

Financial Assistance Scheme

Trustee Update – dated 6 March 2008

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

Subject: Ministerial Statement from Mike O'Brien Minister of State for Pension Reform, and consultation overview.	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. As you are aware, last year a Review was conducted by Andrew Young of the Government Actuary's Department (GAD) to identify whether additional value could be generated by an alternative use of the residual assets in pension schemes qualifying for the Financial Assistance Scheme (FAS).
2. Following the publication of their interim report in July, which reported that better value could be achieved if assets were taken into Government, the Young Review issued its final report in December 2007. The principal finding was that additional value could be gained by taking in all the assets remaining in qualifying FAS schemes, including those in respect of members who would not benefit from FAS assistance under the current rules.
3. The Secretary of State responded to these findings on 17th December 2007 and said that the Government would take in all remaining assets of qualifying FAS schemes as a 'windfall' payment and make associated payments to members as they fall due. He also announced a significant package to reform FAS:
 - All scheme members will be guaranteed 90% of their accrued pension at the date of commencement of wind-up, revalued to their retirement date.
 - Assistance will be paid from the scheme's normal retirement age, subject to a lower age limit of 60.
 - People who are unable to work due to ill health will be able to apply for early access to their payments from the age of 60 (subject to actuarial reduction).
 - This will be subject to a cap of £26,000, the value of which will be protected.

- Payment of assistance derived from post-1997 service will be increased in line with inflation (subject to a 2.5% limit).
 - Where their share of scheme funds allows, members will be able to commute some portion of their pension to a lump sum.
 - Assistance will be extended to members of schemes which wound up underfunded (after 1st January 1997 and before the employer was required to meet the full buy-out cost) where the employer is still solvent.
4. The purpose of this update is to provide trustees with information and guidance on the following areas:
- An overview of a Ministerial statement issued today and the proposed legislative timetable for implementing the reforms outlined above.
 - An overview of the role of trustees of qualifying FAS schemes over the coming months.
 - An overview of the programme of consultation and communication that trustees can expect over the coming months. This will provide opportunities for trustees to give feedback on policy development and input into the supporting operational processes outside of the formal consultations linked to the legislative process.
 - Guidance in respect of the key issues surrounding schemes in wind-up such as:
 - Transfer values
 - Winding up lump sums
 - Retirement lump sums
 - Money purchase benefits

Ministerial statement and legislative timetable

Immediate policy changes

5. It will take time to work through the detailed policy to implement all the key changes. However, the priority for Government is to ensure that payments at increased levels are made to members as soon as possible. For these reasons, the full range of the changes announced will be implemented through both primary and secondary legislation in four separate packages.
6. The Minister for Pension Reform, Mike O'Brien issued a statement on Thursday 6th March to outline the details of the first package of Regulations, which have been published for consultation. His full statement can be found on the FAS website at www.dwp.gov.uk/lifeevent/penret/penreform/fas/news.asp

7. The first package of draft Regulations will increase the assistance rate from 80% to 90% and allow FAS to pay members from their scheme normal retirement age, subject to a lower age limit of 60 (as before, entitlement to FAS payments will not arise for the period before the date that FAS was first announced, 14th May 2004).
8. In line with our intention of getting increased payments to members quickly, these draft Regulations have been issued for a written consultation period of 2 weeks. The full consultation document and details of how you can comment on the draft Regulations can be found on the DWP website at [www.dwp.gov.uk/publications/dwp/2008/FinancialAssistanceScheme\(MiscellaneousAmendments\)Regulations2008.pdf](http://www.dwp.gov.uk/publications/dwp/2008/FinancialAssistanceScheme(MiscellaneousAmendments)Regulations2008.pdf) and www.dwp.gov.uk/publications/dwp/2008/revision-of-annuity-factors-in-FAS.pdf

Annuity factors

9. In addition, we are consulting on proposed changes to the annuity factors used by FAS when converting cash sums taken by members into rates of 'notional pension' when top-up payments are calculated (for example where commutation lump sums or transfers have been taken during wind-up). It is our intention that the proposed factors be applied in old as well as new FAS cases and will tend to result in an increase in FAS payment levels where current factors have already been used to assess payments.

