DWP Department for Work and Pensions

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Date: 12 August 2010

Dear Sir or Madam

Consultation on the draft Regulations – The Financial Assistance Scheme and Pension Protection Fund (Valuation, Revaluation and Indexation Amendments) Regulations 2011

The Chancellor of the Exchequer announced in the Budget statement on 22nd June 2010 that, with some exceptions, the Government proposed to use the consumer prices index (CPI) rather than the retail prices index (RPI) as the basis for increasing most benefits and public sector pensions. On 8 July 2010, the Minister of State for Pensions, Steve Webb MP, announced that the Government intended to use the CPI for statutory minimum revaluation and indexation for occupational pension schemes and for relevant payments made by the Pension Protection Fund (PPF) and the Financial Assistance Scheme (FAS).

This consultation document seeks views on the draft Financial Assistance Scheme and Pension Protection Fund (Valuation, Revaluation and Indexation Amendments) Regulations 2010, which are intended to deliver most of the CPI changes for the PPF and the FAS.

Changes covered in the draft Regulations

Changes are proposed to -

- The PPF and the FAS rules so that accrued pensions will be revalued by reference to the RPI for periods before 31st March 2011 and by reference to the CPI after that date. Relevant caps to revaluation increases will continue to apply as they do under current rules.

- The FAS cap so that the CPI is used for the annual increase that will be made in April 2011 and subsequent years.

- The section143 funding test applied by the PPF to relevant schemes.

These changes are intended to come into force on 31 March 2011.

Changes are also proposed to the indexation of relevant FAS payments so that such increases are undertaken in line with the CPI. These changes are intended to come into force on 31 December 2011, in order that the FAS and the PPF changes (which require primary legislation) can be aligned.

Other issues

The consultation document also discusses the synthetic buy-out bases used by the PPF and the FAS which seek to estimate the cost of securing bulk annuities.

Target audience

The consultation is primarily aimed at pension industry professionals and others with an interest in defined benefit occupational pension schemes. However, the Government is mindful that the matters covered in this consultation will affect the payments made to PPF and FAS beneficiaries. Therefore, the Government would welcome feedback from those who may be affected, and their representatives.

Where can I find the consultation document?

The consultation document is available on the Department for Work and Pensions (DWP) website at www.dwp.gov.uk/consultations and www.dwp.gov.uk/fas

Timing

The consultation period lasts twelve weeks beginning on 12 August 2010 and running until 3 November 2010.

How can I respond to the consultation?

The Government would be grateful for your comments on any of the points covered in this document. Please ensure that your response reaches us by the closing date.

A list of those to whom this document has been sent is attached. If you have any suggestions of others who may wish to be involved in this process, please contact us.

Feedback on the consultation

A summary of responses (including the next steps to be taken) will be published online (and linked from the same web page as above). Paper copies will be available on request

Please send consultation responses to:

Post   Financial Assistance Scheme and Pension Protection Fund Consultation

Pensions Protection and Stewardship Division
Department for Work and Pensions
Caxton House
7th Floor
6-12 Tothill Street
London SW1H 9NA

Email caxton.fas-responses@dwp.gsi.gov.uk

Consultation criteria

The consultation is being conducted in line with the Government Code of Practice on Consultation. The seven consultation criteria are:

- **When to Consult.** Formal consultation should take place at a stage when there is scope to influence the outcome.
- **Duration of consultation exercises**. Consultations should normally last for at least 12 weeks, with consideration given to longer timescales where feasible and sensible.
- **Clarity of scope and impact**. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence, and the expected costs and benefits of the proposals.
- **Accessibility of consultation exercises**. Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is designed to reach.
- **The burden of consultation**. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- **Responsiveness of consultation exercises**. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- **Capacity to consult**. Officials running consultation exercises should seek guidance in how to run an effective consultation exercise, and share what they have learned from the experience.

Feedback on the consultation

We value your feedback on how well we consult. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Coordinator:

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Phone 01482 584681

Email roger.pugh@dwp.gsi.gov.uk

Freedom of information

The information you send us may need to be passed to colleagues within the Department for Work and Pensions, published in a summary of responses received and referred to in the published consultation report.

All information contained in your response may be subject to publication or disclosure if requested under the Freedom of Information Act 2000. By providing personal information for the purposes of the public consultation exercise, it is understood that you consent to its disclosure and publication. If this is not the case, you should limit any personal information provided, or remove it completely. If you want the information in your response to the consultation to be kept confidential, you should explain why as part of your response, although we cannot guarantee to do this.

Yours faithfully

Marc Swaby

Policy and Legislation, Pension Protection and Stewardship

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UNISON
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Strategy, Information and Pensions

The Financial Assistance Scheme and Pension Protection Fund (Valuation, Revaluation and Indexation Amendments) Regulations 2011

The Pension Protection Fund
The Financial Assistance Scheme

CONSULTATION 2010

The Financial Assistance Scheme and Pension Protection Fund (Valuation, Revaluation and Indexation Amendments) Regulations 2011

The Pension Protection Fund
The Financial Assistance Scheme

CONSULTATION 2010

CONTENTS

INTRODUCTION

1. Payments made by the Financial Assistance Scheme (FAS) and the Pension Protection Fund (PPF) have their value protected against price inflation through a legal requirement to provide certain annual increases: "revaluation" before payment begins and "indexation" after payment begins.

2. There are different inflation indices that can be used to determine price inflation, two of which are the retail prices index (RPI) and the consumer prices index (CPI).

3. The Government believes that the CPI provides a more appropriate measure of the inflation faced by pensioners. The CPI is a more stable measure than the RPI and is used for the Bank of England inflation target.

4. The Government announced on 8 July 2010 that it proposes to use the CPI as the basis for the revaluation and indexation of relevant payments made by the PPF and the FAS: http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm100708/wmstext/100708m0001.htm#10070869000014

5. The Government considers that the CPI will on average provide a lower rate of inflation than the RPI. This means that payments to FAS and PPF members are expected to be lower over time than if inflation continued to be measured on the RPI basis. Other things being equal, this suggests a reduction in the levy the Board of the Pension Protection Fund would otherwise be required to set and a reduction in the cost to the taxpayer of the FAS.

6. This consultation document sets out the Government's proposals for the CPI changes to the PPF and the FAS in more detail.

7. Areas covered are –

   - Revaluation of accrued pensions for the FAS and the PPF
   - Revaluation of the FAS notional pension and associated matters
   - Impacts on the FAS cap
   - Indexation of FAS payments
   - Future plans in respect of indexation of PPF Compensation
   - Impacts on PPF section 143 (Pensions Act 2004) valuations
   - Impacts on the FAS synthetic buy-out basis and factors

8. The consultation period runs until 3 November 2010. The Government would be grateful for your comments on any of the points covered in this document and particularly on the specific questions raised.

Changes covered in the draft Regulations

9. The FAS and the PPF provide help to members who have lost some or all of their occupational pensions, generally in circumstances of employer insolvency. The rules governing both systems generally reflect the revaluation and indexation statutory requirements on occupational pension schemes.

10. The FAS and PPF payments are calculated by reference to the pension accrued by members in their schemes before the schemes failed. These accrued pensions are generally revalued until payments begin. Caps apply to the amount of revaluation.

11. Once the FAS and PPF payments begin they can be indexed, subject to certain conditions described in the relevant legislation. For most payments indexation only applies in respect of pensions accrued from April 1997.

12. Changes are proposed to the PPF and the FAS rules so that accrued pensions will be revalued according to the CPI for periods from 31 March 2011 (revaluation will continue to be calculated in line with the RPI for periods before that date). Relevant caps to revaluation increases will continue to apply as they do under current rules.

13. The caps that apply to revaluation are compound caps (i.e. the amount of increase that would have been applied across the whole of the relevant period is compared against the amount of increase that would be calculated if the cap had been applied to each year across the whole of that period). The changes to PPF and FAS rules are intended to ensure that the compound caps continue to apply across the same periods as currently.

14. These changes to revaluation rules reflect the Government's intentions in relation to comparable statutory minima that apply to revaluation of benefits in occupational pension schemes. The changes planned to occupational scheme minima were set out in a Departmental statement made on 12 July[1] and are planned to take effect wherever practicable from 2011.

15. Changes are also proposed to the FAS cap[2] so that the CPI is used for the annual increase that will be made in April 2011 and subsequent years.

16. It is intended that, subject to Parliament's agreement, these revaluation changes will come into force on 31 March 2011, for consistency with the changes planned to the statutory minimum revaluation rate for occupational pension schemes.

17. The draft Regulations also cover proposed changes to the indexation of FAS payments. Any indexation due under the FAS Regulations is paid on 1 January each year. These draft Regulations allow for FAS indexation to be measured against the CPI from 1 January 2012.

18. These draft Regulations do not, however, provide for a similar change in respect of PPF compensation. This is because a change to primary legislation is required to allow for changes to PPF indexation. The Government intends to ask Parliament to agree this change through the Pensions and Savings Bill announced in the Queen's Speech on 25 May 2010. The Government expects to introduce the Bill during the first session of Parliament after the Summer

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[1] http://www.dwp.gov.uk/newsroom/press-releases/2010/july-2010/dwp088-10-120710.shtml

[2] Different caps apply under the PPF and the FAS. The FAS cap revalues in line with prices whilst the PPF cap revalues in line with earnings reflecting the fact that the PPF applies to ongoing schemes and accruals whilst the FAS only applies to past accruals.

