

# The Financial Assistance Scheme draft regulations

Consultation on the draft regulations

June 2011

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# 1. Executive summary

1. This consultation document sets out the Government's proposals to –
  - make certain changes to what schemes can qualify for the Financial Assistance Scheme (FAS).
  - make a number of changes to the way FAS payments are calculated.
  - make a number of changes to the Scheme Manager's powers.
  - transfer the responsibility for reviewing investigating complaints against the Scheme Manager from the Parliamentary and Health Service Ombudsman to the Pension Protection Fund Ombudsman.
2. In addition, it asks for comments on two options for dealing with schemes which operated a money purchase underpin.
3. Finally, these draft regulations consolidate previous changes to, and, where appropriate, simplify the main FAS Regulations to assist readers' understanding of the legislation.

## The new proposals

4. The main changes are:

### **Expanding the scheme qualifying conditions for the FAS**

This will enable certain pension schemes that are ineligible for the Pension Protection Fund (PPF) because they are not linked to an employer meeting the statutory definition of 'employer' to become qualifying schemes for the FAS where the connection between the scheme and the last statutory employer was severed before 10 June 2011.

### **Reflecting the implementation of a pension sharing order during the winding up process**

To allow for the FAS to reflect the implementation of a pension sharing order during scheme wind up. The changes allow for the calculation of assistance payments to pension credit members - that is a person who has been given rights in the scheme as a consequence of a divorce - and the appropriate reduction in the amount of assistance paid to the member.

### **Removing the age limit for payments to certain surviving dependants**

This will allow for payments to certain disabled dependants to continue after age 23 where they are under the age of 23 at the calculation date and are members of a scheme which is transferring assets to government.

### **Other changes to the calculation of survivor payments**

These are to ensure survivors and surviving dependants receive the correct amount of assistance in all circumstances.

### **Avoiding excess payments to those in receipt on ill health grounds**

To prevent unintentional excess payments to members during wind up, for members receiving actuarially reduced assistance on the grounds of ill health. This is to avoid excess payments building up during wind up in the future, which would need to be recovered, leading to a reduction in assistance for those future members.

### **Providing the Scheme Manager with additional powers**

To:

- make payments to compensate for administrative errors.
- delegate ill health determinations and the determinations of survivor financial dependency and interdependency to its commercial provider.
- decide on the actuarial factors used in the FAS calculations.

### **Making payments to estates where appropriate**

This will allow for arrears of pension to be paid to the estates of members who have died between the calculation date and the transfer of assets, where the member had an underlying entitlement to FAS and was funded above normal FAS levels.

### **Enabling the Ombudsman to investigate complaints against the FAS scheme manager**

This will align the complaint system for the FAS with that in place for the PPF. Complaints will first be considered by the Board of the PPF as FAS scheme manager, and then subsequently by the PPF investigation committee and, if necessary, the Pension Protection Fund Ombudsman.

## **Other changes**

5. The Regulations also ensure that those beneficiaries whose current level of assistance would otherwise be reduced receive transitional protection of their current payments, with two exceptions:

- a person who had been a deferred member of their scheme and, between the date of deferral and wind up, had transferred part of their accrued rights out of the scheme; and
- a person whose scheme pension is subject to a pension debit during the winding up period.

## **Consolidation, simplification and clarification**

6. The FAS Regulations have been subject to significant amendment over a number of years. The draft Regulations accompanying the consultation document consolidate those amendments and reduce the length of the legislation, including the number of schedules. The revised draft of the Regulations seeks to present the legislation in a more logical order and to simplify certain aspects of the Regulations, most notably:
  - removing the need for separate terms for ill health and severe ill health payments, with the commensurate removal of separate schedules;
  - importing the provisions for the transfer of assets to government from primary legislation;
  - ensuring consistency of terms and phrases used throughout the legislation and changes to clarify the legislation in a number of areas; and
  - providing simplification of the Regulations for the pensions industry and the public.
7. Elements of the simplification are dependent on the passage of the current Pensions Bill and will only proceed once this primary legislation has received Royal Assent.
8. The opportunity has also been taken to make a number of minor changes to help clarify the language and intent and/or better reflect the current operation of the scheme.

## **Policy issues**

9. For schemes transferring assets, the consultation document considers how members whose money purchase underpin benefit exceeds their defined benefit entitlement can obtain the value of that underpin, whilst seeking to ensure remaining members do not suffer detriment if money purchase underpins are discharged. It also considers which day should be used to judge whether the money purchase benefits do exceed the defined benefit amount.

