Department for Work and Pensions

Consultation

The draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008

The Pensions Group
Part of the Department for Work and Pensions

Our address
Department for
Work and Pensions
3rd Floor
The Adelphi
1-11 John Adam Street
London
WC2N 6HT

Website www.dwp.gov.uk/fas

Date 06 March 2008

Dear Sir or Madam

Consultation on draft regulations - The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008

This consultation document seeks views on the draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008, which are being introduced to implement key elements of the extension to the Financial Assistance Scheme (FAS) announced on 17 December 2007 by Rt Hon Peter Hain, the then Secretary of State for Work and Pensions.

Under the terms of the December announcement, all qualifying members will be guaranteed 90% of their accrued pension, which will be paid from the later of the scheme's normal retirement age ('NRA') and age 60. The draft regulations are intended to implement these key enhancements to the scheme.

Our priority is to ensure that eligible members receive payment at these revised levels as soon as possible. <u>To help achieve this aim the written consultation period for these regulations has been limited to 2 weeks</u>. This consultation period has received cross-party political support and the support of Trades Unions and the Pensions Action Group.

We are intending to publish for consultation a further set of draft Regulations before the end of March, which will make provision for other key elements of the package announced in December, such as early retirement on ill health grounds. There will be a final package of Regulations later in the year to deliver the remaining parts of the package, which will move the FAS Scheme to a position where financial assistance payments are calculated on a basis which is broadly comparable to that of the Pension Protection Fund.

Target audience

These regulations have been drafted following consultation with affected schemes, trustees, other pension professionals and affected scheme members and their families. Although this consultation is primarily aimed at pension industry professionals and others with an interest in defined benefit occupational pension schemes, views from the wider public are also welcome.

Where can I find the consultation document?
The consultation document is available on the Department's website at: www.dwp.gov.uk/publications/dwp/2008/FinancialAssistanceScheme(MiscellaneousAmendments)Regulations2008.pdf or alternatively the FAS website: http://www.dwp.gov.uk/fas.

How can people respond to this consultation?
The consultation period begins on 06 March 2008 and runs until 20 March 2008. Where proposals have been stimulated by previous consultation or debate, Cabinet Office guidance provides that a shorter consultation period may be appropriate. Taking account of these factors, and having sought the agreement of Opposition Members of Parliament and other stakeholders, Ministers have decided that a consultation period of 2 weeks is appropriate. Given the limited written consultation period, the Department will be holding meetings during the consultation period with representatives from the Trades Unions and Pensions Action Group to facilitate their responses.

We would be grateful for your comments on any of the points covered by the regulations. Please ensure that your response reaches us by the closing date.

Please send consultation responses to:

Financial Assistance Scheme Consultation
Department for Work and Pensions
Private Pensions Policy
Adelphi
3rd Floor
1-11 John Adam Street
London
WC2N 6HT
E-mail - fas-responses@dwp.gsi.gov.uk

This consultation applies best practice from the Cabinet Office Code of Practice on consultation.

Whilst it is Government policy that regulations which have an impact, however minor, on the private sector should, wherever possible, come into force on just two agreed dates: the 6th April and 1st October, Ministers believe that it is in the public interest to implement these regulations quickly to help ensure people receive revised rates of assistance as soon as possible.

If you have questions about the draft regulations, please write or e-mail them to the above addresses.

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear who the organisation represents and (where applicable) how the views of members were assembled.

A list of those to whom this document has been sent is attached. If you have any suggestions of others who may wish to be involved in this process, please contact us.

All information contained in your response, including personal information, may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purpose of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information which is provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this. We cannot guarantee confidentiality of electronic responses even if your IT system claims it automatically.

If you want to find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact:

Charles Cushing
Department for Work and Pensions, Adjudication and Constitutional Issues,
Information Policy Division,
Freedom of Information Unit,
1-11 John Adam Street,
London
WC2N 6HT
Phone: 0207 962 8581
Email: charles.cushing@dwp.gsi.gov.uk *or* carol.smith14@dwp.gsi.gov.uk

More information about the Freedom of Information Act can be found on the website of the Ministry of Justice.

What will we do after the consultation?

A summary of responses (including the next steps to be taken) will be published online (and linked from the same web page as above). Paper copies will be available on request.

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

Roger Pugh
Department for Work and Pensions' Consultation Coordinator,
Room 2A,

Britannia House,
2 Ferensway,
Hull
HU2 8NF
Phone: 01482 609571
Email: roger.pugh@dwp.gsi.gov.uk

Yours faithfully

Mike Le Brun

Head of Policy and Legislation - Financial Assistance Scheme

Copied to:

Age Concern
Amicus
Association of British Insurers
Association of Consulting Actuaries
Association of Pension Lawyers
Auditing Practices Board
Board for Actuarial Standards
British Chambers of Commerce
Community the Union
Confederation of British Industry
Department for Business, Enterprise & Regulatory Reform
Engineering Employers' Federation
Federation of Small Businesses
Financial Services Authority
GMB Union
Help the Aged
HM Treasury (MOCOP)
Independent Pensions Research Group
HM Revenue & Customs
Institute of Chartered Accountants in England and Wales
Institute of Chartered Accountants in Scotland
Institute of Directors
Institute of Payroll and Pensions Management
Investment Management Association
National Association of Pension Funds
National Consumer Council
National Pensioners' Convention
The Pensions Advisory Service
Pensions Action Group
Pensions Ombudsman
Pension Protection Fund
Pensions Regulator
Regulatory Impact Unit
SAGA
Social Security Policy and Legislation Division, DSD, Northern Ireland
Small Business Service
T&G Union
The Association of Corporate Trustees
The Faculty of Actuaries
The Institute of Actuaries
The Law Society
The Law Society of Scotland
The Pensions Management Institute
The Scottish Executive
The Society of Pension Consultants
The Welsh Assembly
Trades Union Congress
UNISON

