

2008 No. 1432

PENSIONS

**The Financial Assistance Scheme (Miscellaneous Provisions)
Regulations 2008**

Made - - - - *3rd June 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 sections 286, 315(2) and (4) and 318(1) of the Pensions Act 2004^(a) and sections 18(9) and 25(2) of the Pensions Act 2007^(b).

In accordance with section 316(2)(n) of the Pensions Act 2004 and section 18(10) of the Pensions Act 2007, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

In accordance with section 317(1) of the Pensions Act 2004 and section 25(3)(b) of the Pensions Act 2007, the Secretary of State has consulted such persons as he considers appropriate.

PART 1

Introductory

Citation and commencement

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

Interpretation

2. In these Regulations—

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

“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 of, and Schedule 2 to, the FAS Regulations;

(a) 2004 c.35 Section 286 was amended by section 18(2) and (3) of the Pensions Act 2007 (c.22), is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993 and 2005/2113) and extends to England, Wales, Scotland and Northern Ireland. Section 318(1) is cited because of the meanings given to “prescribed” and “regulations”.

(b) 2007 c.22. Section 18 extends to England, Wales, Scotland and Northern Ireland.

“qualifying member” shall be construed in accordance with regulation 15 of the FAS Regulations;

“survivor” means, in relation to a member or former 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) of the FAS Regulations;

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(a).

PART 2

Amendment of section 18 of the Pensions Act 2007

Amendment of section 18 of the Pensions Act 2007

3. In section 18(5) and (7) of the Pensions Act 2007 (financial assistance scheme: increased levels of payments), for “0.8” substitute “0.9”.

PART 3

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. After paragraph (1) of regulation 2 (interpretation) insert—

“(1A) In these Regulations, “normal retirement age” means, subject to paragraph (1B), 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.

(1B) Where the normal retirement age—

- (a) determined in accordance with paragraph (1A) is—
 - (i) more than 65, that age shall be 65;
 - (ii) less than 60, that age shall be 60 except for the purposes of paragraph 2(3)(a) of Schedule 2;
- (b) cannot be determined in accordance with paragraph (1A) 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.”.

Amendment of Part 5

6.—(1) In regulation 17 (annual payments)—

- (a) in paragraph (2)—
 - (i) after “paragraph (3)” insert “or (3A)”; and

(a) S.I. 2005/1986, amended by S.I. 2005/3256, 2006/3370 and 2007/3581.

- (ii) for “the age of 65” substitute “normal retirement age”;
- (b) after paragraph (3) insert—
 - “(3A) Where a person is regarded as a qualifying member under regulation 15(5)—
 - (a) that member shall be entitled to an annual payment determined in accordance with Schedule 2 from—
 - (i) 14th May 2004; or
 - (ii) the date on which he became entitled to a present payment from the qualifying pension scheme;
 - whichever is the later; and
 - (b) monthly instalments of the annual payment which would have been payable to that member shall cease to be payable from the date on which that member would have ceased to be entitled to the payment referred to in regulation 15(5)(a) in accordance with the rules of the qualifying pension scheme.
 - (3B) Where the date referred to in paragraph (3A)(b) cannot be determined from the rules of the qualifying pension scheme, the date on which annual payments shall cease to be payable shall be such date as the scheme manager shall determine having regard to the rules of that scheme and to such other information as he considers relevant.”; and
 - (c) in paragraph (6)(a), for “paragraph (5B)” substitute “paragraphs (3A)(b) and (5B)”.
- (2) In regulation 18 (initial payments)(b)—
 - (a) in paragraph (1)(a)(i), for “the age of 64” substitute “the age which is one year less than normal retirement age”;
 - (b) at the end of paragraph (1)(a) omit “or”;
 - (c) after paragraph (1)(a) insert—
 - “(aa) a person is regarded as a qualifying member under regulation 15(5); or”; and
 - (d) in paragraph (4)—
 - (i) at the beginning of sub-paragraph (a) insert “except where sub-paragraph (c) applies,”;
 - (ii) in sub-paragraph (a)(ii)(aa), for “the age of 65” substitute “normal retirement age”; and
 - (iii) after sub-paragraph (b) insert—
 - “(c) if the qualifying member is regarded as a qualifying member under regulation 15(5), to that member with effect from whichever is the later of—
 - (i) 14 May 2004; or
 - (ii) the date on which he became entitled to a present payment from the qualifying pension scheme.”.

Amendment of Schedule 2

7.—(1) Schedule 2 (determination of annual and initial payments)(c) is amended in accordance with this regulation.

- (2) In each place it occurs(d), for “0.8” substitute “0.9”.
- (3) In paragraph 1 (introductory) omit sub-paragraphs (4) and (5).
- (4) In paragraph 4 (active and deferred members)—

(a) Regulation 17(6) was amended by S.I. 2005/3256.

(b) Regulation 18 was substituted by S.I. 2005/3256 and paragraph (1) was amended by S.I. 2006/3370.

(c) Schedule 2 was amended by S.I. 2005/3256, 2006/3370 and 2007/3581.

(d) The figure 0.8 occurs in paragraphs 3(2), 4(2), 5(3), 7(1), 7(2) and 10(e). Paragraph 5(3) applies to both annual payments for survivors of qualifying members and as modified by paragraph 10(e) of Schedule 2 for the purposes of determining the amount of initial payments to such survivors.