## **Destination list**

10. To assist, a destination table (Annex A) has been published with this consultation giving cross-references between the current and the new regulations. It also notes where there is a change in the wording and/or the policy approach.

## 2. Introduction

### The Financial Assistance Scheme

#### Background

1. The Financial Assistance Scheme (FAS) helps those who have suffered significant losses to their pensions as a consequence of employer insolvency generally between 1 January 1997 and 5 April 2005. It also helps members of pension schemes which wound up underfunded, where the employer is still solvent and at the start of scheme wind-up there was no statutory requirement for the employer to meet the full buy-out cost, or where a compromise agreement exists.
2. The FAS came into operation in September 2005.
3. For members of FAS-qualifying pension schemes that have purchased, or will be purchasing, annuities for their members, FAS makes a payment which effectively tops-up the annuity to the FAS minimum amount. For these members the FAS provides:
  - an assistance top-up to any annuity to 90 per cent of accrued pension at the start of wind up, re-valued under FAS rules to a member's normal retirement age, and subject to an overall cap.
  - increases in line with inflation (subject to a 2.5 per cent a year limit) on payments derived from post-1997 service.
  - payment from the member's normal retirement age (NRA) subject to a lower age limit of 60 and a higher age limit of 65. If this is before 14<sup>th</sup> May 2004 payment begins from that day.
  - early access for those who are unable to work on the grounds of ill health, severe ill health or terminal illness.
  - subject to certain conditions, payments to certain surviving widows, widowers, civil partners and partners.
  - subject to certain conditions, payments to surviving dependants.
4. For members of FAS qualifying pension schemes that transfer assets to government, the system is different. These schemes will not be purchasing annuities for members. Instead of an assistance top-up, relevant members receive payment solely from the FAS.
5. The member's asset share will be turned into "notional pensions" which approximate the amount of annuity which could have been purchased for the member if the scheme had proceeded to do so. The notional pension will either:



- a. reflect the structure of the annuity which the scheme is likely to have bought; or
  - b. reflect the assistance rules described above.
6. The amount of the notional pension will be compared with the amount of assistance calculated under normal rules and the higher amount paid, ensuring that these members get the full value of their asset share.
7. Payments based on the notional pension might:
  - a. be flat rate for as long as this is higher than their entitlement under the normal rules;
  - b. provide a different level of survivor benefits;
  - c. provide indexation over a different proportion of the payment than the normal rules.
8. In addition, certain members with a notional pension will have the opportunity to commute part of their payment into a lump sum, at the point that payment begins.

## **The Pensions Bill**

9. In order to reach their final state, the main FAS Regulations have been revised a number of times since the FAS was launched in 2005. These changes have required a number of sets of amending Regulations.
10. In line with recommended practice, we are using this latest set of draft Regulations to consolidate and simplify the main FAS Regulations. These changes are not intended to alter members' payments, rather they are intended to reduce the length of the Regulations and assist readers' understanding.
11. The consolidation of the main FAS Regulations will be facilitated by changes to section 286 of the Pensions Act 2004 and section 18 of the Pensions Act 2007 (the primary legislation underpinning the FAS) which are included in the current Pensions Bill. These changes will only proceed once this primary legislation has received Royal Assent.

## 3. Proposed changes

### Qualifying schemes

#### **Schemes which fail to be eligible for the PPF due to the status of the scheme's employer**

12. The Government has become aware of one pension scheme (and believes that there could be others in a similar position) where the scheme trustees believed, in error, that the scheme was eligible for the Pension Protection Fund (PPF). In the known case, the company currently attached to the scheme has never employed active members in that scheme, and therefore, upon insolvency, does not meet the definition of statutory employer for the purposes of entry to the PPF.
13. The Government considered amending the PPF entry rules to address this issue. However, to do so would be to admit schemes to the PPF which had not been liable to pay the PPF levy, or been subject to the requirements of scheme funding and employer debt legislation. This would breach an important principle that all PPF schemes are subject to the whole regulatory regime and could result in the PPF levy not properly reflecting the degree of risk which needed to be considered. In short, there would be a risk that these schemes would get the benefit of PPF protection without being subject to the disciplines which manage the cost of PPF protection to levy payers.
14. However, the Government recognizes the serious position that members of such schemes are currently in because the scheme is not able to access financial support. The Government therefore proposes to extend the FAS scheme qualifying conditions to enable underfunded schemes in this position to become eligible for the FAS.
15. The Government proposes to extend the FAS to cover schemes which began to wind up between 23 December 2008 (the day after the last possible date to have done so in the existing FAS Regulations), to the day before these Regulations come into force, providing that:
  - the connection between the scheme and the last statutory employer was lost before 10 June 2011; and
  - this last statutory employer had an insolvency event prior to 6 April 2005 and therefore would be unable to qualify for the PPF.
16. It is not the Government's intention to make further extensions to FAS to cater for events occurring beyond the dates set out above. It is of the view that Trustees must be vigilant and ensure that their schemes do not lose their connections to an employer meeting the statutory definition.