We have also sent copies of the consultation document to private individuals who have expressed an interest in participating in the consultation exercise

THE DRAFT FINANCIAL ASSISTANCE SCHEME (MISCELLANEOUS PROVISIONS) REGULATIONS 2008

CONTENTS

SECTION ONE - POLICY AND LEGISLATIVE BACKGROUND

The original scheme

1. The Financial Assistance Scheme (FAS) was designed to help those who had suffered significant losses to their pensions as a consequence of employer insolvency. Under the original scheme, announced on 14 May 2004, assistance was targeted on members closest to retirement as it was felt that these members were least likely to be able to make up any shortfall in their retirement income.

2. Under the earliest version of the FAS, only those qualifying members who were within three years of their scheme's normal retirement age (NRA) (as of 14th May 2004) could receive top-ups to around 80% of their 'expected pension' paid from the age of 65. No increases were provided on assistance once in payment.

3. Some surviving spouses and civil partners of qualifying scheme members who died after their scheme started to wind-up were also eligible for a payment from the FAS, as were some of those who were in receipt of a beneficiary's pension before wind-up started.

4. A payment cap of £12,000 per year applied which meant that qualifying members would receive assistance that would top up their scheme pension to 80% of their 'expected pension', or to £12,000 per year, whichever was the lower figure. A de minimis rule also applied, such that payments that would otherwise have been below £10 a week were not actually paid

5. An operational unit based in York, opened for business on 1st September 2005 to administer the FAS.

6. The Government committed £400 million in cash terms over 20 years to this version of the scheme which would have helped an estimated 15,000 people.

The first extension to the FAS

7. Three significant extensions have been announced to the FAS. In May 2006, the Government announced a £1.9bn extension to the scheme - bringing the total funding to £2.3bn in cash terms over 60 years. This extension to the scheme was estimated to provide help to around 40,000 people over its life time.

8. Under this extension, which came into force on 16th December 2006, qualifying members who were within seven years of their scheme's NRA (as of 14th May 2004) would receive top-ups to around 80% of their 'expected pension'. For people seven to 11 years from NRA the figure would be 65%, and for people more than 11 years from NRA it would be 50%.

9. The cap and de minimis rules were retained and applied to all beneficiaries in the same way and at the same level as previously described.

The second extension

10. In his Budget Statement on 21st March 2007, the then Chancellor of the Exchequer announced that public funding for the Financial Assistance Scheme would be significantly increased to bring about key changes, including:

- All members to have their pensions topped up to a level broadly equivalent to 80% of their 'expected pension'.
- The cap increased from £12,000 to £26,000 a year
- The minimum payment rule (de minimis) removed

11. As a result it was expected that an estimated 125,000 people who had lost part or all of their pensions would receive at least 80% of their 'expected pension' (subject to the raised cap).

12. This extension meant that the Government's total long-term cash expenditure on the scheme increased from £2.3 billion to £8.6 billion.

13. During this period FAS was further extended FAS to cover certain schemes where employers were not insolvent but where compromise agreements had been reached between trustees and employers to avoid employer insolvency.

14. Some of these changes were introduced through the Pensions Act 2007 but most were implemented through amending regulations which came into force in December 2007.

The third extension

15. In April 2007, a review was set up to consider whether an alternative treatment of the residual funds in affected pension schemes could supplement the committed Government funding of FAS. The review was led by Andrew Young of the Government Actuary's Department. The final report of the Young Review was published in December 2007.

16. Acting on the recommendations of that report the then Secretary of State for Work and Pensions announced on 17th December 2007 that Government would absorb all the available residual assets in the affected schemes and make associated payments as they fall due. A range of changes were also announced to the scheme including:

- Members guaranteed 90% of their accrued pension at the date of commencement of wind up, revalued to their retirement date (subject to a cap of £26,000 year, the value of which will be protected)
- Assistance will be paid from the scheme's NRA, subject to a lower age limit of 60
- Payment of assistance derived from post-1997 service will be increased in line with inflation (subject to a 2.5% limit)
- Extending assistance to members of schemes which wound up under-funded (after 1st January 1997 and before the employer was required to meet the full buy-out cost) where the employer is still solvent

17. The additional cost of this package takes the total Government commitment to £12.5 billion in cash terms (£2.9 billion Net Present Value).

18. A copy of the statement made on 17 December can be found on this link: http://www.dwp.gov.uk/lifeevent/penret/penreform/fas/pensions-hoc-statement-17-12-07.pdf

19. In implementing the changes announced in December our priority is to increase payments to 90% (from the current 80%) and to make payments from NRA (rather than from age 65). The draft regulations included in this consultation intend to implement these key elements of the December extension.

20. We are intending to publish a further set of draft Regulations before the end of March which will make provision for other key elements of the package announced in December, such as early retirement on ill health grounds. There will be a final package of Regulations later in the year to deliver the remaining parts of the package which will move the FAS scheme to a position where financial assistance scheme payments are calculated on a basis which is broadly comparable to that of the Pension Protection Fund (PPF).