Deemed Buyback

10. The Minister also signalled the Government intention to remove access to Deemed Buyback for qualifying FAS schemes. The statement says:

'We will be seeking to make this change as part of a package of FAS Regulations that will come into force in July, subject to passage through Parliament. Some trustees will already have received information on the costs of buying back (known as "Technical Amounts") from HMRC. HMRC will continue to process any applications subsequently received in respect of members for whom that information has been supplied. However, from today, HMRC will suspend action on requests for 'Technical Amounts' pending Parliamentary consideration of the proposed Regulations.'

Timetable for further changes

11. Further changes to FAS will be brought forward in a second package of Regulations which we intend to publish for consultation by the end of March 2008. Subject to the Parliamentary process these regulations should be in force by the end of July 2008.

12. The Government intends to use the current Pensions Bill to bring forward primary legislation in relation to FAS. In particular, we will need primary legislation to facilitate payments to members who would not qualify for FAS under current rules. Subject to the passage of the Bill through Parliament, we hope that it will receive Royal Assent before the summer recess in July.
13. The final package of Regulations will contain the remainder of the key changes to FAS. We currently envisage that a draft of these Regulations will be issued for consultation by the end of the year and come into force early in 2009.
14. Each package of legislation is likely to contain other changes to support the extensions outlined in the December announcement. These changes are likely, for example, to provide FAS with wider powers in respect of information gathering and the monitoring and supervision of the wind-up process.
15. Further details regarding the legislative timeframes for the remainder of the proposed changes can be found in Annex A. *However, please note these dates are provisional as all requirements and timescales are subject to alteration as a result of formal consultation and Parliamentary processes.*

Role of trustees during the 'Transition period'

16. We expect to transfer all remaining assets and scheme data from the majority of qualifying FAS schemes by 30th June 2010. The period from now until all remaining assets and requisite data has been passed to Government will be referred to as the 'transition period'.
17. Throughout the transition period, trustees remain responsible for the day to day running of schemes and accountable for the decisions taken during their tenure.
18. Trustees will be expected to protect the remaining assets in qualifying schemes from unnecessary use or excessive expenditure. We will expect Trustees to be mindful of these issues regardless of the fact that any depletion in scheme assets is now effectively underwritten by the Government. The following paragraphs outline some key areas which have the potential to affect the level of expenses within schemes.

Legal action

19. Where trustees are considering taking legal action to resolve a dispute or secure additional funds for the schemes, we would expect them to undertake a cost benefit analysis of any proposed action, weighing the cost of pursuing legal action with the benefit to the scheme of a positive outcome, along with the likelihood of success. These matters should be considered **without** regard to the fact that any losses would now be effectively underwritten by Government. In summary, trustees should consider the position concerning proposed legal dispute in the same way as they would have done prior to the announcement made in December 2007.

Investment strategy

20. We understand that most trustees will have reviewed their scheme's investment strategy when it began to wind-up and that many trustees have adopted a 'gilts matching' policy or some other method of closely aligning the assets with the scheme liabilities. During the transition period, trustees will be expected to manage their investments in a prudent manner consistent with their duties before the announcement in December. Where trustees feel that a move of investments towards higher risk categories than currently held is in the interests of members, we would expect trustees to contact the FAS operational unit to discuss the matter prior to any decision being made.

Fees and expenses

21. We would ask all trustees to carefully consider the fees and expenses charged to the scheme and where they have not done so already to consider the following areas:

- Wherever possible moving to fixed fee arrangements with their scheme advisers for the remainder of the wind-up. Trustees will need to consider what tasks are outstanding for the particular scheme professional/or adviser and consider whether agreeing a fixed fee for this work would assist in minimising costs to the scheme and assisting trustees to determine the assets available to pay benefits. Trustees are also expected to look at their own expenses and ensure that tasks are carried out efficiently and in the most cost effective ways. It is likely that FAS will seek information from trustees about estimated fees and expenses to be paid for the remainder of the wind-up process;
- Compliance activity – trustees should consider whether compliance tasks such as annual audited accounts or completion of a statutory MFR valuation contribute to the progression of their scheme(s) through the wind-up process. It may be that there is scope to reduce scheme costs through the deferment or removal of tasks related to compliance, such as doing a single set of accounts at the end of the wind-up process rather the commissioning auditors to conduct this exercise for each scheme year end. Where trustees identify any potential savings in this area, they should contact the Pensions Regulator to obtain the necessary assurance that the Regulator is content with their approach and will not seek to penalise the trustees for their actions.

22. Further detailed guidance around the key aspects of the trustees' role and responsibilities will be issued in due course.

Issues around winding-up

23. We appreciate that trustees may have some concerns about how they should approach some key areas of their work in order to preserve assets within qualifying

FAS schemes, given the Government's announcement. Listed below is some guidance which outlines FAS expectations around some key issues which may arise during the wind-up process.

Transfers

24. Trustees should continue to allow transfers for members where it is reasonable and practicable to do so.

Retirement lump sums

25. In due course, we intend to ensure all members whose assets are taken over by the FAS will receive the lump sum they could have expected had their scheme continued to wind-up. Before then, trustees should continue to consider the payment of tax free lump sums to members who reach retirement during wind-up under the same constraints as applied prior to the December announcement (i.e. in accordance with the scheme's rules, HMRC limits, limitations on the commutation of the GMP benefits and the member's anticipated share of fund). For clarification, please note that you should not take into account the level of FAS assistance payable to a member when calculating the member's share of fund.

Winding-up lump sums

26. Paragraph 10, Part 1, Schedule 29 of the Finance Act 2004 allows trustees to extinguish a member's entitlement under the scheme by the payment of a lump sum. For these payments there is *no* aggregation test against the 1% life time allowance limits (currently £16,000) set by HRMC. During the transition period, FAS would expect trustees to continue to offer these payments, where appropriate.

Money purchase benefits

27. We are aware of a number of issues relating to money purchase benefits. Trustees have explained that in some cases they are unable to secure money purchase benefits separately from the remainder of scheme benefits and FAS currently has no mechanisms for including these types of benefits when assets are transferred to FAS. We are currently considering this issue and exploring the experience of the PPF in this area and will issue further guidance in due course.

Equalisation

28. We are aware that some schemes have received advice to re-visit decisions taken in relation to GMP equalisation in light of the extension to the FAS. It has always been the Government's view that the Barber and subsequent judgments do not require the GMP to be equalised: rather it is the scheme benefits as a whole that

should be equal as between men and women. In the absence of any definitive Court ruling in this area, we would prefer if schemes avoided incurring legal expenses simply to review their position.

29. We are also aware that a small number of schemes may not have yet equalised their scheme benefits (perhaps because they have only recently discovered that a valid amendment was not made to scheme rules). Those schemes should be seeking to equalise benefits before the end of wind-up. We naturally want trustees to ensure that their scheme abides by the equal treatment legislation, but do not believe they should go any further than what is required by that law. In particular, we ask trustees to consider whether there was an 'opposite sex comparator' when deciding whether to increase benefit payable to members.

Halting annuitisation

30. Trustees are currently required to obtain approval before purchasing annuities by making an application to FAS in writing. The Government intends to extend the halt on annuitisation for qualifying FAS schemes where there is no prior 'binding commitment' to purchase annuities, beyond the current cut off date of 25th June 2008. Further details about the extension of these regulations will be issued in due course.

31. Further guidance about applications to annuitise and circumstances in which they may be approved, in light of the December announcement will be issued shortly.

32. In situations where trustees have already purchased annuities for individual members, but wish to 'top up' the same annuity policies to provide additional benefits to members, no written application is necessary. However, please note that where trustees are proposing to 'top up' the benefits of individual members who have already annuitised by the provision of a *new* or *additional* policy in the member's name, trustees **must** apply to FAS for approval to purchase these annuities in the normal way.

