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STATUTORY INSTRUMENTS

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**2010 No. 1149**

**The Financial Assistance Scheme  
(Miscellaneous Amendments) Regulations 2010**

**PART 2**

**Amendment of the FAS Regulations**

**Amendment of Schedule 1**

**15.** In Schedule 1 (modification of certain provisions of Parts 1 and 2 of the Act)—

(a) in paragraph 3A—

(i) after sub-paragraph (b) insert—

“(ba) in subsection (2), after paragraph (b) insert—

“(ba) the determination of interim pensions,”;

(ii) after sub-paragraph (c) insert—

“(ca) in subsection (3), before paragraph (a) insert—

“(za) “interim pension” has the meaning given by regulations under section 286(1),”;

(b) after paragraph 3A insert—

“**3B.** In section 135 (restrictions on winding up, discharge of liabilities etc)—

(a) in subsection (1), for “there is an assessment period in relation to an eligible scheme” substitute “an occupational pension scheme is a qualifying pension scheme under section 286(2)”;

(b) omit subsections (2), (3), (5) to (7) and (11);

(c) in subsection (4)—

(i) for the words before paragraph (a) substitute “Except where subsection (4A) applies—

(ii) in paragraph (a), for “member’s” substitute “qualifying member’s”; and

(iii) for paragraph (b) substitute—

“(b) no steps may be taken to discharge any liability of the scheme to or in respect of a qualifying member of the qualifying pension scheme by way of making a payment which would be—

(i) a winding-up lump sum under paragraph 10 of Schedule 29 to the Finance Act 2004 (c.12); or

(ii) a trivial commutation lump sum under paragraph 7 or 7A of that Schedule.”;

- (d) after subsection (4) insert—
- “(4A) This subsection applies where—
- (a) before 26th September 2007 the trustees or managers entered into a binding commitment to purchase an annuity for the qualifying member;
  - (b) the purchase of an annuity has been approved by the scheme manager under section 286A(2)(b);
  - (c) the transfer or discharge of liability has been approved by the scheme manager under subsection (4C) on the application of the trustees or managers of the scheme and any condition imposed under subsection (4D) is satisfied;
  - (d) before the date on which the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 came into force, the trustees or managers of the scheme offered a trivial commutation lump sum to the qualifying member;
  - (e) before the date on which those Regulations came into force—
    - (i) an application under section 93A of the Pension Schemes Act 1993<sup>(1)</sup> or section 89A of the Pension Schemes (Northern Ireland) Act 1993<sup>(2)</sup> (salary related schemes: right to statement of entitlement) for a statement of entitlement had been received by the trustees or managers of the scheme for the qualifying member;
    - (ii) the trustees or managers of the scheme have provided the qualifying member with such a statement; and
    - (iii) the qualifying member has made, within the relevant period, and not withdrawn, an application under section 95 of the Pension Schemes Act 1993 or section 91 of the Pension Schemes (Northern Ireland) Act 1993 (ways of taking right to cash equivalent);
  - (f) the transfer or discharge of liability relates only to money purchase benefits; or
  - (g) the transfer or discharge of liability relates only to benefits derived from the payment of voluntary contributions.
- (4B) For the purposes of subsection (4A)(e), “the relevant period” means—
- (a) where section 94(1)(aa) of the Pension Schemes Act 1993 or section 90(1)(aa) of the Pension Schemes (Northern Ireland) Act 1993 (right to cash equivalent) applies, three months beginning with the guarantee date, as defined in those Acts, in respect of the statement of entitlement; or
  - (b) where regulation 14 of the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>(3)</sup> or regulation 14 of the Occupational Pension Schemes (Transfer Values) Regulations (Northern Ireland) 1996<sup>(4)</sup> (extension of time within which a member may exercise option to take a guaranteed cash equivalent) applies, the three month

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(1) 1993 c.48.  
 (2) 1993 c.49.  
 (3) S.I. 1996/1847.  
 (4) S.R. 1996 No. 619.

period for making a relevant application determined in accordance with that regulation.

