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

2008 No.

PENSIONS

The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008

Made - - - - 2008

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 181(1) of, and paragraph 5(3B) of Schedule 2 to, the Pension Schemes Act 1993(**1**), paragraph 5(3B) and (4A) of Schedule 1 to the Pension Schemes (Northern Ireland) Act 1993(**2**) and now vested in him(**3**) and sections 286, 315(2) and (4) and 318(1) of the Pensions Act 2004(**4**).

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.

Except in relation to regulation 22, the Secretary of State has consulted such persons as he considers appropriate in accordance with section 185(1) of the Pension Schemes Act 1993(**5**) and section 317(1) of the Pensions Act 2004.

(**1**) 1993 c.48. Paragraph 5(3B) was inserted by section 141 of the Pensions Act 1995 (c.26). Section 181(1) is cited because of the meaning given to "regulations".

(**2**) 1993 c.49. Paragraph 5(3B) was inserted by Article 138(2)(b) of the Pensions (Northern Ireland) Order 1995 (S.I. 1995/3213 (N.I.22)) and amended by paragraph 77(5)(c) of Schedule 1 to the Social Security Contributions (Transfer of Functions, etc.) (Northern Ireland) Order 1999 (S.I. 1999/671). Paragraph 5(4A) was added by paragraph 77(5)(d) of Schedule 1 to S.I.1999/671 and is cited because of the meaning given to "regulations".

(**3**) *See* paragraph 5(4A) of Schedule 1 to the Pension Schemes (Northern Ireland) Act 1993.

(**4**) 2004 c.35. Section 286 was amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and 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".

(**5**) Section 185(1) was amended by paragraph 46 of Schedule 3 to, and paragraph 80(a) of Schedule 5 to, the Pensions Act 1995.

PART 1

Introductory

Citation and commencement

1. These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 and shall come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

"the FAS Appeals Regulations" means the Financial Assistance Scheme (Appeals) Regulations 2005(**6**);

"the FAS Information and Payments Regulations" means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(**7**);

"the FAS Internal Review Regulations" means the Financial Assistance Scheme (Internal Review) Regulations 2005(**8**); and

"the FAS Regulations" means the Financial Assistance Scheme Regulations 2005(**9**).

Application

3.—(1) Regulation 21 does not apply in relation to Northern Ireland.

(2) Regulation 22 applies only in relation to Northern Ireland.

PART 2

Amendment of the FAS Regulations

Amendment of the FAS Regulations

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

Amendment of Part 1

5.—(1) In regulation 2(1) (interpretation)—

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

""certification date" means the date for which the relevant information provided in relation to a qualifying member, or a survivor of a qualifying member, is correct;

"ill health payment" means the amount payable to a beneficiary in respect of each year determined in accordance with regulation 17A and Schedule 2A;";

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

(**6**) S.I. 2005/3273 as amended by S.I. 2006/3370.
(**7**) S.I. 2005/2189 as amended by S.I. 2005/3256 and 2007/3581.
(**8**) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349 and 2006/3370.
(**9**) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581 and 2008/1432.

""interim ill health payment" means a payment made to a beneficiary in accordance with regulation 17B;

"interim pension" has the meaning given in paragraph 2 of Schedule 2 as modified by paragraph 10 of that Schedule;".

(2) In regulation 4(2) (application of Parts 1 and 2 of the Act), after paragraph (b) insert—

"(ba) section 134 (directions);".

Amendment of Part 2

6. After regulation 5 (scheme manager) insert—

"**Functions of the Board of the Pension Protection Fund in relation to the financial assistance scheme**

5A.—(1) The Board of the Pension Protection Fund—

(a) shall, on the request of the scheme manager, provide advice to the scheme manager in relation to the financial assistance scheme;

(b) may manage, or make arrangements in relation to the management of, the transfer of any property, rights and liabilities of qualifying pension schemes which have not been fully wound up.

(2) The power conferred by paragraph (1)(b) includes, but is not limited to—

(a) the preparation of plans or other similar preparatory documentation;

(b) undertaking work calculated to assist in ensuring any transfer is carried out effectively and efficiently;

(c) undertaking work to assess the effect of any action taken in relation to qualifying pension schemes; and

(d) the inspection, examination and auditing of data or other information relating to qualifying pension schemes.

(3) The Secretary of State shall pay a grant to the Board of the Pension Protection Fund in connection with the functions in paragraph (1).".

