Draft Regulations laid before Parliament under section 176(1)(a) of the Social Security Contributions and Benefits Act 1992 and section 316(2)(n) of the Pensions Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2009 No. 000

PENSIONS
SOCIAL SECURITY

The Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009

Made - - - - 2009

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 section 30DD(5)(c) and 175(3) of the Social Security Contributions and Benefits Act 1992(**1**) and sections 190(1)(a) and (2), 286, 315(2) and (4) and 318(1) of the Pensions Act 2004(**2**).

In accordance with section 176(1)(a)(**3**) of the Social Security Contributions and Benefits Act 1992 and 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.

The Social Security Advisory Committee has agreed that the proposal in respect of regulation 2 should not be referred to it(**4**).

(**1**) 1992 c.4. Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c.30) and amended by S.I.s 2006/343 and 745; there is provision in Schedule 8 to the Welfare Reform Act 2007 for this section to be repealed, but that provision has not yet been commenced as at the date of coming into force of these Regulations.

(**2**) 2004 c.35. Section 190 is modified by S.I. 2005/1986 and section 286 was amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and section 124(2) to (6) of the Pensions Act 2008 (c.30)(although of those subsections, only (2) and (6) have been commenced, for certain purposes, as at the date of coming into force of these Regulations) , and is modified by S.I. 2005/441. Section 318(1) is cited because of the meanings it gives to "prescribed" and "regulations".

(**3**) Section 30DD(5)(c) was inserted by paragraph 25 of Schedule 2 to the Welfare Reform and Pensions Act 1999.

(**4**) *See* section 173(1)(b) of the Social Security Administration Act 1992 (c.5).

Citation, commencement and application

1.—(1) These Regulations may be cited as the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 and shall come into force on the day after the day on which they are made.

(1) Regulation 2 does not apply in relation to Northern Ireland.

Amendment of the Social Security (Incapacity Benefit) Regulations 1994

2.—(1) The Social Security (Incapacity Benefit) Regulations 1994(**5**) are amended in accordance with this regulation.

(2) After regulation 20 (permanent health insurance), insert—

"**Financial assistance scheme**

20A. For the purposes of section 30DD of the Contributions and Benefits Act (incapacity benefit: reduction for pension payments and PPF periodic payments), "pension payment" includes a payment made under the Financial Assistance Scheme Regulations 2005 to a person who first became entitled to such a payment on or after the date on which the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 came into force.".

Amendment of the Financial Assistance Scheme Regulations 2005

3. The Financial Assistance Scheme Regulations 2005(**6**) are amended in accordance with the following regulations.

4.—(1) Regulation 17 (annual payments) is amended in accordance with this regulation.

(2) In paragraph (2)(**7**), for "or (3A)(**8**)" substitute ", (3A) or (3C) or regulation 17C".

(3) In paragraph (3)(**9**)—

(a) after "qualifying member is receiving" insert "a payment under paragraph (3C) or", and

(b) after "payment under regulation 17B(2)" insert "or an annual payment under regulation 17C".

(4) After paragraph (3B), insert—

"(3C) Except where regulation 17C applies, a qualifying member shall be entitled to an annual payment determined in accordance with Schedule 2(**10**) where—

(a) that member makes a written request for such a payment;

(b) the member is—

(i) not receiving any payments under these Regulations; or

(ii) receiving only payments for a survivor by virtue of paragraph (4), regulation 17A(3), 17B(2)(b) or 18(4)(**11**); and

(c) the scheme manager is satisfied that the member meets the conditions in paragraph (3D).

(**5**) S.I. 1994/2946. Relevant amending instrument is S.I. 2000/3120.
(**6**) S.I. 2005/1986. as amended by S.I.s 2005/3256, 2006/3370, 2007/3581, 2008/1432, 1903, 3069 and 3241 (C.147).
(**7**) Paragraph (2) was amended by S.I.s 2008/1432 and 1903.
(**8**) Paragraphs (3A) and (3B) were inserted by S.I. 2008/1432.
(**9**) Paragraph (3) was amended by S.I.s 2005/3256 and 1903.
(**10**) Schedule 2 was amended by S.I.s 2005/3256, 2006/3370, 2007/3581 and 2008/1432 and 1903.
(**11**) Regulations 17A and 17B were inserted by, and regulation 18(4) was substituted by, S.I. 2008/1903.

(3D) The conditions in this paragraph are that the qualifying member—

(a) has attained the age of 55;

(b) suffers from a progressive disease and as a consequence—

(i) cannot reasonably be expected to die within six months; and

(ii) can reasonably be expected to die within five years;

(c) is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; and

(d) is not regarded as a qualifying member by virtue of regulation 15(5).

(3E) The date from which a qualifying member is entitled to an annual payment under paragraph (3C) is the date on which the scheme manager receives the written request mentioned in paragraph (3C)(a).".

(5) In paragraph (6), for "and (5B)" substitute ", (5B) and regulation 17C(8)".

5.—(1) Regulation 17A (ill health payments) is amended in accordance with this regulation.

(2) In paragraph (1), for "or (3)" substitute ", (3) or (3C) or 17C".

(3) In paragraph (6), after "paragraph (7)" insert "and regulation 17C(7)".

6.—(1) Regulation 17B (interim ill health payments) is amended in accordance with this regulation.

(2) In paragraph (2), for "The scheme manager" substitute "Except where regulation 17C(8)(b)(i) applies, the scheme manager".

