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STATUTORY INSTRUMENTS

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**2008 No. 1903**

**PENSIONS**

**The Financial Assistance Scheme  
(Miscellaneous Amendments) Regulations 2008**

*Made - - - - 16th July 2008*

*Coming into force in accordance with regulation 1*

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by section 181(1) of, and paragraph 5(3B) of Schedule 2 to, the Pension Schemes Act 1993<sup>(1)</sup>, paragraph 5(3B) and (4A) of Schedule 1 to the Pension Schemes (Northern Ireland) Act 1993<sup>(2)</sup> and now vested in him<sup>(3)</sup> and sections 286, 315(2) and (4) and 318(1) of the Pensions Act 2004<sup>(4)</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.

Except in relation to regulation 22, the Secretary of State has consulted such persons as he considers appropriate in accordance with section 185(1) of the Pension Schemes Act 1993<sup>(5)</sup> and section 317(1) of the Pensions Act 2004.

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- (1) 1993 c.48. Paragraph 5(3B) was inserted by section 141 of the Pensions Act 1995 (c.26). Section 181(1) is cited because of the meaning given to “regulations”.
- (2) 1993 c.49. Paragraph 5(3B) was inserted by Article 138(2)(b) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I.22)) and amended by paragraph 77(5)(c) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671). Paragraph 5(4A) was added by paragraph 77(5)(d) of Schedule 1 to S.I.1999/671 and is cited because of the meaning given to “regulations”.
- (3) See paragraph 5(4A) of Schedule 1 to the Pension Schemes (Northern Ireland) Act 1993.
- (4) 2004 c.35. Section 286 was amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993 and 2005/2113). Section 318(1) is cited because of the meanings given to “prescribed” and “regulations”.
- (5) Section 185(1) was amended by paragraph 46 of Schedule 3 to, and paragraph 80(a) of Schedule 5 to, the Pensions Act 1995.

## PART 1

### Introductory

#### Citation and commencement

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

#### Interpretation

2. In these Regulations—

“the FAS Appeals Regulations” means the Financial Assistance Scheme (Appeals) Regulations 2005(6);

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(7);

“the FAS Internal Review Regulations” means the Financial Assistance Scheme (Internal Review) Regulations 2005(8); and

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(9).

#### Application

3.—(1) Regulation 21 does not apply in relation to Northern Ireland.

(2) Regulation 22 applies only in relation to Northern Ireland.

## PART 2

### Amendment of the FAS Regulations

#### Amendment of the FAS Regulations

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

#### Amendment of Part 1

5.—(1) In regulation 2(1) (interpretation)—

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

““certification date” means the date for which the relevant information provided in relation to a qualifying member, or a survivor of a qualifying member, is correct;

“ill health payment” means the amount payable to a beneficiary in respect of each year determined in accordance with regulation 17A and Schedule 2A;”;

(b) after the definition of “initial payment” insert—

““interim ill health payment” means a payment made to a beneficiary in accordance with regulation 17B;

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(6) S.I. 2005/3273 as amended by S.I. 2006/3370.

(7) S.I. 2005/2189 as amended by S.I. 2005/3256 and 2007/3581.

(8) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349 and 2006/3370.

(9) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581 and 2008/1432.

“interim pension” has the meaning given in paragraph 2 of Schedule 2 as modified by paragraph 10 of that Schedule;”.

- (2) In regulation 4(2) (application of Parts 1 and 2 of the Act), after paragraph (b) insert—  
“(ba) section 134 (directions);”.

### **Amendment of Part 2**

6. After regulation 5 (scheme manager) insert—

#### **“Functions of the Board of the Pension Protection Fund in relation to the financial assistance scheme**

- 5A.—**(1) The Board of the Pension Protection Fund—
- (a) shall, on the request of the scheme manager, provide advice to the scheme manager in relation to the financial assistance scheme;
  - (b) 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)(b) 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.
- (3) The Secretary of State shall pay a grant to the Board of the Pension Protection Fund in connection with the functions in paragraph (1).”.

