

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

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DRAFT STATUTORY INSTRUMENTS

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**2009 No.**

**PENSIONS**

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

*Made - - - - 2009*

*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 168, 190, 286, 315(2) and (4) and 318(1) of the Pensions Act 2004<sup>(1)</sup>.

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

The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of the Pensions Act 2004.

**PART 1**

**Introductory**

**Citation and commencement**

1. These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 and shall come into force on the day after the day on which they are made.

**Interpretation**

2. In these Regulations—

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(1) [2004 c.35](#). Sections 168 and 190 are modified in their application to the financial assistance scheme by paragraphs 4 and 5 to Schedule 1 to [S.I. 2005/1986](#). Section 286 was amended by section 18(2) and (3) of the Pensions Act [2007 \(c.22\)](#) and by section 124 of the Pensions Act [2008 \(c.30\)](#). Section 286 is modified in its application to multi-employer schemes by [S.I. 2005/441](#) (amended by [S.I. 2005/993](#) and [2005/2113](#)). Section 318(1) is cited because of the meanings given to “prescribed” and “regulations”.

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

“beneficiary” means a qualifying member or, after a qualifying member’s death, the survivor and surviving dependants of that qualifying member;

“ill health payment” means a payment made to a beneficiary determined in accordance with regulation 17A of, and Schedule 2A to, the FAS Regulations;

“initial payment” means a payment made to a beneficiary in accordance with regulation 18 of, and Schedule 2 to, the FAS Regulations;

“interim ill health payment” means a payment made to a beneficiary in accordance with regulation 17B of, and Schedule 2A to, the FAS Regulations;

“surviving dependant” shall be construed in accordance with regulation 16B of the FAS Regulations(2);

“survivor” shall be construed in accordance with regulation 16A of the FAS Regulations(3);

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(4);

“the FAS Appeals Regulations” means the Financial Assistance Scheme (Appeals) Regulations 2005(5);

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(6); and

“the FAS Internal Review Regulations” means the Financial Assistance Scheme (Internal Review) Regulations 2005(7).

## PART 2

### Amendment of the FAS Regulations

#### Amendment of the FAS Regulations

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

#### Amendment of regulation 2

4. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of “annual payment” after “regulation 17” insert “or 17C”;

(ii) at the end of the definition of “beneficiary” insert “and surviving dependants”;

(iii) after the definition of “beneficiary” insert—

““employment” means any trade, business, profession, office or vocation;”;

(iv) omit the definition of “certification date”;

(v) after the definition of “ill health payment” insert—

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(2) Regulation 16B is inserted into the FAS Regulations by these Regulations.

(3) Regulation 16A is inserted into the FAS Regulations by these Regulations.

(4) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581, 2008/1432, 2008/1903, 2008/3069, 2008/3241 and 2009/792.

(5) S.I. 2005/3273 as amended by S.I. 2006/3370, 2008/1903, 2008/2683 and 2009/792.

(6) S.I. 2005/2189 as amended by S.I. 2005/3256, 2007/3581, 2008/1903 and 2009/792.

(7) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349, 2006/3370, 2008/1903 and 2009/792.

““indexation date” means—

- (a) the 1st January next falling after a beneficiary first becomes entitled to an annual payment or an ill health payment; and
- (b) each subsequent 1st January during that beneficiary’s lifetime;”;

(vi) after the definition of “multi-employer scheme” insert—

““partner” means a person of either sex who was not married to, or in a civil partnership with, the qualifying member but who was living with that member—

- (a) as if that person and the qualifying member were husband and wife; or
- (b) in the case of two adults of the same sex, as if they were civil partners, and, for the purposes of these Regulations, two adults of the same sex are to be regarded as living together as civil partners if they would have been regarded as living together as husband and wife were they instead two adults of the opposite sex;

“pension credit member” has the meaning given by section 124(1) of the 1995 Act;”;

(vii) after the definition of “principal employer” insert—

““qualifying course” means a full time educational or vocational course at a recognised educational establishment where in pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course exceeds 12 hours per week in normal term time, and shall include any gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course;”;

(viii) after the definition of “scheme manager” insert—

““shared initial payment” means a payment which is not an initial payment and which is the amount payable to a survivor of a qualifying member who was a party to a polygamous marriage in accordance with regulation 18(4B) and paragraph 5(6A) of Schedule 2;

“surviving dependant” shall be construed in accordance with regulation 16B;”;

(ix) for the definition of “survivor” substitute—

““survivor” shall be construed in accordance with regulation 16A;”;

(b) after paragraph (1A) insert—

“(1AB) In paragraph (1A), “the rules of that scheme” means the rules of the occupational pension scheme on the date on which benefits ceased to accrue to that member.”;

(c) in paragraph (7), for “paragraph (8)” substitute “paragraphs (8) and (8A)”;

(d) after paragraph (8) insert—

“(8A) Subject to paragraph (8B), where a beneficiary or a possible beneficiary is a child aged less than 18, the scheme manager may regard—

- (a) a parent of the child;

- (b) a person with parental responsibility within the meaning of section 3 of the Children Act 1989<sup>(8)</sup> in relation to the child;
- (c) a person with parental responsibility or parental rights under the Children (Scotland) Act 1995<sup>(9)</sup> in relation to the child; or
- (d) a person with parental responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995<sup>(10)</sup> in relation to the child,

as the appointed representative of that child.

(8B) Where—

- (a) no person referred to in paragraph (8A)(a) to (d) is known to the scheme manager, the scheme manager may appoint a person to act as the appointed representative of a child;
- (b) more than one person referred to in paragraph (8A)(a) to (d) wishes to act as the child’s representative for the purposes of these Regulations, the scheme manager may appoint one of those persons as the appointed representative of that child.”; and
- (e) after paragraph (9) insert—
  - “(10) For the purposes of these Regulations, a qualifying member who has died was “a party to a polygamous marriage” if, immediately before the member died, the member—
    - (a) was a party to a marriage entered into under a law which permits polygamy; and
    - (b) had more than one spouse.”.

#### **Amendment of regulation 4**

5. In regulation 4(2) (application of Parts 1 and 2 of the Act)—

- (a) for paragraph (ba) substitute—
  - “(ba) section 113 (investment of funds);
  - (bb) section 114 (investment principles);
  - (bc) section 115 (borrowing);
  - (bd) section 117 (administration levy);
  - (be) section 119 (annual reports to Secretary of State);
  - (bf) section 134 (directions);”;
- (b) after paragraph (d)—
  - (i) omit “and”; and
  - (ii) insert—
    - “(da) Schedule 5 (the Board of the Pension Protection Fund); and”.

#### **Amendment of regulation 5**

6.—(1) In regulation 5 (scheme manager)—

- (a) in paragraph (1), for “Secretary of State” substitute “Board of the Pension Protection Fund”; and
- (b) for paragraph (2) substitute—

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<sup>(8)</sup> 1989 c.41.

<sup>(9)</sup> 1995 c.36.

<sup>(10)</sup> S.I. 1995/755 (N.I.2).

“(2) References in these Regulations to the scheme manager are to the Board of the Pension Protection Fund acting in its capacity as manager of the financial assistance scheme.

(3) The Secretary of State shall pay a grant to the scheme manager in connection with its functions conferred by these Regulations.

(4) The scheme manager may not use the grant paid by the Secretary of State in accordance with paragraph (3) to make any payments which are required to be made to any beneficiary in accordance with these Regulations.”.

(2) Omit regulations 5A (functions of the Board of the Pension Protection Fund in relation to the financial assistance scheme), 7 (annual reports) and 8 (delegation).

### **Amendments to the FAS Regulations consequential to the amendment of regulation 5 of those Regulations**

7.—(1) In each place it occurs in—

(a) regulations 2(1B)(b), 12A(3)(a), 12B(5)(a), 13(3A), 14(5)(b)(ii), 17(3B), 17B(9) and 18(9); and

(b) paragraphs 2(4) and (5), 3(4), 4(4), 5(5) and 10(a) of Schedule 2,

for “he” substitute “it”.

(2) In—

(a) regulations 4(5)(c), 12A(3)(b), 12B(5)(b), 17B(2), (4) and (5) and 18(5A); and

(b) paragraphs 9, 11(b), 12(a) and (b)(i) and 14(d) and (e) of Schedule 1,

for “his” substitute “its”.

(3) In regulation 18(4) and (5) for “his discretion” substitute “its discretion”.

(4) In each place it occurs in—

(a) regulation 20(3) and (4)(b);

(b) paragraphs 1 and 2(b) of Schedule 1; and

(c) paragraphs 3(4), 4(4), 5(5) and 10(a) of Schedule 2,

for “him” substitute “it”.

### **Amendment of Part 2 – arrangements relating to the scheme manager**

8. For regulation 6 (funding) substitute—

#### **“Financial and other arrangements to enable or assist the Board of the Pension Protection Fund to carry out its functions in relation to the financial assistance scheme**

6.—(1) The Secretary of State—

(a) shall make available such amounts as are necessary to enable—

(i) the scheme manager; or

(ii) a person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act (as modified by Schedule 1 to these Regulations) to pay instalments of payments to beneficiaries,

to make any payments which are required to be made in accordance with these Regulations; and

- (b) may make such arrangements as the Secretary of State considers appropriate to enable or assist the scheme manager to carry out its functions in relation to the financial assistance scheme.

(2) The arrangements in paragraph (1)(b) may, in particular, include the determination of any actuarial factor which is to be applied by the scheme manager when determining the amount of any payment in accordance with Schedule 2 or 2A.

### **Use of information**

**6A.**—(1) Information held by the Secretary of State or the Department for Social Development in Northern Ireland for the purposes of any of their functions relating to social security or the financial assistance scheme may be disclosed to—

- (a) the scheme manager; or
- (b) to a person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act (as modified by Schedule 1 to these Regulations) and who is authorised by the scheme manager to receive and use such information,

for any use connected with, or incidental to, the exercise of the scheme manager’s functions relating to the financial assistance scheme.

(2) Information obtained by the scheme manager, or a person referred to in paragraph (1) (b), in the exercise of the scheme manager’s functions in relation to the financial assistance scheme—

- (a) may be disclosed to the Secretary of State or the Department for Social Development in Northern Ireland in any case in which disclosure is for the purpose of enabling or assisting the scheme manager to exercise its functions; and
- (b) shall be disclosed to the Secretary of State or the Department for Social Development in Northern Ireland on request by the Secretary of State or, as the case may be, that Department in any case in which disclosure is for the purpose of enabling or assisting the Secretary of State or, as the case may be, the Department to exercise their functions relating to the financial assistance scheme.”.

### **Amendment of Part 3 – notification of pension scheme details**

**9.** In regulation 14(4)(c) (notification of details), after “surviving” insert “partner”.

### **Amendment of Part 3 – qualifying pension schemes**

**10.** After regulation 14 insert—

#### **“Working with qualifying pension schemes**

**14A.**—(1) The scheme manager may manage, or make arrangements in relation to the management of, the transfer of any property, rights and liabilities of qualifying pension schemes which have not been fully wound up.

- (2) The power conferred by paragraph (1) includes, but is not limited to—
  - (a) the preparation of plans or other similar preparatory documentation;
  - (b) undertaking work calculated to assist in ensuring any transfer is carried out effectively and efficiently;
  - (c) undertaking work to assess the effect of any action taken in relation to qualifying pension schemes; and

- (d) the inspection, examination and auditing of data or other information relating to qualifying pension schemes.

