

2007 No. 3581

PENSIONS

**The Financial Assistance Scheme (Miscellaneous Amendments)
Regulations 2007**

Made - - - - - *18th December 2007*

Coming into force in accordance with regulation 1(1)

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The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 168, 190(1)(a) and (2), 286, 315(2), (4) and (5) and 318(1) and (4)(a) of the Pensions Act 2004(a).

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

(a) 2004 c.35. Sections 168 and 190 are modified by S.I. 2005/1986; section 286 is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993, 2005/2113 and 2006/566), and is amended by section 18(2) and (3) of the Pensions Act 2007 (c.22). Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.

With the exception of regulation 7(3), before making these Regulations the Secretary of State consulted such persons as he considered appropriate. Regulation 7(3) was not subject to consultation because it appeared to the Secretary of State that by reason of urgency consultation was inexpedient^(a).

PART 1

Introductory

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2007 and shall come into force on the day after the day on which they are made.

(2) In these Regulations—

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

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005^(c).

PART 2

Amendment of the FAS Regulations

Amendment of the FAS Regulations

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

Amendment of Part 1 (general)

3. In regulation 2 (interpretation), omit paragraphs (5) and (6).

Amendment of Part 3 (qualifying pension schemes)

4.—(1) In regulation 9(1) (qualifying pension schemes)—

(a) at the end of sub-paragraph (c), omit “and”, and

(b) after sub-paragraph (c), insert—

“(ca) there was, in the opinion of the scheme manager, a relevant link between the commencement of the winding up of the scheme and the fact that the relevant condition mentioned in sub-paragraph (c) is satisfied; and”.

(2) After regulation 9(1), insert—

“(1A) The relevant link mentioned in paragraph (1)(ca) is deemed to be established in relation to any employer in respect of which the relevant condition mentioned in paragraph (1)(c) is satisfied before 1st January 2009.”.

(3) In regulation 10 (other schemes which are not qualifying pension schemes), for paragraph (l) substitute—

“(l) a scheme with fewer than 12 members where all the members are trustees of the scheme and either—

(a) See section 317(1) and (2)(b) of the Pensions Act 2004.

(b) S.I. 2005/1986, amended by S.I. 2005/3256 and 2006/3370.

(c) S.I. 2005/2189, amended by S.I. 2005/3256.

- (i) the provisions of the scheme provide that any decision made by the trustees is made by the unanimous agreement of the trustees who are members of the scheme; or
 - (ii) the scheme has a trustee who is independent in relation to the scheme for the purposes of section 23 of the 1995 Act (power to appoint independent trustees) and is registered in the register maintained by the Pensions Regulator^(a) in accordance with regulations made under subsection (4) of that section;
- (m) a scheme with fewer than 12 members where all the members are directors of a company which is the sole trustee of the scheme and either—
- (i) the provisions of the scheme provide that any decision made by the company in its capacity as trustee is made by the unanimous agreement of the directors of that company who are members of the scheme; or
 - (ii) one of the directors of the company is independent in relation to the scheme for the purposes of section 23 of the 1995 Act and is registered in the register maintained by the Pensions Regulator in accordance with regulations made under subsection (4) of that section.”.

(4) In regulations 11(1) (condition to be satisfied by employer), 12(1) and (2) (condition to be satisfied: multi-employer schemes), and 13(4) and (4A) (insolvency events), omit “on or before 28th February 2007” in each place that it occurs.

(5) In regulation 13—

- (a) in paragraph (2), omit sub-paragraph (b);
- (b) in paragraph (3A), omit “on 28th February 2007 or on some earlier date”; and
- (c) after paragraph (4A), insert—

“(4B) The scheme manager may also, for the purposes of regulations 11 and 12, treat an insolvency event as having occurred in relation to the employer in relation to an occupational pension scheme where—

- (a) the trustees of such a scheme entered into a binding agreement, with the employer against whom it arose, to compromise the debt that arose under section 75 of the 1995 Act, and
- (b) the scheme manager is satisfied that had that agreement not been entered into—
 - (i) the value of that employer’s assets would have been less than the amount of its liabilities, taking into account its contingent and prospective liabilities, or
 - (ii) the employer would have been unable to pay its debts as they fell due.”.

