Draft Regulations laid before Parliament under section 316(2)(n) of the Pensions Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.[ ]

PENSIONS

The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010

Made - - - - 2010

Coming into force in accordance with regulation 1

The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 190, 203, 286, 315(2) and (4) and 318(1) of the Pensions Act 2004(**1**).

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

The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of the Pensions Act 2004.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

(**1**) 2004 c.35. Section 190 is modified in its application to the financial assistance scheme by paragraph 5 of Schedule 1 to S.I. 2005/1986. Section 286 was amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and by section 124 of the Pensions Act 2008 (c.30). Section 286 is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993, 2005/2113 and 2008/731). Section 318(1) is cited because of the meanings given to "prescribed" and "regulations".

"the FAS Appeals Regulations" means the Financial Assistance Scheme (Appeals) Regulations 2005(**2**);

"the FAS Information and Payments Regulations" means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(**3**);

"the FAS Internal Review Regulations" means the Financial Assistance Scheme (Internal Review) Regulations 2005(**4**); and

"the FAS Regulations" means the Financial Assistance Scheme Regulations 2005(**5**).

PART 2

Amendment of the FAS Regulations

Amendment of the FAS Regulations

3. The FAS Regulations are amended in accordance with this Part.

Amendment of Part 1

4. In regulation 2 (interpretation)—

(a) in the definition of "annual payment", for "regulation 17 or 17C and Schedule 2" substitute "regulation 17, 17C or 17E and Schedule 2, 3 or 4";

(b) after the definition of "annual payment" insert—

> ""asset share" in respect of a person means the assets available to discharge the liability of the scheme in respect of that person as determined in accordance with regulation 22(2), or, where it applies, regulation 28(1);";

(c) for the definition of "beneficiary" substitute—

> ""beneficiary" means—
>
> (a) a qualifying member or, after that qualifying member's death, the survivor and surviving dependants of that qualifying member; and
>
> (b) any person entitled to a payment in accordance with regulation 17G(1);";

(d) after the definition of "beneficiary" insert—

> ""calculation date" means the last day of the month in which the scheme manager instructs the trustees or managers of a qualifying pension scheme to obtain a valuation under regulation 22;";

(e) in the definition of "ill health payment" for "Schedule 2A" substitute "Schedules 2A, 5 and 6";

(f) in the definition of "indexation date", before "an annual payment" insert "a payment under regulation 17G, a payment under regulation 17H,"

(g) after the definition of "multi-employer scheme" insert—

> ""notional pension" means the annual rate of annuity determined in accordance with regulation 27(1)(a);

(**2**) S.I. 2005/3273 as amended by S.I. 2006/3370, 2008/1903, 2008/2683, 2009/792 and 2009/1851.
(**3**) S.I. 2005/2189 as amended by S.I. 2005/3256, 2007/3581, 2008/1903, 2009/792 and 2009/1851.
(**4**) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349, 2006/3370, 2008/1903, 2009/792 and 2009/1851.
(**5**) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581, 2008/1432, 2008/1903, 2008/3069, 2008/3241, 2009/792 and 2009/1851.

"the Ombudsman" means the PPF Ombudsman or any person appointed under section 210(1) (deputy PPF Ombudsmen) to act as a deputy to the PPF Ombudsman;";

(h) after the definition of "qualifying pension scheme" insert—

""relevant accounts" for the purposes of identifying and valuing the assets of a scheme, means the audited accounts for the scheme which—

(a) show a true and fair view of—

(i) the financial transactions of the scheme during the period to which the accounts relate ("the accounting period");

(ii) the amount and disposition of the assets at the end of the accounting period; and

(iii) the liabilities of the scheme, other than the liabilities to pay pensions and benefits after the end of the accounting period;

(b) are in such manner and form as the scheme manager may request;

(c) include a report by the auditor in writing as to whether or not in the auditor's opinion the requirements in paragraphs (a) and (b) above are satisfied; and

(d) are prepared in respect of the period ending with the calculation date;";

(i) after the definition of "scheme manager" insert—

""scheme rules" means the rules of the qualifying pension scheme;";

(j) after the definition of "survivor" insert—

""survivor notional pension" means the annual rate of annuity determined in accordance with regulation 27(1)(c);";

(k) after the definition of "tax approved scheme" insert—

""transfer notice" means the notice given under regulation 29;"; and

(l) after the definition of "trustees or managers" insert—

""valuation actuary" has the meaning given in regulation 22(5),".