**Payments in relation to administration or other costs**

**14B.**—(1) Where the scheme manager is satisfied that—

- (a) the trustees or managers of a qualifying pension scheme are not able to pay or meet administration or other costs which have been incurred or which are likely to be incurred in relation to that scheme from the assets of the scheme; and
- (b) paying or meeting those administration or other costs is necessary in order to—
  - (i) assist the scheme in winding-up;
  - (ii) keep any reduction in the scheme’s assets to a minimum; or
  - (iii) increase the scheme’s assets,

the scheme manager may, on an application by the trustees or managers, pay to them such amounts as it considers appropriate for the purpose of enabling the trustees or managers to pay or meet those costs.

(2) The scheme manager may make a payment under paragraph (1) on such terms as the scheme manager thinks fit.”.

**Amendment of Part 4**

**11.** After regulation 16 (insufficient assets) insert—

**“Survivors**

**16A.**—(1) Subject to paragraphs (2) and (3), a person is a survivor of a qualifying member who has died where that person is the qualifying member’s widow, widower or surviving civil partner.

(2) Where the conditions in paragraph (4) are satisfied—

- (a) the qualifying member’s surviving partner is a survivor of that qualifying member; and
- (b) where the qualifying member leaves a widow, widower or surviving civil partner, that widow, widower or surviving civil partner is not a survivor of that qualifying member.

(3) Where a person is regarded as a qualifying member by virtue of regulation 15(5) that person is not a survivor of the former member referred to in regulation 15(5)(b).

(4) The conditions for the purposes of paragraph (2) are that—

- (a) immediately before the qualifying member’s death, the qualifying member had a partner (“the surviving partner”);
- (b) the rules of the qualifying pension scheme include provision (whether discretionary or otherwise) to pay a survivor’s pension to a partner of the qualifying member;
- (c) the scheme manager is satisfied that the surviving partner was living with the qualifying member immediately before the qualifying member’s death; and
- (d) either—
  - (i) the qualifying member provided the scheme manager with a signed written notice nominating the surviving partner as that member’s survivor;

- (ii) the qualifying member provided the trustees or managers of the qualifying pension scheme with a valid nomination in accordance with the rules of the qualifying pension scheme to pay a survivor's pension to the surviving partner; or
- (iii) where the qualifying member did not leave a widow, widower or surviving civil partner, the scheme manager is satisfied that the qualifying member and the surviving partner were financially interdependent or the surviving partner was financially dependent on the qualifying member.

(5) For the purposes of enabling the scheme manager to be satisfied or not satisfied that the conditions in paragraphs (4)(c) and (d)(ii) or (iii) are met, the surviving partner must provide evidence that those conditions are met to the scheme manager.

### Surviving dependants

**16B.**—(1) Subject to paragraph (2), a child of the family of a qualifying member is a surviving dependant of that qualifying member for the purposes of these Regulations where—

- (a) the child was financially dependent on the member and is aged—
  - (i) less than 18; or
  - (ii) less than 23 and is—
    - (aa) attending a qualifying course; or
    - (bb) incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995<sup>(11)</sup>; and
- (b) the scheme manager is provided with—
  - (i) in the case of a natural child or unborn child, a birth certificate demonstrating that the child was the natural child of the member;
  - (ii) in the case of an adopted child, the adoption certificate demonstrating that the child was the adopted child of the member;
  - (iii) in the case of any other child in respect of whom sub-paragraph (a) is satisfied, evidence demonstrating to the satisfaction of the scheme manager that the child was a dependent child of the member immediately before the qualifying member's death.

(2) Where a person is regarded as a qualifying member by virtue of regulation 15(5) that person is not a surviving dependant of the former member referred to in regulation 15(5)(b).”

### Amendment of regulation 17

**12.** In regulation 17 (annual payments)—

- (a) in paragraph (4), after “applies” insert “and subject to paragraph (4C)”;
- (b) after paragraph (4) insert—

“(4A) Except where regulation 17A(3) applies and subject to paragraph (4C), a surviving dependant of a qualifying member of a qualifying pension scheme shall be entitled to an annual payment determined in accordance with Schedule 2 from—

- (a) 14th May 2004;

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<sup>(11)</sup> 1995 c.50. As amended, in relation to Northern Ireland, by S.I. 2005/1117.



- (b) the day after the day on which that qualifying member died; or
- (c) where a surviving dependant is an unborn child on the day on which the qualifying member died, the day on which that surviving dependant is born,

whichever is the latest.

(4B) An annual payment payable to a surviving dependant under paragraph (4A) shall continue, subject to paragraph (5B), until the surviving dependant—

- (a) where neither sub-paragraph (b) nor (c) applies, attains the age of 18;
- (b) where the surviving dependant is attending a qualifying course—
  - (i) attains the age of 23; or
  - (ii) leaves the qualifying course,

whichever is the earlier; or

- (c) where the surviving dependant is incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995, attains the age of 23.

(4C) A survivor or surviving dependant of a person who is regarded as a qualifying member under regulation 15(5) is not entitled to an annual payment as a survivor or surviving dependant of that qualifying member.

(4D) Where an annual payment ceases to be payable to a surviving dependant as a result of paragraph (4B)(a) or (b)(ii) and the surviving dependant subsequently—

- (a) attends a qualifying course; or
- (b) becomes incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995,

before attaining the age of 23, that surviving dependant shall be entitled to an annual payment determined in accordance with Schedule 2 from the day on which the scheme manager is satisfied that the surviving dependant satisfies sub-paragraph (a) or (b) until a day determined in accordance with paragraph (4B).”;

- (c) for paragraph (5B) substitute—

“(5B) Where a beneficiary dies or otherwise ceases to be entitled to an annual payment—

- (a) subject to sub-paragraph (b), any further instalments of an annual payment that would have been payable to that beneficiary, in respect of that year, cease to be payable;
- (b) any instalment of an annual payment which is payable in respect of a period which includes the day on which the beneficiary has died or otherwise ceased to be entitled to an annual payment shall be payable.”; and

- (d) in paragraph (6)—

- (i) for “, (5B) and regulation 17C(8)” substitute “and (5B), regulation 17C(8) and paragraphs 2A and 4A of Schedule 2”; and
- (ii) for “beneficiary” substitute “qualifying member or survivor”.

### **Amendment of regulation 17A**

**13.** In regulation 17A (ill health payments)—

- (a) in paragraph (3)—

- (i) after “leaves a survivor” insert “or a surviving dependant”; and

- (ii) after “the survivor” insert “and any surviving dependants”;
- (b) in paragraph (6)—
  - (i) for “and regulation 17C(7)” substitute “, regulation 17C(7) and paragraph 10 of Schedule 2A”; and
  - (ii) for “beneficiary” substitute “qualifying member or survivor”;
- (c) after paragraph (6) insert—
  - “(6A) Ill health payments which are payable to a surviving dependant under this regulation shall continue, subject to paragraph (7), until the surviving dependant—
    - (a) where neither sub-paragraph (b) nor (c) applies, attains the age of 18;
    - (b) where the surviving dependant is attending a qualifying course,—
      - (i) attains the age of 23; or
      - (ii) leaves the qualifying course
 whichever is the earlier; or
    - (c) where the surviving dependant is incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995, attains the age of 23.
  - (6B) Where an ill health payment ceases to be payable to a surviving dependant as a result of paragraph (6A)(a) or (b)(ii) and the surviving dependant subsequently—
    - (a) attends a qualifying course; or
    - (b) becomes incapable of engaging in full time paid employment due to having a disability within the meaning of the Disability Discrimination Act 1995, before attaining the age of 23, that surviving dependant shall be entitled to an ill health payment determined in accordance with Schedule 2A from the day on which the scheme manager is satisfied that the surviving dependant satisfies sub-paragraph (a) or (b) until a day determined in accordance with paragraph (6A).”; and
- (d) for paragraph (7) substitute—
  - “(7) Where a beneficiary dies or otherwise ceases to be entitled to an ill health payment—
    - (a) subject to sub-paragraph (b), any further instalments of an ill health payment that would have been payable to that beneficiary, in respect of that year, cease to be payable;
    - (b) any instalment of an ill health payment which is payable in respect of a period which includes the day on which the beneficiary has died or otherwise ceased to be entitled to an ill health payment shall be payable.”.

### **Amendment of regulation 17B**

- 14.** In regulation 17B (interim ill health payments)—
  - (a) in paragraph (1)—
    - (i) omit “a qualifying pension scheme is winding up and”;
    - (ii) in sub-paragraph (a) for “that scheme” substitute “a qualifying pension scheme”; and
    - (iii) in sub-paragraph (b)(i) after “a survivor” insert “or a surviving dependant”;
  - (b) in paragraph (2)(b) after “a survivor” insert “and any surviving dependants”;
  - (c) in paragraph (5)—

- (i) after “the qualifying member” insert “, any surviving dependants”; and
- (ii) after “deem that member” insert “, any such surviving dependant”;
- (d) in paragraph (7)—
  - (i) at the end of sub-paragraph (a) omit “and”; and
  - (ii) after sub-paragraph (b) add—
    - “and
    - (c) in respect of a qualifying member who has died, to a surviving dependant of that qualifying member from the day after the day on which that qualifying member died until the day on which the surviving dependant—
      - (i) would have been paid, or is paid, the first instalment of an ill health payment in accordance with regulation 19, if an ill health payment were payable, or is payable, to that surviving dependant under this Part; or
      - (ii) dies or otherwise ceases to be entitled to an ill health payment in accordance with regulation 17A,
- (e) for paragraph (8) substitute—
  - “(8) Where a beneficiary dies or otherwise ceases to be entitled to an ill health payment—
    - (a) subject to sub-paragraph (b), any further instalments of an interim ill health payment that would have been payable to that beneficiary, in respect of that year, cease to be payable;
    - (b) any instalment of an interim ill health payment which is payable in respect of a period which includes the day on which the beneficiary has died or otherwise ceased to be entitled to an ill health payment shall be payable.”; and
- (f) in paragraph (11)—
  - (i) after “that qualifying member” in the first place it occurs insert “, that qualifying member’s surviving dependants”; and
  - (ii) after “that qualifying member” in the second place it occurs insert “, any surviving dependant”.

#### **Amendment of regulation 17C**

**15.** In regulation 17C(8)(b)(iii) (annual payments for certain applications in cases of severe ill health), for “regulation 18(1)(a)(ii) and (4)” substitute “regulation 18(4)”.