Recess. The current assumption is that the PPF indexation change is therefore unlikely to be agreed until late 2011 (which in practice would mean that the CPI will first be used for PPF annual increases awarded from 1 January 2012).

19. The Government is keen to ensure that FAS and PPF payments remain broadly aligned. To meet this aim it intends to co-ordinate commencement dates for the FAS indexation changes (covered in these Regulations) and the PPF indexation changes (in primary legislation) so that both changes come into force together.

20. Therefore these draft FAS Regulations include a 31 December 2011 commencement date for the FAS indexation change. Should the PPF indexation commencement date change, the Government will bring forward a further amendment to the FAS Regulations to retain the alignment between the indexation changes for FAS and PPF payments.

Synthetic buy-out bases

21. Under the FAS and the PPF, relevant schemes undertake valuations that establish their funding position against the benefits that could be secured for the member in the bulk annuity market. These valuations are undertaken by reference to synthetic buy-out bases that seek to estimate the cost of securing benefits by bulk annuity purchase. Most obviously, the bases are used for:

- In the PPF: section 143 valuations are used to determine whether schemes can secure higher benefits than PPF compensation provides so that those schemes have the opportunity to secure those benefits; and section 179 valuations to help determine levies;

- In the FAS (where a scheme is transferring remaining assets to government): tests to see whether assets allocated to members could have bought higher benefits than the FAS payment otherwise provided to the member (the 'notional pension' test).

22. PPF 143 and 179 bases are set by the PPF Board; the FAS basis is set by government.

23. At this point in time the Government does not propose a change to the FAS basis because the CPI market is too small to establish a stable assumption for the cost of securing such benefits. However, the Government anticipates that it may bring forward proposals for change before these draft Regulations come into force. More information is provided in the sections titled 'Notional pensions - reviewing the buy-out basis' and 'FAS operational matters'.

A note on the draft Regulations

24. The draft Regulations do not refer to the CPI specifically, rather they refer to the 'general level of prices in Great Britain estimated in such manner as the Secretary of State thinks fit, as published by the Secretary of State from time to time'. This approach provides greater flexibility to make changes to inflation measures in the future, should they be needed. If the draft Regulations come into force the Government expects to announce that the CPI will be the measure that will be used as the general level of prices for FAS and PPF

purposes from the date that the Regulations come into force. (RPI will remain as the measure up to that date.) Any subsequent changes will be announced as far in advance as is reasonably practicable, to allow for any operational changes to be made.

Changes to s.143 valuations

25. Due to the intended switch to the CPI, the Government is also proposing changes to the way that the PPF section 143 funding test will be applied to certain schemes which have entered an assessment period before the CPI revaluation change comes into force but who have not completed a valuation by that date.

PART 1

CHANGES TO THE PENSION PROTECTION FUND

Background

26. The Pension Protection Fund (PPF) pays compensation to members of certain final salary schemes which are unable to meet all their liabilities to pay pensions in circumstances of employer insolvency.

27. In high level terms, in order for the PPF to assume responsibility for a scheme, the scheme must satisfy the following key criteria:

    - the scheme must be a scheme which is eligible for the PPF;
    - the scheme must not have commenced wind up before 6 April 2005;
    - an insolvency event must have occurred in relation to the scheme's employer which is a qualifying insolvency event;
    - there must be no chance that the scheme can be rescued; and
    - there must be insufficient assets in the scheme to secure benefits on wind up that are at least equal to the compensation that the PPF would pay if it assumed responsibility for the scheme.

28. Where a qualifying insolvency event occurs in relation to the employer of an eligible scheme then an assessment period will automatically begin.

29. The PPF is funded by means of levies charged to all eligible schemes, the assets of schemes which transfer to the PPF, investment returns and recoveries from insolvent employers.

30. Compensation provisions set out in the Pensions Act 2004 and supporting Regulations are used to determine:

    - The rate of payment to members by occupational pension scheme trustees during an assessment period;
    - The rate of compensation payable by the PPF if the scheme transfers at the end of the assessment period;
    - The valuation of the schemes funding position under section 143 of the Pensions Act 2004 during the assessment period to determine whether the Board will assume responsibility for the scheme at the end of the assessment period;
    - The valuation of the scheme's funding position under section 179 of the Pensions Act 2004 to determine whether a risk based levy is due, the amount of the risk based levy and the risk of the scheme entering the PPF.

31. Broadly there are two levels of compensation:

    - Where a member has reached normal retirement age compensation is payable at the rate of 100 per cent of what they would have got under their scheme;
    - Where the member is below normal pension age compensation is payable at the rate of 90 per cent when they reach normal pension age, subject to a cap.

32. The compensation payable is also subject to a review of the scheme rules.

33. Compensation may also be payable where there was a provision under the admissible rules of the former pension scheme to pay a survivor's pension. If a member dies before reaching normal pension age and the survivor is eligible, compensation will be payable to the spouse or partner at the rate of half of the compensation the member would have been entitled to receive if they had reached normal pension age.

The Changes

Revaluation and Indexation

34. Compensation paid by the PPF is not a pension, but the rules for paying compensation are similar in many ways to the rules for paying a pension. In particular, there are similar rules for revaluation and indexation.

35. In simple terms, when a scheme enters the PPF, members who are due compensation from the PPF will fall into two basic categories. Some will already be receiving a pension from the scheme; others will have rights to a pension from the date they reach pensionable age in the future. The latter category need their compensation revalued to take into account inflation in the period between the assessment date and when their compensation becomes payable.

36. Currently, revaluation of compensation is provided in line with scheme rules up to the date the scheme entered the PPF assessment period. Thereafter, revaluation in line with the increase in the RPI is provided up to the commencement of compensation payments. This revaluation is subject to a cap of 5 per cent per annum compound in respect of service to April 2009, and 2.5 per cent per annum compound in respect of service thereafter. This reduction in the revaluation cap reflects similar changes which were introduced to the statutory minima for occupational pensions around that time.

37. The Government is proposing to amend the way in which PPF compensation is revalued during the assessment period with effect from 31 March 2011. The change will mean that revaluation is carried out in line with increases in the RPI up until 30 March 2011 and in line with the CPI, for periods from 31 March 2011. The revaluation across the whole revaluation period (including any period that spans the date the draft Regulations come into force) will be subject to the same caps as under current rules (either 2.5 per cent per annum compound or 5 per cent per annum compound depending on periods for which the pension accruals relate).

38. Under the draft Regulations those people reaching the point at which PPF payments are payable before 31 March 2011 will have all of their PPF revaluation calculated according to the RPI. Those reaching that point on or after 31 March 2011 will have revaluation for periods starting from that date calculated according to the CPI and any revaluation for periods before that date calculated according to the RPI.

Examples

39. Revaluation in the PPF occurs in one of two ways. The first is shown by the following example.

    a) 1997 – a person starts work, and joins occupational final salary pension scheme.
    b) 2007 – the pension scheme enters a PPF assessment period.
    c) 31 March 2011 – the change to CPI is made.
    d) 2017 – the person reaches pension age.

40. In this example, the person is contributing to their pension from 1997 to 2007. From 2007, no further contributions can be made because the scheme has entered the PPF assessment period. The pension rights accrued between 1997 and 2007 need to be revalued between 2007 and 2017. Under the Government's proposals, for the period 2007 to 30 March 2011, it would be revalued by the RPI. The change to the CPI would have no effect on this period. However, for the period from 31 March 2011 to 2017, it would be revalued by the CPI.

41. The second way revaluation occurs in the PPF is shown by the following example.

    a) 1990 – a person starts work, joins occupational final salary pension scheme.
    b) 2000 – the person stops work.
    c) 2005 – the pension scheme enters the PPF assessment period.
    d) 31 March 2011 – the change to CPI made.
    e) 2020 – the person reaches pension age.

42. The key difference with this example is that the person had stopped contributing to their pension scheme before the scheme entered the PPF (the person is therefore a deferred member, whereas the person in the first example is an active member).

43. Revaluation for this person is a two stage process. Firstly, revaluation is carried out for the period between 2000 and 2005. This is done by the scheme and in exactly the same way it would have been done under the scheme's rules. Secondly, revaluation is carried out for the period between 2005 and 2020. For the period 2005 to 30 March 2011 it would be revalued by the RPI. Under the Government's new proposals, the change to the CPI would have no effect on this period. However, for the period from 31 March 2011 to 2020, it would be revalued by the CPI.

Early payment of Compensation

44. Where a person becomes entitled to early payment of compensation, the Government's proposals will mean that revaluation, where relevant, will also be undertaken in line with the CPI from 31 March 2011 until the commencement of compensation payments.

Q1. The Government welcomes views on the change to the PPF revaluation provisions.

Indexation for the Pension Protection Fund

45. When PPF compensation is in payment, it is increased each year to take into account the effects of inflation. Under current rules, the part of the member's compensation that derives from pensionable service on or after 6 April 1997 is increased in line with the RPI, capped at 2.5 per cent. Under the Government's proposals, announced on 8 July 2010, future indexation will be provided in line with CPI, capped at 2.5 per cent.

46. The changes needed to link the future indexation of PPF payments to the CPI cannot be delivered by regulations as they require amendments to Schedule 7 to the Pensions Act 2004 and Schedule 5 to the Pensions Act 2008. The Government intends to ask Parliament to agree these changes through the Pensions and Savings Bill announced in the Queen's Speech on 25 May 2010. The Government expects to introduce the Bill during the first session of Parliament after the Summer Recess. Our current planning assumption is that these changes will be introduced by the end of 2011 so that indexation payments in 2012 can be provided in line with the CPI.