Amendment of Part 4 (qualifying members)

5. In regulation 15 (qualifying members)—

- (a) in paragraph (1), for “paragraphs (2) to (4)” substitute “paragraphs (2) and (3)”;
- (b) omit paragraph (4); and
- (c) in paragraph (5), omit sub-paragraph (d) and the word “and” which precedes it.

Amendment of Part 5 (annual and initial payments)

6.—(1) In regulation 17 (annual payments), for paragraph (1) substitute—

(a) Section 7(2) of the Pensions Act 2004 (“the 2004 Act”) provides that “the Authority” in Part 1 of the Pensions Act 1995 (c.26) (which includes section 23) means the Pensions Regulator. The Pensions Regulator was established by section 1 of the 2004 Act.

“(1) Schedule 2 makes provision for the determination of the amount of annual payments to be paid to, or in respect of, qualifying members of qualifying pension schemes including provision for a cap to be imposed on such amounts.”.

(2) In regulation 18 (initial payments)—

(a) in paragraph (1), omit “Subject to paragraph (4A),”;

(b) omit paragraph (4A);

(c) after paragraph (9), insert—

“(9ZA) The power to redetermine the amount of an initial payment under paragraph (9) includes the power to redetermine that amount as a result of a change in the amount of interim pension being paid to the beneficiary.”; and

(d) for paragraph (10) substitute—

“(10) In this regulation “interim pension” has the meaning given in paragraph 2 of Schedule 2.”.

Amendment of Schedule 2 (determination of annual and initial payments)

7.—(1) In paragraph 1(2) of Schedule 2 (determination of annual and initial payments), omit the definitions of “Group 1 qualifying member”, “Group 2 qualifying member” and “Group 3 qualifying member”.

(2) After paragraph 1(3), insert—

“(4) In this Schedule, “normal retirement age” means, subject to sub-paragraph (5), 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.

(5) Where the normal retirement age—

(a) determined in accordance with sub-paragraph (4) is more than 65, that age shall be 65;

(b) cannot be determined in accordance with sub-paragraph (4) from the rules of the qualifying pension scheme, that age shall be such age as the scheme manager shall determine having regard to the rules of that scheme and to such other information as he considers relevant.”.

(3) In paragraph 2—

(a) in sub-paragraph (3)(c), omit “and increases in the annual rate of annuity in payment”; and

(b) after sub-paragraph (4), add—

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

(4) In paragraph 3—

(a) for sub-paragraph (1) substitute—

“(1) This paragraph applies to—

(a) a member or former member of a qualifying scheme who—

(i) is a qualifying member under regulation 15(1), and

(ii) was entitled to present payment of a pension under the scheme rules on the crystallisation date; and

(b) a person who is regarded as a qualifying member under regulation 15(5).”; and

(b) for sub-paragraph (2) substitute—

“(2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—

(expected pension \times 0.8) – actual pension.”.

(5) In paragraph 4, for sub-paragraph (2) substitute—

“(2) The annual payment payable to a qualifying member to whom this paragraph applies shall be—

(expected pension \times 0.8) - actual pension. ”.

(6) In paragraph 5, for sub-paragraph (3) substitute—

“(3) Where the qualifying member dies before 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), the annual payment payable to his survivor shall be—

$$\frac{\text{(expected pension } \times 0.8)}{2} - \text{actual pension.}”.$$

(7) In paragraph 7—

- (a) in sub-paragraph (1), omit from “(where the qualifying member is a Group 1 qualifying member” to “is a Group 3 qualifying member);”;
- (b) in sub-paragraph (2)(a), omit from “(where the qualifying member is a Group 1 qualifying member” to “is a Group 3 qualifying member”; and
- (c) for “£12,000”, in each place that it occurs, substitute “£26,000”.