### **Amendment of Part 3**

- 7.—(1) In regulation 9 (qualifying pension schemes)—
- (a) for paragraph (1)(c) substitute—
    - “(c) either—
    - (i) the employer in relation to that scheme satisfies the condition in regulation 11;
    - (ii) in relation to a multi-employer scheme, the condition in regulation 12 is satisfied;
    - (iii) in relation to a scheme which is not a multi-employer scheme and which began to wind up before 6th April 1997, the condition in regulation 12A(1) is satisfied;
    - (iv) in relation to a multi-employer scheme which began to wind up before 6th April 1997, the condition in regulation 12B(1) or (2) is satisfied;
    - (v) in relation to a scheme which is not a multi-employer scheme and which began to wind up on or after 6th April 1997 but before 11th June 2003, the condition in regulation 12A(2) is satisfied; or

- (vi) in relation to a multi-employer scheme which began to wind up on or after 6th April 1997, the condition in regulation 12B(3) or (4) is satisfied;”;
- (b) at the beginning of paragraph (1)(ca) insert “where paragraph (i) or (ii) of sub-paragraph (c) applies,”; and
- (c) in paragraph (1)(ca), for “sub-paragraph (c)” substitute “those paragraphs”.
- (2) In regulation 11(1), for “regulation 9(1)(c)” substitute “regulation 9(1)(c)(i)”.
- (3) In paragraphs (1) and (2) of regulation 12, for “regulation 9(1)(c)” substitute “regulation 9(1)(c)(ii)”.
- (4) After regulation 12 insert—

**“Employer-related condition**

**12A.**—(1) The condition to be satisfied for the purposes of regulation 9(1)(c)(iii) is that the employer discharged the debt due under section 144 of the 1993 Act or that no debt was due under that section when the scheme began to wind up.

(2) The condition to be satisfied for the purposes of regulation 9(1)(c)(v) is that the employer discharged the debt due under section 75 of the 1995 Act or that no debt was due under that section when the scheme began to wind up.

(3) The scheme manager may treat the condition in paragraph (1) or (2) as being satisfied where—

- (a) he is satisfied that an appropriate proportion of the debt was discharged or is likely to be discharged; and
- (b) in his opinion, it was reasonable that the debt due under section 144 of the 1993 Act, or section 75 of the 1995 Act as appropriate, has not been discharged.

(4) In this regulation the reference to the employer shall be interpreted in accordance with regulation 11(2).

**Employer-related condition: multi-employer schemes**

**12B.**—(1) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that—

- (a) the debt due under section 144 of the 1993 Act was discharged by all the employers in that section of the scheme; or
- (b) no debt was due under that section of that Act when the scheme began to wind up.

(2) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that—

- (a) the debt due under section 144 of the 1993 Act was discharged by all the employers to which the scheme relates; or
- (b) no debt was due under that section of that Act when the scheme began to wind up.

(3) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(vi) is that—

- (a) the debt due under section 75 of the 1995 Act was discharged by all the employers in that section of the scheme; or
- (b) no debt was due under that section of that Act when the scheme began to wind up.

(4) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(vi) is that—

- (a) the debt due under section 75 of the 1995 Act was discharged by all the employers to which the scheme relates; or
  - (b) no debt was due under that section of that Act when the scheme began to wind up.
- (5) The scheme manager may treat any condition in paragraphs (1) to (4) as being satisfied where—
- (a) he is satisfied that an appropriate proportion of the debt was, or is likely to be, discharged; and
  - (b) in his opinion, it was reasonable that the debt due under section 144 of the 1993 Act, or section 75 of the 1995 Act as appropriate, or a proportion of that debt has not been discharged.
- (6) In this regulation—
- (a) the references to the employer in paragraphs (1) and (3) shall be interpreted in accordance with regulation 12(3);
  - (b) the references to the employer in paragraphs (2) and (4) shall be interpreted in accordance with regulation 12(4); and
  - (c) “sectionalised multi-employer scheme” has the meaning given by regulation 12(6).”.

#### **Amendment of regulation 15**

**8.** At the beginning of paragraph (5) of regulation 15 (qualifying members) insert “Except for the purposes of regulations 17A and 17B,”.