Compensation sharing on divorce

47. The Government recently consulted on the draft Pension Protection Fund (Pension Compensation Sharing on Divorce etc) Regulations 2010 ('the draft Compensation Sharing Regulations') that would enable pension compensation provided by the PPF to be shared when a person seeks a divorce, a dissolution of their civil partnership or an annulment of their marriage or civil partnership[3]. The draft Compensation Sharing Regulations are intended to provide that the former spouse or civil partner of a person who is in receipt of, or is due to receive, pension compensation will be able to receive a share of that compensation.

48. Amongst other things, the draft Compensation Sharing Regulations set out the manner in which the revaluation amount is to be determined for pension compensation paid to a former spouse or civil partner where the pension compensation comes into payment at a date after the draft Compensation Sharing Regulations come into force. In the consultation draft, regulations stipulated that the revaluation amount would be determined by reference to RPI. The Government propose to amend those regulations to reflect the switch to CPI.

49. A revised draft of the relevant extract from the draft Compensation Sharing Regulations showing the proposed changes is included at Part 3 of this document.

50. The Government intends for the Compensation Sharing Regulations to come into force in April 2011, and that the Regulations would be amended as shown in the extract in Part 3 before they are laid before Parliament. The draft Compensation Sharing Regulations do not provide for revaluation in relation to any periods before they come into force. The changes planned to the draft Compensation Sharing Regulations, as a consequence of the move to the use

[3] http://www.dwp.gov.uk/consultations/2010/pension-protection-fund.shtml

of CPI, therefore do not need to provide for RPI to apply in respect of periods before April 2011.

Q2. The Government welcomes comments on the amendments proposed to the draft Compensation Sharing regulations

51. Indexation provisions in respect of compensation payments made to former spouses or civil partners are set out in primary legislation rather than regulations. Proposals to amend these references will be put forward alongside the other changes to primary legislation that are needed to introduce the CPI-based PPF indexation.

Payments made by trustees during an assessment period

52. Trustees of pension schemes in an assessment period will continue to be expected to make pension payments at a level that does not exceed the compensation which would be payable to or in respect of the member should the scheme enter the PPF. The proposed changes in respect of revaluation such that the CPI will apply for revaluation across periods starting on 31 March 2011 will read across to trustee calculations which are undertaken in line with PPF provisions for members who reach scheme pension age during an assessment period.

Section 143 valuations for schemes that have already entered an assessment period before the CPI change is in force

53. Valuations undertaken under section 143 of the Pensions Act 2004 are used to determine whether the PPF will assume responsibility for a scheme by assessing whether the scheme's funding position means that it could afford to secure benefits equal to or above PPF compensation levels (calculated in line with relevant legislation) as at the point immediately before the beginning of the PPF assessment period.

54. If a scheme's funding position is found to be sufficient under section 143, the scheme will approach the market to secure benefits for the members. If it cannot find a suitable product to secure benefits above PPF compensation levels, the scheme may reapply to enter the PPF and to obtain PPF compensation for its members instead.

55. The section 143 valuation currently compares the value of scheme assets immediately before the commencement of the assessment period triggered by a qualifying insolvency event (QIE) or application by the scheme, against the amount of the protected liabilities calculated in line with the PPF legislation at that time.

56. The Government is aware that some schemes will have entered a PPF assessment period before the proposed CPI changes come into force, and will undertake the section 143 valuation after that date. Under current provisions the test would be applied using protected liabilities calculated on an RPI basis, rather than a CPI basis, even where the test is carried out after the coming into force of the CPI revaluation change. The Government is concerned that if the

CPI market develops this may lead to some schemes being drawn into the PPF where they may have sufficient funding to obtain pensions for members that are above PPF compensation levels as calculated under the revised provisions.

57. It is anticipated that some schemes will be clearly funded <u>under</u> PPF levels irrespective of whether liabilities revalue on an RPI or CPI basis; in other cases schemes will be clearly funded <u>over</u> PPF levels on either measure. The Government does not want a new process to apply to schemes in either of those positions which would potentially add significant additional operational cost to schemes and the PPF.

58. The Government proposes to amend regulations under section 143 so that actuaries undertaking section 143 valuations can undertake them on 'the CPI basis' (i.e. the basis resulting from the changes made to the PPF Compensation Regulations by these draft Regulations under which any part of a valuation period that falls on or after 31 March 2011 would use CPI) where that basis would make a difference to the overall outcome of the valuation (ie. where if assessed on an RPI basis the scheme would be funded below PPF compensation levels; but if on a CPI basis they would be funded above PPF compensation levels).

59. PPF guidance sets out the value to be placed on protected liabilities in valuations. In the absence of an established CPI annuity market, the Government anticipates that the size of any scheme buying-out CPI annuities will likely have a significant impact on the cost of buying out those benefits. Hence, at least for a limited period, it may be difficult for the PPF Board to set an assumption for the cost of securing CPI benefits that applies universally to all schemes. It would be unnecessarily costly for schemes to have to go through the process of seeking to buy-out CPI benefits if it could reasonably be anticipated that they would not in practice be able to buy-out those benefits.

60. For these reasons the proposed changes to the PPF valuation Regulations provide for 'CPI valuations' to apply only where the actuary undertaking the valuation considers it likely that a scheme will actually be able to buy-out the CPI liabilities. In due course, the Government expects that the PPF will provide guidance to help actuaries identify relevant schemes.

61. Part of the draft provision (regulation 6A(3)(b)(ii) as inserted by regulation 21 of the draft Regulations) refers to the protected liabilities to be determined in accordance with the compensation provisions as they stand at the date 'the valuation is completed'. In general, section 143 valuations are undertaken across a period of time - often months - and draft valuations are often submitted ahead of the final valuation. It is anticipated that the 'date the valuation is completed' will often refer to the date at which any final draft is produced.

62. It should be noted that the draft new regulation 6A reflects much of the structure of the existing PPF Valuation Regulations, including the provision that the value of protected liabilities (determined in accordance with revised compensation provisions) will be calculated as the estimated cost of securing benefits by means of an annuity purchased at the market rate at the relevant time. Retaining this structure (and hence many of the actuarial assumptions determined by it) will help ensure consistency within the valuations and will help

ensure that existing processes followed by schemes and the PPF do not require significant change unnecessarily.

63. However, in order for the draft provision to have practical effect, PPF valuation guidance that applies to these schemes would need to provide an assumption for the cost of securing CPI-linked annuities. If a CPI market develops, it would seem likely the PPF basis would be reviewed accordingly.

Q3.The Government welcomes views on the proposed changes to the PPF's section 143 test.

Q4. The Government welcomes views on whether it is appropriate and practical for the actuary undertaking the valuation to decide whether, in practice, the scheme would be likely to able to buy-out protected liabilities on a CPI basis.

PART 2

CHANGES TO THE FINANCIAL ASSISTANCE SCHEME AND FAS OPERATIONAL MATTERS

Background

64. The Financial Assistance Scheme (FAS) provides assistance to members of certain occupational pension schemes who have lost part or all of their defined benefit pensions as a consequence of their scheme winding-up without having enough money to pay benefits in full.

65. In broad terms, the FAS helps schemes that commenced winding up under-funded before those helped by the PPF. Unlike the PPF, the FAS is funded by the taxpayer.

66. FAS payments are generally made from a member's normal retirement age (NRA). FAS payments are also made to eligible survivors and surviving dependants of qualifying members.

67. Typically, in order to calculate FAS payments, a member's pension benefits that were accrued in their pension scheme are revalued up to the date of FAS entitlement. The amount of assistance payable is subject to an overall cap. Once assistance is in payment it can be indexed, subject to certain conditions.

The Changes

Revaluation of accrued pension

68. In order to calculate a member's assistance, revaluation may need to be applied to their accrued pension to protect the value of the pension between the date the member ceased to accrue benefits and the date from which assistance is payable. Revaluation is applied as described in this table.

FAS Revaluation Periods - Current Provisions for Members		
Periods	**Revaluation**	**Member types**
Period 1 Date of leaving service to the day before the date of start of wind up.	Revaluation in accordance with the scheme rules.	• Deferred members - i.e. someone who had left service before the start of wind up but had retained their accrued rights in the scheme.
Period 2 From the wind-up date to the earlier of the member's normal retirement age (NRA) or entitlement to FAS (ie 14 May 2004 if this was after NRA or ill	RPI increases, up to a maximum of 5 per cent per annum compound over the period, is applied to any tranches of accrued pension entitled to	• Pensioners below NRA • Deferred members • Active members – i.e. someone who was still in pensionable service on the day before the

health eligibility).	increases in accordance with the scheme rules. No revaluation is applied to any accrued pension that would not have been revalued under scheme rules.	scheme entered wind up.
Period 3 Only applies where the member's NRA is prior to 14 May 2004 (FAS does not make payments prior to this date). From the member's NRA to 14 May 2004.	RPI increases applied to all elements of the pension including those elements which would not have been revalued under period 2 revaluation	• Pensioner members • Deferred members • Active members
Assistance payments to survivors and surviving dependants are also calculated by reference to the relevant member's accrued pension at date of leaving, so they have similar revaluation periods and rates. *For those in schemes transferring assets to government, revaluation is calculated on the notional pension and runs from the calculation date up to FAS entitlement or the point of scheme payment (see paragraphs 71 to 76 below).*		

69. The Government is proposing to provide for period 2 revaluation to be split such that it is calculated by reference to the RPI in relation to relevant periods before 31 March 2011 and by reference to the CPI after that time. Under the draft Regulations those people reaching the point at which FAS payments are payable before 31 March 2011 will have any FAS revaluation calculated according to the RPI. Those reaching that point on or after 31 March 2011 will have any revaluation for periods starting from that date calculated according to the CPI and any revaluation for relevant periods before that date calculated according to the RPI.

