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Date: 12th August 2009

Dear Sir or Madam

**Consultation on draft Regulations – The Financial Assistance Scheme
(Miscellaneous Amendments) Regulations 2010**

This consultation document seeks views on the draft Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010, which are being introduced to deliver the remaining elements of the extension to the Financial Assistance Scheme (FAS) announced on 17 December 2007 by the then Secretary of State for Work and Pensions.

This set of draft Regulations includes provisions for the Government to absorb the assets remaining in relevant FAS qualifying schemes. It also amends the structure of Assistance to ensure that members of those schemes do not lose out as a result of the transfer of assets to Government.

Where can I find the consultation document?

The consultation document is available on the Department's website at:
<http://www.dwp.gov.uk/consultations/>

Timing

The consultation period begins on 12 August 2009 and runs until 6 October 2009.

Government guidance provides that consultations should normally last for at least 12 weeks. However, the guidance suggests that in certain circumstances Departments may depart from this.

The Government has already undertaken considerable informal consultation since 2007. These include groups representing the members of affected pension schemes, in particular the Pensions Action Group and the trade unions, in particular the GMB, Unite and Community. Ministers and officials have held a number of meetings with these groups. Officials also have regular contact with a number of trustees and insurers who have given us the benefit of their extensive knowledge of occupational pension schemes.

The Government has sought to reflect their views in this consultation document and made them aware in advance of the content and intentions behind the draft Regulations.

Initial proposals on these measures were set out in the consultation document published on 2 April 2009. Comments received have been used to inform the proposals on these issues that are now included in this document.

Taking account of the wider consultation that has already taken place, and the desire to implement the remaining elements of the December 2007 package as quickly as possible, Ministers have decided that a formal written consultation period of 8 weeks will allow for meaningful consultation. Further meetings will be offered to stakeholder groups during this period.

How can I respond to the consultation?

The Government would be grateful for your comments on any of the points covered by the draft Regulations. Please ensure that your response reaches us by the closing date.

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.

Please send consultation responses to:

E-mail: CAXTON.FAS-RESPONSES@DWP.GSI.GOV.UK

Post: Financial Assistance Scheme Consultation
Pensions Protection and Stewardship Division
Department for Work and Pensions
Caxton House
7th Floor
6-12 Tothill Street
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SW1H 9NA

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 whom the organisation represents and (where applicable) how the views of members were assembled.

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,
The Adelphi
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London
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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 the Government 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.

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 6 April and 1 October, Ministers believe that it is in the public interest to implement these draft Regulations quickly to complete implementation of the extensions announced in December 2007.

The consultation process

The Government values your feedback on how well it consults. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

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Yours faithfully,

Julie Guthrie

Policy and Legislation - Financial Assistance Scheme

Copied to:

Age Concern
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, Innovation
and Skills
Engineering Employers' Federation
Federation of Small Businesses
Financial Services Authority
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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
The Pensions Regulator
Better Regulation Unit
SAGA
Social Security Policy and Legislation
Division, DSD, Northern Ireland
Small Business Service
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
Unite
Unite the Union

Copies of the consultation document have also been sent to private individuals who have expressed an interest in participating in the consultation exercise.

**Department for Work
and Pensions**

CONSULTATION

**The Draft Financial Assistance Scheme
(Miscellaneous Amendments) Regulations 2010**

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SECTION 1: EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

1. This consultation document sets out the Government's proposals for implementing the final stages of the changes to the Financial Assistance Scheme (FAS) announced in December 2007, and draft Regulations giving effect to those proposals. It includes commentary on these draft Regulations.
2. The draft Regulations deal with two major issues:
 - providing for the transfer of remaining assets of relevant schemes to government, and related issues; and
 - enabling the FAS to make payments to members of those schemes which would previously have been made by scheme trustees. In particular, to:
 - make payments to members whose share of scheme assets would have been sufficient to pay pensions in excess of standard FAS Assistance; and
 - enable members who have not yet started taking a scheme pension nor reached their normal retirement age to take up to 25 per cent of their FAS payment or their share of scheme assets, whichever is the lower, as a tax-free lump sum.
3. The detail of the changes needed to deal with these two issues and the other changes proposed through these draft Regulations are described in the full consultation document.

Section 3 – Transfer of assets

4. Andrew Young's FAS Review of Scheme Assets (the 'Young Review') identified that transferring remaining scheme assets to government would release additional value that would contribute to funding an extension of the assistance paid by the Scheme. Section 3 of the consultation document sets out how the Government proposes to achieve this transfer.
5. Where appropriate, the Government proposes to follow standard industry practices in winding up pension schemes. The Board of the Pension Protection Fund, in its role as Scheme Manager for the FAS will support trustees in winding up schemes.
6. The consultation document sets out two new phases for FAS qualifying schemes:
 - the **preparation period** – the run-up to the valuation of assets and liabilities of the scheme, during which time tasks such as data cleansing will take place; and
 - the **transition period** – during which time assets will be transferred to government and trustees released from their responsibilities.
7. The consultation document sets out which assets and liabilities will, or will not, be included in the transfer process. For example, schemes that have already fully wound-up will not be transferring assets to government.

8. The Government proposes that assets will be transferred in the form of cash where possible.
9. Before transferring assets, a **valuation** will be conducted to establish the **asset share** and liabilities relating to each relevant beneficiary. The valuation will be by reference to a **calculation date** towards the end of the preparation period for each scheme, to minimise risks relating to movements in asset values.
10. This consultation document sets out the Government's intentions for the particular treatment of certain liabilities (for example, defined benefit additional voluntary contributions) and assets (for example, money purchase assets) in the valuation process, and the means of valuing certain liabilities and assets.
11. The valuation will be used to ensure that members receive appropriate payments from the FAS. The consultation document sets out how the Government intends to reconcile entitlements with payments already made to ensure all members are treated fairly.
12. The consultation document also sets out the information requirements the Government proposes to place on trustees and the FAS Scheme Manager, and the new review and appeal rights that the Government considers are appropriate to reflect the new asset transfer process and related FAS payment structure.

Section 4 – Assistance structure

13. Schemes which wind up normally will generally provide each member with a pension annuity, a transfer payment or a winding-up lump sum based on their share of the remaining scheme assets (their **asset share**). Where these are worth less than 90 per cent of their expected pension (subject to a cap) the FAS makes a top-up payment to that 90 per cent, again subject to a cap on the maximum amount paid. The schemes covered by the main new proposals in this consultation will be transferring their remaining assets to government. The FAS will then be solely responsible for payments to members in respect of whom assets are transferred, rather than topping-up payments made by schemes.
14. The consultation document sets out proposals for Assistance payments to those members. The intention is to ensure that they receive the full value of their asset share. The proposals cover:
 - tax-free lump sums in certain cases; and
 - payments to members whose asset share would have produced more than 90 per cent of their expected pension, had their scheme continued to wind up in the normal manner.
15. Section 4 sets out in detail who should be a **qualifying member** in future as a consequence of the transfer of assets.
16. The Section also sets out the payments which members who would have received more than standard FAS from their schemes will receive under the proposals. Where members entitled to payments above the 90% level are already receiving a

pension from their scheme, the Government proposes that payments should broadly reflect scheme rules. Where members are not yet receiving pensions, the Government proposes to pay an enhanced rate of assistance in line with FAS rules.

17. In order to establish which members are entitled to payments above normal Assistance levels, the Government proposes that asset shares will be turned into **notional pensions** which approximate the amount of annuity which could have been purchased for the member if the scheme had continued to wind up. The amount of the notional pension can then be compared to the amount of Assistance under normal rules and the higher amount paid.
18. The consultation document sets out how the Government proposes ill health and other payments should be calculated for these members, how survivor entitlements should be calculated, and how people who have already taken early retirement should be treated.
19. Where members have not yet taken a pension from a scheme transferring its assets to government, the Government proposes that they should be able to take a tax-free lump sum in line with the lump sum they might have expected had their scheme wound up in the conventional way. That is, they would be able to take the lower of:
 - 25 per cent of the capital value of the FAS payments due; and
 - the capital value of their notional pension, revalued by RPI capped at 5 per cent between the date it is calculated and the date they become entitled to Assistance.
20. A number of examples and flow-charts are provided in the consultation document to assist in understanding the implications of the Government's proposals.
21. The Government proposes a number of changes to information, review and appeal arrangements to reflect these new Assistance payments.

Section 5 – Reviews and appeals

22. This section sets out a number of proposed changes to the timescales for reviews and appeals in the light of operational experience.

Section 6 – List of questions

23. The Government welcomes views on the proposals set out in the consultation document, and the extent to which the draft Regulations give effect to these proposals effectively.

Section 7 – Commentary on draft Regulations

24. This section summarises the effect of each draft regulation and Schedule included in the draft Regulations.

SECTION 2: INTRODUCTION

THE FINANCIAL ASSISTANCE SCHEME

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 between 1 January 1997 and 5 April 2005. It was first announced on 14 May 2004 but, since then, has been extended a number of times, covering more people and offering increased benefits.

The December 2007 announcement

2. The Financial Assistance Scheme Review of Assets (the 'Young Review') was commissioned by the Government to consider whether an alternative treatment of residual assets in affected schemes could supplement the committed government funding of FAS. The final report was published in December 2007 and can be found at: www.dwp.gov.uk/policy/pensions-reform/fas-review-of-scheme-assets/
3. Following the publication of the review's findings the then Secretary of State announced on Monday 17 December 2007 a significant extension to the FAS. The extension provided that:
 - the proportion of accrued pension covered by FAS would be increased from 80 to 90 per cent
 - this amount would be subject to a cap of £26,000 the value of which would be protected
 - payments derived from post-1997 service would be increased in line with inflation, subject to a 2.5 per cent limit
 - Assistance would be paid from the scheme's normal retirement age (NRA), subject to a lower age limit of 60
 - those who are unable to work due to ill health would be able to apply for access from the age of 60, subject to actuarial reduction
 - where the share of scheme funds allows, people would be able to commute some portion of their Assistance to a lump sum
 - FAS would be extended to members of schemes which wound up under-funded where the employer is still solvent.
4. This extension would be part-funded by taking into government the assets remaining in the schemes. The additional cost of this package takes the total government commitment to £3.5 billion Net Present Value¹.
5. The full text of the Secretary of State's announcement can be found at **Annex A**.

¹ The £3.5 billion differs from the cost estimated at the time of the December 2007 announcement. Estimates have been revised in light of new information, policy changes and amended modelling.

Implementing the December 2007 extension

6. The Government has already implemented those parts of the 2007 extension which increase Assistance for members of FAS-qualifying schemes. Full details of the Regulations giving effect to these changes can be found in **Annex B**.
7. These Regulations complete the legislative implementation by:
 - providing for the transfer of remaining assets of relevant schemes to government, and related issues; and
 - enabling the FAS to make payments to members of those schemes which would previously have been made by scheme trustees. In particular, to:
 - make payments to members whose share of scheme assets would have been sufficient to pay pensions in excess of standard FAS Assistance; and
 - enable members who have not yet started taking a scheme pension nor reached NRA to take up to 25 per cent of their FAS payment or their share of scheme assets, whichever is the lower, as a tax-free lump sum.
8. Throughout the development of these proposals the Government has applied certain overarching principles. These are to:
 - ensure continuity of payment where assets and payments transfer;
 - achieve a broadly consistent outcome for all FAS members, regardless of whether they have an annuity, took a transfer from their scheme or are members of schemes which will transfer their assets to government;
 - have regard to the overall cost to the taxpayer; and
 - take account of the characteristics of the compensation offered by the Pension Protection Fund (PPF).
9. It is planned that, subject to feedback on this consultation this set of draft Regulations should be laid before Parliament in the Winter.

General Issues:

Q1. The Government would like comments on whether the draft Regulations achieve the aims set out in this consultation document.

Q2. The Government would welcome comments on the potential effect of these changes on equality between different groups. In particular, the Government welcomes comments on:

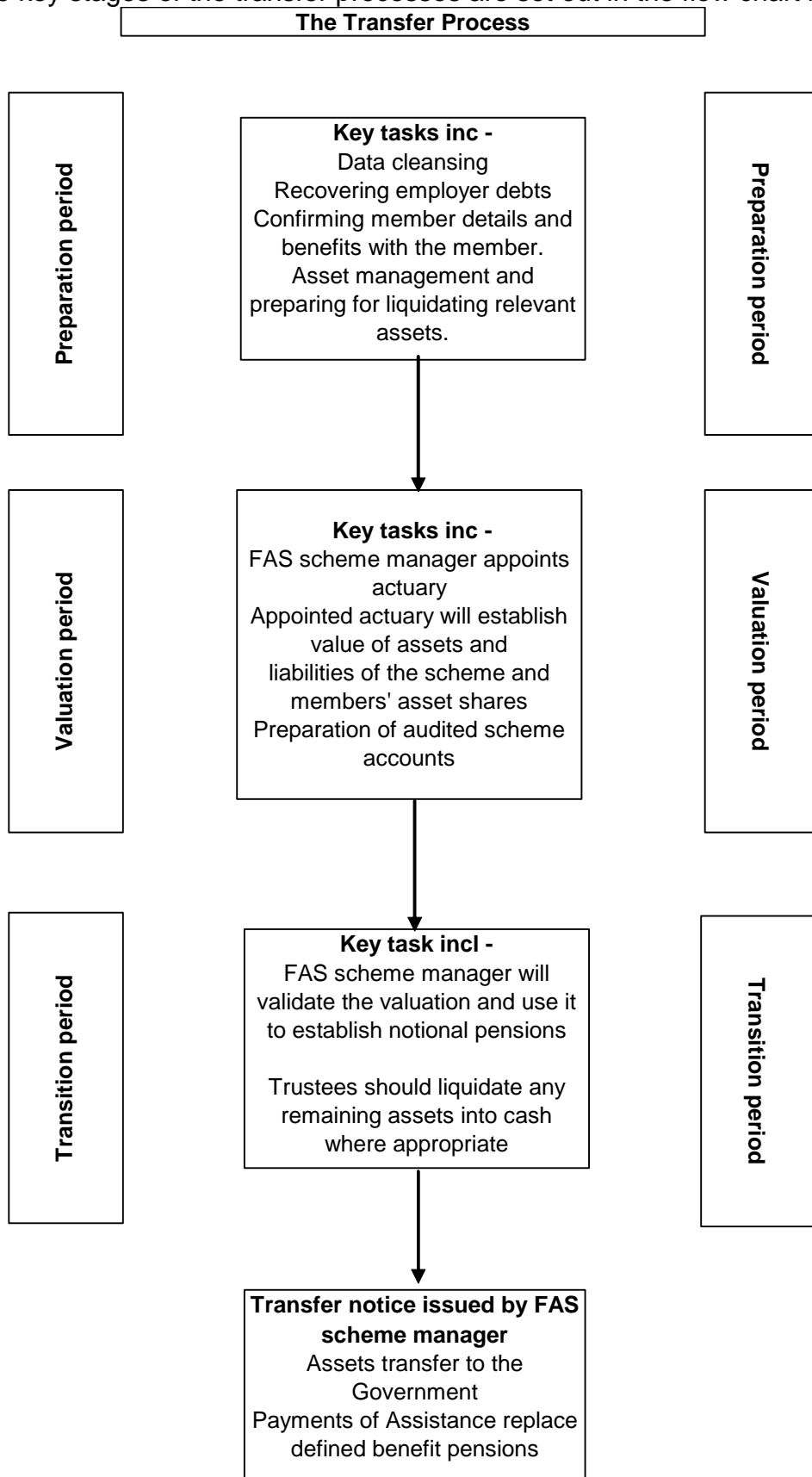
- ***whether there are any differential impacts on different racial groups;***
- ***whether disabled people would be affected differently than non-disabled people; and***
- ***whether men and women would be affected differently by these changes.***

SECTION 3: PREPARATION AND TRANSFER OF FAS QUALIFYING SCHEMES' ASSETS TO GOVERNMENT

PURPOSE OF TRANSFERRING ASSETS TO GOVERNMENT

1. To date FAS qualifying schemes have wound up by discharging their liabilities to members, typically by buying annuities from insurers. The original FAS was set up to provide top-up payments to annuity payments.
2. Andrew Young's FAS Review of Scheme Assets (the 'Young Review') identified that transferring remaining scheme assets to Government would release additional value that would contribute to funding an extension of the assistance paid by the Scheme. The then Secretary of State's announcement in December 2007 confirmed that the Government would take in all residual assets of qualifying schemes that had yet to fully wind up and make associated payments as they fall due, and use the additional value obtained from the assets transferred to part-fund the enhanced payments offered by the FAS.
3. This section of the consultation document sets out how the Government proposes to effect this transfer of assets. The Government consulted on initial proposals earlier this year, as part of the consultation on the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009. This latest consultation document reflects the Government's consideration of the feedback from the earlier consultation and subsequent discussions with stakeholders. It also reflects feedback from a separate consultation earlier this year on draft guidance prepared by the Government Actuary's Department on the method and assumptions that will apply when actuaries undertake valuations in respect of FAS qualifying schemes to facilitate the transfer of assets.
4. This consultation seeks views on more detailed proposals and the accompanying draft legislation which will provide for the transfer of assets. In particular, it gives further detail of the Government's proposed approach to the valuation of assets and the rules and processes governing activity either side of the actuarial valuation during:
 - the preparation period - during which scheme data is cleansed and other winding up activity proceeds in preparation for the valuation and transfer of assets; and
 - the transition period - that will lead to the transfer of assets and the discharge of trustees from certain responsibilities for their schemes.
5. Where appropriate, the Government has followed the models provided by conventional winding up processes and those used in relation to the PPF. This will help ensure that FAS processes will lead to outcomes for members that would be broadly consistent with those they may have expected had their scheme wound up by annuity purchase. It will also help to ensure that pension scheme trustees and other professionals will already have some familiarity with the steps leading to transfer.

The key stages of the transfer processes are set out in the flow chart below:



6. This section also covers proposals in respect of –
- those schemes and beneficiaries that will not be covered by the transfer of asset provisions;
 - the arrangements to transfer assets and the discharge of scheme trustees or managers from certain obligations at that point;
 - unusual cases where the Government will be accepting unused ‘residual’ funds from schemes that have otherwise already discharged their defined benefit (DB) liabilities; and
 - provisions to facilitate the separation and discharge of defined contribution (DC) assets and liabilities held by FAS qualifying schemes transferring their DB-related assets to government.
7. Following the coming into force of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 the Board of the PPF has assumed the role of scheme manager for the FAS. This section also sets out how the Board will support the process of transferring assets to Government in its role as scheme manager.

Qualifying schemes and beneficiaries excluded from the transfer of asset provisions

8. Not all FAS qualifying schemes will be transferring assets to government. Some schemes will already have fully wound up or will fully wind up (for example, if there is an existing binding commitment that exempts a qualifying scheme from the current restriction on the purchase of annuities for FAS qualifying schemes²) without transferring assets. In such circumstances beneficiaries will be considered for FAS top-up payments to top up their annuity to relevant entitlement levels. The Government does not intend for the valuation and asset transfer provisions to apply to any qualifying scheme in which all DB liabilities have been discharged or where the scheme manager thinks they are likely to be discharged by:
- annuity purchase (whether because of a binding commitment to annuitise or an approval to annuitise under section 286A of the Pensions Act 2004);
 - payment of transfers or relevant discharge lump sums (although it should be noted that this section also includes details of the Government’s intention to restrict the future payment of transfers and discharge lump sums); or
 - buy-back into the State Scheme (permissible in certain limited circumstances).

² The Financial Assistance Scheme (Halting Annuitisation) Regulations 2007 (SI 2533) prohibited FAS qualifying schemes from purchasing annuities. The restriction has been extended through the Pensions Act 2008, which had retrospective effect to link with the day the restriction in the regulations expired (25 June 2008). The legislation states that the trustees of qualifying schemes are prohibited from purchasing, or agreeing to purchase, annuities on behalf of qualifying members unless the trustees entered into a binding commitment to purchase the annuities before 26 September 2007, or the purchase of the annuities is approved by the FAS scheme manager.

9. Some schemes will contain a mix of beneficiaries, some of whom will have or will have had their liabilities discharged by one of the methods indicated above and some who will not. It is intended that the valuation and asset transfer provisions will only relate to those beneficiaries in such schemes that will not have their DB liabilities otherwise discharged.
10. There may be instances where schemes are divided into different sections in which assets and liabilities are segregated, and a section of such a scheme qualifies for the FAS but another section of that scheme does not. In this scenario, the Government intends only to take in assets relating to the section of the scheme that qualifies for the FAS, subject to the exclusions described above. This is because each section of a sectionalised scheme is treated as a separate pension scheme for FAS purposes.

Partial discharge cases

11. The Government is aware that some schemes have, in certain circumstances, partially discharged liabilities to some beneficiaries. For example, they may have paid a transfer to a member on the understanding that the amount of transfer would not represent the final discharge payment to the member but would be topped up by a further transfer payment once the assets of the scheme had been fully realised and allocated. Similarly some schemes may have partially annuitised members on the understanding that increases to those annuities might be made at the end of wind up.
12. The Government proposes that in all such cases – where members accepted a partial discharge payment on the understanding that a further payment might be made to account for their final share of scheme assets – trustees will complete the discharge of liabilities in respect of these members and not transfer relevant assets to government.
13. The Government recognises that in order to make relevant payments to such members, a share of assets will need to be identified and set aside to discharge relevant liabilities.
14. To facilitate the calculation of relevant shares of assets for these members the Government proposes that as part of the processes leading to the submission of final valuations, relevant schemes will undertake a preliminary valuation that will include relevant assets and liabilities for all members. Trustees will then discuss with the FAS scheme manager the appropriate time to discharge relevant liabilities before the transfer of remaining assets to government. Final valuations will be prepared by stripping out the relevant assets, liabilities and members from the preliminary draft in order to meet the valuation requirements (described later in this section) for those members in respect of whom assets will be transferred to government. Members whose liabilities were discharged would then fall to be considered under FAS ‘top-up’ provisions.
15. It should be noted that preliminary valuations will be undertaken by reference to the same calculation date as final valuations and that the requirement is not for schemes to complete two separate valuations.

16. The Government anticipates that where partial discharge was achieved by annuity purchase, trustees may as a consequence have a binding commitment with the insurer to discharge any residual member liability with that insurer. In this instance, applications to annuitise under section 286A of the Pension Act 2004 might therefore not be required.
17. The Government intends that the halt to the payment of transfers described later in this section would not apply in cases where additional payments would be required to top up existing partial transfer payments (where suitable evidence is provided that the original transfer payment was made on the understanding that it was not a full and final discharge of the member's DB liabilities but rather might be increased by a further payment).
18. The Government proposes that the actual transfer of assets would not take place until after any relevant DB discharge payments have been made.

Q1. *The Government welcomes comments on its proposed approach to identifying the schemes and assets which will transfer to Government.*

Q2. *The Government welcomes views on its proposed approach to partial discharge cases and in particular:*

- ***whether there might be any circumstances in which member liabilities may have been partially discharged by annuity purchase but where a binding commitment would not apply to any future payment to discharge remaining liabilities; and***
- ***whether there may be any obstacles to trustees discharging partial liabilities that may impede the transfer of remaining defined benefit assets.***

Period over which schemes will transfer assets to Government

19. The Government expects the majority of FAS qualifying schemes to transfer assets within two years of the proposed Regulations coming into force. It is also expected that some qualifying schemes will transfer assets early in this period.
20. However, the Government recognises that there may be exceptional circumstances in which asset transfer may be unavoidably delayed (for example, where legal action is outstanding and must run its course before the final funding position of a scheme can be established). PPF caseworkers will work with FAS qualifying schemes to help identify and overcome potential obstacles to early transfer.

Interaction of asset transfer and payments to beneficiaries

21. Under current arrangements scheme payments are made to eligible FAS beneficiaries from scheme funds whilst schemes are winding up. Where scheme payments are less than the level guaranteed by the FAS, they are topped up by Assistance payments. The Government intends to retain this top-up approach until

assets transfer into Government. From this point the FAS would then be the only source of payment for relevant beneficiaries, including those currently receiving their full scheme pensions from their pension scheme.

PREPARING FOR THE VALUATION AND ALLOCATION OF ASSETS

22. Under the Government's proposals the FAS scheme manager will decide when the scheme is ready to proceed with the final valuation of assets and liabilities.
23. Before reaching that decision the FAS scheme manager will expect trustees or managers, administrators and scheme actuaries to have undertaken a number of preparatory tasks aimed at establishing the final asset position and the underlying liabilities of the qualifying scheme.
24. These preparatory tasks resemble key functions already undertaken by schemes during wind up, including for example:
 - serving a debt on the employer (and where feasible obtaining that debt) or managing a compromise agreement;
 - surrendering the contracting-out certificate;
 - confirming member details and benefits with the member;
 - data cleansing, including Guaranteed Minimum Pension reconciliation; and
 - member tracing and resolving any ambiguities in the scheme's benefits.
25. However, there will be some further tasks required of FAS qualifying schemes which do not form part of the 'normal' wind up process:
 - liquidating assets to cash where practicable; and
 - transferring cash and – in some circumstances – other assets, to government.
26. The FAS scheme manager is already supporting FAS trustees in winding up activities and further guidance to assist trustees in preparing for the transfer of assets will be published in due course.

Asset management

27. Scheme assets are under the control and management of trustees and the Government proposes that they remain so until the assets of the scheme are transferred to government. Trustees and pension scheme managers of FAS qualifying schemes will be familiar with the FAS scheme manager's expectations around the management of assets prior to their transfer to government from trustee guidance and updates.
28. The FAS scheme manager can already direct relevant persons with regard to investment of scheme assets, incurring expenditure and legal proceedings in

order to minimise reduction of the scheme's assets, or to ensure that the assets are appropriately invested.

29. In addition, the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 included requirements for information to be provided by FAS qualifying schemes to the FAS scheme manager to assist in monitoring the use of assets by pension schemes. The information required includes details of:
- expenditure incurred in each three-month period (or in any shorter or longer period as determined by the FAS scheme manager);
 - details of any significant changes in investment or expenditure; and
 - details of current or contemplated legal actions or proceedings.
30. The FAS scheme manager will continue to monitor FAS qualifying schemes' investment and liquidation strategies prior to the transfer of assets. This is to ensure that decisions taken are appropriate and do not create undue risk for the taxpayer through increased Assistance not funded through the bringing-in of assets. This monitoring will also help determine when it would be appropriate to undertake the valuation and allocation of assets.

Q3. *The Government welcomes comments on its proposed approach to managing assets during the preparation period.*

Preparing to liquidate assets

31. All FAS qualifying schemes that will be transferring assets are in wind up. On commencing wind up trustees should have taken advice on the financial implications for the scheme in order to review the scheme's investment strategy and to consider liability matching and liquidation of assets to facilitate the discharge of liabilities.
32. Research undertaken as part of, and subsequent to, the 'Young Review' shows that many FAS qualifying schemes have already adopted a 'winding up investment strategy'. The Review estimated that over 80 per cent of residual FAS qualifying scheme assets were held in an easily realisable form such as bonds and gilts.
33. The Government intends that scheme assets will be transferred to DWP wherever practicable in cash form (pounds sterling) to facilitate their onward transfer to Her Majesty's Treasury. However, the way in which assets are liquidated can affect the amount of money realised which in turn can affect the FAS payments that members will receive.
34. The Government anticipates that discussion will be required between the FAS scheme manager and trustees to agree appropriate liquidation strategies. Although the Government envisages that any issues arising will be resolved through mutual agreement, legislation already allows the FAS scheme manager to direct schemes over the liquidation of assets.

35. The Government recognises that during wind up trustees are likely to want to remain invested in assets that match their defined benefit liabilities at least until such time as the calculation date for the valuation is reached.
36. Given the Government's overarching intention to receive assets in cash form, assets should, where practicable, be switched into an easily realisable form by qualifying schemes before the calculation date for the valuation is reached. When deciding the appropriate investment strategy, trustees may wish to be mindful of the Government's intention that the buy-out basis underlying the valuation of liabilities is linked to gilts and the implication of this for the FAS payments members receive. Trustees may wish to seek actuarial and/or investment advice when making asset-management decisions.

Assets that cannot be liquidated

37. The Government recognises that there may be some situations where liquidation is prevented by particular arrangements, for example, property with sitting tenants where potential purchasers would want vacant possession. Anticipated processes will allow for the transfer of such illiquid assets where the scheme manager considers it appropriate.
38. In preparing for the valuation and allocation of assets it is proposed that the FAS scheme manager will explore with the trustees of schemes:
 - whether assets might be switched into cash and at what point; and
 - potential assets that might be transferred to government in a non-cash form.

Q4. The Government welcomes comments on its proposed approach to liquidation of scheme assets, and where liquidation might be prevented by particular arrangements.

The FAS valuation

39. Under the proposed transfer arrangements described in this document, defined benefit pensions in respect of relevant beneficiaries will be replaced by Assistance payments (or prospective Assistance payments where beneficiaries are not yet entitled to receive payment) on the transfer of the assets to government.
40. To facilitate this process, the assets of the scheme will need to be valued and allocated amongst relevant beneficiaries and a 'notional pension' that could have been purchased from the asset share calculated. As described in Section 4, the notional pension will be used by the FAS scheme manager to determine whether a person stands to receive payments higher than would otherwise be payable by the FAS. The asset share will also affect the amount of Assistance some members are able to take as a tax-free lump sum.
41. The Government's intention is to seek to ensure that the share of assets allocated to the beneficiaries broadly reflects the share of assets that would have been allocated to them had their scheme wound up by the purchase of annuities.

42. Therefore, in common with schemes proceeding to wind up by purchasing annuities, the Government expects schemes transferring assets to government to allocate assets in line with the priority order under section 73³ of the Pensions Act 1995 in force at the time wind up began, or, where wind up began before these provisions came into force on 6 April 1997, in line with scheme rules.
43. The valuation and allocation of assets for FAS purposes will be undertaken by an actuary appointed to the task by the FAS scheme manager. In most cases the Government anticipates that this ‘appointed actuary’ will be the scheme actuary, although the FAS scheme manager may feel it appropriate to appoint another actuary where, exceptionally, it is considered that they are more suited to the task.
44. In other cases the FAS scheme manager may decide that there are economies that might be realised if valuations are batched together and allocated to a firm of actuaries (although sign off of the valuation will still rest with an individual within that firm).
45. The ‘appointed actuary’ will be responsible for producing a valuation that establishes:
- the value of the assets of the scheme;
 - the liabilities of the scheme;
 - the coverage of liabilities in line with the appropriate priority order (or scheme rules where this does not apply); and
 - member asset shares.
46. The Government intends to provide actuarial guidance detailing the method and assumptions that should be used by the ‘appointed actuary’ when undertaking the valuation. This guidance will also set out the buy-out basis that will be used by actuaries to determine relevant liabilities – that is, those that fall to be valued on a buy-out basis – and by the FAS scheme manager to determine notional pensions. The next draft guidance is expected to be published for consultation in the autumn⁴. It is anticipated that this guidance will also provide further information on the valuation of particular assets.

