

FINANCIAL ASSISTANCE SCHEME

THE FINANCIAL ASSISTANCE SCHEME REGULATIONS 2005

Government response to the consultation

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INTRODUCTION

1. In April 2005 the Government undertook a consultation on the draft Financial Assistance Scheme Regulations 2005. The consultation lasted for six weeks and ended on 16th May.
2. 73 responses were received. A list of respondents is at Annex A. The Government is very grateful to all who contributed to the consultation, including members of the Industry Working Group and individual scheme members who were invited to make contributions in person at meetings on the 12th and 16th May. The comments have been very helpful in finalising the draft regulations.
3. The Financial Assistance Scheme Regulations 2005 were laid on 22nd June and are available on OPSI's website at <http://www.opsi.gov.uk/si/si2005/draft/20052955.htm>
4. In addition you may also wish to view The Financial Assistance Scheme (Internal Review) Regulations 2005 at the same website: <http://www.opsi.gov.uk/si/si2005/draft/20052953.htm>
5. This document is available on the Department for Work and Pensions' website at <http://www.dwp.gov.uk/consultations/2005/index.asp>
6. A paper copy of this document can be obtained from:

Helen Dobbie
Department for Work and Pensions
3rd Floor
Adelphi
1-11 John Adam Street
London WC2N 6HT

Telephone: 020 77122365
7. This document describes the policy underpinning the changes being made to the Financial Assistance Scheme Regulations. Comments on the regulations should not however be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.

RESPONSES TO CONSULTATION

Overview

1. This document sets out the main points made in the consultation and provides the Government's response. Six topics attracted the most interest with a range of comments on other issues. This response therefore discusses comments received on:
 - Schemes with solvent employers
 - Schemes where an employer no longer exists
 - Effective date of eligibility for assistance
 - Definition of normal retirement age
 - Application of £12,000 benefit cap and £520 de minimis rule
 - Payment from age 65
2. There were other comments on topics such as the adequacy of funding made available for the Financial Assistance Scheme but, as these are not part of the regulations, they are not discussed here. The Government has, however, noted these comments.

Schemes with solvent employers

3. Many respondents expressed concern that members of schemes sponsored by solvent employers would be excluded from the FAS and are facing losses of the same order as members of schemes sponsored by insolvent employers. This was felt to be unfair in cases where compromise agreements have been reached by trustees and employers acting in good faith to maximise the funding position of schemes and to avoid insolvency.

Response

4. The Government believes that solvent employers have a duty to support their schemes and to provide the benefits that members were expecting. We recognise the difficulties which members of such affected schemes face. Nevertheless, we believe that it is right for FAS to focus its help on those schemes where there is no solvent employer at all.

Schemes where an employer no longer exists

5. A number of responses were received in respect of a particular scheme which has not entered an insolvency event but where the employer has ceased trading, been dissolved and no longer exists. Dissolution itself was not defined as an insolvency event in the draft FAS regulations issued in April, nor is it treated as an insolvency event under other pensions' legislation.

Response

6. As above, the Government considers that solvent employers remain primarily responsible for expected pension provision. However, it recognises that this is not practical in cases where an employer no longer exists due to the dissolution of the company. The FAS will therefore provide assistance where such employers no longer exist and the other eligibility conditions are met and the draft regulations have been altered accordingly.

Effective date of eligibility for assistance

8. Many respondents were unhappy that eligibility for FAS payments requires a member to be within three years of their scheme's normal retirement age on 14th May 2004. This was considered by many to be an arbitrary date that would deny people in very similar circumstances to eligible members access to the FAS and would mean that some people who may have been scheme members for a long time would not be eligible for an award.

Response

9. The Government acknowledges the strength of feeling that having such a 'cut-off' date arouses but believes that, given the funds available for the Financial Assistance Scheme, help must be focused on those who are facing the most urgent difficulties and are closest to, or have already arrived at, retirement age and therefore less able to replace their lost pensions.
10. The FAS will be reviewed after three years and its funding will be considered in the next spending review alongside other spending priorities.

Definition of normal retirement age

10. The draft regulations stated that, for the purpose of determining eligibility for the FAS, ' "normal retirement age" means the age specified in the rules of a qualifying pension scheme at which a member will normally retire'.
11. Concerns were raised in the consultation exercise that it needs to be clear that the definition applies to that individual member. It also highlighted a case where, in the months prior to scheme closure, scheme rules were changed to substantially raise this normal retirement age which would have a detrimental and unfair effect on the ability of members to qualify for the FAS.

Response

12. The Government has clarified the definition to make it clear “normal retirement age” means the age specified in the rules of that scheme at which that member will normally retire. In addition, the Government does not consider that it would be appropriate to use an inflated scheme retirement age where the rule change took place in the run up to scheme closure. If a normal retirement age is over 65, therefore, it will be deemed to be 65 for FAS purposes.