70. The cap of 5 per cent per annum compound will continue to apply as across existing revaluation periods. The change from RPI to CPI will only affect revaluation period 2 as described above.

Notional pensions where a FAS scheme is transferring assets to the Government

71. Regulations[4] have recently extended the FAS by, among other things, providing for the transfer of remaining assets of relevant schemes to government and enabling the FAS to make payments to members of those schemes that would previously have been made by scheme trustees. In particular, the Regulations now:
    - allow the FAS scheme manager to make payments to members whose share of scheme assets would have been sufficient to pay pensions in excess of standard FAS assistance payments; and

[4] The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2010

- enable members who have not started taking a scheme pension nor reached their normal retirement age before the scheme transfers its assets to government, to take a tax-free lump sum once their assistance payment is put into payment.

72. Once a scheme has transferred assets to government, the FAS becomes solely responsible for payments to members in respect of whom assets have transferred, rather than, as now, providing top-ups to annuities.

73. Where a person is a member of a scheme which is transferring assets to government, FAS provisions have been developed to ensure that they get payments which reflect the value of those assets where those assets would have secured benefits higher than standard assistance payments. Typically, members in this position would be those receiving their pension before the scheme started to wind up, who are generally afforded higher protection under statutory rules.

74. To protect the interests of such members, current FAS Regulations provide for valuations of assets and liabilities ('FAS valuations') to be undertaken in respect of relevant schemes and for individual asset shares to be calculated for scheme members as at a specific date – the 'calculation date'. Using the asset share, the FAS scheme manager calculates a 'notional pension'. This is undertaken by reference to the FAS synthetic buy-out basis and is intended to approximate the bulk annuity generally payable from the member's normal retirement age that could have been secured as at the calculation date.

75. For deferred members, when the date of FAS entitlement is reached, the amount of 'notional pension' (together with any potential annual increases) as at that date is compared with the amount of standard assistance the member would be entitled to on the same day; and the higher of the two figures is paid. In order for a proper comparison to be made the notional pension is revalued from the calculation date to the FAS date of entitlement. A similar cap of 5 per cent per annum compound applies across the revaluation period.

76. For consistency with the changes described to the accrued pension, the Government intends that any revaluation applied to the notional pension up until 30 March 2011 will be applied in line with the RPI; and in line with the CPI in relation to any periods after that date.

Notional pensions - reviewing the buy-out basis

77. The Government wants to ensure that the value of asset shares allocated to members continues to be protected. To meet this aim it anticipates that it may review the synthetic buy-out basis before these draft Regulations come into effect depending on development of a CPI buy-out market.

78. As part of any review on the basis the Government will consider the position of members who are already receiving payments that have been affected by the determination of notional pensions.

79. In practice the changes to revaluation will not apply to these members (as they will already be in receipt of a payment when the revaluation changes are made). Hence any impacts will only arise in relation to indexation. As all

indexation under FAS rules is capped at 2.5%, and relevant actuarial assumptions that underlie the basis effectively assume in current market conditions that in the long-term inflation will run at over 2.5% (on either a CPI or RPI measure), the Government anticipates that the change to CPI would not affect notional pensions for these members. Hence the Government does not anticipate that it will be necessary to redetermine notional pensions for such members. However, were market conditions to change such members could be affected, and to ensure such members would continue to receive the full value of their asset share, the Government will consider whether it might be appropriate to revisit calculations already made to take account of revised notional pensions.

80. Different considerations apply to deferred members (for whom the 5% revaluation cap means effects are much more likely to arise). All other things being equal, it is likely that a review of the basis would change notional pension assumptions for deferred members.

Q5. The Government welcomes views on whether it may be necessary to revisit notional pensions that have already been determined when the revaluation changes are made.

Q6. The Government welcomes views on the proposed changes to the FAS revaluation provisions.

Indexation of assistance once in payment

81. Indexation of assistance is limited to accruals from 6 April 1997 only (except in certain cases where members are paid at the level of their notional pensions, because that is higher than standard assistance). It is currently linked to the RPI and capped at 2.5 per cent.

82. Changes are made by the draft Regulations so that from 1 January 2012 indexation will be paid in line with the CPI increases rather than the RPI increases.

83. As described earlier in this document, the Government intends to make changes to PPF indexation (which require amendment to primary legislation) and FAS indexation from the same date, in order to keep PPF and FAS payments consistent. If the PPF primary changes cannot be made by the end of 2011 then the Government will further seek to amend the FAS Regulations to ensure alignment.

84. Regulation 27 of the FAS Regulations 2005/1986 provides for notional pensions to be determined by the FAS scheme manager by reference to the Schedules to those Regulations which set out how payments are to be calculated. If these Schedules were not amended to provide for CPI indexation from 2012 then notional pensions determined before the indexation changes were made would need to be on the basis of RPI indexation and it is likely that reassessments of notional pensions would need to be undertaken later, when the indexation change was introduced. Those reassessments would be complicated and potentially costly to implement.

85. The Government considers it preferable to make the indexation changes to the FAS rules now (albeit with a later coming into force date) in order that notional pensions can be determined on the basis of the intended changes to indexation.

Q7. The Government welcomes views on the proposed changes to the FAS indexation provisions.

Increases to the FAS cap

86. The FAS Regulations cap the amount a of assistance a member can get, so that the amount the member can receive from their pension scheme and the FAS combined is no more than £29,386 a year (for anyone whose entitlement begins between 1 April 2010 and 31 March 2011 - different amounts apply depending on the date entitlement starts).

87. The cap is increased annually. Currently, cap increases are linked to the RPI (measured annually from September to September). The Government proposes to amend provisions in respect of the FAS cap so that the CPI is used for any annual increase to the cap from April 2011.

Q8. The Government welcomes views on the proposed changes to the FAS cap.

FAS operational matters

The determination of annuities

88. Around half of FAS members are not in a scheme where assets will transfer but instead will have an annuity purchased (from which a FAS top-up payment will be calculated). In practice the amount of annuity that is taken into account in determining a FAS top-up is calculated by the FAS scheme manager on the basis of information provided by insurance companies.

89. It was anticipated that it may be possible that some insurers might start to increase annuities in line with the CPI instead of the RPI, as a consequence of the shift in statutory minima for occupational pension schemes (if, for example, the annuity contract specified that statutory minima applied) . Currently the FAS scheme manager does not collect information that would allow it to identify annuities that might switch from increasing in line with the RPI to increasing in line with the CPI. The Government collected some information from bulk annuity providers to quantify this issue.

90. On the basis of information collected to date it appears likely that the vast majority of FAS-related annuity contracts will specify the particular inflation measure that applies and thus it appears unlikely that revaluation or indexation of annuities that have already been secured will change from an RPI to a CPI basis.

91. On the basis of this initial analysis the Government proposes that the FAS scheme manager will continue to determine annuities on the assumption that any revaluation or indexation measure that has been stated as applying to annuities secured for FAS members will continue to apply in practice.

Q9. The Government welcomes views on the proposal that where information has been provided on annuities for the purposes of determining FAS payments and that information indicates that the annuity will increase by RPI, the PPF (as FAS scheme manager) will assume RPI will continue to apply to those annuities. The Government particularly welcomes any information from insurers that provide annuities for FAS members that have or will change from an RPI to a CPI basis.

Actuarial factors

92. Various actuarial factors are used in the calculation of FAS payments all of which are derived from the central synthetic buy out basis. These functions include:

    - Calculating a notional annuity in respect of various cash payments that may have been made to a member whilst their scheme was winding-up. For example transfer payments or lump sum payments. In such circumstances a notional annuity derived from the cash sum is deducted from the member's FAS payment.
    - Adjusting FAS payments to account for any lump sum paid by the FAS
    - Adjusting amounts of pension payable by a scheme at an age other than NRA so that FAS payments can be made at a single NRA;
    - Reducing assistance payments when a member takes early FAS payments in circumstances of ill health;
    - Adjusting components of pension that are only paid for a temporary period (often bridges paid to men between NRA at 60 and age 65 when they start receiving their state pension) so that they are smoothed out when taken into account for the calculation of assistance; and
    - Spreading the recovery of excess payments over a beneficiary's lifetime

93. As described earlier in this document the Government does not consider it appropriate to review the central FAS basis at this time as it considers that the CPI market is as yet too small for a stable estimate of the CPI cost to be made.

94. The Government will continue to keep this matter under review and in so doing will consider the potential impacts of any changes to the calculations derived from the basis.

Q10. The Government welcomes views on whether the synthetic basis should be reviewed in light of the planned changes from the RPI to the CPI .

CPI assumptions in FAS valuations

95. Before FAS schemes transfer assets, valuations are undertaken of the schemes' assets and liabilities. Those valuations are undertaken in line with guidance published by the DWP. Following the Minister of Pensions' statement made on 8 July 2010 some scheme liabilities may be considered to revalue and index at the CPI rather than the RPI from 2011. At present the FAS valuation guidance does not include an assumption related to the cost of securing such CPI benefits.

