

2008 No. 1903

PENSIONS

The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008

Made - - - -

16th July 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(a), paragraph 5(3B) and (4A) of Schedule 1 to the Pension Schemes (Northern Ireland) Act 1993(b) and now vested in him(c) and sections 286, 315(2) and (4) and 318(1) of the Pensions Act 2004(d).

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(e) and section 317(1) of the Pensions Act 2004.

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(f);

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- (a) 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".
- (b) 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".
- (c) See paragraph 5(4A) of Schedule 1 to the Pension Schemes (Northern Ireland) Act 1993.
- (d) 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".
- (e) Section 185(1) was amended by paragraph 46 of Schedule 3 to, and paragraph 80(a) of Schedule 5 to, the Pensions Act 1995.
- (f) S.I. 2005/3273 as amended by S.I. 2006/3370.

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

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

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

Application

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

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

[Regulation 4 makes various amendments to S.I. 2005/1986.]

[Regulation 5 amends regulation 2 of S.I. 2005/1986.]

[Regulation 6 inserts regulation 5A into S.I. 2005/1986.]

[Regulation 7 amends regulations 9, 11 and 12 of S.I. 2005/1986.]

[Regulation 8 amends regulation 15 of S.I. 2005/1986.]

[Regulation 9 amends regulation 17 of S.I. 2005/1986.]

[Regulation 10 inserts regulations 17A and 17B into S.I. 2005/1986.]

[Regulation 11 amends regulation 18 of S.I. 2005/1986.]

[Regulation 12 amends regulation 19 of S.I. 2005/1986.]

[Regulation 13 amends Schedule 1 of S.I. 2005/1986.]

[Regulation 14 amends Schedule 2 of S.I. 2005/1986.]

[Regulation 15 inserts Schedule 2A into S.I. 2005/1986.]

[Regulation 16 makes various amendments to S.I. 2005/2189.]

[Regulation 17 amends regulation 2 of S.I. 2005/2189.]

[Regulation 18 amends Schedule 1 to S.I. 2005/2189.]

[Regulation 19 amends regulations 2 and 5 of S.I. 2005/1994.]

[Regulation 20 amends regulations 2 and 6 of S.I. 2005/3273.]

[Regulation 21 amends regulation 49 of S.I. 1996/1172.]

[Regulation 22 makes amendments to regulations outside the scope of these works.]

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

16th July 2008

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

(a) S.I. 2005/2189 as amended by S.I. 2005/3256 and 2007/3581.

(b) S.I. 2005/1994 as amended by S.I. 2005/3256, 2006/349 and 2006/3370.

(c) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581 and 2008/1432.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986, as amended) ("the FAS Regulations") which allow for payments to be made to, or in respect of, certain members or former members of certain occupational pension schemes where the liabilities of the scheme to those members are unlikely or unable to be satisfied in full.

They also amend the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (S.I. 2005/2189, as amended), the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994, as amended), the Financial Assistance Scheme (Appeals) Regulations 2005 (S.I. 2005/3273, as amended), the Occupational Pension Schemes (Contracting-out) Regulations 1996 (S.I. 1996/1172, as amended) and the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996 (S.R. 1996 No. 493, as amended) in relation to the financial assistance scheme ("the FAS").

Part 2 amends the FAS Regulations. In particular it—

- (a) confers certain functions on the Board of the Pension Protection Fund in relation to the FAS. The functions are to advise the FAS scheme manager in relation to the FAS on request of the scheme manager and to manage or make arrangements in relation to the management of the transfer of certain scheme property, rights and liabilities. The Secretary of State shall pay a grant to the Board of the Pension Protection Fund in connection with those functions;
- (b) provides further conditions which may be satisfied by an employer in order for the pension scheme to which that employer relates to be a qualifying pension scheme for the purposes of the FAS;
- (c) makes provision for ill health payments and interim ill health payments to be payable to qualifying members within 5 years of normal retirement age where the scheme manager is satisfied that the qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until their normal retirement age. A new Schedule (Schedule 2A to the FAS Regulations) makes provision for the determination of the amount of ill health payments and interim ill health payments;
- (d) removes the requirement in regulation 18 of the FAS Regulations for a written request from the trustees or managers of a pension scheme in order for the scheme manager to use his discretion to make initial payments; and
- (e) applies a modified section 134 and section 191 of the Pensions Act 2004 (c. 35) in relation to the FAS, so that the scheme manager may give a relevant person directions in relation to a qualifying pension scheme which is winding-up and to extend the power to give notices under section 191 to the Board of the Pension Protection Fund in relation to their functions which relate to the FAS.

Part 3 amends the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005. In particular it amends the period during which certain information is to be provided by appropriate persons.

Part 4 amends the Financial Assistance Scheme (Internal Review) Regulations 2005 and the Financial Assistance Scheme (Appeals) Regulations 2005 in order to make provision for the internal review and appeal of certain decisions relating to ill health payments and interim ill health payments and to make an amendment in relation to appeals by survivors.

Part 5 amends the Occupational Pension Schemes (Contracting-out) Regulations 1996 and the Occupational Pension Schemes (Contracting-out) Regulations (Northern Ireland) 1996, to amend regulation 49 of those instruments to insert a further condition which must be satisfied in order for a member of a contracted-out scheme to have their state scheme rights restored. The condition is that the member is not a qualifying member of a qualifying pension scheme for the purposes of the FAS. Part 5 also makes provision for an exception for such members who have been notified in accordance with regulation 50 before the date on which these Regulations came into force.

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 the private or voluntary sectors.