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

- 9.** In regulation 17 (annual payments)—
- (a) in paragraph (2)(10), after “paragraph (3) or (3A) applies” insert “or where the qualifying member is receiving an ill health payment under regulation 17A(1) or an interim ill health payment under regulation 17B(2)”;
  - (b) at the beginning of paragraph (3) insert “Except where the qualifying member is receiving an ill health payment under regulation 17A(1) or an interim ill health payment under regulation 17B(2),”; and
  - (c) at the beginning of paragraph (4) insert “Except where regulation 17A(3) applies,”.

#### **Insertion of regulations 17A and 17B**

**10.** After regulation 17 insert—

##### **“Ill health payments**

**17A.—**(1) Except where the qualifying member is entitled to an annual payment under regulation 17(2) or (3), where the scheme manager is satisfied that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age, that member shall be entitled to a payment (“an ill health payment”) in accordance with paragraph 2 of Schedule 2A from—

- (a) the day on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 come into force;

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(10) Paragraph (2) was amended by [S.I. 2008/1432](#).

- (b) subject to paragraph (2), the day on which the scheme manager is first notified that that member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; or
- (c) the day on which the member attains the age which is 5 years less than normal retirement age,

whichever is the latest.

(2) Where the scheme manager—

- (a) has been notified that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age;
- (b) is not so satisfied or the qualifying member withdraws the notification; and
- (c) receives a further notification in relation to that qualifying member and is then so satisfied,

the day which is the day for the purposes of paragraph (1)(b) is the day of the later notification.

(3) Where—

- (a) a qualifying member of a qualifying pension scheme has died and leaves a survivor; and
- (b) that qualifying member was receiving an ill health payment or an interim ill health payment when he died,

the survivor of that qualifying member shall be entitled to an ill health payment from the day after the day on which that qualifying member died.

(4) An ill health payment shall be made in respect of a year starting on the day on which a monthly instalment of the ill health payment or, as the case may be, an interim ill health payment, is first payable to a beneficiary by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

(5) In determining the amount of an ill health payment that is payable to, or in respect of, a beneficiary for any previous year or years (“arrears payable”)—

- (a) the total of all monthly instalments of an interim ill health payment that have been made to, or in respect of, the beneficiary for any previous year or years is to be deducted from the amount of arrears payable to that beneficiary; and
- (b) if the total of all such monthly instalments is greater than that amount of arrears payable—
  - (i) the amount to be paid in respect of arrears payable is nil, and
  - (ii) the difference between that total and the amount of arrears payable is recoverable from the member in accordance with regulation 7 of the FAS Information and Payments Regulations (recovery of overpayments)(11).

(6) Subject to paragraph (7), ill health payments which are payable to a beneficiary under this regulation shall continue for life.

(7) From the day after the day on which a beneficiary dies, 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.

(8) Schedule 2A makes provision for the determination of the amount of ill health payments and the circumstances in which an ill health payment is not payable.

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(11) Regulation 7 was amended by [S.I. 2007/3581](#).

### **Interim ill health payments**

**17B.**—(1) This regulation applies where a qualifying pension scheme is winding up and—

- (a) the scheme manager has been notified that, and is satisfied that, a qualifying member of that scheme is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; or
- (b) a qualifying member of that scheme—
  - (i) has died and leaves a survivor; and
  - (ii) was receiving an interim ill health payment when he died.

(2) The scheme manager may, in his discretion, make an interim ill health payment, in anticipation of an ill health payment being payable under this Part and on account of such a payment—

- (a) to the qualifying member with effect from—
  - (i) the day on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 come into force;
  - (ii) subject to paragraph (3), the day on which the scheme manager is first notified that that member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; or
  - (iii) the day on which the member attains the age which is 5 years less than normal retirement age,whichever is the latest; or
- (b) if the qualifying member has died, to a survivor of that qualifying member with effect from the day after the day on which that qualifying member died.

(3) Where the scheme manager—

- (a) has been notified that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age;
- (b) is not so satisfied or the qualifying member withdraws the notification; and
- (c) receives a further notification in relation to that qualifying member and is then so satisfied,

the day which is the day for the purposes of paragraph (2)(a)(ii) is the day of the later notification.

(4) In exercising his discretion under paragraph (2), the scheme manager shall 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 the qualifying member; and
- (b) any circumstances relating to the scheme which, in the opinion of the scheme manager are relevant to determining whether an interim ill health payment should be made.