96. The FAS valuation guidance will be amended with effect from today such that any CPI liabilities should be assumed to cost the same amount to secure as RPI liabilities. The Government will keep this assumption under review, mindful of any changes to the buy-out market.

Q11. The Government welcomes comments on whether it is appropriate for assumptions of the CPI and the RPI buy-out costs to be the same for the purposes of FAS valuations.

Q12. The Government would also welcome comments on the potential effect of the PPF and the FAS changes on equality between different groups. In particular, the Government welcomes comments on:

- ***whether there are any differential impacts on different racial groups;***
- ***whether disabled people would be affected differently than non-disabled people; and***
- ***whether men and women would be affected differently by these changes.***

PART 3

EXTRACT FROM THE REVISED DRAFT OF THE COMPENSATION SHARING REGULATIONS

STATUTORY INSTRUMENTS

2010 No.

PENSIONS

The Pension Protection Fund (Pension Compensation Sharing on Divorce etc) Regulations 2010

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

Interpretation

In these Regulations—

…

the "general level of prices" means the general level of prices Britain estimated in such manner as the Secretary of State thinks fit.

…

Manner in which percentage increase in general level of prices is to be determined

For the purposes of paragraph 8(4)(a) of Schedule 5 to the Act, the manner in which the percentage increase in the general level of prices is to be determined is—

$$(100 \times (A \div B)) - 100$$

where—

A is the general level of prices for the month which falls two months before the month in which the transferee—

attains pension compensation age in respect of the payment of the periodic compensation or, as the case may be, the lump sum compensation; or

becomes entitled to periodic compensation under paragraph 6 of Schedule 5 to the Act; and

B is the general level of prices for the month which falls two months before the month during which the transfer day falls.

PART 4

LIST OF QUESTIONS

Q1. The Government welcomes views on the change to the PPF revaluation provisions.

Q2. The Government welcomes comments on the amendments proposed to the draft Compensation Sharing regulations

Q3. The Government welcomes views on the proposed changes to the PPF's section 143 test.

Q4. The Government welcomes views on whether it is appropriate and practical for the actuary undertaking the valuation to decide whether, in practice, the scheme would be likely to able to buy-out protected liabilities on a CPI basis.

Q5. The Government welcomes views on whether it may be necessary to revisit notional pensions that have already been determined when the revaluation changes are made.

Q6. The Government welcomes views on the proposed changes to the FAS revaluation provisions.

Q7. The Government welcomes views on the proposed changes to the FAS indexation provisions.

Q8. The Government welcomes views on the proposed changes to the FAS cap.

Q9. The Government welcomes views on the proposal that where information has been provided on annuities for the purposes of determining FAS payments and that information indicates that the annuity will increase by RPI, the PPF (as FAS scheme manager) will assume RPI will continue to apply to those annuities. The Government particularly welcomes any information from insurers that provide annuities for FAS members that have or will change from an RPI to a CPI basis.

Q10. The Government welcomes views on whether the synthetic basis should be reviewed in light of the planned changes from the RPI to the CPI .

Q11. The Government welcomes comments on whether it is appropriate for assumptions of the CPI and the RPI buy-out costs to be the same for the purposes of FAS valuations in the absence of a competitive CPI bulk annuity market.

Q12. The Government would also welcome comments on the potential effect of the PPF and the FAS changes on equality between different groups. In particular, the Government welcomes comments on:

- **whether there are any differential impacts on different racial groups;**
- **whether disabled people would be affected differently than non-disabled people; and**
- **whether men and women would be affected differently by these changes**

PART 5

COMMENTARY ON THE DRAFT REGULATIONS

Part 1: General

Draft regulation 1 gives the name of the Regulations and the proposed dates on which they would come into force. Most of the regulations (all PPF regulations and those relating to FAS revaluation) will come into force on 31 March 2011. Regulations 12, 15 and 16 (relating to FAS indexation) will come into force on 31 December 2011.

Draft regulation 2 contains definitions of certain words and phrases used in the draft Regulations.

Part 2: Amendment of the FAS Regulations

Draft regulation 3 sets out that the FAS Regulations (S.I. 2005/1986 as amended) will be amended in accordance with Part 2 of the draft Regulations.

Draft regulation 4 amends regulation 2 - interpretation - to insert a definition of "general level of prices" into that regulation. General level of prices (subject to certain exceptions where the RPI applies because those periods end before 1 April 2011) is to be the level estimated in such manner as the Secretary of State think fits, as published by the Secretary of State from time to time.

Draft regulation 5 amends regulation 17. Specifically:

> Regulation 5(a), (c) and (d) deletes or amends certain words or phrases in Regulation 17 to take account of the new definition of the general level of prices and changes to the revaluation periods.
>
> Regulation 5(b) amends paragraph 10 which defines "the revalued notional pension" for the purposes of paragraphs (8), (16) and (17). The amendment creates a new end date - 30 March 2011 - for the revaluation period, and creates a new revaluation period to run from 31 March 2011 until payments begin.
>
> Regulation 5(e) deletes the current paragraph (13) (the method for determining the percentage increase in prices) and inserts a replacement which sets out the same method but by reference to the general level of prices rather than the RPI, except where new paragraph (13A) applies. The method specified in paragraph (13) applies to revaluation periods which run from 31 March 2011 only. It applies to the periods set out in both (10)(b) and (10)(c). The period in (10)(c) will always fall after 30 March 2011. The period in (10)(b) will sometimes fall after 30 March 2011. Where the period in (10)(b) falls before 31 March 2011, new paragraph (13A) which provides for RPI to be used will apply.
>
> Regulation 5(f) inserts a new paragraph (13A). This describes the method to be used for determining the percentage increase in prices where the entire revaluation period referred to in paragraph (10)(b) falls before 31 March 2011. The method set out in paragraph (13A) is determined by reference to the RPI.

Regulation 5(g) amends paragraph (14) by replacing the existing sub-paragraph (a) with a new one to ensure that the cap of 5% applies over the entire period to which revaluation applies. It also amends sub-paragraph (b) by inserting “whether determined in accordance with paragraph (13) or (13A)” into the reference to the general level of prices.

Draft regulation 6 amends regulation 17A to replicate the changes to regulation 17 in draft regulation 5, for those who are entitled to an ill health payment.

Draft regulation 7 amends paragraph 3 - qualifying members receiving pensions from the qualifying pension scheme - in Schedule 2.

Regulation 7(a) deletes all reference to “Great Britain” in this paragraph since such a reference is now included in the newly inserted definition of “general level of prices”.

Regulation 7(b) replaces the current sub-paragraph (3)(c)(ii). This amends the definition of expected pension so that it provides for 2 different scenarios: one for where the qualifying member reaches their normal retirement age before 31 March 2011; and one for where the qualifying member reaches their normal retirement age on or after that date. There are consequential amendments in draft regulation 7(c).

Regulation 7(d) makes a consequential amendment inserting a new sub-paragraph (3AA) to provide for how the revaluation amount is to be determined in cases where the qualifying member attains normal retirement age after 14 May 2004.

Regulation 7(e) adds a cross-reference into sub-paragraph (3B) to take account of the changes to sub-paragraph (3)(c) and new sub-paragraph (3AA).

Regulation 7(f) amends sub-paragraph (3ZD) by inserting a cross-reference to sub-paragraph (3)(c)(iii)(aa) in the determination of the percentage increase. It also amends the end date in the definition of “A” in the formula to take account of the split in the revaluation period.

Regulation 7(g) inserts a new sub-paragraph (3ZAD). This provides the formula for determining the increase in the general level of prices for the purposes of sub-paragraph (3)(c)(iii)(bb) i.e. the period that falls after 30 March 2011.

Regulation 7(h) amends some wording in sub-paragraph (3D) to take account of there being two rather than one revaluation periods in some cases (i.e. a period before 31 March 2011 and a period from 31 March 2011) and to ensure that the cap of 5 per cent per annum compound applies over the entire period to which revaluation applies.

Draft regulation 8 amends paragraph 4 - active and deferred members - in Schedule 2.

Regulation 8(a) deletes all references to “Great Britain” in paragraph 4 since such a reference is now included in the newly inserted definition of “general level of prices”.

Regulation 8(b) amends sub-paragraph (3)(b) by changing the reference to sub-paragraphs (7) to (11) to a reference to sub-paragraphs (7) to (10) and (11), to take account of the amendments made by regulation 8(j).

Regulation 8(c) inserts a new sub-paragraph (3)(ca). This new sub-paragraph amends the definition of expected pension to allow for a third revaluation period. This period applies where the qualifying member becomes entitled to an annual payment at normal retirement age or on the grounds of reduced life expectancy on or after 31 March 2011.

Regulation 8(d) amends the reference to the third revaluation period in sub-paragraph (3)(d) to refer to the fourth revaluation period.

Regulation 8(e) amends sub-paragraph (7)(b)(ii) so that the second revaluation period will end on the earlier of 30 March 2011 or the date the member becomes entitled to an annual payment at normal retirement age (or 14 May 2004 if later) or on the grounds of reduced life expectancy.

Regulation 8(f) inserts a new sub-paragraph (7A) to set out how the third revaluation period is determined.

Regulation 8(g) and (h) makes amendments consequential on the creation of the new revaluation period.

Regulation 8(i) amends sub-paragraph (10) so that the general level of prices referred to in the definition of “A” is set by reference to the last day of the revaluation period.

Regulation 8(j) inserts new sub-paragraph (10A). This sets out the calculation method for the revaluation amount applying for the third revaluation period for the purposes of the new sub-paragraph (3)(ca).

