Impact Unit  
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

We have also sent copies of the consultation document to the schemes of which the FAS Operational Unit is aware which may be affected by the proposed changes to FAS' scheme qualification rules, and to private individuals who have expressed an interest in participating in the consultation exercise.

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

**CONTENTS**

- Section One – Policy and legislative background
- Section Two – Commentary on the draft regulations
- Section Three – The draft regulations

## **SECTION ONE - POLICY AND LEGISLATIVE BACKGROUND**

### **The original scheme**

1. The Financial Assistance Scheme (FAS) was originally designed to focus help on those who had suffered significant losses and were closest to retirement as it was felt that these members were least likely to be able to make up any shortfall in their retirement income.
2. In its original form the FAS provided assistance to members of qualifying defined benefit occupational pension schemes which started to wind up, under-funded, between 1st January 1997, and 5th April 2005, where the relevant employer was insolvent.
3. Under this earliest version of the FAS, only those qualifying members who were within three years of their normal scheme retirement age (as of 14th May 2004) could receive top-ups to around 80 per cent of their expected core pension.
4. Some surviving spouses and civil partners of qualifying scheme members who died after their scheme started to wind-up were also eligible for a payment from the FAS, as were some of those who were in receipt of a survivor's pension before wind-up started.
5. A payment cap of £12,000 per year applied which meant that qualifying members would receive assistance that would top up their scheme pension to 80% of their expected core pension, or to £12,000 per year, whichever was the lower figure.
6. Payments were also subject to a de minimis of £520 a year. This meant that payments would not be made unless they were calculated to be over £10 per week (before revaluation of the payment was applied).
7. An operational unit based in York, opened for business on 1st September 2005 to administer the FAS.
8. The Government committed £400 million in cash terms over 20 years to this version of the scheme which would have helped an estimated 15,000 people.

### **The first extension to the FAS – the current scheme**

9. In May 2006, the Government announced a £1.9bn extension to the scheme - bringing the total funding to £2.3bn in cash terms over 60 years. This extension to the scheme was estimated to provide help to around 40,000 people over its life time.
10. Under the extension, which came into force on 16th December 2006, qualifying members who were within seven years of their normal scheme retirement age (as of 14th May 2004) would receive top-ups to around 80 per cent of their expected core pension. For people seven to 11 years from scheme retirement age the

figure would be 65 per cent, and for people more than 11 years from retirement it would be 50 per cent.

11. The cap and de minimis rules were retained and applied to all beneficiaries in the same way and at the same level as previously described.

### **The latest proposed extension – the future scheme**

12. In his Budget Statement on 21st March 2007, the Chancellor of the Exchequer announced that public funding for the Financial Assistance Scheme would be significantly increased.

13. The key changes:

- All members of qualifying pension schemes will have their pensions topped up to a level broadly equivalent to 80% of the core pension rights accrued in their scheme.
- The cap will be increased from £12,000 to £26,000 a year
- The minimum payment rule (de minimis) will be removed

14. As a result it is expected that all of the estimated 125,000 people who have lost their pensions will now receive at least 80% of their core expected pension (subject to the raised cap).

15. This extension will mean that the Government's total long-term cash expenditure on the scheme will increase from £2.3 billion to £8 billion.

16. In addition, the Government announced on 18th April this year that it will further extend FAS to cover members of schemes that began winding up between 1st January 1997 and 5th April 2005, where a compromise agreement is in place and enforcing the debt against the employer would have forced the employer into insolvency. It is estimated that this will mean that FAS will help around 8000 members of some 16 schemes.

17. The Government is also amending the provision which currently prescribes a cut-off date by which an employer insolvency event must occur in order for a scheme to qualify for the FAS

18. These proposals are discussed in more detail in the 'Commentary' section.

### **Further potential changes to the FAS**

19. The Government has commissioned a review to assess whether better use can be made of funds in winding-up schemes and to assess other sources of non-public funding. The review's interim findings were published in the summer. Its full report is expected in November. The Government has pledged that, should additional monies be identified by the review, then they will be used to raise the level of FAS top up.

20. The review team has also been asked to determine whether there are other pension schemes where, although the sponsoring employer has not undergone an insolvency event, it would not be reasonable to expect the employer to have a continuing responsibility for supporting an under funded scheme.
21. Any further changes to the FAS arising from the final recommendations of the review will be brought forward following the review's final report.

