

**EXPLANATORY MEMORANDUM TO
THE FINANCIAL ASSISTANCE SCHEME (QUALIFYING PENSION SCHEME
AMENDMENTS) REGULATIONS 2014**

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Work and Pensions (DWP) and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**
 - 2.1 The Financial Assistance Scheme provides financial assistance to members of certain occupational pension schemes who have lost part or all of their pensions as a consequence of their scheme winding up without having enough money to pay full pension benefits.

 - 2.2 These Regulations are amending the Financial Assistance Scheme Regulations 2005 to allow certain schemes to become qualifying schemes and thus allowing the members to be potentially entitled to assistance.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None

4. **Legislative Context**
 - 4.1 The coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 (SI. 2010/1149) implemented the final extensions to the Financial Assistance Scheme announced by the Government in December 2007.

 - 4.2 At the time of the debates on these regulations the then government committed to providing a set of regulations which consolidated all the amending regulations made since 2005. In addition, it was expected that operational experience would expose some areas of the regulations which would benefit from clarification and thus a further set of amending regulations would be needed.

 - 4.3 The DWP consulted on a consolidated set of Regulations in June 2011. Those draft Regulations also contained a small number of amendments including those made by the regulations covered by this explanatory memorandum. However, consolidation has proved a more complex operation than previously thought.

 - 4.4 While work continues on the consolidation, a decision has been made to lay a further set of amending regulations, as the relevant scheme covered by these draft regulations is not able to enter the Financial Assistance Scheme until this amendment is made. It is still the plan to lay a set of consolidation regulations.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister for Pensions, Steve Webb MP, has made the following statement regarding Human Rights:

In my view the provisions of the Financial Assistance Scheme (Qualifying Pension Scheme Amendments) Regulations 2014 are compatible with the Convention rights

7. Policy background

- *What is being done and why*

- 7.1 The Pension Protection Fund is responsible for dealing with underfunded schemes with insolvent employers from 6 April 2005. As a general principle, the Financial Assistance Scheme deals with schemes with insolvent employers where the scheme began to wind up before this date, although exceptions exist. For instance, the Financial Assistance Scheme Regulations were amended on 23 December 2008 to allow some schemes into the Financial Assistance Scheme which began to wind up after 6 April 2005 and before the amending Regulations came into force because, as the employer became insolvent before 6 April 2005, the scheme was ineligible for the Pension Protection Fund.
- 7.2 There are a number of conditions a scheme has to meet in order to qualify for the Pension Protection Fund, one of which is that the insolvent employer was, in fact, the “statutory employer”: an employer attached to the scheme which employed at least one active member of that scheme.
- 7.3 A particular scheme has been brought to the Government’s attention which appears to fall between the Financial Assistance Scheme and the Pension Protection Fund because, while the scheme began to wind up after 6 April 2005, the employer attached to the scheme at that time does not meet the definition of a statutory employer needed for entry to the Pension Protection Fund.
- 7.4 Rather than leave the members of that scheme ineligible for both the Pension Protection Fund and the Financial Assistance Scheme, the Government has decided to extend the qualifying conditions for the latter.
- 7.5 These Regulations redefine a qualifying pension scheme to cover a defined benefit scheme which began to wind up after 23 December 2008 and before these regulations come into force, whose connection with a statutory employer was lost before 10 June 2011 and that statutory employer became insolvent before 6 April 2005.

- **Consolidation**

7.6 The consolidation of the regulations relating to the Financial Assistance Scheme is still planned.

8. Consultation outcome

8.1 These regulations were issued as part of a draft consolidation set for consultation on 10th June 2011. The consultation ran for 12 weeks until 1st September.

8.2 A total of 19 responses to the consultation were received, of which 18 were from organisations involved in pensions. Not all the responses dealt with all of the proposals outlined in the consultation document.

8.3 The proposal covered by these amending regulations - allowing schemes which meet certain criteria to become qualifying schemes - was generally welcomed. Nine respondents expressed reservations. Seven of these concerned the time limits imposed. Some thought these schemes should enter the Pension Protection Fund, rather than the Financial Assistance Scheme and one thought that, where the scheme had a non-statutory employer, they should become the statutory employer instead.

8.4 A more detailed analysis of the consultation outcome was published in May 2012 and is on the Government website:

<https://www.gov.uk/government/consultations/financial-assistance-scheme-regulations-2012-originally-2011-draft-regulations>

The Report details the reactions to the individual proposals and the Government's response.

9. Guidance

9.1 All staff who will be responsible for operating the changes to the Financial Assistance Scheme will be trained in the new provisions. The Financial Assistance Scheme's leaflets and website will be amended to reflect the new provisions. In addition, trustees of the relevant pension schemes will be informed through the Trustee Updates issued by the Financial Assistance Scheme. Guidance will also be provided for trustees and others involved in the administration of the relevant pension schemes on any new information and reporting requirements.

10. Impact

10.1 The impact on business and civil society is negligible. The impact on the public sector is negligible.

10.2 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business.

11.2 In order for assistance to be paid to qualifying members of qualifying schemes, trustees of the pension schemes affected need to supply information on the pension scheme and its members. The requirements are the same for all schemes regardless of size.

12. Monitoring & review

12.1 The Board of the Pension Protection Fund, as the Financial Assistance Scheme Manager, is required to provide a report to the Secretary of State for Work and Pensions at the end of each financial year on the operation of the Financial Assistance Scheme including the number of persons who have received payments and the total amount of those payments. This report is laid before Parliament when received by the Secretary of State.

12.2 Where any part of that Report raises concerns over the operation of the Financial Assistance Scheme, the DWP will take the appropriate action, which could include flagging its concerns with the Scheme Manager or adjusting targets.

12.3 The Government wants qualifying members and their survivors to get the appropriate level of payments at the appropriate time, without inappropriate delay. It agrees with the Scheme Manager targets to ensure this is achieved. The Scheme Manager's performance is also monitored by the DWP to satisfy Ministers that the Regulations are being implemented appropriately and that members and their families are getting the payments the Regulations provide for.

13. Contact

Pam Bryson at the Department for Work and Pensions - Tel: 020 7 449 74406 or email: Pam.Bryson@dwp.gsi.gov.uk can answer any queries regarding the instrument.

