

2005 No. 1994

PENSIONS

**The Financial Assistance Scheme (Internal Review) Regulations
2005**

Made - - - - - *19th July 2005*

Coming into force in accordance with regulation 1(1)

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Whereas a draft of this instrument was laid before Parliament in accordance with section 316(2)(n) of the Pensions Act 2004(a) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 286(1) and (3)(g)(i), 315(2) and (4) and 318(1) of the Pensions Act 2004(b),

(a) 2004 c.35. Section 286 is modified in its application to multi-employer schemes by the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I. 2005/441).
(b) Section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

and of all other powers enabling him in that behalf, by this instrument, which contains 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^(a), makes the following Regulations:

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Financial Assistance Scheme (Internal Review) Regulations 2005 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Northern Ireland.

(3) In these Regulations—

“the Act” means the Pensions Act 2004;

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005^(b);

“appointed representative” has the meaning given in regulation 2(7) of the FAS Regulations (interpretation);

“beneficiary”, except where the context otherwise requires, has the meaning given in regulation 2(1) of the FAS Regulations;

“interested person” means a person who is entitled to make an application for the review of a reviewable determination in accordance with regulation 6(1);

“qualifying member” shall be interpreted in accordance with Part 4 of the FAS Regulations (qualifying members);

“qualifying pension scheme” shall be interpreted in accordance with Part 3 of the FAS Regulations (qualifying pension scheme);

“reviewable determination” shall be interpreted in accordance with regulation 2;

“scheme manager” shall be interpreted in accordance with regulation 5 of the FAS Regulations (scheme manager);

“survivor” has the meaning given in regulation 2(1) of the FAS Regulations.

Reviewable determinations

2.—(1) For the purposes of these Regulations, a reviewable determination is a determination made by, or on behalf of, the scheme manager under, or for the purposes of, the FAS Regulations which relates to—

(a) whether or not the details prescribed in regulation 14 of the FAS Regulations (notification of details) have been supplied to the scheme manager in the form and manner and within the notification period prescribed in that regulation (“scheme notification”);

(b) whether or not an occupational pension scheme is a qualifying pension scheme (“scheme eligibility”);

(c) whether or not a member of a qualifying pension scheme is a qualifying member (“member eligibility”); or

(d) the amount of an annual payment payable to a qualifying member of a qualifying pension scheme in accordance with regulation 17 of, and Schedule 2 to, the FAS Regulations (determination of annual and initial payments) (“member assessment”).

(2) References in these Regulations to scheme notification, scheme eligibility, member eligibility and member assessment shall be interpreted in accordance with paragraph (1).

(a) See section 317(2)(c) of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

(b) S.I. 2005/1986.

Notice of a reviewable determination

3.—(1) Where, in relation to an occupational pension scheme, a reviewable determination is made which relates to—

- (a) scheme notification or scheme eligibility, the scheme manager must—
 - (i) issue a notice of that determination to—
 - (aa) the person who supplied the details referred to in regulation 14(1) or (3) of the FAS Regulations (notification of details) to the scheme manager; or
 - (bb) where the scheme has not completed winding up, the trustees of the scheme if the scheme manager is not already required to issue a notice to those trustees under sub-paragraph (a)(i)(aa);
 - (ii) take reasonable steps to publicise to any other interested person that such a determination has been made; and
 - (iii) make a copy of the notice issued under sub-paragraph (a)(i) available for inspection by any interested person; or
- (b) member eligibility or member assessment, the scheme manager must issue a notice of that determination to—
 - (i) the member concerned; or
 - (ii) any appointed representative or survivor of that member.

