

EXPLANATORY MEMORANDUM TO
THE FINANCIAL ASSISTANCE SCHEME (MISCELLANEOUS PROVISIONS)
REGULATIONS 2008

2008 No. Draft

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Description**
 - 2.1 These Regulations relate to the assistance paid by the Government's Financial Assistance Scheme (FAS). They increase the fractions used in calculating FAS payments from 0.8 to 0.9. This results in qualifying members receiving a combined total of 90% of their accrued pensions from their FAS payments plus any actual pension received from their scheme (subject to a cap). The Regulations also provide for payments to qualifying members who are not terminally ill to be made from the qualifying member's normal retirement age (NRA) rather than from age 65.
 - 2.2 In addition the Regulations make some related amendments to provisions relating to the way revaluation is applied and to applications for initial payments. They also provide transitional protection so that certain people who are already receiving FAS payments will receive at least as much as they would have received had the changes made by these Regulations not been made.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 These Regulations implement some of the key reforms to the Financial Assistance Scheme as announced by the then Secretary of State for Work and Pensions on 17 December 2007. In doing so, the Regulations amend the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) and section 18 of the Pensions Act 2007.
5. **Territorial Extent and Application**
 - 5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister of State for Pensions Reform, Mike O'Brien, has made the following statement regarding Human Rights:

In my view the provisions of The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 are compatible with the Convention rights.

7. Policy Background

The financial assistance scheme

- 7.1 The Financial Assistance Scheme (FAS) was designed to help those who had suffered significant losses to their pensions as a consequence of employer insolvency. Under the original scheme, announced on 14 May 2004, assistance was targeted on members closest to retirement as it was felt that these members were least likely to be able to make up any shortfall in their retirement income.
- 7.2 Some surviving spouses and civil partners of qualifying scheme members who died after their scheme started to wind-up were also eligible for a payment from the FAS, as were some of those who were in receipt of a beneficiary's pension before wind-up started.
- 7.3 From its inception the FAS has received significant public interest. And, since 2005, three significant extensions have been announced to the FAS. The extensions in 2006 and 2007 were reflected in the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006 (S.I.2006/3370) and the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007 (S.I.2007/3581).
- 7.4 These Regulations relate to the third announced extension.
- 7.5 In April 2007, a review was set up to consider whether an alternative treatment of the residual funds in affected pension schemes could supplement the committed Government funding of FAS. The review was led by Andrew Young of the Government Actuary's Department. The final report of the Young Review was published in December 2007.
- 7.6 Acting on the recommendations of that report the then Secretary of State for Work and Pensions announced on 17 December 2007 that Government would absorb all the available residual assets in the affected schemes and make associated payments as they fall due. A range of changes were also announced to the scheme including:

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

- 7.7 The additional cost of this package takes the total Government commitment to £12.5 billion in cash terms (£2.9 billion Net Present Value).
- 7.8 In implementing the changes announced in December 2007 our priority is to increase payments to 90% (from the current 80%) and to make payments from NRA (rather than from age 65). These Regulations implement these key elements of the December 2007 extension.
- 7.9 A further set of draft Regulations was published for consultation on 28 March which includes provision for other elements of the package announced in December 2007, such as early retirement on ill health grounds. A further package of draft Regulations will be ready for consultation later in the year to deliver the remaining parts of the package which will move the FAS scheme to a position where payments are calculated on a basis which is broadly comparable to that of the Pension Protection Fund (PPF).

The changes

- 7.10 These Regulations amend section 18 of the Pensions Act 2007 and make a number of amendments to the Financial Assistance Scheme Regulations 2005 (SI 2005/1986) ("The FAS Regulations").

Changes to calculation of payments

- 7.11 A number of changes are made to increase FAS payments from the current 80% rate to 90%. This increase is made in relation to all qualifying members. Related changes are made to the calculation of payments to survivors of qualifying members whose entitlements continue to be based on 50% of the qualifying member's entitlement. Section 18 of the Pensions Act 2007 is amended to change the fraction used from 0.8 to 0.9, to reflect the change from 80% to 90%.

Changes to payment dates

- 7.12 The Regulations amend the date from which FAS assistance is paid to qualifying members who are not terminally ill (qualifying members who are terminally ill are entitled to payments from the date the FAS scheme manager is notified). Under the current provisions, assistance to these members is paid from age 65. The Regulations provide for payment from normal retirement age (NRA) (or 60 where the member's NRA is below that age, or 65 where the member's NRA is above that age). However, the provisions maintain the principle that payments are not made in respect of periods before 14 May 2004, the date when FAS was first announced.
- 7.13 The Regulations maintain the existing definition of NRA employed in FAS of the age specified in the rules of the qualifying pension scheme at which the member will normally retire. The Regulations also provide for the scheme manager to determine the NRA where the NRA cannot otherwise be determined from scheme rules. This definition follows that used previously in relation to the FAS (for example under the original version of the scheme where payments were restricted to those within three years of NRA) but with the addition of the floor of 60 in order to ensure FAS payments are not made with effect from an NRA below that age.
- 7.14 Further changes to payment ages are made in respect of FAS beneficiaries who qualify as a result of death benefits payable by qualifying schemes. Depending on individual pension scheme rules some spouses, unmarried partners or dependent children of members of pension schemes who die before the start of scheme wind-up qualify for pensions from their schemes. We would expect most of these beneficiaries to receive their pensions in full from their schemes because of their position in the statutory priority orders that apply when schemes wind up. However, some schemes are so under-funded that these people will receive less than 90% of the pension they were expecting. Existing regulation 15(5) of the FAS Regulations provides for such people to be regarded as 'qualifying members' for the purposes of the FAS.
- 7.15 Currently, such members in common with other qualifying members receive payment from age 65. In order to reflect the revised payment rules that will apply to other qualifying members, those members who qualify for FAS by virtue of regulation 15 (5) of the FAS Regulations will be eligible for payment from the later of 14 May 2004 and the date that they became eligible for payment under the qualifying scheme's rules.

