

**EXPLANATORY MEMORANDUM TO
THE FINANCIAL ASSISTANCE SCHEME (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2006**

2006 No.

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations extend eligibility to assistance from the Government's Financial Assistance Scheme to members of qualifying pension schemes who were within 15 years of their scheme pension age on 14 May 2004. Currently, members who were more than three years from their scheme's normal retirement age on 14th May 2004 are excluded from receiving assistance.
 - 2.2 These Regulations also allow us to consider schemes where the employer has been subject to overseas insolvency proceedings, and further, they give a discretionary power to include schemes where the employer is unlikely to continue as a going concern but for whatever reason has not formally undergone a qualifying insolvency event.
 - 2.3 In addition they introduce a number of amendments linked to the calculation of FAS payments and new review and appeal rights powers linked to the determination of terminal illness for FAS purposes.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative background**
 - 4.1 These Regulations implement the extension of the Financial Assistance Scheme as announced in the Government's white paper, *Security in Retirement: towards a new pension system*, in May this year. They also include various amendments to the scheme that have arisen following consultation with stakeholders or have come to light during operational running of the scheme since its launch in September last year.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1 The Minister for Pensions Reform, James Purnell, has made the following statement regarding Human Rights:

In my view the provisions of The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006 are compatible with the Convention rights.

7. Policy Background

- 7.1 The Financial Assistance Scheme offers help to some people who have lost out on their defined benefit occupational pension because their scheme was under-funded when it wound up and the employer is insolvent or no longer exists. In addition, it provides assistance for some surviving spouses and civil partners of qualifying members.
- 7.2 Whilst the Government accepts no liability in respect of these schemes, it recognises the severe losses that pension scheme failures have imposed in some cases, and aims to provide assistance to those scheme members who face the most significant losses.
- 7.3 The FAS is funded by the taxpayer and administered by the Department for Work and Pensions via the FAS Operational Unit in York.
- 7.4 Ministers initially committed £400 million to FAS over 20 years, with a commitment to review the scheme after 3 years. This would have coincided with the Comprehensive Spending Review (CSR) in 2007. In March, the Prime Minister said that the Government would expedite its review, and proposals for extending the scheme to provide assistance to more affected members were announced in the Pensions White Paper on 25th May. The FAS was originally expected to assist some 15,000 people over the lifetime of the scheme. Due to the extension it is now expected that some 40,000 people will be assisted by the scheme over the course of its lifetime.

Overview of the Current Scheme

- 7.5 A pension scheme must successfully go through two stages to qualify for the FAS, notification and qualification.
- 7.6 Notification is simply the provision of some basic information, including the name of the scheme and the name of any employer in relation to the

scheme. The notification period, the period in which trustees and members are able to formally notify FAS of their scheme's basic details so that the schemes can be considered for FAS qualification, began on 1 September 2005 and ended on 28 February 2006. Exceptionally, the scheme manager has discretion to accept late notifications if he considers it reasonable to do so.

- 7.7 The scheme then has to meet the necessary qualifying conditions to be eligible as a qualifying scheme. For example, it must have completed notification as above; not be a money purchase scheme and have started winding up between 1 January 1997 and 5 April 2005. Also, the relevant employer must have experienced an insolvency event in the UK. Amendments linked to insolvency events are explained in the changes section below.

Member qualification

- 7.8 Currently, a scheme member may be considered for a FAS payment if he belongs (or belonged) to a qualifying pension scheme, and if he was within three years of his pension scheme's normal retirement age (NRA) or older on 14 May 2004 (when the FAS was announced). An extension to the NRA rule is discussed in more detail in the changes section.
- 7.9 Surviving spouses and civil partners of qualifying scheme members who died after their scheme started to wind-up may also be eligible for a payment but at a lower rate. Some of those who were in receipt of a survivor's pension from the qualifying pension scheme before wind-up may also be eligible for a payment in their own right if they meet the NRA rule.
- 7.10 In most cases FAS payments begin from the 65th birthday. Survivors and qualifying members who are terminally ill may be paid earlier than 65.
- 7.11 Final FAS payments top up a scheme member's pension to a level broadly equivalent to 80 per cent of their expected core pension, subject to a £12,000 cap. This means, for example, that if 80 per cent of their expected core pension is £15,000 and they get a pension of £10,000, the FAS payment will be £2,000 a year. The FAS does not make payments of less than £520 a year. These final payments are known as 'annual payments'.
- 7.12 'Annual payments' cannot be determined until scheme liabilities in respect of a member have been discharged or the allocation of scheme assets finalised. This usually occurs at the end of the scheme wind-up process, which can take some time.