Q5. The Government welcomes comments on its proposed approach to obtaining relevant scheme valuations.

Waiving valuation requirements in respect of asset shares

47. Responses to previous consultations have raised concerns that ‘full’ valuations may not be necessary in relation to all schemes transferring assets to government.
48. In response to this feedback, the draft Regulations provide for the FAS scheme manager to be able to limit valuation requirements for FAS purposes. It is

³ Section 73 of the Pensions Act 1995 sets out the requirements for valuing scheme liabilities and allocating assets against those liabilities in relation to schemes in wind up.

⁴ The first draft of this guidance was consulted upon in May this year.

anticipated that this power would only be used in certain exceptional circumstances, for example where it would not be cost-effective for asset shares to be calculated and where member payments would not be affected by this action.

49. Given that the amount of assets allocated to a beneficiary may affect the payments they receive from FAS it is not anticipated that this power will be used frequently. However, this approach may be appropriate where qualifying schemes have low amounts of residual assets and are funded in such a way that asset shares will not have a material impact on beneficiary payments.
50. This may arise, for example, where a scheme's funding position is such that all residual assets will be allocated to pensioner members, none of whom stand to receive payments that would otherwise be above FAS levels.
51. In such circumstances, although a valuation of assets and liabilities would be required, it may not be necessary for the actuary to allocate assets amongst members. It should be noted that even in these circumstances it is likely that the valuation would at least need to be started to determine that a full valuation is not required. It is anticipated that PPF caseworkers will work with schemes to establish whether a limited valuation may be applicable.

Deeming asset share/notional pensions

52. Where requirements to provide asset shares are waived, the Government proposes that the FAS scheme manager should be able to deem asset shares or notional pensions in certain circumstances to enable appropriate payments to be made. For example, if as in the circumstances described above it is apparent that no deferred members would have an asset share, but some of those deferred members received an interim pension from the scheme, it may be appropriate for the FAS scheme manager to determine that an asset share is zero to enable appropriate reconciliation calculations to apply.

Q6. The Government welcomes comments on this proposal to give the scheme manager the power to decide it isn't appropriate to obtain asset share calculations in relation to some particular categories of person and on whether there are any other circumstances where it would not be appropriate for asset shares to be calculated.

Schemes that have recently undertaken section 73 valuations

53. Previous consultation identified concerns at the prospect of schemes that have recently undertaken section 73 (Pensions Act 1995) valuations, being required to undertake a further valuation for FAS purposes. In particular, concerns related to:
 - revised valuations affecting individual assets share and thus potentially member payments; and
 - the extra costs associated with a further valuation.

54. The Government has considered whether it may be appropriate to allow existing valuations to stand for the purposes of transferring assets. However, it does not consider that this would be appropriate because:
- there would be significant risks of asset values and liabilities changing between the calculation date of the valuation and transfer; and
 - the buy-out basis adopted by the scheme in an earlier valuation may be different from the “synthetic buy-out” basis that will be applied by the FAS scheme manager for FAS purposes. A different buy-out basis would alter the allocation of assets and thus raise issues of inconsistency and financial risk to government.

Q7. The Government welcomes further views on this approach.

When to undertake the valuation and prescribing the calculation date

55. The Government proposes that it will be the FAS scheme manager, rather than the scheme trustee, who determines when it is appropriate to undertake the final valuation of assets. This would take place once the various data cleansing, reconciliation, debt recovery, and relevant liquidation preparation tasks have been completed and liabilities have been established. No objections to this proposal were made during earlier consultation, but the Government welcomes further comment.

The calculation date for the valuation

56. As the value of pension scheme liabilities and assets changes over time, the calculation date as at which a scheme valuation is undertaken can affect the share of assets allocated to a beneficiary.
57. In a conventional wind up, trustees would undertake a final valuation of assets and liabilities towards the end of the winding-up period. This is usually after the various data cleansing, reconciliation, debt recovery, and relevant liquidation tasks have been completed and liabilities have been established.
58. The Government intends the valuation for FAS purposes to be undertaken by reference to a calculation date towards the end of the preparation period to reflect typical wind-up processes. This will also ensure that subsequent movement in asset values is minimised.
59. The possibility of asset values changing with time means that leaving the selection of the calculation date to scheme trustees could unnecessarily delay the transfer of assets. This might, for example, arise if trustees were of the view that the value of assets might increase at some future point.
60. In order to mitigate this risk the Government considered providing for a fixed and uniform calculation date for all schemes (which could for example be the date the draft Regulations come into force). However, some schemes might not be in a position to transfer their assets for some time after the draft Regulations come into force. A significant period between the calculation date and the date of transfer

would increase the risk of movement in the value of assets and thus increase the associated risks either to members or to government.

61. For this reason the Government does not believe a fixed date for all schemes would be appropriate.
62. In initial consultation on the calculation date, the Government suggested fixed retrospective quarterly calculation dates starting from a date close to the date the relevant Regulations come into force. Under that proposal, the relevant preceding quarterly date would have applied as a matter of course once the FAS caseworker was satisfied that the necessary preparatory tasks had been completed.
63. However, after further consideration, the Government believes that providing for prospective valuation calculation dates on a monthly basis will best balance the financial risk to government of assets changing in value before transfer and unnecessary delay to the transfer of assets. Prospective dates may also facilitate schemes' planning in respect of producing audited accounts to support the valuation.
64. It is proposed that the calculation date will be the last day of the month in which FAS scheme manager appoints the actuary to undertake the valuation.

Q8. The Government welcomes views on the proposed approach to 'calculation dates' included in the draft Regulations.

The treatment of DB Additional Voluntary Contributions (AVCs) in the valuation and the calculation of Assistance payments in respect of DB AVCs

65. FAS qualifying schemes would have offered additional benefits to members who paid AVCs. Such benefits would usually be made on a DC basis and thus are excluded from FAS consideration.
66. However, some schemes allowed AVCs to be made on a DB basis. Currently, the calculation of Assistance does not take account of DB AVCs where scheme assets have first been applied to satisfy those AVC liabilities either in the 'actual pension' (that is, the scheme pension or annuity paid to the beneficiary) or the 'expected pension'.
67. Maintaining the current position of seeking to separate DB AVCs from other DB benefits could raise practical issues in FAS qualifying schemes transferring assets to government. The separation of DB AVC assets in these schemes would mean that trustees would lose the economy of scale associated with securing all scheme benefits with insurers. Insurers might be unwilling to take on this business and, even if they were, their charges could lead to lower returns for members.
68. To better facilitate asset transfer, the draft Regulations provide that assets relating to DB AVCs should be included in the share of assets allocated to the beneficiary as part of the FAS-related valuation and for these assets to transfer alongside other relevant assets into government.

69. Where assets relating to DB AVCs are to be transferred, the member's AVC benefit will be added into the accrued pension for the purposes of calculating the FAS 'expected pension' and standard Assistance calculations applied. Members will thereby receive 90 per cent of the DB AVC benefit, subject to the FAS cap that will be applied to the expected pension including the DB AVC benefit.⁵ This approach is broadly consistent with the approach adopted for PPF compensation purposes.
70. It is envisaged that this approach will be followed in relation to all types of DB AVC, such as benefits in the form of additional fixed pensions or added years.
71. The Government does not intend to revisit FAS qualifying schemes with DB AVCs that are unaffected by the transfer provisions; that is, schemes that will wind up or that have already wound up where AVC assets have been separately allocated. Obtaining information on DB AVCs that have already been separately secured would in the majority of cases be difficult and potentially costly to obtain. For such schemes, the existing approach will continue to apply.

Q9. *The Government welcomes views on whether the proposed approach to DB AVCs is reasonable and appropriate in all cases.*

Assets to be excluded from the valuation for FAS purposes

72. Not all the assets within qualifying FAS schemes will be included in the valuation for FAS purposes, or included in the 'pot' to be divided amongst scheme beneficiaries. For example, some assets might relate to DC benefits that will be discharged separately from the process that applies to assets relating to DB liabilities, whilst other assets will need to be set aside to meet anticipated costs of managing the scheme up until the point that assets transfer into government.
73. Exemptions contained in the draft Regulations include –
- **Money Purchase (DC) assets** – as described later in this section, some assets will be required to discharge outstanding DC liabilities.
 - **Assets in respect of excluded members** – as described in preceding paragraphs, some assets will be required to cover DB liabilities that will be discharged outside of the transfer process.
 - **Non-recoverable debts** – when undertaking the valuation, the appointed actuary will consider whether to exclude debts that cannot be recouped without disproportionate cost or recovered within a reasonable time from the valuation. In such cases the Government envisages that the trustees would already have made a provision for non-recovery in their accounts. In preparing for the valuation, the FAS scheme manager will work with schemes to identify whether such exemptions should apply so that

⁵ As part of the allocation of assets the overall share of assets allocated to the member will include any assets allocated in respect of DB AVCs. As described elsewhere in this document where a member's asset share yields a 'notional pension' higher than the payments than FAS would otherwise provide those higher payments will be made (without any cap applying). In such circumstances the member will effectively receive the value of the assets allocated in respect of the AVC.

uncertainty or concerns in respect of the omission of assets from the valuation can be resolved during the preparation period.

- ***Payments made by the FAS scheme manager to the trustees or managers of the scheme under regulation 14B of the FAS Regulations 2005*** – such payments are made to schemes for administrative purposes and not in respect of member liabilities, for example they can be made to enable a scheme to wind up where there would otherwise be insufficient funds available. It is therefore appropriate to exclude them from the assets of the scheme for the purposes of the valuation.
- ***Pre-6th April 97 contracts of insurance*** - these will be excluded from the valuation where:
 - the trustees or managers have taken all reasonable steps to obtain information concerning that contract of insurance, whether by searching the records of the scheme or otherwise;
 - the information that they provide concerning that contract of insurance is insufficient in the opinion of the appointed actuary to conduct a valuation;

This exemption is included because such contracts often do not have a surrender value (before relevant provisions of the Pensions Act 1995 came into force there was no statutory requirement for them to have one); and because given the age of the arrangement, information on any value is often sketchy. In practice it may be that any such arrangements in FAS qualifying schemes would be transferred into individual annuity contracts and such assets would not in any case form part of a FAS qualifying scheme's transfer valuation. However, as a contingency the draft Regulations provide for their exclusion under the circumstances described.

Further exclusions or deductions

74. In addition it is envisaged that guidance provided for under the draft Regulations will set out how the valuation should be conducted. This will include guidance on where certain other assets should be ignored for the purposes of the valuation, for example expenses that will be incurred by the scheme to complete the process of asset transfer, including any expenses incurred that have not yet been paid.
75. As described elsewhere in this document further consultation on this guidance is planned for later this year.

Hybrid Schemes and DC assets

76. Some FAS qualifying schemes offer various combinations of DC and DB benefits. DC assets are not considered in the statutory priority order calculation, with the exception of AVCs and certain cases where an "underpin benefit" has applied.
77. As the FAS provides Assistance only in respect of DB benefits, all purely DC liabilities and assets should be stripped out of the valuation that is undertaken by FAS qualifying schemes (with the exceptions indicated above).

78. The actuarial guidance planned for publication in the autumn will include further information on the Government's intended approach in relation to hybrid schemes that offer either DB benefits subject to a DC underpin or vice versa.

Placing a value on an asset

79. Audited scheme accounts will provide the starting point for the appointed actuary's valuation of the assets of the scheme. The Government expects that the value allotted to assets as at the calculation date in the scheme accounts should be in the context of the scheme not being a going concern. Such an approach should be familiar to schemes as the standard 'Statement of Recommended Practice: Financial reports of Pension Schemes' (SORP) already covers the impact on scheme asset values when the going concern basis is no longer appropriate.
80. The SORP provides for trustees to modify, where appropriate, the basis used to value assets where the scheme is in wind up. It sets out that the values placed on assets would, mostly, be realisation values which have taken relevant costs into account. However, for less liquid assets (such as property) the net realisable value may be a forced sale value.
81. The draft Regulations require the actuary appointed by the FAS scheme manager to undertake the valuation by reference to the scheme accounts and provide that the assets should be valued as at the relevant valuation calculation date. This remains subject to exclusions, or obligations on the alternative valuation of assets in determining the value of the relevant assets of the scheme, as described in subsequent paragraphs in this section.

Audited scheme accounts and accounting cycles

82. There are various existing requirements on trustees to obtain annual audited accounts within certain timescales. The Government is mindful of the demands this places on the resources of schemes at certain points in the year. Furthermore, as the calculation date for the valuation for FAS qualifying schemes will be controlled by legislation and by the FAS scheme manager rather than by trustees, the Government is aware that the usual accounting/valuation cycle will be disrupted.
83. Whilst special purpose accounts solely for the purposes of supporting the FAS valuation could be obtained outside of the usual accounting cycle, this would incur additional expense. To avoid such unnecessary expense, the FAS scheme manager will seek to work with schemes during the preparation period to provide an indication of when a valuation is likely to take place. This will allow trustees to decide whether to exercise the flexibility allowed within existing accounting requirements to adjust their accounting cycle so that the 'annual' audited accounts necessary to deliver the valuation are produced at the relevant time.
84. The FAS scheme manager will also liaise with schemes in respect of accounting requirements at the point assets transfer to government, which is likely to be some months after the date accounts were produced to support the FAS valuation. It is

anticipated that further information will be required from schemes to account for any movement in scheme assets prior to transfer, though it is not envisaged that full audited accounts will typically be required in respect of this period.

Alternative valuation of assets in specific cases

Debts owed to the scheme

85. Some schemes will have assets that relate to debts that are owed to the scheme. These may be debts owed by employers, by members or other beneficiaries who have been overpaid by the scheme, or by other parties, perhaps as a consequence of legal proceedings. The draft Regulations require trustees to provide initial information (in most cases within 28 days of the proposed Regulations coming into force – see para 107 of this section) on outstanding debts and their plans for recovery so that the FAS scheme manager can help schemes prepare for the valuation.
86. Where appropriate, the FAS scheme manager will expect debts to have been recovered before proceeding with the valuation and for these assets to be included in the valuation. However, the Government is aware that some FAS qualifying schemes have arrangements with ongoing employers in which debts are payable over future periods. For example, this could be a profit-sharing arrangement with a solvent employer that forms part of an agreement to compromise the employer debt payable on scheme wind up.
87. Some such arrangements may have a comparatively short period to run and they will therefore have been completed by the time the scheme is otherwise ready to value its assets. However, in other cases, agreements may not be time-limited but rather be extinguished when payments reach a certain threshold. In some cases fixed payment amounts are agreed, whilst in others payments are dependent on other factors such as the profits of an employer.
88. The Government is also aware that there are instances, for example in relation to fraud cases, where payments owed to the scheme in respect of member liabilities are not expected to be received for some years.
89. In recognition of the varying nature of these arrangements the draft Regulations provide for flexibility in the treatment of debts for valuation purposes.
90. Where agreements have a short time to run the FAS scheme manager will consider whether to delay the valuation until the agreement has run its course, or proceed with the valuation using an estimate of the returns from the debt recovery action. This decision will be influenced by the confidence the FAS scheme manager has in the solidity of the estimates of these proceeds.
91. Where agreements have some time to run and, in the opinion of the FAS scheme manager it is appropriate to proceed with the valuation and transfer of assets, the FAS scheme manager will instigate the valuation.

92. In such circumstances the draft Regulations provide for the appointed actuary to place a value on any future payments as part of the asset valuation, in line with FAS guidance. The value of those payments will take account of the risk of default and the period across which the agreement runs. As part of this arrangement, the draft Regulations provide that any payments made post-transfer will be made to government rather than into the pension scheme.

Debts owed to a qualifying scheme by a beneficiary in respect of an overpayment of pension prior to wind up

Pre-wind up overpayments

93. Where beneficiaries have been overpaid by their scheme before the start of wind up and debts in respect of such overpayments remain outstanding at transfer, those debts will transfer to government as part of the assets of the scheme.
94. The Government proposes to provide the FAS scheme manager with the discretion to take such debts into account when determining the appropriate action in respect of any adjustments to final Assistance payments. Full proposals on how payments made across wind up will be reconciled against FAS entitlements and notional pensions derived from asset shares are described later in this section.
95. The Government anticipates that in some cases there will already be recovery plans in place that have been agreed between beneficiaries and trustees and that it may be appropriate for beneficiaries to continue to make payments in line with these plans after assets transfer. In practice it is not anticipated that residual debts in respect of member overpayments will be at all common and it is expected that the FAS scheme manager will recommend and agree approaches to repayment with beneficiaries.

Debts owed in respect of contribution notices, financial support directions and restoration orders

96. The Government is not aware of any such orders applying to FAS qualifying schemes but the draft Regulations provide for FAS valuations to take account of such assets in case of their existence. Where such debts apply, the draft Regulations provide for the appointed actuary to adopt, as the value of the asset, the amount due to the scheme given in the notice, direction or order.
97. The draft Regulations also provide for the appointed actuary to adjust the value placed on such debts to reflect situations where the debt has not been recouped (either at all or in part) as at the calculation date, or where they are of the opinion that further scheduled payments might not be made in full. Guidance on how to deal with such debts will be provided. The appointed actuary will be required to bring such adjustments to the attention of the FAS scheme manager as part of the information provided at the valuation's approval stage.

Q10. The Government welcomes comments on the proposals for the valuation of assets including debts, in particular whether there are other types of debts

or circumstances where specific provisions might be needed to allow appropriate valuations to be undertaken.

Insurance products

98. Some FAS qualifying schemes may have taken out insurance contracts which are held in the name of the trustees to provide for member benefits, including investments that have guarantees or options embedded within them. Under normal winding-up arrangements trustees would have sought to convert these contracts into individual annuity contracts if possible. It is understood that most insurers have terms which allow assignment to an individual at least for certain forms of contract.

99. Such products tend to have surrender values that are low in comparison with the value of the contract if it is held to maturity. The Government is of the view therefore that, where an insurance product held by trustees that provides payouts linked to a particular member:

- has a surrender value that is less than the liability secured by that product; and
- can be transferred into an annuity contract for that member on the same terms as the original contract,

it would seem appropriate for individual annuitisation to apply. The FAS scheme manager is likely to look favourably on applications by schemes to annuitise in such cases. Such members would then fall to be considered for eligibility to top-ups of Assistance as the related asset will not transfer to government.

100. Where such products are not individually annuitised, the draft Regulations also provide for the Government to be able to take in such assets and for a value to be placed upon them in the valuation (see Commentary on the Regulations). Under such arrangements the income arising from the policy would become payable to the government rather than the trustees of the scheme.

101. In the unlikely event that a contract had a higher surrender value than the liability secured by that product, it should be cashed before transfer to government.

Q11. The Government welcomes comments on its proposed approach to insurance products.

Overarching powers to include and place an alternative value on an asset in the valuation

102. The draft Regulations allow the appointed actuary:

- to place a different value, with the FAS scheme manager's agreement, on an asset held by or owed to the scheme if he is of the opinion that the value of the asset is substantially different at the calculation date from that set out in the relevant accounts; and

- to include and place a value on an asset of the scheme which is not listed in the relevant scheme accounts.
103. Further guidance will be provided on such adjustments. However, the Government envisages that such powers might be used where:
- a surrender value has been placed on an insurance contract in the audited accounts but that contract is transferring to government – in such circumstances the appointed actuary will place a value on the liability secured in line with guidance which will be used in the valuation; or
 - new assets come to light (which will not have had a value placed upon them) between the production of the audited accounts and the valuation being undertaken by the appointed actuary, or the valuation being approved by the scheme manager.
104. These provisions aim to ensure schemes are not put through the added expense of producing new accounts when alternative values have been used or additional assets have been included. The appointed actuary will be expected to bring any such adjustments to the attention of the FAS scheme manager as part of the information provided to support the approval of the valuation.
105. The draft Regulations also provide the FAS scheme manager with the power to require the appointed actuary to amend the value of an asset in the valuation. The Government considers that such a power would be used exceptionally, perhaps in circumstances:
- where there is a disagreement with the appointed actuary over the value of an asset at the calculation date and agreement cannot be reached through discussion; or
 - where the FAS scheme manager is satisfied that there has been a significant decrease in the value of particular assets between the calculation date and the point the valuation has been submitted for approval – in practice this would mean the assets in question being valued as at a different date from the calculation date prescribed by the FAS scheme manager, although the value of liabilities and other assets would remain as at the original calculation date.
106. This provision is intended to enable the FAS scheme manager to provide the Government with protection against significant movement in the value of an asset between the calculation date and the date that the valuation is approved. The Government considers this is appropriate in order to help minimise the risk of government bearing additional financial obligations derived from asset shares that will not be covered by the assets transferred.

Q12. The Government welcomes views on its proposals for alternative values to be placed on assets in certain circumstances.

Assets received/debts recovered after the valuation has commenced

107. The Government proposes that schemes should notify the FAS scheme manager of the amount and nature of the debts owed to the scheme during the preparation period. This is so that the FAS scheme manager can make an informed decision whether to instruct the appointed actuary to proceed with the valuation using a 'notional' value or whether to wait for the actual debts to be repaid. The intended information requirements are described later in this section.
108. In general, it is anticipated that the value applied to an asset in the valuation would not be revised, irrespective of the actual returns received in respect of that asset subsequently. This approach is intended to avoid the need to revisit valuations and the expense this would cause.

Liquidation of assets once the valuation calculation date has been reached

109. Under the proposals contained in this document the value of scheme assets in the valuation will affect the Assistance payments which will be made and consequently the Government's additional funding commitments (see Section 4).
110. The Government therefore wishes to minimise the risk of assets decreasing in value as a result of market changes after the valuation calculation date. With this in mind it is expected that schemes would complete the liquidation of relevant assets into cash at the calculation date, or very soon after, to reduce the risk that assets transferring are lower than those taken into account in the valuation.
111. As indicated in paragraphs 31-38, it is anticipated that in practice schemes may only be holding gilts or approved illiquid assets (that is, assets which the scheme manager has agreed should not be realised before transfer) at the calculation date. Therefore, it is only gilt holdings that will be realised on or immediately after the calculation date.
112. Provision is not made in the draft Regulations for gilts to transfer. The Government does not envisage that gilt holdings will be transferred in any circumstances but will rather be realised before transfer.

Q13. The Government welcomes comments on the proposed approach to liquidating assets after the valuation date is reached and, in particular, whether there may be any obstacles to the liquidation of gilt holdings prior to transfer.

Valuing pension liabilities and calculating asset shares

113. In undertaking the FAS valuation the appointed actuary will need to place a value on scheme liabilities and calculate asset shares for relevant beneficiaries. Actuarial guidance will set out the calculation process in detail. It is anticipated that liabilities will be valued and allocated in line with the legislation governing the wind up of relevant pension schemes, as per section 73 of the Pensions Act 1995.

114. Under certain statutory priority orders made under section 73 certain benefits are valued on a 'full buy-out basis'. In a conventional wind up, these buy-out values would reflect the actual cost of securing the liabilities with an insurer. As the FAS qualifying schemes in question will not be securing annuities, actual buy-out costs may not be generally available. Because of this, and in order to ensure consistency between FAS qualifying schemes, guidance will set out a 'synthetic buy-out' basis which will be applied by appointed actuary in order to value relevant liabilities.
115. The Government proposes that the same synthetic buy-out basis will also underlie the calculation of notional pensions undertaken by the scheme manager and other annuity factors that apply in relation to the calculation of FAS Assistance. For example, for the purposes of allowing Assistance to be commuted in line with the proposals described elsewhere in this document and for notional annuities to be determined from transfer payments in order that top-up Assistance can be calculated. The Government considers it is appropriate that a consistent basis should be used for these purposes to avoid anomalies arising.
116. The synthetic buy-out basis that will be used by the FAS scheme manager will form part of the package of guidance that will be issued to trustees and actuaries. The buy-out basis, included in the draft guidance published for consultation in May this year, was an extension of the basis on which the Government consulted in March 2008 for the purposes of reviewing the annuity factors that are applied in the calculation of relevant members' FAS entitlements.
117. Given that this basis has now been in operation for some time and was based on evidence from the buy-out market in 2007, the Government anticipates that it will be appropriate to consult on a revised basis before these Regulations come into force. This consultation may be undertaken at the same time as the Government consultation on revised valuation guidance planned for the autumn and will provide opportunity for comment on any revision to the buy-out basis, the use of the basis in deriving annuity factors used to calculate asset shares and relevant aspects of FAS payments.

Q14. Whilst these proposals do not form part of the draft Regulations and are not essential to the consideration of the proposals in the consultation document, the Government welcomes comments on its intentions that:

- ***a consistent synthetic buy-out basis should be employed for all relevant FAS functions; and***
- ***that the basis employed under current FAS functions will be reviewed before the Regulations come into force.***

Submission of valuation reports

118. Guidance will set out the information required from appointed actuaries to meet the valuation requirements. It is anticipated that this information will include but not be limited to:

- the value of assets, taken from audited accounts with the exceptions described previously;
- details of scheme liabilities;
- the value of liabilities;
- asset shares for relevant beneficiaries;
- information to help the FAS scheme manager to validate the valuation; and
- information relating to member's scheme benefits to help determine notional pensions.

119. It is anticipated that required information will be submitted on a standard spreadsheet provided by the FAS scheme manager.

ACTIVITY FOLLOWING THE VALUATION

The approval of the valuation by the FAS scheme manager

120. The draft Regulations require that the FAS scheme manager must approve the valuation provided by the appointed actuary.

121. Where the FAS scheme manager is not satisfied that the valuation submitted by the appointed actuary has been prepared in accordance with the legislation, the draft Regulations provide that the FAS scheme manager must obtain another valuation.

122. If a further valuation is required, the same calculation date will continue to apply as per the original valuation. Such an approach will be easier to administrate, as otherwise all of the underlying calculations would need to be revisited which may, for example, not be necessary if it were only the value of an asset of the scheme that had been revised. This approach will also protect government and scheme interests, as some pension liabilities are intended to be calculated with reference to the price of gilts at the calculation date but any gilts held at the calculation point will subsequently have been liquidated. Allowing for a revised calculation date may therefore produce a different funding level even without correcting the error.

123. The draft Regulations require the FAS scheme manager to provide the trustees, or pension scheme manager, with a copy of the approved valuation. Provisions in respect of the valuation and related rights of review are covered later in this document.

Q15. The Government welcomes comments on its proposals in respect of the approval of the valuation and subsequent notifications.

Calculations by the FAS scheme manager

124. Once approved, the FAS scheme manager will use the valuation to establish the notional pension derived from the asset share for each beneficiary in order to determine whether they would have received benefits higher than the basic FAS

levels, had the scheme not been transferring its assets to government. This process is described in Section 4 of this consultation document.

Reconciliation

125. Beneficiaries whose scheme entitlement arose before or during wind up will have been receiving interim pensions from their scheme during wind up. Those interim pensions are paid by trustees on account of the beneficiary's final scheme entitlement and are generally set on a conservative basis to help ensure that beneficiaries do not receive a fall in their income when the scheme completes wind up.
126. The Government understand that for schemes that are winding up by annuity purchase trustees would typically reconcile the interim pension payments made to beneficiaries on account of their final scheme entitlement against the share of assets determined for the beneficiary and the annuity that the asset share could purchase. In some cases trustees might buy a higher annuity to account for any underpayment identified, or, in other cases they might purchase a lower annuity to account for any excess payment.
127. This reconciliatory action would not be possible where assets transfer to government.
128. Existing Regulations provide, in broad terms, for the FAS scheme manager to reconcile relevant payments made to members across their FAS entitlement period to seek to ensure beneficiaries receive no more or less than a total of 90 per cent of their FAS expected pension in respect of that period. In practice this is achieved by considering the amount that a beneficiary received from their scheme and from the FAS during the FAS entitlement period, comparing this with their final FAS entitlement and any final scheme payments and making relevant adjustments to future payments and in respect of past periods.
129. The Government is aware of a number of legal cases requiring trustees to revisit interim pensions already paid during the winding up period. These legal judgments will result in trustees having to redistribute assets between members and adjust future payments to take account of these judgments which will affect past periods. The Government's proposals for reconciliation will therefore need to also take account of the adjustments required as a result of these legal judgments.
130. The Government has considered whether it would be appropriate to extend the current powers in order to account for the period before which their entitlement to FAS payments arises in order to ensure that interim pensions can be considered against final scheme entitlements.
131. The Government's proposed approach – set out in the draft Regulations – is to extend the existing reconciliation provisions to include discretion for the FAS scheme manager to reconcile interim pension payments made in respect of beneficiaries whose assets transfer to government with the notional pension

derived from their share of assets across relevant periods. The purpose of this approach is to ensure that, where relevant, beneficiaries receive payments in line with the value of their asset share up to the start of their FAS entitlement as well as receiving payments in line with the higher of the value of their asset share and their “standard FAS” entitlement from the start of their FAS entitlement period.

132. As described in Section 4, the notional pension will be derived from a beneficiary's asset share to establish the rate of pension that could have been secured for the beneficiary from the later of the start of wind up and the date that their pension started to be paid. The Government proposes that reconciliation should begin as from this date. The proposed approach to reconciliation means that there will be two distinct periods across which payments will be reconciled.
133. The ‘first reconciliation period’ will apply from the later of the date that the scheme started to pay a pension to the beneficiary or the start of wind up. This period would run to the date which FAS entitlement would arise (for members who haven't received early access to FAS through ill-health, this would be the later of 14 May 2004 or normal retirement age). Across this period, the total notional pension (including any indexation) will be compared with the actual interim pension payments paid and any difference identified.
134. In general, given that trustees tend to take a conservative approach to setting interim pensions, the Government anticipates that underpayments are likely to be identified in respect of this ‘first reconciliation period’.
135. For the ‘second reconciliation period’, from the date that FAS entitlement arose to the date of transfer, entitlement will be determined by establishing on a year-by-year basis whether the notional pension (including any indexation) is higher than the ‘standard FAS entitlement’. This will then be compared to the total of the amount of interim pension the member received from their scheme across this period and the amount of any initial payments paid by FAS. Any difference will be identified and offset against any difference provided for in the ‘first reconciliation period’. In accordance with current powers, the scheme manager will then be able to make additional payments in respect of any underpayment identified or to adjust the “actual pension” for the purpose of ongoing payments in respect of any excess payment.
136. As an alternative to this approach, the Government has considered requiring trustees to take the reconciliatory action in relation to the pre-FAS entitlement period. This approach would lead to the same excess payments or underpayments being identified and for recovery or reimbursement action to apply, although if trustees were charged with this action the method in which excess payments would be reclaimed would differ depending on the arrangement reached between the trustee and beneficiary.
137. Requiring trustees to reconcile interim pension payments against notional pensions would however lead to a delay in the scheme wind up as there would

need to be an exchange of information and calculations between the trustee and FAS scheme manager in order for:

- differences to be identified by trustees across the first reconciliation period;
- the amount of any differences identified across the two reconciliation periods to be offset; and
- discretionary decisions to be taken over whether adjustments should be applied.