(8) Omit paragraph 8.

(9) In paragraph 10—

- (a) in sub-paragraph (a), in sub-paragraph (2)(a) of the substituted paragraph (2), for “no such communication” substitute “no such commutation”;
- (b) after sub-paragraph (b), insert—
 - “(ba) for “regulation 17”, in each place, substitute “regulation 18”;”;
- (c) omit sub-paragraphs (c) and (ca); and
- (d) for sub-paragraph (e) substitute—
 - “(e) in paragraph 5—

(i) for sub-paragraph (3) substitute—

“(3) The initial payment payable to a survivor of a qualifying member shall be—

$$\frac{\text{(expected pension } \times 0.8)}{2} - \text{interim pension payable to that survivor.}”;$$
 and

(ii) omit sub-paragraphs (2) and (6).”.

PART 3

Amendment of the FAS Information and Payments Regulations

Amendment of the FAS Information and Payments Regulations

8.—(1) The FAS Information and Payments Regulations are amended as follows.

- (2) In regulation 5 (method of providing information), after paragraph (1) insert—
- “(1A) Where, under these Regulations, any information is to be provided to the scheme manager, that information shall be provided in such manner and form as the scheme manager may request.”.
- (3) In regulation 7 (recovery of overpayments)—
- (a) in paragraph (1)—
- (i) after “any payment made” insert “to any person,”; and
- (ii) for “the beneficiary’s entitlement” substitute “any entitlement,”; and
- (b) in paragraph (2)—
- (i) in sub-paragraph (a), after “the beneficiary” insert “(or other person to whom such a payment was made)”;
- (ii) in sub-paragraph (b), for “his” substitute “the beneficiary’s”; and
- (iii) in sub-paragraph (c), after “estate” insert “(or the estate of any other person to whom such a payment was made)”.
- (4) In regulation 8 (suspension of payments)—
- (a) in paragraph (1), for “beneficiary” substitute “person receiving payments”; and
- (b) in paragraph (2), for “the beneficiary’s” substitute “that person’s”.

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

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

18th December 2007

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 FAS Information and Payments Regulations”).

Part 2 amends the FAS Regulations. In particular it—

extends indefinitely the time by which an employer must have an insolvency event in order for their scheme to be eligible for Financial Assistance Scheme (FAS) assistance, subject to a link being established between the insolvency event and the winding up of the scheme;

amends the description of small self-administered schemes to enable some to be eligible for FAS assistance;

allows schemes whose trustees entered into an agreement with the relevant employer to compromise the debt that arose against that employer under section 75 of the Pension Act 1995 (c.26) in circumstances where enforcing the full debt would have forced the employer into insolvency, to be eligible for FAS assistance;

provides that all members of qualifying pension schemes, regardless of how far they were from retirement when their scheme began to wind up, are now eligible to be qualifying members;

provides that all qualifying members will receive 80 per cent. of their expected pension (calculated in accordance with Schedule 2 to the FAS Regulations), subject to the cap;

raises the cap to £26,000 and removes the de minimus requirement;

provides that where the scheme manager is satisfied that increases have been, are being or will be made to the annual rate of annuity and he considers that those increases are not reasonable, he may determine the annual rate of annuity himself, based on the sum which would discharge the liability of the scheme to the beneficiary and such other matters as he considers relevant;

provides that initial payments may be redetermined where the interim pension being paid by the scheme has changed.

Part 3 amends the FAS Information and Payments Regulations. In particular it—

provides that information provided to the FAS scheme manager must be provided in the manner and form requested by him; and

provides that FAS payments made to a person who is not a beneficiary may be suspended and also recovered.

With the exception of regulation 7(3), before making these Regulations the Secretary of State consulted such persons as he considered appropriate. It appeared to the Secretary of State that by reason of urgency, consultation on regulation 7(3) was inexpedient.

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

STATUTORY INSTRUMENTS

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