(5) Where the trustees or managers have determined the amount of interim pension that would be paid to the qualifying member or the survivor of that qualifying member, but do not propose to pay that interim pension for administrative reasons, the scheme manager may, in exercising his discretion under paragraph (2) and in determining the amount of interim ill health payment under Schedule 2A, deem that member or that survivor to be receiving that interim pension, if in the scheme manager's opinion it is reasonable to do so.

(6) Schedule 2A makes provision for the determination of the amount of interim ill health payments and the circumstances in which an interim ill health payment is not payable.

(7) If the scheme manager determines that an interim ill health payment may be made under paragraph (2), the interim ill health payment is payable—

(a) to a qualifying member from the relevant day mentioned in that paragraph until the day on which the qualifying member—

(i) would have been paid, or is paid, the first monthly instalment of an ill health payment in accordance with regulation 19, if an ill health payment were payable, or is payable, to him under this Part; or

(ii) dies,

whichever is the earlier; and

(b) in respect of a qualifying member who has died, to a survivor of that qualifying member from the day after the day on which that qualifying member died until the day on which his survivor—

(i) would have been paid, or is paid, the first monthly instalment of an ill health payment in accordance with regulation 19, if an ill health payment were payable, or is payable, to him under this Part; or

(ii) dies,

whichever is the earlier.

(8) From the day after the day on which a beneficiary dies, any further monthly instalments of an interim ill health payment that would have been payable to that beneficiary, in respect of that year, cease to be payable.

(9) The scheme manager may, at any time before the amount of the ill health payment is determined, redetermine the amount of any interim ill health payment paid under paragraph (2) if he is satisfied that the amount being paid by way of an interim ill health payment, as determined in accordance with Schedule 2A, may be incorrect.

(10) The power to redetermine the amount of an interim ill health payment under paragraph (9) includes the power to redetermine the amount as a result of a change in the amount of interim pension being paid to the qualifying member.

(11) If, having determined that an interim ill health payment may be made under paragraph (2), the scheme manager subsequently determines, in accordance with Schedule 2A, that no ill health payment is payable to or in respect of that qualifying member or his survivor, then the total of all monthly instalments of an interim ill health pension made to or in respect of that qualifying member or his survivor is recoverable in accordance with regulation 7 of the FAS Information and Payments Regulations.”.

### **Amendment of regulation 18**

**11.** In regulation 18 (initial payments)(12)—

(a) omit paragraphs (2), (3) and (10);

(b) for paragraph (4) substitute—

“(4) The scheme manager may, in his discretion, make a payment (“an initial payment”) to, or in respect of, a qualifying member or his survivor—

(a) in anticipation of an annual payment being payable under this Part to the qualifying member or his survivor, and on account of such a payment; and



- (b) before any monthly instalment of that annual payment is made.
- (4A) An initial payment under paragraph (4) may be made—
  - (a) except where sub-paragraph (c) applies, to the qualifying member with effect from whichever is the later of—
    - (i) 14th May 2004; or
    - (ii) the earlier of—
      - (aa) the day on which the qualifying member attains normal retirement age; or
      - (bb) the day on which the scheme manager is first notified that the qualifying member is terminally ill;
  - (b) if the qualifying member has died, to a survivor of that qualifying member with effect from whichever is the later of—
    - (i) 14th May 2004; or
    - (ii) the day after the day on which that qualifying member died; or
  - (c) if the qualifying member is regarded as a qualifying member under regulation 15(5), to that member with effect from whichever is the later of—
    - (i) 14th May 2004; or
    - (ii) the date on which he became entitled to a present payment from the qualifying pension scheme.”.

#### **Amendment of regulation 19**

- 12.** In regulation 19 (time and manner of payment: general provisions)(**13**)—
  - (a) in paragraph (1), after “the annual payment” insert “, the ill health payment, an interim ill health payment”;
  - (b) in paragraph (3)—
    - (i) at the end of sub-paragraph (a) omit “or”;
    - (ii) after sub-paragraph (b) insert—
      - “(c) the beneficiary becomes entitled to an ill health payment under regulation 17A(1) or (3); or
      - (d) the scheme manager determines that an interim ill health payment may be made under regulation 17B(2).”.

