

2005 No. 2189

PENSIONS

The Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005

Made - - - - - *4th August 2005*

Laid before Parliament *11th August 2005*

Coming into force in accordance with regulation 1(1)

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 168, 190(1)(a) and (2), 203(1), 315(2), (4) and (5) and 318(1) and (5) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, by this instrument, which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made(b), makes the following Regulations:

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 and shall come into force—

- (a) in so far as these Regulations apply in relation to civil partnerships, on 5th December 2005; and
- (b) for all other purposes, on 1st September 2005.

(2) These Regulations extend to Northern Ireland(c).

Interpretation

2.—(1) In these Regulations—

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005;

“appointed representative” means a person—

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

(a) 2004 c. 35. Sections 168, 190 and 203 are modified respectively by the Financial Assistance Scheme Regulations 2005 (S.I.2005/1986), regulation 4 and Schedule 1, paragraphs 4, 5 and 15. Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(b) See section 317 of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

(c) See regulation 4(3) of S.I.2005/1986.

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

“appropriate person” means, in relation to an occupational pension scheme—

- (a) a trustee or manager of the scheme or, where the scheme has fully wound up, a former trustee or manager of that scheme;
- (b) a professional adviser in relation to the scheme or, where the scheme has fully wound up, a former professional adviser in relation to that scheme;
- (c) in relation to a scheme which has fully wound up, any insurance company which is paying annuities to former members of that scheme; and
- (d) any other person appearing to the scheme manager to be a person who holds, or is likely to hold, information relevant to—
 - (i) whether an occupational pension scheme is a qualifying pension scheme; or
 - (ii) a qualifying member’s entitlement to an annual payment under the FAS Regulations and the amount of such a payment;

“beneficiary” means a qualifying member or, after his death, his survivor;

“member” includes—

- (a) a person who was entitled to a present payment from a qualifying pension scheme immediately before the scheme began to wind up where—
 - (i) that payment was attributable to the pensionable service of a former member of that scheme who has died; and
 - (ii) the scheme’s pension liabilities in respect of that person are unlikely to be satisfied in full because the scheme has insufficient assets;
- (b) a person who is entitled to, but not in receipt of, a present payment from a qualifying pension scheme where that payment would have been attributable to the pensionable service of a former member of that scheme who died on or after the day on which the scheme began to wind up; and
- (c) a person who became a pension credit member of the scheme on or after the day on which the scheme began to wind up,

and for the purposes of this definition, the day on which the scheme began to wind up shall be determined in accordance with regulation 3 of the FAS Regulations;

“normal retirement age” means, in relation to a member of an occupational pension scheme, the age specified in the rules of that scheme at which that member will normally retire;

“personal representative” means the executor, original or by representation, or administrator for the time being of a deceased person;

“potential beneficiary” means any person who has been notified to the scheme manager as being a person who may be entitled to a payment under the FAS Regulations but who has not yet been determined to be a beneficiary;

“qualifying member” shall be construed in accordance with regulation 15 of the FAS Regulations;

“qualifying pension scheme” shall be construed in accordance with regulation 9 of the FAS Regulations;

“scheme manager” shall be construed in accordance with regulation 5 of the FAS Regulations;

“survivor” means, in relation to a member of a qualifying pension scheme who has died—

- (a) the member’s widow or widower; or
- (b) the member’s surviving civil partner,

but shall not include a person who comes within paragraph (a) or (b) but who is regarded as a qualifying member by virtue of regulation 15(5) of the FAS Regulations,

and other expressions have the meaning given to them in the Pensions Act 2004 or, as the case may be, in the Pensions (Northern Ireland) Order 2005(a).

(2) For the purposes of the definition of “appropriate person” in paragraph (1), “insurance company” means—

- (a) a person who has permission under Part 4 of the Financial Services and Markets Act 2000(b) to effect or carry out contracts of long-term insurance; or
- (b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act (certain direct insurance undertakings) which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance,

and in this paragraph, “contracts of long-term insurance” means contracts which fall within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(c).

(3) Paragraph (2) shall be read with—

- (a) section 22 of Financial Services and Markets Act 2000 (regulated activities);
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.

