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

2006 No.

PENSIONS

The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006

Made - - - - 2006

Coming into force in accordance with regulation 1(1)

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

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

Before making these Regulations the Secretary of State consulted such persons as he considered appropriate(**2**).

PART 1

Introductory

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Northern Ireland.

(3) In these Regulations—

"the FAS Regulations" means the Financial Assistance Scheme Regulations 2005(**3**);

(**1**) 2004 c. 35. 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 2006/566). Section 318(1) is cited because of the meaning there given to "modifications", "prescribed" and "regulations".

(**2**) *See* section 317(1) of the Pensions Act 2004.

(**3**) S.I. 2005/1986, amended by S.I. 2005/3256.

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

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

PART 2

Amendment of the FAS Regulations

Amendment of the FAS Regulations

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

Amendment of Part 1

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

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

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

(b) for the definitions of ""multi-employer scheme" and "relevant public authority"" substitute—

> ""multi-employer scheme" means an occupational pension scheme in relation to which there is or has been—
>
> (a) a principal employer and at least one employer (who is not the principal employer in relation to that scheme); or
>
> (b) more than one employer,
>
> at the same time;";

(c) omit the definition of "notification period";

(d) immediately before the definition of "qualifying member" insert—

> ""principal employer" has the meaning given in regulation 12(6)"; and

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

> ""relevant public authority" has the meaning given in section 307(4) or, as the case may be, Article 280(4);".

Amendment of Part 3

4.—(1) In regulations 11(1) (condition to be satisfied by employer), 12(1) and (2) (condition to be satisfied: multi-employer schemes) and 13(2)(b) and (4) (insolvency events), for "the last day of the notification period" substitute "28th February 2007".

(2) In regulation 11(2) for "includes every", in both places it occurs, substitute "is to the".

(3) In regulation 12—

(a) in paragraph (1), for sub-paragraphs (a), (b) and (c) substitute—

(**4**) S.I. 2005/1994, amended by S.I. 2005/3256 and 2006/349.
(**5**) S.I. 2005/3273.
(**6**) S.I. 2005/2189, amended by S.I. 2005/3256.

"(a) in relation to the principal employer in that section; or

(b) where either there is no principal employer in that section or, where the principal employer is not an employer, there has been no insolvency event in relation to such a principal employer in that section—

(i) in relation to the employer in that section; or

(ii) where there is more than one employer in that section, in relation to all the employers in that section.";

(b) in paragraph (2), for sub-paragraph (b) substitute—

"(b) where either there is no principal employer or, where the principal employer is not an employer, there has been no insolvency event in relation to such a principal employer—

(i) in relation to the employer; or

(ii) where there is more than one employer, in relation to all the employers.";

(c) in paragraphs (3) and (4)—

(i) after "references to the employer" insert "(other than in the phrase "principal employer")";

(ii) omit "are"; and

(iii) for "to the person" substitute "include every person"; and

(d) in—

(i) paragraph (5), for "in paragraphs (1)(b) and (c)" substitute "(who may or may not be an employer within the meaning of paragraph (3) or (4)) in paragraphs (1)"; and

(ii) paragraph (5) and the definition of "principal employer" in paragraph (6), for "the employer" in each place it occurs, substitute "the person".

(4) After regulation 13(3) insert—

"(3A) Where the scheme manager is satisfied that the employer in relation to an occupational pension scheme is unlikely to continue as a going concern, the scheme manager may treat an insolvency event as having occurred in relation to that employer for the purposes of regulations 11 and 12 where he is satisfied that on 28th February 2007 or on some earlier date all of the following circumstances applied to that employer—

(a) no insolvency event referred to elsewhere in this regulation has occurred or is likely to occur in relation to the employer;

(b) the value of the assets of the employer is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; and

(c) the employer is unable to pay its debts as they fall due or have fallen due.".

(5) After regulation 13(4) insert—

"(4A) An insolvency event also occurs for the purposes of regulations 11 and 12 where the scheme manager is satisfied that on or before 28th February 2007—

(a) an event has occurred in any jurisdiction outside the United Kingdom, in relation to an employer, that substantially corresponds to any event referred to in—

(i) section 121(2) to (4) (other than subsection (3)(f) of that section),

(ii) Article 105(2) to (4) and (12) (other than paragraph (3)(f) of that Article), and

(iii) paragraph (4) of this regulation; and

(b) that employer is unlikely to continue as a going concern.".

(6) In paragraph (6), after the definition of "administration order" insert—

""employer" includes a person who is a principal employer for the purposes of regulation 12;".