(4C) The scheme manager may approve a transfer referred to in subsection (4)(a) or any steps to discharge any liability of the scheme to or in respect of a qualifying member of the qualifying pension scheme by way of making a payment referred to in subsection (4)(b) if the scheme manager thinks it appropriate to do so.

(4D) An approval under subsection (4C) may be made subject to such conditions (if any) as the scheme manager thinks appropriate.”; and

(e) in subsection (9) for “Board” substitute “scheme manager”.

**3C.** In section 136 (power to validate contraventions of section 135)—

(a) in each place it occurs, for “Board” substitute “scheme manager”;

(b) in subsection (1) for the words “to do so is consistent” to the end, substitute “it is appropriate to do so”;

(c) in subsection (2) omit paragraphs (a), (c) and (d);

(d) after subsection (2) insert—

“(2A) The scheme manager may copy the notice under subsection (2) to any other person to whom, in the opinion of the scheme manager, the determination is relevant.”;

(e) in subsection (3) for “Board’s” substitute “scheme manager’s”; and

(f) omit subsections (4) and (5).

**3D.** In section 161 (effect of Board assuming responsibility for a scheme)—

(a) in subsection (1)—

(i) after “given” insert “under regulation 29 of the Financial Assistance Scheme Regulations 2005 (transfer notice)”;

(ii) for “an eligible scheme” substitute “a qualifying pension scheme under section 286(2)”;

(iii) for the words from “the Board” to the end substitute—

“(a) the property, rights and liabilities of the scheme are transferred to the Secretary of State, without further assurance, with effect from the time the trustees or managers are given the transfer notice,

(b) the trustees or managers of the scheme are discharged from their pension obligations from that time, and

(c) any liabilities other than those transferred under paragraph (a) or liabilities in respect of money purchase benefits referred to in subsection (4A) are discharged.”;

(b) omit subsection (2);

(c) in subsection (3)—

(i) after “liabilities of the scheme” insert “means any liabilities which are liabilities of the scheme as a direct result of the rights or property referred to in subsection (1)(a) being held by or vested in the trustees or managers of the scheme, but”; and

(ii) omit the words from “, other than” to the end;

- (d) in subsection (4)—
    - (i) after the words in brackets insert “which are not pensions or benefits in respect of money purchase benefits referred to in subsection (4A)”; and
    - (ii) omit paragraph (b) and the “and” which precedes it;
  - (e) after subsection (4) insert—
 

“(4A) Subsection (1)(a) does not transfer any property which is, or rights which are, held by or vested in the trustees or managers of the scheme in respect of money purchase benefits where the scheme manager is satisfied that appropriate arrangements have been made or are being made for the discharge of the scheme’s liabilities relating to money purchase benefits.

(4B) The trustees or managers of the scheme may discharge their liabilities in respect of money purchase benefits irrespective of any rules of the scheme which may provide that such liabilities must be discharged together with benefits which are not money purchase benefits.”;
  - (f) in subsection (7) for “Board” substitute—
    - (i) where it first occurs, “scheme manager”; and
    - (ii) for the subsequent occurrences, “Secretary of State”;
  - (g) after subsection (7) insert—
 

“(7A) Neither paragraph (b) nor (c) of subsection (1) affects any rights transferred to the Secretary of State in accordance with paragraph (a) of that subsection.”; and
  - (h) in each place it occurs, for “subsection (2)” substitute “subsection (1)”.
- 3E.** In section 165 (guaranteed minimum pensions)—
- (a) in subsection (1)—
    - (i) for “Board” substitute “scheme manager”;
    - (ii) for “Commissioners of Inland Revenue” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
    - (iii) for “it assuming responsibility for an eligible scheme in accordance with this Chapter” substitute “the scheme manager giving a transfer notice under regulation 29 of the Financial Assistance Scheme Regulations 2005 (transfer notice)”; and
  - (b) after subsection (3) insert—
 

“(4) In subsection (8) of that section (as inserted by subsection (3) above) for “on the Board of the Pension Protection Fund assuming responsibility for the scheme” substitute “when a transfer notice was given under regulation 29 of the Financial Assistance Scheme Regulations 2005”.”;
  - (c) after paragraph 14 insert—
 