(2) A notice issued by the scheme manager under paragraph (1)(a)(i) or (b), or made available by the scheme manager for inspection under paragraph (1)(a)(iii), must be in writing and must contain the following information—

- (a) a statement of the reviewable determination made and of the reasons for that determination;
- (b) the date on which the reviewable determination was made;
- (c) the name of the occupational pension scheme to which the reviewable determination relates;
- (d) if that occupational pension scheme has not completed winding up, the address and telephone number of at least one trustee of the scheme;
- (e) the name in legible characters of the person issuing the notice and the date on which the notice is issued;
- (f) a statement that if a person to whom the notice is issued is dissatisfied with the reviewable determination, he may ask the scheme manager to give a review decision in respect of that determination;
- (g) the applicable time limit for requesting a review of a reviewable determination;
- (h) an explanation of how an application may be made for the review of a reviewable determination;
- (i) an explanation of how such an application will be considered;
- (j) a summary of the scheme manager's powers on giving a review decision in respect of a reviewable determination.

Duty of scheme manager to give a review decision

4. Subject to regulation 7, a review decision in respect of a reviewable determination must be given by the scheme manager on the application of any interested person.

Time for making an application for a review of a reviewable determination

5.—(1) Subject to paragraph (3), an application for a review of a reviewable determination must be made—

- (a) in the case of a reviewable determination which relates to scheme notification or scheme eligibility, before the end of the period of two months beginning with the date on which that determination was made; or
- (b) in the case of a reviewable determination which relates to member eligibility or member assessment, at any time after the date on which that determination was made.

(2) An application for a review of a reviewable determination is made when it is received by the scheme manager.

(3) Where, in relation to an application to which paragraph (1)(a) applies, the scheme manager is of the opinion that it is reasonable for the application to have been made after the end of the period referred to in that paragraph, the scheme manager must review that determination provided that the application was not made after the end of the period of 12 months beginning with the date on which the reviewable determination was made.

Applications for a review of a reviewable determination

6.—(1) An application for a review of a reviewable determination—

- (a) which relates to scheme notification or scheme eligibility may, in the case of an occupational pension scheme which—
 - (i) has not completed winding up, be made by—
 - (aa) any person who is a potential beneficiary of that scheme or a representative of such a person appointed under regulation 17(2); or
 - (bb) the trustees of that scheme or a representative of those trustees appointed under regulation 17(1); and
 - (ii) has been wound up, be made by any person who is a potential beneficiary of the scheme or a representative of such a person appointed under regulation 17(2); and
- (b) which relates to member assessment or member eligibility, may be made by a beneficiary or a potential beneficiary of the financial assistance scheme who is affected by that determination or a representative of such a person appointed under regulation 17(2).

(2) An application for a review of a reviewable determination must be in writing and must include the following information—

- (a) the name and address of the person making the application;
- (b) the date on which the reviewable determination was made;
- (c) the grounds on which the application is made;
- (d) if a representative has been appointed under regulation 17 to make the application on behalf of another person, the name and address of that person and whether that address is the address to be used for the purposes of the application; and
- (e) in a case where the application relates to scheme notification or scheme eligibility and is made after the end of the period specified in regulation 5(1)(a), the reason why the application could not be made before the end of that period.

(3) An application for a review of a reviewable determination—

- (a) must be signed and dated by the person making the application; and
- (b) may be accompanied by supporting evidence.

Combined or further applications

7.—(1) Where, in relation to an occupational pension scheme—

- (a) two or more applications for a review of a reviewable determination which relate to scheme notification or scheme eligibility are made to the scheme manager; and
- (b) those applications are made on the same or substantially the same grounds and are supported by the same or substantially the same evidence,

the scheme manager may, for the purposes of these Regulations, give a single review decision in respect of them.

(2) Where, in relation to an occupational pension scheme, the scheme manager gives a review decision in respect of an application for a review of a reviewable determination (“the first application”), the scheme manager may immediately give a review decision on the same basis in respect of other applications which relate to that determination (“a subsequent review decision”) if they are made on the same or substantially the same grounds and are supported by the same or substantially the same evidence as the first application.

(3) For the purposes of paragraph (2), it does not matter whether the other applications were made before or after the first application.

(4) Regulations 8(1)(b)(i) to (iii) and (3), 9(3) and (4) and 16(1) and (3) shall not have effect for the purposes of the scheme manager giving a subsequent review decision.