Application of the £12,000 benefit cap and £520 de minimis rule

13. Some respondents considered that the £12,000 cap on FAS assistance was unfair and would disproportionately affect long term employees and those who had amassed, and expected, sizeable pensions through working hard and contributing to the business. There was concern that its application would mean that some people will get considerably less than the 80% of their expected pension that the FAS implies.
14. Concern was also expressed that application of the de minimis rule would deprive those on low incomes of money to which they were entitled. Some respondents suggested that in such cases a one off lump sum could be paid.

Response

15. The Government acknowledges the strength of feeling that the cap and de minimis rule arouses but believes that its aim – to target available resources on those with the most significant losses – remains correct. Increasing the cap, for instance, would not make significant numbers of additional people eligible for the FAS and would, in practice, give more money to those already eligible.

Payment from age 65

16. Many respondents objected to the proposal that FAS payments should begin on the recipient’s 65th birthday (or the 14th May 2004 whichever is later), arguing that payments should begin (and be backdated to) scheme pension age. Others were concerned that waiting for the wind-up process to be completed would significantly delay payments.

Response

17. The FAS provides assistance to some of those who have lost out by the failure of their occupational pension scheme. It does not attempt to compensate for that loss or to reflect the rules and conditions of individual schemes: to do so would introduce administrative complexity and substantially increase costs. The Government considers that backdating FAS payments to the later of the 65th birthday or 14th May

2004 means that taxpayers' money made available for the scheme can assist the widest range of people.

18. The Government acknowledges that it would not necessarily be appropriate to delay FAS payments to eligible scheme members who reach their 65th birthday but whose schemes have not completed wind-up and for whom, therefore, a definitive award cannot be calculated. The Financial Assistance Scheme manager will, therefore, have the discretion to make initial payments at a 'safe' rate of 60% of expected pension entitlement to eligible scheme members who have attained the age of 65. This award will be recalculated and any arrears paid when their scheme completes wind-up. The Government believes that this approach ensures that members are not grossly penalised for delays in the winding-up process and reflects the approach of many pension schemes in making similar 'safe' payments to members in similar circumstances.
19. The Government has also decided that in cases where a scheme member aged under 65 is eligible for the FAS, suffering from a terminal illness and not expected to live for longer than six months, then FAS payments will be made with immediate effect.

General Comments

20. There were also a number of drafting suggestions and requests for clarification in the legislation. The Government has taken these on board where necessary or desirable.

Thanks

21. We are most grateful to all those who took the time to comment on the draft Regulations.

List of respondents

Barry Allen
Dr Ros Altmann
Robert Balshaw
Michael Berry
James Breakell
Lin Brotherstone
Tony Brown
CMS Cameron McKenna (representing members of Parsons Group
International Pension and Life Assurance)
KW Canfield
Paul Cannon (W Notting)
Claire Carey (Sacker and Partners)
Ken Charmer (Citex)
Moiria Chapman
Dave Cross
C Darling (trustee, Brian Colquhoun Staff Pension Scheme)
Barry Digwood
Norman Dowie (Standard Life Insurance)
Sandy Easton
John Francis
Brian Freake (Amicus)
Dennis Gadsby
Nigel Hawkes (trustee, Lionheart Group Pension Scheme)
John Hayter
Henlys Pensions Action Group
Angela Hills
Alexander Horn
D Howell
Peter Humphrey
John Hunt
Maurice Jones
Bernard Lamb
Patricia Lawlor
Alison Layton-Henry (representing trustees of W Notting scheme)
Michael Leahy OBE (Community Union)
Ian MacDougall
J Mackmurdie
Alan Marnes
Derek Moorhouse
Terry Monk (Independent Trustee Services Ltd)
J Mortimer (Society of Pension Consultants)
Richard Nicholl (trustee, FH Burgess)
Gordon Nixon (Sturmlay-Archer Staff and General Pension schemes)
Occupational Pensioners' Alliance
Louise Perkins
Jacqueline Price

Willie Riggans (UEF)
David Robertson (Association of Consulting Actuaries)
John T Robson
Kevin Royle
Paul Ruse
Burgess Salmon (trustee, Dalgety Pension Scheme)
Michael Salters
Patricia and Keith Sargent
Stephen Scholefield (Holder Consultants Pension Scheme)
Moirá Shearer (Law Society of Scotland)
Robert Smith
Sam Smith
J Stomer
Philip Sutton
Christopher Symington
Robert Thornton (Scottish Widows)
John Townend (trustee, Chapman Group Pension Scheme)
Gloria Tucker (Faculty and Institute of Actuaries)
Peter Tupman
ADC Turnbull
Jean Wade
Alan Warner (trustee director, Lionheart Group Pension Scheme)
GJ Whiting
Coast Yiasoumi (Mercer)