Revaluation

21. As part of implementing changes to pay enhanced levels of assistance from a member's NRA (or age 60 if later), the draft regulations include some related changes to FAS revaluation rules.

22. Under current FAS rules payments, top-up assistance payments are revalued to 65 regardless of the member's NRA. Revaluation from NRA to 65 was a feature of the original FAS as it was felt that it would be unfair to expect people to wait perhaps up to 5 years from their NRA to receive assistance without that assistance benefiting from some form of index-linking.

23. Under the changes to FAS made by these draft regulations FAS payments will now be made from NRA (or, if later, age 60 with revised entitlements only paid for the period from 14th May 2004). This means that assistance payments for some people already receiving FAS will be reassessed and, where appropriate, sums representing new entitlements will be paid for the period from NRA.

24. Bringing payments forward for such members means that some revaluation will be lost - where previously such payments would have been revalued to 65 they will now be revalued to an earlier NRA. In some cases, where there is a significant period between NRA and 65, the loss of revaluation may mean that ongoing payments will not increase significantly when payments are reassessed to 90% from 80%. In extreme cases such payments might fall (by up to 2%). However, any members in this position will receive significant payments as a result of their revised entitlement being applied for the period from their NRA. The following case study demonstrates these effects:

Case study demonstrating the effects of changing payment date

Mrs A, a member with an NRA of 60 reaches age 65 in February 2008. Her scheme is so underfunded that it cannot pay her a pension. Her annual rate of FAS assistance based on the full 80% of her 'expected pension' revalued to February 2008 is 80% x £3,975 = **£3180 a year**.

From July 2008, the member's rate of FAS assistance is now revalued not to the date of her 65th birthday (February 2008) but to the later of 14th May 2004 and NRA. In this case that means the accrued pension is now revalued to 14th May 2004, giving an 'expected pension' of £3,500 a year revalued to that date. Mrs A's FAS assistance now becomes 90% x £3,500 = **£3,150 a year**.

So for this member, the impact of simultaneously increasing the FAS assistance rate and making payments from scheme NRA is to reduce the annual rate of assistance by around £30 or £2.50 per month.

However, Mrs A would also receive a lump sum payment in respect of her revised entitlement from May 2004 to February 2008. In this case the lump sum would be around **£12,000.**

25. The draft regulations also include related changes to the revaluation that applies to deferred members' 'expected pensions' in relation to the 'certification date' (the date as at which a members 'expected pension' is compared to their 'actual pension' paid by way of annuity or their interim pension paid by their scheme - see **annex A** for further information on the certification date).

26. Under current FAS assessment rules 'expected pension' revaluation applies up to a certification date which in some cases falls after the member's FAS payment date (currently the later of age 65 and the 14 May 2004). To prevent excess revaluation being applied in such cases, to maintain consistency with the revaluation that will apply where payments are brought forward, and to help ensure all members are treated consistently regardless of the certification date provided, we are changing regulations so that revaluation of 'expected pensions' cannot be applied after the FAS payment date. In addition, this change will further align the calculation of FAS assistance to relevant members with the calculation of compensation made under the Pension Protection Fund.

Transitional arrangements

27. The anomalies that can arise in relation to the certification date can affect those members with an NRA of 65, those whose NRA is below 65 but who reached 65 before 14th May 2004, and some survivors. None of these beneficiaries will receive any additional back-payments as a result of their revised entitlement

because their payment date is not changing and any relevant arrears will already have been paid.

28. With the move to paying 90% rather than 80%, it is unlikely that such members will see their existing payments fall as a result of the changes we are proposing to the revaluation of the 'expected pension'. However, in the event that members might otherwise be in this position we are proposing to provide 'transitional protection' so that ongoing assistance payments in relation to this group, who will not receive any back-payments, do not reduce from the level currently in payment as a result of this change to revaluation. The following case study demonstrates how payments might otherwise fall to those who will not receive back-payments:

Case study demonstrating transitional protection for those whose payment date does not change

Mr B reached his NRA (of 65) in mid-2004. His trustees did not apply for an initial payment for him until the end of 2007. As part of the assessment for his payment his 'expected pension' was revalued for some 3½ years after his NRA, giving an 'expected pension' of £10,000 a year at the end of 2007. This situation arises because the information provided to the FAS Operational Unit on Mr B reflected the fact that initial FAS payments were not requested until some years after his 65th birthday.

An immediate 80% initial payment of (80% of £10,000) – interim pension of £4,000 = **£4,000 a year** was made by FAS to Mr B, along with arrears of £4,000 x 3.5 = £14,000.

When payments are increased to 90% but with revaluation applied only to NRA, Mr B's expected pension at NRA falls to £8,880. His assistance is now calculated as (90% of £8,880) – interim pension of £4,000 = **£3,990 a year**. Mr B would thus stand to receive a **decrease of £10 a year**. And, unlike most members who will be affected by changes to revaluation, Mr B will not see his FAS payment date change as his NRA is 65, so he will not receive any revised back-payments.

Under transitional arrangements FAS will continue to pay Mr B £4,000 a year as FAS will ensure ongoing payments to members who do not receive additional back-payments as a result of the changes introduced by these draft regulations do not decrease.

Application of annuity factors

29. We are consulting separately on the annuity factors that are used to help determine rates of assistance paid to FAS members in certain circumstances (chiefly where FAS members have commuted part of their scheme benefits for a lump sum during wind-up or where other cash sums might be taken and where information on the rate of pension that might otherwise have been secured for the

member is unavailable).