### **Legislative Background**

22. Section 286 of the Pensions Act 2004, which received Royal Assent on 18th November 2004, required 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.
23. 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.
24. The Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994) ("FAS Internal Review Regulations") and the Financial Assistance Scheme (Appeals) Regulations (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 (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.
25. These regulations were added to by the Financial Assistance Scheme (Modification 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 15th February 2006.
26. The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006 (S.I. 3370/2006), came into force on 16th December 2006 to implement the current version of the scheme.

### **Amendments included on the face of the Pensions Bill**

27. The recent Pensions Act 2007, which received Royal Assent on 26<sup>th</sup> July, made some changes to FAS that came into force on Royal Assent. These amending regulations will ensure FAS regulations are consistent with those provisions in the Pensions Act 2007.

## **SECTION TWO – COMMENTARY ON THE DRAFT REGULATIONS**

### **PART 1 - INTRODUCTORY**

28. Regulation 1 states the day on which these regulations will come into force, indicates that they extend to Northern Ireland, and provides definitions of other legislation referred to in the regulations.

### **PART 2 - AMENDMENT OF THE FAS REGULATIONS**

29. In line with the Budget statement we are amending the FAS Regulations to ensure all members of qualifying pension schemes will have their pensions topped up to a level broadly equivalent to 80 % of the core pension rights accrued in their scheme (subject to a cap). In doing so, we will remove the tapered assistance levels linked to the individual's normal retirement age (NRA) which previously applied. In addition, we intend to increase the cap and remove the de minimis rule.

30. Whilst the majority of the changes are covered in our discussion of the changes to Schedule 2 (the Determination of Annual and Initial Payments) of the FAS Regulations, some changes have also been made to Parts 1, 4 and 5 of those regulations. All changes are explained in the relevant sections below.

31. We are also making some changes to the scheme qualification rules in Part 3 of the main FAS regulations. Those changes are discussed in the relevant section.

### **Amendments to Part 1 – General**

#### **Interpretation**

32. Regulation 3 removes paragraphs (5) and (6) of regulation 2 of the FAS Regulations which define the 'normal retirement age' for FAS purposes. This definition is only used in relation to tapered assistance rates. As all qualifying members will now receive the same rate of assistance these paragraphs are no longer required.

### **Amendments to Part 3 – Qualifying Pension Schemes**

#### **Date by which employer insolvency must occur**

33. Under current regulations the relevant employer of a pension scheme must have undergone a qualifying insolvency event by 28th February 2007 in order for their scheme to qualify for FAS. On the 27th February 2007, the then Minister of State for Pensions Reform announced that he would extend that date to 31st August. However, following a recommendation by the Young Review, the Government has confirmed that it will not now enforce that date.

34. However, the Government continues to believe that where there is a healthy solvent employer that employer has a moral obligation to meet the pension promise made to their members. Therefore, whilst we will remove the cut-off date that applies to employer insolvency events (by regulations we have inserted a provision that means that the scheme manager must be of the opinion that the wind-up of the scheme and the insolvency event of the employer were linked in order for the scheme to qualify).
35. We expect that employer insolvency will already have occurred or will occur soon for most relevant schemes and we will assume that scheme wind-up and employer insolvency were linked in relation to employer insolvencies that occur up to 1st January 2009: we have no reason to believe otherwise and this assumption will aid administrative processes.
36. However, for employer insolvency events that occur after that date evidence of a connection will need to be provided and the scheme manager will have to take the view that scheme wind-up and the insolvency event were linked in a relevant way in order for the scheme to qualify for the FAS. For example, schemes might provide evidence from company accounts that shows the employer was in a difficult financial position before the start of scheme wind-up which continued up to the insolvency event.
37. Regulations 4(1) and (2) make amendments to provide for the need for scheme wind-up and employer insolvency to be linked and for this link to have been deemed to have been met in relation to relevant insolvency events that occur before 1st January 2009. Regulations 4(4) and 4(5)(a) and (b) delete references to the insolvency event cut-off date.
38. We recognise that there may be schemes that are currently excluded from the FAS but that are in a similar position to those with insolvent employers; the Young review continues to consider representations made on behalf of such schemes. Trustees of schemes which began wind-up between 1st January 1997 and 5th April 2005 but are currently not eligible for FAS because the employer is still solvent, and no compromise agreement had been made, are urged to contact the review. Details should be sent to [adelphi.fas-review@dwp.gsi.gov.uk](mailto:adelphi.fas-review@dwp.gsi.gov.uk)