7. After regulation 17B, insert—

"**Annual payments for certain applications in cases of severe ill health**

17C.—(1) A qualifying member shall be entitled to an annual payment determined in accordance with Schedule 2 where the conditions in paragraphs (2) and (3) are met.

(2) The condition in this paragraph is that, subject to paragraph (9), the qualifying member makes a written request for an annual payment under this regulation during the period of 12 months beginning with the date on which the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 come into force.

(3) The conditions in this paragraph are that the scheme manager is satisfied that the qualifying member—

(a) has attained the age of 55;

(b) suffers from a progressive disease and as a consequence can reasonably be expected to die within five years;

(c) is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; and

(d) is not regarded as a qualifying member by virtue of regulation 15(5).

(4) The date from which a qualifying member is entitled to an annual payment under this regulation is—

(a) where the scheme manager is satisfied that the conditions in paragraph (3) were met before the date on which the scheme manager receives the written request mentioned in paragraph (2), whichever is the later of—

(i) the date on which the scheme manager is satisfied that the conditions in paragraph (3) would first have been met; or

(ii) 14th May 2004; or

(b) in all other cases, the date on which the scheme manager receives the written request mentioned in paragraph (2).

(5) In determining whether or not the scheme manager is satisfied in accordance with paragraph (4)(a), the scheme manager shall have regard to—

(a) the information available as to the length of time the qualifying member has met the conditions in paragraph (3);

(b) the medical evidence available, taking into account—

(i) such evidence as the scheme manager would have expected the qualifying member to have been able to provide in accordance with Schedule 2 to the FAS Information and Payments Regulations, and

(ii) the effect of the lapse of time on the availability of that evidence; and

(c) such other matters as the scheme manager considers relevant.

(6) Paragraphs (4) to (7) of regulation 17 apply to annual payments made under this regulation.

(7) Paragraph (8) applies where—

(a) on the date the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 come into force, the qualifying member is receiving a payment in accordance with these Regulations (other than payments for a survivor by virtue of regulation 17(4), 17A(3), 17B(2)(b) or 18(4)); and

(b) the qualifying member is entitled to an annual payment in accordance with this regulation.

(8) Where this paragraph applies, from the date on which the scheme manager determines that the qualifying member is entitled to an annual payment in accordance with this regulation—

(a) the qualifying member is not entitled to—

(i) an annual payment under regulation 17(2);

(ii) an annual payment for terminal illness under regulation 17(3); or

(iii) an ill health payment under regulation 17A(1); and

(b) the scheme manager may not make—

(i) an initial payment under regulation 18 in anticipation of an annual payment being payable under regulation 17(2);

(ii) an interim ill health payment under regulation 17B(2); or

(iii) an initial payment for terminal illness by virtue of regulation 18(1)(a)(ii) and (4).

(9) Where—

(a) a qualifying member has died;

(b) the scheme manager is satisfied that prior to death that qualifying member satisfied the conditions in paragraph (3); and

(c) the relevant representative makes a written request in respect of that qualifying member during the time period set out in paragraph (2);

that qualifying member shall be entitled to an annual payment in accordance with this regulation.

(10) Any annual payment (or initial payment under regulation 18) payable under paragraph (9) is payable to the estate of the deceased qualifying member.

(11) For the purposes of paragraph (9), references in these Regulations to "qualifying member" may be construed as references to the deceased qualifying member or to the deceased qualifying member's estate, as the case requires.

(12) For the purposes of this regulation—

"relevant representative" means—

(a) the survivor of the deceased qualifying member referred to in paragraph (9), or

(b) where there is no survivor in relation to that qualifying member, that member's personal representative; and

"personal representative" has the meaning given in regulation 2(1) of the FAS Information and Payments Regulations.".

8.—(1) Regulation 18 (initial payments)(**12**) is amended in accordance with this regulation.

(2) In paragraph (1), after sub-paragraph (aa) insert—

"(ab) the scheme manager—

(i) has received a written request under regulation 17(3C)(a) or 17C(2) or (9) from, or in respect of, a qualifying member of that scheme; and

(ii) is satisfied that that qualifying member is entitled to a payment under regulation 17(3C) or 17C; or".

(3) In paragraph (4), for "The scheme manager" substitute "Except where regulation 17C(8)(b)(i) or (iii) applies, the scheme manager".

(4) In paragraph (4A)(a)(ii)—

(a) for "earlier" substitute "earliest"; and

(b) at the end of sub-paragraph (bb) add—

"; or

(cc) the day on which the qualifying member becomes entitled to a payment under regulation 17(3C) or 17C;"date.

9.—(1) Schedule 2 (determination of annual and initial payments) is amended in accordance with this regulation.

(2) In paragraph 4(5)(b)(ii) and (7)(b)(ii) and paragraph 5(8)(b)(ii) and (10)(b)(ii), for "or (3)", in each place it occurs, substitute ", (3) or (3C) or 17C".

(3) After paragraph 5 (survivors of qualifying members) insert—

"**Payment for an entitlement under regulation 17C**

5A.—(1) This paragraph applies where a qualifying member is entitled to an annual payment in accordance with regulation 17C for a period during which that member has previously received a relevant payment.

(2) The annual payment payable to a qualifying member to whom this paragraph applies is determined in accordance with this Schedule.

(**12**) Relevant amending instruments are S.I.s 2005/3256, 2006/3370, 2007/3581 and 2008/1432.