Information to be provided by, and to, appropriate persons

3.—(1) Where the scheme manager has been notified in accordance with regulation 14 of the FAS Regulations that an occupational pension scheme may be a qualifying pension scheme, an appropriate person shall provide such information to the scheme manager as is necessary for him to determine whether the scheme is a qualifying pension scheme for the purposes of Part 3 of the FAS Regulations, within the period of 6 months beginning on the day on which the scheme manager requests that information or within such longer period as the scheme manager may determine.

(2) Where the scheme manager has determined whether or not an occupational pension scheme is a qualifying pension scheme, he shall, no later than 14 days after making that determination—

- (a) notify the relevant appropriate person relating to that scheme, in writing, of that determination; and
- (b) where the determination is that the scheme is not a qualifying pension scheme, notify that person in writing of the reasons for that determination.

(3) Where the scheme manager has determined that an occupational pension scheme is a qualifying pension scheme, the information to be provided to—

- (a) the scheme manager; and
- (b) members or, as the case may be, former members of that scheme,

by an appropriate person shall be determined in accordance with the provisions of Schedule 1.

Information to be provided by beneficiaries and potential beneficiaries and their personal representatives

4.—(1) The information to be provided to the scheme manager by beneficiaries and potential beneficiaries shall be determined in accordance with the provisions of Schedule 2.

(2) Where a beneficiary or a potential beneficiary dies, his personal representative shall, within the period of 28 days beginning with the date of the death, notify the scheme manager of the death and provide a copy of the death certificate to the scheme manager.

(a) S.I.2005/255 (N.I.1).
(b) 2000 c.8.
(c) S.I.2001/544.

Method of providing information

5.—(1) Where, under these Regulations, any information is to be provided to any person, that information shall be provided in writing.

(2) Where, under these Regulations—

- (a) any information is to be provided to the scheme manager by any beneficiary or potential beneficiary; and
- (b) there is an appointed representative in relation to that beneficiary or potential beneficiary,

that information shall be provided by or to his appointed representative.

(3) Any document sent, or notification given, by an appropriate person to the scheme manager under regulation 3(1) or (3) and Schedule 1 shall include—

- (a) the names of the persons sending the document or giving the notification;
- (b) the name of the scheme to which the document or notification relates; and
- (c) the pension scheme registration number which is allocated to that scheme in the register.

(4) Any document sent, or notification given, to the scheme manager by any beneficiary or potential beneficiary under regulation 4(1) and Schedule 2, or by the personal representative of a such a person under regulation 4(2), shall include, in relation to that person—

- (a) the name, address, date of birth and national insurance number of that person;
- (b) where the beneficiary or potential beneficiary concerned is, or purports to be, a survivor, the name and date of birth of the qualifying member from whom that person has accrued pension rights;
- (c) the name of the employer in relation to the scheme in which that qualifying member's pension rights accrued; and
- (d) the address or location of a place of business of that employer.

Insufficient or unsuitable information

6.—(1) Where the scheme manager—

- (a) has not been provided with the information or evidence required to be provided to him under regulation 3(1) or (3) or 4(1) or Schedule 1 or 2 within the period allowed for in that regulation or those Schedules;
- (b) is of the opinion that he has insufficient information or evidence; or
- (c) has been provided with such information or evidence but in an inappropriate form or manner,

he may, at any time after the expiry of the relevant period prescribed in that regulation or those Schedules, refuse to make a determination in relation to the matters in respect of which that information and evidence was, or was to have been, provided and shall notify the person who provided, or was to have provided, the information and evidence in writing accordingly.

(2) The scheme manager shall only be bound to make a determination in relation to the matters specified in paragraph (1) once he receives the information or evidence or receives it in an appropriate form or manner.

Recovery of overpayments

7.—(1) The scheme manager shall be entitled to recover the amount of any payment made in excess of the beneficiary's entitlement under Part 5 of the FAS Regulations where it has been determined that an amount has been so paid.

(2) An amount recoverable under paragraph (1) is recoverable from—

- (a) the beneficiary;
- (b) his appointed representative for the purposes of the FAS Regulations; or

(c) the beneficiary's estate.

(3) An amount recoverable under paragraph (1) may, without prejudice to any other method of recovery, be recovered by abating future payments made under Part 5 of the FAS Regulations.