Regulation 8(k) replaces the current sub-paragraph (11) - the maximum revaluation rate - with a new one to take account of the changes to the revaluation periods. This ensures that the cap of 5 per cent per annum applies over the entire period to which revaluation applies.

Regulation 8(l) to (n) amends references to revaluation periods in sub-paragraphs (12), (13) and (13A) to take account of the new third revaluation period.

Draft regulation 9 amends paragraph 4A(5) of Schedule 2 – it amends the cross-reference to paragraph 3 in the definition of “the revaluation amounts” to insert a further cross-reference to paragraph 3(3)(c)(ii) and (iii) - the new two revaluation amount periods.

Draft regulation 10 amends paragraph 5 of Schedule 2 – survivors of qualifying members- to set out a new revaluation period that applies to survivors who become entitled to a FAS payment on or after 31 March 2011. The amendments reflect those made by drat regulation 8 in relation to qualifying members.

Draft regulation 11 amends paragraph 7 in Schedule 2.

> Regulation 11(a) replaces sub-paragraph (3)(e). The new sub-paragraph provides for a cap of £29,386 where a qualifying member becomes entitled to an annual payment between 1 April 2010 and 31 March 2011. It also provides for the cap to be calculated under sub-paragraph (4) for any beneficiary who becomes entitled to an annual payment from 1 April 2011.
>
> Regulation 11(b) amends sub-paragraph (4) so a reference to the general level of prices is substituted for the existing reference to the retail prices index.

Draft regulation 12 amends paragraph 9 in Schedule 2, by replacing any reference in that paragraph to "retail prices index" with "general level of prices" which is defined in the amended regulation 2. This amendment changes the indexation of annual payments (payable in respect of post-1997 service) to be in line with the general level of prices. This change will only apply to indexation from 1 January 2012

All of the changes described above will also apply to FAS initial payments by virtue of paragraph 10 of Schedule 2.

Draft regulation 13 amends paragraph 6 in Schedule 2A (determination of ill health and interim ill health payments) to modify the references to "annual payment" in new sub-paragraphs (7A) to (10A) of paragraph 4 so that the changes made also apply for the determination of ill health and interim ill health payments.

Draft regulation 14 amends paragraph 7 in Schedule 2A so that the changes made in relation to the cap for annual payments also apply to ill health payments (and interim ill health payments).

Draft regulation 15 amends paragraph 9 in Schedule 2A, by replacing any reference in that paragraph to "retail prices index" with "general level of prices" which is defined in the amended regulation 2. This amendment changes the indexation of all ill health payments that are payable in respect of post-1997 service to be in line with the general level of prices. This change will only apply to indexation from 1 January 2012

Draft regulation 16 amends Schedules 3 to 7 (relating to the determination of annual payments derived from notional pensions) by replacing any reference in those Schedules to "retail prices index" with "general level of prices" which is defined in the amended Regulation 2. This amendment changes the indexation of notional pension to be in line with the general level of prices. This change will only apply to indexation from 1 January 2012

Part 3: Amendment of the PPF Compensation Regulations

Draft regulation 17 says that the Pension Protection Fund Compensation Regulations 2005 are amended in accordance with this Part.

Draft regulation 18 amends regulation 13.

Regulation 18(a) inserts words at the beginning of the regulation so that the provisions of regulation 13 are subject to the new regulation 15B, where that regulation applies.

Regulation 18(b) inserts words so that the manner prescribed for the determination of the percentage increase in the general level of prices in Great Britain will be estimated in such manner as the Secretary of State thinks fit and publishes from time to time.

Draft regulation 19 amends regulation 15 of the PPF Compensation Regulations.

Regulation 19(a) inserts words at the beginning of the regulation so that the provisions of regulation 15 are subject to the new regulation 15B, where that regulation applies.

Regulation 19(b) inserts words so that the manner prescribed for the determination of the percentage increase in the general level of prices in Great Britain will be estimated in such manner as the Secretary of State thinks fit and publishes from time to time.

Draft regulation 20 inserts new regulation 15B. This new regulation covers the manner for determining a valuation percentage or higher valuation percentage where a revaluation period spans the day these Regulations come into force.

Paragraph (1) of new regulation 15B provides for the determination of the revaluation percentage in respect of periods where the revaluation period for relevant active or deferred members includes a period which falls prior to 31 March 2011.

Paragraph (2) provides that revaluation in respect of the period which falls prior to 31 March 2011 is to be determined in accordance with regulations 13 and 15 as modified by paragraph (4) of new regulation 15B.

Paragraph (3) provides that revaluation in respect of the period which begins on 31 March 2011 is to be determined in accordance with regulations 13 and 15 as modified by paragraph (4) of new regulation 15B.

Paragraph (4) sets out modifications to regulations 13 and 15 for the purposes of paragraph (2).

Sub-paragraph (a) amends regulation 13 so that the manner for determining the revaluation percentage for active members in respect of the period which runs up to and includes 30 March 2011 will be undertaken by reference to the level of the RPI.

Sub-paragraph (b) amends regulation 15 so that the manner for determining the higher revaluation percentage for deferred members in respect of the period which runs up to and includes 30 March 2011 will be undertaken by reference to the level of the RPI.

Paragraph (5) sets out modifications to regulations 13 and 15 for the purposes of paragraph (3).

Sub-paragraph (a) modifies regulation 13 so that the manner for determining the revaluation percentage for active members in respect of the period which begins on 31 March 2011 will be undertaken by reference to the general level of prices estimated in such manner as the Secretary of State sees fit as published by the Secretary of State from time to time.

Sub-paragraph (b) modifies regulation 15 so that the manner for determining the revaluation percentage for active members in respect of the period which begins on 31 March 2011 will be undertaken by reference to the general level of prices estimated in such manner as the Secretary of State sees fit as published by the Secretary of State from time to time.

Part 4: Amendment of the PPF Valuation Regulations

Draft regulation 21 amends the Pension Protection Fund (Valuation) Regulations 2005.

Regulation 21(2) makes amendments so that the existing Regulations are clear when the amendments in regulation 21(3) are made.

Regulation 21(3) inserts a new regulation 6A. It sets out how to calculate a scheme's protected liabilities for the purposes of an application to enter the PPF. It applies to schemes which, on the date these modifying Regulations come into force, are in a PPF assessment period but had not had a valuation under section 143 of the Pensions Act 2004. Such schemes must use the revised compensation provisions in determining their protected liabilities where:

(a) the assets of the scheme would be found to be higher than the protected liabilities measured using the revised compensation provisions, but lower than the protected liabilities determined in accordance with the compensation provisions before amendment; and
(b) the actuary is satisfied that the scheme would be able to secure benefits by way of annuity purchase that are at least equal to the protected liabilities determined in accordance with the revised compensation provisions.

Regulation 21 refers to Schedule 7 to the Pensions Act 2004. The PPF Compensation Regulations 2005 are made under that Schedule. Those Regulations are amended by regulations 18 to 20 of these draft Regulations. The references in regulation 21 of these draft Regulations to Schedule 7 as it is in force on certain dates are therefore referring in particular to those amendments made to the PPF Compensation Regulations.

Annex

THE DRAFT REGULATIONS

Draft Regulations laid before Parliament under section 316(2)(n) of the Pensions Act 2004, for approval by resolution of each House of Parliament.

STATUTORY INSTRUMENTS

2011 No. [DRAFT Consultation 3]

PENSIONS

The Financial Assistance Scheme and Pension Protection Fund (Valuation, Revaluation and Indexation Amendments) Regulations 2011

Made - - - - ***

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 143(4), 286, 315(2), (4) and (5) and 318(1) of, and paragraphs 12(4)(a) and 17(4)(a) of Schedule 7 to, the Pensions Act 2004(**a**).

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.

The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of the Pensions Act 2004.

PART 1

General

Citation and commencement

1.—(1) These Regulations may be cited as the Financial Assistance Scheme and Pension Protection Fund (Valuation, Revaluation and Indexation Amendments) Regulations 2011 and, subject to paragraph (2), shall come into force on 31st March 2011.

(2) Regulations 12, 15 and 16 shall come into force on 31st December 2011.

Interpretation

2. In these Regulations—

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

(**a**) 2004 c.35. Section 286 is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993, 2005/2113 and 2008/731). Section 318(1) is cited because of the meanings given to "prescribe" and "regulations".

the "PPF Compensation Regulations" means the Pension Protection Fund (Compensation) Regulations 2005(**b**);

the "PPF Valuation Regulations" means the Pension Protection Fund (Valuation) Regulations 2005(**c**).

PART 2

Amendment of the FAS Regulations

Amendment of the FAS Regulations

3. The FAS Regulations are amended in accordance with this Part.

Amendment of regulation 2

4. In regulation 2 (interpretation) after the definition of "employment" insert—

> ""general level of prices" means, except where the revaluation percentage falls to be determined under regulations 17(13A) or 17A(13A) or paragraphs 3(3C), 3(3ZD), 4(10) or 4(13C) of Schedule 2, the general level of prices in Great Britain estimated in such manner as the Secretary of State thinks fit, as published by the Secretary of State from time to time;".