33. Also where trustees hold annuities in the name of the scheme, trustees are able to transfer these annuities into the names of individual members without further reference to FAS.

Administrators

34. We appreciate the pivotal role that administrators play in the provision of the data required to calculate FAS payments. In order to meet the challenging deadline of 30th June 2010 to affect the transfer of all data and assets to government, we feel it important to put greater emphasis on communication and cooperation between FAS and administrators.

35. For these reasons it is our intention to contact all administrators of qualifying FAS schemes to discuss ways for managing the provision of data and improving partnership working arrangements with their companies. Further information about this initiative will be issued in due course.

Consultation and Communication

36. The implementation timescale for the revised scheme is challenging and trustees will continue to have an opportunity to provide comments during the formal consultation periods for each set of regulations. However, we will also be asking trustees to consider some early proposals for some key policy areas as well as our operational processes, in order to ensure that our proposals will be workable in practice.
37. We are particularly interested to hear from any trustees who have less than 10 schemes within their FAS portfolio and who would like to be involved in discussions about the operational implications for smaller schemes and trustee boards/companies during transition.

Request for information from trustees

Identifying excluded schemes

38. We are also looking at schemes in unusual circumstances, for example those which are not eligible for the PPF nor qualify for FAS either because of the date of the employer insolvency or when the wind-up began. If any trustee is aware of any schemes in similar situations, could you please let us know as soon as possible.

Yours Sincerely

Pat Ferguson

Unit Manager
FAS Operational Unit

TIMETABLE FOR IMPLEMENTING FAS REFORMS

First package of regulations	
<i>Type of legislation</i>	Regulations (secondary)
<i>Key changes</i>	<ul style="list-style-type: none"> • Change headline rate of assistance to 90% (subject to cap). • Make FAS payable from scheme NRA (subject to lower age of 60). • Make related changes to revaluation rules.
<i>Date issued for consultation</i>	Written Consultation period of 2 weeks from 6 th March 2008 to 20 th March 2008 for draft Regulations. 6 weeks from 6 th March to 18 th April 2008 for annuity factors. Consultation documents available now.
<i>Target date for Regulations to come into force</i>	By 30 th May 2008. (However, please note the operational unit intends to complete the recalculation of all eligible members and survivors currently receiving payments by August 2008).

Primary legislation	
<i>Type of legislation</i>	Pensions Bill 2007
<i>Key changes</i>	<ul style="list-style-type: none"> • Powers to make members who are due to receive full scheme benefits eligible members of FAS. • Technical amendments in relation to information gathering, and clarification of current powers. • Extending the halting of annuitisation beyond 25th June 2008.
<i>Target date for provisions to become law</i>	July 2008 (if Bill receives Royal Assent before summer recess of Parliament) October 2008 (if Bill does not receive Royal Assent before summer recess)

Second package of regulations	
<i>Type of legislation</i>	Regulations (secondary)
<i>Key changes</i>	<ul style="list-style-type: none"> • To allow qualification for certain schemes which began to wind-up between the relevant dates, which have a solvent employer, where the full buyout debt did not apply. • Early reduced payment for certain members who are ill and unable to work. • Removal of the requirement on trustees to apply for initial payments for members. • Removal of access to Deemed Buyback for qualifying FAS members. • Changes to information requirements on trustees and scheme professionals.
<i>Target date to issue for consultation</i>	End of March 2008
<i>Target date for Regulations to come into force</i>	By 30 th July 2008

Third package of regulations

<i>Type of legislation</i>	Regulations (secondary)
<i>Key changes</i>	<ul style="list-style-type: none">• Set out calculation basis for payments to those members who would have received over FAS levels from their scheme.• Method for maintaining value of the cap.• Indexation of post-97-service-related assistance.• Other changes to normalise the current operation of FAS with revised scheme.• Taking over remaining assets in schemes.
<i>Target date to issue for consultation</i>	To be confirmed
<i>Target date for Regulations to come into force</i>	To be confirmed

However, please note that all requirements and timescales are subject to alteration as a result of formal consultation and Parliamentary processes