### **Other schemes which are non qualifying schemes**

39. As things stand, Small Self Administered Schemes designated as such by virtue of historic HMRC legislation, can not qualify for the FAS. The vast majority of such schemes were established on a money purchase basis. However, we have received representations from a scheme that offered defined benefits and that is ruled out by this provision. The members of the scheme appear to be in similar circumstances to members of other schemes that are already being assisted by the FAS: they had an accrued right to a defined benefit that has been significantly depleted through no fault of their own as a result of their employer's insolvency. We believe the FAS should be extended to include such members.
40. The definition formerly employed by HMRC has been replaced elsewhere in pension's legislation (for example in relation to qualification for the Pensions

Protection Fund). The paragraphs inserted by Regulation 4 (3) will bring the FAS Regulations in line with that other legislation.

41. We are not aware of any schemes that will be excluded from the FAS under the proposed change and invite responses from any schemes that could be excluded under this provision.

### **Insolvency events**

42. We have received representations from schemes where the trustees believed it was in the best interests of scheme members to reach a “compromise agreement” with the employer under which they accepted a lower amount than the full debt owed by the employer on the wind-up of their scheme in order not to tip that employer into insolvency. Those schemes in which employers have subsequently avoided insolvency would, under current rules, be excluded from the FAS.

43. Many compromise agreements were entered into before the FAS was announced. In many cases, had trustees known at the time that by compromising the debt to keep an employer solvent they would exclude their members from FAS they might have chosen instead to force employer insolvency to ensure FAS qualification for their members. We believe it is right to extend the FAS to cover members of schemes that began winding up between 1st January 1997 and 5th April 2005 where a compromise agreement is in place and when enforcing the debt against the employer would have forced the employer into insolvency. Regulation 4(5)(c) intends to bring this extension into effect.

44. In order for us to take decisions on whether or not this new provision is met scheme representatives will need to provide suitable evidence. We envisage that such evidence might include:
- statements of accounts showing the employer’s assets and liabilities;
  - evidence of the full debt that would have been payable by the employer had the debt not been compromised;
  - evidence of the binding agreement that compromised the employer debt; and
  - documented reasons for accepting the compromise agreement and any supporting documentation, for example copy of an independent auditors report about the employer’s financial position

We invite responses from relevant schemes on whether such evidence could be provided.

45. We also invite responses from any schemes who may not meet the strict terms of these provisions (for example if a compromise agreement was entered into for circumstances other than insolvency).

### **Amendments to Part 4 – Qualifying Members**

#### **Qualifying Members**

46. Various amendments relating to the budget statement are made to Part 4.

47. Regulation 5(a) and (b) delete paragraph (4) of regulation 15 to remove the condition that only members who reach their NRA before 14 May 2019 will be considered as qualifying members and make consequential amendments.
48. Regulation 5(c) deletes sub paragraph (5)(d) of regulation 15 to remove the condition that people who received pensions from schemes as result of the death of a member of a qualifying member before their scheme started to wind-up should be considered as qualifying members where they reach the NRA of the original member before 14 May 2019.
49. Related amendments are made to Schedule 2 – Determination of Annual and Initial Payments – and are discussed in the relevant section.

### **Amendments to Part 5 – Annual and Initial Payments**

#### **Annual payments**

50. Regulation 6(1) substitutes a new paragraph for paragraph 17(1) of the FAS Regulations to reflect the removal of the de minimis rule.