Amendment of regulation 17

5. In regulation 17 (annual payments)—

(a) in each place in which it occurs omit "in Great Britain";

(b) after paragraph (10)(b)(ii)(cc) insert—

"or

(dd) 30th March 2011, provided that the calculation date falls before 30th March 2011; and

(c) in any case where the calculation date falls on or before 30th March 2011 and the day determined in accordance with paragraphs (i) to (iii) falls after 30th March 2011, the revaluation amount for the period beginning on 31st March 2011 and ending on—

(i) the day on which the beneficiary became entitled to an annual payment;

(ii) the day on which the beneficiary began to receive a present payment from the scheme; or

(iii) the day on which the qualifying member died,

whichever is the earliest.";

(c) in paragraph (11)—

(i) for "the period referred to in paragraph (10)" substitute "the periods referred to in paragraph (10)(b) and (c)"; and

(ii) for paragraph (i) substitute—

"(i) those periods together form a period of less than one month; or";

(d) in paragraph (12) after "period" insert "or periods";

(**a**) S.I. 2005/1986 as amended by S.I. 2005/3256, 2006/3370, 2007/3581, 2008/1432, 2008/1903, 2008/3069, 2008/3241, 2009/792, 2009/1851 and 2010/1149.

(**b**) S.I. 2005/670 as amended by S.I. 2005/993, 2005/2113, 2006/580, 2007/782, 2009/451, 2009/809 and 2010/560.

(**c**) S.I. 2005/672.

(e) for paragraph (13) substitute—

"(13) Subject to paragraph (13A), the method for determining the percentage increase in the general level of prices during the revaluation periods determined in accordance with paragraph (10)(b) and (c) is—

$$\left(100 \times \left(A \div B\right)\right) - 100$$

where—

(a) A is the general level of prices for the month which falls two months before the month in which the last day of the revaluation period falls; and

(b) B is the general level of prices for the month which falls two months before the month in which the first day of the revaluation period falls.";

(f) after paragraph (13) insert—

"(13A) Where the entire period determined in accordance with paragraph (10)(b) falls before 31st March 2011, the method for determining the percentage increase in the general level of prices during the revaluation period determined in accordance with paragraph (10)(b) is—

$$\left(100 \times \left(A \div B\right)\right) - 100$$

where—

(a) A is the level of the retail prices index for the month which falls two months before the month in which the last day of the revaluation period falls; and

(b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls."; and

(g) in paragraph (14)—

(i) for sub-paragraph (a) substitute—

"(a) if the period or periods mentioned in paragraph (12)(a) in total form a period of 12 months, 5%; or"; and

(ii) in sub-paragraph (b) after "prices" insert "whether determined in accordance with paragraph (13) or (13A)".

Amendment of regulation 17A

6. In regulation 17A (ill health payments)—

(a) in each place in which it occurs omit "in Great Britain";

(b) after paragraph (10)(b)(ii)(bb) insert—

"(cc) 30th March 2011, provided that the calculation date falls before 30th March 2011; and

(c) in any case where the calculation date falls on or before 30th March 2011 and the day on which the beneficiary became entitled to an ill health payment or began to receive a present payment from the scheme falls after 30th March 2011, the revaluation amount for the period beginning on 31st March 2011 and ending on the day on which the beneficiary became entitled to an ill health payment or began to receive a present payment from the scheme; and";

(c) in paragraph (11)—

(i) for "period" substitute "periods";

(ii) for "paragraph (10)" substitute "paragraph (10)(b) and (c); and

(iii) for paragraph (i) substitute—

"(i) those periods together form a period of less than one month, nil; or";

(d) in paragraph (12) after "period" insert "or periods";

(e) for paragraph (13) substitute—

"(13) Subject to paragraph (13A), the method for determining the percentage increase in the general level of prices during the revaluation periods determined in accordance with paragraph (10)(b) and (c) is—

$$\left(100 \times \left(A \div B\right)\right) - 100$$

where—

(a) A is the general level of prices for the month which falls two months before the month in which the last day of the revaluation period falls; and

(b) B is the general level of prices for the month which falls two months before the month in which the first day of the revaluation period falls.";

(f) after paragraph (13) insert—

"(13A) Where the entire period determined in accordance with paragraph (10)(b) falls before 31st March 2011, the method for determining the percentage increase in the general level of prices during the revaluation period determined in accordance with paragraph (10)(b) is—

$$\left(100 \times \left(A \div B\right)\right) - 100$$

where—

(a) A is the level of the retail prices index for the month which falls two months before the month in which the last day of the revaluation period falls; and

(b) B is the level of the retail prices index for the month which falls two months before the month in which the calculation date falls."; and

(g) in paragraph (14)—

(i) for sub-paragraph (a) substitute—

"(a) if the period or periods mentioned in paragraph (12)(a) in total form a period of 12 months, 5%; or"; and

(ii) in sub-paragraph (b) after "prices" insert "whether determined in accordance with paragraph (13) or (13A)".

Amendment of Schedule 2

7. In Paragraph 3 of Schedule 2—

(a) in each place in which it occurs omit "in Great Britain";

(b) for sub-paragraph (3)(c)(ii) substitute—

"(ii) where the qualifying member attains normal retirement age before 31st March 2011, the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on the day on which the qualifying member attains normal retirement age; and

(iii) where the qualifying member attains normal retirement age on or after 31st March 2011, the sum of—

(aa) the revaluation amount for the period beginning on the day on which the qualifying pension scheme began to be wound up and ending on the day on 30th March 2011; and

(bb) the revaluation amount for the period beginning on 31st March 2011 and ending on the day on which the qualifying member attains normal retirement age.";

(c) in sub-paragraph (3A)—

(i) omit "and (c) (ii)"; and

(ii) omit "or, as the case may be, sub-paragraph (3)(c)(i)";

(d) after sub-paragraph (3A) insert—

"(3AA) In sub-paragraph (3)(c)(ii) and (iii), the revaluation amount is—

(a) where the periods determined in accordance with those paragraphs together form a period of less than one month, nil; or

(b) in any other case, the revaluation percentage of the amount of the annual rate of pension under sub-paragraph (3)(c)(i).";

(e) in sub-paragraph (3B)—

(i) after "(3A)" insert "and (3AA)"; and

(ii) after "and (c)(ii)" insert "and (iii)";

(f) in sub-paragraph (3ZD)—

(i) for "period" substitute "periods";

(ii) after "sub-paragraph (3)(c)(ii)" insert "and (iii)(aa)"; and

(iii) for "during which the qualifying member attains normal retirement age" substitute "in which the last day of that revaluation period falls";

(g) after sub-paragraph (3ZD) insert—

"(3ZAD) The method for determining the percentage increase in the general level of prices during the revaluation period determined in accordance with sub-paragraph (3)(c)(iii)(bb) is—

$$\left(100 \times \left(A \div B\right)\right) - 100$$

where—

A is the general level of prices for the month which falls two months before the month during which the qualifying member attains normal retirement age; and

B is the general level of prices for January 2011."; and

(h) in sub-paragraph (3D)—

(i) after "revaluation period" insert "or periods";

(ii) for paragraph (a) substitute—

"(a) if the period or periods mentioned in sub-paragraph (3)(c) together form a period of 12 months, 5%; or"; and

(iii) in paragraph (b) for "that period" substitute "those periods".

8. In paragraph 4 of Schedule 2—

(a) in each place in which it occurs omit "in Great Britain";

(b) in sub-paragraph (3)(c) for "sub-paragraphs (7) to (11)" substitute "sub-paragraphs (7) to (10) and (11)";

(c) after sub-paragraph (3)(c) insert—

"(ca) in any case where the day—

(i) on which the qualifying member attains normal retirement age; or

(ii) from which the qualifying member becomes entitled to an annual payment in accordance with regulation 17(2), (3) or (3C) or 17C,

is on or after 31st March 2011, the revaluation amount for the third revaluation period (see sub-paragraphs (10A) to (11)); and";

(d) in sub-paragraph (3)(d) for "third" substitute "fourth";

(e) in sub-paragraph (7)(b)(ii) at the end insert—

"; or

(iii) 30th March 2011,";

(f) after sub-paragraph (7) insert—

"(7A) The third revaluation period is the period beginning on 31st March 2011 and ending on—

(a) the day on which the qualifying member attains normal retirement age; or

(b) the day from which the qualifying member is entitled to an annual payment in accordance with regulation 17(2), (3) or (3C) or 17C,

whichever is the earlier.";

(g) in sub-paragraph (8)—

(i) for "second revaluation period" substitute "second and third revaluation periods"; and

(ii) for paragraph (a) substitute—

"(a) where those periods together form a period of less than one month, nil; or";

(h) in sub-paragraph (9) for paragraph (a) substitute—

"(a) the percentage increase in the general level of prices during the second and third revaluation periods determined in accordance with sub-paragraphs (7) and (7A) respectively; and";

(i) in sub-paragraph (10) for "day from which the qualifying member is entitled to an annual payment" substitute "last day of the revaluation period";

(j) after sub-paragraph (10) insert—

"(10A) The method for determining the percentage increase in the general level of prices during the third revaluation period is—

$$\left(100 \times \left(A \div B\right)\right) - 100$$

where—

(a) A is the general level of prices for the month which falls two months before the month in which the day on which the qualifying member is entitled to an annual payment falls; and

(b) B is the general level of prices for January 2011.";

(k) for sub-paragraph (11) substitute—

"(11) In sub-paragraph (9)(b), "the maximum revaluation rate" in relation to the second and third revaluation periods is—

(a) if the second and third revaluation periods together form a period of 12 months, 5%; or

(b) in any other case, the percentage that would be the percentage mentioned in sub-paragraph (9)(a) had the general level of prices whether determined in accordance with sub-paragraph (10) or (10A) increased at the rate of 5% compound per annum during those periods.";

(l) in sub-paragraph (12) after "second" insert "or third";

(m) in sub-paragraph (13) for "third" substitute "fourth"; and

(n) in sub-paragraph (13A) for "third" substitute "fourth".