#### **Amendment of Schedule 1**

- 13.** In Schedule 1 (modification of certain provisions of Parts 1 and 2 of the Act)—
  - (a) after paragraph 3 insert—
    - “**3A.** In section 134 (directions)—
      - (a) in subsection (1), for “there is an assessment period in relation to an eligible scheme” substitute “an occupational pension scheme is a qualifying pension scheme under section 286(2) which has not been fully wound up”;
      - (b) in subsection (2), for the words from the beginning to “is kept to a minimum” substitute “With a view to ensuring that any reduction in the scheme’s assets is

kept to a minimum or that the assets of the scheme are invested in a way which, in the opinion of the scheme manager, is appropriate”;

(c) in subsections (2) and (4), for “the Board”, substitute “the scheme manager”; and

(d) in subsection (3), after paragraph (a)(i) insert—

“(ia) a professional adviser to the scheme;

(ib) any other person appearing to the scheme manager to be a person who carries out, or is likely to carry out, activities relevant to the use of the assets of the scheme;”;

(b) for paragraph 6 substitute—

“6. In section 191 (notices requiring provision of information to the Board)—

(a) in subsection (1)(b), after “the Board’s” insert “or scheme manager’s”;

(b) in subsection (2)—

(i) before paragraph (a), insert—

“(za) the scheme manager, in relation to the scheme manager’s functions;”;

(ii) in paragraph (a), after “the Board,” insert “in relation to the Board’s functions;”;

(iii) in paragraph (b), after “the Board” insert “or scheme manager”; and

(c) in subsection (3)—

(i) omit “and” at the end of paragraph (d);

(ii) after paragraph (d), insert—

“(da) in the case of a wound up scheme, any insurance company (within the meaning of the Financial Assistance Scheme Regulations 2005(14)) which is paying annuities to former members of the scheme, and”; and

(iii) in paragraph (e)—

(aa) after “the Board” insert “, scheme manager”; and

(bb) after “the Board’s” insert “or scheme manager’s”.

## **Amendment of Schedule 2**

14. In Schedule 2 (determination of annual and initial payments)—

(a) in paragraph 1(2) omit the definition of “the certification date”; and

(b) for paragraph 10(ba)(15) substitute—

“(ba) for “regulation 17(2) and (3)” in each place, substitute “regulation 18(4)”;

## **Insertion of Schedule 2A**

15. After Schedule 2 insert—

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(14) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581 and 2008/1432.

(15) Paragraph (ba) was inserted by S.I. 2007/3581.

“SCHEDULE 2A

Regulations 17A(8) and 17B(6)

DETERMINATION OF ILL HEALTH AND INTERIM ILL HEALTH PAYMENTS

**Introductory**

1. This Schedule applies for the purposes of determining the amount of an ill health payment or an interim ill health payment payable to or in respect of qualifying members of qualifying pension schemes who are unable to work due to ill health and are likely to continue to be so unable to work until normal retirement age.

**Amount of an ill health payment**

2.—(1) The amount of an ill health payment payable to a qualifying member of a qualifying pension scheme shall be—

$$C((A \times 0.9) - B)$$

(2) The amount of an ill health payment payable to a survivor of a qualifying member of a qualifying pension scheme shall be—

(a) one-half of the ill health payment which was payable to the qualifying member in accordance with sub-paragraph (1) immediately before his death where—

- (i) that member was in receipt of an ill health payment at the time of his death; or
- (ii) that member was in receipt of an interim ill health payment and dies on or after the date on which the liabilities of the scheme in respect of that member are discharged (whether by entry into an annuity contract or by other means); or

(b) where the qualifying member was in receipt of an interim ill health payment at the time of his death and dies before the date on which the liabilities of the scheme in respect of that member are discharged—

$$C\left(\frac{A \times 0.9}{2}\right) - B$$

(3) In this paragraph—

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

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

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

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

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

(4) This paragraph is subject to paragraphs 4 and 7.