138. It is estimated that this approach would typically add between three and six months to the period before assets could be transferred and would entail additional cost. Therefore, the Government considers that it is preferable that the FAS scheme manager undertakes this reconciliation rather than the scheme trustees.

Example 1 of Reconciliation by FAS Scheme Manager

Andrea's scheme started to wind up on 1 January 2000. She reached NRA and retired on 14 May 2000 on her 65th birthday.

If her scheme had been fully funded, then Andrea would have received a pension of £5,000 a year. After taking advice on the funding situation, the trustees decide that they can afford to pay Andrea an interim pension of £3,000 a year.

With effect from 14 May 2004, FAS start to pay initial payments of £1,500 a year to bring Andrea's total income up to £4,500 which is 90 per cent of her expected pension of £5,000. All of Andrea's service was prior to 6 April 1997, so she is not eligible for an annual increase (indexation) to her FAS Assistance payment.

In preparation for transferring assets to government, the scheme calculates the asset shares for all members as at 30 June 2010. Andrea's asset share is £70,000. This is calculated to be equivalent to a notional pension of £3,500 a year without increases payable from her NRA.

Andrea therefore received underpayments from the scheme of £500 a year during wind-up. The underpayments during the period prior to 14 May 2004 totalled £2,000. The FAS scheme manager decides to pay this to Andrea as a lump sum.

At the same time, the FAS scheme manager reconciles FAS initial payments made. The scheme underpayments during the period after 14 May 2004 were exactly offset by overpayments of FAS initial payments so no recovery of FAS initial payments is necessary and no arrears of FAS payments need to be made.

Andrea's normal Assistance entitlement is 90 per cent of expected pension less actual pension which is £4,500 a year (90 per cent x £5,000).

The FAS pays the higher of the normal Assistance and the notional pension. For Andrea, this is the normal Assistance payments of £4,500 a year. Andrea will receive the annual payment for the rest of her life. No indexation will apply as she

has no post-April 1997 service.

Example 2 of Reconciliation by FAS Scheme Manager

Bruce's scheme started to wind-up on 1 January 2000. He reached NRA and retired on 14 May 2000 on his 65th birthday.

If his scheme had been fully funded, then Bruce would have received a pension of £5,000 a year. After taking advice on the funding situation, the trustees decide that they can afford to pay Bruce an interim pension of £4,000 a year.

With effect from 14 May 2004, FAS start to pay initial payments of £500 a year to bring Bruce's total income up to £4,500 which is 90 per cent of his expected pension of £5,000. All of Bruce's service was prior to 6 April 1997 so he is not eligible for an annual increase (indexation) to his FAS Assistance payment.

In preparation for transferring assets to government, the scheme calculates the asset shares for all its members as at 30 September 2010. Bruce's asset share is £80,000. This is calculated to be equivalent to a notional pension of £3,900 a year without increases payable from his NRA.

Bruce therefore received excess scheme payments of £100 a year during wind-up. The excess payments during the period prior to 14 May 2004 totalled £400. When assets transfer on 31 March 2011 and the FAS scheme manager is assessing Bruce's Annual payment, the FAS scheme manager decides to recover the excess payments over Bruce's lifetime by converting the pre-May 2004 excess payments of £400 to the amount of annuity that could have been purchased with this amount (actual pension) of £35 a year.

At the same time, the FAS scheme manager reconciles FAS initial payments made. The scheme excess payments during the period after 14 May 2004 were exactly offset by underpayments of FAS initial payments so no recovery of the scheme excess payments is necessary and no arrears of FAS initial payments need to be made.

Bruce's normal Assistance entitlement is 90 per cent of expected pension less actual pension which is £4,465 a year (90 per cent x £5,000 - £35).

The actual pension amount of £35 a year is also deducted from the notional pension to reflect the fact that Bruce received more than his asset share would justify in the period up to May 2004. The net notional pension amount is therefore £3,865 a year.

The FAS pays the higher of the normal Assistance and the notional pension. For Bruce, this is the normal Assistance payments of £4,465 a year. Bruce will receive the annual payment for the rest of his life. No indexation will apply as he has no post-April 1997 service.

Q16. The Government welcomes comments on its proposals and approaches in respect of reconciliation of under and overpayments from the later of the

start of wind up and the start of a beneficiary's entitlement to pension payments.

Decisions to require trustees to adjust interim pension payments

139. Trustees will remain responsible for the payment of interim pensions to beneficiaries before assets transfer to government. As shown in the examples above, it is possible that the amount of interim pension being paid by trustees does not reflect the share of assets and the notional pension that will be determined. In most cases it is expected that any differences will not be significant and that any change made to the interim pension paid would be offset by adjustments to the payment of initial payments by FAS. However, in some cases it is possible that significant differences may emerge in relation to beneficiaries who are receiving interim pensions above the normal rate of FAS entitlement. In such circumstances excess payments would continue to accrue if interim pension payments were maintained at that level.
140. The government expects trustees to regularly review the determination of interim pensions - particularly if it is apparent that excess payments may be being made to members that will not be balanced out by 'underpayments' of Assistance payments – in order to ensure that assets are not inappropriately depleted. Whilst it is anticipated that trustees will proactively amend relevant interim pension payments, the draft Regulations contain provision for the FAS scheme manager to direct trustees in relation to the determination of interim pension payments in case such action is not taken.

Finalisation of the valuation before proceeding with the transfer of assets

141. The FAS scheme manager cannot proceed with the transfer of assets until the valuation is binding. The draft Regulations provide that a valuation is not binding until:
- it has been approved by the FAS scheme manager; and
 - the period within which the approval of that valuation may be reviewed by trustees or pension scheme managers has expired (see later paragraphs which cover proposed review provisions); and
 - any review and appeal activity is completed, following which the approved valuation remains valid.
142. The draft Regulations provide that the scheme manager must send a notice that the valuation is binding to the trustees of the scheme and the Pensions Regulator. The notice must state:
- the date on which the notice is given;
 - the name, address and pension scheme registration number of the qualifying pension scheme in respect of which the notice is given;
 - a statement that the valuation has become binding;
 - the date on which the approval of valuation notice was issued;

- the name of the employer in relation to the qualifying pension scheme in respect of which the notice is issued; and
- whether the notice issued by the scheme manager contains any restricted information and, if so, the nature of the restriction.

Q17. The Government welcomes comments on this approach and on the proposed content of the binding notice.

The transfer of assets

143. The decision as to when to proceed with the actual transfer of the assets – and when to take on responsibility for making associated payments to qualifying members – will rest with the FAS scheme manager. This mirrors the approach already set out under the Pensions Act 2004 for the PPF in relation to PPF eligible schemes.
144. The transfer will be notified and achieved by a formal transfer notice issued electronically by the FAS scheme manager to the trustees or managers of the scheme. This too is similar to the approach used by the PPF and will be familiar to many trustees.
145. This transfer notice will also provide detail of the liabilities from which the trustees will be discharged in accordance with the Regulations.
146. Before issuing the transfer notice the FAS scheme manager will consider whether key activities have been completed, for example:
- the valuation has been finalised;
 - notional pensions have been calculated (see Section 4 for details of this calculation);
 - assets have been liquidated into an appropriate form;
 - DB liabilities in respect of ‘excluded members’ have been discharged; and
 - the data needed to make reciprocal Assistance payments to members whose assets will transfer has been provided.

The effect of the transfer notice

147. The draft Regulations provide that on receipt of the transfer notice:
- the property and rights (‘assets’) held by or vested in the trustees or managers as trustees or managers of the scheme are transferred to the Secretary of State;
 - certain rights and liabilities will transfer to the Secretary of State, whilst others will be discharged or remain with trustees; and
 - trustees will be discharged of remaining DB pension obligations (all other DB pension obligations having already been discharged).

Managing Assets

148. The Government intends that assets will be transferred to the Secretary of State (rather than the scheme manager) to ensure clear government ownership of the assets which will facilitate onward transfer to the Consolidated Fund of Her Majesty's Treasury and help to ensure appropriate tax treatment including application of relevant Crown exemptions⁶). The draft Regulations provide the FAS scheme manager with the necessary powers to manage the property and rights transferred to enable - for example - illiquid assets to be sold after transfer or to enable debts to be pursued. To do this, the draft Regulations provide the FAS scheme manager with the same rights and powers over those assets and rights as the government has as the new owner of the assets and rights.

The impact of the transfer notice on rights and liabilities

149. The Government acknowledges that taking in the assets of relevant schemes brings with it a requirement to consider the appropriate treatment of relevant rights and liabilities.

150. FAS schemes transferring assets to government may have a number of outstanding obligations ('liabilities') at the transfer point. Some of these liabilities will be linked to the obligation to provide pensions whilst others will be administrative; for example, contracts with third parties to support the running of the scheme or to facilitate the management of scheme assets. Schemes will also have certain rights; for example, to pursue a legal claim to reclaim an unpaid debt to the scheme.

151. Whilst the Government envisages that the transfer notice will extinguish some liabilities, others will transfer to the Secretary of State or remain with trustees. The table below sets out the Governments' understanding of the type of liabilities FAS schemes might hold and its view of the impact that the issue of the transfer notice would have on those liabilities in accordance with the draft Regulations.

| Liability / Right | Treatment under the proposals | Approach / Outcome |
|---|--------------------------------------|---|
| Trustees' obligations to pay DB pensions to beneficiaries | Extinguished | Trustees will be discharged of this obligation. Beneficiaries will receive FAS Assistance payments as those Assistance payments fall due. |
| Trustees' obligations to pay DC pensions | Remain with trustee. | Trustees will remain obliged to discharge any outstanding DC liabilities |
| Unpaid bills | N/A | Any outstanding bills should be identified and paid out by the |

⁶ The Government plans to make regulations relating to the tax treatment of assets transactions and relevant payments using the regulation-making power conferred by Section 73 of Finance Act 2009 in order to support the changes currently being made to the FAS legislation.

| Liability / Right | Treatment under the proposals | Approach / Outcome |
|---|--|---|
| | | trustees of the scheme prior to transfer ⁷ . |
| Legal proceedings or applications to an authority <u>against trustees/managers</u> the settlement of which they would be personally liable to meet (i.e. for which they would not be indemnified from scheme assets). | Remains with trustee/manager | Trustees will remain liable in such circumstances, (for example where fraud may have been committed). |
| Legal proceedings or applications <u>against trustees/managers</u> (where these are not linked to personal liability). | Transfers to Secretary of State – with the FAS scheme manager handling such cases. | <p>Where such cases will have a significant material impact on beneficiaries, the FAS scheme manager will not proceed with the transfer of the liabilities until the case has been settled.</p> <p>In other cases, transfers may apply. The FAS scheme manager will have full powers to handle all such cases, with the Secretary of State/DWP only becoming involved where considered necessary.</p> <p>It is expected that the transfer of such cases will be rare.</p> |
| Legal proceedings <u>by</u> trustees/managers against third parties. | Transfers to Secretary of State – with FAS scheme manager handling such cases | <p>The FAS scheme manager will be able to pursue such cases where they are outstanding at the transfer point, (for example proceedings to recoup a debt which was unpaid at the point of transfer).</p> <p>The fact that trustees have been discharged from defined benefit liabilities in respect of relevant members will not reduce any such claim (the claim itself transferring in full to the Secretary of State as an asset of the scheme).</p> |

⁷ Although the Government would expect costs for services required up to and after the point of transfer to have been identified and incorporated in the valuation it acknowledges that there may be costs for some services that cannot be identified or agreed in advance. In such circumstances the FAS scheme manager would be able to meet costs it considered reasonable.

| Liability / Right | Treatment under the proposals | Approach / Outcome |
|---|--|---|
| <p>Debts – third parties' liabilities to make payments to the scheme.</p> | <p>Transfers to Secretary of State – FAS scheme manager handling such cases</p> | <p>The FAS scheme manager will consider whether it is appropriate to continue with the valuation/transfer or wait for any such payments to be made.</p> <p>Where it is appropriate to proceed with the transfer, such liabilities will survive and be pursued by the FAS scheme manager (for example the recovery of debts owed by the employer or overpayments owed by members).</p> <p>Recovered monies will then be paid over to the Secretary of State.</p> |
| <p>Liabilities in respect of contracts.</p> | <p>Transfers to Secretary of State – with FAS scheme manager handling any issues arising</p> | <p>With the exception of liabilities which are liabilities of the scheme as a direct result of the rights or property of the scheme, the draft Regulations provide for outstanding contracts to be terminated automatically to avoid the Government automatically taking on obligations linked to contracts that are no longer needed.</p> <p>Where appropriate, the FAS scheme manager will set up new contracts to support ongoing activity needed to facilitate the transfer (or liquidation) of the schemes' assets or to support the transfer of responsibility to make beneficiary payments.</p> <p>There will be rare circumstances where the Government anticipates that it will be appropriate for existing contracts directly derived from particular assets to survive beyond the transfer point in order to reduce additional cost or potential barriers to the transition or liquidation of assets. Examples identified are:</p> |

| Liability / Right | Treatment under the proposals | Approach / Outcome |
|-------------------|-------------------------------|--|
| | | <ul style="list-style-type: none"> • where a contract of insurance has been identified as appropriate to transfer in its illiquid form (which would transfer (and become payable to Secretary of State) automatically, without the need to renegotiate the terms of the contract) • where property subject to a lease is to transfer, (the lease arrangement will continue) • where assets subject to a custodian arrangement are not ready to transfer to government – for example pooled investment vehicles. It is understood that there may be a delay before such assets can be cashed but that there may be no benefit in transferring them in specie.⁸ <p>Such situations will be rare as the FAS scheme manager will be seeking to ensure assets are ready to transfer before issuing a transfer notice.</p> |

Q18. The Government welcomes views on whether its assumptions in respect of the rights and liabilities held by FAS schemes are reasonable and comprehensive and whether the proposed approach to these rights and liabilities is appropriate.

152. The draft Regulations make specific provision that the discharge of trustees from their obligation to pay relevant pensions does not affect any right that would otherwise transfer to the Secretary of State. The Government proposes to take this power to ensure that a third party against whom the trustees were taking any action could not argue that there would be no longer a loss to be compensated after the trustee's pension obligations are discharged.

⁸ In such circumstances the custodian arrangement may remain effective until the asset has been switched into cash and transferred from the custodian to Secretary of State ownership.

Q19. The Government invites views on whether the draft Regulations will achieve this intended effect and whether there might be any unintended consequences of this power (for example, whether there might be any rights held by the trustees which should be affected by the discharge of the trustee obligations).

Outstanding applications to the Pensions Ombudsman

153. It is anticipated that there may be some outstanding applications to the Pensions Ombudsman in respect of qualifying schemes that will transfer assets to government. Those applications may, for example, have been made by members or other beneficiaries against trustees in relation to pension awards, or may have been made by trustees against other parties.
154. As indicated in the table above, the draft Regulations provide for applications to any authority that are pending immediately before the transfer by or against any of the trustees or managers of the qualifying scheme in their capacity as trustees or managers to be continued by or against the Secretary of State. Under this provision if an application by a member to the Pensions Ombudsman challenging a pension award was pending immediately before the transfer, the application would be continued against the Secretary of State (as the new “owner” of the assets of the scheme).
155. In practice, where applications to the Pensions Ombudsman could have a significant material impact on the scheme’s valuation, it is envisaged that the FAS scheme manager will not proceed with the valuation (and the subsequent transfer of the assets and liabilities) until the case has been settled.
156. PPF caseworkers will liaise with qualifying schemes to identify where such applications exist and the potential impact on the transfer process. It is hoped that the vast majority will have been dealt with prior to transfer with no impact on the timescale for transferring assets.
157. Where transfers involving ongoing applications are made, the draft Regulations provide for the Pensions Ombudsman to recognise that the Secretary of State replaces the scheme’s trustees or managers in respect of such applications. The draft Regulations also provide for the FAS scheme manager to take such steps as are necessary to satisfy the requirements of any direction made by the Ombudsman.

Q20. The Government welcomes views on its proposals in respect of such applications. It would also welcome views on whether there are any other types of applications to any authority which affect trustees and managers of pension schemes which could require specific provisions to ensure they can be continued by or against the Secretary of State and handled by the FAS scheme manager.

Terms and conditions of contracts

158. The draft Regulations also provide for the FAS scheme manager to modify or disapply the terms of a contract relating to the property, rights and liabilities of the scheme, where it considers those terms or conditions to be onerous. This replicates similar powers in PPF legislation.
159. As described in earlier paragraphs relating to insurance products, in limited circumstances some insurance contracts will transfer to government and be allowed to run to term. It is intended that members whose liabilities would otherwise have been covered by those contracts will receive FAS Assistance payments as those Assistance payments fall due, rather than payments from the insurer. The draft Regulations provide for the FAS scheme manager to amend such contracts of insurance so that the benefit becomes payable to the Secretary of State rather than the original beneficiary.

Foreign property, rights and liabilities

160. The Government anticipates that there may be rare occasions where FAS qualifying schemes hold property outside of the UK. The draft Regulations provide the necessary powers to secure the transfer of such property to the Secretary of State, including any relevant rights and liabilities. The draft Regulations replicate the approach taken in PPF legislation.

Q21. The Government welcomes views on the proposed powers relating to contracts and foreign property, rights and liabilities and in particular whether these powers may present issues in relation to any contracts or holdings of FAS transferring schemes.

FURTHER ISSUES AROUND THE DISCHARGE OF DC LIABILITIES AND ASSETS

161. The FAS only provides Assistance in respect of DB benefits, therefore DC liabilities and assets will need to be identified and discharged separately by qualifying schemes.
162. Under current winding-up rules, trustees discharge DC assets in the same way as DB assets by annuity purchase, transfer payment or, where relevant, winding-up lump sum. These options will be allowed to continue to be exercised, as described below.
163. Where FAS qualifying schemes are able to discharge DC assets by transfer payment they can do so. The Government does not intend to modify this process in relation to FAS qualifying schemes so:
- where FAS qualifying schemes are able to discharge DC assets by transfer payment they can continue to do so; and

- where FAS qualifying schemes are able to discharge DC assets by annuity purchase, applications to annuitise are required by the FAS halting annuitisation legislation and the FAS scheme manager will be inclined to look favourably on any such applications.

164. However, respondents to the previous consultations raised a variety of issues about discharging DC liabilities. In order to help overcome some of these obstacles in relation to PPF schemes, the PPF has recently entered an arrangement with a private sector provider which may also be used by trustees of FAS qualifying schemes. Trustees of FAS qualifying schemes wanting to make use of this provider may wish to approach their PPF caseworker.

Facilitating discharge of DC liabilities by winding up lump sum

165. A further option to discharge ‘small pots’ of DC assets could be provided by Winding Up Lump Sums (WULS) and Winding Up Lump Sum Death Benefits (subject to rules of Her Majesty’s Revenue and Customs (HM Revenue and Customs))⁹. HM Revenue and Customs tax rules for pension schemes allow for WULS or ‘winding-up lump sum death benefits’ of up to £17,500 (tax year 2009/10) to be paid. However, such sums can only be paid where they extinguish all of a member’s rights under a scheme. Thus, if the approach proposed in these draft Regulations is taken forward it might then only be possible for trustees to discharge small DC pots by payments of winding up lump sums only after any DB assets in relation to the member have been transferred into government.

166. The draft Regulations allow for this process to be followed by providing for DB assets to be transferred while relevant DC assets and liabilities remain. In such circumstances the transfer notice would reflect that the trustees retained such obligations in respect of DC liabilities.

167. In practice, schemes would be expected to discharge DC liabilities immediately after the DB transfer notice takes effect, so that the scheme can be considered wound up and the trustees discharged of remaining responsibilities.

Barriers in scheme rules – separate discharge of DC AVCs

168. Occupational pension schemes generally provide a facility for members to be able to make AVCs. These are contributions on top of the regular contributions payable for the main scheme benefits. As mentioned previously, most AVCs are on a DC basis.

169. The Government is aware of a small number of schemes where the scheme rules appear to prevent separate discharge of DC AVC and DB liabilities – and where there are no powers of amendment to the scheme rules available to the trustees to facilitate this separation as relevant powers appear to have expired once wind up was triggered.

⁹ WULS in respect of discharging DC liabilities will not be halted by the draft provisions described later in this section, which only apply to DB liabilities.

170. To assist trustees of relevant schemes transfer of assets, the draft Regulations provide for an effect of the transfer notice to be that the trustees or managers of the scheme may discharge their liabilities in respect of DC benefits irrespective of any rules of the scheme which may provide that such liabilities must be discharged with non-DC benefits.

Q22. *The Government welcomes views on these proposals, in particular views from trustees and industry professionals as to whether the approach described will enable trustees to effect the separate discharge of DC benefits where appropriate.*

Residual Assets held by schemes

171. Under the Government's proposals, assets relating to DB liabilities will transfer into government, and relevant payments of Assistance will be made to and in respect of members.

172. FAS qualifying schemes which have already wound up would not normally transfer assets to government. However, feedback from trustees has indicated that some such schemes have been left with residual assets after initially discharging members' liabilities which it would not be cost effective for trustees to allocate against member liabilities. This is because the cost of undertaking a revised valuation to allocate remaining assets is considered greater than the value of those assets themselves. This could happen either:

- when trustees and/or other professional advisors are not on fixed-fee contracts and actual expenditure on fees is less than the amount estimated and set aside to meet these expenses; or
- when unexpected dividends arise in relation to the scheme after annuities have been secured (for example because insolvency proceedings yield greater returns on employer debts than anticipated or in relation to investment performance).

173. Trustees have indicated that the re-negotiation of annuities for deferred members for their schemes would have no material benefit to deferred members' overall income from their annuity and Assistance so the money would be better transferred to government rather than spent on nugatory work. The draft Regulations provide for such residual assets (property of the scheme) to be taken into government where -

- the trustees or managers notify the scheme manager in writing that they wish to transfer the property to the Secretary of State; and
- the scheme manager is satisfied that—
 - the property can be transferred to the Secretary of State; and
 - it is appropriate that the property is transferred to the Secretary of State.

174. Under the test described above, trustees will be expected to provide suitable evidence that they have established whether it would be cost effective to divide

any residual assets amongst members in line with their statutory obligations and fiduciary duties.

175. Furthermore, as the FAS would not be making related payments in respect of these assets, the FAS scheme manager will require assurance from trustees that members will not lose out as a consequence of government taking in these assets.
176. As the settlement provided by the FAS is only partially funded by the assets from FAS qualifying schemes, and as in the kinds of cases described there would be no additional benefits to any members by reallocating the assets, the Government believes such an arrangement is justified.
177. Respondents to previous consultations have been supportive of this proposed approach.

Q23. The Government welcomes any further views on these proposals, in particular views from trustees and industry professionals as to whether the tests described are relevant and appropriate.

Halting the provision of transfers and winding-up lump sums in respect of DB liabilities

178. Under current FAS and winding-up rules members can request transfers of their DB rights from their schemes. Also, where their share of scheme assets is below certain limits members may be able to take winding up lump sums or trivial commutation payments¹⁰. Although FAS takes account of such payments in calculating top-up Assistance payments, the additional value that could have been gained from the discharged assets is lost.
179. In order to preserve the residual assets of those FAS qualifying schemes that will be transferring their assets to government, the Government intends to place a halt on such schemes providing members with DB transfers or DB winding up lump sums or trivial commutation payments.
180. As well as helping to preserve assets, the halting of these payments will provide administrative savings and help speed up the transfer of assets (because relevant periods allowing for members to exercise options will not be required).
181. The Government recognises that some FAS qualifying members may have applications for transfers in the pipeline before the proposed Regulations come into force. The Government considers that allowing any applications made before the Regulations come into force to continue to be honoured could increase the risk of asset depletion and slow the transfer of assets, particularly as trustees may delay providing statements of transfer entitlements until the final funding position of the scheme can be determined.

¹⁰ Some of the rules for payment of WULS are described in this section. Similar conditions apply in respect of trivial commutation lump sum or trivial commutation lump sum death benefit payments.

182. However, the Government intends to ensure that any application properly made under section 95 of the 1993 Act before the Regulations come into force continues to be honoured. This will apply where members have received statements of entitlement from their schemes and have made an application to take up payments.
183. The Government also intends for relevant transfer or lump sum payments to be payable in the following circumstances:
- in respect of any DC rights;
 - in respect of any pension-sharing order;
 - in respect of 'top-ups' to partial transfer discharge payments; and
 - where the FAS scheme manager approves an application in respect of a beneficiary from trustees – it is anticipated that this process will be similar to the basis that applies in respect of applications to annuitise.
184. It should also be noted that where scheme funds allow, schemes will continue to be able to offer pension commencement lump sums to members who reach retirement age whilst the scheme is winding up. Furthermore, in line with the lump-sum proposals described elsewhere in this document, members who have not reached retirement before their scheme transfers assets will be able to receive part of their Assistance as a tax-free lump sum when they reach normal retirement age (NRA), subject to their asset share.
185. In addition, trivial commutation and winding up lump sums are payable as death benefits in certain circumstances. The Government does not intend to halt trivial commutation payments made in such circumstances.
186. Initial proposals to halt transfers and winding up lump sums were provided in previous consultation material. The Government did not receive any significant objections to these proposals and respondents were generally supportive of the rationale for halting such payments.

Q24. Comments would be welcomed on the intention to limit schemes providing transfers, winding up lump sums and trivial commutation payments (other than death benefits) in respect of DB rights.

Delegation of FAS scheme manager functions relating to asset transfer

187. Current powers allow for the FAS scheme manager to delegate certain functions to third parties including the calculation of, and the payment of, Assistance to beneficiaries.
188. The draft Regulations extend the functions that the FAS scheme manager can delegate to a third party to cover calculations required following a valuation (for example, the calculation of notional pensions) and the function of exercising the rights, obligations and powers relating to the property, rights and liabilities that have transferred to government.

189. In practice, it is not anticipated that it will be necessary for the FAS scheme manager to delegate management functions relating to transferred assets as, for the reasons described earlier in this section, it is not anticipated that significant amounts of assets will be transferred in illiquid form. However, the Government has provided for the ability to delegate such functions in case this is required.

Q25. *The Government welcomes views on its proposals to provide that certain functions can be delegated by the FAS scheme manager. The Government would particularly welcome views on whether the FAS scheme manager should be able to delegate additional functions to third parties.*

INFORMATION, INTERNAL REVIEWS AND APPEALS RELATING TO THE PREPARATION PERIOD AND ASSET TRANSFER

INFORMATION

Initial information relating to scheme assets and debts

190. To assist with planning for the transfer of the remaining assets of qualifying schemes to government, it is proposed that scheme trustees, managers, administrators or other appropriate persons who may hold the relevant information should provide the FAS scheme manager with details of:

- the type of scheme assets; and
- the value of scheme assets.

191. To help prevent unnecessary costs to the scheme it is envisaged that, where appropriate, the value of relevant assets might be taken from readily available information. This may include, for example, the last available audited accounts, an investment manager's report or the most recent actuarial valuation, as long as the information is comprehensive and reasonably up to date.

Q26. *Comments are invited on the proposal to use the scheme's most recent accounts or valuation for the purposes of gathering initial information on the assets held by schemes and their value.*

192. In addition, the Government proposes that information should be provided to the FAS scheme manager in relation to the following debts:

- details of employer debts under section 75 of the Pensions Act 1995 or Article 75 of the Pensions (Northern Ireland) Order 1995 (including compromise agreements);
- debts due to the scheme resulting from a contribution notice under sections 38, 47 or 55 of the Pensions Act 2004 or Article 34, 43, or 51 of the Pensions (Northern Ireland) Order 1995;
- obligations arising from a financial support direction put in place under section 43 of the Pensions Act 2004 or Article 39 of the Pensions (Northern Ireland) Order 1995;

- any obligation arising from a restoration order under section 52 of the Pensions Act 2004 or Article 48 of the Pensions (Northern Ireland) Order 1995 in respect of a transaction involving assets of the scheme;
- details of any other contribution expected, including the amount of contribution and the person/body/organisation responsible for making the contribution (whether the contribution is made or not); and
- details of any other significant debts owed to the scheme (which may include debts owed by members arising from overpayments).

193. This information will enable the FAS scheme manager to assess and monitor the scheme's debt recovery action before transfer which, in turn, will help determine the appropriate time to undertake a valuation of scheme assets which will lead to the eventual transfer of scheme assets to government. In addition, this information may also be used by the FAS scheme manager as appropriate to validate the scheme valuation.

194. It is envisaged that information on debts which are held as investments of the scheme, such as gilts, bonds or other tradable securities, will be provided as part of any information on assets rather than debts.

Q27. Comments are invited on the types of debt in relation to which information should be provided to the FAS scheme manager.

Timing for the provision of information relating to a scheme's assets and debts

195. The Government proposes that information relating to a scheme's type and value of assets and a scheme's debts should be provided to the FAS scheme manager within the later of:

- 28 days of the coming into force of the Regulations;
- 28 days from notification that the scheme is a qualifying scheme;
- 28 days from the date of becoming aware of the amount of any contribution to be made or any debt; or
- a later deadline set by the FAS scheme manager.

Q28. Comments are invited on the timing of the collection of information in relation to the value of scheme's assets and debts.

Notifications by the FAS scheme manager relating to asset transfer

Approval of the Valuation

196. The draft Regulations provide that on approval of the valuation, the scheme manager must:

- notify the trustees or managers of the qualifying pension scheme of the approval; and
- send a copy of the valuation to the trustees or managers of the qualifying pension scheme.

Binding Valuation

197. As described earlier in this section, the draft Regulations provide that where a valuation becomes binding the scheme manager must as soon as reasonably practicable give a notice to that effect together with a copy of the binding valuation to:

- the trustees or managers of the qualifying pension scheme; and
- the Pensions Regulator.

