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 (Modifications and Miscellaneous Amendments) Regulations 2005

Made - - - - 2005

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 168, 190(1)(a) and (2), 203(1), 286(1) and (3)(d) and (j), 315(2), (4) and (5) and 318(1) 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.

This instrument contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made(**2**).

Citation, commencement, extent and interpretation

1.—(1) These Regulations may be cited as the Financial Assistance Scheme (Modifications and Miscellaneous Amendments) Regulations 2005 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 Act" means the Pensions Act 2004;

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

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

(**1**) 2004 c. 35. Section 286 is modified in its application to multi-employer schemes by S.I. 2005/441 as amended by S.I. 2005/993 and 2005/2113; section 318(1) is cited because of the meaning there given to "prescribed" and "regulations".

(**2**) *See* section 317(2) of the Pensions Act 2004 ("the Act") which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of the Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of the Act by virtue of which the regulations are made.

(**3**) S.I. 2005/1986.

(**4**) S.I. 2005/1994.

"the FAS Information and Payments Regulations" means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(**5**).

Application of Part 2 of the Act

2.—(1) The provisions of Part 2 of the Act set out in regulation 3 shall apply, with the modifications there specified, for the purposes of any regulations in relation to appeals against any determination, or failure to make a determination, in connection with the financial assistance scheme.

(2) In so far as they do not extend to Northern Ireland, the provisions of Part 2 of the Act which are applied by paragraph (1) shall apply, as modified by regulation 3, to Northern Ireland, for the purposes of any regulations in relation to appeals referred to in paragraph (1), as if those provisions extended to Northern Ireland.

Modifications to Part 2 of the Act

3.—(1) In section 209(4) of the Act—

(a) paragraph (d) shall apply as if, after "the PPF Ombudsman" there were inserted "except any function conferred on him in relation to appeals in connection with the financial assistance scheme";

(b) paragraph (f) shall apply as if, after "his functions" there were inserted ", except any function conferred on him in relation to appeals in connection with the financial assistance scheme"; and

(c) paragraph (g) shall apply as if, after "held by him" there were inserted "except information held by him in relation to any appeal in connection with the financial assistance scheme".

(2) Section 212 of the Act shall apply as if, in subsection (1), after "discharge of his functions" there were inserted ", and a separate report on the discharge of his functions in relation to appeals in connection with the financial assistance scheme,".

(3) Section 213(4)(d) of the Act (costs) shall apply as if it provided for regulations under that section to make provision for the costs or expenses of prescribed persons incurred in connection with an appeal under regulations made under section 286 of the Act (financial assistance scheme for members of certain pension schemes).

(4) Section 215 of the Act (referral of questions of law) shall apply as if it provided for the PPF Ombudsman to refer any question of law arising for determination in connection with an appeal under regulations made under section 286 of the Act—

(a) in England and Wales, or in Northern Ireland, to the High Court; or

(b) in Scotland, to the Court of Session.

(5) Section 216(2) of the Act (publication) shall apply as if it provided that, for the purposes of the law of defamation, the publication of any matter by the PPF Ombudsman in connection with an appeal under regulations made under section 286 of the Act shall be absolutely privileged.

(6) Section 217(1) of the Act (determinations of the PPF Ombudsman – right of appeal) shall apply as if it provided that a person bound by a determination or direction by the PPF Ombudsman by virtue of regulations made under section 286 of the Act may appeal on a point of law arising from the determination or direction—

(a) in England and Wales, or in Northern Ireland, to the High Court; or

(b) in Scotland, to the Court of Session.

(**5**) S.I. 2005/2189.

(7) Section 217(2) of the Act (determinations of the PPF Ombudsman – enforcement) shall apply as if it provided that any determination or direction of the PPF Ombudsman made under regulations made under section 286 of the Act is enforceable—

(a) in England and Wales, or in Northern Ireland, in a county court as if it were a judgment or order of that court; and

(b) in Scotland, in like manner as an extract registered decree arbitral bearing warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

(8) Section 218 of the Act (obstruction etc of the PPF Ombudsman) shall apply as if—

(a) in subsection (1)(b), for "section 213 or 214" there were substituted "section 286"; and

(b) in subsection (5)(a), after "in England and Wales" there were inserted ", or in Northern Ireland".

Amendment of the FAS Regulations

4.—(1) The FAS Regulations shall be amended in accordance with this regulation.

(2) In regulation 2 (interpretation)—

(a) in paragraph (1), in the definition of "survivor", after "member" insert "or former member";

(b) in paragraph (7)—

(i) for "In these Regulations," substitute "Subject to paragraph (8), in these Regulations,", and

(ii) for "potential", in each place that it occurs, substitute "possible"; and

(c) after paragraph (7), add—

"(8) If a beneficiary or a possible beneficiary appoints a person under sub-paragraph (a) of paragraph (7), and then—

(a) dies, or

(b) becomes otherwise incapable of acting for himself,

the person appointed under sub-paragraph (a) of that paragraph is deemed to have been appointed under sub-paragraph (b) of that paragraph.

