

Financial Assistance Scheme

Trustee Update – dated 11 June 2009

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

Subjects: <ul style="list-style-type: none"> • The Financial Assistance Scheme Incapacity Benefit and Miscellaneous Amendments Regulations 2009 	Financial Assistance Scheme (FAS) PO Box 702 York YO32 9XR Tel: 0845 6019941 Email: FAS-Operational-Unit@dwps.gov.uk
<ul style="list-style-type: none"> • Normal Retirement Age 	
<ul style="list-style-type: none"> • The draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 	

Financial Assistance Scheme Incapacity Benefit and Miscellaneous Amendment Regulations 2009 (S.I. 2009/792)

Severe ill-health payments

In the February 2009 update we told trustees about the progress of the proposed Regulations introducing severe ill-health payments. The Regulations have now successfully completed the Parliamentary process and came into force on 27 March 2009.

The Regulations provide for early unreduced payment of assistance (severe ill-health payments) for qualifying members who are:

- aged 55 or over;
- unable to work due to ill health and likely to be so unable to work until their normal retirement age; and
- suffering from a progressive disease and as a consequence can reasonably be expected to die within five years.

The Regulations also provide that, for a transitional period of one year (that is until 26 March 2010), eligible members may make a request for payment for a past period where the member would have met the qualifying conditions at an earlier date (but not before 14 May 2004). Applications can be made in writing to the FAS Scheme manager by:

- a qualifying member, including a member now over their normal retirement age, as well as those currently receiving assistance on the grounds of ill health or terminal illness;
- the survivor of a member who may have benefited from the provisions if they had been in place earlier; and
- the personal representative of a member who may have benefited from the provisions if they had been in place earlier, where the member has died leaving no qualifying survivor.

In addition the Regulations provide for FAS payments to be treated as pension payments for Incapacity Benefit purposes, where someone becomes first entitled to a FAS payment on or after the date the Regulations came into force (27 March 2009).

The Regulations build on the help already available through FAS to those who are suffering ill health or who are terminally ill. Trustees are asked to bring these new provisions to the attention of any members who might benefit from them. Alternatively, trustees can contact the FAS Operational Unit (FAS OU) themselves with details of any such members.

More information is available on the FAS website www.dwp.gov.uk/fas and in the FAS Ill-health leaflet which is available from the FAS OU.

Normal Retirement Age

Regulation 2(1A) of the Financial Assistance Scheme Regulations 2005 (SI 2005/1986) says that for the purposes of entitlement to FAS payment, normal retirement age (NRA) in relation to a member of an occupational pension scheme means **the age specified in the rules of that scheme at which a member will normally retire.**

There is an upper limit of age 65 and a lower limit of age 60, in addition to provision for determination where the normal retirement age cannot be determined from scheme rules.

The FAS OU have received a number of queries from the administrators of various schemes about determining the NRA they should supply to the Unit. We have also received comments on this issue during the recent consultation on the draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009.

This provision means the NRA specified in the scheme rules which applied at the point the individual ceased to accrue pensions rights in the scheme. For instance this will be the date pensionable service ceased where the member ceased to work for that employer before the point at which the scheme started to wind up. However, responses to the recent consultation indicate that some administrators have been interpreting this to mean the NRA in the scheme rules at the start of wind up, regardless of the situation when the individual ceased to accrue rights in their scheme.

This may have a particular effect for members who left during a *Barber* window. As trustees will be aware, from the date of the *Barber* judgment (17 May 1990), the direct effect of European law meant that NRAs of men or women were “levelled up” to the earlier NRA until schemes equalised.

So, for example, where:

(i) a man was a member of a scheme which had an NRA of 60 for women and 65 for men; and

(ii) that scheme equalised at age 65 for both sexes; and

(ii) that man left the scheme after 17 May 1990 but before the scheme equalised its scheme rules,

that man's NRA for FAS entitlement purposes will be age 60.