#### **Amendment of regulation 18**

- 16.** In regulation 18 (initial payments)—
- (a) omit paragraph (1);
  - (b) in paragraph (4)—
    - (i) after “Except where” insert “paragraph (4B) or”; and
    - (ii) after “qualifying member” in both places it occurs insert “, the qualifying member’s surviving dependants”;
  - (c) in paragraph (4A)(b) after “a survivor” insert “and any surviving dependants”;

- (d) after paragraph (4A) insert—
- “(4B) Where a qualifying member who has died was a party to a polygamous marriage the scheme manager may, in its discretion, make a payment (“a shared initial payment”) to each survivor—
- (a) in anticipation of an annual payment being payable under this Part to those survivors;
  - (b) before any instalment of that annual payment is made; and
  - (c) with effect from whichever is the later of—
    - (i) 14th May 2004; and
    - (ii) the day after the day on which that qualifying member died.
- (4C) In exercising its discretion under paragraph (4B), the scheme manager may only have regard to—
- (a) the amount, if any, of any interim pension that was in payment, is in payment, or is proposed to be paid, from the qualifying pension scheme to any of the survivors of the qualifying member; and
  - (b) any circumstances relating to the scheme which, in the opinion of the scheme manager, are relevant to determining whether a shared initial payment should be made.
- (4D) Paragraphs (5A) and (7) to (9A) shall apply to a shared initial payment under paragraph (4B) with the following modifications—
- (a) for “paragraph (4)” in each place it occurs, substitute “paragraph (4B)”;
  - (b) for “initial payment” in each place it occurs, substitute “shared initial payment”.
- (e) in paragraph (5)(a)(ii) after “his survivor” insert “or surviving dependants”;
- (f) in paragraph (5A)—
- (i) after “the qualifying member” insert “, any surviving dependants”;
  - (ii) after “deem that member” insert “, that surviving dependant”;
- (g) in paragraph (6) after “initial payments” insert “and shared initial payments”;
- (h) in paragraph (7)—
- (i) at the end of sub-paragraph (a) omit “and”; and
  - (ii) after sub-paragraph (b) add—
 

“and

    - (c) in respect of a qualifying member who has died, to a surviving dependant of that qualifying member from the day after the day on which that qualifying member died until the surviving dependant—
      - (i) would have been paid, or is paid, the first instalment of an annual payment in accordance with regulation 19, if an annual payment were payable, or is payable, to that surviving dependant under this Part; or
      - (ii) dies or otherwise ceases to be entitled to an annual payment in accordance with regulation 17,
 whichever is the earlier.”;
- (i) for paragraph (8) substitute—
- “(8) Where a beneficiary dies or otherwise ceases to be entitled to an annual payment—

- (a) subject to sub-paragraph (b), any further instalments of an initial payment that would have been payable to that beneficiary, in respect of that year, cease to be payable;
- (b) any instalment of an initial payment which is payable in respect of a period which includes the day on which the beneficiary has died or otherwise ceased to be entitled to an annual payment shall be payable.”; and
- (j) in paragraph (9A), in each place it occurs, for “or his survivor” substitute “or that qualifying member’s survivor or surviving dependant”.

### **Amendment of provisions for payment by instalment**

**17.**—(1) In regulation 19(1) (time and manner of payment: general provisions) for the words “in equal monthly instalments” to the end substitute “in instalments of no more than 52 in a year on a day specified by the scheme manager for the making of such payments to that beneficiary.”.

(2) In—

- (a) regulation 17(3A)(b) and (5A)(a) and (b);
- (b) regulation 17A(5)(a) and (b);
- (c) regulation 17B(7)(a)(i) and (b)(i) and (11);
- (d) regulation 18(4)(b), (7)(a)(i) and (b)(i) and (9A);
- (e) regulation 19(3) and (4); and
- (f) regulation 20(1) and (2),

omit “monthly”.

(3) In—

- (a) regulation 17(5);
- (b) regulation 17A(4); and
- (c) regulation 19(2),

for “a monthly instalment” substitute “an instalment”.

### **Amendment of Schedule 1**

**18.** In Schedule 1 (modification of certain provisions of Parts 1 and 2 of the Act)(**12**)—

(a) after paragraph 3 insert—

“**3ZA.** In section 113 (investment of funds)—

- (a) at the beginning of subsection (1), insert “Subject to subsection (1A),”; and
- (b) after subsection (1), insert—

“(1A) The Board may hold any grant received in accordance with regulation 5(3) of the Financial Assistance Scheme Regulations 2005(**13**) (scheme manager) in an interest-bearing account but may not otherwise invest any such grant.”.

**3ZB.** After section 114(4) (investment principles), insert—

“(4A) A statement of investment principles need not cover investments made in accordance with section 113(1A).”.

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(12) Schedule 1 was amended by [S.I. 2008/1903](#).

(13) [S.I. 2005/1986](#) as amended by [S.I. 2005/3256](#), [2006/3370](#), [2007/3581](#), [2008/1432](#), [2008/1903](#), [2008/3069](#), [2008/3241](#) and [2009/792](#).

**3ZC.** In section 115(1)(a) (borrowing), after “any of its functions”, insert “except its functions relating to the financial assistance scheme”.

**3ZD.** In section 117(1)(b) (administration levy), after “section 116”, insert “except where such expenditure relates to the financial assistance scheme”.

**3ZE.** In section 119 (annual reports to Secretary of State)—

(a) in subsection (2)—

(i) after “the Board” insert “in relation to the financial assistance scheme”;

(ii) for “the report” substitute “any part of the report”; and

(iii) after “that section” insert “which relates to the financial assistance scheme”;

(b) in subsection (3), after paragraph (c) insert—

“(d) the operation of the financial assistance scheme including the number of persons who have received payments under the Financial Assistance Scheme Regulations 2005 and the total amount of those payments.”; and

(c) in subsection (6)(a), for “the date on which the Board is established” substitute “the date on which the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 come into force”.

(b) in paragraph 5 for sub-paragraph (a) substitute—

“(a) in subsection (1), for “the Board” substitute “the scheme manager”;

(c) in paragraph 10 omit sub-paragraph (b);

(d) in paragraph 11 after sub-paragraph (a) insert—

“(ab) in subsection (2), before paragraph (a) insert—

“(za) regulation 6A of the Financial Assistance Scheme Regulations 2005,”;

(e) in paragraph 14(f) omit paragraphs (i) and (iii); and

(f) after paragraph 16 add—

“17. In paragraph 18(2) of Schedule 5 (delegation)—

(a) after sub-paragraph (g), insert—

“(ga) regulation 9(1)(d) of the Financial Assistance Scheme Regulations 2005 (“the 2005 Regulations”) (receiving notification of the details prescribed in regulation 14);

(gb) regulation 14A of the 2005 Regulations (working with qualifying pension schemes);

(gc) regulations 17 to 20 of, and Schedules 2 and 2A to, the 2005 Regulations in so far as those provisions relate to—

(i) the determination of the amount of payments to beneficiaries,

(ii) paying instalments of payments to beneficiaries (including non-payment where the scheme manager decides to suspend payments in accordance with regulation 8 of the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(**14**)), or

(iii) receiving information pursuant to notification requirements;

- (gd) the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 except—
  - (i) regulation 3(2) (notification following determination of whether or not a scheme is a qualifying pension scheme), and
  - (ii) regulation 8 (suspension of payments) in so far as that regulation provides for the scheme manager to decide to suspend payments or not continue any such suspension;
- (ge) regulations 3 (notice of a reviewable determination), 14(d) (dealing with matters arising out of a review decision) and 16 (notice of a review decision or a subsequent review decision) of the Financial Assistance Scheme (Internal Review) Regulations 2005(15);
- (gf) regulation 23(6) and (8) (taking or refraining from taking such steps as directed by the Ombudsman) of the Financial Assistance Scheme (Appeals) Regulations 2005(16);” and
- (b) in sub-paragraph (h), for the words “paragraphs (a) to (g)” substitute “paragraphs (a) to (gf)”.

18. In paragraph 22(7)(a) of Schedule 5 (accounts), for “the date on which the Board is established” substitute “the date on which the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 come into force”.

#### **Amendment of paragraph 1 of Schedule 2**

19. In paragraph 1 of Schedule 2 (introductory)—
- (a) in sub-paragraph (2) omit the definition of “the crystallisation date”; and
  - (b) in sub-paragraph (3) for “Paragraphs 2 to 5” substitute “Paragraphs 2 to 5B”.

#### **Amendment of paragraph 2 of Schedule 2**

20. In paragraph 2 of Schedule 2 (actual pension)—
- (a) for sub-paragraph (1) substitute—

“(1) In this Schedule, “actual pension” means, subject to sub-paragraphs (3), (3A) and (4) and paragraph 2A, the annual rate of annuity which has been, can be or could have been, paid to the beneficiary as at the later of—

    - (a) the day from which the beneficiary is entitled to an annual payment; or
    - (b) the day on which the qualifying pension scheme began to be wound up, as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has, or had, been determined.”;
  - (b) in sub-paragraph (3)—
    - (i) after “sub-paragraph (1)” insert “or, as the case may be, paragraph 2A, as a result of the purchase of an annuity”;
    - (ii) in paragraph (a) for “on the crystallisation date” substitute “on the day before the day on which the qualifying pension scheme began to be wound up”;
    - (iii) in paragraph (b)—

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(15) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349, 2006/3370, 2008/1903 and 2009/792.

(16) S.I. 2005/3273 as amended by S.I. 2006/3370, 2008/1903, 2008/2683 and 2009/792.

- (aa) after “survivor” insert “or surviving dependant”; and
- (bb) for the words from “to him immediately on the purchase” to the end substitute—
  - “to that beneficiary on the later of—
    - (i) the day on which an annuity has been purchased from the assets of the scheme; or
    - (ii) the day after the day on which that qualifying member died;”;
- (iv) after paragraph (b) insert—
  - “(ba) where the beneficiary is a survivor or surviving dependant, on the basis that any amount (including any lump sum) payable to that beneficiary as a result of the death of the qualifying member being within a period specified in the scheme rules beginning on the day on which the member became entitled to a pension from the scheme or, if later, the day on which the pension was first paid, shall not be taken into account;”;
- (v) omit paragraph (c); and
- (vi) in paragraph (d), after “the scheme” insert “after the day on which the scheme began to be wound up”;
- (c) after sub-paragraph (3) insert—
  - “(3A) Where the scheme manager is satisfied that the amount of interim pension paid to the beneficiary in respect of any previous year or years in which an annual payment was payable to the beneficiary is higher or lower than the annual rate of annuity determined in accordance with this paragraph, the scheme manager may determine how the actual pension is to be calculated for the purposes of determining the annual payment in respect of each year in which an annual payment is payable to the beneficiary, having regard to—
    - (a) the annual rate of annuity determined in accordance with this paragraph;
    - (b) the amount of any interim pension which was, or is due to be, paid to the beneficiary; and
    - (c) such other matters as the scheme manager considers relevant.”; and
- (d) in sub-paragraph (4)—
  - (i) for the words “available to him” substitute “available to it and to such other matters as the scheme manager considers appropriate”; and
  - (ii) at the end for the words “and to such other matters” substitute “and of such other matters”.

## **Amendment of Schedule 2 – annual redeterminations**

- 21.** In Schedule 2, after paragraph 2 insert—

### **“Annual redetermination**

- 2A.—(1)** This paragraph applies where—

- (a) on the first indexation date following the date on which the beneficiary first became entitled to an annual payment; and
- (b) on any indexation date following that first indexation date;

the annual rate of annuity which has been or could have been paid to the beneficiary as at that indexation date as a result of the purchase of an annuity with the assets available to



discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has or had been determined, is higher as a result of indexation or revaluation than the annual rate determined in accordance with paragraph 2.

(2) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to that beneficiary with effect from the indexation date.

(3) When redetermining an annual payment under sub-paragraph (2), the actual pension for the purposes of paragraph 3(2) or 4(2) shall be the annual rate of annuity which has been or could have been paid to the beneficiary as at the indexation date as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has or had been determined, on the basis of, and having regard to, the matters referred to in paragraph 2(3).