30. The consultation on revised FAS annuity factors is starting at the same time as this consultation but with a six week consultation period (ending on 18 April). Consultation material on FAS annuity factors can be found on the FAS website on the following link:
www.dwp.gov.uk/publications/dwp/2008/revision-of-annuity-factors-in-FAS.pdf

31. It should be noted that we intend to apply revised factors to all members (and in relation to any survivors) when FAS is reassessed at 90% from NRA, including any members to whom payments have already been made. Members to whom payments have already been made will be reassessed on the basis of entitlement to 90% from the latest of NRA, age 60 and the 14th May 2004. Where annuity factors have been used in the calculation of a member's FAS entitlement, the new factors will be used in the reassessment. Members will be paid the difference between their new entitlement and what they have already received, in addition to receiving reassessed payments going forward.

32. The factors we have proposed in consultation tend to provide a lower rate of 'notional pension' than those currently employed and therefore tend to increase the rate of assistance payable to members for whom they apply. The revised factors may ameliorate some of the impact of revisions to revaluation rules described in the preceding paragraphs. Any transitional protection (referred to in paragraphs 27 and 28 above) will be applied as the final stage of assessing a member's FAS entitlement so after any revised annuity factors have been used.

Legislative Background

33. Section 286 of the Pensions Act 2004, which received Royal Assent on 18th November 2004, requires the Secretary of State to make provision by way of regulations for the Financial Assistance Scheme. Section 286 is amended by section 18(1) to (3) of the Pensions Act 2007.

34. The Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) ("the FAS Regulations") established the scheme and prescribed the qualifying criteria for occupational pension schemes and for persons to whom payments could be made. These Regulations received Parliamentary approval in July 2005, and the main FAS provisions came into force on 1st September of that year.

35. The Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994) ("FAS Internal Review Regulations") and the Financial Assistance Scheme (Appeals) Regulations (S.I. 2005/3273) ("the FAS Appeals Regulations") established the arrangements for internal reviews and appeals to an independent external body – the PPF Ombudsman. The Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations (S.I. 2005/2189) set out the information to be provided by and to appropriate persons in order for the FAS to complete its role.

36. These regulations were added to by the Financial Assistance Scheme (Modification and Miscellaneous Amendments) Regulations 2005 (S.I. 2005/3256) which came into force on 24th November 2005, and the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006 (S.I. 2006/349) which came into force on 15th February 2006.

37. The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006 (S.I. 2006/3370), came into force on 16th December 2006 to implement the changes announced that year.

38. Section 18 of The Pensions Act 2007, which received Royal Assent on 26th July, amended section 286 of the Pensions Act 2004. These changes reflected the extension announced on 21st March 2007 and amongst other things committed the Secretary of State to introduce regulations to ensure all qualifying members received 80% of their ‘expected pension’. The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007 (S.I. 2007/3581), which came into force on 19th December 2007 delivered that commitment and completed the implementation of the full package of changes announced in March 2007.

SECTION TWO – COMMENTARY ON THE DRAFT REGULATIONS

PART 1 – INTRODUCTORY

39. Draft regulation 1 states the day on which the Regulations will come into force, which will be the day after the day that they are made. Draft regulation 2 sets out the definitions of words and phrases used in the Regulations.

PART 2 - AMENDMENT OF SECTION 18 OF THE PENSONS ACT 2007

40. Draft regulation 3 amends subsections (5) and (7) of section 18 of the Pensions Act 2007 (PA 2007) by substituting 0.9 for 0.8, reflecting the proposed change in assistance rates from 80% to 90%. Subsection (5) sets out the amount of ‘initial payment’ payable under FAS regulations, subject to any relevant restriction. Subsection (7) sets out the relevant restrictions which relate to the operation of the FAS cap. The changes we are making to PA 2007 will ensure that primary legislation is consistent with the changes we are making to secondary legislation.

PART 3 – AMENDMENT OF THE FAS REGULATIONS

41. Draft regulation 4 states that the FAS Regulations 2005/1986 (‘the FAS Regulations’) are amended in accordance with Part 3 of the draft Regulations

Normal Retirement Age

42. Draft regulation 5 inserts a definition of normal retirement age (NRA) into regulation 2 of the FAS Regulations. The definition used is the age specified in the rules of [the qualifying pension] scheme at which [the] member will normally retire. The draft provision also provides that a member’s NRA will be considered 65 where the NRA would otherwise be above that age, 60 where the NRA would otherwise be below that age, and provides for the scheme manager to determine the NRA where the NRA cannot otherwise be determined from scheme rules. This definition follows that used previously in relation to the FAS (for example under the original version of the scheme where payments were restricted to those within three years of NRA) but with the addition of the floor of 60 in order to ensure FAS payments are not made with effect from an NRA below that age.

43. The floor of age 60 does not apply to the phrase “normal retirement age” in paragraph 2(3)(a) of Schedule 2 of the FAS Regulations because that provision relates to the ‘actual pension’ that has been or could have been secured by schemes for members by way of annuity. This provision effectively allows FAS to guard against the increased liabilities that might otherwise result if pensions were paid before scheme normal retirement age (thereby lowering the actual pension taken into account in the determination of FAS payments).

44. The ceiling of 65 arose after consultation on the FAS regulations in 2005 that highlighted a case where, in the months prior to scheme closure, scheme rules were changed to substantially raise the normal retirement age which would have had a detrimental and unfair effect on the ability of members to qualify for the FAS. At that time, the Government considered that it would not be appropriate to use an increased scheme retirement age where the rule change took place in the run up to scheme closure. Thus, if an NRA was over 65, it would be deemed to be 65 for FAS purposes.