- (a) for sub-paragraph (5) substitute—
 - “(5) The first revaluation period is the period—
 - (a) beginning on the day on which the qualifying member’s pensionable service ended; and
 - (b) ending on the earlier of—
 - (i) the day before the day on which the scheme began to wind up; or
 - (ii) the day from which the qualifying member is entitled to an annual payment in accordance with regulation 17(2) or (3).”;
 - (b) for sub-paragraph (7) substitute—
 - “(7) The second revaluation period is the period—
 - (a) beginning on the day after the date determined in accordance with sub-paragraph (5)(b); and
 - (b) ending on—
 - (i) the certification date; or
 - (ii) the day from which the qualifying member is entitled to an annual payment in accordance with regulation 17(2) or (3),
 whichever is the earlier.”.
- (5) In paragraph 5 (survivors of qualifying members)—
- (a) in sub-paragraph (4)(b), for “paragraph 4(3)” substitute “sub-paragraph (7)”;
 - (b) in sub-paragraph (6)(b)(i), for “the age of 65” substitute “normal retirement age”;
 - (c) after sub-paragraph (6) insert—
 - “(7) For the purposes of sub-paragraph (4)(b), “expected pension” means the aggregate amount of—
 - (a) the amount specified in paragraph 4(3)(a);
 - (b) the revaluation amount for the first survivor revaluation period (see sub-paragraphs (8) and (9)); and
 - (c) the revaluation amount for the second survivor revaluation period (see sub-paragraphs (10) and (11)).
- (8) The first survivor revaluation period is the period—
- (a) beginning on the day on which the qualifying member’s pensionable service ended; and
 - (b) ending on—
 - (i) the day before the day on which the scheme began to wind up;
 - (ii) the day from which the qualifying member became entitled to an annual payment in accordance with regulation 17(2) or (3); or
 - (iii) the day from which the survivor of the qualifying member became entitled to an annual payment under regulation 17(4),
 whichever is the earliest.
- (9) The revaluation amount for the first survivor revaluation period is the revaluation amount determined in accordance with paragraph 4(6).
- (10) The second survivor revaluation period is the period—
- (a) beginning on the day after the date determined in accordance with sub-paragraph (8)(b); and
 - (b) ending on—
 - (i) the day from which the qualifying member became entitled to an annual payment in accordance with regulation 17(2) or (3); or

(ii) the day from which the survivor of the qualifying member became entitled to an annual payment under regulation 17(4),
whichever is the earlier.

(11) The revaluation amount for the second survivor revaluation period is the revaluation amount determined in accordance with paragraph 4(8) to (12).”.

(6) In paragraph 9(2A) (revaluation)(a), for the words “where that qualifying member was in receipt of an annual payment at the time of his death” substitute “where an annual payment was payable to that qualifying member immediately before his death”.

PART 4

Transitional provision

Transitional provision

8. The FAS Regulations and section 18 of the Pensions Act 2007 shall continue to have effect as if these Regulations had not come into force where—

- (a) a beneficiary has, before the date on which these Regulations come into force, received a monthly instalment of an annual payment or an initial payment;
- (b) the date from which the beneficiary would be entitled to an annual payment or an initial payment would not change under these Regulations; and
- (c) the beneficiary would be entitled to a higher annual payment or higher initial payment if these Regulations had not come into force.

Signed by authority of the Secretary of State for Work and Pensions.

Mike O'Brien
Minister of State,
Department for Work and Pensions

3rd June 2008

(a) Paragraph 9(2A) was inserted by S.I. 2006/3370.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend section 18 of the Pensions Act 2007 and the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986, as amended) (“the FAS Regulations”), which provide for payments to be made to, or in respect of, certain members or former members (or their survivors) of certain occupational pension schemes where the liabilities of the scheme to those people are unlikely or unable to be satisfied in full.

Part 2 amends section 18 of the Pensions Act 2007 to increase from 0.8 to 0.9 the fraction used to calculate the amount of a person’s initial payment.

Part 3 amends the FAS Regulations. In particular, it—

- (a) increases from 0.8 to 0.9 the fraction used in the calculation of annual payments and initial payments;
- (b) changes the date from which qualifying members (who are not terminally ill or members by virtue of regulation 15(5) of the FAS Regulations) are entitled to financial assistance scheme payments from the later of 14 May 2004 and age 65 to the later of 14 May 2004 and normal retirement age (normal retirement age is subject to a lower limit of 60 and an upper limit of 65);
- (c) makes changes to payments to members who are qualifying members by virtue of regulation 15(5) of the FAS Regulations, to provide that such payments start from the later of 14 May 2004 and the date on which such members would have been entitled to payments under scheme rules and end when payments to them would have ceased under scheme rules;
- (d) makes a corresponding change so that a request for initial payments can be made from one year before normal retirement age for qualifying members or at any time where the member is regarded as a qualifying member under regulation 15(5) of the FAS Regulations;
- (e) makes changes to the way payments are revalued.

Part 4 makes a transitional provision providing that the FAS Regulations and section 18 of the Pensions Act 2007 continue to have effect as if these Regulations had not been made in certain cases where the previous provisions result in higher annual payments or higher initial payments.

Before making these Regulations the Secretary of State consulted such persons as he considers appropriate.

An impact assessment has not been published for this instrument as it has only a negligible impact on business, charities and voluntary bodies.

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