**Q1. The Government welcomes comments on the proposal to extend the scheme qualifying conditions for the FAS for certain schemes without a statutory employer.**

## **Benefit changes**

### **Pension sharing**

17. A private pension belonging to one member of a couple can be part of a financial settlement following a divorce. This can result in part, or all, of the pension being allocated to the ex-partner under a pension sharing order. Where this occurs, a pension credit is allocated to the ex-partner and the scheme member has a pension debit made against their benefit.
18. Currently, where a pension sharing order is implemented before a scheme enters wind up and the ex-partner has chosen to become a member of the scheme, the FAS treats the pension credit member like any other member of the scheme. The expected pension used in the assistance calculation of the member with a pension debit is the reduced amount. However, the FAS is not able to deal appropriately with the consequences of a pension scheme implementing a pension sharing order during the winding up period.
19. Where the individual with a pension credit entitlement chooses to become a member of the scheme (rather than take a cash transfer value) the amendments will allow them to be paid from the date they join the scheme, on the same basis as for other members:
- payments will be made from the later of the date the order is implemented, the normal benefit age or 14 May 2004.
  - assistance will be based on the pension rights given to the member by the scheme
  - they may apply for early access in the same way as other members.
  - survivor payments will also be made in respect of pension credit members.
20. The amendments will also allow for the original member's expected pension to be reduced by the amount of the pension debit from the date the pension sharing order is implemented by the scheme.

**Q2: The Government would be interested in any comments on this proposed change.**

## **Survivors and surviving dependants**

21. The Government proposes to make some amendments to the legislation setting out how payments to certain survivors and surviving dependants are calculated. With two exceptions these changes are relatively minor and simply amend the legislation so that it corrects oversights and delivers the policy intention expressed in previous consultations. They will ensure that survivors and surviving dependants will receive the correct assistance in all situations.
22. The more substantive amendments relate to payments to certain surviving dependants in FAS schemes that are transferring assets to government and are described below.

### **Extending payments to certain surviving dependants over age 23**

23. The FAS currently makes payments to surviving dependent children to a maximum age of 23. This follows the approach taken in PPF legislation and that of most occupational pension schemes which provide pensions for surviving dependent children. This complies with tax rules, as generally payments made beyond age 23 are classed as unauthorised payments for tax purposes. However, tax rules do allow pensions for surviving disabled dependant children to continue for life, without penalty.
24. A FAS scheme already paying a surviving disabled dependant child may have expected to pay them for life under the scheme rules. If the scheme had proceeded to buy annuities for its members, it would have bought a lifetime annuity for that disabled child. In such a case, the assistance top up under FAS rules would stop when the child reached age 23, but they would continue to receive their annuity for life.
25. The Government wishes to achieve a comparable outcome for surviving disabled dependant children who are members of a scheme that is transferring its assets to government, including payment beyond the age of 23 when appropriate.
26. Payments of assistance will still stop at age 23.
27. Where the disabled child passes age 23 before the calculation date, but the scheme still has a liability towards that child after the transfer of assets, their notional pension is calculated on the basis that it will be payable for life. The FAS picks up responsibility for the payment of this notional pension from the transfer date.
28. However, where the disabled child was under age 23 at the calculation date, currently the notional pension is calculated as if it will stop on the child's 23rd birthday. The Government is proposing to amend this so that where:

- the disabled child is in receipt of a pension at the calculation date; and
- the pension scheme would have paid them for life;

the FAS will pay them assistance until age 23 and then pay the notional pension only thereafter.

29. The draft Regulations also provide for any survivor notional pension determined for such a surviving dependant prior to the coming into force of these Regulations to be re-determined on the basis that they will be payable for life.

**Q3. The Government welcomes comments on the proposal that the FAS should pay certain surviving disabled dependants at the level of their survivor notional pension from age 23 for life.**

#### **Apportioning survivor entitlement**

30. Under normal FAS rules a survivor payment is based on half of the payment due to the deceased scheme member. The surviving children share the balance equally. This reflects the general rule in pension schemes. However, we are aware that some schemes paid survivors differently. FAS payments to some survivors and surviving dependants are based on these different scheme rules.