#### **Initial Payments**

51. Regulation 6(2)(a) and (b) delete paragraph (4A) of regulation 18 which provides that initial payments are not to be paid to Group 2 and 3 qualifying members (unless they are terminally ill).
52. This exclusion was inserted originally because such members would not reach 65 until 15th May 2011 at the earliest and we would expect (and would encourage) schemes to have completed wind-up by that date.
53. However, given the interim findings of the Young Review which suggest better value might be extracted from an alternative use of scheme assets, and the possible changes to the wind-up process that might result from an alternative use of scheme assets, we are removing this provision.
54. Regulation (6)(2)(c) inserts a new paragraph '(9ZA)' into Regulation 18 of the FAS Regulations. Regulation 18(9) already provides the FAS scheme manager with the power to redetermine the amount of an initial payment if the amount paid by way of initial payment is incorrect. Paragraph (9ZA) clarifies, for the avoidance of doubt, that that power includes the capacity to redetermine the rate of initial payment where the interim pension paid by the scheme changes.
55. Initial payments are designed to top-up interim pensions paid by schemes but different amounts of interim pension might be paid by schemes across different periods. If we were to determine FAS initial payments on the amount of interim pension in payment at a particular point in time and backdate those payments to an earlier date; and if different interim pensions had been paid during that earlier period then this could result in either an excessive payment or an underpayment

counter to our intention that eligible members receive 80% of their core expected pension during the wind-up of their scheme.

56. Regulation 6(2)(d) amends paragraph 10 of regulation 18 which currently includes references to the definitions of Group 2 and Group 3 Qualifying Members. The references apply only in order to provide tapered assistance rates and will no longer be required.

## **Amendments to Schedule 2 – Determination of Annual and Initial Payments**

### **Introductory**

57. Regulation 7(1) amends paragraph 1(2) of Schedule 2 of the FAS Regulations to remove the definitions of Group 1, 2 and 3 members as tapered assistance rates no longer apply.

### **Qualifying members receiving pensions from the qualifying pension scheme**

58. Regulation 7(2)(a) amends paragraph 3(1) to clarify that all of those people who start to receive a survivor's or a dependent's pension from a qualifying scheme before that scheme starts to wind-up stand to receive FAS assistance based on the unreduced survivor's or dependent's pension they would have received had their scheme been able to meet their pension in full (rather than by reference to the deceased member's 'expected pension'). As FAS regulations stand only those people in receipt of such pensions at the crystallisation date fall to be treated in this way this amendment corrects that oversight.

59. Regulation 7(2)(b) changes paragraph 3(2) to remove references to tapered rates of annual payment assistance that apply to pensioner members by reference to proximity to NRA.

### **Active and deferred members**

60. Regulation 7(3) changes paragraph 4 to remove references to tapered rates of annual payment assistance that apply to active and deferred members by reference to proximity to NRA.

### **Survivors of qualifying members**

61. Regulation 7(4) changes paragraph 5 which specifies the rates of annual payment assistance that apply to eligible survivors of qualifying members. Paragraph 5(3) currently provides tapered assistance rates to survivors of members who die before scheme liabilities are discharged to them by reference to the proximity of that member to their NRA.

## **Cap on expected pension and actual pension**

62. Regulation 7(5) amends paragraph 7 to remove references to Group 1, 2, and 3 members and to increase the cap on the expected pension and the actual pension from £12,000 to £26,000.
63. For the purposes of this package of regulations the cap has not been indexed. The Government is considering whether and how the cap might be increased over time to ensure that it keeps its value. Much might depend on the final findings of the Young Review and the potential changes that review might bring to the future form of the FAS scheme.

## **De Minimis rule**

64. Regulation 7(6) removes paragraph 8 of Schedule 2 which specifies the de minimis rule.

## **Initial Payments**

65. Regulation 7(7)(a) substitutes 'regulation 18' for regulation 17' for the purposes of determining initial payments. This substitution would be applied to paragraph 9 of Schedule 2 which relates to revaluation. This change intends to clarify that initial payments fall to be revalued where there is a month or more between certification date and the date on which an initial payment is first payable to a beneficiary in the same way as revaluation is applied to annual payments. In practice FAS already applies revaluation to initial payments in this way. The amendment corrects an oversight in the original regulations.
66. Regulation 7(7)(b) amends paragraph 10 to remove references to the tapers when calculating initial payments of assistance. All qualifying members will now have their interim pension topped up to 80% of their expected core pension (subject to the raised cap brought into effect by these regulations).
67. An amendment to increase initial payments to 80% was included on the face of the Pensions Act 2007 which required us to raise initial payments immediately from Royal Assent. The changes described in respect of initial payments in this consultation document aim to align FAS secondary legislation with the primary legislation contained in the Act.
68. Regulation 7(7)(c) changes paragraph 10(e) which sets out how initial payments are determined for survivors to reflect the removal of tapered assistance rates.