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of annuity for the purposes of this paragraph, it shall determine that annual rate having regard to such matters as it considers relevant.

(5) Where the scheme manager is satisfied that increases have been, are being, or will be made to the annual rate of annuity, and it considers that those increases are not reasonable, it may determine the annual rate of annuity for the purposes of this paragraph on the basis of the sum which would discharge the liability of the scheme to the beneficiary and of such other matters as it considers relevant.”.

### **Amendment of paragraph 3 of Schedule 2**

**22.** In paragraph 3 of Schedule 2 (qualifying members receiving pensions from the qualifying pension scheme)—

- (a) in sub-paragraph (1)(a)(ii), for “on the crystallisation date” substitute “on the day before the day on which the qualifying pension scheme began to be wound up”;
- (b) for sub-paragraph (3) substitute—

“(3) Subject to sub-paragraphs (4) and (5) and paragraphs 4A and 4B, in this paragraph “expected pension” means—

- (a) the annual rate of the pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme as at the day before the day on which the qualifying pension scheme began to be wound up; or
- (b) where the day on which the qualifying pension scheme began to be wound up is earlier than 14 May 2004, the aggregate of—
  - (i) the annual rate of the pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme as at the day on which the qualifying pension scheme began to be wound up; and
  - (ii) the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on 14 May 2004.

(3A) In sub-paragraph (3)(b)(ii), the revaluation amount is—

- (a) where that period is less than one month, nil; or
- (b) in any other case, the revaluation percentage of the amount of the annual rate of pension under sub-paragraph (3)(b)(i).

(3B) In sub-paragraph (3A), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with sub-paragraph (3)(b)(ii); and
- (b) the maximum revaluation rate.

(3C) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with sub-paragraph (3)(b)(ii) is—

$$(100 \times (A \div B)) - 100$$

where—

A is the level of the retail prices index for March 2004; and

B is the level of the retail prices index for the month two months before the month during which the relevant qualifying pension scheme began to be wound up.

(3D) In sub-paragraph (3B)(b), “the maximum revaluation rate” in relation to the revaluation period is—

- (a) if that period is a period of 12 months, 5%; or
  - (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (3B)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.”; and
- (c) after sub-paragraph (4) add—
- “(5) Where—
- (a) the annual rate of the pension determined for the purposes of calculating the expected pension under sub-paragraph (2) includes an amount which, under the rules of the qualifying pension scheme, was payable for a period which is shorter than the period in respect of which the remainder of the pension was payable; and
  - (b) the liabilities of the scheme in respect of the beneficiary have been discharged (whether by the purchase of an annuity or by other means) in a manner which does not provide for a reduction in the annual rate of an annuity from the date on which the amount referred to in paragraph (a) would have ceased to be payable under the rules of the pension scheme,

the scheme manager shall determine the expected pension having regard to the expected pension which would have been determined in accordance with paragraph 4A if that paragraph had applied and to such other matters as it considers relevant.”.

#### **Amendment of paragraph 4 of Schedule 2**

**23.** In paragraph 4 of Schedule 2 (active and deferred members)—

- (a) in sub-paragraph (1), for “on the crystallisation date” substitute “on the day before the day on which the qualifying pension scheme began to be wound up”;
- (b) in sub-paragraph (3)—
  - (i) omit “, (3B)”;
  - (ii) after paragraph (b) omit “and”;
  - (iii) after paragraph (c) add—
 

“and

    - (d) in any case where 14 May 2004 is later than—

- (i) the day on which the qualifying pension scheme began to be wound up; and
  - (ii) the day on which the qualifying member attained normal retirement age,the revaluation amount for the third revaluation period (see sub-paragraphs (13) to (13D)).”;
- (c) for sub-paragraph (3A) substitute—
  - “(3A) Where—
    - (a) the annual rate of the pension determined for the purposes of sub-paragraph (3) (a) includes an amount which, under the rules of the qualifying pension scheme, was payable for a period which is shorter than the period in respect of which the remainder of the pension was payable; and
    - (b) the liabilities of the scheme in respect of the beneficiary have been discharged (whether by the purchase of an annuity or by other means) in a manner which does not provide for a reduction in the annual rate of an annuity from the date on which the amount referred to in paragraph (a) would have ceased to be payable under the rules of the pension scheme,the scheme manager shall determine the annual rate for the purposes of sub-paragraph (3) (a) having regard to the expected pension which would have been determined in accordance with paragraph 4A if that paragraph had applied and to such other matters as it considers relevant.”;
- (d) omit sub-paragraph (3B);
- (e) in sub-paragraph (4), for “sub-paragraph (3), (3A) or (3B)” substitute “sub-paragraph (3) or (3A) or paragraph 4B”;
- (f) in sub-paragraph (5)(b) for the words “the earlier of” to the end substitute “the day before the day on which the qualifying pension scheme began to be wound up.”;
- (g) for sub-paragraph (7)(b)(i) substitute—
  - “(i) the day on which the qualifying member attains normal retirement age.”;
- (h) in sub-paragraph (10) for “the certification date” substitute “the day from which the qualifying member is entitled to an annual payment”; and
- (i) for sub-paragraph (13) substitute—
  - “(13) The third revaluation period is the period—
    - (a) beginning on the day after the day on which the member attained normal retirement age; and
    - (b) ending on 14 May 2004.
  - (13A) The revaluation amount for the third revaluation period is—
    - (a) where that period is less than one month, nil; or
    - (b) in any other case, the revaluation percentage of the aggregate of—
      - (i) the annual rate of the pension under sub-paragraph (3)(a);
      - (ii) the revaluation amount for the first revaluation period under sub-paragraph (6); and
      - (iii) the revaluation amount for the second revaluation period under sub-paragraph (8).
  - (13B) In sub-paragraph (13A), “the revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with sub-paragraph (13); and
- (b) the maximum revaluation rate.

(13C) The method for determining the percentage increase in the general level of prices in Great Britain during the revaluation period determined in accordance with sub-paragraph (13) is—

$$(100 \times (A \div B)) - 100$$

where—

A is the level of the retail prices index for March 2004; and

B is the level of the retail prices index for the month two months before the month in which the qualifying member attained normal retirement age.

(13D) In sub-paragraph (13B)(b), “the maximum revaluation rate” in relation to the revaluation period is—

- (a) if that period is a period of 12 months, 5%; or
- (b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (13B)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.”.

#### **Amendment of Schedule 2 – bridging pensions and pension payable at an age other than normal retirement age**

24. After paragraph 4 of Schedule 2 insert—

##### **“Bridging pensions**

4A.—(1) This paragraph applies where—

- (a) the annual rate of the pension determined for the purposes of calculating the expected pension under paragraph 3(2) or 4(2) includes an amount which, under the scheme rules, was payable for a period which is shorter than the period in respect of which the remainder of the pension was payable; and
- (b) an annuity has been purchased for the beneficiary which provides for payment of a pension to the beneficiary at a lower annual rate from the date on which the amount referred to in paragraph (a) would have ceased to be payable under the rules of the pension scheme.

(2) Where this paragraph applies, the scheme manager shall redetermine the annual payment payable to that beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable under the rules of the pension scheme.

(3) When redetermining an annual payment under sub-paragraph (2)—

- (a) the annual rate of the pension for the purposes of paragraph 3(3)(a) shall be the annual rate of pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme less the annual amount which was payable for the shorter period referred to in sub-paragraph (1)(a), as at the day which is the day before the day on which the qualifying pension scheme began to be wound up;
- (b) the annual rate of the pension for the purposes of paragraph 3(3)(b)(i) shall be the amount which was or should have been in payment to the qualifying member

in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme less the annual amount which was payable for the shorter period referred to in sub-paragraph (1)(a), as at the day on which the qualifying member attained normal retirement age;

- (c) the amount specified in paragraph 4(3)(a) shall be the amount determined in accordance with that paragraph less the amount which is the amount which was payable for the shorter period referred to in sub-paragraph (1)(a);
- (d) the amount which was payable for the shorter period referred to in sub-paragraph (1)(a) shall be disregarded when determining the revaluation amounts; and
- (e) the beneficiary shall be entitled to so much of the total amount of the annual increases determined in accordance with paragraph 9 payable to the beneficiary as at the date referred to in sub-paragraph (2) as are attributable to the amount of expected pension determined in accordance with this paragraph.

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of pension for the purposes of sub-paragraph (3)(a) or (b) or any one of the amounts for the purposes of sub-paragraph (3)(c) to (e) it shall determine that annual rate or amount, having regard to such matters as it considers relevant.

(5) In sub-paragraph (3)(d) “the revaluation amounts” means—

- (a) the revaluation amount referred to in paragraph 3(3)(b)(ii); and
- (b) the revaluation amounts referred to in paragraph 4(3)(b) to (d).

#### **Pension payable at an age other than normal retirement age**

**4B.**—(1) This paragraph applies where any pension or part of a pension would have been payable to the qualifying member for life without actuarial adjustment under the rules of the qualifying pension scheme (disregarding any rule making special provision as to early payment on the grounds of ill health or otherwise) at an age other than the member’s normal retirement age.

(2) Where this paragraph applies—

- (a) paragraphs 3(3) and 4(3) and (3A) shall have effect as if the amount of pension or part of a pension payable at the age other than the member’s normal retirement age were a separate pension;
- (b) paragraph 4(3)(a) shall have effect as if the reference to normal retirement age were a reference to the age at which the pension or part of a pension would be payable to the qualifying member without actuarial reduction under the rules of the qualifying pension scheme (disregarding any rule making special provision as to early payment on the grounds of ill health or otherwise); and
- (c) “expected pension” in paragraphs 3(2) and 4(2) means, subject to paragraph 4(4), the aggregate of the amounts calculated as the expected pension in accordance with paragraphs 3 and 4 in relation to any pension treated as a separate pension in accordance with paragraph (a).

(3) An actuarial factor, determined having regard to such matters as the person determining the factor considers relevant, shall be applied to any amount determined in accordance with sub-paragraph (2)(a).”

## Amendment paragraph 5 of Schedule 2

25. In paragraph 5 of Schedule 2 (survivors of qualifying members)—

- (a) in sub-paragraph (2) for “sub-paragraph (3) or (6)” substitute “sub-paragraph (3) or (6A)”;
- (b) for sub-paragraph (3) substitute—

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“(3) Except where sub-paragraph (6A) applies, the annual payment payable to a survivor shall be—

$$\frac{(\text{expected pension} \times 0.9) + H}{2} - A.”$$


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- (c) in sub-paragraph (4) for “on the crystallisation date” substitute “on the day before the day on which the qualifying pension scheme began to be wound up”;
- (d) omit sub-paragraph (6);
- (e) after sub-paragraph (6) insert—

“(6A) Where the qualifying member was a party to a polygamous marriage, the annual payment payable to each survivor shall be—

$$\frac{(E + H)}{N} - B$$

(6B) In this paragraph—

“A” means the actual pension;

“B” means the sum of the actual pensions of all the survivors of that qualifying member;

“E” means one half of the product of 0.9 multiplied by the expected pension which would be determined in accordance with sub-paragraph (3) if sub-paragraph (6A) did not apply;

“H” means the aggregate of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled before the day on which the qualifying member died;

“N” means the number of survivors of that qualifying member.

