

2008 No. 3069

PENSIONS

**The Financial Assistance Scheme (Amendment) Regulations
2008**

<i>Made</i>	- - - -	<i>27th November 2008</i>
<i>Laid before Parliament</i>		<i>2nd December 2008</i>
<i>Coming into force</i>	- -	<i>23rd December 2008</i>

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by paragraph (b) of the definition of “qualifying pension scheme” in subsection (2) of section 286, 315(5) and 318(1) of the Pensions Act 2004(a).

This instrument contains regulations which are made before the end of the period of six months beginning with the coming into force of the provision of the Pensions Act 2004 by virtue of which the regulations are made(b).

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Assistance Scheme (Amendment) Regulations 2008 and shall come into force on 23rd December 2008.

(2) In these Regulations, “the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(c).

Amendment of the FAS Regulations

2.—(1) Regulation 9 of the FAS Regulations (qualifying pension schemes) is amended as follows.

(2) At the beginning of paragraph (1)(b) insert “except where paragraph (1B) applies,”.

(3) After paragraph (1A)(d) insert—

“(1B) This paragraph applies where—

(a) the scheme began to wind up during the period beginning on 6th April 2005 and ending on 22nd December 2008;

(a) 2004 c.35. Paragraph (b) of the definition of “qualifying pension scheme” in subsection (2) of section 286 was amended by section 124(3) of the Pensions Act 2008 (c.30). Section 286 was also amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and section 124 of the Pensions Act 2008 and is modified in its application to multi-employer schemes by regulation 76 of S.I. 2005/441. Section 318(1) is cited because of the meanings given to “prescribed” and “regulations”.

(b) See section 317 of the Pensions Act 2004 under which the requirement to consult such persons as the Secretary of State considers appropriate does not apply to 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 the regulations are made.

(c) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581, 2008/1432 and 2008/1903.

(d) Paragraph (1A) was inserted by S.I. 2007/3581.

- (b) paragraph (i) or (ii) of paragraph (1)(c)(a) applies by virtue of an insolvency event which occurred before 6th April 2005; and
- (c) there has not been an insolvency event in relation to the relevant employer which would be a qualifying insolvency event for the purposes of section 127(b) or Article 111(c) (duty to assume responsibility for schemes following insolvency event) if the scheme were an eligible scheme.

(1C) In paragraph (1B)—

“eligible scheme” has the meaning given in section 126(d) or, as the case may be, Article 110(e) (eligible schemes);

“relevant employer” means the employer in relation to the scheme or, in relation to a multi-employer scheme, any employer or employers in relation to the scheme.”.

Consequential provision

3.—(1) Where a scheme is a qualifying pension scheme for the purposes of the FAS Regulations by virtue of these Regulations, that scheme—

- (a) is not an eligible scheme for the purposes of section 126(1)(b) of the Pensions Act 2004 or Article 110(1)(b) of the Pensions (Northern Ireland) Order 2005(f) (eligible schemes); and
- (b) remains a qualifying pension scheme for the purposes of the FAS Regulations if, on or after 23rd December 2008, there is an insolvency event in relation to the relevant employer which would be a qualifying insolvency event for the purposes of section 127 of that Act or Article 111 of that Order (duty to assume responsibility for schemes following insolvency event) if the scheme were such an eligible scheme.

(2) In paragraph (1), “relevant employer” means the employer in relation to the scheme or, in relation to a multi-employer scheme, any employer or employers in relation to the scheme.

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

William D. McKenzie,
Parliamentary Under Secretary of State,
Department for Work and Pensions

27th November 2008

(a) Paragraph (1)(c) was substituted by S.I. 2008/1903.
 (b) Section 127 is modified in its application to partially guaranteed pension schemes by S.I. 2005/277 and in its application to multi-employer schemes by S.I. 2005/441 (as amended by S.I. 2005/993 and 2005/2113).
 (c) Article 111 is modified in its application to partially guaranteed pension schemes by S.R. 2005/55 and in its application to multi-employer schemes by S.R. 2005/91 (as amended by S.R. 2005/194 and 2005/357).
 (d) Section 126 is modified in its application to multi-employer schemes by S.I. 2005/441 (as amended by S.I. 2005/993 and 2005/2113).
 (e) Article 110 is modified in its application to multi-employer schemes by S.R. 2005/91 (as amended by S.R. 2005/194 and 2005/357).
 (f) S.I. 2005/255 (N.I.1).

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend regulation 9 of the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986, as amended) (“the FAS Regulations”) which provide 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 people are unlikely or unable to be satisfied in full.

The amendment provides for an exception to the condition in paragraph (1)(b) of that regulation which must be met in order for an occupational pension scheme to be a qualifying pension scheme for the purposes of the FAS Regulations.

Regulation 3 makes a consequential provision providing that a scheme which is a qualifying pension scheme for the purposes of the FAS Regulations as a result of these Regulations is not an eligible scheme for the purposes of the Pension Protection Fund and remains a qualifying pension scheme for the purposes of the financial assistance scheme where an event occurs which would be a qualifying insolvency event for the purposes of the Pension Protection Fund if it were an eligible scheme.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provision 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 full impact assessment has not been published for this instrument as it has only a negligible impact on the private or voluntary sectors.

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STATUTORY INSTRUMENTS

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