- 7.13 In order to provide some assistance to qualifying members who turn 65 and whose liabilities are not discharged before the end of wind-up, FAS can, at the request of trustees, make discretionary 'initial payments' in anticipation of their eventual receipt of annual payments. Initial payments top up any interim pension the scheme is paying to 60 per cent of expected core pension (subject to the cap and de minimis). Initial payments can also be made to survivors of qualifying members who have died during wind-up.

The Changes

- 7.14 These Regulations make a number of changes to the Financial Assistance Scheme Regulations 2005. The Regulations:
- substitute a new definition of multi-employer scheme to clarify that multi-employer schemes will satisfy the FAS qualification condition relating to employer insolvency if the principal employer of the scheme (or in the case of a sectionalised scheme, the section) has undergone an insolvency event, regardless of the solvency position of any other employer in the scheme. This ensures the regulations meet the policy intent.
 - set a date by which an insolvency event must occur if a pension scheme is to be considered a qualifying scheme within the Financial Assistance Scheme. The insolvency event and notification dates are currently linked within regulations. On the 16th February 2006 the Minister of State for Pensions Reform told Parliament that the Government intended to set a definitive cut-off date for insolvency by the end of the calendar year. This change would meet the original policy intention. A copy of the relevant Hansard extract is reproduced at Annex A. These regulations set a cut-off date of 28th February 2007.
 - provides the scheme manager with discretion to accept certain schemes as qualifying schemes where no insolvency event referred to elsewhere in the regulations has occurred to the employer, if he is satisfied that:
 - the employer is unlikely to continue as a going concern;
 - the value of the employer's assets are less than the amount of its liabilities, taking into account its contingent and prospective liabilities; and
 - the employer is unable to pay its debts as they fall due or have fallen due.

All of these conditions must have applied to the employer on or before 28th February 2007. This amendment will meet the Government's intention of ensuring such schemes are not excluded on a technicality whilst expecting ongoing solvent employers to support their schemes and provide the benefits members were expecting, rather than the taxpayer.

- allow the scheme manager to accept an employer's overseas insolvency event as a qualifying insolvency event for the purposes of the Financial Assistance Scheme, where he is satisfied that such an event substantially corresponds to one that the Financial Assistance Scheme already accepts in the UK for qualification purposes and that the employer is unlikely to continue as a going concern. These conditions must have applied to the employer on or before by 28th February 2007. Again, we do not want schemes that would meet all the other scheme qualification criteria to be excluded on a technicality where there is no reason other than in relation to the FAS for the employer to undergo a UK insolvency event. This change follows discussions with affected schemes.
- extend eligibility for help from the Financial Assistance Scheme to members of qualifying pension schemes who were within 15 years of their pension scheme's normal retirement age (NRA) on 14th May 2004. Further amendments are made to specify that those members within 7 years of their NRA on 14th May 2004 ('Group 1 members') will benefit from FAS topping up their pensions to 80% of their 'expected pension' (subject to the cap and de minimis mentioned previously). Those between 7 and 11 years from their NRA ('Group 2 members') will be considered for a top-up to 65% of their 'expected pension', and 50% for those between 12 and 15 years ('Group 3 members') (again subject to a de minimis and a cap). The extension was announced in the Pensions White Paper on 25th May this year.
- insert a new paragraph relating to the extension and initial payments of Financial Assistance. The Regulations specify that whilst initial payments can be requested on behalf of 'Group 1 members' who reach 64 and can be made to such members from age 65, such payments cannot be requested and made to 'Group 2' and 'Group 3' members. Group 2 and 3 members will not reach 65 until May 2011 at the earliest. We expect all FAS qualifying schemes to have completed wind-up by that date. Therefore, in the main, initial payments will not be appropriate for these groups of members. However, requests for initial payments can be made on behalf of Group 2 and 3 members who may be terminally ill. And

such requests can also be made on behalf of survivors of Group 2 and 3 members who die during wind-up.