Transfer Notice

198. The draft Regulations provide that where a transfer notice is given to a scheme's trustees or managers the scheme manager:

- must give a copy of the transfer notice to the Pensions Regulator; and
- may give a copy of the transfer notice to any other person to whom, in the opinion of the scheme manager, the transfer notice is relevant.

Notifying members of transfer

199. The Government proposes that the FAS scheme manager should be required to inform any persons, whose liabilities have been discharged as a consequence of the transfer of assets, of the transfer of relevant responsibilities from their scheme trustee to the FAS scheme manager.

200. It is proposed that the FAS scheme manager should be required to provide notification within 28 days of the date the transfer notice is issued.

Q29. Comments are invited on the proposal that those whose liabilities have been discharged as a consequence of the transfer of assets should be notified by the FAS scheme manager that relevant responsibilities have passed to the FAS scheme manager and that this notification should be within 28 days of the transfer taking place.

Notifying Members of their Asset Share

201. The Government proposes that, when a member's FAS Annual payment is calculated, they should, at this time, receive details of their asset share as well as details of their FAS Annual payment. Details of the asset share will enable the member to understand how this affects their amount of Assistance. The approach of providing details of asset share at the same time as details of the FAS Annual payment will enable the member to consider all the relevant information at the appropriate time.

202. The asset share has an influence on the amount of Annual payment payable and any possible lump sum. It is not possible to give accurate details of these amounts before the Annual payment is due to be paid. Therefore, providing the member with information on their asset share at a point any earlier would require estimations of the payment due – and for those members who are many years from retirement would be highly speculative.

203. The Government therefore believes that informing beneficiaries of the asset share at the Annual payment calculation stage, rather than at an earlier stage in the process, would be more meaningful to the member. This would not be a formal requirement (it is not part of the draft Regulations) but the FAS scheme manager would include the information as part of the detail given when notifying a person about their FAS payment.

Q30. Comments are invited on the proposal that details of the asset share are provided at the same time as the FAS Annual payment.

Discretion of the FAS scheme manager to waive some or all information requirements

204. The Government proposes amending the definition of qualifying member to enable members who would be likely to have an asset share sufficient to secure all their scheme benefits to become qualifying members and to have access to Assistance.

205. The Government believes that, as a result of the amendment enabling fully-funded members to become qualifying members, it is appropriate to amend the information requirements to enable the FAS scheme manager, at its discretion, to waive in full, or part, the information requirements. It is envisaged that this discretion would be used, for example, where a qualifying scheme becomes funded above FAS levels as a result of recovery of debt and, as a result, the FAS scheme manager approves an application by the trustee to purchase annuities for all the scheme members. In this case some, or all, of the information which would have been required from the trustee may no longer be needed.

206. The Government proposes that the FAS scheme manager may waive all or some information requirements where it considers that to be appropriate.

207. This approach ensures that the FAS scheme manager only collects information that is relevant to its work and will avoid nugatory work for the trustee in providing unnecessary information, and the expense that this would entail.

Q31. Comments are invited on the proposal for the FAS scheme manager to waive information requirements.

Removing a provision which is no longer required as a result of the changes concerning FAS qualifying members

208. Regulation 3(1A) of the Financial Assistance Scheme (Internal Review) Regulations 2005 provides for the FAS scheme manager to publish a web-based decision in circumstances where a particular category or class of member of a qualifying scheme are not eligible for Assistance rather than giving individual notification.

209. As the definition of qualifying member is being amended to capture fully-funded members in relation to whom assets will transfer to government, the circumstances in which a web-based decision will be required will no longer exist.

210. The Government proposes to remove the provision in the FAS (Internal Review) Regulations 2005 for determinations relating to member eligibility which are issued on the FAS website to scheme members as a group.

Q32. Comments are invited on the proposal to remove the provision to issue “no entitlement” determinations to a particular category or class of members of a scheme on the FAS website.

REVIEWS AND APPEALS

Reviewable Determination: Approval of the valuation

211. The draft Regulations provide for the trustees or scheme managers of a FAS qualifying scheme to have the right to request a review to the FAS scheme manager of the approval of a valuation. In practice, given the preparatory work that will be undertaken with trustees to ensure that schemes are ready for the valuation – for example, in relation to notional values applied to debts – it is envisaged that such review requests will be rare.

212. The draft Regulations allow 14 days for the request for a review to be made. This comparatively short deadline reflects that there will have been extensive communication between the FAS scheme manager and trustees leading up to the valuation, and will help ensure that the transfer of assets is not unnecessarily delayed.

Q33. Comments are invited on the proposal that trustees or managers may request a review of their pension scheme valuation and on the proposed deadline for a request for a review to be made.

Reviewable Determination: In respect of a section 134 (Pensions Act 2004) or Article 118 (Pensions (Northern Ireland) Order 1995) direction

213. Section 134 of the Pensions Act 2004 and Article 118 of the Pensions (Northern Ireland) Order 1995 provides for the FAS scheme manager to give directions in respect of matters such as the investment of the scheme's assets, the incurring of expenditure and the instigation or conduct of legal proceedings. Failure to comply with a direction may result in a civil penalty under section 10 of the Pensions Act 1995.

214. The Government proposes creating a right to request a review of a direction given by the FAS scheme manager. The person to whom the direction applies would, be able to request a review within one month of the direction being given by the FAS scheme manager.

215. As with other reviewable matters, the decision following the review will be subject to the existing appeals process.

Q34. Comments are invited on the ability to request a review of a section 134 or Article 118 direction given by the FAS scheme manager.

SECTION 4: EXTENSION OF ASSISTANCE

ASSISTANCE STRUCTURE

1. Schemes which wind up normally will provide each member with a pension annuity, a transfer payment or a winding-up lump sum based on their share of the remaining scheme assets (their “asset share”). Where these are worth less than 90 per cent of their expected pension (subject to a cap) the FAS makes a top-up payment to that 90 per cent, again subject to a cap on the maximum amount paid. The schemes covered by this consultation will be transferring their remaining assets to government. The FAS will be solely responsible for payments to members in respect of whom assets are transferred.
2. This section describes the Government’s proposals for Assistance payments to those members. The intention is to ensure that they receive the full value of their asset share. The proposals cover:
 - tax-free lump sums in certain cases; and
 - payments to members whose asset share would have produced more than 90 per cent of their expected pension, had their scheme continued to wind up in the normal manner.
3. This consultation does not propose any change of approach in the calculation of Assistance for members who have, or will have, received a pension annuity, transfer payment or winding up lump sum arranged by their scheme. Nor does it propose any changes to initial payments of Assistance which are paid on account of final entitlement.
4. However, the draft Regulations do make some minor amendments to the provisions in the Financial Assistance Scheme Regulations 2005 on calculating the expected pension for members and their survivors who were receiving a scheme pension at the start of wind up but who had not reached their FAS entitlement date. These minor changes ensure that such members and survivors receive the correct revaluation on the member’s expected pension, in line with the policy intention, up to the point they become entitled to Assistance. In addition they provide for Assistance payments to surviving dependants to be re-calculated when a further dependant of the member subsequently becomes eligible for Assistance (for instance, by beginning a qualifying course after age 18).

PROPOSALS

Qualifying member

5. A scheme member can currently only qualify for the FAS if their scheme was unlikely to be able to cover all their accrued rights.
6. The Government has, through section 124 of the Pensions Act 2008, paved the way for changes to this definition so that, when the remaining assets in the schemes are transferred to government, the FAS will also be able to pay individuals whose schemes could have bought them an annuity which covered all

of their scheme benefits. The relevant parts of that section will be commenced before these Regulations are made.

7. The Government is proposing that a qualifying member should be someone:
 - who was a member of a qualifying scheme when it commenced wind up;
 - who has accrued rights in that scheme at that date; and
 - whose rights have not been satisfied in full by the qualifying pension scheme (i.e. someone whose pension scheme has been able to discharge their liabilities to that member by providing all that person's expected pension and other benefits in full).
8. In addition, as now, certain people who were in receipt of a scheme pension prior to the scheme beginning to wind up, including survivors and anyone who has a pension credit entitlement, will be included as a qualifying member.
9. This new definition of qualifying member will apply for all FAS-related purposes – there will no longer be a need to have a different definition for the purposes of the restriction on the purchase of annuities.
10. The Government believes this revised definition includes all those who could previously qualify for the FAS and also allows for payments to all the members of schemes who would have got a payment from the scheme had it been proceeding to wind up as normal.

Q1. *The Government would be interested in views on whether this proposed definition covers all the intended categories of scheme members.*

Assistance structure

11. The Government has considered whether, and how far, the current FAS rules should be amended in the light of the transfer of assets to government.
12. It has concluded that, except for a small group of early retirees described later, payments should still begin from normal retirement age (NRA) unless the individual member qualifies for early access on the grounds of ill health.
13. Making no change to the calculation of Assistance payments would mean that all payments would be limited to 90 per cent of the member's accrued pension at the start of wind up, revalued and indexed in accordance with the FAS rules and subject to the FAS cap. For many people this would be appropriate, as the amount they would get would be the same as if their scheme had not transferred assets to government. The Government expects the vast majority of deferred members will be in this position.
14. However, the Government is aware that some members of the schemes could lose out under this approach. This is because, had the scheme continued to wind up as normal, their asset share would have been sufficient to provide more than the amount of their normal FAS entitlement. This is most likely to be the case for

those who were already pensioners when their scheme started to wind up, because they would have been at the top of the priority order for allocating scheme assets.

15. When it outlined its future proposals in the consultation on the draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, the Government indicated (paragraph 81) that it was proposing that the FAS should reflect the higher payments such members would have received from their schemes. The Government still believes this is the appropriate way forward.
16. In that earlier consultation the Government said that it had considered two approaches:
 - paying an uplifted amount of Assistance to the full value of the asset share; or
 - paying an Assistance payment calculated under the qualifying members' scheme rules to the full value of the asset share when they reach their NRA.
17. It would be administratively simpler to pay everyone Assistance calculated in line with normal FAS rules. The second approach would be administratively complex, require an extensive information gathering exercise and, in certain situations, could lead to significant inconsistencies in treatment between members. Views expressed during informal consultation with key stakeholders, have led the Government to propose a slightly modified approach.
18. The Government proposes making the distinction between those already receiving their pension and those not. This was in recognition that those already receiving scheme pensions above the levels provided by the FAS had an expectation as to the shape of the payments and ancillary benefits, such as indexation and survivor's rights. For members not yet in payment the same expectations of a certain structure of benefits had not arisen and would have required assumptions to be made about the choices those members might make when they reached NRA and the decisions trustees would have made when winding up the schemes.
19. The Government received one response on this issue (from a group representing qualifying members) strongly confirming that the level of pensions in payment should be maintained. It intends, therefore, that any beneficiary who *is* receiving a scheme pension when the proposed Regulations come into force and whose asset share would provide a pension:
 - lower than normal Assistance, will be paid Assistance under the current rules;
 - higher than normal Assistance, will be paid Assistance which would be uncapped and based broadly on the rules of the scheme.
20. The Government intends that any beneficiary who *is not* receiving a pension from their scheme pension on the day the proposed Regulations come into force and whose asset share would provide a pension:

- lower than normal Assistance, will be paid Assistance under the current rules;
- higher than normal Assistance, will get a Assistance which would be uncapped and calculated in line with normal FAS rules but to the full value of their asset share.

21. The Government considers that fixing the dividing line at the coming into force of the relevant Regulations is appropriate, because it gives a common date for all schemes which is not dependent on how long a scheme takes to transfer assets to government. Trustees will be able to take into account the likely shape of Assistance, which will be paid to members after asset transfer, when making interim pension payments to members reaching NRA between the coming into force of these draft Regulations and the assets transferring. If the dividing line were to be the date of the transfer of scheme assets, for instance, trustees would have to consider whether the timing of the transfer would affect the Assistance payments to certain members.

Q2. *The Government would be interested to have views on whether it is appropriate to set the dividing line at the point these draft Regulations come into force.*

Identifying those entitled to a scheme payment above the level provided by the FAS

22. To identify those members who have an asset share above the value of normal Assistance, the Government proposes to:
- turn the member's asset share, as determined by the FAS valuation (see Section 3), into a "notional pension"; and
 - compare this notional pension with the amount of Assistance which would be paid under the normal FAS rules.

The notional pension

23. The notional pension will be calculated using actuarial factors to approximate the amount of annuity which could have been secured for the member had the scheme proceeded to discharge its liabilities by purchasing annuities. It will be calculated as the amount which could have been purchased for the member as from the earlier of the member's NRA or the date from which the scheme started to make a pension payment to the member, but no earlier than the start of wind up.

Members not yet receiving a scheme pension

24. As set out above, the Government proposes that, for someone who is not receiving a *scheme* pension when the draft Regulations come into force, the notional pension will be calculated according to the normal FAS rules, including payment from NRA, but without the cap being applied. This means that a member's asset share will be turned into a notional pension for the member which

provides indexation on post-1997 accruals capped at 2.5 per cent, plus benefits for survivors and surviving dependants, in line with FAS rules. If the asset share were more than enough to secure 100 per cent of the expected pension with post-1997 indexation and FAS-shaped survivor benefits¹¹, the excess would be applied to increase the notional pension rate to the member to more than 100 per cent of expected pension.

25. Where a scheme provides a higher or ‘bridging’ pension for a limited period – for instance from age 60 until State Pension age – the notional pension will take this into account by applying the value of the bridge to increasing the expected pension over an average life expectancy. This will result in an amount of notional pension which will not need to be reduced when the scheme bridging pension would have ceased.
26. Where the member is not yet entitled to Assistance the amount of the notional pension will be revalued in line with the Retail Prices Index (RPI), capped at 5 per cent from the date at which it is calculated, until the member becomes entitled to Assistance. At that point, the amount of the notional pension (with any revaluation) will be compared to the amount of Assistance calculated under normal rules.
27. Where the notional pension is higher than Assistance, the FAS will pay the member at the rate of the notional pension. This will reflect the fact that the member had a share of scheme assets which could have secured benefits higher than FAS levels.
See figure 1.
28. Calculating the notional pension in this way means that –
 - If a member’s notional pension is less than FAS levels at outset it will always remain so, as in example 1 below:

Example 1: *member not receiving scheme pension when draft Regulations come into force – notional pension less than 90 per cent of expected pension*

Ann’s scheme provided the same survivor’s benefits as the FAS and statutory indexation on post-1997 accruals only.

Ann had an accrued pension of £5,000 per annum when her scheme started to wind up. With revaluation her **expected pension** at NRA is £6,000 per annum, 90 per cent of which is £5,400 per annum.

At the calculation date her **asset share** was £39,000.

Ann’s **notional pension**, based on her asset share, as at the calculation date is £2,000 per annum. Revalued to her NRA this is £2,400 per annum.

At her NRA, the FAS compares 90 per cent of Ann’s revalued expected pension (£5,400) with her revalued notional pension (£2,400) and pays the higher amount.

¹¹ See Annex C for a full description of FAS survivor benefits.

- the member will receive the amount of the notional pension where it is less than 90 per cent of the expected pension but more than the amount of the cap applied to normal Assistance, as in example 2 below:

Example 2: *member not receiving scheme pension when draft Regulations come into force – notional pension less than 90 per cent of expected pension but higher than the cap*

Bhashker had an accrued pension of £40,000 per annum when his scheme started to wind up. With revaluation his **expected pension** at NRA is £50,000 per annum, 90 per cent of which is £45,000 per annum.

At the calculation date his **asset share** was £500,000.

Bhashker's **notional pension** as at the calculation date was £30,000 per annum. Revalued to his NRA this is £34,000 per annum.

When Bhashker reaches NRA, the FAS calculates 90 per cent of his expected pension (£45,000 per annum). This is above the amount of the FAS cap at that time (£32,000 per annum) so Bhashker's expected pension is capped at £32,000 per annum. The capped expected pension is compared to Bhashker's notional pension of £34,000 per annum. The notional pension will be paid as it is the higher amount.

Bhashker's notional pension has been based on FAS indexation of post-1997 accruals only. Half of his service was post-1997. This means that half of his notional pension will be increased annually.

- The actuarial value of higher scheme indexation or survivor benefits will be reflected in a higher headline rate. This could happen where an asset share was sufficient to secure more indexation than the normal FAS rules or where a scheme would have provided a higher proportion of survivor's benefits than the 50 per cent provided under the normal FAS rules. The additional value of these higher benefits would be used to provide a higher starting payment for the member, as in example 3 below:

Example 3: *member not receiving scheme pension when draft Regulations come into force - higher scheme indexation*

Clive's scheme provided the same survivor's benefits as the FAS, but provided 3 per cent fixed indexation on pre-April 1997 accruals and the statutory minimum on post-April 1997 accruals.

Clive had an accrued pension of £10,000 per annum when his scheme started to wind up. With revaluation his **expected pension** at NRA is £11,000 per annum, 90 per cent of which is £9,900 per annum.

At the calculation date his **asset share** was £200,000.

Clive's **notional pension** as at the calculation date was £9,200 per annum based on FAS indexation of post-1997 accruals only. The amount of the notional pension is £3,000 per annum higher compared to what his scheme would have been able to pay initially based on his asset share if it was also going to provide

indexation on all accruals. Revalued to his NRA the notional pension is £10,120 per annum.

At NRA, the FAS compares 90 per cent of Clive's expected pension (£9,900) with his revalued notional pension (£10,120) and pays the higher amount.

Clive will be paid at the level of the notional pension and the proportion based on post-1997 service will be increased annually in line with the RPI up to a maximum of 2.5 per cent per annum. He receives the full value of the higher indexation his scheme would have provided through the enhanced amount of his notional pension.

- Lower scheme survivor benefits will be reflected in a lower headline rate. This could happen where a scheme provides a lower than 50 per cent survivor benefit or no survivor benefit at all. As the FAS will be providing a 50 per cent survivor benefit, the member's notional pension will be actuarially reduced to reflect the amount of assets needed to secure the survivor's benefit, as in the example below:

Example 4: *member not receiving scheme pension when draft Regulations come into force – lower scheme survivor pension leading to lower initial rate of pension than would have been paid by the scheme*

David's scheme provided no survivor's benefits.

David had an accrued pension of £1,000 per annum when his scheme started to wind up. With revaluation his **expected pension** at NRA is £1,100 per annum, 90 per cent of which is £990 per annum.

At the calculation date it is determined that his benefits were funded to 95 per cent by the scheme and an **asset share** is determined as £15,000.

David's **notional pension** as at the calculation date was £850 per annum, based on providing FAS survivor benefits of 50 per cent. Revalued to his NRA the notional pension is £935 per annum. The amount of the notional pension is £100 lower than the 95 per cent pension the scheme could have afforded to reflect that FAS will provide a survivor benefit which the scheme would not have done.

At NRA, the FAS compares 90 per cent of David's expected pension (£990) with his revalued notional pension (£935) and pays the higher amount.

David will be paid at the level of normal Assistance and the proportion based on post-1997 service will be increased annually in line with the RPI up to a maximum of 2.5 per cent per annum. At his death, if David has a survivor, the FAS will pay them 50 per cent of the amount in payment to David at that time.

Q3. The Government would welcome any comments on the proposal to calculate the notional pension for those yet to retire in this way.

Members receiving a scheme pension

29. As set out above, the Government proposes that, for someone who is receiving a scheme pension when the draft Regulations come into force, the notional pension will be based on the structure of the annuity that trustees were likely to have bought, had the scheme been proceeding to annuitise. Given that trustees will not actually be purchasing annuities, certain assumptions have to be made as to what shape of annuity the trustees would have purchased with the member's asset share, had the scheme wound up in the normal way rather than transferring assets to government. This is particularly relevant where a member's asset share would have been sufficient to secure most, but not all, of their scheme benefits.
30. The Government has informally consulted some trustees of FAS qualifying schemes on which option they would have chosen, had they been purchasing annuities for these members, but there was no consistency of practice. However, most appeared to favour ensuring that any pension in payment is covered first in order to reduce the likelihood of payments being reduced and to offer members the greatest immediate value for their asset share. Although indexation is of greater value than a flat rate pension in times of higher than expected inflation and/or to those who live longer than expected, it is relatively expensive to buy and would affect the headline rate of pension of those whose rights could not be secured in full.
31. However, the Government is aware that a significant minority of trustees would have tried to replicate scheme rules and that in such cases trustees might have secured the pension and indexation in equal (lower) proportion to the member's normal expected pension.
32. On balance, the Government considers it appropriate for the notional pension to be calculated by prioritising the headline rate of pension, since this is what most pension schemes would have provided as an annuity. Unless their schemes have been paying more than their entitlement under the scheme rules, or more than their asset share would warrant during wind up, this is the method most likely to ensure that pensioners will not see a fall in their pensions in payment when assets transfer to government and FAS payments become the only payments made.
33. The Government further proposes that the asset share is put towards providing a payment in the following order:
 - the pension entitlement at the start of wind up (or at the date the member retired if the member started to receive a scheme pension after the start of wind up but before these draft Regulations came into force.). This would include provision for a payment to a survivor, using the scheme's rules on survivor payments and any guarantee period (see below) still outstanding, and any bridging pension in payment; then
 - indexation at RPI capped at 2.5 per cent; then
 - increase to the headline rate of payment.

Where the notional pension takes account of a bridging pension in payment, the FAS scheme manager will re-determine the amount of the notional pension at the point the bridge ceases to be payable under the rules of the scheme

34. Calculating the notional pension by prioritising the elements in this way means that –

- The member will have a flat notional pension if the asset share is sufficient only to meet the pension entitlement, as in example 5 below:

Example 5: *member receiving scheme pension when draft Regulations come into force – notional pension higher than 90 per cent of expected pension*

Eric's scheme provided the same survivor's benefits as the FAS, but provided indexation on all scheme benefits. He had no service after April 1997.

Eric was receiving £4,000 per annum when his scheme started to wind up in 2005. This is his **expected pension**; 90 per cent of this is £3,600 per annum.

At the calculation date his **asset share** was £50,000.

Eric's **notional pension** as at the date the scheme started to wind up is £4,000 per annum, because the scheme had sufficient assets to secure his pension in payment in full.

The FAS compares 90 per cent of Eric's expected pension (£3,600) with his notional pension (£4,000) and pays the higher amount as from the start of wind up. Payment that Eric has already received from his scheme and the FAS will be taken into account as described in the reconciliation proposals in Section 3.

Eric will not receive any indexation in the future because his scheme had insufficient assets to secure any indexation on his service before April 1997.

- If a member's notional pension is less than FAS levels at outset it will always remain so, as in example 6 below:

Example 6: *member receiving scheme pension when draft Regulations come into force – notional pension lower than 90 per cent of expected pension.*

Frank's scheme provided the same survivor's benefits and indexation as the FAS. He had twenty years service, five of them after April 1997. His scheme started to wind up in 2004.

Frank's **expected pension** when he reached his NRA in 2007 was £8,000 per annum, 90 per cent of which is £7,200 per annum. However, his scheme was very poorly funded and paid him an interim pension of just £6,800 per annum from 2007 with no indexation.

At the calculation date his **asset share** was £100,000.

Frank's **notional pension** calculated as at the date he retired is £7,000 per

annum, with no indexation as his scheme was too poorly funded to cover even the pension in payment.

The FAS compares 90 per cent of Frank's expected pension (£7,200) with his notional pension (£7,000) and pays the higher amount as from the start of wind up. Payments that Frank has already received from his scheme and the FAS will be taken into account.

Frank will also receive indexation on the one quarter of his expected pension which comes from service after April 1997.

- A member whose asset share was sufficient to secure more generous scheme indexation than provided by RPI capped at 2.5 per cent a year will have their headline rate increased, as per example 7 below:

Example 7: *member receiving scheme pension when draft Regulations come into force – headline rate of notional pension increased to reflect higher scheme indexation*

Grace's scheme provided indexation at 3 per cent fixed on all accruals. She had no service after April 1997.

Grace's **expected pension** when her scheme started to wind up in 2002 was £12,000 per annum, 90 per cent of which is £10,800 per annum. During wind up her scheme continued to pay Grace 100 per cent of her pension in payment together with scheme indexation.

At the calculation date her **asset share** was £180,000. This was sufficient to secure Grace's pension in payment and her future scheme increases.

Grace's **notional pension** calculated as from the start of wind up is £12,300 per annum. The amount of her notional pension is higher than her full expected pension at wind up, to reflect that the FAS will index it in line with RPI capped at 2.5 per cent rather than her scheme indexation rate of 3 per cent fixed.

The FAS will pay Grace at the level of her notional pension because that is higher than standard Assistance and will index it in line with RPI capped at 2.5 per cent.

- If a member's notional pension is higher than FAS levels at outset, the FAS level may become higher at some point in the future if the asset share was insufficient for the notional pension to contain relevant indexation, as in example 8 below; and
- A survivor may have a notional pension higher than FAS levels, even though the member's notional pension was below that level – this is because the notional pension reflected higher scheme benefits for a survivor than those provided by normal FAS rules, as in example 10 below.

Q4. The Government would welcome any comments on the proposal to calculate the notional pension for those receiving scheme pensions on the day the proposed Regulations come into force in this way.

35. The Government proposes that, at the point the member becomes entitled to Assistance, the FAS will compare the amount of the notional pension, calculated as described above, to the amount of Assistance calculated under normal rules which would be payable at the date of entitlement. Where the notional pension is higher than Assistance, the FAS will pay the member the amount of the notional pension. This will reflect the fact that the member had a share of scheme assets which could have secured benefits higher than FAS levels.
36. The Government proposes that where this occurs, the FAS will undertake an annual comparison between the amount of the notional pension and the amount of standard Assistance calculated in line with normal rules, including FAS indexation on any pension rights accrued after 1997. In any year where the notional pension is higher than standard Assistance, the FAS will make payments at the level of the notional pension. In some cases, where a member starts with a notional pension higher than standard Assistance, in subsequent years standard FAS Assistance may become higher because it contains indexation, whereas the asset share was insufficient to secure any indexation in the notional pension. As example 8 below shows, the Government's proposed approach will ensure that the member will receive the "better of" the compared amounts.

Example 8: *member with pension in payment when draft Regulations come into force – notional pension higher than 90 per cent of expected pension initially but lower at a future indexation date*

Harsha's scheme provided the same survivor's benefits as the FAS, but provided RPI on all accruals with a limit of 5 per cent. She had five years service, all after April 1997. She retired in 2004 just before her scheme started to wind up.

Harsha was receiving £2,000 per annum when her scheme started to wind up. This is her **expected pension**, 90 per cent of which is £1,800 per annum. Her scheme continued to pay her £2,000 per annum during wind up, but paid no increases.

At the calculation date her **asset share** was £25,000.

Harsha's **notional pension** calculated as at the date she retired is £2,000 per annum, because the scheme was sufficiently funded to cover the pension in payment. The asset share was not sufficient to provide any indexation on the notional pension.

The FAS compares 90 per cent of Harsha's expected pension (£1,800) with her notional pension (£2,000) and pays the higher amount as from the start of wind up. Payments that Harsha has already received from her scheme and the FAS will be taken into account.

Each following year the FAS compares 90 per cent of Harsha's expected pension plus indexation with her notional pension. If RPI each year is 2.5 per cent or more, after five years 90 per cent of Harsha's expected pension plus indexation will be £2,037 per annum. The FAS will pay this as it is more than the level notional pension of £2,000 per annum.

Q5. *The Government would welcome any comments on the proposal for an annual comparison where the notional pension is higher than Assistance.*

37. The Government recognises that this approach may result in some inconsistencies with members of FAS qualifying schemes whose assets are not transferred to government but who discharge their liabilities by purchasing annuities, for example. In the latter case, a member who receives an un-indexed annuity higher than FAS levels, will not receive Assistance even if at some point in the future Assistance with post-1997 indexation is higher than the un-indexed annuity.
38. No data is held, or could easily be obtained in the case of wound up schemes, on those who have had benefits secured above FAS levels. The Government has considered this matter carefully but concluded that the administrative difficulties in trying to identify those who might be affected far outweigh the benefits there might be for a small number of people. Most members funded above FAS levels will have been pensioners when their schemes started to wind up. They are therefore less likely to have significant service after April 1997 and, therefore, are less likely to have any indexation in their FAS entitlement.

Members entitled to Assistance on the grounds of ill health

Receiving a scheme pension when these draft Regulations come into force

39. The notional pension calculation is more complicated where members are, or become, entitled to Assistance earlier than NRA on the grounds of ill health. This is because assumptions around payment dates need to be changed in order to allow appropriate comparisons between 'normal FAS entitlement' and 'asset share entitlement' to be made.
40. In some cases the FAS will be making interim ill health payments which top up scheme payments being made to the member. In other cases FAS will be making interim ill health payments to members who are not yet receiving any payment from their scheme. And there will be further cases where schemes may be paying members earlier than NRA with no FAS top-up payments. For consistency and in order to allow appropriate comparisons to be made, the Government proposes to determine all notional pensions to members who qualify for FAS payments on the grounds of ill health to be payable from the earlier of the date that they started to receive their scheme pension (but no earlier than the start of wind-up) and the date they started to receive Assistance.
41. The Government does not propose to apply an early payment reduction factor to the notional pensions of those receiving a scheme pension before these draft Regulations come into force under any ill health payment scenario. (However, any

payments received before FAS entitlement arises may result in ongoing payments being reduced in line with the early retiree proposals discussed later in this section.)

42. Where a member was not receiving a scheme pension at the time these draft Regulations come into force, the Government proposes to apply a reduction factor to the notional pension where one is required for an appropriate comparison to be made with any normal FAS entitlement on the grounds of ill health. This means that where a member is entitled to unreduced Assistance on the grounds of terminal or severe ill health, no reduction will be made to the notional pension. Where a member is entitled to reduced Assistance on the grounds of ill health, a reduction will be made to the notional pension.
43. In the vast majority of cases where the member was not receiving a scheme pension at the time these draft Regulations come into force, the amount of the notional pension, whether reduced or unreduced, will be below normal Assistance levels when the comparison is made. This is because the members concerned are unlikely to have a high asset share which is most commonly associated with those who were priority pensioners at the point their scheme started to wind up. As a result, the only practical effect of whether the notional pension is reduced would be on the amount of lump sum which could be taken by the member (see below). Not reducing the amount of the notional pension for a member, who is not receiving a scheme pension and who becomes entitled to Assistance on the grounds of severe ill health or terminal illness, will maximise the amount of lump sum available to them. The Government believes that this is an appropriate approach given their reduced life expectancy.