(6C) Where a survivor of a qualifying member who was a party to a polygamous marriage dies, the annual payment payable to each survivor of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died.”;

(f) in sub-paragraph (7)—

(i) after paragraph (b) omit “and”; and

(ii) after paragraph (c) add—

“and

(d) in any case where 14 May 2004 is later than—

(i) the day on which the qualifying member died; and

(ii) the day on which the qualifying pension scheme began to be wound up,

the revaluation amount for the third survivor revaluation period (see sub-paragraphs (12) and (13)).”;

(g) for sub-paragraph (10)(b) substitute—

- “(b) ending on—
- (i) the earlier of—
- (aa) the day from which the qualifying member became entitled to an annual payment; or
- (bb) the day from which the survivor of the qualifying member became entitled to an annual payment; or
- (ii) in any case where 14 May 2004 is later than—
- (aa) the day on which the qualifying member died; and
- (bb) the day on which the qualifying pension scheme began to be wound up,
- the day on which the qualifying member died.”; and
- (h) after sub-paragraph (11) add—
- “(12) The third survivor revaluation period is the period—
- (a) beginning on the day after the day on which the qualifying member died; and
- (b) ending on 14 May 2004.
- (13) The revaluation amount for the third survivor revaluation period is the revaluation amount determined in accordance with paragraph 4(13A) to (13D).”.

**Amendment of Schedule 2 – surviving dependants of qualifying members**

26. After paragraph 5A of Schedule 2 (payment for an entitlement under regulation 17C) insert—

**“Surviving dependants of qualifying members**

**5B.**—(1) The annual payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (5).

(2) Where an annual payment is also payable to a survivor of the qualifying member and—

(a) there is only one surviving dependant, the amount of the annual payment shall be—

$$\frac{E}{2} - B$$

(b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{E - B}{N}$$

(3) Where the qualifying member does not have a survivor and—

(a) there is only one surviving dependant, the amount of annual payment shall be—

$$E - B$$

(b) there are two or more surviving dependants, the amount of the annual payment shall be—

$$\frac{(2 \times E) - B}{N}$$

## (4) Where—

- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor under regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, dies; or
- (b) a person ceases to be a surviving dependant of a qualifying member,

the annual payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died or the person ceased to be a surviving dependant.

## (5) In this paragraph—

“B” means—

- (a) where there is only one surviving dependant, the surviving dependant’s actual pension; or
- (b) where there are two or more surviving dependants, the sum of the actual pensions of all the surviving dependants of that qualifying member;

“E” means one half of the sum of  $G + H$ ;

“G” means the product of 0.9 multiplied by the expected pension which has been or could have been determined in respect of the survivor in accordance with paragraph 5(3);

“H” means the aggregate of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled before the day on which the qualifying member died;

and

“N” means the number of surviving dependants of that qualifying member.”.

**Amendment of paragraph 7 of Schedule 2****27.** In paragraph 7 of Schedule 2 (cap on expected pension and actual pension)—

## (a) for sub-paragraph (1) substitute—

“(1) Where the amount of a qualifying member’s expected pension determined in accordance with the previous provisions of this Schedule multiplied by 0.9 exceeds the FAS cap—

- (a) the amount of the annual payment payable to, or in respect of, that member under paragraphs 3 to 5B shall be determined on the basis that the product of that calculation was the amount of the FAS cap; and
- (b) the expected pension for the purposes of paragraph (b)(i) in the definition of “underlying rate” in paragraph 9 shall be the amount of the FAS cap;”;

## (b) in sub-paragraph (2), for “£26,000” substitute “the FAS cap”;

## (c) after sub-paragraph (2) insert—

“(3) Except where sub-paragraph (5) applies, in this paragraph “the FAS cap” is—

- (a) where the beneficiary became entitled to an annual payment before 1st April 2007, £26,000;
- (b) where the beneficiary became entitled to an annual payment in the period beginning on 1st April 2007 and ending on 31st March 2008, £26,936;
- (c) where the beneficiary became entitled to an annual payment in the period beginning on 1st April 2008 and ending on 31st March 2009, £27,987;



- (d) where the beneficiary became entitled, or becomes entitled, to an annual payment in the period beginning on 1st April 2009 and ending on 31st March 2010, £29,386; and
  - (e) where the beneficiary becomes entitled to an annual payment in the period after 31st March 2010, the amount determined in accordance with sub-paragraph (4).
- (4) For each successive period of 12 months from 1st April 2010, the FAS cap shall be—
- (a) where paragraph (b) does not apply, the amount of the FAS cap for the previous period of 12 months increased by the percentage increase of the retail prices index for the period of 12 months ending on the 30th September falling within that previous period of 12 months; or
  - (b) where there is no such percentage increase, the amount of the FAS cap for the previous period of 12 months.
- (5) Where a qualifying member dies on or after the day on which that qualifying member became entitled to an annual payment, “the FAS cap” for the purposes of determining the amount of the annual payment payable to a survivor or a surviving dependant of that qualifying member under paragraph 5 or 5B is the amount which was determined in accordance with sub-paragraph (3) for the purposes of determining the amount of the annual payment payable to that qualifying member.
- (6) Where the amount of the FAS cap determined in accordance with sub-paragraph (3) results in a fraction of a pound, that fraction shall be treated as a pound.”.

#### **Amendment of Schedule 2 – annual increases**

**28.** For paragraph 9 of Schedule 2 (revaluation) substitute—

##### **“Annual increase to an annual payment**

**9.—(1)** Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an annual amount determined in accordance with paragraphs 2A to 5B shall be entitled, on the indexation date, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date, or
- (b) where the beneficiary first became entitled to an annual payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the annual payment was first payable.

(2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with the 31st May last falling before the indexation date; and
- (b) 2.5%;

“underlying rate” means—

- (a) the aggregate of—
  - (i) the product of X multiplied by so much of the expected pension as is attributable to post-1997 service;
  - (ii) where—

- (aa) the beneficiary is a survivor or a surviving dependant of a qualifying member; and
- (bb) that qualifying member dies on or after the day on which that qualifying member became entitled to an annual payment, the product of X multiplied by W; and
- (iii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; or
- (b) where paragraph 7(1) applies, the aggregate of—
  - (i) so much of the expected pension as is, proportionately, attributable to post-1997 service; and
  - (ii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date;

“post-1997 service” means—

- (a) pensionable service (whether actual or notional) which occurs on or after 6th April 1997; or
- (b) where the annual payment is payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

“W” means the amount of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on the day before the day on which the qualifying member died;

“X” means—

- (a) 0.9, where the beneficiary is the qualifying member;
- (b) 0.45, where the beneficiary is a survivor who is not a survivor to whom paragraph 5(6A) applies;
- (c) the product of 0.45 divided by Y, where the beneficiary is a survivor to whom paragraph 5(6A) applies;
- (d) the product of 0.9 divided by Z, where the beneficiary is a surviving dependant and the qualifying member does not have a survivor; or
- (e) the product of 0.45 divided by Z, where the beneficiary is a surviving dependant and an annual payment is also payable to a survivor of the qualifying member;

“Y” means the number of survivors of the qualifying member; and

“Z” means—

- (a) where there is only one surviving dependant, 2; or
- (b) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

(3) In any case where the scheme manager is satisfied, having regard to the information available, that it is not possible for the scheme manager to determine the amount of expected pension which is attributable to post-1997 service for the purposes of this paragraph, the scheme manager shall determine that amount, having regard to such matters as the scheme manager considers relevant.”.

## **Amendment of paragraph 10 of Schedule 2**

**29.** In paragraph 10 of Schedule 2 (initial payments)—

- (a) in sub-paragraph (a)—
  - (i) after “survivor”, in both places it occurs, insert “or surviving dependant”;
  - (ii) in the substituted paragraph 2(2)(a)(ii) after “commutation” insert “, after the day on which the qualifying pension scheme began to be wound up,”; and
  - (iii) in the substituted paragraph 2(2)(b) after “commutation of benefits” insert “after the day on which the scheme began to be wound up”; and
- (b) in sub-paragraph (e), for paragraph (ii) substitute—
  - “(ii) for sub-paragraph (4) substitute—
    - “(4) In sub-paragraph (3), “expected pension” shall, subject to sub-paragraph (5), be the sum of—
      - (a) the amount determined—
        - (i) where the qualifying member was entitled to a present payment of a pension under the scheme rules on the day before the day on which the qualifying pension scheme began to be wound up, in accordance with paragraph 3(3); or
        - (ii) where the qualifying member was an active member or a deferred member of a qualifying pension scheme on the day before the day on which the qualifying pension scheme began to be wound up, in accordance with paragraph 4(3); and
      - (b) the product of the aggregate of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled on the day before the day on which the qualifying member died divided by 0.9.”.”.

### **Amendment of Schedule 2 – shared initial payments**

**30.** After paragraph 10 of Schedule 2 (initial payments), insert—

#### **“Shared initial payments**

**10A.—**(1) Where two or more survivors of a qualifying member are entitled to a shared initial payment by virtue of regulation 18(4B), the amount of each survivor’s shared initial payment shall be—

$$\frac{Z - Y}{N}$$

(2) In this paragraph—

“N” means the number of survivors of the qualifying member;

“Y” means the sum of the interim pensions of all the survivors which would have been determined in accordance with paragraph 5(3)(17) had that paragraph applied to the survivors; and

“Z” means the product of 0.9 multiplied by the expected pension which would have been determined in accordance with paragraph 5(3) had that paragraph applied to the survivors.”.

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(17) Paragraph 5(3) is modified by paragraph 10(b), (d) and (e) of Schedule 2 for the purposes of determining the amount of an initial payment.

## Amendment of Schedule 2A

31. In Schedule 2A (determination of ill health and interim ill health payments)—

(a) in paragraph 2—

(i) for sub-paragraph (2) substitute—

“(2) Except where sub-paragraph (2A) applies, the amount of an ill health payment to a survivor of a qualifying member of a qualifying pension scheme shall be—

$$\frac{(C(A \times 0.9)) + H}{2} - B$$

(2A) Where a qualifying member was a party to a polygamous marriage, the amount of an ill health payment payable to each survivor shall be—

$$\frac{\left(\frac{E}{2} - D\right)}{N}$$

(2B) Where a survivor of a qualifying member who was a party to a polygamous marriage dies, the ill health payment payable to each survivor of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died.”;

(ii) in sub-paragraph (3)—

(aa) after the definition of “B” omit “and”;

(bb) after the definition of “C” insert—

““D” means the sum of the actual pensions of all the survivors of that qualifying member which would be determined in accordance with paragraph 2 if sub-paragraph (2A) did not apply;

“E” means the produce of—

$$(C(A \times 0.9)) + H$$

“H” means the aggregate of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled before the day on which the qualifying member died; and

“N” means the number of survivors of that qualifying member.”; and

(iii) in sub-paragraph (4) for “paragraphs 4 and 7” substitute “paragraph 7”;

(b) after paragraph 2 insert—

### “Amount of an ill health payment to a surviving dependant

2A.—(1) The amount of an ill health payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (5).