Notice of an application for the review of a reviewable determination

8.—(1) Subject to paragraph (3), as soon as practicable after his receipt of an application for a review of a reviewable determination, the scheme manager must—

- (a) send a written acknowledgement of his receipt of the application to the person making the application; and
- (b) in a case where the application relates to scheme notification or scheme eligibility—
 - (i) issue a notice to the effect that he has received the application to—
 - (aa) the person who supplied the details referred to in regulation 14(1) or (3) of the FAS Regulations to the scheme manager in respect of the occupational pension scheme to which the application relates; or
 - (bb) where that scheme has not completed winding up, the trustees of the scheme if the scheme manager is not already required to issue a notice to those trustees under sub-paragraph (b)(i)(aa);
 - (ii) take reasonable steps to publicise to any interested person, other than the person who made the application, the fact that the application has been made and the date by which written representations must be received by the scheme manager from any such person in connection with the application; and
 - (iii) make a copy of the application available for inspection by any interested person.

(2) An acknowledgement sent by the scheme manager under paragraph (1)(a), or a notice issued by the scheme manager under paragraph (1)(b), must—

- (a) in a case where regulation 7(1) applies, state that the scheme manager has decided to combine the application with other applications received by him which are made on the same or substantially the same grounds and are supported by the same or substantially the same evidence and that he will give a single review decision in respect of them; and
- (b) in a case where regulation 7(2) applies—
 - (i) state that the scheme manager has given a review decision in respect of the application on the basis of a review decision given by him in relation to another application or other applications made on the same or substantially the same grounds and supported by the same or substantially the same evidence as that application; and
 - (ii) enclose a copy of the review decision given in respect of the application.

(3) Paragraph (1)(a) does not apply where, in any case, the person making the application is either—

- (a) the person who supplied the details referred to in regulation 14(1) or (3) of the FAS Regulations to the scheme manager in respect of the occupational pension scheme to which the application relates; or
- (b) the trustees of that scheme if it was winding up at the time at which the application was made.

Withdrawal or amendment of application

9.—(1) A person who has made an application for a review of a reviewable determination may at any time before a review decision has been given in respect of that application—

- (a) withdraw the application and any supporting evidence; or
- (b) with the consent of the scheme manager, amend the application or any evidence provided in support of the application.

(2) Where, under regulation 7(1), the scheme manager has decided to combine two or more applications for a review of a reviewable determination and to give a single review decision in respect of them, the withdrawal or amendment of one or more of the combined applications under paragraph (1), or of any evidence provided in respect of them, shall not prevent the scheme manager from giving a single review decision in respect of any remaining such applications provided that they are at least two in number.

(3) The scheme manager shall—

- (a) issue a notice about the withdrawal or amendment of an application for the review of a reviewable determination, or of any supporting evidence provided in respect of such an application, to—
 - (i) the person who supplied the details referred to in regulation 14(1) or (3) of the FAS Regulations to the scheme manager in respect of the occupational pension scheme to which the application relates; or
 - (ii) where that scheme has not completed winding up, the trustees of the scheme if the scheme manager is not already required to issue a notice to those trustees under sub-paragraph (a)(i);
- (b) take reasonable steps to publicise to any interested person, other than the person who made the application, the fact that the application, or any supporting evidence, has been amended or withdrawn; and
- (c) make a copy of—
 - (i) the notice issued under sub-paragraph (a); and
 - (ii) any amended application or supporting evidence,

available for inspection by any interested person.

(4) A notice issued by the scheme manager under paragraph (3) must—

- (a) where the application to which the notice relates or any supporting evidence has been amended, state how the scheme manager proposes to deal with that application; and
- (b) where the application to which the notice relates or any supporting evidence has been amended or withdrawn, state how the scheme manager proposes to deal with any other applications with which that application is, or has been, combined.

Review decisions or subsequent review decisions other than on application

10. The scheme manager may review—

- (a) a reviewable determination; and
- (b) a subsequent review decision given by him pursuant to regulation 7(2) in respect of a reviewable determination,

and give a review decision in relation to the matter otherwise than on application.