Survivors of members who entitled to Assistance on the grounds of ill health

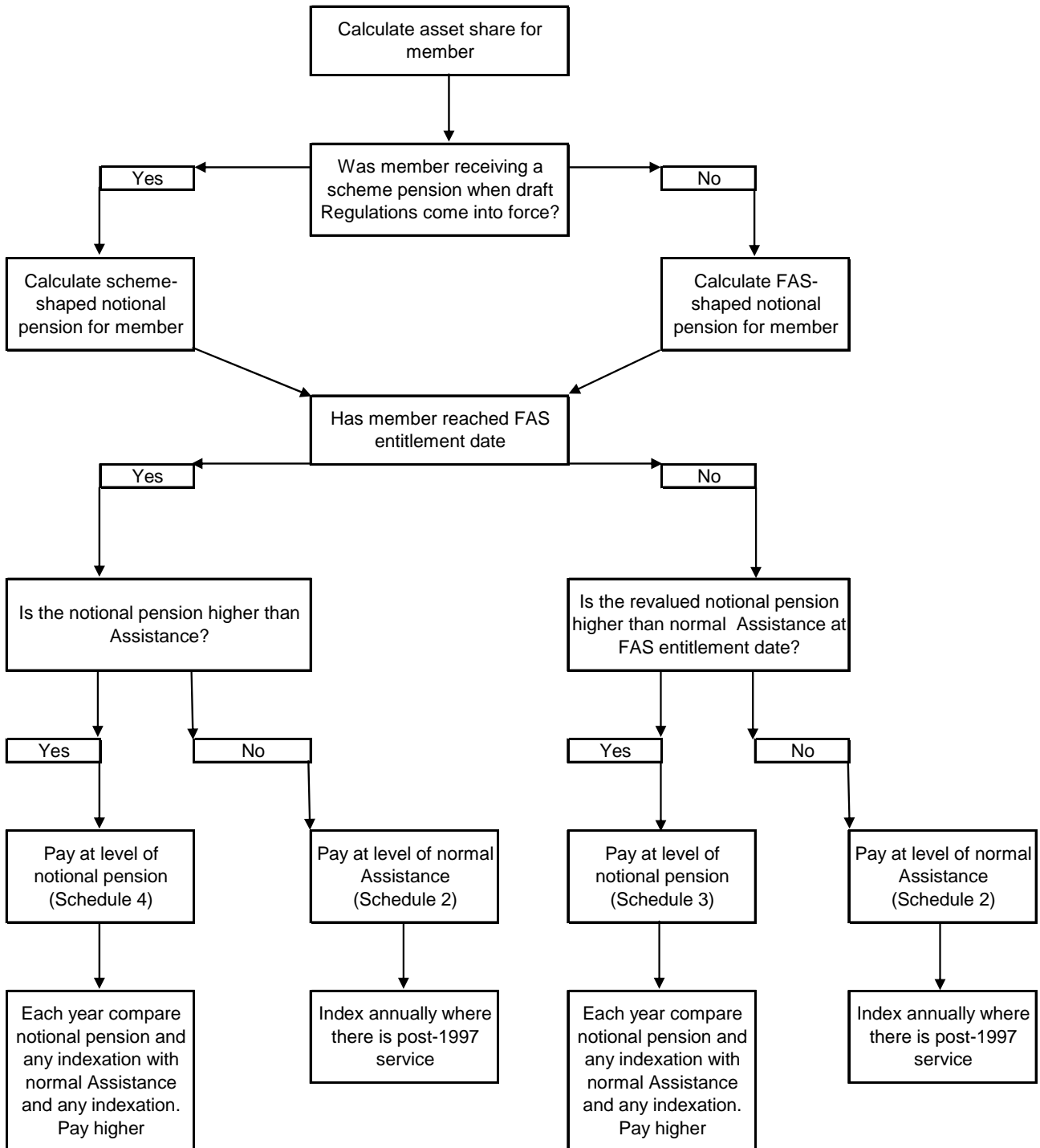
44. As described earlier in this section, separate asset shares will be calculated for survivors where members die before the valuation calculation date regardless of whether members were receiving scheme pensions (or Assistance) prior to that date. To maintain consistency with the way the Government proposes to determine notional pensions for members who had qualified for ill health early access, the Government does not propose to apply an early payment reduction factor to any notional pensions in respect of survivors for whom an asset share is calculated even though a reduction would be applied to their normal FAS entitlement. This approach will also help ensure consistency with survivors in schemes that purchase annuities as reduced annuities would not be purchased for such beneficiaries in such circumstances.

Q6. The Government would be interested to receive comments on its suggested approach for comparing Assistance on the grounds of ill health with the notional pension.

Q7. The Government would particularly welcome views on whether there are any circumstances where it would not be appropriate to apply a reduction factor to the notional pension of someone entitled to ill health payments who was not receiving a scheme pension when these draft Regulations come into force.

Figure 1

Qualifying Member
(includes survivors and others in payment when scheme starts to wind-up)



The survivor notional pension

45. The Government is proposing to follow a similar process for calculating payments to survivors or surviving dependants.

Where the qualifying member dies before a member notional pension is calculated

46. If a qualifying member dies after the start of wind up and before the valuation calculation date when an asset share would be calculated for them, the Government proposes that the FAS will calculate a notional pension for any survivor or surviving dependant with the share of scheme assets allocated to the survivor or surviving dependant in the valuation in the following way:
- where the member or the survivor or surviving dependant was receiving a scheme pension when the draft Regulations come into force, the notional pension will be calculated in line with the approach for a member receiving a scheme pension at that date (see above) but without any provision for further survivor benefits. This will prioritise the pension in payment to them, which will reflect the proportion of the member's pension payable to them specified in the scheme rules, and apply indexation where asset share allows (see figure 2); or
 - where the member was not receiving a scheme pension at the point the draft Regulations come into force, the notional pension will be calculated in line with the approach for a member not receiving a scheme pension at that point (see above) but without any provision for further survivor benefits. This notional pension will be a proportion of what the member's notional pension would have been and will include indexation on any entitlement based on post-1997 service. The proportion will be in line with normal FAS rules: one half for a surviving spouse, civil partner, or partner; and according to the number of surviving dependants and whether there is also a surviving spouse, civil partner, or partner (see figure 3 and Annex C for full details).
47. The survivor notional pension will be calculated as from the day after the member's death and compared to the amount payable to a survivor or surviving dependant under normal FAS rules, whereupon the higher amount will be paid.

Example 9: *survivor with a notional pension higher than FAS levels where the member died before the asset share was calculated*

Ivor's civil partner had retired when his scheme started to wind up, but he died before his asset share was calculated. When the scheme started to wind up Ivor's civil partner had been receiving £5,500 per annum from his scheme. This is his **expected pension**, 90 per cent of which is £4,950 per annum.

During wind up Ivor's civil partner continued to receive his pension in full, together with scheme increases of RPI capped at 2.5 per cent per annum. At the time he died his pension in payment is £6,000 per annum, but because none of his service was after April 1997, his expected pension for calculating normal

Assistance has not increased.

The scheme provided a 50 per cent survivor pension and starts to pay Ivor £3,000 per annum. It will calculate an **asset share** for Ivor. The FAS calculates a **survivor notional pension** for Ivor based on his asset share. Ivor's asset share is sufficient to provide a notional pension of £3,000 per annum with scheme indexation on the whole amount at RPI capped at 2.5 per cent.

Under normal Assistance rules, Ivor would be entitled to half his civil partner's expected pension (£2,475 per annum). Since his survivor notional pension is higher than this, the FAS will pay him at the rate of the notional pension and will pay his scheme increases each year.

48. A notional pension will be calculated for any survivor in payment at the calculation date. However, the comparison with the amount payable under normal FAS rules would only apply to those who meet the FAS definition of a survivor or surviving dependant (see Annex C). Payments to other categories of survivor, for instance parents, who may have notional pensions calculated for them are covered later in this section.

Where the qualifying member dies after a member notional pension is calculated

49. If a qualifying member dies after a notional pension has been calculated for them, the Government proposes that the FAS will calculate the proportion of the member's notional pension payable to any survivor or surviving dependant, as defined for the FAS, in the following way:
- where the member was receiving a scheme pension when the draft Regulations come into force, the proportion of the member's notional pension payable to a survivor or surviving dependant will be the proportion of the scheme pension specified in the rules of the scheme as payable to them, taking into account the scheme rules on commutation (see figure 2); or
 - where the member was not receiving a scheme pension at the point the draft Regulations come into force, the proportion of the member's notional pension payable to a survivor or surviving dependant will be the proportion specified in the normal FAS rules for them (see figure 3).
50. The proportion of the member's notional pension payable to a survivor or surviving dependant will be calculated as from the day after the member's death and compared to the amount payable to them under normal FAS rules, whereupon the higher amount will be paid.
51. Where the amount of notional pension due to the survivor or surviving dependant is based on scheme rules (see earlier in this section), this could for instance be two-thirds of the member's pension rather than one half as in the normal FAS rules. In other cases, where a scheme did not provide for survivor benefits, it could be nil. Calculating the survivor notional pension in this way will ensure that the survivor or surviving dependant receives the appropriate amount where the member had an asset share insufficient to secure a notional pension above the

level of standard Assistance but sufficient to secure a higher scheme survivor pension (as in example 10 below).

52. Where the survivor or surviving dependant is entitled to payment at the rate of the notional pension, the Government proposes a similar annual comparison as described earlier in this section. This will be with the amount of Assistance calculated under normal rules so that the survivor or surviving dependant can benefit from any indexation contained in the calculation of Assistance.

Example 10: *member with a notional pension lower than FAS levels where the survivor is entitled to more than FAS levels*

John's wife retired after her scheme started to wind up but before these draft Regulations came into force. She died after her **asset share** and notional pension had been calculated and assets had transferred.

Her **expected pension**, including revaluation up to the date she reached her NRA was £7,000 per annum, 90 per cent of which is £6,300 per annum.

Her **notional pension** from her share of scheme assets was £6,000 per annum – therefore the FAS had paid her £6,300 per annum.

However, her scheme would have provided a two-thirds survivor's pension and the amount of her notional pension had been calculated taking this into account.

Therefore, John is entitled to two-thirds of her notional pension, which is £4,000 per annum. The FAS compares this with survivor's Assistance of half of 90 per cent of expected pension (£3,150). The FAS pays John £4,000 per annum as this is higher than normal survivor Assistance.

Example 11: *member with notional pension higher than FAS levels but lower scheme survivor benefit than the FAS.*

Kamal retired before his scheme started to wind up in 2005. His scheme provided a 50 per cent survivor benefit only on his contracted-out benefits which are half his total benefits; that is 25 per cent of the total.

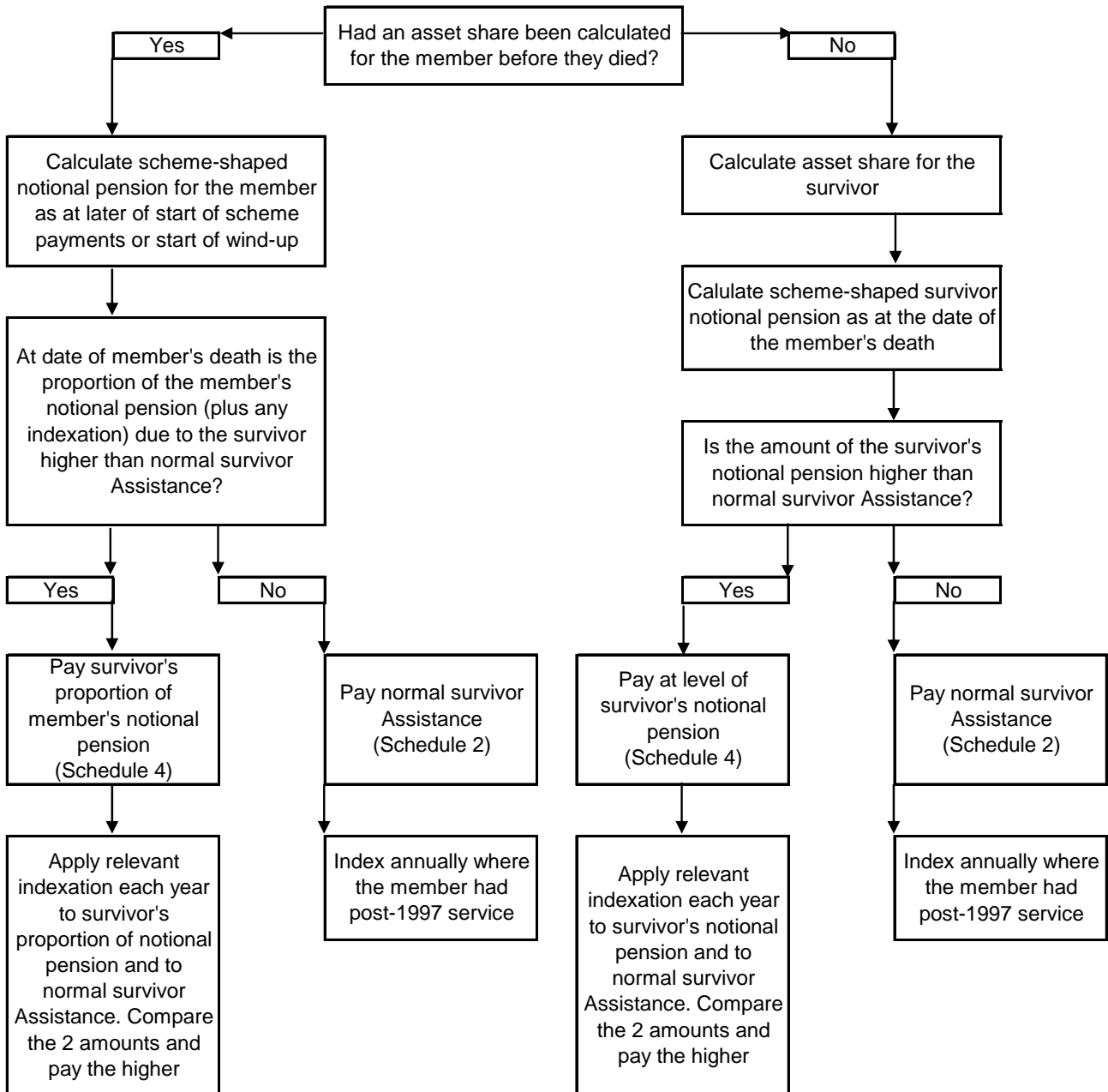
Kamal's **asset share** is sufficient to provide a **notional pension** equal to his pension in payment – 100 per cent of his **expected pension** at the start of wind up with any indexation. Therefore, the FAS pays him at the rate of his notional pension.

When Kamal dies, the FAS compares the proportion (25 per cent) of his notional pension which the scheme would have paid to his survivor. This is less than the amount of normal survivor Assistance, so the FAS pays Kamal's widow normal survivor Assistance.

Q8. *The Government would welcome any comments on its proposals for calculating the amount of notional pension payable to a survivor or surviving dependant and comparing with Assistance calculated under normal rules.*

Figure 2

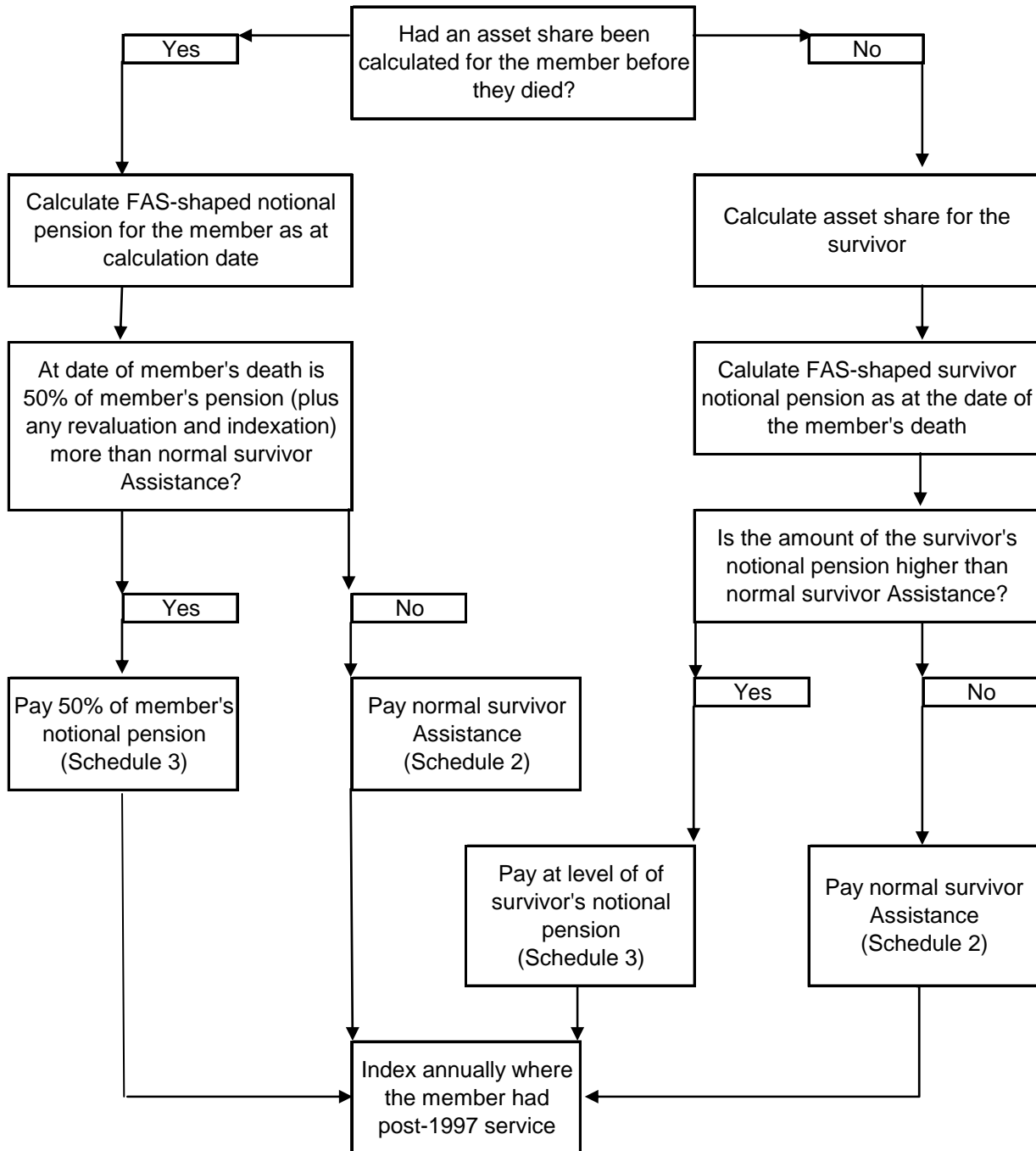
When a qualifying member dies
 Where the qualifying member, survivor or surviving dependant was receiving a scheme pension at the date the draft Regulations came into force



Surviving dependants will follow the same process. However, the proportions may differ depending on whether there is also a survivor and/or the number of dependants (see Annex C).

Figure 3

When a qualifying member dies
 Where the qualifying member, survivor or surviving dependant was not receiving a
 scheme pension at the date the draft Regulations came into force



Surviving dependants will follow the same process. However, the proportions may differ depending on whether there is also a survivor and/or the number of dependants (see Annex C).

Redetermination of the payments to surviving dependants

53. Current provisions require the scheme manager to redetermine the amount of Assistance for remaining surviving dependants when one of them ceases to be eligible (for instance because a child reaches the age of 18 without continuing in qualifying education). And, as mentioned earlier, these draft Regulations propose that this should also apply where another surviving dependant subsequently becomes eligible.
54. The Government has considered whether it would be appropriate to redetermine the payments to surviving dependants where their payments are based on a notional pension (i.e. where they are above normal FAS levels). It proposes that it is appropriate to do so where a member was not receiving a scheme pension at the point these draft Regulations come into force and where the notional pension will be shaped according to normal FAS survivor rules. It is not proposing to do so where the member was receiving a scheme pension at the date these draft Regulations come into force and where the notional pension will be shaped according to the survivor provisions in scheme rules.

Q9. The Government would welcome views on the circumstances where it does, and does not, propose to redetermine payments for surviving dependants.

Guarantee periods

55. Guarantee periods operate where a member of a pension scheme dies within a specified period, usually five years but in some cases ten years, of their pension being put into payment. Depending on the rules of the scheme, it may:
- continue paying the survivor at the same rate for the remainder of the guarantee period. This can be instead of, or in addition to, any survivor's pension; or
 - pay the survivor a reduced rate of pension immediately, but also pay them a lump sum representing the balance of the pension payments the member would have received for the remainder of the guarantee period.
56. This guarantee is in place in order to ensure that members get at least a minimum return for the contributions they have made into the schemes. When schemes in wind up annuitise, they generally ensure the annuities also offer a guarantee period for the same reason. However, the FAS has never offered such a guarantee because it is not funded through member contributions.
57. The Government has considered whether this position should be maintained for members of schemes which are not annuitising. It proposes that there should be no change for those members who will receive normal Assistance; that is, those whose asset share is below the value of normal Assistance. Nor does it propose to provide such a guarantee for a member who was not receiving a scheme pension at the date the draft Regulations come into force. This is because both of

these groups will have Assistance and/or notional pensions calculated in line with usual FAS rules which do not take account of guarantee periods.

58. However, where, at the date of death, a member who was receiving a scheme pension at the date the draft Regulations come into force – and whose notional pension, which is calculated to take account of any remaining guarantee period, is higher than Assistance at that date – the Government proposes that any remaining death benefit guarantee will be paid in the form specified in the scheme rules.

Q10. The Government would welcome comments on this approach to death benefit guarantees.

Pension Commencement Lump Sums

59. In the December 2007 announcement the Government said “*where the share of scheme funds allows, people [will be] able to commute some portion of their Assistance to a lump sum*”. It was the Government’s intention that this lump sum would be the same as that which would have been available, had the qualifying member’s asset share been annuitised.
60. However, following informal consultation with trustees, it became clear that trustees do not take a consistent approach to lump sums when purchasing annuities. This is particularly the position where trustees have to deal with contracted-out rights. For instance, some schemes allow for the commutation of 25 per cent of the value of the full annuity, but others exclude from this commutation any part of the annuity that represents contracted-out rights.
61. It has been suggested that the Government should allow for qualifying members simply to take 25 per cent of their Assistance, without any maximum. The Government has considered this but has decided against it, because it brings forward significant costs to government. This is not an issue with a funded arrangement such as the PPF, but it is an important factor in a pay-as-you-go taxpayer-funded scheme such as the FAS. In addition, making such a provision only for members in respect of whom schemes will be transferring assets would put them in a much more advantageous position in relation to other members.
62. However, the Government is proposing to take a simplified approach to the amount of the lump sum by not including any restrictions on the amount of the lump sum to take account of contracted-out rights.
63. The Government proposes that qualifying members will be able to commute part of their Assistance into a lump sum when they first access their Assistance where:
- the member had an asset share allocated to them;
 - the scheme has not discharged, or is not likely to discharge, its liability towards the member and transfers relevant assets to government; and
 - the member is not receiving a pension, including an interim pension paid on account of final entitlement, from the scheme.

64. Where a member is already receiving a scheme pension when assets transfer, tax rules will have required any lump sum related to that scheme pension to have already been taken. The Government understands that trustees have been offering members who have retired during wind up lump sums according to the assets available, in line with the scheme's approach to the amount which can be offered taking into account any contracted-out rights.
65. The Government understands that some trustees may have been intending to make top-up lump sum payments at the end of wind up, where the member's eventual entitlement is higher than the amount of the interim pension. The Government is not currently proposing to make any such provision for members of schemes transferring assets to government. It will, however, consider the matter further if it receives responses to consultation setting out circumstances where top-up lump sums might have been paid if the schemes concerned had continued to wind up by purchasing annuities.
66. Where a member meets the conditions outlined above, the maximum lump sum will be the lower of:
- 25 per cent of the capital value of the FAS payments due – either Assistance under the normal rules or the notional pension if higher; or
 - the capital value of their notional pension, revalued by RPI capped at 5 per cent between the date it is calculated and the date they become entitled to Assistance.
67. HM Revenue and Customs have set maximum limits on the amount of lump sum that can be taken by commuting pension. The maximum lump sum that can be taken must be no greater than 25 per cent of the capital value of the pension and lump sum received. The capital value equals the lump sum plus 20 times the initial rate of pension actually received; that is, after being reduced as a result of commutation. These same rules will apply to commutation of Assistance. In addition, the total amount of any lump sums taken from Assistance and any pension arrangements must not exceed the Lifetime Allowance.

Example 12: *member commuting Assistance where the maximum lump sum is not limited by the amount of the asset share*

Leroy had an accrued pension of £1,000 per annum at the start of wind up in 2001 when he was aged 40. In 2011 his scheme transfers assets to government. Leroy's **asset share** is £10,000 which produces a **notional pension** of £250 per annum.

When he reaches his normal retirement age.

His **expected pension** (with revaluation) is £1,650 per annum.
His revalued notional pension is £700 per annum

Calculation of Assistance based lump sum

Assistance is £1,650 x 90 per cent = £1,485

The commutation rate applicable to Leroy is 21

Maximum Assistance-based lump sum according to tax rules = £7,514 which is equivalent to £358 per annum Assistance.

Compare to asset share

The notional pension is £700 per annum.

Maximum amount of Assistance commutable = £358 per annum.

Therefore the maximum tax-free lump sum available to Leroy is £7,514.

If Leroy took a lump sum, his FAS payment would reduce accordingly.

Example 13: *member commuting Assistance where the maximum lump sum is limited by the amount of the asset share*

Mark had an accrued pension of £1,000 per annum at the start of wind up in 2001 when he was aged 40. In 2011 his scheme transfers assets to government. Mark's **asset share** is £1,500 which produces a **notional pension** of £150 per annum.

When he reaches his normal retirement age

His **expected pension** (with revaluation) is £1,650 per annum.

His revalued notional pension is £200 per annum.

Calculation of Assistance-based lump sum

Assistance is £1,650 x 90 per cent = £1,485.

The maximum Assistance-based lump sum according to tax rules = £7,514 which is equivalent to £358 per annum Assistance.

Compare to asset share

The notional pension is £200 per annum.

Maximum amount of Assistance commutable = £200 per annum.

Therefore the maximum lump sum available to Mark is £4,200 which is the maximum amount of Assistance commutable (£200) multiplied by the commutation factor (21). If Mark took a lump sum, his FAS payment would reduce accordingly.

68. The Government proposes to set commutation factors on actuarially-neutral terms. The commutation factor reflects the actuarial value of the benefits being given up by the member and the member's dependants. It is calculated based on assumptions for mortality, indexation, interest rates and the dependants of members. In general, commutation rates are higher for those retiring at younger ages since the benefits being given up would be payable for a longer period than those given up by older members.

69. It is intended that the commutation terms will be derived from the basis used to calculate the notional annuity (used for those qualifying members in respect of whom assets are not being transferred) and the notional pension. Use of a shared basis will also ensure consistency between FAS members in respect of whom assets transfer, and those FAS members who took a lump sum during wind up and whose scheme wound up by annuity purchase.
70. The PPF also provides commutation of compensation on an actuarially-neutral basis. However, currently the PPF and FAS operate different buy-out assumptions which would lead to differing neutral-commutation rates. As indicated earlier in this section, the Government intends to consult on a revised basis to underlie the FAS factors. In doing so it will consider whether the PPF basis might be appropriate for the FAS.
71. Where a qualifying member decides to take a lump sum, their entitlement to ongoing payments of Assistance (and any increases on pension entitlement accrued after April 1997) will be reduced by an amount that takes account of the lump sum paid on an actuarially-neutral basis. This will have a corresponding effect on the amount any survivor or surviving dependant will be paid after the member dies.

Example 14: *reduced survivor Assistance where member has commuted part of their Assistance*

Nicola's husband commuted part of his Assistance when he reached his NRA. If he had not chosen to commute part of his Assistance he would have received £2,000 per annum. Instead he chose to receive a lump sum of £1,500 and his Assistance was reduced to £1,900 per annum.

When Nicola's husband died he was still receiving £1,900 per annum, because all of his service was prior to 6 April 1997 and so he was not entitled to annual increases.

Nicola will receive survivor's Assistance at the rate of £950 per annum. If Nicola's husband had not commuted Assistance, then she would have received £1,000 per annum.

Q11. *The Government would be interested in any comments on the proposed conditions for obtaining a lump sum; the method proposed for calculating it and the proposed reduction in the entitlement of the member and that member's survivors and surviving dependants as a consequence.*

Early retirees

72. Many schemes offered an early-retirement option under which, subject to certain conditions, scheme members could take their pension before the scheme's normal retirement age (NRA).
73. The FAS does not currently provide for Assistance to be paid earlier than NRA unless a qualifying member meets the ill health, severe ill health or terminal illness conditions. However, a scheme could purchase an annuity for any early retiree

based on their asset share which the member could have paid to them immediately. Where the annuity was below Assistance levels, the FAS would pay a top-up when the member reached NRA or met the ill-health conditions.

74. If the FAS continued only to pay those members who had reached NRA or met the ill-health conditions, any payments being made by their scheme to this group would stop when assets transferred and the trustees are discharged of their obligation to pay pensions.
75. The Government concluded that it would be inappropriate to stop payments in this way and that payments in some form should continue up to the date of normal FAS entitlement. During the consultation on the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, the Government invited views to help inform the development of these final proposals (paragraphs 77-78 of that consultation document).
76. Initial thinking at that time was to:
 - allow an early retiree, who had been receiving a scheme pension when the scheme started to wind up, early access to Assistance as from the later of the start of wind up or 14 May 2004 (when the FAS was first announced); and
 - pay someone who took early retirement after the start of wind up, Assistance payments only at the level supported by their share of scheme assets until they reached NRA (or became entitled to an ill-health payment).
77. The Government initially thought this would be appropriate to avoid developing a separate administrative procedure to pay what was believed to be a small number of members who had taken early retirement before wind up – and who would not have reached the age FAS became payable before the FAS took on responsibility for making future payments to them. Because those who are pensioners at the start of wind up come at the top of the priority order in which assets are to be allocated, only those in the most severely under-funded schemes would be unlikely to have an asset share which would secure less than Assistance levels.
78. The Government received no responses to its proposals on this issue. Since then further detailed work has been done on the proposed FAS structure outlined in this document. In particular:
 - how the notional pension will be calculated for those in respect of whom assets will be transferred (see paragraphs 23 onwards above);
 - how this will be compared with the amount of standard Assistance and the higher amount paid; and
 - how to pay those who will have an asset share but who will never be entitled to Assistance (see paragraphs 85 - 89 below).
79. As a result the Government now proposes that **all** early retirees should fit within the overall proposed FAS structure in the following way:

- a notional pension will be calculated based on the early retiree's asset share – as set above, the shape of the notional pension will depend on whether the member was receiving a scheme pension at the point the draft Regulations come into force;
- the amount of the notional pension will be paid until the early retiree reaches NRA or becomes entitled to Assistance on grounds of ill health;
- normal Assistance will be reduced to account for the amount of any interim pension payments made by the scheme and any notional pension payments made by the FAS; and
- the comparison between normal Assistance and the notional pension will be made when the member becomes entitled to Assistance – at this time the member will be paid the higher of the two amounts as described above.