- clarify our powers to reclaim the value of 'excess' initial payments where this is greater than the value of annual payments for the same period.
- clarify that a member of a qualifying scheme who satisfies the relevant conditions will still be a qualifying member even if he died before the coming into force of the main Financial Assistance Regulations in September last year.
- allow the scheme manager to have the discretion to deem an interim pension where an interim pension has been determined by a scheme but not paid for administrative reasons. In operational running we have been made aware of a number of schemes that would have been paying interim pensions but are not paying these for good administrative reasons (for example, where negotiations with insurance companies to secure annuities have been more protracted than expected). The intended effect is to allow us to make initial payments at an appropriate level under such circumstances.
- provide for the scheme manager to determine an 'expected pension' for members in receipt of a pension before the start of wind-up where typical data in relation to the 'expected pension' is unavailable. This could arise in cases where schemes completed wind-up some time in the past and records of pension rights have subsequently been lost. An equivalent provision relating to deferred and active members is already contained in the existing regulations.
- clarify that survivors of deceased qualifying members will be considered for payment only if the qualifying member was entitled to a FAS payment or would have been entitled to a payment had they lived. A member of a qualifying scheme may receive more than 80% of their expected core pension from their scheme. If so they will not receive a FAS payment. As survivor eligibility is based on member eligibility, in the first instance, we do not intend to pay survivors of members who would not themselves qualify for a FAS payment. However, as things stand, survivors of such members could qualify for a FAS payment (if, for example, the member's nominated scheme pension beneficiary is not their surviving spouse or civil partner). This amendment ensures assistance is not paid to survivors whose deceased partners met the age criteria but would not actually have received any money from

FAS. We will continue to pay any cases already assessed under the old rules.

- introduce amendments to Schedule 2 to clarify various points around the calculation of annual payments and initial payments for qualifying members and survivors. The amendments include allowing for lump sum payments to be taken into account in calculating initial payments (this brings them into line with the treatment of lump sums in calculating annual payments) and aligning the method used to calculate FAS payments in State Scheme Premium cases with the method used in Deemed Buy Back cases (in both instances members pay a premium to reinstate rights in the state scheme so it is appropriate to treat these cases consistently).

7.15 The Regulations amend the FAS Internal Review Regulations 2005 to

- clarify the definition of potential beneficiary.
- provide for a right of review and appeal of a decision as to whether or not a member is terminally ill by adding a new reviewable determination.
- provide that the scheme manager may issue certain notices via the FAS website where in his opinion it is reasonable to do so.

7.16 The Regulations also make some consequential amendments to the FAS Appeals Regulations 2005 to

- take account of the new reviewable determination in relation to terminal illness, and to ensure consistency as to when an interested person is to be treated as a party to the appeal.

Consultation

7.17 As these Regulations were 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 was required to consult such persons as he considered appropriate before making them.

7.18 The consultation period started on 24th July and closed on 17th September 2006. The length of the consultation struck a reasonable balance between time for respondents to contribute, and bringing in the rules to allow payments to be issued. Where proposals have been stimulated by previous consultation, Cabinet Office guidance provides that a shorter consultation period may be appropriate. Taking account of all these factors, Ministers decided that a consultation period of 8 weeks was appropriate.

7.19 A very limited response was received on the draft regulations with most of those who did respond criticising the broad scope of the scheme - such as the use of the NRA rule or the application of a cap - rather than the new proposals. A response to the consultation was published on the FAS website - <http://www.dwp.gov.uk/fas> - at the time these regulations were laid.

Guidance

7.20 Details of the proposed changes have been published on the FAS website. We have also been liaising with trustees and scheme managers to assist them in understanding the impact of the changes. We will also be updating our public facing leaflets and guidance.

Consolidation

7.21 Consolidated versions of the FAS regulations will be available in the Law Relating to Social Security (Blue Volumes). These can be found at <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/index.asp>. These are updated quarterly and are available on the internet at no cost to the public.

8. Impact

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

8.2 The impact on the public sector is nil.

9. Contact

Any enquiries about the contents of this memorandum should be addressed to: Mr C Jennings, Department of Work and Pensions, FAS Team
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Annex A

Cut-off Date for Insolvency

A Ministerial Statement by Stephen Timms, The Minister of State for Pensions laid in the House of Commons on 16 February 2006 (Hansard Extract)

Financial Assistance Scheme

The Minister for Pensions Reform (Mr. Stephen Timms): The general notification period for the Financial Assistance Scheme ends on the 28 February. The notification period began on 1 September and is the period during which the scheme manager must be supplied with some basic details of potentially eligible pension schemes in order for them to be considered for qualification. The scheme manager may, at his discretion, accept notification of those details for any particular scheme after the 28 February.

Although FAS offers help to those pension schemes which began winding-up between 1 January 1997 and 5 April 2005 where the principal employer became insolvent on or before 28 February, extending the notification period for any particular scheme also extends the period in which an insolvency event can occur. This means it may be possible for some pension schemes which would not otherwise qualify for FAS or for compensation offered under the Pension Protection Fund to become qualifying schemes for FAS. I wish to make it clear that we may be able to extend help to some individual pension scheme members who have lost part or all of their occupational pensions but who may not have appeared eligible for help from either FAS or the PPF.

The Government will set a definitive cut-off date for insolvency events before the end of the calendar year. Until then the scheme manager will consider requests for an extension to the notification period from those pension schemes that undergo a qualifying insolvency event after the 28 February.