

Financial Assistance Scheme

Trustee Update dated – February 2009

This update is for Trustees, Administrators and members of FAS Qualified schemes. Please make its contents available to colleagues within your organisation.

Subject: Update on Legislative Changes.	Financial Assistance Scheme (FAS) PO Box 702 York YO32 9XR Tel: 0845 6019941 Email: FAS-Operational-Unit@dwpgsi.gov.uk
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Introduction

1. This update is designed to inform trustees about:
 - amendments to existing FAS rules that came into force late last year;
 - progress on legislative and operational changes.

Inclusion of schemes that fall outside the remit of both FAS and PPF

2. On 23 December 2008, Regulations came into force to allow certain occupational pension schemes that could not previously qualify for either the Financial Assistance Scheme (FAS) or the Pension Protection Fund (PPF) to become qualifying schemes under FAS rules.
3. The Regulations cover the small number of schemes where the employer became insolvent before 6 April 2005, (making the scheme ineligible for the PPF) and did not start to wind up until after 5 April 2005, (making the scheme ineligible for FAS). As a result, the members of these schemes did not previously qualify for protection under either FAS or PPF rules.
4. These Regulations provide an exception to the FAS rule that only schemes that began to wind up between 1 January 1997 and 5 April 2005 can qualify for assistance payments from FAS.
5. This exception applies where a scheme began to wind up between 6 April 2005 and 22 December 2008, and where the scheme underwent an insolvency event prior to 6 April 2005. Where a scheme qualifies for FAS as a result of this exception, it cannot then become eligible for the purposes of the PPF.
6. If trustees are aware of any schemes within their wind up portfolio that may now qualify under these provisions, they should contact the FAS Operational Unit.

The extension of the Halting Annuitisation Regulations

7. In a previous Update dated 30 May 2008, we alerted trustees to the fact that the restriction on the purchase of annuities in Financial Assistance Scheme (Halting Annuitisation) Regulations 2007 would end on 25 June 2008 and that it was our intention to extend the general prohibition on annuitisation indefinitely with retrospective effect, as part of the Pensions Bill 2008.
8. The new provisions contained in section 123 of the Pensions Act 2008 came into force on 26 November 2008 and, as previously indicated, they have been made to operate retrospectively, which means that the embargo on purchasing or agreeing to purchase annuities remains in place indefinitely from 26 June 2008.
9. The provisions differ from the original legislation in that they now:
 - allow the FAS to make any approval to annuitise subject to any condition that the FAS Scheme Manager considers appropriate;
 - give the FAS the power to 'void' any purchase or agreement to purchase annuities, where trustees have acted outside the parameters of the legislation.
10. FAS will consider using the power to void any purchase or agreement to purchase annuities, where trustees:
 - did *not* enter a binding commitment to purchase annuities prior to 26 September 2007;
 - failed to obtain approval from the FAS; or
 - where approval was granted but the trustees failed to satisfy any condition to which such approval was subject.
11. This power is discretionary and is designed to be used where the FAS is of the view that trustees have deliberately acted outside the legislation or should have known that the legislation was in place. The FAS is not likely to use this power in other circumstances, for example where schemes have only recently qualified and annuitised after 26 September 2007.

Update to previous guidance on Applications to Annuitise

12. We have reviewed the process relating to halting annuitisation to reflect the amended powers and to take into account all the developments within FAS over the last year.
13. In general, we will continue to be mindful of the intention to preserve assets within schemes for transfer to government.

14. Each application will be considered on its merits and will take into account all relevant matters.
15. Under the Pensions Act 2008, trustees are required to provide reasons for their application to annuitise. In each case, we would ask that trustees cover the following issues when providing reasons for their application:
 - why they believe annuitisation is necessary;
 - what prevents them from paying any benefits due from scheme funds;
 - how members may be disadvantaged by any refusal to annuitise
16. It is vital that trustees supply clear supporting evidence to demonstrate why they believe annuitisation is necessary when considering the particular circumstances of the scheme and the relevant members.

Equality and FAS Qualifying Schemes

17. Schemes will be aware that as a consequence of the Barber judgment, schemes are required to treat men and women in similar employment equally for any period after 17 May 1990. Similarly, Sections 62 to 65 of the 1995 Pensions Act require that, any scheme rule that produces an outcome which is different for men or women undertaking comparable work must be read as if it produced an equal outcome.
18. However, some trustees have informed us that some schemes do not appear to have equalised benefits - particularly in respect of the differences created by the Guaranteed Minimum Pension rules within contracted-out schemes.
19. Trustees should ensure that the information provided by schemes to FAS for qualifying members reflects benefits calculated on an equalised basis.
20. Trustees of any scheme which is proceeding to annuitisation should ensure that appropriate equalisation has taken place before transferring any information to the Financial Assistance Scheme.
21. We envisage that, where schemes are transferring remaining scheme assets to government, part of the pre-transfer process will be ensuring that equalisation has been dealt with. This process will be developed further in the coming months.
22. If any trustees are uncertain as to what action they should take, we would direct their attention to the guidance offered by The Pensions Regulator.

Further legislative changes to FAS

Further changes to the assistance structure

23. We intend to commence the consultation on the next set of draft Regulations shortly. These draft Regulations will cover further changes in line with the announcement made by the then Secretary of State in December 2007 to introduce post-97 indexation and other related changes to the calculation of FAS payments. They will also include proposals relating to how FAS is administered.
24. Subject to the outcome of this consultation and the Parliamentary timetable, it is hoped that these Regulations will come into force in the summer of 2009.
25. In parallel with this consultation, we will also be consulting on early proposals on asset transfer, the delivery of asset-backed payments (including lump sums) and the formal discharge of trustees of qualifying schemes. At this stage this is for preliminary consultation, we anticipate that a further set of draft Regulations will go out for further consultation in the summer, with a view to their coming into force in winter 2009. In the meantime, we would welcome your initial views on these issues.

Severe ill health

26. Following a recent consultation, these Regulations that will allow early access to unreduced payments from FAS on the grounds of severe ill health are about to be laid before Parliament with a view to their coming into force before the Easter Recess, subject to Parliamentary time being available. These Regulations will provide for members who meet the relevant criteria to have access to unreduced Assistance payments from age 55.

Further communications

27. The PPF will shortly be issuing a guide for trustees covering their role and responsibilities, to help trustees prepare for the operational changes being put in place to help schemes progress through wind up.