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

2005 No.

PENSIONS

The Financial Assistance Scheme Regulations 2005

Made - - - - 2005

Coming into force in accordance with regulation 1

Whereas a draft of this instrument was laid before Parliament in accordance with section 316(2)(n) of the Pensions Act 2004(**1**) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 286, 315(2) and 318(1), (4)(a) and (5) of that Act(**2**), and of all other powers enabling him in that behalf, hereby makes the following Regulations:

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Assistance Scheme Regulations 2005 and shall come into force—

(a) for the purposes of this regulation, regulation 4 and paragraphs 4, 5, 15 and 16 of Schedule 1 in so far as they relate to regulation 4, for the purpose only of the making of regulations, on the day after the day on which these Regulations are made;

(b) in so far as these Regulations apply in relation to civil partnerships, on 5th December 2005; and

(c) for all other purposes, on 1st September 2005.

(2) These Regulations extend to Northern Ireland.

(**1**) 2004 c.35.

(**2**) Section 286 is modified in relation to multi-employer schemes by S.I.2005/441. Section 318(1) is cited because of the meaning ascribed to the words "modifications", "prescribed" and "regulations".

Interpretation

2.—(1) In these Regulations—

"the Act" means the Pensions Act 2004 and references to a numbered section are, unless the context otherwise requires, to a section of the Act(**3**);

"the Northern Ireland Order" means the Pensions (Northern Ireland) Order 2005(**4**) and references to a numbered Article are, unless the context otherwise requires, to an Article of that Order;

"the 1993 Act" means the Pension Schemes Act 1993(**5**);

"the 1995 Act" means the Pensions Act 1995(**6**);

"the FSMA" means the Financial Services and Markets Act 2000(**7**);

"the ICTA" means the Income and Corporation Taxes Act 1988(**8**);

"the Commissioners of HMRC" means the Commissioners of Her Majesty's Revenue and Customs;

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

"beneficiary" means a qualifying member or, after his death, his survivor;

"initial payment" means a payment made to a beneficiary in accordance with regulation 18;

"multi-employer scheme" and "relevant public authority" have the meanings given in section 307(4) or, as the case may be, Article 280(4);

"notification period" shall be construed in accordance with regulation 14(5)(b);

"qualifying member" shall be construed in accordance with regulation 15;

"qualifying pension scheme" shall be construed in accordance with regulation 9;

"scheme manager" shall be construed in accordance with regulation 5;

"survivor" means, in relation to a member of a qualifying pension scheme who has died—

(a) the member's widow or widower; or

(b) the member's surviving civil partner,

but shall not include a person who comes within paragraph (a) or (b) but who is regarded as a qualifying member by virtue of regulation 15(5);

"tax approved scheme" means a scheme which is approved or was formerly approved under section 590 (conditions for approval of retirement benefit schemes) or 591(**9**) (discretionary approval) of the ICTA or in respect of which an application for such approval has been duly made but has not been determined;

"trustees or managers" shall be construed in accordance with the definition in section 124(1) of the 1995 Act,

(**3**) The Act is modified in its application to partially guaranteed pension schemes by S.I.2005/277, in its application to multi-employer schemes by S.I. 2005/441 and in its application to hybrid schemes by S.I.2005/449.
(**4**) S.I.2005/255 (N.I.1). The Northern Ireland Order is modified in its application to partially guaranteed pension schemes by S.R.2005/55, in its application to hybrid schemes by S.R.2005/84 and in its application to multi-employer schemes by S.R.2005/91.
(**5**) 1993 c.48.
(**6**) 1995 c.26.
(**7**) 2000 c.8.
(**8**) 1988 c.1.
(**9**) Sections 590 and 591 are amended by the Finance Act 1988 (c.39), section 35 and Schedule 3, the Finance Act 1989 (c.26), sections 75 and 187 and Schedules 6 and 17, the Finance Act 1991 (c.31), sections 34, 36 and 123 and Schedule 19, the Finance Act 1994 (c.9), section 107, the Finance Act 1995 (c.4), section 59 and the Finance Act 1999 (c.16), section 79 and Schedule 10.

and other expressions have the meaning given to them in the Act or, as the case may be, in the Northern Ireland Order.

(2) References in these Regulations to provisions of the 1993 Act, the 1995 Act, the Welfare Reform and Pensions Act 1999(**10**) and to the Social Security Contributions and Benefits Act 1992(**11**) include references to the provisions in force in Northern Ireland corresponding to those provisions.

(3) In these Regulations, "insurance company" means—

(a) a person who has permission under Part 4 of the FSMA to effect or carry out contracts of long-term insurance; or

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act (certain direct insurance undertakings) which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance,

and in this paragraph, "contracts of long-term insurance" means contracts which fall within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**12**).

(4) Paragraph (3) shall be read with—

(a) section 22 of the FSMA (regulated activities);

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.

(5) In these Regulations, "normal retirement age" means, subject to paragraph (6), in relation to a member of an occupational pension scheme, the age specified in the rules of that scheme at which that member will normally retire.

(6) Where the normal retirement age—

(a) determined in accordance with paragraph (5) is more than 65, that age shall be 65;

(b) cannot be determined in accordance with paragraph (5) from the rules of the qualifying pension scheme, that age shall be such age as the scheme manager shall determine having regard to the rules of that scheme and to such other information as he considers relevant.