- 7.16 A related change is made to ensure that these payments end on the date that the person would have stopped receiving payment of their pension from their pension scheme.

Changes to revaluation

- 7.17 It has always been the policy intention that FAS payments revalue until they come into payment to help ensure that they maintain their value over time. Under the changes we described above we are bringing payment periods forward for many qualifying members, therefore we are making related changes to ensure revaluation only applies to that earlier payment date.
- 7.18 Most beneficiaries who are already receiving FAS payments and who are affected by the changes to revaluation will receive significant “one-off” payments in respect of past periods. However, some beneficiaries will not receive any additional payments for past periods as a result of their revised entitlement because their payment date is not changing and any relevant payments will already have been paid. Some of these beneficiaries may be affected by the revaluation changes because the way the current rules work led them to receiving more revaluation than had been the policy intention.
- 7.19 With the move to paying 90% rather than 80%, it is unlikely that FAS beneficiaries will see their existing payments fall as a result of the changes we are proposing to revaluation. However, this is possible for certain beneficiaries in particular circumstances and so the Regulations provide a transitional provision for this so that ongoing assistance payments in relation to this group do not reduce from the level currently in payment as a result of this change to revaluation.

Consultation

- 7.20 As the Regulations were made more than six months after the coming into force of the provisions of the Pensions Act 2004 under which the Regulations are made, the Secretary of State was required to consult such persons as he considered appropriate before making them.
- 7.21 The written consultation period started on 6 March and closed on 20 March. The written consultation period for the Regulations was limited to 2 weeks to help ensure that eligible members receive payment at these revised levels as soon as possible. Opposition Members of Parliament and other stakeholders agreed with DWP Ministers that the limited written consultation period would facilitate speedy implementation whilst still providing adequate time for the consultation to be meaningful. Given the

limited written consultation period, the Department held meetings during that period with representatives from the Trades Unions and the Pensions Action Group to facilitate their responses.

- 7.22 28 responses were received on the draft regulations. Most were broadly supportive of the changes announced in December 2007 and of the particular changes made by the draft Regulations. A number of submissions were received relating to issues not covered by the Regulations. Some of these issues related to other reforms announced in December 2007, for example the payment of lump sums, the application of indexation in relation to assistance derived from post-1997 service and preserving the value of the FAS cap. Other issues were general concerns about the operation of the FAS, for example:
- concerns around tax treatment of FAS payments;
 - treatment of unmarried partners; and
 - the treatment of Additional Voluntary Contributions.
- 7.23 The Government has noted these comments and will be considering the issues in detail before consulting on the further draft Regulations to go out to consultation later this year.
- 7.24 A number of respondents raised concerns about the implications of the definition of NRA in the Regulations. The Government will retain the definition of NRA in the draft Regulations to enable enhanced payments to be delivered as quickly as possible using information already held by the operational unit. However the Government will continue to consider the issues raised in relation to the definition of NRA in the context of achieving broad comparability with the PPF, subject to further consultation and draft Regulations later in the year.
- 7.25 Two respondents raised concerns over the period across which FAS payments are paid which mean payments cannot be made back any further than 14 May 2004, the date when FAS was first announced. The Government continues to believe that it is right that FAS payments only relate to periods after the date FAS was first announced. In addition, retaining the 14 May 2004 date assists in current administrative delivery and helps control costs. However, we will continue to consider this point alongside the issues raised in this and other consultations, before consulting on further draft Regulations later this year.
- 7.26 A full response to the consultation was published on the FAS website - <http://www.dwp.gov.uk/fas>. - at the time these Regulations were laid.

Guidance

- 7.27 Details of the proposed changes have been published on the FAS website. We have also been liaising with trustees and scheme managers to assist them in understanding the impact of the changes. We will also be updating our public-facing leaflets and guidance.

Consolidation

- 7.28 Consolidated versions of the FAS regulations will be available in the Law Relating to Social Security (Blue Volumes). These can be found at <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/index.asp>. These are updated quarterly and are available on the internet at no cost to the public.

8. Impact

- 8.1 An impact assessment has not been prepared for this instrument as it has only a negligible impact on business, charities and voluntary bodies.
- 8.2 The impact on the public sector is negligible¹.

9. Contact

Any enquiries about the contents of this memorandum should be addressed to Andy Maggs at the Department for Work and Pensions, 3rd floor, The Adelphi 1-11 John Adam Street, London WC2N 6HT, Telephone 020 7712 2797 or Email: Andrew.maggs@dwp.gsi.gov.uk.

¹ In administrative terms the impact of the instrument on the public sector is negligible. The additional costs of increased amounts of payment are included in the cost of the total Government commitment to the FAS provided in paragraph 7.7.