9. In paragraph 4A(5)(a) of Schedule 2 after "3(3)(b)(ii)" insert ", (c)(ii) and (iii)".

10. In paragraph 5 of Schedule 2—

(a) in sub-paragraph (7)—

(i) after paragraph (c) insert—

"(ca) in any case where—

(i) the day from which the qualifying member became entitled to an annual payment; or

(ii) the day from which the survivor of the qualifying member became entitled to an annual payment,

is on or after 31st March 2011, the revaluation amount for the third survivor revaluation period (see sub-paragraphs (10A) and (11)); and”; and

(ii) in paragraph (d) for “third” substitute “fourth”;

(b) for sub-paragraph (10)(b)(i) substitute—

“(i) the earliest of—

(aa) the day from which the qualifying member became entitled to an annual payment;

(bb) the day from which the survivor of the qualifying member became entitled to an annual payment; or

(cc) 31st March 2011; or”;

(c) after sub-paragraph (10) insert—

“(10A) The third survivor revaluation period is the period beginning on 31st March 2011 and ending on the earlier of—

(a) the day from which the qualifying member became entitled to an annual payment; and

(b) the day from which the survivor of the qualifying member became entitled to an annual payment.”;

(d) for sub-paragraph (11) substitute—

“(11) The revaluation amounts for the second and third survivor revaluation periods are the revaluation amounts determined in accordance with paragraph 4(8) to (12).”;

(e) in sub-paragraph (12) for “third” substitute “fourth”; and

(f) in sub-paragraph (13) for “third” substitute “fourth”.

11. In paragraph 7 of Schedule 2—

(a) for sub-paragraph (3)(e) substitute—

“(e) where the beneficiary becomes entitled to an annual payment in the period beginning on 1st April 2010 and ending on 31st March 2011, £29,386; and

(f) where the beneficiary becomes entitled to an annual payment in the period after 31st March 2011, the amount determined in accordance with sub-paragraph (4).”; and

(b) in sub-paragraph (4)—

(i) for “1st April 2010” substitute “1st April 2011”; and

(ii) for “of the retail prices index” substitute “in the general level of prices”.

12. In paragraph 9 of Schedule 2 in each place in which it occurs for “retail prices index” substitute “general level of prices”.

Amendment of Schedule 2A

13. In paragraph 6 of Schedule 2A (determination of ill health and interim ill health payments)—

(a) after sub-paragraph (b) insert—

“(bza) in paragraph 4(7A)(a) for “the day on which the qualifying member attains normal retirement age” substitute “the day from which the qualifying member is entitled to an ill health payment in accordance with regulation 17A(1);”;

(b) for sub-paragraph (ba) substitute—

“(ba) in paragraph 4(10A) for “annual payment” substitute “ill health payment”;”;

(c) for sub-paragraph (c) substitute—

“(c) for paragraph 5(10)(b) substitute—

“(b) ending on the earlier of—

(i) the day on which the qualifying member became entitled to an ill health payment in accordance with regulation 17A(1); and

(ii) 31st March 2011.”;”; and

(d) after sub-paragraph (c) insert—

“(ca) in sub-paragraph (10A) for the words from “the earlier of” to the end substitute “the day from which the qualifying member became entitled to an ill health payment.”;”.

14. In paragraph 7 of Schedule 2A—

(a) for sub-paragraph (3)(c) substitute—

“(c) where the qualifying member becomes entitled to an ill health payment in the period beginning on 1st April 2010 and ending on 31st March 2011, £29,386; and

(d) where the beneficiary becomes entitled to an ill health payment in the period after 31st March 2011, the amount determined in accordance with sub-paragraph (4).”; and

(b) in sub-paragraph (4)—

(i) for “1st April 2010” substitute “1st April 2011” and

(ii) for “of the retail prices index” substitute “in the general level of prices”.

15. In paragraph 9 of Schedule 2A in each place in which it occurs for “retail prices index” substitute “general level of prices”.

Amendment of Schedules 3 to 7

16. In Schedules 3 to 7 in each place in which it occurs for “retail prices index” substitute “general level of prices”.

PART 3

Amendment of the PPF Compensation Regulations

Amendment of the PPF Compensation Regulations

17. The PPF Compensation Regulations are amended in accordance with this Part.

Amendment of regulation 13

18. In regulation 13 (manner of determining the revaluation percentage in the case of active members who have not attained normal pension age at assessment date)—

(a) at the beginning insert “Subject to regulation 15B where it applies,”; and

(b) in each place in which it occurs, for “retail prices index” substitute “general level of prices estimated in such manner as the Secretary of State thinks fit, as published by the Secretary of State from time to time,”.

Amendment of regulation 15

19. In regulation 15 (manner of determining the higher revaluation percentage in the case of deferred members who have not attained normal pension age at assessment date)—

(a) at the beginning insert “Subject to regulation 15B where it applies,”; and

(b) in each place in which it occurs, for "retail prices index" substitute "general level of prices estimated in such manner as the Secretary of State thinks fit, as published by the Secretary of State from time to time,".

Insertion of regulation 15B

20. After regulation 15A (modification of Schedule 7 for schemes with no revaluation) insert—

"Determination of the revaluation percentage in respect of certain periods

15B.—(1) This regulation applies where any revaluation period referred to in regulation 13 and regulation 15 includes a period which falls prior to 31st March 2011.

(2) Where this regulation applies, revaluation in respect of the period which falls prior to 31st March 2011 shall be determined in accordance with regulations 13 and 15 as modified by paragraph (4).

(3) Where this regulation applies, revaluation in respect of the period which begins on 31st March 2011 shall be determined in accordance with regulations 13 and 15 as modified by paragraph (5).

(4) For the purposes of paragraph (2)—

(a) regulation 13 is modified as follows—

(i) omit the words "Subject to regulation 15B where it applies"; and

(ii) for paragraphs (a) and (b) substitute—

"(a) A is the level of the retail prices index for January 2011; and

(b) B is the level of the retail prices index for the month two months before the month during which the assessment date falls."; and

(b) regulation 15 is modified as follows—

(i) omit the words "Subject to regulation 15B where it applies"; and

(ii) for paragraphs (a) and (b) substitute—

"(a) A is the level of the retail prices index for January 2011; and

(b) B is the level of the retail prices index for the month two months before the month during which the assessment date falls.".

(5) For the purposes of paragraph (3)—

(a) regulation 13 is modified as follows—

(i) omit the words "Subject to regulation 15B where it applies"; and

(ii) for paragraph (b) substitute—

"(b) B is the level of the general level of prices for January 2011 estimated in such manner as the Secretary of State thinks fit, as published by the Secretary of State from time to time."; and

(b) regulation 15 is modified as follows—

(i) omit the words "Subject to regulation 15B where it applies"; and

(ii) for paragraph (b) substitute—

"(b) B is the level of the general level of prices for January 2011 estimated in such manner as the Secretary of State thinks fit, as published by the Secretary of State from time to time.".".

PART 4

Amendment of the PPF Valuation Regulations

Amendment of the PPF Valuation Regulations

21.—(1) The PPF Valuation Regulations are amended in accordance with this regulation.

(2) In regulation 6(1) (valuation of protected liabilities)(**a**)—

(a) for “regulation 7” substitute “regulations 6A and 7”; and

(b) in sub-paragraph (a), after “Schedule 7 to the Act” insert “as it was in force at the relevant time”.

(3) After regulation 6, insert—

“**Amount of protected liabilities in transitional cases**

6A.—(1) This regulation prescribes how the amount of the protected liabilities of eligible schemes referred to in paragraph (3) is to be determined and calculated for a section 143 valuation.

(2) This regulation is subject to regulation 7.

(3) The eligible schemes referred to in this paragraph are eligible schemes—

(a) in respect of which on 31st March 2011—

(i) an assessment period has begun under section 132 of the Act; and

(ii) the Board has not obtained a section 143 valuation;

(b) in respect of which a section 143 valuation using the legislation as it is in force—

(i) at the relevant time would conclude that the value of the assets of the scheme at the relevant time was less than the amount of the protected liabilities at the relevant time; and

(ii) on the date the valuation is completed would conclude that the value of the assets of the scheme at the relevant time was greater than the amount of the protected liabilities at the relevant time; and

(c) which would be likely, in the opinion of the appropriate person, to be able to purchase annuities—

(i) at the market rate,

(ii) for the members, and

(iii) which are at least equal to the amount of the protected liabilities at the relevant time determined in accordance with paragraphs (4) and (5).

(4) The amount of the protected liabilities is the estimated cost of securing scheme benefits to the member by means of an annuity purchased at the market rate at the relevant time.

(5) The scheme benefits referred to in paragraph (4) must be calculated in accordance with Schedule 7 to the Act as it is in force at the date of the calculation.

(6) Where regulation 3(c) applies, the amount representing the value of a protected liability in respect of the benefits secured by a pre-6th April 1997 contract of insurance must be excluded from the valuation of the eligible scheme’s protected liabilities.”.

EXPLANATORY NOTE

(This note is not part of the Regulations)[For completion once Regulations are finalised.]

(**a**) Regulation 6 was amended by S.I.s 2005/993 and 2007/782.