**Amount of an interim ill health payment**

3.—(1) The amount of an interim ill health payment payable to a qualifying member of a qualifying pension scheme shall be—

$$C((A \times 0.9) - D)$$

(2) The amount of an interim ill health payment payable to a survivor of a qualifying member of a qualifying pension scheme shall be—

$$C\left(\frac{A \times 0.9}{2}\right) - E$$

(3) In this paragraph—

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

- (a) the beneficiary were entitled to an initial payment; and
- (b) the modifications in paragraph 6 applied;

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

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

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

“E” means the amount of interim pension payable to the survivor which would be determined in accordance with Schedule 2 if—

- (a) the survivor were entitled to an initial payment; and
- (b) the modifications in paragraph 6 applied.

(4) This paragraph is subject to paragraphs 4 and 7.

### **Revaluation**

4.—(1) Where there is a period of one month or more between the certification date and the date on which the ill health payment or interim ill health payment is first payable to a qualifying member of a qualifying pension scheme in accordance with regulation 17A or 17B, the amount determined in accordance with paragraph 2(1) or 3(1) before the actuarial factor “C” is applied shall be increased by the appropriate revaluation percentage of that amount.

(2) In sub-paragraph (1) the “appropriate revaluation percentage” means the lesser of—

- (a) the percentage increase in the general level of prices in Great Britain during the period referred to in sub-paragraph (1); and
- (b) the maximum revaluation rate.

(3) The method for determining the percentage increase in the general level of prices in Great Britain during that period is—

$$100 \times \frac{A}{B} - 100$$

where—

“A” is the level of the retail prices index for the month which falls two months before the month in which the ill health payment or interim ill health payment is first payable to the qualifying member under regulation 17A or 17B; and

“B” is the level of the retail prices index for the month two months before the month in which the certification date falls.”.

(4) In sub-paragraph (2)(b), “the maximum revaluation rate” in relation to that period is—

- (a) if that period is a period of 12 months, 5%; and
- (b) in any other case, the percentage that would be the percentage mentioned in subparagraph (2)(a) had the general level of prices in Great Britain increased at the rate of 5% compound per annum during that period.

#### **Actuarial reduction**

5. The actuarial factor to be applied in paragraphs 2 and 3 shall be determined by the scheme manager, having regard to—

- (a) the age of the qualifying member;
- (b) the normal retirement age of the qualifying member; and
- (c) such other matters as the scheme manager considers relevant.

#### **Modifications to Schedule 2**

6. The following modifications to Schedule 2 apply for the purposes of paragraphs 2 and 3 of this Schedule—

- (a) for paragraphs 4(5)(b) and 5(8)(b) substitute—
  - “(b) ending on the day before the day on which the scheme began to wind up.”;
- (b) in paragraph 4(7)(b)(ii) for “annual payment in accordance with regulation 17(2) or (3)” substitute “ill health payment in accordance with regulation 17A(1)”;
- (c) for paragraph 5(10)(b) substitute—
  - “(b) ending on the day from which the qualifying member became entitled to an ill health payment in accordance with regulation 17A(1).”;
- (d) omit paragraphs 7 and 9; and
- (e) for paragraph 10(ba) substitute—
  - “(ba) for “regulation 17A(1)”, in each place it occurs, substitute “regulation 17B(2)”;
  - (bb) for “ill health payment”, in each place it occurs, substitute “interim ill health payment”;
  - (bc) for paragraph 4(7)(b) substitute—
    - “(b) ending on the day from which the qualifying member is entitled to an interim ill health payment in accordance with regulation 17B(2).”.

#### **Cap on expected pension and actual pension**

7.—(1) Where the amount of a qualifying member’s expected pension determined in accordance with paragraph 2 or 3 multiplied by 0.9 exceeds £26,000, the amount of the ill health payment or interim ill health payment payable to, or in respect of, that member under paragraph 2 or 3 shall be determined on the basis that the product of that calculation was £26,000.

(2) Where the amount of a qualifying member’s actual pension or interim pension determined in accordance with this Schedule exceeds—

- (a) the amount of the qualifying member’s expected pension determined in accordance with paragraph 2 or 3 multiplied by 0.9; or
- (b) £26,000,

no ill health payment or interim ill health payment shall be payable to, or in respect of, that member.

### **Rounding**

8. Where the amount of an ill health payment or interim ill health payment determined in accordance with this Schedule results in a fraction of a penny, that fraction shall be treated as a penny.”.