And where:

(i) a woman was a member of a scheme which had an NRA of 60 for women and 65 for men; and

(ii) that scheme equalised at age 65 for both sexes; and

(iii) that woman was still a member of that scheme at the point of equalisation,

that woman's NRA for FAS entitlement purposes will be age 65.

Given the reported differences in interpretation, we wish to clarify that the date the FAS will use as the individual member's NRA is the NRA in force under the scheme rules as they applied at the date on which the member ceased to accrue rights in the scheme. The upper and lower age limits will remain the same.

We intend to clarify this matter in the post-consultation draft of the Regulations, which we expect to be laid before Parliament in the near future. We have also amended the S1 guidance, which now says, "NRA is **the age specified in the scheme rules in force when the member ceases accrual as the age at which the member will normally retire**¹."

Action for trustees

Trustees should:

- a) ensure that in future all information supplied on a member's NRA relates to the NRA in the scheme which applied at the time that member ceased to accrue rights in the scheme; and
- b) where they need to amend the NRA details, complete the new revised S1 which is currently being issued (see update on the S1 below) or contact the FAS OU where necessary.

¹ HMRC guidance in force until 5 April 2008 (IR12 Practice Notes on the Approval of Occupations Pension Schemes) stated that it was a condition of tax approval that the rules of a scheme should specify a single age for each member at which that member will normally retire.

The draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009

Between 11 February and 25 March 2009, the DWP undertook a consultation exercise on the draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009. We consulted on how the Government proposed to implement the remaining elements of the extension to the FAS announced in December 2007 as they related to people who were not members of FAS qualifying schemes which are transferring their funds to government. These were:

- indexation of payments derived from post-1997 service;
- maintaining the value of the cap;
- treatment of different tranches of accrued pension; and
- extending survivor's rights to dependent children and surviving partners.

Since the consultation closed we have been analysing the responses. We are currently planning for these Regulations to come into force this Summer, subject to Parliamentary approval and timetabling.

Assistance for Survivors and Dependants

Trustees may be aware from the consultation on the draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 that we propose to extend survivor assistance to certain dependent children and surviving partners.

A child of the family of the deceased qualifying member will be entitled to assistance where that child was financially dependent on that member and is aged:

1. under 18; or
2. over 18, but under 23 and
 - a. on a relevant full-time educational or vocational course; or
 - b. unable to work full-time due to a disability.

Such children will be eligible for assistance irrespective of whether the scheme rules provided for them to receive a pension.

Surviving partners will only be eligible for survivor assistance where the scheme rules included a provision for a survivor's pension to be paid to a partner and either –

1. the member nominated that partner, or
2. if there has been no nomination, and there is no surviving spouse or civil partner, the surviving partner was financially dependent on the deceased member.

A FAS nomination process will be in place ahead of the Regulations coming into force. A further Update will be issued shortly which will provide trustees with more information on how members can make nominations to the FAS scheme manager.

Reconciliation of payments

As outlined in the consultation document, the Government is proposing to change the way in which final assistance is calculated so that all members receive 90 per cent of their expected pension, subject to the FAS cap, from a combination of any scheme and FAS payments over the whole period of their entitlement to assistance.

The current regulations require the FAS scheme manager to take into account all FAS initial payments when calculating any FAS arrears due, or potential overpayments, following the determination of the final assistance payment.

Regulations planned for this summer go further than this and will (subject to those Regulations obtaining Parliamentary approval) include a power for the FAS scheme manager to be able to take into account scheme interim pension payments from the start of a member's entitlement to assistance when calculating the member's final assistance payments.

Where this reconciliation shows that the member has received high or low levels of interim pension from their scheme from the start of their entitlement to assistance, the FAS scheme manager will take this into account when determining the member's "actual pension" to be deducted as part of the FAS payment calculation. This, in cases where high levels of interim pension have been paid, will lead to a higher "actual pension" than would otherwise be the case, and consequently lower FAS payments going forward, for life.