Amendment of regulation 4

5. In regulation 4 (application of Parts 1 and 2 of the Act)—

(a) after paragraph (2)(bf) insert—

"(bg) sections 135 and 136 (provisions restricting winding up, discharge of liabilities etc and provisions regarding validation of contraventions of section 135);

(bh) section 165 (guaranteed minimum pensions);";

(b) in paragraph (2)(d) omit "(except section 202)"; and

(c) in paragraph (5) omit "201 and".

Amendment of regulation 15

6. In regulation 15 (qualifying members)—

(a) for paragraph (1) substitute—

"(1) A member or a former member of a qualifying pension scheme is a qualifying member of that scheme for the purposes of—

(a) section 286A(**6**) (restriction on purchase of annuities); and

(b) these Regulations,

where the conditions in paragraphs (2) to (3A) are satisfied in relation to that member or former member or would have been satisfied in relation to that member or former member had that member or former member not died before the coming into force of these Regulations."; and

(b) after paragraph (3) insert—

"(3A) The condition in this paragraph is that the scheme's pension liabilities have not been satisfied in full in respect of that member.".

Omission of regulations 15A and 16

7. Omit regulations 15A (qualifying members for the purposes of section 286A) and 16 (insufficient assets).

Amendment of regulation 17

8. In regulation 17 (annual payments)—

(a) in each place it occurs omit "determined in accordance with Schedule 2";

(b) in paragraph (1) for "Schedule 2 makes" substitute "Schedules 2, 3 and 4 make";

(c) in paragraph (5A) after "a beneficiary" insert "entitled to an annual payment in accordance with Schedule 2";

(d) after paragraph (7) add—

"(8) Subject to paragraphs (16) and (17), and until such time, if any, as regulation 17E applies, where a beneficiary is entitled to an annual payment in accordance with this regulation, that annual payment shall be determined in accordance with—

(a) Schedule 2, where none of sub-paragraphs (b) to (k) nor paragraph (16) or (17) applies;

(b) Schedule 3, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a qualifying member who was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010; and

(iii) the sum of—

(aa) the revalued notional pension in relation to the qualifying member; and

(bb) the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

(**6**) Section 286A was inserted by section 125(1) of the Pensions Act 2008 (c.30).

is higher than the amount of the annual payment to which that qualifying member would be entitled in accordance with Schedule 2 if that Schedule applied and sub-paragraphs (3A) to (3G) of paragraph 2 of that Schedule were omitted;

(c) Schedule 3, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a survivor or surviving dependant; and

(iii) the qualifying member in respect of the beneficiary was entitled to an annual payment in accordance with Schedule 3 immediately before the death of the member;

(d) Schedule 3, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a survivor or surviving dependant;

(iii) the qualifying member in respect of the beneficiary was not receiving a present payment from the qualifying pension scheme under scheme rules before the coming into force of the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010;

(iv) the qualifying member died—

(aa) before becoming entitled to an annual payment; and

(bb) on or after the calculation date; and

(v) the sum of—

(aa) one half of the revalued notional pension in relation to the qualifying member;

(bb) one half of the total amount of any annual increases which the scheme manager considers could have been paid from the relevant date until the date on which the qualifying member died, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11); and

(cc) the total amount of any annual increases which the scheme manager considers could have been paid to a survivor from the day after the day on which the qualifying member died until the day on which the transfer notice is given, taking into account the determination under regulation 27(1)(d) and the revaluation amount determined in accordance with paragraph (11),

is higher than the amount of the annual payment to which a survivor would be entitled in accordance with Schedule 2 if that Schedule applied and paragraphs 2(3A) to (3G) and 5(6A) of that Schedule were omitted;

(e) Schedule 3, where—

(i) a transfer notice has been given in respect of the qualifying pension scheme;

(ii) the beneficiary is a survivor or surviving dependant;