(2) Where an ill health payment is also payable to a survivor of the qualifying member and—

(a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$\frac{F}{2} - B$$

- (b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{F - B}{N}$$

- (3) Where the qualifying member does not have a survivor and—

- (a) there is only one surviving dependant, the amount of the ill health payment shall be—

$$F - B$$

- (b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{(2 \times F) - B}{N}$$

- (4) Where—

- (a) a survivor of a qualifying member, who is not a person who is treated as a survivor under regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, dies; or

- (b) a person ceases to be a surviving dependant of a qualifying member,

the ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died or the person ceased to be a surviving dependant.

- (5) In this paragraph—

“A” means the amount of expected pension which would be determined in accordance with Schedule 2 if—

- (a) the qualifying member were entitled to an annual payment; and  
(b) the modifications in paragraph 6 applied;

“B” means—

- (a) where there is only one surviving dependant, the actual pension of that surviving dependant which would be determined in accordance with Schedule 2 if—

- (i) the surviving dependant were entitled to an annual payment; and  
(ii) the modifications in paragraph 6 applied;

- (b) where there are two or more surviving dependants, the sum of the actual pensions of all the surviving dependants of that qualifying member which would be determined in accordance with Schedule 2 if—

- (i) the surviving dependants were entitled to annual payments; and  
(ii) the modifications in paragraph 6 applied;

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied;

“F” means one half of the product of—

$$(C(A \times 0.9)) + H$$

“H” means the aggregate of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled before the day on which the qualifying member died; and

“N” means the number of surviving dependants of that qualifying member.”;

(c) in paragraph 3—

(i) at the beginning of sub-paragraph (2) insert “Except where sub-paragraph (2A) applies,”;

(ii) for the formula in sub-paragraph (2) substitute—

$$\frac{(C(A \times 0.9)) + H}{2} - E$$

(iii) after sub-paragraph (2) insert—

“(2A) Where a qualifying member was a party to a polygamous marriage, the amount of an interim ill health payment payable to each survivor shall be—

$$\frac{(C(A \times 0.9)) + H}{2} - F$$

$$\frac{\quad}{N}$$

(iv) in sub-paragraph (3)—

(aa) after the definition of “D” omit “and”;

(bb) after the definition of “E” insert—

““F” means the sum of the interim pensions of all the survivors which would have been determined in accordance with Schedule 2 if—

(a) the survivors had been entitled to initial payments; and

(b) the modifications in paragraph 6 applied;

“H” means the aggregate of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled before the day on which the qualifying member died; and

“N” means the number of survivors of that qualifying member.”;

(v) in sub-paragraph (4) for “paragraphs 4 and 7” substitute “paragraph 7”;

(d) after paragraph 3, insert—

**“Amount of an interim ill health payment for a surviving dependant**

**3A.—**(1) The amount of an interim ill health payment payable to a surviving dependant of a qualifying member shall be determined in accordance with sub-paragraphs (2) to (5).

(2) Where an interim ill health payment is also payable to a survivor of the qualifying member and—

(a) there is only one surviving dependant, the amount of the interim ill health payment shall be—

$$\frac{F}{2} - G$$

(b) there are two or more surviving dependants, the amount of the interim ill health payment shall be—

$$\frac{F - G}{N}$$

(3) Where the qualifying member does not have a survivor and—

(a) there is only one surviving dependant, the amount of the interim ill health payment shall be—

$$F - G$$

(b) there are two or more surviving dependants, the amount of the ill health payment shall be—

$$\frac{(2 \times F) - G}{N}$$

(4) Where—

(a) a survivor of a qualifying member, who is not a person who is treated as a survivor under regulation 37 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009, dies; or

(b) a person ceases to be a surviving dependant of a qualifying member,

the interim ill health payment payable to a surviving dependant of that qualifying member shall be redetermined with effect from the day after the day on which the survivor died or the person ceased to be a surviving dependant.

(5) In this paragraph—

“A” means the amount of expected pension which would be determined in accordance with Schedule 2 if—

(a) the qualifying member were entitled to an annual payment; and

(b) the modifications in paragraph 6 applied;

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied;

“F” means one half of the product of—

$$(C(A \times 0.9)) + H$$

“G” means—

(a) where there is only one surviving dependant, the interim pension of the surviving dependant which would be determined in accordance with Schedule 2 if—

(i) the surviving dependant was entitled to an annual payment; and

(ii) the modifications in paragraph 6 applied;

(b) where there are two or more surviving dependants, the sum of the interim pensions of all the surviving dependants which would be determined in accordance with Schedule 2 if—

(i) the surviving dependants were entitled to annual payments; and

(ii) the modifications in paragraph 6 applied;

“H” means the aggregate of any annual increases determined in accordance with paragraph 9 to which the qualifying member was entitled before the day on which the qualifying member died; and

“N” means the number of surviving dependants of that qualifying member.”;

- (e) omit paragraph 4;
- (f) in paragraph 5—
  - (i) omit “by the scheme manager”; and
  - (ii) in sub-paragraph (c) for “scheme manager” substitute “person determining the factor”;
- (g) in paragraph 6—
  - (i) before sub-paragraph (a) insert—
    - “(za) in paragraph 2(1), for the words from “the later of” to the end of paragraph (b), substitute “the day on which the beneficiary is entitled to an ill health payment in accordance with regulation 17A”;
    - (zb) in paragraph 4(3)—
      - (i) after paragraph (b) insert “and”;
      - (ii) after paragraph (c) omit “and”; and
      - (iii) omit paragraph (d);”;
    - (ii) in sub-paragraph (a) for “paragraphs 4(5)(b) and” substitute “paragraph”;
    - (iii) for sub-paragraph (b) substitute—
      - “(b) in paragraph 4(7)(b)(i) for “the day on which the qualifying member attains normal retirement age” substitute “the day from which the qualifying member is entitled to an ill health payment in accordance with regulation 17A(1)”;
    - (iv) after sub-paragraph (b) insert—
      - “(ba) in paragraph 4(10) for “annual payment” substitute “ill health payment”; and
    - (v) in sub-paragraph (d) for “paragraphs 7 and 9” substitute “paragraphs 2A, 4(13) to (13D), 4A, 7, 9 and 10”;
  - (h) in paragraph 7—
    - (i) for sub-paragraph (1) substitute—
      - “(1) Where the amount of a qualifying member’s expected pension determined in accordance with paragraph 2, 3 or 3A multiplied by 0.9 exceeds the FAS cap—
        - (a) the amount of the ill health payment or interim ill health payment payable to, or in respect of, that member under paragraph 2, 2A, 3 or 3A shall be determined on the basis that the product of that calculation was the amount of the FAS cap; and
        - (b) the amount “A” under paragraph 2 for the purposes of paragraph (b) (i) in the definition of “underlying rate” in paragraph 9 shall be the amount of the FAS cap;”;
      - (ii) in sub-paragraph (2), for “£26,000” substitute “the FAS cap”;
      - (iii) after paragraph (2) add—
        - “(3) In this paragraph, “the FAS cap” is—
          - (a) where the qualifying member became entitled to an ill health payment in the period beginning on 1st April 2008 and ending on 31st March 2009, £27,987;



- (b) where the qualifying member became entitled, or becomes entitled, to an ill health payment in the period beginning on 1st April 2009 and ending on 31st March 2010, £29,386; and
  - (c) where the qualifying member becomes entitled to an ill health payment in the period after 31st March 2010, the amount determined in accordance with sub-paragraph (4).
- (4) For each successive period of 12 months from 1st April 2010, the FAS cap shall be—
  - (a) where paragraph (b) does not apply, the amount of the FAS cap for the previous period of 12 months increased by the percentage increase of the retail prices index for the period of 12 months ending on the 30th September falling within that previous period of 12 months; or
  - (b) where there is no such percentage increase, the amount of the FAS cap for the previous period of 12 months.
- (5) Where the amount of the FAS cap determined in accordance with sub-paragraph (3)(c) results in a fraction of a pound, that fraction shall be treated as a pound.”; and
- (i) after paragraph 8 add—

**“Annual increase to an ill health payment**

9.—(1) Except where there is no percentage increase in the retail prices index for the period of 12 months ending with 31st May last falling before the indexation date, a beneficiary entitled to an amount determined in accordance with this Schedule shall be entitled, on the indexation date, to an increase of—

- (a) the appropriate percentage of the amount of the underlying rate immediately before that date, or
  - (b) where the beneficiary first became entitled to an ill health payment during the period of 12 months ending immediately before that date, one twelfth of that amount for each full month since the date on which the ill health payment was first payable.
- (2) In this paragraph—

“appropriate percentage” means the lesser of—

- (a) the percentage increase in the retail prices index for the period of 12 months ending with the 31st May last falling before the indexation date; and
- (b) 2.5%;

“C” means the actuarial factor, determined in accordance with paragraph 5, to be applied;

“E” means so much of the expected pension as is attributable to post-1997 service;

“post-1997 service” means—

- (a) pensionable service (whether actual or notional) which occurs on or after 6th April 1997; or
- (b) where the ill health payment is payable to, or in respect of, a qualifying member who is, or was, a pension credit member of the scheme, pension credit rights deriving from rights attributable to service (whether actual or notional) which occurred on or after 6th April 1997;

“underlying rate” means—

- (a) the aggregate of—
  - (i) the product of X multiplied by  $(C \times E)$ ;
  - (ii) where the beneficiary is a survivor or a surviving dependant of a qualifying member, the product of X multiplied by W; and
  - (iii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date; or
- (b) where paragraph 7(1) applies, the aggregate of—
  - (i) so much of the amount “A” for the purposes of paragraph 2 as is, proportionately, attributable to post-1997 service; and
  - (ii) any annual increases to which the beneficiary is entitled in accordance with sub-paragraph (1) immediately before the indexation date;

“W” means the aggregate of any annual increases to which the qualifying member was entitled in accordance with sub-paragraph (1) on the day before the day on which the qualifying member died;

“X” means—

- (a) 0.9, where the beneficiary is the qualifying member;
- (b) 0.45, where the beneficiary is a survivor who is not a survivor to whom paragraph 2(2A) applies;
- (c) the product of 0.45 divided by Y, where the beneficiary is a survivor to whom paragraph 2(2A) applies;
- (d) the product of 0.9 divided by Z, where the beneficiary is a surviving dependant and the qualifying member does not have a survivor; or
- (e) the product of 0.45 divided by Z, where the beneficiary is a surviving dependant and an ill health payment is also payable to a survivor of the qualifying member;

“Y” means the number of survivors of the qualifying member; and

“Z” means—

- (a) where there is only one surviving dependant, 2; or
- (b) where there is more than one surviving dependant, the number of surviving dependants of the qualifying member.

(3) In any case where the scheme manager is satisfied, having regard to the information available, that it is not possible for the scheme manager to determine the amount of the amount “A” which is attributable to post-1997 service for the purposes of this paragraph, the scheme manager shall determine that amount, having regard to such matters as the scheme manager considers relevant.

### **Annual redetermination**

**10.—(1)** This paragraph applies where—

- (a) on the first indexation date following the date on which the beneficiary first became entitled to an ill health payment; and
- (b) on any indexation date following that first indexation date;

the annual rate of annuity which has been or could have been paid to the beneficiary as at that indexation date as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that

liability has, or had been, determined, is higher as a result of indexation or revaluation than the annual rate determined in accordance with the preceding paragraphs of this Schedule.

(2) Where this paragraph applies, the scheme manager shall redetermine the ill health payment payable to that beneficiary with effect from the indexation date.