Amendment of Part 3

7.—(1) In regulation 9 (qualifying pension schemes)—

(a) for paragraph (1)(c) substitute—

"(c) either—

(i) the employer in relation to that scheme satisfies the condition in regulation 11;

(ii) in relation to a multi-employer scheme, the condition in regulation 12 is satisfied;

(iii) in relation to a scheme which is not a multi-employer scheme and which began to wind up before 6th April 1997, the condition in regulation 12A(1) is satisfied;

(iv) in relation to a multi-employer scheme which began to wind up before 6th April 1997, the condition in regulation 12B(1) or (2) is satisfied;

(v) in relation to a scheme which is not a multi-employer scheme and which began to wind up on or after 6th April 1997 but before 11th June 2003, the condition in regulation 12A(2) is satisfied; or

(vi) in relation to a multi-employer scheme which began to wind up on or after 6th April 1997, the condition in regulation 12B(3) or (4) is satisfied;";

(b) at the beginning of paragraph (1)(ca) insert "where paragraph (i) or (ii) of sub-paragraph (c) applies,"; and

(c) in paragraph (1)(ca), for "sub-paragraph (c)" substitute "those paragraphs".

(2) In regulation 11(1), for "regulation 9(1)(c)" substitute "regulation 9(1)(c)(i)".

(3) In paragraphs (1) and (2) of regulation 12, for "regulation 9(1)(c)" substitute "regulation 9(1)(c)(ii)".

(4) After regulation 12 insert—

"**Employer-related condition**

12A.—(1) The condition to be satisfied for the purposes of regulation 9(1)(c)(iii) is that the employer discharged the debt due under section 144 of the 1993 Act or that no debt was due under that section when the scheme began to wind up.

(2) The condition to be satisfied for the purposes of regulation 9(1)(c)(v) is that the employer discharged the debt due under section 75 of the 1995 Act or that no debt was due under that section when the scheme began to wind up.

(3) The scheme manager may treat the condition in paragraph (1) or (2) as being satisfied where—

(a) he is satisfied that an appropriate proportion of the debt was discharged or is likely to be discharged; and

(b) in his opinion, it was reasonable that the debt due under section 144 of the 1993 Act, or section 75 of the 1995 Act as appropriate, has not been discharged.

(4) In this regulation the reference to the employer shall be interpreted in accordance with regulation 11(2).

Employer-related condition: multi-employer schemes

12B.—(1) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that—

(a) the debt due under section 144 of the 1993 Act was discharged by all the employers in that section of the scheme; or

(b) no debt was due under that section of that Act when the scheme began to wind up.

(2) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(iv) is that—

(a) the debt due under section 144 of the 1993 Act was discharged by all the employers to which the scheme relates; or

(b) no debt was due under that section of that Act when the scheme began to wind up.

(3) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(vi) is that—

(a) the debt due under section 75 of the 1995 Act was discharged by all the employers in that section of the scheme; or

(b) no debt was due under that section of that Act when the scheme began to wind up.

(4) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c)(vi) is that—

(a) the debt due under section 75 of the 1995 Act was discharged by all the employers to which the scheme relates; or

(b) no debt was due under that section of that Act when the scheme began to wind up.

(5) The scheme manager may treat any condition in paragraphs (1) to (4) as being satisfied where—

(a) he is satisfied that an appropriate proportion of the debt was, or is likely to be, discharged; and

(b) in his opinion, it was reasonable that the debt due under section 144 of the 1993 Act, or section 75 of the 1995 Act as appropriate, or a proportion of that debt has not been discharged.

(6) In this regulation—

(a) the references to the employer in paragraphs (1) and (3) shall be interpreted in accordance with regulation 12(3);

(b) the references to the employer in paragraphs (2) and (4) shall be interpreted in accordance with regulation 12(4); and

(c) "sectionalised multi-employer scheme" has the meaning given by regulation 12(6).".

Amendment of regulation 15

8. At the beginning of paragraph (5) of regulation 15 (qualifying members) insert "Except for the purposes of regulations 17A and 17B,".

Amendment of regulation 17

9. In regulation 17 (annual payments)—

(a) in paragraph (2)(**10**), after "paragraph (3) or (3A) applies" insert "or where the qualifying member is receiving an ill health payment under regulation 17A(1) or an interim ill health payment under regulation 17B(2)";

(b) at the beginning of paragraph (3) insert "Except where the qualifying member is receiving an ill health payment under regulation 17A(1) or an interim ill health payment under regulation 17B(2),"; and

(c) at the beginning of paragraph (4) insert "Except where regulation 17A(3) applies,".

Insertion of regulations 17A and 17B

10. After regulation 17 insert—

"**Ill health payments**

17A.—(1) Except where the qualifying member is entitled to an annual payment under regulation 17(2) or (3), where the scheme manager is satisfied that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age, that member shall be entitled to a payment ("an ill health payment") in accordance with paragraph 2 of Schedule 2A from—

(**10**) Paragraph (2) was amended by S.I. 2008/1432.