

**EXPLANATORY MEMORANDUM TO THE  
FINANCIAL ASSISTANCE SCHEME REGULATIONS 2005**

**2005 No. 1986**

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. Description**

2.1 These regulations establish the Financial Assistance Scheme. The scheme will provide assistance to qualifying members of qualifying pension schemes where the scheme commenced winding up prior to the introduction of the Pension Protection Fund on 6 April 2005.

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

3.1 None

**4. Legislative Background**

4.1 This is the first use of the powers under section 286 of the Pensions Act 2004 which received Royal Assent on 18 November 2004. Section 286 of that Act requires the Secretary of State for Work and Pensions to make provision by regulations for a Financial Assistance Scheme. This instrument provides the detail of the Financial Assistance Scheme so that it can operate effectively and make the first payments, as soon as is practicable, to or in respect of those qualifying members of qualifying pension schemes which face the most significant losses. The regulations are split into six Parts and two Schedules and are to be read in conjunction with the Financial Assistance Scheme (Internal Review) Regulations 2005.

4.2 Part 1 – This Part prescribes the date on which the regulations will come into force and defines terms that are used in the regulations. It also explains how the date that schemes start to wind-up will be determined and provides that certain provisions in Parts 1 & 2 of the Pensions Act 2004 will apply to the regulations with modifications that are set out in Schedule 1. It also makes special provision for Northern Ireland.

4.3 Part 2 – This Part prescribes that the Financial Assistance Scheme will be managed by the Secretary of State who, in this capacity, will be known as the ‘scheme manager’. It also provides that assistance payments under the regulations be paid out of money provided by Parliament and that further funds may be provided at any stage by any third parties. It prescribes that an annual report must be put before Parliament detailing the operation of the Financial Assistance Scheme and information on the numbers of people that are receiving assistance and the amounts that they are being paid.

4.4 Part 3 – This Part sets out what a ‘qualifying pension scheme’ is for the purposes of assessing eligibility for the Financial Assistance Scheme. Amongst other detailed criteria, an occupational pension scheme must have started winding up between 1 January 1997 and 5 April 2005. From 6 April 2005, the Pension Protection Fund came into operation and will provide compensation to members of occupational pension schemes in specified circumstances. Part 3 sets out the types of schemes that

cannot qualify, for example public service pension schemes. It also prescribes who is deemed to be the employer both in relation to single and multi-employer schemes and the insolvency events that need to have occurred in relation to these employers in order for schemes to qualify. Before schemes can be deemed to be qualifying pension schemes, certain details will need to have been notified to the scheme manager within a fixed period.

4.5 Part 4 – This Part defines what a ‘qualifying member’ is for the purposes of the regulations. A qualifying member must have been a member of a ‘qualifying scheme’ or in receipt of a survivor’s pension from such a scheme immediately before the pension scheme started winding up or they must have become a pension credit member of such a scheme after the start of wind-up (through pension sharing on divorce). To qualify, each member must have reached or be due to reach his normal retirement age for the scheme of which he is a member on or before 14 May 2007. Those in receipt of a survivor’s pension must also be due to reach the normal retirement age of the former member whom they survived on or before this date in order to be a ‘qualifying member’. The qualifying member must also be a member of a scheme which is underfunded. Therefore, Part 4 also prescribes the criteria for calculating the liabilities of a scheme in order to determine whether a scheme is underfunded.

4.6 Part 5 – This Part prescribes that annual payments will be payable to a beneficiary (a qualifying member or their survivor) from the later of 14 May 2004 or the member’s 65<sup>th</sup> birthday. It follows that assistance will be backdated to the later of these dates. Entitlement may however begin earlier for terminally ill members. A survivor’s entitlement will start on the later of 14 May 2004 or the day after the survivor’s spouse or civil partner died. All payments will continue for life. It also sets out that initial payments may be made before entitlement is determined if the scheme manager deems it appropriate in certain circumstances. The amount of annual payments and initial payments is determined in accordance with Schedule 2.

4.7 Part 6 – This Part sets out provisions relating to the administration of payments. When entitlement to assistance begins, payments will be made in monthly instalments, normally by direct credit transfer.

4.8 Schedule 1 – This Schedule modifies certain provisions of Parts 1 and 2 of the Pensions Act 2004 so that they apply to the Financial Assistance Scheme. These modifications allow for restricted information to be disclosed by the Regulator or the Board of the Pension Protection Fund to the scheme manager of the Financial Assistance Scheme and vice versa. It also allows for the scheme manager to require certain information to be provided to him by way of regulations to be prescribed by the Secretary of State, for eligibility and assessment purposes.

4.9 Schedule 2 - This Schedule sets out how the amount of assistance payable to beneficiaries will be determined. For qualifying members, the annual payment will be a ‘top-up’ which is the difference between 80 per cent of the member’s “expected pension” and the “actual pension” available to the member from the qualifying pension scheme at the end of wind up. The annual payment for survivors will be 50 per cent of the former member’s rate, or the difference between 40 per cent of the former member’s “expected pension” and the “actual pension” available to the survivor at the end of wind up, depending on the date of the member’s death. “Expected pension” and “actual pension” are defined for different categories of beneficiary. 80 per cent of the “expected pension” is capped at £12,000 a year. Should the actual pension exceed £12,000 a year no annual payment will be payable. All

money purchase benefits and benefits derived from additional voluntary contributions are excluded from the calculation and no payments will be made if the annual amount is calculated to be below £520 a year or £260 a year for survivors. The Schedule also determines the amount of any initial payments if they are determined to be appropriate, in which case the top up is the difference between 60 per cent of the expected pension and any interim pension being paid from the assets of the qualifying pension scheme.

## **5. Extent**

5.1 This instrument extends to the whole of the United Kingdom.

## **6. European Convention on Human Rights**

Stephen Timms, the Minister of State for Pensions Reform has made the following statement regarding Human Rights:

In my view the provisions of the Financial Assistance Scheme Regulations 2005 are compatible with the Convention rights.

## **7. Policy background**

7.1 The aim of the Financial Assistance Scheme is to provide financial assistance to qualifying members of qualifying pension schemes. These members have seen a reduction in their expected pensions as their pension scheme started to wind up underfunded, in circumstances of employer insolvency, before the Pension Protection Fund came into operation on 6 April 2005.

7.2 The Government recognises the severe losses that pension scheme failures have imposed in some cases, and will provide assistance to those scheme members who face the most significant losses. The Government has no liability in respect of these schemes.

7.3 On 22 February 2005, the Department published an indicative list of 380 potentially eligible schemes, of which some members may receive assistance from the Financial Assistance Scheme. This list was based on the information that was provided during a data collection exercise undertaken in December 2004.

7.4 Draft regulations were published on 4 April 2005 and a consultation period was held for six weeks which concluded on 16 May 2005. We received 73 responses. No major changes were made as a result of the consultation exercise.

## **8. Impact**

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

8.2 The Government has set aside £400 million over 20 years for assistance payments. The public sector costs of operating the Financial Assistance Scheme will depend on the level of applications for assistance, but are currently estimated to be some £16 million over the first three years of operation, including set-up costs. Those costs will be met from the Department's existing administration resources, separately from the funds available for assistance payments.

## **9. Contact**

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