Changes to payment age

45. Draft regulation 6 amends Part 5 of the FAS Regulations which sets out the conditions in which FAS ‘annual payments’ (broadly those payments paid by FAS after a schemes liabilities to or in respect of a member are discharged) and ‘initial payments’ (payments paid by FAS where a scheme is still winding-up) are payable. In regulation 17 of the FAS Regulations, which applies in respect of annual payments “NRA” is substituted for “the age of 65” to allow payment from NRA.

46. Further changes to payment ages are made in respect of FAS beneficiaries who qualify as a result of death benefits payable by qualifying schemes. Depending on individual pension scheme rules some spouses, unmarried partners or dependent children of members of pension schemes who die before the start of scheme wind-up qualify for pensions from their schemes. We would expect most of these beneficiaries to receive their pensions in full from their schemes because

of their position in the statutory priority orders that apply on wind-up. However, some schemes are so under-funded that these people will receive less than 90% of the pension they were expecting. Existing regulation 15(5) of the FAS regulations provides for such people to be ‘qualifying members’ of FAS.

47. Under current rules such members in common with other qualifying members receive payment from age 65. In order to reflect the revised payment rules that will apply to qualifying pensioner members and qualifying deferred members, those members who qualify for FAS by virtue of regulation 15 (5) of the FAS Regulations will be eligible for payment from the later of 14th May 2004 and the date that they became eligible for payment under the qualifying scheme’s rules. A new paragraph (3A) is inserted into regulation 17 to provide for these revised payment dates.

48. Under pension scheme rules payments to dependent children are normally only made until a fixed age (typically 18 or the end of full time education). Draft regulation 6(1)(b) inserts a new paragraph (3A)(b) into regulation 17 to ensure that any FAS payments made in respect of such pensions end on the date that the person would have stopped receiving payment of their pension from the qualifying pension scheme.

49. We anticipate that there may be situations in which it might not be possible to obtain information from schemes clarifying the precise date at which dependants’ pensions would have been stopped under scheme rules (for example where schemes have wound up and where available records are patchy). In such circumstances, to ensure that we can limit payments made to such members at an appropriate time, draft regulation 6(1)(b) inserts new paragraph (3B) to provide for the FAS scheme manager to determine the date on which such payments should cease to be payable, having regard to the rules of the scheme and relevant information.

50. Draft regulation 6(2) relates to regulation 18 of the FAS regulations which provides for initial payments to be payable. Currently, regulation 18 of the FAS regulations provides for initial payments to be requested for all qualifying members where those qualifying members have reached the age of 64. Because we are changing the date from which initial payments are payable from 65 to NRA we are also changing the date at which requests for such payments can be made to a year before NRA. Complementary changes are made in relation to those qualifying members whose payments arise from death benefits (described in paragraph 46 above). Draft regulations 6(2) of the draft amending regulations provide for these changes by amending regulation 18 of the FAS Regulations.

51. Changes to payment dates in line with those described in relation to annual payments are also made in relation to initial payments by draft regulation 6. ‘Normal retirement age’ is substituted for ‘the age of 65’ in regulation 18 to allow payment of initial payments from NRA (or 14th May 2004 if later) for relevant qualifying members and other changes are made to regulation 18 so that initial payments are made from the scheme pension entitlement date (or 14 May 2004 if later) for those qualifying members whose payments arise from death benefits.

Changes to schedule 2 of the FAS Regulations

52. Regulation 7 amends Schedule 2 of the FAS Regulations which applies for the determination of the amount of annual payments and initial payments.

53. Regulation 7 substitutes 0.9 for 0.8 to reflect the increase in assistance rates from 80% to 90%. These changes are applied throughout Schedule 2 by regulation 7(1) including in reference to:

- payments to pensioner members (paragraph 3(2) of Schedule 2)
- payments to active and deferred members (paragraph 4(2) of Schedule 2)
- annual payments to eligible survivors of qualifying members (paragraph 5 of Schedule 2)
- provisions that set out the FAS cap (paragraph 7 of Schedule 2); and
- initial payments to eligible survivors of qualifying members (paragraph 10(e) of Schedule 2)

54. Draft regulation 7(4) amends paragraph 4 of Schedule 2 which applies in respect of determining assistance rates in relation to members who were active or deferred members at the time of the qualifying scheme's crystallisation date (which is usually the start of scheme wind-up). As described in paragraphs 21 to 26 above we intend to make changes to the revaluation that applies in relation to these members' 'expected pensions' to reflect the changes to revaluation that arise as a consequence of payments being brought forward to NRA rather than 65. Our intention here is to ensure that additional revaluation is not applied beyond the FAS payment date even when certification dates fall after that FAS payment date.

55. Under current FAS rules revaluation is applied to 'expected pensions' in two stages across which two different rates apply. The first stage applies from the date a member leaves pensionable service within their scheme up to the day before the start of scheme wind-up. During that period accrued pensions revalue in accordance with scheme and statutory rules (under paragraph 4(6) of Schedule 2). The second revaluation period starts on the date of wind-up. From that date revaluation is applied in line with the rise in prices capped at 5% per year compound (under paragraph 4(8) to (11) of Schedule 2).

