

FINANCIAL ASSISTANCE SCHEME
THE FINANCIAL ASSISTANCE SCHEME (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2006

The Government response to the consultation

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INTRODUCTION

1. On 24th July 2006 the Government launched a consultation on the draft Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006. The consultation lasted for eight weeks, ending on 17th September.
2. This document sets out the main points made in relation to the draft regulations and provides the Government's response.
3. 15 respondents provided their views or those of the organisation they represent. A list of these is at Annex A. The Government is very grateful for their contribution to developing a final draft of the new regulations, which were laid on 15th November 2006 with a view to them coming into force on by the end of the year subject to Parliamentary approval. A copy of the regulations can be found on the FAS website: <http://www.dwp.gov.uk/fas>
4. This document describes the policy underpinning the changes being made to the Financial Assistance Scheme (FAS) 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.

RESPONSE TO CONSULTATION

5. The following proposed changes within the draft regulations attracted interest:
 - extending the FAS to those within 15 years of their scheme's normal retirement age
 - employers subject to overseas insolvency proceedings
 - allowing schemes to qualify where the employer does not have sufficient funds to undergo a qualifying insolvency event
 - qualification conditions relating to employer insolvency for multi-employer schemes
 - revising the calculation of FAS annual payments to reduce discrepancies in payment levels
6. However, many comments were on the broad scope of the scheme rather than the new regulations, covering topics such as the position of solvent employers, the full restoration of pension benefits, the application of a cap and the non-indexation of FAS payments. Although we appreciate that many respondents feel strongly about these issues, the Government's approach to these areas has been consulted upon previously as part of the original FAS regulations in 2005, and were responded to at that time. We will not, therefore, revisit them in detail here. The Government has, however, noted these comments.

Discussion

Extending the FAS to those within 15 years of their pension scheme's normal retirement age

7. Although some respondents welcomed any extension to the scheme many objected to qualification being linked to a member's normal retirement age within the scheme rules and the cut-off point this creates, particularly for members with long service but who fall just outside the qualification date. The phased approach to the level of assistance for new members brought into the scheme by the extension was also criticised as being unfair.

Response

8. Whilst the Government acknowledges the strength of feeling on this issue, in any cash limited scheme there will always be people who miss out. Extending the scheme to those within 15 years of their pension scheme's normal retirement does much to help those who may have suffered significant losses but are least likely to be in a position to be able to make up the shortfall. The Government believes that extending FAS coverage to 15 years is the most that the taxpayer can be expected to bear. Most taxpayers do not benefit from defined benefit occupational pension schemes and cannot be expected to assume responsibility for the pension scheme liabilities of those that do.
9. The Government feels that extending the full benefits of FAS to those within 7 years of their pension scheme's normal retirement age does as much as is practicable to help those who may have suffered significant losses but are least likely to be able to make up the shortfall. Those between 7 and 15 years from scheme pension age are in a better position to make up any shortfall in their retirement income and so a lower rate of assistance is appropriate.

Allowing schemes to qualify where the principal employer has been subject to overseas insolvency proceedings.

10. Of those that responded on this issue, all were in favour of this extension to scheme qualification although some would welcome further clarification of how it will work in practice.

Response

11. The scheme manager will 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 in relation to the employer on or before the 28th February 2007.

12. The Government considers that this approach will ensure that such schemes, which fulfil all other qualifying criteria, are not excluded on a technicality.
13. The onus will be on the scheme to provide the necessary information to satisfy the Scheme Manager that they meet the conditions outlined. We are currently developing guidance on this change.

Allowing schemes to qualify where the employer does not have sufficient funds to undergo a qualifying insolvency event.

14. Respondents on this issue asked for further clarification on how this might work in practice particularly in relation to how a scheme's going concern status might be determined. Others expressed concern that the amendment would only allow a small number of extra schemes to qualify for FAS and members of schemes sponsored by ongoing solvent employers would continue to be excluded from the FAS despite facing losses of the same order as members of schemes sponsored by insolvent employers.

