

**EXPLANATORY MEMORANDUM TO THE  
FINANCIAL ASSISTANCE SCHEME (INTERNAL REVIEW) REGULATIONS 2005**

**2005 No.1994**

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 make provision for the internal review of reviewable determinations by the Financial Assistance Scheme.

**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 power under section 286 of the Pensions Act 2004 which received Royal Assent on 18th November 2004. Section 286 requires the Secretary of State for Work and Pensions to make provision by regulations for a Financial Assistance Scheme. This instrument provides the detail for internal reviews. This is to be read in conjunction with the Financial Assistance Scheme Regulations 2005.

4.2 These regulations set out those determinations of the Financial Assistance Scheme manager of which prescribed individuals could request a review, the way in which such a request should be made, and the manner of dealing with the request. Where the determination is one relating to scheme notification or eligibility, both trustees and members or survivors of a scheme that is winding up could request a review of this determination, and where a scheme has fully wound up, individuals who were members or their survivors can request a review. Where a determination is one of member eligibility and entitlement, only the individual in question or their survivor could request a review. In addition, the scheme manager may choose to review a determination other than when an application is made.

4.3 The intention is to ensure that anyone who could be materially affected by a determination of the scheme manager - that is, the member or their survivor - could request a review of that determination. In addition, where a scheme has not fully wound up and trustees are therefore still in existence, such trustees have been given the right to request a review of determinations relating to scheme notification and eligibility. This is both because trustees may have the knowledge required to challenge the determination, but also to enable them to fulfil their obligations under trust law to act in the best interest of scheme members.

4.4 The regulations give details of:

- timescales for requesting a review;
- how multiple applications for a review of the same reviewable determination could, in some circumstances, be combined and dealt with together;

- arrangements for representations to be made by other potentially affected individuals;
- the factors which must be considered by the scheme manager when making a review determination and any actions he may subsequently take;
- and who would be made aware of the final review determination.

Should an applicant remain dissatisfied following the review determination, he will be able to refer the matter for a further appeal. The regulations relating to appeals are planned to be made in November 2005. The timing of the regulations will enable those who wish to seek an appeal to do so where applicable.

## **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 (Internal Review) 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 was introduced 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.

## **8. Impact**

8.1 A Regulatory Impact Assessment has not been published for this instrument as it has no 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**

Kerry McCarter at the Department for Work and Pensions, Tel: 020 796 28549 or e-mail: [Kerry.McCarter@dwp.gsi.gov.uk](mailto:Kerry.McCarter@dwp.gsi.gov.uk) can answer any queries regarding the instrument.