56. Draft regulation 7(4)(a) of the draft Regulations substitutes a new paragraph 4(5) of Schedule 2 such that the first revaluation period ends on the day before the day on which the scheme started to wind-up or the FAS payment date whichever is the earlier (it is possible for a member to reach their NRA before the wind-up date and yet be a deferred member in circumstances where the crystallisation date precedes the wind-up date). Draft regulation 7(4)(b) substitutes a new paragraph 4(7) such that the second revaluation period begins on the day after the first revaluation period ends and ends on the earlier of the certification date and the FAS payment date.

57. It should be noted that in cases where the certification date falls a month or more before the FAS payment date then the FAS payment will be revalued up to the date from which it is paid in accordance with existing paragraph 9 of Schedule 2 of the FAS Regulations. Also, paragraph 4(13) of Schedule 2 already provides

that in a case where the certification date falls before the wind-up date revaluation will apply up to the certification date (revaluation would then apply up to the payment date in line with paragraph 9 of Schedule 2).

58. As described in paragraphs 21 to 26 above, the intention of these changes is to help ensure that members are treated consistently regardless of the certification date provided by their scheme. As a result of these changes in all cases revaluation will now apply up to the date of that FAS is first payable but not beyond that date.

59. Draft regulation 7(5) relates to provisions within the FAS regulations that apply for the purposes of determining payments to eligible survivors of qualifying members. Payments to survivors are based on the underlying entitlements of qualifying members so the changes to the rate of assistance (to 90%), the payment age (to NRA) and related changes in relation to revaluation bring with them corresponding changes to the way payments to survivors are determined.

60. Under existing rules, payments to survivors are calculated in different ways depending on whether scheme liabilities have been discharged to the member at the time of their death. If liabilities have been discharged then the survivor simply receives half of the payment that was or that would have been payable to the member (under paragraph 5(6) of Schedule 2). Revaluation then applies to this payment by virtue of paragraph 9 of Schedule 2. Draft regulation 7(6) amends that paragraph so that revaluation is not applied to the survivor payment where an annual payment was payable to the qualifying member immediately before their death.

61. If a qualifying member who was an active or deferred member immediately before the crystallisation date (typically the date the scheme started to wind-up) dies before liabilities are discharged then payments to their survivor are calculated under paragraph 5(3) and (4)(b) of Schedule 2 by reference to the amount of pension the member had accrued within their scheme up to the date that their pensionable service ended (‘the accrued pension’).

62. Draft regulation 7(5) provides for new sub-paragraphs in paragraph 5 of Schedule 2. Those sub-paragraphs ((7) to (11)) provide for revaluation to apply to the member’s accrued pension in relation to the survivor’s payment. The rates of revaluation that apply in relation to the survivor payment correspond to the rates of revaluation that apply for members as described in paragraph 55 above (i.e. there may be two different revaluation periods applying if revaluation is applied across the date the qualifying scheme started to wind-up). And revaluation will only apply until the earlier of the date that the member became entitled to a FAS payment and the date that the survivor became entitled to a FAS payment. Revaluing up to the date at which a member’s pension rights first come into payment (whether to them or in the event of their death to their survivor) reflects the approach taken by defined benefit schemes and by the Pension Protection Fund in relation to payments to survivors.

PART 4 – TRANSITIONAL PROVISION

63. As discussed in paragraphs 27 and 28 above we are providing transitional protection for some beneficiaries who will already be in receipt of FAS payments at the time that the draft regulations come into force. Draft regulation 8 provides for this transitional protection by allowing the FAS regulations and section 18 of PA2007 to have effect as if the regulations had not been made where payments would otherwise be lower for members who have already received a monthly instalment of an annual or initial payment and whose FAS payment date will not change as a result of the changes implemented by these regulations.

SECTION THREE - THE DRAFT REGULATIONS

Draft Regulations laid before Parliament under section 316(2)(n) of the Pensions Act 2004 and section 18(10) of the Pensions Act 2007, for approval by resolution of each House of Parliament.

D R A F T   S T A T U T O R Y   I N S T R U M E N T S

2008 No.

PENSIONS

The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008

Made - - - - 2008

Coming into force in accordance with regulation 1.

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 286, 315(2) and (4) and 318(1) of the Pensions Act 2004(**1**) and sections 18(9) and 25(1) of the Pensions Act 2007(**2**).

[In accordance with section 316(2)(n) of the Pensions Act 2004 and section 18(10) of the Pensions Act 2007, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.]

[In accordance with section 317(1) of the Pensions Act 2004 and section 25(3)(b) of the Pensions Act 2007, the Secretary of State has consulted such persons as he considers appropriate.]

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"annual payment" means the amount payable to a beneficiary in respect of each year determined in accordance with regulation 17 of, and Schedule 2 to, the FAS Regulations;

(1) H2004 c.35H. Section 286 was amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993 and 2005/2113). Section 318(1) is cited because of the meanings given to "prescribed" and "regulations".

(**2**) 2007 c.22.

"beneficiary" means a qualifying member or, after his death, his survivor;

"initial payment" means a payment made to a beneficiary in accordance with regulation 18 of the FAS Regulations;

"qualifying member" shall be construed in accordance with regulation 15 of the FAS Regulations;

"survivor" means, in relation to a member or former member of a qualifying pension scheme who has died—

(a) the member's widow or widower; or

(b) the member's surviving civil partner,

but shall not include a person who comes within paragraph (a) or (b) but who is regarded as a qualifying member by virtue of regulation 15(5) of the FAS Regulations;

"the FAS Regulations" means the Financial Assistance Scheme Regulations 2005(**3**).

