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

2009 No.

PENSIONS

The Financial Assistance Scheme (Miscellaneous Provisions) 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 sections 168, 190, 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 Provisions) Regulations 2009 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. Sections 168 and 190 are modified in their application to the financial assistance scheme by paragraphs 4 and 5 to 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 and 2005/2113). Section 318(1) is cited because of the meanings given to "prescribed" and "regulations".

"annual payment" means the amount payable to a beneficiary in respect of each year determined in accordance with regulation 17 or 17C of, and Schedule 2 to, the FAS Regulations;

"beneficiary" means a qualifying member or, after a qualifying member's death, the survivor and surviving dependants of that qualifying member;

"ill health payment" means a payment made to a beneficiary determined in accordance with regulation 17A of, and Schedule 2A to, the FAS Regulations;

"initial payment" means a payment made to a beneficiary in accordance with regulation 18 of, and Schedule 2 to, the FAS Regulations;

"interim ill health payment" means a payment made to a beneficiary in accordance with regulation 17B of, and Schedule 2A to, the FAS Regulations;

"surviving dependant" shall be construed in accordance with regulation 16B of the FAS Regulations(**2**);

"survivor" shall be construed in accordance with regulation 16A of the FAS Regulations(**3**);

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

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

"the FAS Information and Payments Regulations" means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(**6**); and

"the FAS Internal Review Regulations" means the Financial Assistance Scheme (Internal Review) Regulations 2005(**7**).

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 regulation 2

4. In regulation 2 (interpretation)—

(a) in paragraph (1)—

(i) in the definition of "annual payment" after "regulation 17" insert "or 17C";

(ii) at the end of the definition of "beneficiary" insert "and surviving dependants";

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

""employment" means any trade, business, profession, office or vocation;";

(iv) omit the definition of "certification date";

(v) after the definition of "ill health payment" insert—

(**2**) Regulation 16B is inserted into the FAS Regulations by these Regulations.
(**3**) Regulation 16A is inserted into the FAS Regulations by these Regulations.
(**4**) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581, 2008/1432, 2008/1903, 2008/3069, 2008/3241 and 2009/792.
(**5**) S.I. 2005/3273 as amended by S.I. 2006/3370, 2008/1903, 2008/2683 and 2009/792.
(**6**) S.I. 2005/2189 as amended by S.I. 2005/3256, 2007/3581, 2008/1903 and 2009/792.
(**7**) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349, 2006/3370, 2008/1903 and 2009/792.

""indexation date" means—

(a) the 1st January next falling after a beneficiary first becomes entitled to an annual payment or an ill health payment; and

(b) each subsequent 1st January during that beneficiary's lifetime;";

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

""partner" means a person of either sex who was not married to, or in a civil partnership with, the qualifying member but who was living with that member —

(a) as if that person and the qualifying member were husband and wife; or

(b) in the case of two adults of the same sex, as if they were civil partners,

and, for the purposes of these Regulations, two adults of the same sex are to be regarded as living together as civil partners if they would have been regarded as living together as husband and wife were they instead two adults of the opposite sex;

"pension credit member" has the meaning given by section 124(1) of the 1995 Act;";

(vii) after the definition of "principal employer" insert—

""qualifying course" means a full time educational or vocational course at a recognised educational establishment where in pursuit of that course, the time spent receiving instruction or tuition, undertaking supervised study, examination or practical work or taking part in any exercise, experiment or project for which provision is made in the curriculum of the course exceeds 12 hours per week in normal term time, and shall include any gaps between the ending of one course and the commencement of another, where the person is enrolled on and commences the latter course;";

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

""shared initial payment" means a payment which is not an initial payment and which is the amount payable to a survivor of a qualifying member who was a party to a polygamous marriage in accordance with regulation 18(4B) and paragraph 5(6A) of Schedule 2;

"surviving dependant" shall be construed in accordance with regulation 16B;";

(ix) for the definition of "survivor" substitute—

""survivor" shall be construed in accordance with regulation 16A;";

(b) after paragraph (1A) insert—

"(1AB) In paragraph (1A), "the rules of that scheme" means the rules of the occupational pension scheme on the date on which benefits ceased to accrue to that member.";

