

EXPLANATORY MEMORANDUM TO
THE FINANCIAL ASSISTANCE SCHEME (AMENDMENT) REGULATIONS 2008
2008 No. 3069

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. Purpose of the instrument

2.1 These Regulations provide for an exception to one of the qualifying conditions for the Financial Assistance Scheme to provide for certain occupational pension schemes which currently cannot qualify for the Financial Assistance Scheme or the Pension Protection Fund to be qualifying pension schemes for the Financial Assistance Scheme.

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

3.1 None.

4. Legislative Context

4.1 Regulation 9 of the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) sets out the conditions for a pension scheme to be a qualifying pension scheme for the purposes of the Financial Assistance Scheme. These Regulations provide for an exception to one of those conditions so that in certain circumstances a pension scheme can qualify even though it began to wind-up at a date later than the date currently provided for in regulation 9.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

The Financial Assistance Scheme

7.1 The Financial Assistance Scheme was designed to help those who had suffered significant losses to their defined benefit (often “final salary” or “average salary”) pensions as a consequence of employer insolvency. Under the original scheme, announced on 14th May 2004, assistance was targeted on

members closest to retirement as it was felt that these members were least likely to be able to make up any shortfall in their retirement income.

Schemes which fall between the FAS and the PPF

- 7.2 The Pensions Act 2004 introduced the Financial Assistance Scheme to cover schemes which began to wind up on or after 1st January 1997 and before 6th April 2005. The Pension Protection Fund was also introduced to cover schemes where the sponsoring employer had an insolvency event on or after 6th April 2005 and the pension scheme began to wind up on or after that date.
- 7.3 The Government has become aware of a small number of occupational pension schemes where the employer became insolvent before 6th April 2005 and as a consequence the scheme cannot begin a Pension Protection Fund assessment period, but in addition the pension scheme did not start to wind up until after 5th April 2005 and so the scheme could not be a qualifying pension scheme for the purposes of the Financial Assistance Scheme. As a result, the scheme members are unable to be eligible for either Pension Protection Fund compensation or Financial Assistance Scheme payments.
- 7.4 Members of these schemes are in a similar position to those people already helped by the Financial Assistance Scheme in that the related employer became insolvent before 6th April 2005 with an underfunded pension scheme, but because their scheme failed to begin winding up in time to qualify for the Financial Assistance Scheme they are currently unable to receive assistance. The Government therefore decided that it was right to make an exception to the Financial Assistance Scheme qualifying criteria to enable these schemes to qualify.

The Changes

- 7.5 These Regulations amend regulation 9 of the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986, as amended) which sets out the criteria for schemes to be qualifying pension schemes for the purposes of the Financial Assistance Scheme.
- 7.6 The amendment provides for an exception to the condition in paragraph (1) (b) of that regulation. The condition in paragraph (1) (b) is that the scheme must have begun to wind up during the period beginning on 1st January 1997 and ending on 5th April 2005.
- 7.7 The exception applies where the scheme began to wind up in the period beginning on 6th April 2005 and ending on the day before these Regulations come into force; where the scheme has undergone an insolvency event in the period before 6th April 2005; and where there has not been an insolvency event which would be a qualifying insolvency event for the Pension Protection Fund if the scheme were an eligible scheme.
- 7.8 The Regulations also make a consequential provision to provide that where a scheme is a qualifying scheme for the Financial Assistance Scheme as

a result of the exception made by these Regulations the same scheme cannot also be an eligible scheme for the purposes of the Pension Protection Fund. This will avoid a potential double provision of Financial Assistance Scheme assistance and Pension Protection Fund compensation where a scheme might qualify for both the Financial Assistance Scheme and the Pension Protection Fund if, after these Regulations come into force, the employer in relation to the scheme were to undergo a further insolvency event which was a qualifying insolvency event for the purposes of the Pension Protection Fund.

- **Consolidation**

7.9 Consolidated versions of the Regulations will be available in the Law Relating to Social Security (Blue Volumes). These can be found at <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol/index.asp>. These are updated quarterly and are available on the internet at no cost to the public.

8. Consultation outcome

8.1 Because these Regulations have been made within 6 months of the coming into force of the primary power enabling them to be made, (a power inserted into section 286 of the Pensions Act 2004 by section 124(3) of the Pensions Act 2008), there is no statutory requirement for consultation in accordance with section 317(2) (d) of the Pensions Act 2004. This extension of the Financial Assistance Scheme is a familiar issue for stakeholders, and something that they support and want to happen as quickly as possible. For these reasons the Government concluded that a consultation exercise was not necessary.

9. Guidance

9.1 The Government has been liaising with trustees, scheme managers and other stakeholders to assist them in understanding the impact of the changes. In addition, the then Minister of State for Pensions Reform, during debate in the Commons Committee stage of the Pensions Bill in February, said: "If we are to deal with this issue, it would be useful to know whether any other schemes are affected". Public-facing leaflets and guidance will be updated, and the Regulations, together with this Explanatory Memorandum will be published on the Financial Assistance Scheme website.

10. Impact

10.1 The impact on business, charities or voluntary bodies is negligible.

10.2 The impact on the public sector is negligible.

10.3 An impact assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation applies to small business. In order for schemes' members to qualify for the Financial Assistance Scheme, trustees of the pension schemes affected need to supply information on the pension scheme and its members. This is the same for all schemes regardless of size. The impact on trustees and schemes is negligible, and these Regulations will enable schemes which currently don't qualify for this assistance to do so and, as such, is likely to be welcomed by trustees and scheme members.

12. Monitoring & review

12.1 The change to the Financial Assistance Scheme qualifying conditions is intended to allow some occupational pension schemes, which under the existing legislation are unable to qualify for Financial Assistance Scheme assistance, to qualify. The Government already monitors, through the Financial Assistance Scheme Operational Unit, the incidence of schemes qualifying for the Financial Assistance Scheme.

12.2 As a matter of course the Financial Assistance Scheme Operational Unit will examine the initial decisions made in respect of any schemes attempting to qualify through these amended qualifying conditions. In addition, the Government's continuing engagement with stakeholders, specifically pension scheme trustees, will help to identify any issues concerning the effectiveness of these Regulations, and if necessary legislation will be amended further.

13. Contact

David Brown at the Department for Work and Pensions Tel: 020 7962 8104 or email: david.brown@dwp.gsi.gov.uk can answer any queries regarding the instrument.