PART 2

Amendment of section 18 of the Pensions Act 2007

Amendment of section 18 of the Pensions Act 2007

3. In section 18(5) and (7) of the Pensions Act 2007 (financial assistance scheme: increased levels of payments), for "0.8" substitute "0.9".

PART 3

Amendment of the FAS Regulations

Amendment of the FAS Regulations

4. The FAS Regulations are amended in accordance with this Part.

Amendment of Part 1

5. After paragraph (1) of regulation 2 (interpretation) insert—

"(1A) In these Regulations, "normal retirement age" means, subject to paragraph (1B), in relation to a member of an occupational pension scheme, the age specified in the rules of that scheme at which that member will normally retire.

(1B) Where the normal retirement age—

(a) determined in accordance with paragraph (1A) is—

(i) more than 65, that age shall be 65;

(ii) less than 60, that age shall be 60 except for the purposes of paragraph 2(3)(a) of Schedule 2;

(b) cannot be determined in accordance with paragraph (1A) from the rules of the qualifying pension scheme, that age shall be such age as the scheme manager shall determine having regard to the rules of that scheme and to such other information as he considers relevant.".

Amendment of Part 5

6.—(1) In regulation 17 (annual payments)—

(a) in paragraph (2)—

(i) after "paragraph (3)" insert "or (3A)"; and

(**3**) S.I. 2005/1986, amended by S.I. 2005/3256, 2006/3370 and 2007/3581.

(ii) for “the age of 65” substitute “normal retirement age”;

(b) after paragraph (3) insert—

“(3A) Where a person is regarded as a qualifying member under regulation 15(5)—

(a) that member shall be entitled to an annual payment determined in accordance with Schedule 2 from—

(i) 14th May 2004; or

(ii) the date on which he became entitled to a present payment from the qualifying pension scheme;

whichever is the later; and

(b) monthly instalments of the annual payment which would have been payable to that member shall cease to be payable from the date on which that member would have ceased to be entitled to the payment referred to in regulation 15(5)(a) in accordance with the rules of the qualifying pension scheme.

(3B) Where the date referred to in paragraph (3A)(b) cannot be determined from the rules of the qualifying pension scheme, the date on which annual payments shall cease to be payable shall be such date as the scheme manager shall determine having regard to the rules of that scheme and to such other information as he considers relevant.”; and

(c) in paragraph (6)(**4**), for “paragraph (5B)” insert “paragraphs (3A)(b) and (5B)”.

(2) In regulation 18 (initial payments)(**5**)—

(a) in paragraph (1)(a)(i), for “the age of 64” substitute “the age which is one year less than normal retirement age”;

(b) at the end of paragraph (1)(a) omit “or”; and

(c) after paragraph (1)(a) insert—

“(aa) a person is regarded as a qualifying member under regulation 15(5); or”; and

(d) in paragraph (4)—

(i) at the beginning of sub-paragraph (a) insert “except where sub-paragraph (c) applies, ”;

(ii) in sub-paragraph (a)(ii)(aa), for “the age of 65” substitute “normal retirement age”; and

(iii) after sub-paragraph (b) insert—

“(c) if the qualifying member is regarded as a qualifying member under regulation 15(5), to that member with effect from whichever is the later of—

(i) 14 May 2004; or

(ii) the date on which he became entitled to a present payment from the qualifying pension scheme.”.

Amendment of Schedule 2

7.—(1) Schedule 2 (determination of annual and initial payments)(**6**) is amended in accordance with this regulation.

(2) In each place it occurs(**7**), for “0.8” substitute “0.9”.

(3) In paragraph 1 (introductory) omit sub-paragraphs (4) and (5).

(4) In paragraph 4 (active and deferred members)—

(a) for sub-paragraph (5) substitute—

“(5) The first revaluation period is the period—

(**4**) Regulation 17(6) was amended by S.I. 2005/3256.

(**5**) Regulation 18 was substituted by S.I. 2005/3256 and paragraph (1) was amended by S.I. 2006/3370.

(**6**) Schedule 2 was amended by S.I. 2005/3256, 2006/3370 and 2007/3581.

(**7**) The figure 0.8 occurs in paragraphs 3(2), 4(2), 5(3), 7(1), 7(2) and 10(e). Paragraph 5(3) applies to both annual payments for survivors of qualifying members and as modified by paragraph 10(e) of Schedule 2 for the purposes of determining the amount of initial payments to such survivors.

(a) beginning on the day on which the qualifying member's pensionable service ended; and

(b) ending on the earlier of—

(i) the day before the day on which the scheme began to wind up; or

(ii) the day from which the qualifying member is entitled to an annual payment in accordance with regulation 17(2) or (3).";

(b) for sub-paragraph (7) substitute—

"(7) The second revaluation period is the period—

(a) beginning on the day after the date determined in accordance with sub-paragraph (5)(b); and

(b) ending on—

(i) the certification date; or

(ii) the day from which the qualifying member is entitled to an annual payment in accordance with regulation 17(2) or (3);

whichever is the earlier.";

(5) In paragraph 5 (survivors of qualifying members)—

(a) in sub-paragraph (4)(b), for "paragraph 4(3)" substitute "sub-paragraph (7)";

(b) in sub-paragraph (6)(b)(i), for "the age of 65" substitute "normal retirement age";

(c) after sub-paragraph (6) insert—

"(7) For the purposes of sub-paragraph (4)(b), "expected pension" means the aggregate amount of—

(a) the amount specified in paragraph 4(3)(a);

(b) the revaluation amount for the first survivor revaluation period (see sub-paragraphs (8) and (9)); and

(c) the revaluation amount for the second survivor revaluation period (see sub-paragraphs (10) and (11)).