Notice of reviews other than on application

11.—(1) Where, in relation to an occupational pension scheme, the scheme manager proposes to review a reviewable determination under regulation 10(a) which relates to scheme notification or scheme eligibility, he must, as soon as practicable—

- (a) issue a notice to that effect to—

- (i) the person who supplied the details referred to in regulation 14(1) or (3) of the FAS Regulations to the scheme manager in relation to that scheme; and
 - (ii) where that scheme has not completed winding up, the trustees of the scheme if the scheme manager is not already required to issue a notice to those trustees under sub-paragraph (a)(i);
- (b) take reasonable steps to publicise to any interested person that he proposes to review the reviewable determination and the date by which written representations must be received by the scheme manager from any such person in connection with the proposed review; and
- (c) make a copy of the notice issued under this paragraph available for inspection by any interested person.
- (2) Where the scheme manager proposes to review a reviewable determination under regulation 10(a) which relates to member eligibility or member assessment, he must issue a notice to that effect to the person to whom a notice of the reviewable determination was issued under regulation 3.
- (3) Where the scheme manager proposes to review a subsequent review decision under regulation 10(b), he must—
- (a) issue a notice to that effect to any person to whom a notice of the subsequent review decision was issued under regulation 16(2); and
 - (b) in the case of a subsequent review decision which relates to scheme notification or scheme eligibility—
 - (i) take reasonable steps to publicise to any interested person that he proposes to review the subsequent review decision and the date by which written representations must be received by the scheme manager from any such person in connection with the proposed review; and
 - (ii) make a copy of the notice issued under sub-paragraph (a) available for inspection by any interested person.
- (4) A notice issued by the scheme manager under paragraph (1)(a), (2) or (3)(a) must state the reason why the scheme manager has decided to review the reviewable determination or the subsequent review decision.

Written representations

12.—(1) A person—

- (a) to whom a notice is issued by the scheme manager—
 - (i) under regulation 8(1)(b)(i) in respect of an application for the review of a reviewable determination; or
 - (ii) under regulation 11(1)(a), (2) or (3)(a) in respect of a decision by the scheme manager to review a reviewable determination or a subsequent review decision; or
- (b) who is an interested person to whom the scheme manager has publicised the matters referred to in regulation 8(1)(b)(ii), 11(1)(b) or (3)(b)(i),

or a representative of such a person appointed under regulation 17, may make written representations to the scheme manager in respect of that matter.

(2) Subject to regulation 13(3)(b)(i), any written representations made by virtue of paragraph (1) must be received by the scheme manager—

- (a) in a case to which paragraph (1)(a) applies, before the end of the period of 28 days beginning with the date on which the notice was issued; and
- (b) in any other case, before the date publicised by the scheme manager in accordance with regulation 8(1)(b)(ii), 11(1)(b) or (3)(b)(i).

Matters to be considered when giving a review decision or a subsequent review decision

13.—(1) In giving a review decision under regulation 4 or 7(1), or a subsequent review decision under regulation 7(2), the scheme manager must take into account—

- (a) the grounds on which the application for a review is made;
- (b) any evidence provided in support of the application;
- (c) any valid written representations received in respect of the application; and
- (d) any other matters which appear to the scheme manager to be relevant including any relevant change of circumstances since the date on which the reviewable determination or the review decision was made.

(2) In giving a review decision under regulation 10(a), or a subsequent review decision under regulation 10(b), the scheme manager must take into account—

- (a) any valid written representations received in respect of the proposed review;
- (b) any other matters which appear to the scheme manager to be relevant including any relevant change of circumstances since the date on which the reviewable determination or the review decision was made.