## **PART 3 - AMENDMENT OF THE FAS (PROVISION OF INFORMATION AND ADMINISTRATION OF PAYMENTS) REGULATIONS 2005**

### **Method of Providing Information**

69. Regulation 8(2) clarifies, by inserting regulation 5(1A) into the FAS (Provision of Information and Administration of Payments) 2005 (“the FAS Information and Payments Regulations”), that the scheme manager may decide the format in which information is provided. Currently regulation 6(2) of the FAS Information and Payments Regulations permits the scheme manager to refuse to make a decision on scheme and member eligibility until such time as the information or evidence is provided in an appropriate form or manner. The scheme manager has always required that member data is submitted in a particular and standard format (FORM S1). To provide clarity this amendment makes it explicit that it is for the scheme manager to specify the format in which he will accept data. In exceptional circumstances it may not be possible for the form S1 to be completed in full and the scheme manager may then accept elements of the information in a different format.

### **Recovery of overpayments**

70. Regulation 8(3) provides a new power, via amendments to paragraph (2) of regulation 7 of the FAS Information and Payments Regulations, to allow us to recover overpaid assistance from individuals who are not beneficiaries as defined within the main FAS regulations.

71. All overpayments of FAS are recoverable. Recoveries from beneficiaries of pension schemes are made under powers contained in the FAS (Provision of Information and Administration of Payments) Regulations and recoveries from non-beneficiaries through civil action. This amendment provides the power to recover overpayments from both beneficiaries and non beneficiaries by using the powers contained in DWP FAS legislation in line with DWP protocols rather than having to have recourse to civil action.

### **Suspension of Payment**

72. Regulation 8(4) inserts a new power, via amendments in regulation 8 of the FAS Information and Payments) Regulations, to suspend payments to individuals who are not beneficiaries as defined within the main FAS regulations.

73. This amendment expands the power of the scheme manager to suspend payments of FAS to non-beneficiaries of pension schemes.

## **SECTION THREE - THE DRAFT REGULATIONS**

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

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### DRAFT STATUTORY INSTRUMENTS

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**2007 No.**

## **PENSIONS**

### **The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007**

*Made* - - - - - *September 2007*

*Coming into force in accordance with regulation 1(1)*

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8. Amendment of the FAS Information and Payments Regulations

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 168, 190(1)(a) and (2), 286, 315(2), (4) and (5) and 318(1) and (4)(a) of the Pensions Act 2004(1).

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(1) 2004 c.35. Sections 168 and 190 are modified by S.I. 2005/1986; section 286 is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993, 2005/2113 and 2006/566), and is amended by section 18(2) and (3) of the Pensions Act 2007 (c.22). Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.

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

Before making these Regulations the Secretary of State consulted such persons as he considered appropriate<sup>(2)</sup>.

## PART 1

### Introductory

#### **Citation, commencement, extent and interpretation**

**1.**—(1) These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Northern Ireland.

(3) In these Regulations—

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005<sup>(3)</sup>;

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005<sup>(4)</sup>;

## PART 2

### Amendment of the FAS Regulations

#### **Amendment of the FAS Regulations**

**2.** The FAS Regulations are amended in accordance with this Part.

#### **Amendment of Part 1 (General)**

**3.**—(1) In regulation 2 (interpretation), omit paragraphs (5) and (6).

#### **Amendment of Part 3 (Qualifying Pension Schemes)**

**4.**—(1) In regulation 9(1) (qualifying pension schemes)—

(a) at the end of sub-paragraph (c), omit “and”, and

(b) after sub-paragraph (c) insert—

“(ca) the commencement of the wind-up of the scheme was, in the opinion of the scheme manager, linked in a relevant way to the fact that the employer satisfies the relevant condition mentioned in sub-paragraph (c); and”.

(2) After regulation 9(1), insert—

“(1A) The relevant link mentioned in paragraph (1)(ca) is deemed to be established in relation to any employer who satisfies the relevant condition mentioned in paragraph (1)(c) before 1st January 2009.”.