80. Where the member has a notional pension which is higher than Assistance levels, payments will always be made at the level of the notional pension (see example 15 below) unless Assistance with any indexation overtakes the notional pension at some point after FAS entitlement would otherwise have begun. However, where the member's asset share is below Assistance levels, they would receive an increase in their payments from the start of FAS entitlement (see example 16 below).
81. The payments which a member has received from their scheme and the notional pension payments made by the FAS prior to entitlement to Assistance will be taken into account when assessing the amount of Assistance calculated under normal rules, which is to be used in the comparison from the start of entitlement to Assistance. It is intended that this adjustment will be achieved, as shown in example 16, by turning the amount of payments received before FAS entitlement into a notional amount of annuity which will be added to any actual pension in order to reduce Assistance payments from NRA onwards.
82. This approach is consistent with the treatment of early retirees for whom annuities are purchased: their actual pension deduction is determined as at their NRA and not at the date they actually retired. The early payment deduction will also be applied to the calculation of the amount of Assistance for any survivor or surviving dependant of the early retiree.

Example 15: *early retiree with notional pension higher than normal Assistance*

Oliver had taken early retirement from his scheme at age 55 before it started to wind up. When his scheme transfers assets Oliver has not yet reached his NRA of 65.

Oliver is a priority pensioner as he had retired, on an actuarially reduced pension, before his scheme started to wind up. The scheme has sufficient assets to cover the liabilities of pensioners. Therefore, Oliver's **asset share** is sufficient to secure his reduced **expected pension** in full. The FAS pays him at the level of his notional pension with increases in line with RPI subject to a 2.5 per cent cap

from the point at which his scheme transfers assets until he reaches his NRA.

When Oliver reaches his NRA the FAS compares his **notional pension** (plus any indexation) with normal Assistance (90 per cent of his expected pension at the start of wind up plus any indexation). Oliver's notional pension is still higher than normal Assistance so the FAS continues to pay Oliver at the level of the notional pension.

The payments Oliver has received from his scheme and the FAS from the start of wind up until NRA will be taken into account when calculating the correct amount of normal Assistance to be used in the comparison.

Example 16: *early retiree with notional pension lower than normal Assistance*

Polly retired from her scheme after it started to wind up when she was 60, although her normal retirement age was 65. Polly is 63 when her scheme transfers assets.

Polly's **asset share** is sufficient for a **notional pension** equal to half her **expected pension** but without any indexation. The FAS pays Polly at the level of her notional pension until she reaches her NRA of 65.

When Polly reaches her NRA the FAS compares her notional pension with normal Assistance (90 per cent of her expected pension at the start of wind up plus any indexation minus "actual pension"). Polly's notional pension is lower than normal Assistance so the FAS starts to pay Polly at the level of normal Assistance from her NRA.

The normal Assistance calculation takes into account all the payments Polly received from her scheme and the notional pension payments she received from the FAS prior to her NRA. It does this by deriving an actual pension from the total of the payments made to her in excess of the amount which reflects the value of her asset share and reducing her normal entitlement by that amount of actual pension. This ensures that overall Polly receives her correct Assistance entitlement taking account of the payments she has already received before NRA from her scheme and from the FAS after assets transfer.

83. This revised proposed approach will ensure that early retirees continue to receive a payment in line with their share of scheme assets until they become entitled to Assistance. It will also provide consistency of treatment between members of schemes which purchase annuities and schemes which will transfer assets to government, and between those who took early retirement before wind up and those who took early retirement after wind up.
84. The proposed change would also avoid having to make an exception to the otherwise clear rules for the point at which someone becomes entitled to Assistance.

Q12. The Government would welcome any comments on how it proposes to deal with early retirees.

Q13. The Government would also welcome comments on circumstances where it may not be appropriate to take account of all payments made before FAS entitlement arises in relation to all members (including those for whom scheme payment may have been made early on account of ill health).

Scheme rules survivors

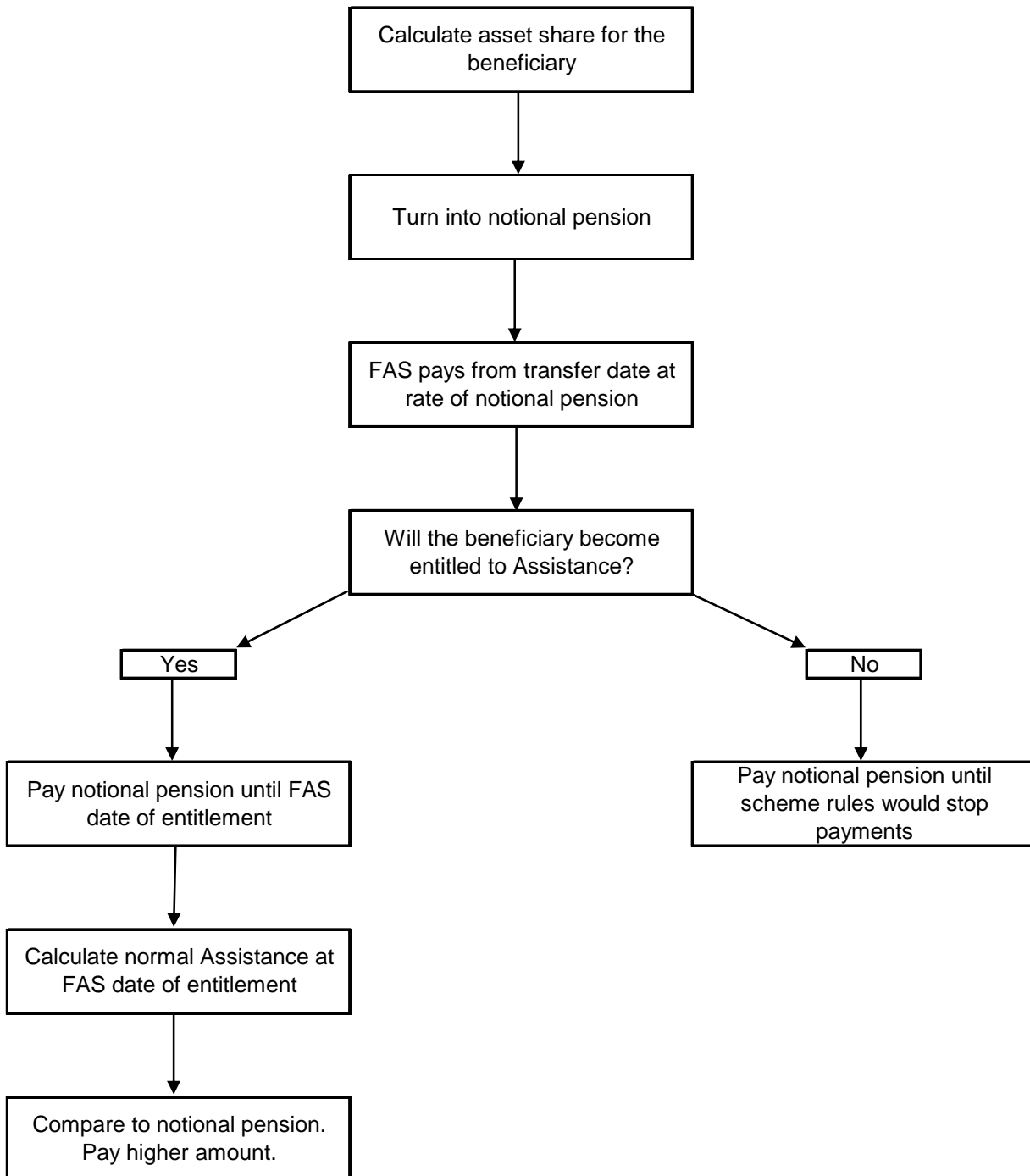
85. The Government is aware that a few schemes may have made provision to make a survivor payment to someone other than those the FAS already allow for; that is a member's spouse, civil partner, surviving partner and dependent children. For example, some schemes may offer the possibility of provision for parents in certain circumstances. The Government believes that payments to such survivors would be made at the trustees' discretion and not be a liability of the scheme specified in the scheme rules.
86. Where someone in this category is receiving a scheme pension when the scheme starts to wind up, they are treated as a qualifying member for the purposes of the FAS. Currently this means that, if the scheme could not afford to purchase them an annuity or to pay them an interim pension above the levels of normal Assistance, the FAS will top up their payments to that level. Such payments continue for as long as they would have done under the scheme rules. The Government proposes no change to this.
87. Where someone was receiving such a scheme pension and has a share of scheme assets which will transfer to government, a notional pension will be calculated for them and they will be paid the higher of the notional pension and normal Assistance.
88. Where the scheme begins such payments to someone after wind up begins and will be transferring assets in respect of them to government, the Government proposes that the FAS will calculate a notional pension for them based on their share of scheme assets. Once assets transfer the FAS will make payments to them at the level of that notional pension for as long as the scheme rules would have allowed. The Government does not propose making a comparison with normal Assistance of those in this category. This is consistent with what happens in the case of those in this category who are annuitised – they receive payments from an annuity based on their asset share but are not entitled to top-up payments from the FAS if their annuity payments are less than FAS levels.
89. The Government proposes that these payments will only be made for those for whom an asset share has been calculated. The Government believes this is an appropriate approach because of the difficulties there would be in establishing who might have been awarded a scheme survivor pension had assets not transferred. As the Government intends that asset shares will only be calculated for those beneficiaries entitled to scheme benefits at the valuation calculation date, it further proposes that trustees should not start to pay any pensions to such beneficiaries after the scheme's calculation date.

Q14. *The Government would welcome any comments on the circumstances in which it proposes to make payments to certain survivors who do not come within the FAS survivor definitions.*

Q15. *The Government would welcome any further comments on the extent to which the proposals outlined in this Section give effect to the commitments made in December 2007.*

Figure 4

Schedule 5 Beneficiaries (i.e. early retirees or scheme rules survivors)



INFORMATION, INTERNAL REVIEWS AND APPEALS RELATING TO THE EXTENSION OF ASSISTANCE

INFORMATION

Information access requirements

90. The Government recognises that the FAS scheme manager will need to be able, on an on-going basis, to obtain information from the National Insurance PAYE system (NPS) where it is both relevant and necessary to its FAS work and where the information is unavailable from other sources. For example, information may be obtained from NPS to determine periods of employment necessary to identify periods of contracting out of the State pension scheme. This will assist in the calculation and payment of Assistance.
91. The Government proposes that the draft Regulations modify Section 202 of the Pensions Act 2004 (which is an existing information sharing provision with the PPF which covers tax information), to enable the sharing of data held on the NPS in respect of FAS work.

Ensuring the security of transferred/shared data

92. There are clear government standards for the safe-handling of personal customer and other sensitive information. The FAS scheme manager must meet these standards in the handling, processing, storing and transferring of personal sensitive information, regardless of the media used. In addition, information systems that process, store or transmit personal or sensitive information (whether owned by the FAS scheme manager or by a commercial provider) must already be assessed to provide assurance that the system meets acceptable security standards and does not present an unacceptable level of risk. Information systems should meet recognised government and International security standards.

Q16. The Government would welcome your views on the sharing of relevant information owned by Her Majesty's Revenue and Customs with the FAS scheme manager, its staff and any third party provider.

REVIEWS AND APPEALS

Reviewable Determination: Tax-Free Lump Sums

93. The Government intends to make tax-free lump sum payments available to those who meet the relevant criteria described earlier. These tax-free lump sums will be available when members first access their Assistance, to members who have not started to receive a pension from their scheme before assets transfer.
94. As the amount of tax-free lump sum payable to a qualifying member has an impact on their subsequent post-commutation payments of Assistance, it is

proposed that qualifying members have a right of review in respect of the FAS scheme manager's determination of their tax-free lump sum.

Reviewable Determination: Level of Indexation

95. Whilst indexation will form part of a qualifying member's Assistance, the existing rights of review relating to Annual payments do not currently encompass the level of indexation. It is therefore proposed that members have a right of review in relation to the FAS scheme manager's determination of the level of indexation used in the calculation of their Assistance.

Reviewable Determination: early retiree assessment

96. The Government proposes that a right of review is given in relation to any decisions by the FAS scheme manager relating to whether or not a person is entitled to payments as an early retiree from the FAS before the normal FAS entitlement ages, and a right to internal review on the amount of such a payment.

Reviewable Determination: scheme beneficiary assessment

97. The Government proposes that a right of review is given in relation to a person's eligibility for, and amount of, a payment which is made to someone who isn't a qualifying member or a survivor or surviving dependant, but is someone in respect of whom the scheme had a liability to pay a pension.

Timings for lump sum, indexation, early retiree and scheme beneficiaries review requests

98. In line with existing rights of review, it is proposed that the scheme member or their representative must submit a request for a review of a determination in respect of lump sums, level of indexation, early retiree assessments and scheme beneficiaries assessment described above to the FAS scheme manager within one month of the issue of the FAS scheme manager's determination.
99. As lump-sum determinations are made only once, the Government believes a one-off, one-month period in which to request a review of the amount of the lump sum is appropriate.
100. The level of indexation is one element of an Annual payment and the Government believes that each time the level of indexation is determined by the FAS scheme manager the member will be able to request a review if they believe the FAS scheme manager's determination of the level of indexation is incorrect.
101. The early retiree assessment determination relates to eligibility and as this decision is only made once, the Government believes it is appropriate for the timescale in which to request a review should be limited to one month.
102. The scheme beneficiaries assessment determination relates to both eligibility and amount of payment. The eligibility determination will only be made once and therefore the Government believes it is appropriate to limit the time in which a

review can be requested to one month. As the amount of payment may be increased annually, each time a new determination is made on the amount of payment, the scheme beneficiary will have a month in which to request a review of the determination.

Q17. *Comments are invited on the proposals to a right of review of the FAS scheme manager's determination in relation to lump sums, indexation, early retiree assessments and scheme beneficiaries assessments and the timescales in which a review can be requested in relation to these matters.*

Review Decisions

103. As with existing reviewable matters, there will be a right to escalate the review decisions to an appeal to the PPF Ombudsman if the member or their representative is not satisfied with the review decision.

**SECTION 5: CHANGES TO EXISTING TIMESCALES
FOR PROVISION OF INFORMATION AND INTERNAL
REVIEWS**

CHANGES TO EXISTING FAS INFORMATION AND REVIEWS LEGISLATION

1. In the light of operational experience the Government proposes to make the following changes to legislation on the provision of information and internal reviews.

INFORMATION REQUIREMENTS

Information to be provided in a determination notice

2. Regulation 3(2) of the Financial Assistance Scheme (Internal Review) Regulations 2005 provides a list of information which the FAS scheme manager is required to include in a determination notification. The Government proposes to remove the requirement for trustee details to be included in determinations which are made beyond the point at which the transfer notice has been given. This means that determination notices in respect of Annual payments and ill-health payments, which are issued after a scheme's assets have been transferred to government and the trustees discharged of their obligation to pay pensions, will not include details of the trustee.
3. This change will ensure that information which is not appropriate to these determinations will not be included.
4. The Government proposes that determination notices in respect of the post-commutation payments referred to earlier in this consultation document will not require inclusion of details of the trustee where the scheme assets have transferred to government and the trustee has been discharged.

Q1. Comments are invited on the proposal to exclude irrelevant trustee information from Annual payment and ill health payment determination notices where the scheme assets have transferred to government and the trustee has been discharged.

Changes to existing timescales relating to information from potential beneficiaries of wound up schemes

5. Regulation 4(1) to Schedule 2 of the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (SI 2005/2189) provides that the FAS scheme manager may request information from a potential beneficiary of a wound up scheme. For example, this could be evidence of being a member of the scheme and data from which actual, expected and interim pension can be determined. The regulation requires information to be provided within six months of the FAS scheme manager's request, or to a longer deadline set by the FAS scheme manager where it considers this appropriate.
6. Based on the practical experience of the FAS Operational Unit in running the FAS, the Government believes that the existing six month timescale for beneficiaries to provide the information is unnecessarily long, and that two months from the date

of the FAS scheme manager's request is sufficient. This will avoid delays to the calculation of the member's Assistance. The Government proposes to retain the existing provision which enables the FAS scheme manager to set a longer deadline if it considers appropriate as this approach maintains flexibility to deal with unusual circumstances.

7. This proposed change will contribute to the Government's aim of avoiding delay in providing Assistance to qualifying scheme members.

Q2. *Comments are invited on the proposal to reduce the timescale for provision of information from potential beneficiaries of wound up schemes from six months to two months.*

INTERNAL REVIEW REQUIREMENTS

(Financial Assistance Scheme (Internal Review) Regulations 2005 S.I. 1994)

Changes to Existing Internal Review Timescales

Reviewable Determinations – Notification and Qualification:

- **Whether a pension scheme has notified in the appropriate form and within appropriate timescales.**
 - **Whether a scheme qualifies or not.**
8. In order to qualify for the FAS a pension scheme must provide certain details, for example scheme name and registration number, to enable the FAS scheme manager to determine whether the scheme has notified appropriately and within the notification dates.
 9. Following scheme notification, when the FAS scheme manager has received the appropriate information from the scheme trustee it is required to communicate its determination on whether the scheme qualifies for the FAS. The FAS scheme manager must communicate its determination within 14 days of making that determination, providing reasons if it determines that a scheme does not qualify.
 10. The FAS (Internal Review) Regulations 2005 provide that a request for a review in relation to scheme notification and scheme qualification determinations may be made, in each case, within a period of two months following the determination of the FAS scheme manager. The FAS scheme manager is able to extend the period in which a review can be requested up to 12 months from the date on which the determination was made where the scheme manager it considers it reasonable to do so.
 11. Practical experience of running the FAS leads the Government to believe that reducing the two month period in which a review can be requested would not present problems and would accommodate most review requests. Therefore, the Government proposes that the period in which a review may be requested should be reduced from two months to one month, whilst retaining the provision for the FAS scheme manager to extend this period to 12 months where it considers appropriate. The Government believes that this approach will enable the

qualification and payment process to proceed at a faster pace in most cases whilst retaining the flexibility in other cases to extend the one month time period where appropriate. For determinations made before the coming into force of these Regulations, the existing two month period in which a review can be requested will continue to apply.

Q3. Comments are invited on the proposal that the timescale for making a review request should be reduced to one month in relation to scheme notification and qualification determinations.

Reviewable Determinations - Payments:

- **Amount of Annual payment payable**
 - **Amount of ill-health payment payable**
12. Currently, when a FAS qualifying scheme has completed wind up, the FAS scheme manager calculates Annual payments for members and arranges payment. The member has the right of review of the determination made by the FAS scheme manager on the amount of Annual payment payable.
 13. In circumstances where the qualifying member is unable to work due to ill health and likely to remain so unable through to normal retirement age, the FAS scheme manager will determine the amount of ill-health payment payable.
 14. The time limit for requesting a review in each of these matters is one month from the date of determination, though the period in which a review can be requested can be extended by the FAS scheme manager to 12 months where it considers this appropriate (there are exceptions for certain cases from 2005).
 15. The Government proposes the existing time limit be removed completely, so that there is no time limit on applying for a review against the determination of the amount of Annual payment payable and the amount of ill-health payment payable. This proposed approach takes account of the fact that the member may not be able to identify errors relating to the FAS scheme manager's determination without the help of others (for example, family) or may want to discuss potential errors relating to the determination with others (for example, Citizens Advice) before requesting a review.
 16. The removal of the deadline does not remove the fact that any request must be linked to a reviewable determination. Instead, it ensures that any error in the determination of the Annual payment or ill-health payment, which the member may not be aware of until some time later, can be challenged by the member.

Q4. Comments are invited on the proposal that there should be no time limit for requesting a review of Annual payment payable and the amount of ill health payment payable though the request for a review must relate to a reviewable determination.

SECTION 6: LIST OF QUESTIONS

Section 2: Introduction

- Q1. *The Government would like comments on whether the draft Regulations achieve the aims set out in this consultation document.***
- Q2. *The Government would welcome comments on the potential effect of these changes on equality between different groups. In particular, the Government welcomes comments on:***
- whether there are any differential impacts on different racial groups;***
 - whether disabled people would be affected differently than non-disabled people; and***
 - whether men and women would be affected differently by these changes.***

Section 3: Preparation and Transfer of FAS qualifying schemes to government

- Q1. *The Government welcomes comments on its proposed approach to identifying the schemes and assets which will transfer to Government.***
- Q2. *The Government welcomes views on its proposed approach to partial discharge cases and in particular:***
- whether there might be any circumstances in which member liabilities may have been partially discharged by annuity purchase but where a binding commitment would not apply to any future payment to discharge remaining liabilities; and***
 - whether there may be any obstacles to trustees discharging partial liabilities that may impede the transfer of remaining defined benefit assets.***
- Q3. *The Government welcomes comments on its proposed approach to managing assets during the preparation period.***
- Q4. *The Government welcomes comments on its proposed approach to liquidation of scheme assets, and where liquidation might be prevented by particular arrangements.***
- Q5. *The Government welcomes comments on its proposed approach to obtaining relevant scheme valuations.***
- Q6. *The Government welcomes comments on this proposal to give the scheme manager the power to decide it isn't appropriate to obtain asset share calculations in relation to some particular categories of person and on whether there are any other circumstances where it would not be appropriate for asset shares to be calculated.***

- Q7. The Government welcomes further views on this approach.**
- Q8. The Government welcomes views on the proposed approach to ‘calculation dates’ included in the draft Regulations.**
- Q9. The Government welcomes views on whether the proposed approach to DB AVCs is reasonable and appropriate in all cases.**
- Q10. The Government welcomes comments on the proposals for the valuation of assets including debts, in particular whether there are other types of debts or circumstances where specific provisions might be needed to allow appropriate valuations to be undertaken.**
- Q11. The Government welcomes comments on its proposed approach to insurance products.**
- Q12. The Government welcomes views on its proposals for alternative values to be placed on assets in certain circumstances.**
- Q13. The Government welcomes comments on the proposed approach to liquidating assets after the valuation date is reached and, in particular, whether there may be any obstacles to the liquidation of gilt holdings prior to transfer.**
- Q14. Whilst these proposals do not form part of the draft Regulations and are not essential to the consideration of the proposals in the consultation document, the Government welcomes comments on its intentions that:**
- a consistent synthetic buy-out basis should be employed for all relevant FAS functions; and**
 - that the basis employed under current FAS functions will be reviewed before the Regulations come into force.**
- Q15. The Government welcomes comments on its proposals in respect of the approval of the valuation and subsequent notifications.**
- Q16. The Government welcomes comments on its proposals and approaches in respect of reconciliation of under and overpayments from the later of the start of wind up and the start of a beneficiary’s entitlement to pension payments.**
- Q17. The Government welcomes comments on this approach and on the proposed content of the binding notice.**
- Q18. The Government welcomes views on whether its assumptions in respect of the rights and liabilities held by FAS schemes are reasonable and comprehensive and whether the proposed approach to these rights and liabilities is appropriate.**

- Q19. The Government invites views on whether the draft Regulations will achieve this intended effect and whether there might be any unintended consequences of this power (for example, whether there might be any rights held by the trustees which should be affected by the discharge of the trustee obligations).**
- Q20. The Government welcomes views on its proposals in respect of such applications. It would also welcome views on whether there are any other types of applications to any authority which affect trustees and managers of pension schemes which could require specific provisions to ensure they can be continued by or against the Secretary of State and handled by the FAS scheme manager.**
- Q21. The Government welcomes views on the proposed powers relating to contracts and foreign property, rights and liabilities and in particular whether these powers may present issues in relation to any contracts or holdings of FAS transferring schemes.**
- Q22. The Government welcomes views on these proposals, in particular views from trustees and industry professionals as to whether the approach described will enable trustees to effect the separate discharge of DC benefits where appropriate.**
- Q23. The Government welcomes any further views on these proposals, in particular views from trustees and industry professionals as to whether the tests described are relevant and appropriate.**
- Q24. Comments would be welcomed on the intention to limit schemes providing transfers, winding up lump sums and trivial commutation payments (other than death benefits) in respect of DB rights.**
- Q25. The Government welcomes views on its proposals to provide that certain functions can be delegated by the FAS scheme manager. The Government would particularly welcome views on whether the FAS scheme manager should be able to delegate additional functions to third parties.**
- Q26. Comments are invited on the proposal to use the scheme's most recent accounts or valuation for the purposes of gathering initial information on the assets held by schemes and their value.**
- Q27. Comments are invited on the types of debt in relation to which information should be provided to the FAS scheme manager.**
- Q28. Comments are invited on the timing of the collection of information in relation to the value of scheme's assets and debts.**
- Q29. Comments are invited on the proposal that those whose liabilities have been discharged as a consequence of the transfer of assets should be notified by the FAS scheme manager that relevant responsibilities have passed to the**

FAS scheme manager and that this notification should be within 28 days of the transfer taking place.

- Q30.** *Comments are invited on the proposal that details of the asset share are provided at the same time as the FAS Annual payment.*
- Q31.** *Comments are invited on the proposal for the FAS scheme manager to waive information requirements.*
- Q32.** *Comments are invited on the proposal to remove the provision to issue “no entitlement” determinations to a particular category or class of members of a scheme on the FAS website.*
- Q33.** *Comments are invited on the proposal that trustees or managers may request a review of their pension scheme valuation and on the proposed deadline for a request for a review to be made.*
- Q34.** *Comments are invited on the ability to request a review of a section 134 or Article 118 direction given by the FAS scheme manager.*

Section 4: Extension of Assistance

- Q1.** *The Government would be interested in views on whether this proposed definition covers all the intended categories of scheme members.*
- Q2.** *The Government would be interested to have views on whether it is appropriate to set the dividing line at the point these draft Regulations come into force.*
- Q3.** *The Government would welcome any comments on the proposal to calculate the notional pension for those yet to retire in this way.*
- Q4.** *The Government would welcome any comments on the proposal to calculate the notional pension for those receiving scheme pensions on the day the proposed Regulations come into force in this way.*
- Q5.** *The Government would welcome any comments on the proposal for an annual comparison where the notional pension is higher than Assistance.*
- Q6.** *The Government would be interested to receive comments on its suggested approach for comparing Assistance on the grounds of ill health with the notional pension.*
- Q7.** *The Government would particularly welcome views on whether there are any circumstances where it would not be appropriate to apply a reduction factor to the notional pension of someone entitled to ill health payments who was not receiving a scheme pension when these draft Regulations come into force.*

- Q8. *The Government would welcome any comments on its proposals for calculating the amount of notional pension payable to a survivor or surviving dependant and comparing with Assistance calculated under normal rules.***
- Q9. *The Government would welcome views on the circumstances where it does, and does not, propose to redetermine payments for surviving dependants.***
- Q10. *The Government would welcome comments on this approach to death benefit guarantees.***
- Q11. *The Government would be interested in any comments on the proposed conditions for obtaining a lump sum; the method proposed for calculating it and the proposed reduction in the entitlement of the member and that member's survivors and surviving dependants as a consequence.***
- Q12. *The Government would welcome any comments on how it proposes to deal with early retirees.***
- Q13. *The Government would also welcome comments on circumstances where it may not be appropriate to take account of all payments made before FAS entitlement arises in relation to all members (including those for whom scheme payment may have been made early on account of ill health).***
- Q14. *The Government would welcome any comments on the circumstances in which it proposes to make payments to certain survivors who do not come within the FAS survivor definitions.***
- Q15. *The Government would welcome any further comments on the extent to which the proposals outlined in this Section give effect to the commitments made in December 2007.***
- Q16. *The Government would welcome your views on the sharing of relevant information owned by Her Majesty's Revenue and Customs with the FAS scheme manager, its staff and any third party provider.***
- Q17. *Comments are invited on the proposals to a right of review of the FAS scheme manager's determination in relation to lump sums, indexation, early retiree assessments and scheme beneficiaries assessments and the timescales in which a review can be requested in relation to these matters.***

Section 5: Changes to existing timescales for provision of information and internal reviews

- Q1. *Comments are invited on the proposal to exclude irrelevant trustee information from Annual payment and ill health payment determination notices where the scheme assets have transferred to government and the trustee has been discharged.***

- Q2. Comments are invited on the proposal to reduce the timescale for provision of information from potential beneficiaries of wound up schemes from six months to two months.**
- Q3. Comments are invited on the proposal that the timescale for making a review request should be reduced to one month in relation to scheme notification and qualification determinations.**
- Q4. Comments are invited on the proposal that there should be no time limit for requesting a review of Annual payment payable and the amount of ill health payment payable though the request for a review must relate to a reviewable determination.**

SECTION 7: DRAFT REGULATIONS COMMENTARY

Commentary on Draft Regulations

Part 1 - Introductory

Draft regulation 1 gives the name of the Regulations and the proposed date on which they would come into force, which is the day after they are made.

Draft regulation 2 contains definitions of certain words and phrases used in the draft Regulations.

Part 2 – Amendment of the FAS Regulations

Draft regulation 3 introduces Part 2 which amends the Financial Assistance Scheme Regulations 2005.

Draft regulation 4 inserts a number of new definitions into regulation 2 - interpretation – of the Financial Assistance Scheme Regulations 2005 including:

“the Ombudsman” means the PPF Ombudsman or any person appointed under section 210(1) (deputy Ombudsman) to act as a deputy to the PPF;

“appointed actuary” is defined as having the meaning given in regulation 22(4).

“beneficiary” is amended to include, along with the qualifying member and after the qualifying member’s death, any survivor or surviving dependant, any person entitled to a payment under regulation 17G(1).

“calculation date” is defined for the purpose of valuing assets and calculating liabilities of qualifying schemes under Part 7 of the FAS Regulations as the last day of the month in which the FAS scheme manager appoints an actuary to undertake the valuation required under regulation 22;

“notional pension” is defined as the annual rate of annuity calculated under regulation 27(1)(a).

“relevant accounts” is defined for the purpose of valuing the assets of qualifying schemes and providing that those accounts show true and fair view of, financial transactions; the amount of disposition of the assets; include a report from the auditor; and are prepared for a period ending with the calculation date;

“scheme rules” is defined as the rules of the qualifying pension scheme.

“survivor notional pension” is defined as the annual rate of annuity calculated under regulation 27(1)(c).