With this in mind, where trustees are completing wind up by purchasing annuities, they may wish to consider:

- paying arrears/recovering overpayments for periods before 14 May 2004, as there is no entitlement to assistance earlier than this;
- not paying arrears for periods after 14 May 2004 (except in relation to DC benefits) where they believe members have received assistance - otherwise members are likely to see a decrease in their future assistance payments to take account of the excess payments made; and
- paying interim pensions at levels that are in line with scheme funds to avoid members seeing a decrease in their future assistance payments to take account of any excess interim pension payments made.

Of course, trustees will wish to take into account the individual circumstances of their members and, in some cases, paying arrears for periods after 14 May 2004 could be in the member's best interests.

Revised S1 Template

The FAS OU has begun issuing a revised S1 template and guidance. The revised S1 will replace the current one and must be used to deliver all member data in the future.

The FAS OU is now issuing the S1 on a rolling programme to collect new and additional member data. The S1 is being issued to:

- Schemes where the FAS OU know that a member is approaching their NRA in the period August 2009 to January 2010;
- Schemes where members have already been assessed; and
- Schemes newly qualified, together with those schemes which have not supplied data to support payment for members approaching their NRA.

Customer Account Managers and Transition Analysts will be available to support administrators complete the revised S1 template.

Administrators must continue to supply data for members as they reach their NRA.

Halting Transfers

As set out in the consultation document to the draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, in order to preserve the residual assets of FAS qualifying schemes that will be transferring their assets to Government, we intend to propose a halt to the provision of transfers and defined benefit winding-up lump sums from when the asset transfer regulations come into force. These regulations will provide for the residual assets in FAS qualifying schemes that have not annuitised to be taken into Government ownership, thereby enabling FAS qualifying members to be paid 90% of their expected pensions from the FAS.

We consider that halting these types of payments from schemes will also provide administrative savings and help speed up the transfer of assets (because relevant periods allowing members to exercise options will not be required).

In light of these intentions, we would ask trustees to consider the aims of the Government, the potential decrease in the value of scheme assets from making these payments and, therefore, to refrain from actively offering transfers or winding up lump sums to members by way of bulk exercises. We appreciate that trustees will want to continue to deal with individual member requests for transfers and winding-up lump sums in the meantime. If trustees are considering any bulk exercises they should speak to their caseworker.

Further details of proposals to halt such payments will be included in the forthcoming consultation on draft regulations enabling the transfer of assets.

Insurance Cover for Trustees

We have been asked by the trustees of some FAS schemes which will be transferring their assets to Government to confirm our position in relation to the use of scheme assets to fund certain insurance premiums.

We understand that there are two main types of insurance that trustees of FAS schemes might seek to purchase from scheme assets:

- run-off insurance, which gives indemnity to trustees for past actions in wound-up schemes with cover stretching as far as 12 years into the future;

and

- missing beneficiary insurance (which is often incorporated in run-off insurance) which can be issued without an expiry date to cover circumstances where a missing or overlooked member comes forward after the completion of wind-up, when all the funds have been distributed.

Under current proposals, which will be subject to consultation, at the point assets are transferred to Government, we intend to discharge trustees in a similar way to that undertaken in the Pension Protection Fund (PPF) regime, leaving trustees with only those liabilities where they would have been personally liable to meet claims rather than being indemnified from the assets of the scheme.

We envisage that our proposed approach will mean it is unnecessary for trustees to purchase such insurance cover. As purchase would deplete the amount of assets transferring to Government, our initial view is that it would not be appropriate for trustees to purchase such cover out of scheme assets, even where it is possible under scheme rules for them to do so. This approach is similar to that taken in the PPF in relation to eligible schemes. Trustees should discuss any concerns with this approach with their caseworker.

Contact Details

If you have any queries about the information in this update, please do not hesitate to contact the FAS Operational Unit on 0845 609941, or by email to FAS-OPERATIONAL-UNIT@DWP.GSI.GOV.UK . If you would like on going advice during wind up, please contact your PPF caseworker.

Yours Sincerely

Ros Sannachan

FAS Operational Manager