

Further guidance for trustees regarding the Financial Assistance Scheme Halting Annuitisation Regulations 2007(SI 2007/2533)

Introduction

1. From today, The Financial Assistance Scheme (FAS) Halting Annuitisation Regulations 2007, pursuant to section 19 of the Pensions Act 2007, come into force.
2. The purpose of these regulations is to preserve the assets in qualifying schemes to maximise the potential benefit for scheme members identified by the FAS Review of Scheme Assets. The Government has committed to match the extra value that the Review identifies.
3. These regulations prohibit the purchase of annuities for a period of 9 months starting on 26th September except in circumstances where either under:
 - Regulation 2(1)(a), trustees have entered into a binding commitment to purchase annuities before that date; or
 - Regulation 2 (1)(b), trustees apply to the FAS scheme manager for approval to purchase annuities and the scheme manager approves such a purchase.
4. This guidance outlines the process and information requirements in more detail for trustees and administrators. There will be two processes for trustees to follow depending which category their scheme(s) falls into. [There is an application form for each process.](#)

'Binding commitments'

5. Trustees that have entered a '*binding commitment*' to purchase annuities by 26 September 2007, will be asked to provide a formal **notification of exemption**.

No 'binding commitments'

6. Trustees that have not entered a '*binding commitment*' to purchase annuities by 26 September 2007 but wish to do so, will have to complete an **application for approval to purchase annuities**.
7. It is important that trustees be aware that they should only apply for approval to purchase annuities where they have a contract that is immediately available that they wish to secure. We will only expect applications from trustees who are actually in a position to proceed to annuitisation i.e. who have received a buyout quote which they are minded to accept.

Notification of exemption process

Definition of 'binding commitment'

8. We will acknowledge that that trustees have entered into a 'binding commitment' to purchase annuities, if:
 - there is a contract or agreement in writing between the trustees and the annuity provider which binds the parties to undertake action to purchase annuities; and
 - the contract or agreement has legal force (this is where a legal challenge could be mounted against the trustees if they did not proceed with the purchase of annuities); and
 - the 'binding commitment' was made prior to 26th September 2007
9. Where the conditions above apply, a 'binding commitment' could be considered to in place even though, the contract/agreement does not specifically mention financial or other penalties for a withdrawal/surrender or a change of terms.
10. Where the contract/agreement does provide for a withdrawal or change of terms, it is a matter for the trustees to decide whether they wish to utilise this option.
11. Trustees should be aware that our focus will be on whether a legally enforceable agreement to purchase annuities has been made, **not** on whether trustees are able to withdraw from such an agreement.

Circumstances not considered to be a binding commitment

12. In general terms, any proposal or offer of terms would not be considered a binding agreement unless it has been formally accepted in writing. As such the items listed below would **not** constitute evidence of a binding commitment:
 - A minuted decision/agreement by trustees to purchase annuities from a particular provider.
 - A buy out quote that has been received but has not been formally accepted in writing.
 - A buy out quote where the terms have lapsed, or the deadline for agreement has passed without a formal acceptance in writing.

Notification process

13. If you believe that you are exempt from these regulations because you entered into a binding commitment to purchase annuities before 26th September 2007, please complete the attached **Notification of exemption** form and return it to the FAS operational unit as soon as possible.
14. In most cases, the information on the form should be sufficient and the Notification will be returned to you having been acknowledged by the unit. However, where there are differences between the information already held in the FAS operational unit, and the information provided on the form, we will contact you again and request confirmation of your exemption by asking you to provide written evidence of your binding commitment.
15. There have been some concerns raised, that qualifying FAS schemes which choose to annuitise now may not benefit from any additional funding identified by the FAS Review of Scheme Assets. This is not correct. It is our intention to consider the position of all qualifying members of FAS schemes when developing payment criteria in line with any approved recommendations of the review.

Applications to purchase annuities for members of qualifying schemes

16. If you have not entered into a binding commitment to purchase annuities before 26th September 2007, but wish to do so (after that date), you will have to complete an **Application for approval to purchase annuities**, and send it to the FAS operational unit.
17. We would expect trustees to provide documentation to support the application.
18. Applications can be in respect of:
 - The scheme as a whole.
 - Individual members.
 - Groups of members categorised as such as a consequence of the operation of relevant priority orders (e.g. pre-discontinuance pensioners or deferred members).
 - Other groups of members who *do not* share a common category of membership under a priority order but for whom there are common reasons why you consider that annuity purchase is appropriate.

Our considerations

19. Whilst individual applications will be considered on their merits, we will be mindful of the intention to preserve overall assets within qualifying FAS schemes. This is because the additional matched funding from Government for FAS (to move towards 90% of expected core pension), is

dependent on the amount of assets remaining in schemes. This means that annuitisation by individual schemes could limit the value of additional funding promised by Government to the detriment of overall assistance levels for all members. It is to help manage this risk, that these regulations have been put in place.

20. In addition, we are likely to take some or all of the following factors into account when considering whether to approve an application for approval to purchase annuities. However, please note that this list is not exhaustive.

- The levels and types of benefits to be secured by annuity.
- The terms offered by the proposed annuity contract.
- The position of the FAS Review of Scheme Assets when approval is being considered.
- Exceptional situations where the personal circumstances of individual members, (such as terminal illness, ill health) are such where it is believed that the benefits to be secured would be of material benefit to them (over and above the anticipated benefits for all qualifying FAS members).

21. Decisions will be made based on the information you supply with your application. FAS will not routinely write to trustees to request further information in support of any application unless this is vital to our consideration of the application. Therefore, it is up to you to ensure that you include any relevant or supporting documentation with your application and are explicit as to how any accompanying documentation supports your reasons for the application.

22. The FAS Operational Unit will aim to provide a decision on your application within 30 days. However, more complex applications may take longer. The FAS operational unit reserves the right to defer a decision pending further investigation or to obtain more detailed information from the trustees.