## **PART 3**

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

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

16. The FAS Information and Payments Regulations are amended in accordance with this Part.

#### **Amendment of regulation 2**

17. In the definition of “normal retirement age” in regulation 2(1) (interpretation) after “means,” insert “except in paragraph 1(3) of Schedule 1,”.

#### **Amendment of Schedule 1**

18. In paragraph 1 of Schedule 1 (information to be provided by appropriate persons)—

(a) in sub-paragraph (2)—

- (i) in paragraph (1) in column 2 of the fourth item of the table, after “Schedule 2” insert “or Schedule 2A”; and
- (ii) for the words in column 3 of the fourth item of the table substitute “In accordance with sub-paragraphs (3) and (4).”;

(b) after sub-paragraph (2) insert—

“(3) Subject to sub-paragraphs (4) to (6), the period for information to be provided in relation to—

(a) each member or former member who has not attained normal retirement age on the date which is 6 months after the date on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 come into force is—

- (i) the period of 3 months ending 3 months before the day on which the member or former member attains normal retirement age; and
- (ii) where the scheme manager requests the information (regardless of whether or not the information was provided in accordance with sub-paragraph (i)), the period of 3 months beginning on the day on which the request was made,

or such longer period as the scheme manager may determine for the provision of that information;

(b) each member or former member who has attained normal retirement age on the date referred to in paragraph (a) or any survivor of a member or former member, is the period of 3 months beginning on the day on which the scheme manager requested the information or such longer period as the scheme manager may determine for the provision of that information.

(4) Where the information is to be provided in relation to a person who is terminally ill or unable to work due to ill health, the period is the period of 14 days beginning on the

day on which the scheme manager requested the information or such longer period as the scheme manager may determine for the provision of that information.

(5) A request for information is not a request for information for the purposes of sub-paragraph (3)(a)(ii) where it relates to information which has not been provided within the period determined under sub-paragraph (3)(a)(i).

(6) Where a request for information is not a request for information for the purposes of sub-paragraph (3)(a)(ii) by virtue of sub-paragraph (5), the period for the information to be provided shall be determined by the scheme manager.

(7) In sub-paragraphs (3) and (4), “normal retirement age” and “terminally ill” have the meanings given by the FAS Regulations.”.

## PART 4

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

#### Amendment of the FAS Internal Review Regulations

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

(2) In regulation 2(1) (reviewable determinations)—

(a) at the end of sub-paragraph (d) omit “or”;

(b) after sub-paragraph (e) insert—

“(f) the amount of an ill health payment payable to a qualifying member of a qualifying pension scheme or to a survivor of that qualifying member in accordance with regulation 17A (ill health payments) of, and Schedule 2A (determination of ill health and interim ill health payments) to, the FAS Regulations (“ill health payment assessment”); and

(g) whether or not the scheme manager is satisfied that a qualifying member of a qualifying pension scheme is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age for the purposes of regulations 17A(1) (ill health payments) and 17B(1) (interim ill health payments) of the FAS Regulations (“ill health eligibility”).”.

(3) In each place it occurs (except in regulations 2(1)(d) and 5(1)(b)(ii)), after “member assessment” insert “, ill health payment assessment, ill health eligibility”.

#### Amendment of the FAS Appeals Regulations

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

(2) In regulation 2 (interpretation)—

(a) after the definition of “Deputy PPF Ombudsman” insert—

““ill health 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 the scheme manager is satisfied that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age for the purposes of regulations 17A(1) (ill health payments) and 17B(1) (interim ill health payments) of the FAS Regulations;

“ill health payment assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a

determination as to the amount of an ill health payment payable to a beneficiary in accordance with regulation 17A of, and Schedule 2A (determination of ill health and interim ill health payments) to, the FAS Regulations;” and

- (b) in the definition of “member assessment decision”, after “payable to a qualifying member” insert “or a survivor of that qualifying member”.