Suspension of payments

8.—(1) Payment of monthly instalments under regulation 19 of the FAS Regulations may be suspended, in whole or in part, where the scheme manager is of the opinion that a beneficiary may not be entitled to receive payments under those Regulations.

(2) The suspension in paragraph (1) shall continue until such time as the scheme manager is satisfied as to the beneficiary's entitlement to a payment under those Regulations.

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

Stephen C. Timms
Minister of State,

Department for Work and Pensions

4th August 2005

SCHEDULE 1

Regulation 3(3)

INFORMATION TO BE PROVIDED BY APPROPRIATE PERSONS

1.—(1) In this Schedule, "notification date" means the day on which the scheme manager notifies the appropriate person that he has determined that a scheme is a qualifying pension scheme.

(2) Information to be provided to the scheme manager and members or former members by appropriate persons shall be determined in accordance with the table of information set out below—

Table of information to be provided by appropriate persons

<i>Description of persons to whom information is to be provided</i>	<i>Description of information to be provided</i>	<i>Period during which information is to be provided</i>
The scheme manager.	The identity of those individuals within the appropriate person's organisation who will have responsibility for providing information to the scheme manager.	The period of 28 days beginning on the notification date.
The scheme manager.	Details of any change in the address or telephone number— (a) in relation to a qualifying pension scheme which is winding up, of the trustees or managers of the scheme; (b) in relation to a qualifying pension scheme which has wound up, of the appropriate person who has responsibility for providing information to the scheme manager.	The period of 5 days beginning on the day on which the change took place.
The scheme manager.	Any change in the identity of the individuals who have been notified to the scheme manager as having responsibility for providing information to the scheme manager.	The period of 14 days beginning on the day on which the change took place.

<p>The scheme manager.</p>	<p>In relation to each member or former member of a qualifying pension scheme to whom, or in respect of whom, a payment might be made under the FAS Regulations—</p> <p>(a) his full name;</p> <p>(b) his date of birth;</p> <p>(c) his address and telephone number;</p> <p>(d) his national insurance number;</p> <p>(e) where that member has died, the date of his death;</p> <p>(f) his marital or civil partnership status;</p> <p>(g) such evidence as is necessary to prove that he was a member of that scheme;</p> <p>(h) his normal retirement age;</p> <p>(i) information necessary to determine the amount of pension to which he would have been entitled from the scheme if the scheme's liabilities to the member had been satisfied in full;</p> <p>(j) where applicable, the annual rate of annuity which can be purchased for him with the assets available to be used to discharge the liability of the scheme to him, after the liabilities of the scheme have been determined in accordance with section 73 of the Pensions Act 1995(a) or Article 73 of the Pensions (Northern Ireland) Order 1995(b) (preferential liabilities on winding up) or, where that section or Article does not apply, the rules of that scheme;</p> <p>(k) the sum which is available to be used to discharge the liability of the scheme to the member when the scheme is fully wound up; and</p> <p>(l) where the information referred to in paragraphs (i) to (k) cannot be provided or where that information might be inappropriate or inaccurate in a particular case, such other information from which the amount of his actual pension, expected pension and interim pension for the purposes of Schedule 2 to the FAS Regulations may be derived.</p>	<p>The period of 6 months beginning on the day on which the scheme manager requested the information or during such longer period as the scheme manager may determine for the provision of that information.</p>
<p>All current members of the scheme and all former members of the scheme who are qualifying members.</p>	<p>In relation to a qualifying pension scheme which is winding up, notification that the scheme manager has determined that the scheme is, or is not, a qualifying pension scheme.</p>	<p>The period of 28 days beginning on the notification date.</p>

(a) 1995 c.26. Section 73 is substituted by the Pensions Act 2004 (c.35), section 270(1) but see article 2(8) of S.I.2005/275 (C.10).

(b) S.I.1995/3213 (N.I.22). Article 73 is substituted by the Pensions (Northern Ireland) Order 2005 (S.I.2005/255 (N.I.1)), Article 247(1) but see Article 2(8) of S.R.2005 No. 48 (C.5).