(9) For the purposes of these Regulations, a person is "terminally ill" at any time if at that time he suffers from a progressive disease and his death, in consequence of that disease, can reasonably be expected within six months.".

(3) In regulation 17 (annual payments)—

(a) in paragraph (3), omit "within the meaning given in section 66(2)(a) of the Social Security Contributions and Benefits Act 1992";

(b) after paragraph (5), insert—

"(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"), 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.

(5B) From the day after the day on which a beneficiary dies, any further monthly instalments of an annual payment that would have been payable to that beneficiary, in respect of that year, cease to be payable.";

(c) in paragraph (6), for "Annual" substitute "Subject to paragraph (5B), annual"; and

(d) after paragraph (6), add—

"(7) Paragraphs 7 and 8 of Schedule 2 provide for the circumstances in which an annual payment is not payable under this Part.".

(4) For regulation 18 (initial payments), substitute—

"**Initial payments**

18.—(1) This regulation applies where a qualifying pension scheme is winding up and—

(a) a qualifying member of that scheme—

(i) has attained the age of 64; or

(ii) has not attained that age, but the scheme manager—

(aa) has been notified that a qualifying member is terminally ill; and

(bb) is satisfied as to that fact; or

(b) a qualifying member of that scheme has died and leaves a survivor.

(2) The trustees or managers of the scheme may make a written request to the scheme manager for a payment ("an initial payment") to be made to, or in respect of, a qualifying member or his survivor—

(a) in anticipation of an annual payment being payable under this Part to the qualifying member or his survivor; and

(b) before any monthly instalment of that annual payment is made.

(3) If a request for an initial payment is made in respect of a qualifying member who dies before any monthly instalment of an annual payment has been made to that qualifying member, the trustees or managers may make a further request that an initial payment be made in respect of any survivor of that qualifying member.

(4) On receipt of a request for an initial payment, the scheme manager may, in his discretion, make an initial payment—

(a) to the qualifying member in respect of whom the request was made, with effect from whichever is the later of—

(i) 14th May 2004; or

(ii) the day on which—

(aa) the qualifying member attains the age of 65, or

(bb) the scheme manager is first notified that the qualifying member is terminally ill,

whichever is the earlier; or

(b) if the qualifying member has died, to a survivor of that qualifying member with effect from whichever is the later of—

(i) 14th May 2004; or

(ii) the day after the day on which that qualifying member died.

(5) In exercising his discretion under paragraph (4), the scheme manager may only have regard to—

(a) the amount, if any, of any interim pension that was in payment, is in payment, or is proposed to be paid, from the qualifying pension scheme—

(i) to a qualifying member up until his death; or

(ii) after his death, to his survivor; and

(b) any circumstances relating to the scheme which, in the opinion of the scheme manager, are relevant to determining whether an initial payment should be made.

(6) Schedule 2 makes provision for the determination of the amount of initial payments.

(7) If the scheme manager determines that an initial payment may be made under paragraph (4), the initial payment is payable—

(a) to a qualifying member from the relevant day mentioned in that paragraph until the day on which that qualifying member—

(i) would have been paid, or is paid, the first monthly instalment of an annual payment in accordance with regulation 19, if an annual payment were payable, or is payable, to him under this Part; or

(ii) dies,

whichever is the earlier; and

(b) in respect of a qualifying member who has died, to a survivor of that qualifying member from the day after the day on which that qualifying member died until the day on which his survivor—

(i) would have been paid, or is paid, the first monthly instalment of an annual payment in accordance with regulation 19, if an annual payment were payable, or is payable, to him under this Part; or

(ii) dies,

whichever is the earlier.

(8) From the day after the day on which a beneficiary dies, any further monthly instalments of an initial payment that would have been payable to that beneficiary in respect of that year cease to be payable.

(9) The scheme manager may, at any time before the amount of the annual payment is determined, redetermine the amount of any initial payment paid under paragraph (4) if he is satisfied that the amount being paid by way of initial payment, as determined in accordance with Schedule 2, may be incorrect.

(10) In this regulation, "interim pension" has the meaning given by paragraph 2 of Schedule 2(**6**).".

(5) In regulation 19(3)(b), for "18(3)" substitute "18(4)".

(6) In Schedule 2 (determination of annual and initial payments)—

(a) in paragraph 1(2) (introductory)—

(i) for the definition of "the certification date" substitute—

""the 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;", and

(ii) in the appropriate alphabetical places, insert—

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

"appropriate person" has the meaning given by regulation 2(1) of the FAS Information and Payments Regulations (interpretation);

(**6**) Paragraph 2 of Schedule 2 is modified by paragraph 10(a) of that Schedule as substituted by regulation 4(5)(e) of these Regulations.

(**7**) S.I. 2005/2189 as amended by regulation 6 of these Regulations.