(3) For the purposes of paragraph (1)(c) and (2)(a), a written representation is valid when—

- (a) it is made by, or on behalf of, a person—
 - (i) to whom a notice of a review under regulation 8(1)(b)(i) or 11(1)(a), (2) or (3)(a) was issued by the scheme manager or to whom an acknowledgement was sent by the scheme manager under regulation 8(1)(a); or
 - (ii) any interested person to whom the scheme manager has publicised the matters referred to in regulation 8(1)(b)(ii) or 11(1)(b) or (3)(b)(i); and
- (b) it is received by the scheme manager—
 - (i) before the end of the period referred to in regulation 12(2)(a) or before the end of such further period as the scheme manager may in any particular case allow; or
 - (ii) before the date publicised by the scheme manager in accordance with regulation 8(1)(b)(ii) or 11(1)(b) or (3)(b)(i).

Powers on giving a review decision or a subsequent review decision

14. In giving a review decision under regulation 4, 7(1) or 10, or a subsequent review decision under regulation 7(2), in respect of a reviewable determination, the scheme manager may—

- (a) vary or revoke the reviewable determination;
- (b) substitute the reviewable determination with a new determination;
- (c) provide for any variation, revocation or substitution of the reviewable determination given as a result of the review decision to be treated as if it were given at such time (which may be at a time prior to the making of the review decision) as the scheme manager considers appropriate; and
- (d) deal with matters arising out of the review decision, including arrangements to make or recover any or any part of an annual or initial payment made under Part 5 of the FAS Regulations (annual and initial payments), as if they had arisen out of the reviewable determination.

Matters to be included in a review decision or a subsequent review decision

15. A review decision given under regulation 4, 7(1) or 10, or a subsequent review decision given under regulation 7(2), must be in writing and must include the following information—

- (a) a statement of the decision and the reasons for that decision;
- (b) whether and, if so, to what extent the decision affects any other determinations made by the scheme manager under the FAS Regulations;

- (c) references to any relevant legislation; and
- (d) a statement explaining—
 - (i) that any person issued with a notice of the decision who is dissatisfied with it may appeal against that decision;
 - (ii) to whom such an appeal may be made;
 - (iii) the time limit for making such an appeal; and
 - (iv) the address to which any enquiries about the making of such an appeal can be sent.

Notice of a review decision or a subsequent review decision

16.—(1) The scheme manager must issue a notice of a review decision given under regulation 4, 7(1) or 10—

- (a) in a case where the reviewable determination relates to scheme notification or scheme eligibility—
 - (i) to—
 - (aa) the person who made the application for a review of a reviewable determination; or
 - (bb) where the occupational pension scheme to which the application relates has not completed winding up, the trustees of the scheme if the scheme manager is not already required to issue a notice to those trustees under sub-paragraph (a)(i)(aa); and
 - (ii) to any interested person who has had a copy of review decision made available to him for inspection by the scheme manager in accordance with paragraph (3)(b); and
- (b) in a case where the reviewable determination relates to member eligibility or member assessment, to the person who made the application for a review decision.

(2) The scheme manager must issue a notice of a subsequent review decision given under regulation 7(2)—

- (a) in a case where the reviewable determination relates to scheme notification or scheme eligibility—
 - (i) to—
 - (aa) the person who made the application for a review of a reviewable determination; or
 - (bb) where the occupational pension scheme to which the application relates has not completed winding up, the trustees of the scheme if the scheme manager is not already required to issue a notice to those trustees under sub-paragraph (a)(i)(aa); and
 - (ii) to any interested person who has had a copy of the notice of the subsequent review decision made available to him for inspection by the scheme manager in accordance with paragraph (3)(b); and
- (b) in a case where the reviewable determination relates to member eligibility or member assessment, the person who made the application for a review of a reviewable determination.

(3) The scheme manager must also, in a case where the reviewable determination relates to scheme notification or scheme eligibility—

- (a) take reasonable steps to publicise to any interested person, other than the person who made the application for a review of a reviewable determination, the fact that a review decision or a subsequent review decision has been made and about the right of any such person to appeal against that decision; and
- (b) make a copy of the notice issued under paragraph (1) or (2) available for inspection by any interested person.

(4) A notice issued by the scheme manager under paragraph (1) or (2) must be in writing and must be accompanied by a copy of the review decision or the subsequent review decision to which it relates.