“transfer notice” is defined as the notice given under regulation 29.

Draft regulation 5 (Amendment of regulation 4 of the FAS Regulations 2005)

Provides that sections 135, 136 and 165 of the Pensions Act 2004 apply to the FAS. These cover restrictions on discharging liabilities and guaranteed minimum pensions. It also removes a reference to section 202 of the Pensions Act 2004 thereby removing an exception and allowing access to information held by Her Majesty's Revenue and Customs (HM Revenue and Customs) in respect of information in Great Britain and Northern Ireland. These provisions, once applied, are modified for the purposes of the FAS through Schedule 1 to the FAS Regulations 2005.

Draft regulation 6 replaces the current paragraph (1) and inserts new paragraph (3A) in regulation 15 of the FAS Regulations 2005, which defines a qualifying member of a qualifying pension scheme. The revised paragraph (1) allows someone whose scheme could have met its liabilities to them in full to be a qualifying member for the purposes of the FAS Regulations and section 286A of the Pensions Act 2004. (Section 286A prevents trustees purchasing annuities for member where they do not have a binding commitment or the approval of the FAS scheme manager to do so). New paragraph (3A) excludes any member for whom the scheme has met its liabilities in full.

Draft regulation 7 removes both regulation 15A and 16 from the FAS Regulations 2005. A single definition of "qualifying member" is now provided for the purposes of both section 286A of the Pensions Act 2004 and of the Regulations so regulation 15A is no longer required. The condition that the scheme must have had insufficient assets to cover its liability towards the member having been removed by draft regulation 6, the definition of insufficient assets in regulation 16 is no longer needed.

Draft regulation 8 amends regulation 17 of the FAS Regulations.

Draft regulation 8(a) and (b) amends regulation 17 to allow for payments to be made under new Schedules 3 and 4 as well as under existing Schedule 2.

Draft regulation 8(c) inserts five new paragraphs (8) to (13) into regulation 17.

New paragraph (8) says that, subject to new regulation 17E (redetermination of an Annual payment previously determined in accordance with Schedule 4), Assistance is calculated under Schedule 2, 3 or 4:

New paragraph (8)(a) - Schedule 2 applies to all beneficiaries not dealt with under new paragraphs 8(b) to 8(i).

New paragraph (8)(b) – Schedule 3 applies where: the scheme has transferred assets to government; the beneficiary is a qualifying member who is not in receipt of a payment from the scheme before these draft Regulations come into force; and their revalued notional pension is higher than normal Assistance calculated under Schedule 2 without any commutation being taken into account.

New paragraph (8)(c) – Schedule 3 applies for survivors and surviving dependants where: the scheme has transferred assets to government; and the qualifying member was entitled to and is in receipt of an annual payment calculated under Schedule 3 and subsequently dies.

New paragraph (8)(d) – Schedule 3 applies for survivors and surviving dependants of a qualifying member who was not receiving a scheme pension when these draft Regulations come into force and where: the scheme has transferred assets to government; the qualifying member died after their asset share was calculated but before becoming entitled to Assistance; and 50 per cent of the deceased’s revalued notional pension is higher than normal survivor entitlement calculated under Schedule 2 without any commutation of FAS payments being taken into account.

New paragraph (8)(e) – Schedule 3 applies for survivors and surviving dependants where: the scheme has transferred assets to government; the qualifying member dies before their asset share is determined and before they become entitled to Assistance; neither the member nor any survivor or dependant was in receipt of a scheme payment before these draft Regulations come into force; and the survivor’s notional pension is higher than normal survivor entitlement calculated under Schedule 2.

New paragraph (8)(f) – Schedule 4 applies where: the scheme has transferred assets to government; the qualifying member is in receipt of a payment from the scheme before these draft Regulations come into force; and their notional pension is higher than normal Assistance calculated under Schedule 2.

New paragraph (8)(g) – Schedule 4 applies for survivors and surviving dependants where: the scheme has transferred assets to government; the qualifying member is in receipt of a payment from the scheme before these draft Regulations come into force, but dies before their asset share has been calculated; and the survivor notional pension is more than the survivor and/or surviving dependants would be entitled to under Schedule 2.

New paragraph (8)(h) – Schedule 4 applies where: the scheme has transferred assets to government; the survivor or surviving dependants were in receipt of a pension from the scheme before these draft Regulations came into force; and the survivor’s notional pension calculated is more than the survivor and/or surviving dependants would be entitled to under Schedule 2.

New paragraph (8)(i) – Schedule 4 applies where: the scheme has transferred assets to government; the qualifying member had been in receipt of a pension from the scheme before these draft Regulations came into force, but dies after the asset share calculation date; and the amount of survivor benefit taken into account in the calculation of the member’s notional pension is higher than the amount that the survivor and/or surviving dependant would be entitled to under Schedule 2.

New paragraph (9) defines the term “revalued notional pension” for the purposes of new paragraph (8)(b) and (d).

New paragraphs (10) – (13) set out how the revaluation in new paragraph (9) is to be calculated and applied.

Draft regulation 9 amends regulation 17A of the FAS Regulations

Draft regulation 9(a) and (b) removes certain references to calculations being in accordance with Schedule 2 in paragraphs (1) and (6B) of regulation 17A.

Draft regulation 9(c) inserts six new paragraphs, (8) to (13), into regulation 17A.

New paragraph (8) says that, subject to new regulation 17F (redetermination of an ill health payment previously determined in accordance with Schedule 2C) ill health payments are calculated under Schedule 2A, 2B or 2C.

New paragraph (8)(a) Schedule 2A applies to all beneficiaries not dealt with under new paragraphs 8(b) to 8(e).

New paragraph (8)(b) Schedule 2B applies where: the scheme has transferred assets to government; the beneficiary is a qualifying member who is not in receipt of a payment from the scheme before these draft Regulations come into force; and their revalued notional pension, reduced by the actuarial factors "C", is higher than normal ill health payments calculated under Schedule 2A, without any commutation of FAS payments being taken into account.

New paragraph (8)(c) – Schedule 2B applies for survivors and surviving dependants where: the scheme has transferred assets to government; and the qualifying member was entitled to an ill health payment calculated under Schedule 2B and subsequently dies.

New paragraph (8)(d) – Schedule 2B applies for survivors and surviving dependants of a qualifying member where neither the qualifying member nor the survivor was receiving a scheme pension when these draft Regulations come into force and where: the scheme has transferred assets to government; the survivor or surviving dependant was in receipt of an ill health or interim ill health payment before the calculation date; and the survivor's notional pension is higher than normal ill health survivor entitlement calculated under Schedule 2A.

New paragraph (8)(e) – Schedule 2C applies where the scheme has transferred assets to government; the qualifying member was in receipt of a pension from the scheme before these draft Regulations came into force and their notional pension is higher than normal ill health entitlement calculated under Schedule 2A.

New paragraph (8)(f) – Schedule 2C applies where: the scheme has transferred assets to government; the survivor or surviving dependants were in receipt of a pension from the scheme before these draft Regulations came into force and also in receipt of an ill health or interim ill health payment before the calculation date; and the survivor's notional pension calculated is more than the survivor and/or surviving dependants would be entitled to under Schedule 2A.

New paragraph (8)(g) – Schedule 2C applies where: the scheme has transferred assets to government; the qualifying member had been in receipt of a pension from the scheme before these draft Regulations came into force, but dies on or after the calculation date; and the amount of survivor benefit taken into account in the calculation of the member's notional pension is higher than the amount that the survivor and/or surviving dependant would be entitled to under Schedule 2A.

New paragraph (9) defines “the revalued notional pension” and “C” for the purposes of paragraph (8)(b)(iii).

New paragraphs (10) to (13) set out how the revaluation in new paragraph (9) is to be calculated and applied.

Draft regulation 10 inserts new regulations - 17D to 17H - into the FAS Regulations.

New regulation 17D deals with the commutation of Assistance to a lump sum.

Paragraph (1) defines who may be eligible to commute their Assistance. Firstly the person must be a qualifying member who comes under Part 7 of the draft Regulations (that is, a member of a scheme transferring assets to government and for whom an asset share will be determined), but not someone who is a qualifying member because they were in receipt of a pension derived from a member’s rights (for example a survivor pension) from the scheme prior to the beginning of wind up. Secondly the member must not be in receipt of a scheme pension before the scheme transfers its assets to government. Thirdly, the member must apply in writing no later than the first day of entitlement to Assistance, unless the FAS scheme manager decides to extend the deadline. Finally the amount of their notional pension must be greater than nil (i.e. they must have had a share of the scheme assets transferring).

Paragraph (2) says that where the conditions are met, the member will be entitled to commute a portion of the payments payable then or in the future, to and in respect of the member, immediately before the day on which that member becomes entitled to Assistance.

Paragraph (3) caps the amount that can be commuted as the lower of 25 per cent of the member’s Assistance or the amount of their revalued notional pension as at the date of entitlement.

Paragraph (4) defines the amount of the lump sum as the actuarial equivalent of the commuted portion of payments to be made in respect of the member in accordance with the FAS Regulations 2005 (as amended).

Paragraph (5) says that the FAS scheme manager is only required to determine entitlement to Assistance after the deadline for making a written request for commutation has been passed.

Paragraph (6) requires the FAS scheme manager to take all reasonable steps to notify a member that it will accept a written request for a commutation after the normal deadline of the start of entitlement to Assistance has passed.

New regulation 17E governs the re-assessment of any annual payments originally calculated under new Schedule 4.

Paragraph (1) applies this regulation to the situation where on every indexation date (1 January each year) following the date of entitlement the amount in paragraph 17E(2) is lower than the amount in paragraph 17E(3).

Paragraph (2) defines the amount as the annual payment due under Schedule 4 plus the amount of indexation payable under that Schedule.

Paragraph (3) defines the amount as that of the normal Assistance that would be payable under Schedule 2 plus any indexation that would be due under that Schedule.

Paragraph (4) says that, where this regulation applies, the FAS scheme manager is required to redetermine the individual's entitlement and that, from the indexation date, the individual will be entitled to payments calculated under Schedule 2, instead of Schedule 4.

New regulation 17F makes similar provision for re-assessment of any annual payment originally calculated under new Schedule 2C.

New regulation 17G deals with payments to individuals other than qualifying members, survivors or dependants.

Paragraph (1) applies this regulation to those who are not qualifying members nor entitled to a survivor or surviving dependant payment from the FAS, but were entitled to payments from a scheme which transfers its assets to government and that scheme would have had an ongoing liability towards them, if it had not been discharged of that liability when the transfer took place.

Paragraph (2) says that where a person meets the conditions in paragraph (1), they have an entitlement to payments calculated under Schedule 5.

Paragraph (3) gives entitlement to such a payment from the later of the date of the transfer notice or the date the scheme would have made that payment. Entitlement will end on the day the scheme would have stopped paying.

Paragraph (4) defines the entitlement year as the year starting on the day a payment instalment is first due and on the same day in each subsequent year.

Paragraph (5) allows for instalments of Assistance to stop being paid when the individual dies or ceases to be entitled to a payment, but that the instalment that includes the day of death is to be paid.

New regulation 17H deals with payments to qualifying members who were in receipt of a scheme pension for a period before entitlement to Assistance begins.

Paragraph (1) applies this regulation to those who are members of a scheme which transfers its assets to government, were in receipt of a scheme pension on the day the transfer notice is given, but who are not at that point entitled to Assistance.

Paragraph (2) says that where a member meets the conditions in paragraph (1), they are entitled to payments in respect of a year, calculated under Schedule 5.

Paragraph (3) gives entitlement from the date the transfer notice is given to the day the member becomes entitled to Assistance.

Paragraph (4) defines the entitlement year as the year starting on the day a payment instalment is first due and on the same day in each subsequent year.

Paragraph (5) allows for instalments of Assistance to stop being paid when the individual dies or ceases to be entitled, but that the instalment that includes the day of death is to be paid in cases where the member dies before becoming entitled to Assistance.

Draft regulation 11 amends regulation 19 of the FAS Regulations (time and manner of payments). It expands the requirement on the scheme manager to pay instalments of no more than 52 a year to cover payments made under the new regulations 17F and 17G. It also requires the scheme manager to make such payments as soon as reasonably practicable after the day the beneficiary becomes entitled to a payment made under regulations 17F and 17G.

Draft regulation 12 (Insertion of Parts 7 to 9) inserts a new Part 7, a new Part 8 and a new Part 9 (as set out in Schedule 1 of these draft Regulations) after the existing Part 6 of the FAS Regulations 2005.

Draft regulation 13 makes changes to Schedule 1 of the FAS Regulations 2005 which modifies provisions in Parts 1 and 2 of the Pensions Act 2004.

Draft regulation 13 also inserts sub-section 2(ba) into paragraph 3A of Schedule 1 to provide the FAS scheme manager with the ability to provide directions under section 134 of the Act relating to determination of interim pensions with a view to ensuring that any reduction to the scheme's assets is kept to a minimum.

Draft regulation 13 inserts a new sub-section (3B) to modify section 135 of the Act which deals with restrictions on discharging scheme liabilities. New sub-section (3B) modifies section 135 to restrict trustees or managers of FAS qualifying schemes in providing their members with transfers out, winding up lump sums and trivial commutation payments.

Draft regulation 13 also inserts a new sub-section (4A) into Section 135 to provide that the restrictions on discharge payments do not apply in a range of circumstances where:

- before 26 September 2007 the trustees had a binding commitment to purchase an annuity;
- the purchase of an annuity has been approved by the scheme manager;
- the transfer or discharge has been approved by the scheme manager and any condition satisfied);
- the trustees had already offered a trivial commutation payment before the draft Regulations come into force;
- the member had already made a relevant application for a transfer payment; or
- the transfer or discharge relates only to money purchase benefits.

Sub-section (8) of section 135 of the Act which applies unmodified under the proposed Regulations, provides that the discharge of pension credits is unaffected by section 135.

Sub-section (9) of section 135, as modified, provides for action taken in contravention of section 135 to be void, except to the extent that the FAS scheme manager validates the action, and sub-section (10) provides for civil penalties to apply to trustees or managers who fail to take reasonable steps to secure compliances with the section.

New sub-section (4B) provides that the FAS scheme manager may approve any discharge payment where it considers it appropriate to do so and sub-section (4C) allows the scheme manager to make approvals under sub-section (4B) subject to any conditions.

New paragraph 3C of Schedule 1 modifies section 136 of the Act to allow the FAS scheme manager to validate an action that would otherwise contravene section 135 and for notices of related determinations to be given to scheme trustees as a matter of course (and to other relevant persons at the FAS scheme manager's discretion).

New paragraph 3D of Schedule 1 modifies section 165 of the Act to require the FAS scheme manager to notify HM Revenue and Customs as soon as is reasonably possible after a transfer notice has been given to a scheme that the trustees have been discharged of their liabilities to provide guaranteed minimum pensions. This paragraph also modifies that part of section 165 which modifies section 46 of the Pension Schemes Act 1993 so that so that relevant deductions from the state earnings related pension scheme (SERPS) can be made by HM Revenue and Customs.

Draft regulation 13(c) inserts a new paragraph 14A into Schedule 1 to the FAS Regulations 2005 to modify section 202 of the Pensions Act 2004 in relation to FAS to make reference to section 18 and 19 of the Commissioners for Revenue and Customs Act 2005 to enable information held by Her Majesty's Revenue and Customs' (HM Revenue and Customs) National Insurance PAYE system (NPS) to be shared with the FAS scheme manager and its staff. The FAS scheme manager will only be able to pass the information to anyone else, for example its commercial provider, with the agreement of HM Revenue and Customs or in relation to criminal proceedings. In addition, this regulation makes a technical amendment so that references to the Board of the PPF are substituted for the FAS scheme manager.

Draft regulation 13(d) inserts a reference to the new regulations 27 and 30 into paragraph 17 of Schedule 1 of the FAS Regulations 2005 in order to provide that the FAS scheme manager may make arrangements for functions under those regulations (in particular the function of calculating notional pensions and functions relating to managing the assets transferred to government) to be exercised by a third party on behalf of the scheme manager. Draft regulation 13(d) also makes a small change to ensure that the current reference to the Schedules under which FAS payments are determined is updated to accommodate the changes made through these draft Regulations.

Amendment of Schedule 2

Draft regulation 14 makes amendments to Schedule 2 to the FAS Regulations 2005 (Determination of Annual and Initial Payments) which sets out how Assistance is calculated under normal rules.

Draft regulation 14(a) removes the definition of “scheme rules” in paragraph 1(2). This definition is now in draft Regulation 4.

Draft regulation 14(b)(i) inserts (ab) into paragraph 2(3) to provide for the actual pension deduction in the calculation of Assistance to take into account where a member has commuted part of their Assistance for a lump sum in accordance with regulation 17D.

Draft regulation 14(b)(ii) inserts three new paragraphs into paragraph 2 of Schedule 2 - (3B), (3C) and (3D) - to allow the FAS scheme manager to determine how the actual pension is to be calculated where:

- it is satisfied that the amount of interim pension paid to a beneficiary is higher or lower than the amount of the notional pension or survivor notional pension determined in accordance with new regulation 27;
- a beneficiary owed money to a qualifying pension scheme and that debt has been transferred to the government; or
- a beneficiary has received payments under new regulation 17H (payments made in accordance with notional pensions where a member is not yet entitled to an annual payment or an ill health payment).

Draft regulation 14(b)(iii) amends paragraph 2(4) so that the scheme manager can determine the amount of interim pension paid or due to a beneficiary where there is insufficient information otherwise available.

Draft regulation 14(c)(i) changes paragraph (3)(3)(b) to make it subject to the operation of paragraph (c).

Draft regulation 14(c)(ii) inserts a new sub-paragraph (c) in sub-paragraph (3). It adds to the definition of expected pension for any qualifying member who reaches normal retirement age after 14 May 2004 so that revaluation applies as intended up until normal retirement age.

Draft regulation 14(c)(iii) and (iv) make the necessary cross-reference changes to take account of the new sub-paragraph (3)(c).

Draft regulation 14(c)(v) inserts a new sub-paragraph (3ZD) into paragraph 3. This new sub-paragraph describes how the revaluation referred to in draft sub-paragraph (c)(ii) is to be calculated.

Draft regulation 14(d) substitutes sub-paragraph (7)(d). This new sub-paragraph allows for the third revaluation period to be part of the aggregate amount of expected pension when calculating a survivor or surviving dependant FAS payment in specified circumstances.

Draft regulation 14(e) amends paragraph 5B so that annual payments can be redetermined when another person becomes entitled to an annual payment as a surviving dependant of a qualifying member.

Draft regulation 15 amends Schedule 2A so that ill health payments or interim ill health payments can be redetermined when another person becomes entitled to an ill health payment or interim ill health payments as a surviving dependant of a qualifying member.

Draft regulation 15(c) makes an amendment so that the changes to revaluation made through regulation 14(d) in relation to annual payments are made in relation to ill health payments.

Draft regulation 16 inserts new Schedules 2B to 5, as set out in Schedule 2 to these draft Regulations into the FAS Regulations.

Part 3 - Amendment of the FAS Information and Payments Regulations

Draft regulation 17(1) introduces amendments to the FAS Information and Payments Regulations in accordance with these Regulations.

Draft regulation 17(2) inserts a provision requiring the information requirements to apply, subject to the conditions in the new sub-paragraph (2A) (waiving of information).

Draft regulation 17(3)(a)(i)-(iii) adds new information requirements to paragraph 1(2) of Schedule 1 of the FAS (Provision of Information and Administration of Payments) Regulations 2005 to require information to be provided to the FAS scheme manager (or a person to whom it has delegated the function) in respect of assets, including money purchase assets, held by the FAS qualifying pension scheme and details of debts, contribution notices, financial support directions or restoration orders in relation to the pension scheme.

The timescale for providing this information is within the later of 28 days of the coming into force of the Regulations, or the notification date, or the day on which the appropriate person became aware of the debt or expected contribution. In addition, the FAS scheme manager may choose to determine a longer deadline.

Draft regulation 17(4) inserts sub-paragraph (2A) into paragraph 1 of Schedule 1 to the FAS (Provision of Information and Administration of Payments) Regulations 2005 to provide a power for the FAS scheme manager to waive some or all of the information requirements where it considers appropriate.

Draft regulation 17(5) reduces the timescale for potential beneficiaries of wound up schemes to provide information to the FAS scheme manager. The timescale is reduced from six months to two months though the FAS scheme manager may extend the deadline.

Part 4 – Amendment to the FAS Internal Review Regulations and FAS Appeals Regulations

Draft Regulation 18(1) adds a reference to these Regulations in the FAS (Internal Review) Regulations 2005.

Draft regulation 18(2) adds to the list of existing reviewable determinations in the FAS (Internal Review) Regulations 2005; the giving of a direction under section 134 of the

Pensions Act 2004 or Article 118 of the Pensions (Northern Ireland) Order 1995; the approval by the FAS scheme manager of a valuation in respect of a qualifying pension scheme; whether or not regulation 17D applies and the amount of any lump sum; the amount of any annual increase to an annual payment or ill health payment; eligibility for a payment in accordance with regulation 17G and the amount of any such payment; and eligibility for an early retirement payment in accordance with regulation 17H and the amount of any such payment. Draft Regulation 18(2) also adds cross-references to the Schedules under which Annual payments and ill health payments are calculated to enable the right to request a review of those payments calculated under the various Schedules.

Draft regulation 18(3)(a), (b) and (c) amend regulation 3 of the FAS Internal Review Regulations to remove the ability to publish group decisions on the FAS website in relation to member eligibility.

Draft regulation 18(3)(d) makes an amendment to remove the requirement to provide the address and telephone number of at least one trustee from certain determination notices in cases where the trustee has been discharged of related liabilities.

Draft regulation 18(4)(a), (b) and (c) provides that where a reviewable determination on scheme notification or scheme eligibility is made before the coming into force of these Regulations, a review request may be submitted within two months of the date of the reviewable determination. This regulation goes on to provide that where a reviewable determination on scheme notification or scheme eligibility is made after the coming into force of these Regulations, the timescale to request a review is reduced to one month from the date of the reviewable determination.

This regulation also provides for there to be a 14 day time limit for making an application for a review relating to a valuation approval and removes the time limit for making an application for a review against an Annual payment determination and ill health payment determination. This regulation provides for a one month limit to apply for reviews in respect of determinations relating to section 134 and Article 118 directions, lump sum assessment, early retiree assessment and scheme beneficiaries assessment.

Draft regulation 18(4)(d) extends the current provisions so that the deadline for all review requests relating to scheme notification and eligibility determinations including those made after these Regulations come into force, can be extended by the FAS scheme manager to 12 months where it considers appropriate.

Draft regulation 18(5) ensures that review applications may be made by those who have been given a section 134 or Article 118 direction by the FAS scheme manager and by trustees or managers of a qualifying pension scheme in relation to a valuation approval given by the FAS scheme manager. This regulation also extends the list of reviewable determinations in relation to which applications may be made by beneficiaries, potential beneficiaries or their appointed representatives.

Draft regulation 19(1) introduces the amendments to the FAS (Appeals) Regulations 2005.

Draft regulation 19(2)(a) to (h) inserts into the FAS (Appeals) Regulations 2005 definitions for decisions made by the FAS scheme manager which are to be capable of being appealed to the PPF Ombudsman:

- an early retiree assessment decision, means a decision relating to a determination as to whether or not a person has entitlement to a payment under regulation 17H of the FAS Regulations.
- an ill health payment assessment decision relates to determinations in accordance with Schedule 2A to 2C of the FAS Regulations.
- an indexation assessment decision, means a decision relating to a determination as to the amount of any annual increase to an annual payment or ill health payment.
- a lump sum assessment decision, means a decision relating to a determination as to the amount of any lump sum.
- a member assessment decision relates to determinations in accordance with Schedules 2, 3 and 4 of the FAS Regulations.
- a scheme beneficiaries decision, means a decision relating to a determination as to eligibility for and the amount of any payment in accordance with regulation 17G of the FAS Regulations.
- a section 134 or Article 118 directions decision, means a decision which relates to giving directions under section 134 of the Pensions Act 2004 or Article 118 of the Pensions (Northern Ireland) Order 1995.
- a valuation approval decision, means a decision which relates to the approval of a valuation in respect of a FAS qualifying scheme.

Draft regulation 19(3) provides for an early retiree assessment decision, a lump sum assessment decision, an indexation assessment decision and a scheme beneficiaries decision to be added to a list of categories of appeal decisions where the name and address of the beneficiary or potential beneficiary must be included in the appeal notice where the appellant is not the beneficiary or potential beneficiary. This regulation also provides for a section 134 or Article 118 directions decision and valuation approval review decision to be added to a list of categories of appeal decisions where the name and address of the trustees or managers must be included in the appeal notice where the appellant is not the trustee or manager of the pension scheme.

Draft regulation 19(4) provides that a section 134 or Article 118 directions decision, a valuation approval decision, an early retiree assessment decision, a lump sum assessment decision, an indexation assessment decision and a scheme beneficiaries decision should be subject to timescales set down in the FAS (Appeals) Regulations 2005 which relate to notifying the time and place of an appeal hearing.

Schedule 1 - Insertion of Parts 7 to 9 of the FAS Regulations

Inserts 3 new Parts into the Financial Assistance Scheme Regulations 2005/1986: Part 7, on the valuation of assets and liabilities, Part 8 on scheme manager functions after a valuation and Part 9 on the transfer of property, rights and liabilities.

Part 7 - Inserts new regulations 21 to 26 into the FAS Regulations 2005

New regulation 21 sets out the circumstances in which Part 7 will apply. New regulation 21(1) sets out the circumstances in which a valuation of assets and liabilities under Part 7 will apply to a qualifying scheme, including providing that it will apply where the

scheme has not been fully wound up and where the liabilities to or in respect of all members and former members have not been discharged or are unlikely to be discharged (in the opinion of the scheme manager) by:

- binding commitments to purchase annuities;
- the scheme manager having given approval to the trustees of the scheme to purchase annuities;
- a transfer of, or transfer payment in respect of, members' rights;
- any other method of discharging the liabilities of the scheme for which the scheme manager has given approval;
- state scheme premiums having been paid; or
- state scheme rights having been otherwise restored.

New regulation 21(2) provides that the valuation will apply to and in respect of qualifying members of qualifying schemes where the liabilities of the scheme to or in respect of that member have not been fully discharged or have not been partially discharged (or are unlikely to be partially discharged) by the methods listed above.

New regulation 22 requires the FAS scheme manager to obtain a valuation of assets and liabilities of relevant qualifying schemes.

Paragraph (1) requires the FAS scheme manager to obtain a valuation of the assets and liabilities of the qualifying pension scheme as at the calculation date.

Paragraph (2) provides that the scheme manager shall obtain the valuation of the assets available to discharge the liability of the scheme ("the asset share") to or in respect of each qualifying member and other people to whom the scheme has a liability to provide a benefit that is not a money purchase benefit.

Paragraph (3) provides the FAS scheme manager with the power to waive the requirement for asset shares to be provided in relation to a person or category of persons where it considers it reasonable to do so.

Paragraph (4) provides requirements for the form and content of the valuation and specifies who will undertake valuations.

Sub-paragraph (a) provides that the valuation should be prepared (and signed by) a person or persons appointed by the FAS scheme manager, who is a Fellow of the Faculty of Actuaries; a Fellow of the Institute of Actuaries or a person approved by the Secretary of State.

Sub-paragraphs (b) and (c) require that the valuation is prepared accordance with such guidance as may be published by the Secretary of State and is presented in the manner and form and with such information as required in accordance with guidance published by the FAS scheme manager.

Paragraph (5) provides for circumstances where assets shall be disregarded in the valuation, including assets held by the trustees in respect of money purchase benefits; assets required to discharge pension liabilities to or in respect of members for whom Part 7 does not apply; certain debts that are unlikely to recouped within reasonable

periods, certain contracts of insurance and payments made by the FAS scheme manager.

Valuation of Assets

New regulation 23 provides for how the values of certain assets of qualifying schemes are to be determined for the purposes of the valuation.

Paragraph (1) states that provisions under regulation 23 are subject to regulation 24 (which allows the FAS scheme manager to apply an alternative value to an asset in the valuation).

Paragraph (2) provides for the value that should be placed on certain assets in the valuation by the appointed actuary.

Sub-paragraph (a) this sub-paragraph provides for the value that shall be placed upon a contract of insurance that falls to be included in the valuation¹².

Where a contract is a relevant contract of insurance within the meaning given by section 161(8) of the Pensions Act 2004 – that is a contract relating to a person whose entitlement to a payment of a pension, or other benefit has arisen - and the

(i) contract may not be surrendered, or

(ii) the surrender does not exceed the liability secured;

the value of the liability secured should be included in the valuation.

Subject to paragraph (3), where the contract of insurance is not a relevant contract of insurance within that meaning, the surrender value of the contract of insurance should be included in the valuation.

Sub-paragraph (b) provides that (subject to paragraph (4) the amount due to the scheme under a contribution notice, a financial support direction or a restoration order shall be adopted as the value of those assets of the scheme.

Paragraph (c) provides for the appointed actuary to include debts owed to the scheme as an asset in the valuation. Under this provision the appointed actuary may in accordance with guidance provided by the Secretary of State include a proportion of a debt as an asset, if the actuary holds the opinion that the debt will be only partially recouped in the future.

Paragraph (d) requires the appointed actuary to adopt the value of the assets in relevant accounts (as defined in draft Regulation 4) as their value as at the calculation date (subject to paragraph (5)). Under draft Regulation 4, relevant accounts are required to be prepared in respect of the period ending with the calculation date.

¹²As described in section 3 of this document, where schemes hold insurance contracts that have a surrender value lower than the value of the liabilities covered by the contract the Government expects trustees to consider annuitisation (i.e. expects trustees to explore whether the contracts can be allocated to individual members and annuitised and to make applications to annuitise where relevant).

Paragraph (3) provides for the appointed actuary to apply, in accordance with guidance issued by the Secretary of State, an alternative value to certain contracts of insurance in the valuation, where he believes the surrender value does not accurately reflect the actual value as at the calculation date.

Paragraph (4) provides for the appointed actuary to adjust, in accordance with guidance issued by the Secretary of State, the value placed on a contribution notice, a financial support direction or a restoration order in the valuation where the amount of such notices, directions or orders may not be recouped in full.

Paragraph (5) provides for the appointed actuary to place a different value on an asset held by or owed to the scheme if notified (by the FAS scheme manager), or, if of the opinion (and the FAS scheme manager agrees), that the value of the asset is substantially different as at the calculation date from that set out in the relevant accounts.