(c) in paragraph (7), for "paragraph (8)" substitute "paragraphs (8) and (8A)";

(d) after paragraph (8) insert—

"(8A) Subject to paragraph (8B), where a beneficiary or a possible beneficiary is a child aged less than 18, the scheme manager may regard—

(a) a parent of the child;

(b) a person with parental responsibility within the meaning of section 3 of the Children Act 1989(**8**) in relation to the child;

(c) a person with parental responsibility or parental rights under the Children (Scotland) Act 1995(**9**) in relation to the child; or

(d) a person with parental responsibility within the meaning of Article 6 of the Children (Northern Ireland) Order 1995(**10**) in relation to the child,

as the appointed representative of that child.

(8B) Where—

(a) no person referred to in paragraph (8A)(a) to (d) is known to the scheme manager, the scheme manager may appoint a person to act as the appointed representative of a child;

(b) more than one person referred to in paragraph (8A)(a) to (d) wishes to act as the child's representative for the purposes of these Regulations, the scheme manager may appoint one of those persons as the appointed representative of that child."; and

(e) after paragraph (9) insert—

"(10) For the purposes of these Regulations, a qualifying member who has died was "a party to a polygamous marriage" if, immediately before the member died, the member—

(a) was a party to a marriage entered into under a law which permits polygamy; and

(b) had more than one spouse.".

Amendment of regulation 4

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

(a) for paragraph (ba) substitute—

"(ba) section 113 (investment of funds);

(bb) section 114 (investment principles);

(bc) section 115 (borrowing);

(bd) section 117 (administration levy);

(be) section 119 (annual reports to Secretary of State);

(bf) section 134 (directions);"; and

(b) after paragraph (d)—

(i) omit "and"; and

(ii) insert—

"(da) Schedule 5 (the Board of the Pension Protection Fund); and".

Amendment of regulation 5

6.—(1) In regulation 5 (scheme manager)—

(**8**) 1989 c.41.
(**9**) 1995 c.36.
(**10**) S.I. 1995/755 (N.I.2).

(a) in paragraph (1), for "Secretary of State" substitute "Board of the Pension Protection Fund"; and

(b) for paragraph (2) substitute—

"(2) References in these Regulations to the scheme manager are to the Board of the Pension Protection Fund acting in its capacity as manager of the financial assistance scheme.

(3) The Secretary of State shall pay a grant to the scheme manager in connection with its functions conferred by these Regulations.

(4) The scheme manager may not use the grant paid by the Secretary of State in accordance with paragraph (3) to make any payments which are required to be made to any beneficiary in accordance with these Regulations.".

(2) Omit regulations 5A (functions of the Board of the Pension Protection Fund in relation to the financial assistance scheme), 7 (annual reports) and 8 (delegation).

Amendments to the FAS Regulations consequential to the amendment of regulation 5 of those Regulations

7.—(1) In each place it occurs in—

(a) regulations 2(1B)(b), 12A(3)(a), 12B(5)(a), 13(3A), 14(5)(b)(ii), 17(3B), 17B(9) and 18(9); and

(b) paragraphs 2(4) and (5), 3(4), 4(4), 5(5) and 10(a) of Schedule 2,

for "he" substitute "it".

(2) In—

(a) regulations 4(5)(c), 12A(3)(b), 12B(5)(b), 17B(2), (4) and (5) and 18(5A); and

(b) paragraphs 9, 11(b), 12(a) and (b)(i) and 14(d) and (e) of Schedule 1,

for "his" substitute "its".

(3) In regulation 18(4) and (5) for "his discretion" substitute "its discretion".

(4) In each place it occurs in—

(a) regulation 20(3) and (4)(b);

(b) paragraphs 1 and 2(b) of Schedule 1; and

(c) paragraphs 3(4), 4(4), 5(5) and 10(a) of Schedule 2,

for "him" substitute "it".

Amendment of Part 2 – arrangements relating to the scheme manager

8. For regulation 6 (funding) substitute—

"**Financial and other arrangements to enable or assist the Board of the Pension Protection Fund to carry out its functions in relation to the financial assistance scheme**

6.—(1) The Secretary of State—

(a) shall make available such amounts as are necessary to enable—

(i) the scheme manager; or