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

## PART 5

### Amendment of Contracting-out Regulations

#### Amendment of the Occupational Pension Schemes (Contracting-out) Regulations 1996

**21.** In regulation 49 of the Occupational Pension Schemes (Contracting-out) Regulations 1996(16) (insolvent schemes)—

- (a) at the end of paragraph (3)(a) omit “and”;
- (b) after paragraph (3)(a) insert—
- “(aa) except where paragraph (3A) applies, the member is not a qualifying member of a qualifying pension scheme for the purposes of the Financial Assistance Scheme Regulations 2005(17); and”;
- (c) after paragraph (3) insert—
- “(3A) This paragraph applies where—
- (a) the member has been notified in accordance with regulation 50 before the date on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 came into force; and
- (b) the Commissioners for Her Majesty’s Revenue and Customs(18) receive a written application for the member’s state scheme rights to be restored in accordance with this regulation.”.

#### Amendment of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996

**22.** In regulation 49 of the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996(19) (insolvent schemes)—

- (a) at the end of paragraph (3)(a), omit “and”;
- (b) after paragraph (3)(a), insert—
- “(aa) except where paragraph (3A) applies, the member is not a qualifying member of a qualifying pension scheme for the purposes of the Financial Assistance Scheme Regulations 2005, and”;
- (c) after paragraph (3), insert—

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(16) S.I. 1996/1172. Regulation 49 was amended by S.I. 2005/3377.

(17) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581 and 2008/1432.

(18) The functions of the Commissioners of Inland Revenue (“the former Commissioners”) were transferred to the Commissioners for Her Majesty’s Revenue and Customs by section 5 of the Commissioners for Revenue and Customs Act 2005 (c.11). See also section 50(1) of that Act in relation to the construction of references to the former Commissioners in other enactments.

(19) S.R. 1996 No. 493. Regulation 49 was amended by S.I. 2005/3377.



“(3A) This paragraph applies where—

- (a) the member has been notified in accordance with regulation 50 before the date on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 came into force, and
- (b) the Commissioners for Her Majesty’s Revenue and Customs receive a written application for the member’s state scheme rights to be restored in accordance with this regulation.”.

Signed by authority of the Secretary of State for Work and Pensions

16th July 2008

*Mike O’Brien*  
Minister of State,  
Department for Work and Pensions

**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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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 2005 (S.I. 2005/3273, as amended), the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172, as amended) and the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 493, as amended) in relation to the financial assistance scheme (“the FAS”).

Part 2 amends the FAS Regulations. In particular it—

- (a) confers certain functions on the Board of the Pension Protection Fund in relation to the FAS. The functions are to advise the FAS scheme manager in relation to the FAS on request of the scheme manager and to manage or make arrangements in relation to the management of the transfer of certain scheme property, rights and liabilities. The Secretary of State shall pay a grant to the Board of the Pension Protection Fund in connection with those functions;
- (b) provides further conditions which may be satisfied by an employer in order for the pension scheme to which that employer relates to be a qualifying pension scheme for the purposes of the FAS;
- (c) makes provision for ill health payments and interim ill health payments to be payable to qualifying members within 5 years of normal retirement age where the scheme manager is satisfied that the qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until their normal retirement age. A new Schedule (Schedule 2A to the FAS Regulations) makes provision for the determination of the amount of ill health payments and interim ill health payments;
- (d) removes the requirement in regulation 18 of the FAS Regulations for a written request from the trustees or managers of a pension scheme in order for the scheme manager to use his discretion to make initial payments; and
- (e) applies a modified section 134 and section 191 of the Pensions Act 2004 (c.35) in relation to the FAS, so that the scheme manager may give a relevant person directions in relation to a qualifying pension scheme which is winding-up and to extend the power to give notices under section 191 to the Board of the Pension Protection Fund in relation to their functions which relate to the FAS.

Part 3 amends the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005. In particular it amends the period during which certain information is to be provided by appropriate persons.

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 review and appeal of certain decisions relating to ill health payments and interim ill health payments and to make an amendment in relation to appeals by survivors.

**Status:** *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

Part 5 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996 and the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996, to amend regulation 49 of those instruments to insert a further condition which must be satisfied in order for a member of a contracted-out scheme to have their state scheme rights restored. The condition is that the member is not a qualifying member of a qualifying pension scheme for the purposes of the FAS. Part 5 also makes provision for an exception for such members who have been notified in accordance with regulation 50 before the date on which these Regulations came into force.

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 the private or voluntary sectors.