Representation

17.—(1) Subject to paragraph (2), any interested person may, by sending written notice to the scheme manager, appoint a person to act as his representative for the purposes of these Regulations.

(2) Where a person who is a beneficiary or a potential beneficiary—

(a) dies; or

(b) is otherwise incapable of acting for himself,

and there is no person appointed under paragraph (1) in respect of him, the scheme manager may appoint a person to act as that person's representative for the purposes of these Regulations.

(3) A person appointed to act as a representative of any person under paragraph (1) or (2) for the purposes of these Regulations may be a person who is an appointed representative of that person for the purposes of the FAS Regulations.

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

19th July 2005

Philip A. Hunt
Parliamentary Under-Secretary of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations are made under section 286(1) and (3)(g)(i) of the Pensions Act 2004 (c.35). They make provision for the internal review of reviewable determinations made under the Financial Assistance Scheme.

The Financial Assistance Scheme is established by the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) to allow payments to be made to, or in respect of, certain members of certain occupational pension schemes where the liabilities of those schemes to those members are unlikely to be satisfied in full.

Regulation 2 sets out those determinations made by the financial assistance scheme which are reviewable determinations for the purposes of these Regulations.

Regulation 3 provides for a notice of a reviewable determination to be issued to any interested person and for it to contain specified information.

Regulation 4 requires the scheme manager to review a reviewable determination when an application for a review is made.

Regulation 5 provides a time limit for making an application for the review of a reviewable determination. Regulation 5 also enables the scheme manager to extend that time limit in certain circumstances.

Regulation 6 makes provision in respect of the persons who may apply for the review of a reviewable determination and in respect of the form and content of such applications.

Regulation 7 provides for the scheme manager to combine multiple applications received in respect of reviewable determinations which are based on the same or substantially the same grounds and supported by the same or substantially the same evidence and to give a single review decision in respect of them. Regulation 7 also enables the scheme manager to give a review decision (“a subsequent review decision”) immediately in cases where an application for a review has been made in respect of a reviewable determination which is based on the same or substantially the same grounds and is supported by the same or substantially the same evidence as another application in respect of which a review decision has been given.

Regulation 8 requires the scheme manager to notify specified persons of his receipt of an application for the review of a reviewable determination, to publicise to any other interested person that such an application has been made and to make that application available for inspection by such persons.

Regulation 9 enables an application for a review of a reviewable determination to be withdrawn, or any evidence provided in support of the application to be amended at any time prior to the giving of a review decision.

Regulation 10 enables the scheme manager to give a review decision in respect of a reviewable determination otherwise than on an application. Regulation 10 also enables the scheme manager to give a review decision otherwise than on an application in respect of a subsequent review decision.

Regulation 11 requires the scheme manager to notify specified persons of his decision to review a reviewable determination under regulation 10 otherwise than on an application and to publicise that fact to any other interested person. Regulation 11 also requires the scheme manager to notify specified persons of his decision to review a subsequent review decision under regulation 10.

Regulation 12 provides for specified persons who are notified or otherwise made aware of an application for a review of a reviewable determination, or of the scheme manager’s intention to review such a determination or a subsequent review decision, to make written representations to the scheme manager within a specified time limit in respect of the matter.

Regulation 13 makes provision in respect of the matters which are to be taken into account by the scheme manager when giving a review decision or a subsequent review decision.

Regulation 14 specifies the powers of the scheme manager when giving a review decision or a subsequent review decision, including power to vary, revoke or substitute a reviewable determination.

Regulation 15 makes provision in respect of the form and content of a review decision, or a subsequent review decision, given by the scheme manager.

Regulation 16 requires the scheme manager to issue a notice of his review decision, or of a subsequent review decision, to specified persons.

Regulation 17 enables the appointment of a representative to act on behalf of specified persons for the purposes of these Regulations.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Pensions Act 2004 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 Regulatory Impact Assessment has not been published for this instrument as it has no impact on business, charities and voluntary bodies.

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