**“14A.** In section 202 (tax information)—

    - (a) in each place it occurs, for “the Board” substitute “the scheme manager”;
    - (b) in subsection (1) for “tax functions” substitute “a function of the Revenue and Customs”;
    - (c) in subsection (2) for “section 182 of the Finance Act 1989 (c.26)” substitute “sections 18 and 19 of the Commissioners for Revenue and Customs Act 2005 (c.11)”;

- (d) in subsection (4) for “Commissioners of Inland Revenue or the Commissioners of Customs and Excise” substitute “Commissioners for Her Majesty’s Revenue and Customs”; and
- (e) for subsection (5) substitute—
  - “(5) In subsection (1), “a function of the Revenue and Customs” has the same meaning as in section 18 of the Commissioners for Revenue and Customs Act 2005.”;
- (d) in paragraph 17—
  - (i) in sub-paragraph (a)—
    - (aa) before inserted sub-paragraph (ga) insert—
      - “(zga) Paragraphs 6A, 7(1) and 8 of Schedule 6 (transfer of property, rights and liabilities to the Board) as modified;”;
    - (bb) for “Schedules 2 and 2A” substitute “Schedules 2 to 7”; and
    - (cc) after “Financial Assistance Scheme (Appeals) Regulations 2005;” insert—
      - “(gg) regulation 27 of the 2005 Regulations (scheme manager calculations after a valuation);
      - (gh) regulation 28 of the 2005 Regulations (determination of certain asset shares, notional pensions and survivor notional pensions);
      - (gi) regulation 31 of the 2005 Regulations (payments where amounts relating to money purchase benefits are transferred to the Secretary of State);”;
  - (ii) in sub-paragraph (b) for “(gf)” substitute “(gi)”; and
- (e) after paragraph 18 add—
  - “19. In Schedule 6 (transfer of property, rights and liabilities to the Board)—
    - (a) after paragraph 3(2) insert—
      - “(3) Where any liabilities in respect of an existing or future cause of action are not transferred as a result of sub-paragraph (2), the trustees or managers are not discharged from any obligations in respect of such causes of action.”;
    - (b) after paragraph 5 insert—
      - “5A. Any contract which does not form part of any rights or liabilities transferred to the Secretary of State shall be treated as terminated.”;
    - (c) in paragraph 6 for the words from “so far as necessary” to the end substitute—
      - “(a) so far as necessary for the purposes of giving effect to the transfer as a reference to the Secretary of State, and
      - (b) so far as necessary for the purposes of giving effect to paragraph 6A(1) as a reference to the scheme manager.”;
    - (d) after paragraph 6 insert—
      - “6A.—(1) The rights, powers and obligations of the Secretary of State in relation to the property, rights and liabilities are exercisable by the scheme manager without limitation.
      - (2) Where, by virtue of sub-paragraph (1), any amount becomes payable, or is to be paid, to the scheme manager, that amount must be paid to the Secretary of State.”;

- (e) in paragraph 7(1) in the first place in which it occurs for “Board” substitute “scheme manager”;
- (f) in all other places in which it occurs for “Board” substitute “Secretary of State”;  
and
- (g) after paragraph 7 add—

“8.—(1) Where, by virtue of paragraph 3(1), an application to the Pensions Ombudsman under Part 10 of the Pension Schemes Act 1993 (c.48) or Part 10 of the Pension Schemes (Northern Ireland) Act 1993 (c.49) is to be continued by or against the Secretary of State, any reference in section 146 of the Pension Schemes Act 1993 or section 142 of the Pension Schemes (Northern Ireland) Act 1993 to the trustees or managers of an occupational pension scheme shall have effect, so far as necessary, for the purpose of giving effect to paragraph 3(1), as a reference to the Secretary of State.

(2) Where, as a result of such an application being continued against the Secretary of State, a direction is given by the Ombudsman under section 151 of the Pension Schemes Act 1993 or section 147 of the Pension Schemes (Northern Ireland) Act 1993, the Secretary of State may require the scheme manager to carry out a review under regulation 10 of the Financial Assistance Scheme (Internal Review) Regulations 2005.”.”.