Paragraph (6) provides for the appointed actuary in accordance with any guidance provided by the Secretary of State to include and place a value on an asset of the scheme where it is not listed in the relevant accounts.

Power of the scheme manager to determine the value of an asset

New regulation 24 allows the FAS scheme manager to determine the value applied to an asset in the valuation.

Paragraph (1) provides that where the FAS scheme manager is of the opinion that any asset in the scheme has a particular value; the scheme manager may determine the value of that asset.

Paragraph (2) requires the appointed actuary to adopt the value of an asset determined under paragraph (1) in the valuation.

Approval of the valuation (by the FAS scheme manager)

New regulation 25 requires the scheme manager to determine whether to approve a scheme valuation or obtain another valuation, and where he approves a valuation, to provide a copy of it to specified persons

Paragraph (1) places a requirement on the FAS scheme manager to notify the trustees (or pension scheme manager) of the approval of the valuation and to provide a copy of the approved valuation alongside that notification.

Paragraph (2) provides for the FAS scheme manager to obtain another valuation if not satisfied with the valuation prepared.

Paragraph (3) provides that where the FAS scheme manager is not satisfied with the valuation and obtains another valuation, the calculation date for the previous valuation continues to apply for the new valuation.

Binding valuation

New regulation 26 sets out the circumstances in which a valuation becomes binding and requires the FAS scheme manager to notify and/or provide a copy of the binding valuation to specified persons.

Paragraph (1) sets out that a valuation cannot become binding (i.e. be considered to be finalised) until the valuation has been approved by the FAS scheme manager; the timeframe for an application to review the approval of the valuation has expired and any review or appeal, or subsequent determination or direction given by the Ombudsman in respect of the appeal has been disposed of.

Paragraph (2) places a requirement on the FAS scheme manager to notify the trustees (or pension scheme manager) and the Regulator as soon as reasonably practicable that the valuation is binding, and to provide a copy of the valuation to them.

Paragraph (3) sets out the information that shall be included in the notice issued under new regulation 26(2) including, for example, the date on which the notice is given; details of the scheme and details of any restricted information contained in the notice.

Part 8 – Functions of the FAS scheme manager after a valuation

New regulation 27 governs the calculations that are to be done by the FAS scheme manager after a valuation.

Paragraph (1) says that, where a valuation has been obtained, unless paragraph (2) applies, the scheme manager shall determine:

(a) the “notional pension” for each qualifying member to whom Part 7 applies and any other person (other than a survivor or surviving dependant) to whom the scheme had a liability to provide a benefit other than a defined contribution benefit). The notional pension is the amount which could have been purchased with the asset share that has been determined under regulation 22(2);

(b) the benefits which could have been purchased with the member’s asset share calculated under regulation 22(2) for the survivor of a qualifying member who died after the calculation date;

(c) the “survivor notional pension” which could have been purchased for each survivor or surviving dependant of a member who died before the calculation date with the asset share determined for them under regulation 22(2); and

(d) the annual increases which could have been purchased with the asset share determined under regulation 22(2) to the notional pension and the survivor notional pension .

Paragraph (2) allows the scheme manager not to determine a notional pension, for either an individual person or a category of people, where it thinks that it is not appropriate to do so.

Paragraph (3) defines the effective date for the calculation of the notional pension. Unless paragraph (4) applies this is:

(a) the qualifying member's normal retirement age for a qualifying member who is neither entitled to an ill health payment or receiving a scheme pension on the calculation date;

(b) the earlier of the first date a scheme pension was first paid, the normal retirement age or the date of entitlement to an ill health payment where the qualifying member was entitled to an ill health payment or receiving a scheme pension on the calculation date;

(c) the day on which a person referred to in paragraph 1(a)(ii) began to receive a scheme payment; and

(d) the day after the day on which the qualifying member died, where a survivor notional pension is being determined.

Paragraph (4) says that, where the day identified under paragraph 3(b) is before the day the scheme began to wind up, the effective date for the calculation of the notional pension is the day on which the scheme began to wind up.

Paragraph (5) requires the scheme manager, when calculating a notional pension, to apply the individual asset share to satisfying the amounts specified in paragraph (6). Where paragraph (6)(a) is being applied, but the asset share is insufficient to meet the amount in full, the asset share must be applied to meeting the amount in the order specified in paragraph (6)(a). If the asset share exceeds the amount needed to satisfy the amounts in full, the remainder is to be put towards increasing the notional pension.

Paragraph (6) defines the amounts referred to in paragraph (5), as in the following subparagraphs:

(a) deals with qualifying members who were in receipt of a payment from the scheme at the time these Regulations came into force. The paragraph requires the asset share to be put to meeting, firstly, the amount of the pension and other benefits to which the member was entitled on the later of the day the member became entitled to a payment under scheme rules, or the day before the scheme began to wind-up and, secondly, to annual increases on that amount.

(b) deals with those individuals described in paragraph 1(a)(ii) who are not qualifying members or survivors or surviving dependants of qualifying members. For this group the asset share is to be put to meeting the pension or other benefits to which the person was entitled under scheme rules at the later of the day on which they become entitled to a payment under the scheme rules, or the day before the scheme began to wind-up.

(c) deals with qualifying members who were not in receipt of a payment from the scheme at the time these Regulations came into force. In this case, the asset share is to be put to meeting a notional pension which is the amount of annuity which could have been purchased for or in respect of the member, including the annual increases determined in accordance with paragraph 6 of Schedule 3.

Paragraph (7) says that the survivor notional pension referred to in paragraph 1(c) should be calculated by applying the asset share towards the amounts in paragraph (8). Where paragraph (8)(a) applies, if the asset share is insufficient to cover the amounts in that paragraph in full, it is to be put to meeting the amounts in the ordered specified. If the asset share exceeds the amount needed to satisfy the amounts in full, the remainder is to be put towards increasing the survivor notional pension.

Paragraph (8) defines the amounts referred to in paragraph (7), as in the following subparagraphs:

(a) deals with a survivor or surviving dependant who was either in receipt of a payment from the scheme, or is a survivor of a qualifying member in respect of whom such payments are being made, when these Regulations came into force. The subparagraph requires the asset share to be put to meeting, firstly, the amount of the pension and other benefits the survivor or surviving dependant was entitled to when they first became entitled to a payment from the scheme and, secondly, to annual increases on that amount.

(b) deals with a survivor or surviving dependant who was either not in receipt of a payment from the scheme, or is a survivor of a qualifying member in respect of whom such payments were not being made, when these Regulations came into force. In this case the survivor notional pension is to be the amount of annuity which could have been purchased for the survivor or surviving dependant, including the annual increases determined in accordance with paragraph 6 of Schedule 3.

Paragraph (9) sets out the elements of the pension and other benefits referred to in paragraphs (6)(a)(i) and (8)(a)(i) to which the asset share is to be applied. These are: the annual rate of pension to which the beneficiary was entitled under scheme rules; the annual rate of pension which would be paid to any survivor or surviving dependant on the death of the member; any amount payable under the scheme rules if the member died within a specified period of starting to receive their scheme pension; and any amount payable under scheme rules for a shorter period than or the remainder of the pension (i.e. to account for a bridging pension).

Paragraph (10) makes this regulation subject to new regulation 28.

New regulation 28 provides for the FAS scheme manager to determine asset shares in relation to persons for whom requirements for appointed actuaries to calculate asset shares in the valuation were waived under new regulation 22(3). This new regulation also provides for notional pensions to be determined where a determination under new regulation 22(1) is not considered appropriate by the FAS scheme manager.

Paragraph 3 provides for the scheme manager to determine how notional pensions are to be calculated where the scheme manager is satisfied that an amount was owed by the beneficiary to a qualifying pension scheme and this debt has now transferred to the Secretary of State.

New regulations 28(4) and (5) provide for the FAS scheme manager to determine the rate of notional pension where the rate of notional pension determined under new

regulation 27 differs from the amount of interim pension paid in respect of any year. New regulation 28(5)(b) provides for the scheme manager to make a payment where the amount of interim pension is lower than the notional pension in respect of any past year. It is intended that these provisions together with the amendments in draft reg 14(b) will allow the FAS scheme manager to make the reconciliation calculations described in Section 3 of this document.

Where information on the amount of interim pension is otherwise unavailable, new regulation 28(6) provides the FAS scheme manager with the ability to determine the rate of interim pension in respect of any year for the purposes of determining whether the interim pension is higher or lower than the notional pension in accordance with new regulations 28(4) and (5).

Part 9 - Transfer of property, rights and liabilities

Part 9 contains new regulations 29 to 34 to be inserted into the FAS Regulations 2005.

New regulation 29 - the purpose of this new Regulation is to provide for the FAS scheme manager to issue a 'transfer notice' to the trustees or managers of the qualifying scheme to provide for the transfer of certain property, rights and liabilities to government. It also provides for the trustees or managers of the scheme to be discharged from certain liabilities/obligations on receipt of the transfer notice.

Paragraph (1) requires the FAS scheme manager to issue a transfer notice in respect of the assets of the scheme at a point it feels it is appropriate to do so and provides that, a transfer notice can only be issued once the valuation is made binding under new regulation 26.

Paragraph (2) sets out the effects of a transfer notice being given on the property, rights and liabilities of the pension scheme. It provides for the transfer of scheme property and certain rights to government. It also discharges certain liabilities whilst providing for others to transfer to the Secretary of State or remain with trustees. It also places certain notification requirements on the FAS scheme manager linked to the transfer notice.

Sub -paragraph (a) requires the scheme manager to notify the Regulator when a transfer notice is given. It also provides flexibility for the scheme manager to notify other relevant persons.

Sub-paragraph (b) provides for the transfer of a scheme's property and rights to the Secretary of State from the point the transfer notice is given by the trustees or managers of the scheme.

Sub-paragraph (c) provides for the transfer of certain liabilities of the scheme which are a direct result of the rights or property referred to at (b), to the Secretary of State from the point the transfer notice is given by the trustees or managers of the scheme.

Sub-paragraph (d) provides that any liabilities other than those described at sub-paragraph (c) and liabilities linked to money purchase benefits referred to at Paragraph shall be treated as discharged.

Sub-paragraph (e) provides, subject to paragraph (7) that trustees or managers are discharged from their pension or other benefit obligations in respect of the scheme and clarifies that this includes any obligation to pay guaranteed minimum pensions.

Sub-paragraph (f) provides for trustees or manager to discharge liabilities in respect of money purchase benefits irrespective of scheme rules that require such liabilities to be discharged with benefits that are not money purchase benefits.

Sub-paragraph (g) terminates any contract which does not form part of the rights and liabilities transferred under draft Regulation 27(2).

Paragraph (3) provides (subject to paragraph (4)) further details on the types of the property, rights and liabilities in the UK and elsewhere that are transferred in accordance with paragraph (2).

Sub -paragraph (a) provides for the transfer of property, rights and liabilities that would not otherwise be capable of being transferred,

Sub-paragraph (b) provides for the transfer of property situated anywhere in the UK or elsewhere

Sub-paragraph (c) provides for the transfer of rights and liabilities under the law of any part of the UK or any country or territory outside the UK.

Paragraph (4) makes provision to ensure that liabilities under contracts of employment between the trustees or managers and an individual will not transfer, but are terminated on the day before the date that the transfer notice is received by the trustees or managers of the scheme.

Paragraph (5) clarifies that any legal proceedings or applications to any authority pending immediately before the transfer by or against any of the trustees or managers of the scheme in their capacity as trustees or managers are not extinguished at the transfer point but shall be continued by or against the Secretary of State.

Paragraph (6) provides that the transfer of liabilities under (2)(c) does not include any liabilities in respect of an existing or future cause of action against the trustees or managers where they would have been personally liable to meet the claim and would not have been indemnified from the assets of the scheme. These will remain liabilities of the trustees or managers.

Paragraph (7) provides that Paragraph (2)(b) does not transfer any property or rights in respect of money purchase benefits, where the scheme manager is satisfied that appropriate arrangements have been made or are being made for the discharge of the scheme's liabilities relating to money purchase benefits.

Paragraph (8) provides that the discharge in paragraphs (2)(d) and (2)(e) does not affect the rights transferred under paragraph (2)(b).

Paragraph (9) provides that the discharge of pension obligations under (2)(e) does not include obligations in respect of any future cause of action against the trustees or scheme manager, where they would have been personally liable to meet the claim and would not have been indemnified from the assets of the scheme.

Paragraph (10) provides that the FAS scheme manager should be required to inform within 28 days of the transfer notice being given, any persons whose liabilities have been discharged as a consequence of the transfer of assets of the transfer of relevant responsibilities from their scheme trustees to the FAS scheme manager. Where a person has an appointed representative the FAS scheme manager should inform the appointed representative.

Effect of Transfer

New regulation 30 provides that where property, rights and liabilities have transferred to the Secretary of State under draft Regulation 28(2), that transfer is binding and that no person shall have a right to amend or terminate an interest which has now transferred to the Secretary of State. It also provides for the FAS scheme manager to exercise the rights, powers and obligations of the Secretary of State in relation property, rights and liabilities transferred under draft Regulation 28(2). The new regulation also provides that relevant references in relevant documents (agreements, document and instruments) shall have effect as references to the Secretary of State or the FAS scheme manager to the extent required to give effect to the transfer provisions.

Paragraph (2) provides that any amount payable by virtue of the FAS scheme manager exercising the rights, powers and obligations of the Secretary of State is paid to the Secretary of State.

Paragraph (3) provides for references in section 146 of the 1993 Act (relating to functions of the Pensions Ombudsman) to trustees or managers of qualifying pension to have effect as references to the Secretary of State to enable relevant applications to the Ombudsman transferred under new regulation 29(5) to be continued against the Secretary of State.

Paragraph (4) requires the FAS scheme manager to take such steps as are necessary to satisfy the requirements of directions provided by the Ombudsman as a consequence of such applications.

Terms and conditions of contracts

New regulation 31, Paragraph (1) provides for the FAS scheme manager to modify or disapply the terms of a contract relating to the property, rights and liabilities of the scheme, where it considers those terms or conditions to be onerous.

Paragraph (2) provides for the FAS scheme manager to amend a contract of insurance which has transferred under Regulation 27, so that the benefit becomes payable to the Secretary of State, rather than the original beneficiary.

Foreign property, rights and liabilities

New regulation 32 provides that property, rights and liabilities are to include property, rights and liabilities that would not otherwise be capable of being transferred, property situated anywhere in the UK or elsewhere, and rights and liabilities under the law of any part of the UK or any country or territory outside the UK.

Arrangements where amounts relating to money purchase benefits are transferred to the Secretary of State

New regulation 33 provides that in circumstances where assets representing money purchase benefits are transferred to Government, the FAS scheme manager must make arrangements to facilitate their payment to the person or people in respect of whom the scheme held those assets. It also requires that the FAS scheme manager must be satisfied that any payment arrangement is made in respect of the full value of the assets transferred as at the date the arrangement is made and for arrangements to be made in respect of the estate of the person in respect of whom the assets are held, if they have died.

Transfer of any residual assets to the Secretary of State

New regulation 34 provides for the trustees of any FAS qualifying schemes (including those to which Part 7 may not apply), to apply to the FAS scheme manager to transfer property to the Secretary of State. It also provides for such property to transfer but only where the FAS scheme manager is satisfied that the property can transfer and that transfer of the property is appropriate.

Schedule 2 – Insertion of Schedules 2B to 5 to the FAS Regulations

Schedule 2B – Determination of certain ill health payments

Paragraph 1 says that this Schedule applies when calculating the amount of an ill health payment to any person covered by Regulation 17A(8)(b) to (d). It also defines the letters used in the calculation formulae in the Schedule.

Paragraph 2 shows how a payment should be calculated for a qualifying member covered by this Schedule.

Paragraph 3 shows how a payment to a survivor or a survivor of a polygamous marriage should be calculated where the deceased qualifying member had been entitled to an ill-health payment.

Paragraph 4 shows how a payment to a surviving dependant should be calculated, where the deceased qualifying member had been entitled to an ill-health payment.

Paragraph 5 says that where any calculation in this Schedule results in a fraction of a penny, that fraction should be treated as a penny.

Paragraph 6 says when a person covered by this Schedule will be entitled to annual increases and, if so, how they shall be calculated.

Schedule 2C – Determination of ill health payments where a present payment was being received on the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010

Paragraph 1 says that this Schedule applies when calculating the amount of an ill health payment to any person covered by Regulation 17A(8)(e) to (g).

Paragraph 2 says that, where this Schedule applies, the ill health payment a qualifying member shall be entitled to is the amount of the notional pension.

Paragraph 3 says that, where this schedule applies to a survivor the amount payable is:
(a) the amount of the survivor notional pension, where regulation 17A(8)(f) applies; and
(b) the amount payable to a survivor which is provided for in the qualifying member's notional pension, where regulation 17A(8)(g) applies.

Paragraph 4 says that, where this schedule applies to a surviving dependant the amount payable is:

- (a) the amount of the notional pension payable in respect of the surviving dependant, where regulation 17A(8)(f) applies; and
- (b) the amount provided for in the qualifying member's notional pension in relation to a surviving dependant, where regulation 17A(8)(g) applies.

Paragraph 5 deals with the situation where the notional pension includes an amount payable in respect of an amount which, under the scheme rules would be payable:

- (a) for a shorter period than the rest; or
- (b) because of the death of the scheme member within a specified period after their first date of entitlement.

Where this occurs, the scheme manager must redetermine the ill health payment payable from the date the amount referred to in sub-paragraph (a) would have ceased or period referred to in sub-paragraph (b) would have ended. When conducting this re-determination, the scheme manager shall redetermine the notional pension or survivor notional pension taking account of the amounts payable in respect of (a) and (b) above.

Paragraph 6 says that where any calculation in this Schedule results in a fraction of a penny, that fraction should be treated as a penny.

Paragraph 7 says when a person covered by this Schedule will be entitled to annual increases and, if so, how they shall be calculated.

New Schedule 3 – Determination of certain annual payments

Paragraph 1 says that this Schedule applies where a person is entitled to Assistance under regulation 17(8)(b) to (e).

Paragraph 2 says that the annual payment due is the amount of the revalued notional pension calculated under regulation 17(9).

Paragraph 3 explains how the payment for a survivor covered by this Schedule should be calculated.

Paragraph 4 explains how the payment for a surviving dependant covered by this Schedule should be calculated.

Paragraph 5 says that, where any calculation in the Schedule results in a fraction of a penny, that fraction shall be rounded up to a whole penny.

Paragraph 6 describes when a person covered by this Schedule will be entitled to annual increases and, if so, how they shall be calculated.

New Schedule 4 – Determination of annual payments where a present payment was being received on the coming into force of these draft Regulations

Paragraph 1 says that this Schedule applies where a person is entitled to Assistance under regulation 17(8)(f) to (i).

Paragraph 2 says that the annual payment due to the member is the amount of their notional pension.

Paragraph 3 says that, where regulation 17(8)(g) or (h) applies the amount payable to a survivor is the amount of the survivor notional pension and, where regulation 17(8)(i) applies, the survivor is paid the amount provided for in the qualifying member's notional pension.

Paragraph 4 says that, where regulation 17(8)(g) or (h) applies the amount payable to a surviving dependant is the amount of the surviving dependant's notional pension and, where regulation 17(8)(i) applies, the surviving dependant is paid the amount provided for in the qualifying member's notional pension.

Paragraph 5 deals with the situation where the notional pension includes an amount payable in respect of an amount which, under the scheme rules would be payable:
(a) for a shorter period than the rest; or
(b) because of the death of the scheme member within a specified period after their first date of entitlement.

Where this occurs, the scheme manager must redetermine the annual payment payable from the date the amount referred to in sub-paragraph (a) would have ceased or period referred to in sub-paragraph (b) would have ended. When conducting this re-determination, the scheme manager shall redetermine the notional pension or survivor notional pension taking account of the amounts payable in respect of (a) and (b) above.

Paragraph 6 says that, where any calculation in this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.

Paragraph 7 describes when a person covered by this Schedule will be entitled to annual increases and, if so, how they shall be calculated.

New Schedule 5 – Determination of payments to early retirees and other beneficiaries

Paragraph 1 says that this Schedule applies when calculating the amount of a payment to any person covered by regulation 17G or 17H.

Paragraph 2 says that, where this Schedule applies, the payment a beneficiary shall be entitled to is the amount of the notional pension.

Paragraph 3 says when a person covered by this Schedule will be entitled to annual increases and, if so, how they shall be calculated.

SECTION 8: DRAFT REGULATIONS

The draft Regulations are available as a separate document on the DWP website.

» <http://www.dwp.gov.uk/consultations/>

**DECEMBER 2007 STATEMENT BY THE RT HON PETER HAIN,
SECRETARY OF STATE FOR THE DEPARTMENT FOR WORK AND
PENSIONS**

Monday 17 December 2007

DEPARTMENT FOR WORK AND PENSIONS

Financial Assistance Scheme

The Secretary of State for Work and Pensions (Rt Hon Peter Hain): The Prime Minister announced last week that the Government would make a statement on the review of pension scheme assets undertaken by Andrew Young. The Prime Minister said that as a result of the review the Government would be able to announce that Assistance from the Financial Assistance Scheme (FAS) would be guaranteed to 90 per cent.

Andrew Young's report is published today and I am very pleased that we are able to announce a settlement that helps the 130,000 people already eligible for FAS – and an additional 11,000 people in some schemes with solvent employers. These have suffered losses, through no fault of their own, as a result of their pension schemes winding up under funded between 1st January 1997 and 5th April 2005, before the introduction of the Pension Protection Fund.

In his interim report published in July, Andrew Young identified that there was approximately £1.7 billion in assets in affected pension schemes that had not been used for annuity purchase. He concluded that the current system of annuitisation was not the best use of these assets. He said alternative solutions could provide the basis for higher Assistance for members.

The Government recognised in July that more needed to be done to help those who lost their pensions. Following the publication of Andrew Young's interim report, we therefore committed to match the extra value identified by the Review with the goal of moving towards 90 per cent Assistance. We also introduced Regulations to protect the £1.7 billion, placing a temporary halt on the purchase of annuities.

Since July, Andrew Young has been considering how much additional value might be generated by alternative treatment of the assets. These are complex issues and I thank him for the clarity of the final conclusions in his report.

He has concluded that, to provide a guaranteed benefit level, the best value will come from Government absorbing all the residual assets in the schemes and then making the associated payments as they fall due [1]. He has also said that members of schemes wound up by solvent employers are in similar circumstances to those in schemes wound up by insolvent employers.

Since receiving a draft of the report ten days ago, I have been working closely with the Chancellor to finalise the details of the Government response.

I can announce today the following extensions to the Financial Assistance Scheme:

- All scheme members will be guaranteed 90 per cent of their accrued pension at the date of commencement of wind up, revalued to their retirement date.
- 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 per cent limit).
- 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 also be able to apply for early access to their payments from the age of 60, subject to actuarial reduction).
- 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 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.

The final details of these proposals will be confirmed in the New Year, when we will outline the legislation necessary to give effect to this package. We will do this as quickly as possible and call on all parties involved to work with the Government to ensure this commitment results in increased payments in the fastest possible time. Our priority will be to ensure that people who have already reached their scheme pension age receive payment at 90 per cent.

The additional costs of this package will be £935 million in Net Present Value (NPV) terms. This will be on top of the £2.0 billion NPV we have already committed – £8.6 billion in cash terms. This will take the total commitment to £2.9 billion NPV, or £12.5 billion in cash terms.

This exceeds the Government's commitment to match the additional value identified by Andrew Young.

The Government recognises the difficulties experienced by those who lost their pensions through no fault of their own. We believe that the revised Scheme we have announced today represents a generous and appropriate final settlement.

KEY REGULATIONS MADE SINCE 2007

The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 – June 2008

These Regulations introduced the increase in Assistance from 80 per cent of expected pension to 90 per cent and changed the age from which payment can be made from 65 to the member's pension scheme normal retirement age – NRA (subject to a lower limit of 60 and upper limit of 65).

The Financial Assistance Scheme (Miscellaneous Amendments) 2008 – July 2008

These Regulations provide for:

- Early reduced payment of Assistance to those qualifying members who are unable to work due to ill health and who are likely to be so unable to work through to their scheme normal retirement age.
- The Board of the Pension Protection Fund to provide advice to the FAS Scheme Manager in relation to a request by him and to manage or make arrangements in relation to the management of the assets of qualifying pension schemes that have not fully wound up.
- An extension to the FAS qualifying conditions to enable pension schemes which started winding up with a solvent employer, after 1 January 1997 but before the employer was required to meet the full buy-out cost, to qualify for the FAS.

The Pensions Act 2008 – November 2008

The Pensions Act 2008 introduced regulation making powers to make an exception to the FAS qualifying conditions to capture certain pension schemes which failed to qualify for the FAS or Pension Protection Fund because of the dates of the employer insolvency and commencement of wind up.

In addition the Pensions Act 2008 indefinitely extended existing regulations preventing FAS qualifying schemes which are still winding up from purchasing annuities unless they had binding commitments to do so. The Act also extended these provisions to members of these schemes whose pension rights could have been fully secured by that scheme.

The Financial Assistance Scheme (Amendment) Regulations 2008 - December 2008

These Regulations make an exception to the FAS qualifying scheme conditions to capture certain pension schemes which failed to qualify for the FAS and failed to be eligible for the Pension Protection Fund. These Regulations provide that, where the employer insolvency event occurred before 6 April 2005 and the pension scheme began winding up after 5 April 2005 but before 23 December 2008, the schemes are eligible to qualify for the FAS.

The Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 **- March 2009**

These Regulations provide for payments to be made to certain persons who are unable to work, who suffer from a progressive disease and as a consequence are likely to have reduced life expectancy.

The Financial Assistance Scheme (Miscellaneous Provisions) Regulations **- July 2009**

These Regulations extend FAS Assistance and change the delivery mechanism for the scheme. They include provision for:

- **The indexation of payments derived from post -97 service**
Delivering the December 2007 announcement to provide annual indexation of payments derived from post- April 1997 service in line with inflation, subject to a 2.5 per cent limit.
- **Maintaining the value of the cap**
Delivering on the commitment to protect the value of the cap. The cap will be increased annually, each April, in accordance with increases in the Retail Prices Index (RPI) with effect from April 2007.
- **Treatment of different tranches of accrued pension**
Where rights in the scheme are payable from a date other than Normal Retirement Age (NRA) this will be recognised when commencing Assistance payments at NRA. Where individuals accrued part of their pension to a date earlier of later than the NRA, Assistance will be adjusted at NRA to give the full actuarial value of their accrued pension rights.
- **Extending survivors rights**
Assistance for survivors will be extended to include surviving partners (where scheme rules would have allowed payment of such benefits) surviving spouses of polygamous marriages and surviving dependent children.
- **Delivery of the Financial Assistance Scheme**
To address the fundamental changes in the FAS – extended Assistance payments and the longer-term intention to bring scheme assets into government, The Board of the Pension Protection Fund will take on the role of FAS scheme manager and manage the FAS work. The Board of the Pension Protection Fund will have the power to delegate its FAS work to its staff and further delegate some of its FAS work to a commercial provider. In taking on the FAS work the

PPF, as FAS scheme manager and its commercial provider will have access to FAS and social security information where this information is necessary and relevant to carrying out the FAS work.

THE FAS DEFINITION OF SURVIVORS AND SURVIVING DEPENDANTS

Survivors

Spouse or Civil Partner

A surviving spouse or civil partner of a FAS qualifying member¹³ is eligible for survivor Assistance irrespective of whether there was provision within the member's scheme rules to pay survivors except where there is also a qualifying surviving partner who has been nominated by the member (see description below for partner).

The survivors of a member who was party to a polygamous marriage share between them the amount of Assistance which would be paid to a single survivor.

Partner

For FAS purposes a 'partner' means a person of either sex who was not married to, or in a civil partnership with, the qualifying member and who was living with the member as if that person and the member were husband and wife, or in the case of two adults of the same sex, as if they were civil partners.

A surviving partner is eligible for survivor Assistance when the following conditions are met:

- there is provision within the qualifying member's scheme rules (including discretionary provision) to pay a survivor's pension to a partner; and
- the partner was living with the member immediately before death; and
- the partner is nominated by the member to receive survivor payments to either the trustees of the scheme or to the FAS Scheme Manager.

It is also possible for a surviving partner to receive Assistance without there being a nomination, but only when the first two conditions above are met and if the member did not also have a spouse or civil partner. In such cases the surviving partner must be able to demonstrate financial dependency or interdependency with the member.

If a member had a spouse or civil partner and also a partner who has not been nominated, the spouse or civil partner will receive Assistance and not the partner.

Surviving Dependant

A dependant is any child* of the member's family who was financially dependent on the member at the time of their death and who was:

¹³ A 'member' refers to a FAS qualifying member except where the qualifying member is a FAS member by virtue of being in receipt of a survivor pension before the scheme started to wind-up. Although Assistance for such survivors is calculated as for qualifying members, there is no provision for any further survivor to be paid Assistance when they die.

- under age 18: or
- over 18 and under 23 and attending a qualifying course**; or
- over 18 and under 23 and unable to work full time due to a qualifying disability***.

*A dependent child can include the member's natural child (born or unborn at the date of death of the member), an adopted child or any other child of the family who was also financially dependent on the member at the time of their death.

**A qualifying course is a full-time educational or vocational course at a recognised educational establishment which exceeds 12 hours per week in normal term time.

***A qualifying disability means where an individual is incapable of engaging in full-time paid employment due to a condition that falls within the definition of a disability under the Disability Discrimination Act 1995.

Amount of survivor and dependant Assistance payable under the normal FAS rules from the day after the qualifying member dies

| Member Types | Provision |
|--|---|
| Survivor: spouse/civil partner or qualifying surviving partner | <ul style="list-style-type: none"> • 45 per cent of member's expected pension as at date of death; • less any actual pension paid to survivor. |
| Survivor and one dependant | <ul style="list-style-type: none"> • survivor as above; • in addition dependant will get 22.5 per cent of member's expected pension at date of death ; • less any actual pension paid to dependant. |
| Survivor and two or more dependants | <ul style="list-style-type: none"> • survivor as above; • to calculate the amount for each dependant, take 45 per cent of the member's expected pension at date of death, subtract the sum of any actual pensions paid to them, then divide equally between all the dependants. |
| No survivor. One dependant | <ul style="list-style-type: none"> • 45 per cent of member's expected pension as at date of death; • less any actual pension paid to dependant. |
| No survivor. Two or more dependants | to calculate the amount for each dependant, take 90 per cent of the member's expected pension at date of death, subtract the sum of any actual pensions paid to them, then divide equally between all the dependants. |