(3) In regulation 10 (other schemes which are not qualifying pension schemes), for paragraph (1) substitute—

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(2) See section 317(1) of the Pensions Act 2004.

(3) S.I. 2005/1986, amended by S.I. 2005/3256 and 2006/3370.

(4) S.I. 2005/2189, amended by S.I. 2005/3256.

- “(1) a scheme with fewer than twelve members where all the members are trustees of the scheme and either—
  - (i) the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme; or
  - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act (power to appoint independent trustees) and is registered in the register maintained by the Authority<sup>(5)</sup> in accordance with regulations made under subsection (4) of that section;
- (m) a scheme with fewer than twelve members where all the members are directors of a company which is the sole trustee of the scheme and either—
  - (i) the provisions of the scheme provide that any decision made by the company in its capacity as a trustee is made by the unanimous agreement of the directors of that company who are members of the scheme; or
  - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Authority in accordance with regulations made under subsection (4) of that section.

(4) In regulations 11(1) (condition to be satisfied by employer), 12(1) and (2) (condition to be satisfied: multi-employer schemes), and 13(4) and (4A) (insolvency events), in each place that it occurs, omit “on or before 28th February 2007”.

(5) In regulation 13—

- (a) in paragraph (2), omit sub-paragraph (b);
- (b) in paragraph (3A), omit “on 28th February 2007 or on some earlier date”; and
- (c) after paragraph (4A), insert—

“(4B) The scheme manager may also, for the purposes of regulations 11 and 12, treat an insolvency event as having occurred in relation to the employer in relation to an occupational pension scheme where—

- (a) the trustees of such a scheme entered into a binding agreement, with the employer against whom it arose, to compromise the debt that arose under section 75 of the 1995 Act, and
- (b) had that agreement not been entered into—
  - (i) the value of that employer’s assets would have been less than the amount of its liabilities, taking into account its contingent and prospective liabilities, and
  - (ii) the employer would have been unable to pay its debts as they fell due.”.

#### **Amendment of Part 4 (Qualifying Members)**

5. In regulation 15 (qualifying members)—

- (a) in paragraph (1), for “paragraphs (2) to (4)” substitute “paragraphs (2) and (3)”;
- (b) omit paragraph (4); and
- (c) in paragraph (5), omit sub-paragraph (d).

#### **Amendment of Part 5 (Annual and Initial Payments)**

6.—(1) In regulation 17 (annual payments), for paragraph (1) substitute—

“(1) Schedule 2 makes provision for the determination of the amount of annual payments to be paid to, or in respect of, qualifying members of qualifying pension schemes including provision for a cap to be imposed on such amounts.”.

(2) In regulation 18 (initial payments)—

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(5) Section 7(2) of the Pensions Act 2004 (c.35) (“the 2004 Act”) provides that “the Authority” in Part 1 of the 1995 Act (which includes section 23) means the Pensions Regulator. The Pensions Regulator was established by section 1 of the 2004 Act.

- (a) in paragraph (1), omit “Subject to paragraph (4A),”;
- (b) omit paragraph (4A);
- (c) after paragraph (9), insert—
  - “(9ZA) The power to redetermine the amount of an initial payment under paragraph (9) includes the power to redetermine that amount as a result of a change in the amount of interim pension being paid to the beneficiary, the redetermined amount to be payable from the date of that change.”; and
- (d) for paragraph (10), substitute—
  - “(10) In this regulation “interim pension” has the meaning given in paragraph 2 of Schedule 2.”.

### **Amendment of Schedule 2 (Determination of Annual and Initial Payments)**

7.—(1) In paragraph 1(2) of Schedule 2 (determination of annual and initial payments), omit the definitions of “Group 1 qualifying member”, “Group 2 qualifying member” and “Group 3 qualifying member”.