(3) When redetermining an ill health payment under sub-paragraph (2), the actual pension shall be the annual rate of annuity which has been or could have been paid to the beneficiary as at the indexation date as a result of the purchase of an annuity with the assets available to discharge the liability of the scheme to, or in respect of, the qualifying member after that liability has, or had been, determined, on the basis of, and having regard to, the matters referred to in paragraph 2(3) of Schedule 2.

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of annuity for the purposes of this paragraph, it shall determine that annual rate having regard to such matters as it considers relevant.

(5) Where the scheme manager is satisfied that increases have been, are being, or will be made to the annual rate of annuity, and it considers that those increases are not reasonable, it may determine the annual rate of annuity for the purposes of this paragraph on the basis of the sum which would discharge the liability of the scheme to the beneficiary and of such other matters as it considers relevant.

### **Bridging pensions**

**11.—**(1) This paragraph applies where—

- (a) the annual rate of the pension determined for the purposes of calculating the expected pension under paragraph 3(2) or 4(2) of Schedule 2 (for the purposes of determining an ill health payment) includes an amount which, under the scheme rules, was payable for a period which is shorter than the period in respect of which the remainder of the pension was payable; and
- (b) an annuity has been purchased for the beneficiary which provides for payment of a pension to the beneficiary at a lower annual rate from the date on which amount referred to in paragraph (a) would have ceased to be payable under the rules of the pension scheme.

(2) Where this paragraph applies, the scheme manager shall redetermine the ill health payment payable to that beneficiary with effect from the date on which the amount referred to in sub-paragraph (1)(a) would have ceased to be payable under the rules of the pension scheme.

(3) When redetermining an ill health payment under sub-paragraph (2)—

- (a) the annual rate of the pension for the purposes of paragraph 3(3)(a) of Schedule 2 shall be the annual rate of pension which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme less the annual amount which was payable for the shorter period referred to in sub-paragraph (1)(a), as at the day which is the day before the day on which the qualifying pension scheme began to be wound up;
- (b) the annual rate of the pension for the purposes of paragraph 3(3)(b)(i) of Schedule 2 shall be the amount which was or should have been in payment to the qualifying member in accordance with the scheme rules in respect of rights accrued in a qualifying pension scheme less the annual amount which was payable for the shorter period referred to in sub-paragraph (1)(a), as at the day on which the qualifying member attained normal retirement age;

- (c) the amount specified in paragraph 4(3)(a) of Schedule 2 shall be the amount determined in accordance with that paragraph less the amount which is the amount which was payable for the shorter period referred to in sub-paragraph (1) (a);
- (d) the amount which was payable for the shorter period referred to in sub-paragraph (1)(a) shall be disregarded when determining the revaluation amounts; and
- (e) the beneficiary shall be entitled to so much of the total amount of the annual increases determined in accordance with paragraph 9 payable to the beneficiary as at the date referred to in sub-paragraph (2) as are attributable to the amount of expected pension determined in accordance with this paragraph.

(4) In any case where the scheme manager is satisfied, having regard to the information available to it, that it is not possible for it to determine the annual rate of pension for the purposes of sub-paragraph (3)(a) or (b) or any one of the amounts for the purposes of sub-paragraph (3)(c) to (e) it shall determine that annual rate or amount, having regard to such matters as it considers relevant.

- (5) In sub-paragraph (3)(d) “the revaluation amounts” means—
  - (a) the revaluation amount referred to in paragraph 3(3)(b)(ii) of Schedule 2; and
  - (b) the revaluation amounts referred to in paragraph 4(3)(b) and (c) of Schedule 2.”.

## PART 3

### Amendment of the FAS Information and Payments Regulations

#### **Amendment of the FAS Information and Payments Regulations**

**32.**—(1) The FAS Information and Payments Regulations are amended in accordance with this regulation.

- (2) In regulation 2 (interpretation)—
  - (a) in paragraph (1)—
    - (i) before the definition of “the FAS Regulations” insert—
      - ““the 2009 Regulations” means the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009;
      - “the Act” means the Pensions Act 2004(18);”;
    - (ii) omit the definition of “appointed representative”;
    - (iii) at the end of the definition of “beneficiary” insert “and surviving dependants”;
    - (iv) in the definition of “potential beneficiary”, for “the scheme manager in accordance with regulation 3(3)(a)” substitute “in accordance with regulation 3(3)(a) to the scheme manager or a person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act”; and
    - (v) for the definition of “survivor” substitute—
      - ““surviving dependant” shall be construed in accordance with regulation 16B of the FAS Regulations;

“survivor” shall be construed in accordance with regulation 16A of the FAS Regulations;” and

(b) after paragraph (1) insert—

“(1A) In the definition of “normal retirement age” in paragraph (1), “the rules of that scheme” means the rules of the occupational pension scheme on the date on which benefits ceased to accrue to that member.

(1B) Subject to paragraph (1C), in these Regulations “appointed representative” means a person—

(a) whose name and address, and those appointment by a beneficiary or potential beneficiary for the purposes of providing information to the scheme manager under regulation 4, have been notified to the scheme manager in a document signed by the beneficiary or potential beneficiary in question or by the legal representative of the beneficiary or potential beneficiary; and

(b) whose appointment has been consented to by the scheme manager.

(1C) Subject to paragraph (1D), where a beneficiary or a potential beneficiary is a child aged less than 18, the scheme manager may regard—

(a) a parent of the child;

(b) a person with parental responsibility within the meaning of section 3 of the Children Act 1989<sup>(19)</sup> in relation to the child;

(c) a person with parental responsibility or parental rights under the Children (Scotland) Act 1995<sup>(20)</sup> in relation to the child; or

(d) a person with parental responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995<sup>(21)</sup> in relation to the child,

as the appointed representative of that child.

(1D) Where—

(a) no person referred to in paragraph (1C)(a) to (d) is known to the scheme manager, the scheme manager may appoint a person to act as the appointed representative of a child;

(b) more than one person referred to in paragraph (1C)(a) to (d) wishes to act as the child’s representative for the purposes of these Regulations, the scheme manager may appoint one of those persons as the appointed representative of that child.

(1E) In—

(a) regulation 3(3)(a) (information to be provided by, and to, appropriate persons);

(b) regulation 4 (information to be provided by beneficiaries and potential beneficiaries and their personal representatives);

(c) regulation 5 (method of providing information);

(d) regulation 6(1) (insufficient or unsuitable information); and

(e) paragraph 1(2) of Schedule 1 (information to be provided by appropriate persons),

a reference to the scheme manager includes a reference to a person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act and who is

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<sup>(19)</sup> 1989 c.41.

<sup>(20)</sup> 1995 c.36.

<sup>(21)</sup> S.I. 1995/755 (N.I.2).

authorised by the scheme manager to be the person to whom information is to be provided in accordance with these Regulations.”.

- (3) In regulations 3(1) and 6(1)(a), for “him” substitute “it”.
- (4) In each place it occurs in—
  - (a) regulation 3(2);
  - (b) regulation 6; and
  - (c) paragraph 1(1) of Schedule 1,
 for “he” substitute “it”.
- (5) In regulation 5(4)(b), after “a survivor” insert “or surviving dependant”.
- (6) In regulation 6(1), for “he may” substitute “the scheme manager may”.
- (7) In regulation 7, after paragraph (3) insert—
 

“(4) An amount recovered by the scheme manager under paragraph (1) must be paid to the Secretary of State.”.
- (8) In regulation 8(1) omit “monthly”.
- (9) In paragraph 1 of Schedule 1 (information to be provided by appropriate persons)—
  - (a) in the table in sub-paragraph (2)—
    - (i) in the second column of the fourth item in the table in sub-paragraph (2)—
      - (aa) after “or any survivor” insert “or surviving dependant”;
      - (bb) after paragraph (f) insert—
 

“(fa) such information as is necessary to determine if the member or former member has a survivor or any surviving dependants;”;
      - (cc) after paragraph (j) insert—
 

“(ja) where applicable, the annual rate of annuity which has been purchased for or in respect of a beneficiary or potential beneficiary, the amount paid for that annuity, the date on which it was purchased and the name, address and telephone number of the annuity provider;
      - (jb) where applicable, information detailing whether a purchased annuity included revaluation, indexation or payments at or in respect of ages other than normal retirement age and if so, the relevant rate secured and the dates at which such payments or increases are payable;
      - (jc) where applicable, the amount of any transfer payment, interim pension or lump sum (including any winding-up lump sum) made after the day on which the scheme began to be wound up and the dates on which those amounts were paid;
      - (jd) where applicable, any amount paid to restore the state scheme rights of a member or former member of the scheme and the date on which that amount was paid;”;
    - (dd) in paragraph (l) after “inaccurate in a particular case” insert “or will not be sufficient to enable a reviewable determination to be made”;
  - (ii) after the sixth item insert a seventh, eighth, ninth, tenth and eleventh item containing—

- (aa) in the second column of the seventh item, the words “Any changes to information provided in accordance with these Regulations.”;
- (bb) in the third column of the seventh item, the words “The period of 14 days beginning on the day on which the change took place.”;
- (cc) in the second column of the eighth item, the words “Details of all expenditure incurred by the scheme in each period of 3 months (or such shorter or longer period as the scheme manager may determine in relation to a qualifying pension scheme), the first such period beginning on the date determined by the scheme manager in respect of the qualifying pension scheme.”;
- (dd) in the third column of the eighth item, the words “The period of 14 days following the end of the period to which the information relates.”;
- (ee) in the second column of the ninth item, the words “Details of any significant changes in the level of expenditure incurred by the scheme.”;
- (ff) in the third column of the ninth item, the words “The period of 14 days beginning on the day on which the change took place.”;
- (gg) in the second column of the tenth item, the words “Details of any contemplated significant changes in the investment of the scheme’s assets”;
- (hh) in the third column of the tenth item, the words “The period of 14 days beginning on the day on which the appropriate person becomes aware of any such contemplated changes”;
- (ii) in the second column of the eleventh item, the words—
  - “Details of any—
  - (a) legal actions or proceedings;
  - (b) contemplated legal actions or proceedings;
  - (c) complaints made, or disputes or questions referred, to the Pensions Ombudsman under Part 10 of the Pension Schemes Act 1993<sup>(22)</sup> or, as the case may be, Part 10 of the Pension Schemes (Northern Ireland) Act 1993<sup>(23)</sup>; or
  - (d) arbitration, dispute resolution procedures or negotiations intended to lead or leading to a settlement or compromise of any legal action or proceeding,relating to a qualifying pension scheme.”; and
- (jj) in the third column of the eleventh item, the words—
  - “The latest of—
  - (a) the period of 28 days beginning on the day on which the 2009 Regulations come into force;
  - (b) the period of 28 days beginning on the notification date; or
  - (c) the period of 28 days beginning on the day on which the appropriate person becomes aware of any of the matters in the second column.”;
- (b) for sub-paragraph (3) substitute—

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(22) 1993 c.48. Part 10 was amended by the Pensions Act 1995 (c.26), the Child Support, Pensions and Social Security Act 2000 (c.19), the Pensions Act 2004 (c.35) and S.I. 2005/2053.

(23) 1993 c.49. Part 10 was amended by the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I.22)), the Child Support, Pensions and Social Security Act (Northern Ireland) 2000 (c.4 (N.I.)), the Pensions (Northern Ireland) Order 2005 (S.I.2005/255 (N.I.1)) and S.R. 2005 No.434.