SCHEDULE 2

Regulation 4(1)

INFORMATION TO BE PROVIDED BY BENEFICIARIES AND POTENTIAL BENEFICIARIES

1. Information to be provided by beneficiaries and potential beneficiaries to the scheme manager shall be determined in accordance with the table of information set out below—

Table of information to be provided by beneficiaries and potential beneficiaries

<i>Description of persons by whom information is to be provided</i>	<i>Description of information to be provided</i>	<i>Period during which information is to be provided</i>
Any potential beneficiary relating to a qualifying pension scheme which has fully wound up.	In relation to that potential beneficiary— (a) such evidence as is necessary to prove that he was either a qualifying member of that scheme or the survivor of such a member; (b) his name, address, date of birth and national insurance number; (c) information from which the member's actual pension, expected pension and interim pension for the purposes of Schedule 2 to the FAS Regulations may be derived.	The period of 6 months beginning on the day on which the scheme manager requested the information or during such longer period as the scheme manager may determine for the provision of that information.
Any beneficiary whose address is changed.	Details of any change in the address of that beneficiary.	(a) Except where paragraph (b) applies, the period of 8 weeks beginning four weeks before the day on which the change will take place; (b) Where the beneficiary was not aware of the change at the beginning of the period referred to in paragraph (a), the period of 8 weeks beginning on the day on which he became aware of the change.
Any qualifying member whose marriage ends in divorce.	Notification of the divorce and a copy of the decree of divorce.	The period of 28 days beginning on the day on which the decree became absolute.
Any qualifying member who has married or remarried.	Notification of the marriage and a copy of the marriage certificate.	The period of 28 days beginning on the day of the marriage or remarriage.
Any qualifying member who enters into a civil partnership.	Notification of the civil partnership and a copy of the civil partnership certificate.	The period of 28 days beginning on the day on which the civil partnership was entered into.
Any qualifying member whose civil partnership is dissolved.	Notification of the dissolution of the civil partnership and a copy of the dissolution certificate.	The period of 28 days beginning on the day of the dissolution.
Where the beneficiary or potential beneficiary	Notification of the termination or of the change in the address of the appointed	The period of 28 days beginning on the day on

<i>Description of persons by whom information is to be provided</i>	<i>Description of information to be provided</i>	<i>Period during which information is to be provided</i>
terminates the appointment of his appointed representative, or where there is any change in the address of an appointed representative, the beneficiary or potential beneficiary who appointed that appointed representative.	representative and the date on which the termination or change became effective.	which the termination or change became effective.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision relating to the information to be provided by, or to, the scheme manager of the financial assistance scheme (“the scheme manager”). Such information is required to be provided both by trustees, managers and other persons acting in relation to occupational pension schemes in respect of which members may qualify for assistance from the financial assistance scheme, and by or on behalf of persons who may be entitled to payments from the financial assistance scheme.

The scheme manager is appointed by the Financial Assistance Scheme Regulations 2005 (S.I.2005/1986) (“the FAS Regulations”) made under section 286 of the Pensions Act 2004 (c.35). The financial assistance scheme is intended to make payments to, or in respect of, certain members of certain occupational pension schemes where those schemes started to wind up on or after 1st January 1997 but before 6th April 2005, the sponsoring employer of the scheme is insolvent and where the pension scheme is underfunded at a certain level. These Regulations extend to Northern Ireland.

Regulation 3 and Schedule 1 make provision as to the information to be provided by appropriate persons in relation to schemes to the scheme manager and vice versa, and as to the information to be provided by appropriate persons to members of schemes.

Regulation 4 and Schedule 2 make provision as to the information to be provided by beneficiaries or potential beneficiaries to the scheme manager.

Regulation 5 makes provision as to the method of providing information and as to certain details to be included whenever information is provided by beneficiaries or potential beneficiaries to the scheme manager.

Regulation 6 provides that the scheme manager may refuse to make a determination if he has no, insufficient or unsuitable information and requires him to notify the person who provided, or should have provided, the information accordingly.

Regulation 7 makes provision for recovery of overpayments where payments have been made in excess of entitlement under the FAS Regulations and regulation 8 makes provision for monthly instalments to be suspended where there is a doubt over entitlement.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2004 by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

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

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