(8) The first survivor revaluation period is the period—

(a) beginning on the day on which the qualifying member's pensionable service ended; and

(b) ending on—

(i) the day before the day on which the scheme began to wind up;

(ii) the day from which the qualifying member became entitled to an annual payment in accordance with regulation 17(2) or (3); or

(iii) the day from which the survivor of the qualifying member became entitled to an annual payment under regulation 17(4),

whichever is the earlier.

(9) The revaluation amount for the first survivor revaluation period is the revaluation amount determined in accordance with paragraph 4(6).

(10) The second survivor revaluation period is the period—

(a) beginning on the day after the date determined in accordance with sub-paragraph (8)(b); and

(b) ending on—

(i) the day from which the qualifying member is entitled to an annual payment in accordance with regulation 17(2) or (3); or

(ii) the day from which the survivor of the qualifying member became entitled to an annual payment under regulation 17(4),

whichever is the earlier.

(11) The revaluation amount for the second survivor revaluation period is the revaluation amount determined in accordance with paragraphs 4(8) to (12).".

(6) In paragraph 9(2A) (revaluation)(**8**), for the words "where that qualifying member was in receipt of an annual payment at the time of his death" substitute "where an annual payment was payable to that qualifying member immediately before his death".

PART 4

Transitional provision

Transitional provision

8. The FAS Regulations and section 18 of the Pensions Act 2007 shall continue to have effect as if these Regulations had not come into force where—

(a) a beneficiary has, before the date on which these Regulations come into force, received a monthly instalment of an annual payment or an initial payment;

(b) the date from which the beneficiary would be entitled to an annual payment or an initial payment would not change under these Regulations; and

(c) the beneficiary would be entitled to a higher annual payment or higher initial payment if these Regulations had not come into force.

[To be] Signed by authority of the Secretary of State for Work and Pensions

[signature]
Minister of State,
[*date*] Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend section 18 of the Pensions Act 2007 and the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986, as amended) ("the FAS Regulations"), which provide for payments to be made to, or in respect of, certain members or former members (or their survivors) of certain occupational pension schemes where the liabilities of the scheme to those people are unlikely or unable to be satisfied in full.

Part 2 amends section 18 of the Pensions Act 2007 to increase from 0.8 to 0.9 the fraction used to calculate the amount of a person's initial payment.

Part 3 amends the FAS Regulations. In particular, it—

(a) makes corresponding changes to the amendment to section 18 of the Pensions Act 2007 to change the references to 0.8 to 0.9 so that 0.9 applies for the calculation of annual payments and initial payments;

(b) changes the date from which qualifying members (who are not terminally ill or members by virtue of regulation 15(5) of the FAS Regulations) are entitled to financial assistance scheme payments from the later of 14 May 2004 and age 65 to the later of 14 May 2004 and normal retirement age (normal retirement age is subject to a lower limit of 60 and an upper limit of 65);

(c) changes to payments to members who are qualifying members by virtue of regulation 15(5) of the FAS Regulations to provide that entitlement to payments starts from the later of 14 May 2004 and the date on which they would have been entitled to payments under scheme rules and end when payments would have ceased under scheme rules;

(**8**) Paragraph 9(2A) was inserted by S.I. 2006/3370.

(d) a corresponding change so that a request for initial payments can be made from one year before normal retirement age for qualifying members or at any time where the member is regarded as a qualifying member under regulation 15(5) of the FAS Regulations;

(e) changes to the way payments are revalued.

Part 4 makes a transitional provision providing that the FAS Regulations and section 18 of the Pensions Act 2007 continue to have effect as if these Regulations had not been made in certain cases where the previous provisions result in higher annual or initial payments.

[Before making these Regulations the Secretary of State consulted such persons as he considered appropriate.]

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

Annex A

Further information on the certification date

The FAS was originally conceived as a scheme that would make payments to top up pensions paid by way of an annuity to a proportion of a member's 'expected pension'. The original FAS scheme was only designed to help a very limited group of members, those within three years of NRA. The way in which FAS payments were calculated was designed to reflect the top-up function and the limited group of recipients.

For consistency it was considered appropriate for FAS to compare insurance company annuity rates and 'expected pensions' as at a common date. Insurance companies quote annuity rates at a fixed point in time but the particular time in any particular case depends on company practice, and the circumstances of the member and of the scheme. FAS assessment rules were designed to be flexible so comparisons of the expected pension and annuity rate could be made at the date as at which a member's annuity rate was quoted by the insurance company (known as the 'certification date', so called because trustees certify that the annuity rate is correct as at that date).

All FAS assessment rules were devised around the concept of the certification date including initial payments made whilst schemes are winding-up. And in all cases expected pensions have been revalued up to the certification date even where the certification date falls after the date at which FAS is payable.

For initial payments, the certification date has in practice become the date at which schemes provide data to the FAS Operational Unit (trustees certify that the pension they are paying is correct as at that date). This means that in many current cases the certification date falls after the members 65^{th} birthday (the current FAS payment age) and in almost all cases falls after the NRA if this is lower than 65.

As a result, some FAS payments have been revalued for a longer period than others. The changes we are making as a result of paying from NRA mean that all FAS payments will be revalued in a consistent way up to the date the first payment is due. This approach will also broadly align FAS revaluation rules with those applied in relation to PPF compensation.