“(3) Subject to sub-paragraphs (3A) and (4), the period for information to be provided in relation to each member or former member or any survivor or surviving dependant of a member or former member of a qualifying pension scheme is—

- (a) in relation to each member or former member who has not attained normal retirement age on or before the date which is 6 months after the date on which the 2009 Regulations come into force, the period of 3 months ending 3 months before the day on which the member or former member attains normal retirement age;
- (b) in relation to each member or former member who has attained normal retirement age on or before the date on which the 2009 Regulations come into force, the period ending 3 months after that date;
- (c) in relation to any survivor or surviving dependant for or in respect of whom an annuity has been purchased and is in payment before the date on which the 2009 Regulations come into force, the period ending 3 months after those Regulations come into force; or
- (d) in relation to any survivor or surviving dependant of a qualifying member who dies after the date on which the 2009 Regulations come into force, the period ending one month after the day on which the appropriate person became aware that the qualifying member has died.

(3A) Where—

- (a) accurate information of the description specified in the table in sub-paragraph (2) can be provided before the period determined in accordance with sub-paragraph (3), the period for information to be provided is the period ending as soon as that accurate information can be provided;
- (b) the scheme manager determines that the information can be, and should be, provided in a period other than the period determined in accordance with sub-paragraph (3), scheme manager may determine the period for the provision of that information; and
- (c) information has been requested by the scheme manager in accordance with these Regulations before the date on which the 2009 Regulations come into force, the information shall be provided by the date determined by the scheme manager in that request.”;

(c) omit sub-paragraphs (5) and (6).

(10) After paragraph 1 of Schedule 1 insert—

“2.—(1) This paragraph applies where the scheme manager has made arrangements with a person under paragraph 18 of Schedule 5 to the Act (as modified by Schedule 1 to the FAS Regulations) and the scheme manager has authorised that person to be the person to whom information is to be provided in accordance with these Regulations.

(2) Where this paragraph applies, appropriate persons shall be notified of the identity of the person so authorised in writing by—

- (a) the scheme manager; or
- (b) the person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act.”.

(11) After paragraph 1 of Schedule 2 (information to be provided by beneficiaries and potential beneficiaries) insert—



“2.—(1) This paragraph applies where the scheme manager has made arrangements with a person under paragraph 18 of Schedule 5 to the Act (as modified by Schedule 1 to the FAS Regulations) and the scheme manager has authorised that person to be the person to whom information is to be provided in accordance with these Regulations.

(2) Where this paragraph applies, beneficiaries and potential beneficiaries shall be notified of the identity of the person so authorised in writing by—

- (a) the scheme manager; or
- (b) the person with whom the scheme manager has made arrangements under paragraph 18 of Schedule 5 to the Act.”.

## PART 4

### Amendment of the FAS Internal Review Regulations and the FAS Appeals Regulations

#### Amendment of the FAS Internal Review Regulations

33.—(1) The FAS Internal Review Regulations are amended in accordance with this regulation.

(2) In each place it occurs (except in regulations 2(1)(c) and 5(1)(b)(ii)), after “member eligibility” insert “, survivor eligibility”.

(3) In regulation 1, after the definition of “scheme manager” insert—

““surviving dependant” has the meaning given in regulation 2(1) of the FAS Regulations;”.

(4) In regulation 2—

(a) after paragraph (1)(c) insert—

“(ca) whether or not a person is a survivor or surviving dependant of a qualifying member (“survivor eligibility”);

(b) in paragraph (1)(d)—

(i) after “a survivor” insert “or surviving dependant”; and

(ii) after “regulation 17” insert “or 17C”; and

(c) in paragraph (1)(f), after “a survivor” insert “or surviving dependant”.

(5) In regulation 3—

(a) in paragraph (1)(b)(ii), for “or survivor” substitute “, survivor or surviving dependant”;

(b) in paragraph (1A)(a) after “issued on the” insert “scheme manager’s”; and

(c) in paragraph (1A)(b) after “as a group,” insert “or to their survivors and surviving dependants, or to a class of such survivors or surviving dependants”.

(6) In each place it occurs in—

(a) regulation 4(2)(b);

(b) regulation 8(1)(b)(i) and (2)(a); and

(c) regulation 11(1) to (3),

for “he” substitute “it”.

(7) In each place it occurs in regulation 8(1) for “his” substitute “its”.

(8) In each place it occurs in regulation 8(2) and 10(b) for “him” substitute “it”.

(9) After regulation 17, insert—

### **“Representation of children**

**18.**—(1) Subject to paragraph (2), where any interested person is a child aged less than 18, the scheme manager may treat—

- (a) a parent of the child;
- (b) a person with parental responsibility within the meaning of section 3 of the Children Act 1989 in relation to the child;
- (c) a person with parental responsibility or parental rights under the Children (Scotland) Act 1995 in relation to the child;
- (d) a person with parental responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995 in relation to the child,

as a person appointed to act as that child’s representative for the purposes of these Regulations.

(2) Where—

- (a) no person referred to in paragraph (1) is known to the scheme manager, the scheme manager may appoint a person to act as that child’s representative for the purposes of these Regulations;
- (b) more than one person referred to in paragraph (1) wishes to act as the child’s representative for the purposes of these Regulations, the scheme manager may appoint one of those persons as the representative of that child.”.

### **Amendment of the FAS Appeals Regulations**

**34.**—(1) The FAS Appeals Regulations are amended in accordance with this regulation.

(2) In regulation 2 (interpretation)—

- (a) in the definitions of “beneficiary” and “member assessment decision” after “survivor” insert “or surviving dependant”;
- (b) after the definition of “subsequent review decision” insert—  
““surviving dependant” has the meaning given in regulation 2(1) of the FAS Regulations;”; and
- (c) after the definition of “survivor” insert—  
““survivor eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not a person is a survivor or surviving dependant of a qualifying member;”.

(3) In regulations 6(2)(b) (notice of appeal) and 17(4)(a) (time and place of oral hearings), after “member eligibility decision” insert “, a survivor eligibility decision”.

(4) In regulation 23(9) for “him” substitute “it”.

## PART 5

### Amendment of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008

#### **Amendment of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008**

**35.** In the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008(24) omit Part 4 (transitional provision).

## PART 6

### Transitional provisions

#### **Transitional provision - reporting**

**36.**—(1) The Secretary of State must prepare a report on the financial assistance scheme for the period beginning on 1st April 2009 and ending on the day before the day these Regulations come into force.

(2) The report must deal with the operation of the financial assistance scheme in the period to which it relates and in particular—

- (a) the number of persons who have received payments under the FAS Regulations; and
- (b) the total amount of those payments.

(3) The Secretary of State must lay a copy of the report prepared in accordance with paragraph (1) before each House of Parliament.

#### **Transitional provisions – payments to survivors**

**37.** Where—

- (a) the widow, widower or surviving civil partner of a qualifying member has, before the date on which these Regulations come into force, received an instalment of an annual payment, an initial payment, an ill health payment or an interim ill health payment; and
- (b) that widow, widower or surviving civil partner would not otherwise be entitled to that payment following the coming into force of these Regulations;

that widow, widower or surviving civil partner shall be treated as a survivor of a qualifying member for the purposes of the FAS Regulations.

#### **Transitional provisions – payments to beneficiaries**

**38.**—(1) Except where paragraph (4) applies, where a beneficiary was a beneficiary to whom regulation 8 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 applied before the coming into force of these Regulations, the amount of that beneficiary's initial payment or annual payment shall be the amount to which the beneficiary was entitled before the coming into force of these Regulations.

(2) Except where paragraph (4) applies, where a beneficiary—

- (a) was not a beneficiary to whom regulation 8 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 applied;

- (b) had received an instalment of an annual payment or ill health payment before the date on which these Regulations come into force; and
- (c) was entitled to a higher amount by way of annual payment or ill health payment before these Regulations come into force,

the amount of that beneficiary's annual payment or ill health payment shall be the amount to which the beneficiary was entitled before the coming into force of these Regulations.

(3) Except where paragraph (4) applies, where a qualifying member to whom paragraph (1) or (2) applies dies, the expected pension and actual pension for the purposes of determining any payment to a survivor or surviving dependant of that qualifying member shall be the amounts which were the expected pension and actual pension for the purposes of the determination of the payment in respect of the qualifying member.

(4) This paragraph applies where the amount of the annual payment, initial payment or ill-health payment to which the beneficiary would be entitled if paragraphs (1) to (3) did not apply would be higher than the amount to which the beneficiary is entitled in accordance with paragraphs (1) to (3).

(5) Where paragraph (1) or (2) applies, the beneficiary's expected pension and actual pension shall be the amounts determined in accordance with the FAS Regulations and regulation 8 of the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 as if these Regulations had not come into force.

Signatory text

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Work and Pensions

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations amend the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986, as amended) (“the FAS Regulations”) which allow for payments to be made to, or in respect of, certain members or former members of certain occupational pension schemes where the liabilities of the scheme to those members are unlikely or unable to be satisfied in full.

They also amend the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (S.I. 2005/2189, as amended), the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994, as amended), the Financial Assistance Scheme (Appeals) Regulations (S.I. 2005/3273, as amended) and the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 (S.I. 2008/1432) in relation to the financial assistance scheme (“the FAS”).

Part 2 amends the FAS Regulations. In particular it—

- (a) confers the function of managing the FAS (being “the scheme manager”) on the Board of the Pension Protection Fund and makes related provision, including provision as to financial arrangements;
- (b) makes provision for certain information held to be disclosed to or by the scheme manager;
- (c) provides a discretion for the scheme manager to make payments in respect of qualifying pension schemes to enable or assist the payment of administration or other costs relating to those schemes;
- (d) makes changes to the way in which the FAS payments are calculated—
  - (i) to take account of any changes in any annuity purchased for, or in respect of, a qualifying member;
  - (ii) to take account of bridging pensions and pension payable at ages other than the normal retirement age;
  - (iii) to change provisions relating to the FAS cap; and
  - (iv) to provide for an annual increase to the payments in respect of any pensionable service after 6 April 1997;
- (e) makes provision for payments to surviving dependants of qualifying members, amends the definition of survivor to extend survivor payments to surviving partners of the qualifying member and makes specific provision in relation to survivors of a qualifying member who is a party to a polygamous marriage; and
- (f) makes certain changes to the administration of the FAS, for example provision so that FAS payments can be paid in instalments other than monthly instalments and provisions to enable the scheme manager to delegate certain functions to another person.

Part 3 amends the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005. In particular it amends the information which must be provided to the scheme manager (or to a person authorised by the scheme manager) to support the changes being made to the FAS.

Part 4 amends the Financial Assistance Scheme (Internal Review) Regulations 2005 and the Financial Assistance Scheme (Appeals) Regulations 2005 in order to make provision for the internal

**Draft Legislation:** This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: *The Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 No. 1851*

review and appeal of certain decisions relating to surviving dependants and to make provision for the representation of children aged under 18.

Part 5 amends the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008 to omit the transitional provisions.

Part 6 makes certain transitional provisions relating to reporting requirements and payments to those already receiving certain payments under the FAS. The provisions carry forward the provisions omitted from the Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2008.

Before making these Regulations the Secretary of State consulted such persons as he considers appropriate.

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