

PENSIONS ACT 2008

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 4: Financial Assistance Scheme

Section 124: Financial Assistance Scheme

355. This section amends section 286(2) of the PA 2004 (financial assistance scheme for members of certain pension schemes). Currently, the definition of a “qualifying member” who may qualify for payments from the Financial Assistance Scheme (the FAS) only includes those members who have not received, or who are unlikely to receive, all their scheme benefits from their pension scheme.
356. Following the Young Review, the Government’s stated intention is to take over the available assets remaining in the qualifying schemes and make all the associated payments itself. This means that, as well as making payments to those whose pensions are not fully covered, the FAS will also make payments to many of those people whose benefits would have been met in full by their pension schemes.
357. This section amends the definition of “qualifying member” (*subsection (2)*) to include this latter group of scheme members. Once the section is brought into force and the amendment to section 286(2) is made, a qualifying member in relation to a qualifying pension scheme will no longer be restricted to someone who will not, or who will not be likely to, receive their benefits in full from the scheme. Instead a qualifying member will be someone who is or was a member of a qualifying scheme at a time which may be prescribed and who satisfied prescribed conditions at such time as may be prescribed.
358. The section also amends the definition of “qualifying pension scheme” to take account of the changes to the definition of “qualifying member”. The changes to “qualifying member” mean that references to schemes having insufficient assets no longer appear in that definition and so the definition of “qualifying pension scheme” is amended to limit the FAS provisions to schemes which are under-funded. The section also removes a definition and other wording (*subsection (6)*) which is no longer needed as a result of the amendments described above.
359. *Subsection (3)* allows for exceptions to one aspect of the definition of a FAS qualifying pension scheme. There are a small number of schemes which cannot qualify for the FAS or the PPF because their employer went insolvent before the PPF start date, thus preventing eligibility for the PPF, and the pension scheme delayed winding up until after that date, thereby also preventing FAS qualification. This amendment will enable exceptions to be made to the winding-up date qualification criterion, to enable these schemes to be FAS qualifying schemes.
360. *Subsection (5)* removes the need for an employer-related condition as part of the definition of a FAS qualifying pension scheme. This will allow greater flexibility for further changes to the FAS eligibility criteria if necessary, in addition to those provided for by the Financial Assistance Scheme (Miscellaneous Amendments) Regulations

*These notes refer to the Pensions Act 2008 (c.30)
which received Royal Assent on 26 November 2008*

2008, which enable certain schemes which wound up under funded with solvent employers to qualify for the FAS.

361. *Subsections (7) to (10)* provide that regulations providing for such an exception are to be subject to the negative resolution procedure unless they are included with other provisions in regulations that are subject to affirmative resolution.