Response

15. Following discussions with the Insolvency Service on this issue the Government feels that a more appropriate approach would be to provide the scheme manager with the discretion to accept certain schemes as qualifying schemes in relation to which no insolvency event referred to elsewhere in the regulations has occurred to the employer where he is satisfied that the employer is unlikely to continue as a going concern, that the value of the employer's assets is 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. These conditions must have applied to the employer on or before 28th February 2007.
16. This will meet the Government's intention of ensuring such schemes are not excluded on a technicality whilst still expecting ongoing solvent employers to support their schemes and provide the benefits members were expecting, rather than the tax payer.
17. The onus will be on the scheme to provide the necessary information to satisfy the Scheme Manager that they meet the conditions outlined. We are currently developing guidance on this change.

Qualification conditions relating to employer insolvency for multi-employer schemes.

18. There was a request for further clarification of what this change entails and how we define such schemes.

Response

19. "Multi-employer scheme" means an occupational pension scheme in relation to which there is more than one employer.

20. However, to meet the current definition of 'employer', employers must have been employing active members within the scheme when active members were last employed in relation to the scheme.

21. So, if a scheme included an employer who was actively participating in the scheme immediately before wind-up and a principal employer who was not then that scheme would not technically be considered a multi-employer scheme. And such a scheme would not technically qualify for the FAS if the principal employer was insolvent but the participating employer solvent.

22. In many cases, the solvency position of the principal employer provides a good indicator of the solvency position of a group of companies as a whole. Because of this, the original policy intention was to base qualification of multi-employer schemes on the solvency position of the principal employer in the first instance, regardless of the solvency position of other employers connected to the scheme, and regardless of whether or not that principal employer may have been employing active members in relation to the scheme. We are making these changes so that the original policy intention is met.

23. As the FAS Regulations stand, schemes in which the last employer (or employers) of active members is 'insolvent' meet the insolvency qualifying condition regardless of the solvency status of the principal employer. Under the amendments we propose it is intended that schemes of this type will continue to meet the qualification condition relating to employer insolvency

24. Therefore, under the proposed changes to regulations, multi-employer schemes will meet the qualification criteria relating to insolvency where the principal employer is insolvent. Also, if the principal employer is not one of the last employers of active members, the scheme will meet the qualification criteria if the last employer (or all of the last employers, if more than one) of active members has (or have all) undergone an insolvency event, even if the principal employer remains solvent.

Revising the calculation of FAS annual payments to reduce discrepancies in payment levels.

25. We did not receive any substantive responses on this issue. Responses we did receive were broadly supportive of the indicative change we suggested, but asked for further clarification in particular areas, especially in relation to the operation of the cap and de minimis rule.

Response

26. We have decided to take more time to consider this complex issue and to consult directly with the pensions industry to ensure any changes are practicable and will improve the current process for calculating payments. If we decide changes are needed we will provide detailed proposals early in the New Year with a view to the necessary changes coming into force in late Spring 2007.

27. This work will include consideration of the treatment of members who have retired early, those retiring during wind-up and the application of the cap and the de minimis rule as described in the consultation document.

Other issues of note

Setting a date by which an insolvency event must occur.

28. Proposals to set a cut-off date for insolvency events of 31 December 2006 did not prompt a response but, on reflection, we feel it is sensible to allow a slightly longer period after the regulations come into force so that any schemes that wish to try and benefit from the extended cut-off date will have a little extra time to do so. We will therefore apply a cut-off date of 28th February 2007, a two month extension to that originally proposed in the draft regulations.

29. Clarification was requested on whether we would automatically extend the notification period for schemes when the relevant employer was expected to undergo an insolvency event before the final cut-off date.

Response

30. The notification period will be extended on request in circumstances where an insolvency event has not occurred but is expected to occur before the 28th February 2007.

General comments

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

Our thanks

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

Mike Le Brun

**Head of Policy and Legislation
Financial Assistance Scheme**

LIST OF RESPONDENTS

Name	Organisation
Robert Forty (fwd by Ros Altman)	N/A
Pat Lawlor	N/A
Barry Digwood	N/A
Kenneth Molloy	N/A
Richard Nicholl	N/A
Trevor Nuthall	Norwich Union
G.R. Isden	The PAL Partnership Limited
David Robertson	Association of Consulting Actuaries
Graham Burbridge	N/A
Tony Croton	N/A
John Wilson	The Society of Pension Consultants
Chris Hayes	HR Trustees Limited
Robert Inglis	The Actuarial Profession
Terry Monk	N/A
Katherine Parker	The Insolvency Service