

EXPLANATORY MEMORANDUM TO
THE FINANCIAL ASSISTANCE SCHEME (MODIFICATIONS AND
MISCELLANEOUS AMENDMENTS) REGULATIONS 2005

2005 No.

1. This Explanatory Memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

- 2.1 These regulations modify the powers contained in the Pensions Act 2004 in respect of functions to be carried out by the Pension Protection Fund (PPF) Ombudsman in relation to appeals against decisions in respect of the Financial Assistance Scheme. The regulations also contain amendments to the Financial Assistance Scheme Regulations 2005, the Financial Assistance Scheme (Internal Review) Regulations 2005 and the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005.

3. Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None

4. Legislative Background

- 4.1 Section 286 of the Pensions Act 2004, which received Royal Assent on 18 November 2004, requires the Secretary of State for Work and Pensions to make provision by regulations for a Financial Assistance Scheme (FAS). These regulations, the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) were made on 19 July 2005 and most of the provisions came into force from 1 September. Subsection (3)(g) of section 286 allows for regulations to make provision for or in connection with both reviews and appeals of decisions made in connection with the Financial Assistance Scheme and allow for an appeals body to be established through regulations. This instrument sets out the changes that are required to the Pension Act 2004 in order for the Pension Protection Fund Ombudsman to carry out his duties in respect of the Financial Assistance Scheme Appeals Scheme. It also includes some amendments to the Financial Assistance Scheme Regulations 2005, the Financial Assistance Scheme (Internal Review Regulations) 2005 and the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005.
- 4.2 There is a requirement for the PPF Ombudsman to provide the Secretary of State with a report on the duties he has carried out in connection with FAS appeals for each financial year. This is achieved through a modification to the section of the Pensions Act 2004 dealing with the PPF Ombudsman's duty to prepare an annual report, to include a requirement for a separate report on the Ombudsman's functions in relation to FAS.

- 4.3 These regulations enable the Ombudsman to make payments in relation to the costs and expenses of persons whom he has requested provide an expert opinion in relation to an appeal in respect of the FAS. He will also be able to pay costs or expenses incurred by parties to the appeal, witnesses who have been requested to attend an oral hearing, and to any person he has appointed as a representative of a party.
- 4.4 These regulations allow the Ombudsman or parties to the appeal to refer a question of law or a point of law arising from the investigation of an appeal in relation to FAS to the High Court in England and Wales or the Court of Sessions in Scotland. They also ensure that the determinations and directions of the Ombudsman are enforceable in a county court in England and Wales or in Northern Ireland and in the sheriff court of any sheriffdom in Scotland.
- 4.5 There is a provision for any material published by the Ombudsman to be absolutely privileged.
- 4.6 Provision has also been made in these regulations for the Ombudsman to refer to court anyone who is guilty of an act of omission or who obstructs the Ombudsman in carrying out his duties.
- 4.7 Amendments are made to the Financial Assistance Scheme Regulations 2005 (S.I 2005/1986) by substituting regulation 18 of those regulations and by making other consequential and minor amendments.
- 4.8 The substitution of regulation 18 allows initial payments to be paid to survivors of FAS qualifying members who die after their pension scheme started to wind up and clarifies the dates from which initial payments to survivors and terminally ill people will be payable and the dates at which such payments will cease.
- 4.9 Consequential amendments are made to Schedule 2 to clarify how initial payments payable to survivors will be calculated. Initial payments to a survivor will be calculated taking into account any interim pension payable to that survivor by the deceased member's scheme.
- 4.10 Other minor amendments are made to Schedule 2 as a result of the substitution of regulation 18 and to make some other minor clarifications. Amendments are made to regulations 17 and 18 to allow for the cessation of monthly FAS payments on the death of the beneficiary.
- 4.11 There are also some amendments to the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I.2005/1994). Most of these amendments are minor and are required to clarify certain requirements:
- i. the duty of the scheme manager to give a review decision does not arise unless and until an application is received in the proper form.
 - ii. an application for a review is made only when it is received by the scheme manager and if it is made within the relevant timescales and in the prescribed manner.
 - iii. only interested persons who receive notices of review decisions may appeal against those decisions.

4.12 The final amendment to the Internal Review regulations relates to the time limits for requesting a review. There is currently no time limit set for members to request a review of member eligibility or member assessment decisions. This amendment imposes a one month time limit with discretion extended to 12 months where the scheme manager considers that there are reasonable grounds for the application for a review not to have been made within the specified time.

4.13 The amendments to the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (S.I.2005/2189) are minor and are required either to clarify existing definitions or clarify certain requirements. Specifically, they:

- i. clarify the definitions of “potential beneficiary” and “survivor”
- ii. include a clear requirement for information on survivors to be provided.

5. Extent

5.1 This instrument extends to the whole of the United Kingdom.

6. European Convention on Human Rights

6.1 Stephen Timms, the Minister of State for Pensions Reform has made the following statement regarding Human Rights:

“In my view the provisions of the Financial Assistance Scheme (Modifications and Miscellaneous Amendments) Regulations 2005 are compatible with the Convention rights.”

7. Policy background

7.1 The aim of the Financial Assistance Scheme is to provide financial assistance to qualifying members of qualifying pension schemes. These members have seen a reduction in their expected pensions as their pension scheme started to wind up underfunded, in circumstances of employer insolvency, before the Pension Protection Fund came into operation on 6 April 2005.

7.2 The Government recognises the severe losses that pension scheme failures have imposed in some cases, and will provide assistance to those scheme members who face the most significant losses. The Government has no liability in respect of these schemes.

8. Impact

8.1 A Regulatory Impact Assessment has not been published for this instrument as it has only a negligible impact on business, charities and voluntary bodies.

8.2 The Government has set aside £400 million over 20 years for assistance payments. The public sector costs of operating the Financial Assistance Scheme will depend on the level of applications for assistance, but are currently estimated to be some £16 million over the first three years of operation, including set-up costs. Those costs will be met from the Department's existing administration resources, separately from the funds available for assistance payments.

9. Contact

Julie Guthrie at the Department for Work and Pensions, Tel: 020 7 962 8150 or e-mail Julie.Guthrie1@dwp.gsi.gov.uk can answer any queries regarding the instrument.