

## 2005 No. 3256

### PENSIONS

#### The Financial Assistance Scheme (Modifications and Miscellaneous Amendments) Regulations 2005

Made - - - - 23rd November 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(a).

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(b).

#### 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(c);

“the FAS Internal Review Regulations” means the Financial Assistance Scheme (Internal Review) Regulations 2005(d);

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(e).

#### 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.

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(a) 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”.

(b) 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.

(c) S.I. 2005/1986.

(d) S.I. 2005/1994.

(e) S.I. 2005/2189.

(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.

(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”.

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

[Regulation 5 amends regulations 1-6, 11, 15, 16 and 17 of S.I. 2005/1994.]

[Regulation 6 amends regulations 2, 3 and Schedules 1 and 2 to S.I. 2005/2189.]

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

23rd November 2005

*Stephen Timms*  
Minister of State,  
Department for Work and Pensions

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Financial Assistance Scheme (“FAS”) is established by the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) (“the FAS Regulations”) to allow payments to be made to, or in respect of, certain members of certain occupational pension schemes where the liabilities of those schemes to those members are unlikely to be satisfied in full.

These Regulations modify and apply certain provisions of Part 2 of the Pensions Act 2004 (c. 35) (“the Act”) to regulations governing appeals in relation to the Financial Assistance Scheme. They also amend the FAS Regulations, the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994) (“the FAS Internal Review Regulations”) and the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (S.I. 2005/2189) (“the FAS Information and Payments Regulations”).

Regulations 2 and 3 make provision for—

the order-making powers under section 209(4)(d), (f) and (g) of the Act (to provide for the delegation of the functions of the PPF Ombudsman (“the Ombudsman”) to his staff or additional staff (as made available to him by the Secretary of State); to confer information gathering functions on the Ombudsman; and to restrict his disclosure of information held by him) to apply as if they included a provision excepting their application to the Ombudsman’s functions in relation to FAS; this is so that similar provision can be made in these Regulations rather than in a separate order;

the obligation for the Ombudsman to prepare an annual report on the discharge of his functions not to apply to any functions conferred on him in relation to an appeal in relation to FAS (“a FAS appeal”);

regulations to be made in relation to FAS appeals to make provision for the costs or expenses of prescribed persons;

the Ombudsman to refer any question of law arising on the investigation of matters arising on a FAS appeal to the High Court (in England and Wales, or in Northern Ireland) or the Court of Session (in Scotland);

the publication of any matter by the Ombudsman in connection with a FAS appeal to be absolutely privileged;

parties to a FAS appeal to appeal to the High Court (in England and Wales, or in Northern Ireland) or the Court of Session (in Scotland) on a point of law arising from a decision of the Ombudsman in relation to a FAS appeal;

determinations and directions of the Ombudsman to be enforceable in a county court (in England and Wales, or in Northern Ireland) or in the sheriff court of any sheriffdom (in Scotland); and

the steps that the Ombudsman may take where any person without lawful excuse obstructs the Ombudsman in the performance of his functions or is guilty of an act or omission which would constitute a contempt of court. The Ombudsman may certify the offence to the court and it will then be dealt with in a similar manner to contempt of court.

Regulation 4 amends the FAS Regulations. In particular it—

makes some minor amendments in regulation 2 of those Regulations (interpretation);

amends regulation 17 of those Regulations (annual payments) to provide that monthly instalments of an annual payment payable to a beneficiary cease to be payable to that beneficiary when that beneficiary dies;

substitutes regulation 18 of those Regulations (initial payments) to make provision for initial payments to be made to survivors of qualifying members; and

makes consequential amendments to Schedule 2 to those Regulations (determination of annual and initial payments) in relation to the determination of initial payments payable to survivors and makes some other minor amendments.

Regulation 5 amends the FAS Internal Review Regulations. In particular it—

substitutes regulation 4 of those Regulations (duty of scheme manager to give a review decision) to clarify that the duty to give a review decision in respect of a reviewable determination does not arise unless an application for a review of the determination is received in proper form;

amends regulation 5 of those Regulations (time for making an application for a review of a reviewable determination)—

to impose a time limit for making an application for a review of a reviewable determination relating to member eligibility or member assessment; and

to clarify that, for the purposes of determining when an application is made, and to determine if it was made within the prescribed time, an application is made only if it is made by an interested person and it otherwise complies with the requirements of regulations 5 and 6;

amends regulation 15 of those Regulations (matters to be included in a review decision or a subsequent review decision) to clarify that only interested persons who receive notices of review decisions need to be advised of their right to appeal against those decisions; and

substitutes regulation 16 of those Regulations (notice of a review decision or a subsequent review decision) to ensure that notices of review decisions are issued to the appropriate persons.

Regulation 6 makes certain amendments to the FAS Information and Payments Regulations. In particular it makes consequential amendments necessary in relation to survivors.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

A Regulatory Impact Assessment has not been published for this instrument as it has only a negligible impact on business, charities and voluntary bodies.