- (2) In paragraph 3—
  - (a) for sub-paragraph (1) substitute—
    - “(1) This paragraph applies to—
      - (a) a member or former member of a qualifying scheme who—
        - (i) is a qualifying member under regulation 15(1), and
        - (ii) was entitled to present payment of a pension under the scheme rules on the crystallisation date; and
      - (b) a person who is regarded as a qualifying member under regulation 15(5).”;
  - (b) for sub-paragraph (2) substitute—
    - “(2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—
      - (expected pension x 0.8) – actual pension;”.
- (3) In paragraph 4, for sub-paragraph (2) substitute—
  - “(2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—
    - (expected pension x 0.8) – actual pension;”.
- (4) In paragraph 5, for sub-paragraph (3) substitute—
  - “(3) Where the qualifying member dies before 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), the annual payment payable to his survivor shall be—
    - $$\frac{(\text{expected pension} \times 0.8) - \text{actual pension}}{2};$$
- (5) In paragraph 7—
  - (a) for “£12,000”, in each place that it occurs, substitute “£26,000”; and
  - (b) in sub-paragraphs (1) and (2)(a), in both places that it occurs, omit from “(where the qualifying member is a Group 1 qualifying member” to “is a Group 3 qualifying member)”.
- (6) Omit paragraph 8.
- (7) In paragraph 10—
  - (a) after sub-paragraph (b), insert—
    - “(ba) for “regulation 17”, in each place, substitute “regulation 18”;”;
  - (b) omit sub-paragraphs (c) and (ca);
  - (c) for sub-paragraph (e) substitute—
    - “(e) in paragraph —

- (i) for sub-paragraph (3) substitute—  
“(3) The initial payment payable to a survivor of a qualifying member shall be—  
(expected pension x 0.8) – interim pension payable to that survivor  
2.”; and
- (ii) omit sub-paragraphs (2) and (6).”.

## PART 3

### Amendment of the FAS Information and Payments Regulations

#### **Amendment of the FAS Information and Payments Regulations**

**8.**—(1) The FAS Information and Payments Regulations are amended as follows.

(2) In regulation 5 (method of providing information), after paragraph (1) insert—

“(1A) Where, under these Regulations, any information is to be provided to the scheme manager, that information shall be provided in such manner and form as is, in the opinion of the scheme manager, appropriate.”

(3) In regulation 7 (recovery of overpayments)—

(a) in paragraph (1)—

- (i) for “the beneficiary’s entitlement” substitute “any entitlement,” and
- (ii) after “the FAS Regulations” insert “, to any person,”; and

(b) in paragraph (2)—

- (i) in sub-paragraph (a), after “the beneficiary” insert “(or other person to whom such a payment was made)”;
- (ii) in sub-paragraph (b), for “his” substitute “the beneficiary’s”; and
- (iii) in sub-paragraph (c), after “estate” insert “(or the estate of any other person to whom such a payment was made)”.

(4) In regulation 8 (suspension of payments)—

- (a) in paragraph (1), for “beneficiary” substitute “person receiving payments”; and
- (b) in paragraph (2), for “the beneficiary’s” substitute “that person’s”.

Signed by authority of the Secretary of State for Work and Pensions

[date]

*Name*  
Minister of State  
Department for Work and Pensions

#### **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”) and the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (S.I. 2005/2189, as amended) (“the FAS Information and Payments Regulations”).

Part 1 makes provision for the citation, commencement and extent of these Regulations, and also for interpretation.

Part 2 amends the FAS Regulations. In particular it—

extends indefinitely the time period by which an employer must have an insolvency event in order for their scheme to be eligible for FAS assistance, subject to a link being established between the insolvency event and the winding up of the scheme;

amends the description of small self-administered schemes to enable some to be eligible for FAS assistance;

allows schemes whose trustees entered into an agreement with the relevant employer to compromise the debt that arose against that employer under section 75 of the Pension Act 1995 (c.26) in circumstances where enforcing the full debt would have forced the employer into insolvency, to be eligible for FAS assistance;

provides that all members of qualifying pension schemes, regardless of how far they were from retirement when their scheme began to wind up, are now eligible to be qualifying members;

provides that all qualifying members will receive 80 per cent. of their expected pension (calculated in accordance with Schedule 2 of the FAS Regulations), subject to the cap;

raises the cap to £26,000 and removes the de minimus requirement;

provides that initial payments may be redetermined where the interim pension being paid by the scheme has changed.

Part 3 amends the FAS Information and Payments Regulations. In particular it—

provides that information provided to the FAS scheme manager must be provided in the manner and form specified by him; and

provides that FAS payments made to a person who is not a beneficiary may be suspended and also recovered.

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

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