(7) In these Regulations, "appointed representative" means—

(a) a person whose name, address and appointment by a beneficiary or by a person who believes himself to be a beneficiary ("potential beneficiary") for the purposes of —

(i) notifying the scheme manager of the details prescribed in regulation 14(1) and (3); or

(ii) receiving payments made under these Regulations,

have been notified to the scheme manager in a document signed by the beneficiary or potential beneficiary in question or by his legal representative and whose appointment has been consented to by the scheme manager; or

(b) where a beneficiary or a potential beneficiary—

(i) dies; or

(ii) is otherwise incapable of acting for himself,

and there is no person appointed under sub-paragraph (a) in respect of that beneficiary or potential beneficiary, a person who has been appointed by the scheme manager to act as the beneficiary's or the potential beneficiary's representative for the purposes of these Regulations.

(**10**) 1999 c.30.
(**11**) 1992 c.4.
(**12**) S.I.2001/544.

Commencement of winding up

3.—(1) For the purposes of these Regulations, the time when an occupational pension scheme begins to be wound up shall be determined in accordance with this regulation.

(2) Subject to paragraphs (3) to (6), where the rules of the scheme require or permit the scheme to be wound up and the scheme is wound up under those rules, the scheme begins to be wound up—

(a) either—

(i) at such time as the rules provide that it does so; or

(ii) if the rules make no provision as to that time, at such time as the trustees or managers determine that the scheme shall begin to be wound up; or

(b) as soon as there are no members who are in pensionable service under the scheme,

whichever is the later.

(3) Where the rules of the scheme require or permit the scheme to be wound up but the trustees or managers determine in pursuance of section 38 of the 1995 Act(**13**) or otherwise that the scheme is not to be wound up for the time being, then for the purposes of paragraph (2), in so far as any provision made by the rules of the scheme as to the time when it begins to be wound up is inconsistent with the trustees' or managers' determination, that provision shall be disregarded.

(4) Where under the rules of the scheme, any person other than the trustees or managers may determine that the scheme is to be wound up, or is not to be wound up for the time being, then the references in paragraphs (2)(a)(ii) and (3) to the trustees' or managers' determination shall be taken, in a case where the winding up begins or is deferred by virtue of that other person's determination, as a reference to his determination.

(5) Paragraph (4) applies where such power is vested in the trustees or managers jointly with another person, or in some but not all of the trustees, as it applies where such a power is vested only in a person other than the trustees or managers.

(6) Where—

(a) the scheme manager is satisfied that the scheme began to wind up during the period prescribed in regulation 9(1)(b); but

(b) the exact date on which the scheme began to wind up cannot be determined,

the scheme begins to be wound up on such date, within that period, as the scheme manager determines.

(7) Where—

(a) a scheme is wound up in pursuance—

(i) of an order by the Determinations Panel on behalf of the Regulator under section 11 of the 1995 Act(**14**) (see section 9); or

(ii) of an order of a court; and

(b) the order makes provision as to the time at which the scheme is to begin to be wound up,

the scheme begins to be wound up at the time specified in the order or, if none is so specified, the date on which the order takes effect.

Application of Parts 1 and 2 of the Act

4.—(1) The provisions of Parts 1 and 2 of the Act specified in paragraph (2) apply for the purposes of these Regulations with the modifications prescribed in Schedule 1.

(**13**) Section 38 is amended by the Welfare Reform and Pensions Act 1999, Schedule 12, paragraph 50.
(**14**) Section 11 is amended by section 22 of the Act.

(2) The specified provisions are—

(a) section 68 (power for the Regulator to collect information relevant to the Board of the Pension Protection Fund);

(b) section 85 (power to enable the Regulator to disclose restricted information to the Board);

(c) section 168 (administration of compensation payable by the Board);

(d) sections 190 to 204 (except section 202) (information gathering powers of the Board and provisions relating to disclosure of information by the Board); and

(e) Schedule 8 (permitted disclosures by the Board to facilitate exercise of functions).

(3) Subject to paragraph (5), the provisions of Parts 1 and 2 of the Act which are applied by paragraph (1), shall apply to Northern Ireland for the purposes of these Regulations, with the prescribed modifications, as if those provisions extended to Northern Ireland.

(4) Section 88(4) shall also apply to Northern Ireland for the purposes of these Regulations as if that provision extended to Northern Ireland.

(5) Sections 197 to 201 and 203 shall apply to Northern Ireland only in so far as they relate to disclosure or provision of information—

(a) by or to the scheme manager;

(b) by any person who receives information directly or indirectly from the scheme manager;

(c) by any person for the purpose of enabling or assisting the scheme manager to exercise his functions; and

(d) by trustees or managers of occupational pension schemes in respect of matters relating to these Regulations.

(6) In so far as this regulation extends provisions to Northern Ireland—

(a) a person may not be required under or by virtue of those provisions to produce, disclose or permit the inspection of protected items within the meaning given in section 311(2) to (4); and

(b) if a person claims a lien on a document, its production under any provision made by, or by virtue of, those provisions, does not affect the lien.

PART 2

ESTABLISHMENT OF THE FINANCIAL ASSISTANCE SCHEME

Scheme manager

5.—(1) The financial assistance scheme established by these Regulations shall be managed by the Secretary of State.

(2) References in these Regulations—

(a) to the scheme manager are to the Secretary of State acting in his capacity as manager of the financial assistance scheme;

(b) to the Secretary of State are to the Secretary of State acting other than in that capacity.

Funding

6.—(1) Any payments which are required to be made in accordance with these Regulations shall be paid out of a fund which is held, managed and applied by the scheme manager ("the fund").

(2) The Secretary of State shall pay amounts into the fund out of monies provided by Parliament.