Amendment of Part 4

5. In regulation 15 (qualifying members)—

(a) in paragraph (1)—

(i) at the end of sub-paragraph (a) omit "or";

(ii) at the end of sub-paragraph (b) insert—

"; or

(c) he died before the date of the coming into force of these Regulations, but would have satisfied the condition in either sub-paragraph (a) or (b)";

(iii) after "that member or former member" insert ", or would have been satisfied where sub-paragraph (c) applies"; and

(b) in paragraphs (4)(b) and (c) and (5)(d)(ii), for "2007" substitute "2019".

Amendment of Part 5

6.—(1) In regulation 17 (annual payments), for paragraph (5A) substitute—

"(5A) In determining the amount of annual payment that is payable to, or in respect of, a beneficiary for any previous year or years ("arrears payable")—

(a) the total of all monthly instalments of an initial payment that have been made to, or in respect of, the beneficiary for any previous year or years is to be deducted from the amount of arrears payable to that beneficiary; and

(b) if the total of all such monthly instalments is greater than that amount of arrears payable—

(i) the amount to be paid in respect of arrears payable is nil, and

(ii) the difference between that total and the amount of arrears payable is recoverable from the beneficiary in accordance with regulation 7 of the FAS Information and Payments Regulations (recovery of overpayments).".

(2) In regulation 18 (initial payments)—

(a) in paragraph (1), at the beginning, insert "Subject to paragraph (4A),";

(b) in paragraph (2)(a), after "or his survivor" insert ", and on account of such a payment";

(c) after paragraph (4) insert—

"(4A) Paragraphs (1)(a)(i) and (4)(a)(ii)(aa) do not apply in relation to Group 2 qualifying members or Group 3 qualifying members.";

(d) after paragraph (5) insert—

"(5A) Where the trustees or managers have determined the amount of interim pension that would be paid to the qualifying member or the survivor of that qualifying member, but do not propose to pay that interim pension for administrative reasons, the scheme manager may, in exercising his discretion under paragraph (4) and in determining the amount of initial payment under Schedule 2, deem that member or that survivor to be receiving that interim pension, if in the scheme manager's opinion it is reasonable to do so.";

(e) after paragraph (9) insert—

"(9A) If, having determined that an initial payment may be made under paragraph (4), the scheme manager subsequently determines, in accordance with Schedule 2, that no annual payment is payable to or in respect of that qualifying member or his survivor, then the total of all monthly instalments of an initial payment made to or in respect of that qualifying member or his survivor is recoverable in accordance with regulation 7 of the FAS Information and Payments Regulations."; and

(f) for paragraph (10) substitute—

"(10) In this regulation—

"Group 2 qualifying member" and "Group 3 qualifying member" have the meanings given in paragraph 1(2) of Schedule 2; and

"interim pension" has the meaning given in paragraph 2 of Schedule 2(**7**).".

Amendment of Schedule 2

7.—(1) In paragraph 1(2) of Schedule 2 (determination of annual and initial payments – introductory)—

(a) omit the definition of "the FAS Information and Payments Regulations"; and

(b) after the definition of "the certification date" insert—

""the crystallisation date" has the same meaning as in paragraphs (6) and (7) of regulation 4 of the Occupational Pension Schemes (Winding Up) Regulations 1996, as those paragraphs were in force on 5th April 2005(**8**);

"Group 1 qualifying member" means a qualifying member of a qualifying pension scheme who—

(a) will have attained his normal retirement age on or before 14th May 2011, or

(b) died before attaining that age but would have attained that age on or before that date;

"Group 2 qualifying member" means a qualifying member of a qualifying pension scheme who—

(a) will attain his normal retirement age during the period beginning on 15th May 2011 and ending on 14th May 2015, or

(b) died before attaining that age but would have attained that age during that period;

"Group 3 qualifying member" means a qualifying member of a qualifying pension scheme who—

(a) will attain his normal retirement age during the period beginning on 15th May 2015 and ending on 14th May 2019, or

(b) died before attaining that age but would have attained that age during that period;".

(2) In paragraph 2 of that Schedule (determination of annual and initial payments – actual pension)—

(a) in sub-paragraph (1)—

(**7**) Paragraph 2 is modified by paragraph 10(a) of Schedule 2.

(**8**) S.I. 1996/3126; although regulation 4 was substituted by S.I. 2005/706 (as amended by S.I. 2005/2159) that substitution does not have effect in relation to any scheme which was regarded, by virtue of regulation 2 of S.I. 1996/3126 or in accordance with the Pensions Act 1995 (c. 26), s. 124(3A)–(3E) (as inserted by s.49(2) of the Child Support, Pensions and Social Security Act 2000 (c. 19) and amended by paragraph 69(3) and (4) of Schedule 12 to the Pensions Act 2004), as having begun to be wound up before 6th April 2005 (see regulation 1(2) and (3) of S.I. 2005/706).