
STATUTORY INSTRUMENTS

2008 No. 1903

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

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;

“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)(1), 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;
- (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

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

- (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)(2).

(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.

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;

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

- (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)(3)—

- (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)(4)—
- (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—

(4) Regulation 19 was amended by [S.I. 2005/3256](#).

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

Insertion of Schedule 2A

- 15. After Schedule 2 insert—

“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—

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

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

- (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—

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

- (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—

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

- (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 sub-paragraph (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.”.