31. The Government understands that in most cases the survivor and surviving dependant entitlement will be specified in the scheme rules. However, it is possible that in some schemes this may be left to trustee discretion. Where this is so, the Government proposes that the normal FAS rules will be applied, where the discretion has not been exercised by the calculation date.

**Q4. The Government welcomes comments on its proposal to provide a default level of survivor/dependant benefits for calculating notional pensions based on scheme rules, where those rules leave the level to trustee discretion which has not been exercised.**

#### **Initial and annual payments on the grounds of ill-health**

32. A qualifying member may be paid assistance early, on the grounds of ill-health. Such payments are reduced to take account of the fact that they are potentially payable for longer than expected.

33. The intention has always been to apply an actuarial factor to the amount of the expected pension and deduct the amount the scheme could pay from the date the FAS starts payment.
34. However, the current Regulations do not achieve this and this results in the member receiving more than intended.
35. The Government is proposing to amend the legislation so that it properly reflects the policy intention.
36. However, the Government has also decided that, as individuals made an active decision to accept an ill-health payment on the basis of figures provided by the FAS manager, it would be inequitable to reduce future payments by re-determining payments under the correct legislation. Therefore all members who were in receipt of an ill-health payment before these regulations come into force will have their payments based on the pre-amendment legislative approach and any arrears due will be paid.

**Q5. The Government welcomes comments on its proposed changes to the calculation of initial and annual payments in respect of ill-health to ensure that future payments are calculated on the intended basis and on its proposals for dealing with those already in receipt of such payments.**

### **Payments to certain people intended to be covered by previous transitional provisions**

37. Amendments to the FAS Regulations introduced from 10 July 2009 made a number of changes to the way assistance payments were to be calculated.
38. Changes to payments as a result of most of these amendments were expected to be beneficial: most members would see an increase in their payments. However, if there would have been a decrease in their annual or ill health payment as a result of those amendments, provision was made for them to continue to receive the higher amount for as long as this was higher than the amount based on the amended legislation.
39. It was intended that this “transitional protection” would apply to anyone who was paid an annual or ill health payment in July 2009. However, some people were first assessed for an annual or ill-health payment just before the amendments came into force, but were not paid until just afterwards. As a result they are not covered by the provision to prevent their payments reducing.
40. The Government, therefore, proposes that those affected (it estimates that there will be fewer than 40 people) should be covered by the transitional protection and therefore receive payments reflecting the difference between what they were

entitled to under the FAS Regulations before the amendments made from 10 July 2009 and the amount they were entitled to after. The FAS scheme manager will contact those members whose annual and ill-health payments were reduced and explain what the Government is proposing to do.

41. Until these Regulations come into force, the Government will consider making special payments equal to the amount of the reduction to those who would suffer hardship as a result of the delay. Therefore the draft Regulations make provision for any such amount made by the Government to be offset against the amount of any payments which will be due for the same past period.

**Q6. The Government welcomes comments on the way it proposes to deal with those whose payments were not protected from a reduction when the amendments to the FAS Regulations came into force on 10 July 2009.**

### **Transitional protection**

42. The Government does not believe that generally the changes in these Regulations will result in a reduction in entitlement. However, where this might occur, it is the Government's intention to apply transitional protection to those payments where any qualifying member or survivor is in receipt of annual payments at the point the legislation comes into force.

43. The Government proposes that this protected amount will not be increased. However, where applicable, the underlying assistance entitlement will be re-determined as and when appropriate (for instance, where indexation is due). When the amount of the entitlement overtakes the protected amount, the qualifying member will be paid the higher amount.

44. There are, however, two exceptions which the Government believes should not be given such protection:

- a. currently where a person ceased to be a member of the scheme and subsequently transferred out part of their accrued rights before the scheme began to wind up, assistance is based on the full amount as at the date of leaving, rather than on the amount the scheme is still liable for; and
- b. there is currently no provision to reduce assistance where a person is being paid and their scheme pension becomes subject to a pension debit as a result of a pension sharing order being implemented during the winding up period.

45. In both of these cases, the Government does not consider it would be right to continue making the higher levels of payments. In these cases, therefore, the payments will be reduced when these regulations come into force.

**Q7. The Government would welcome any comments on this proposal, including the exclusion of the two situations from that protection.**

## **PPF functions in relation to the FAS**

### **Arrangements to enable or assist the Board of the PPF to carry out its functions in relation to the FAS**

46. The FAS scheme manager is the Board of the PPF, a statutory corporation established under the provisions of the Pensions Act 2004.

47. To support this role, the current legislation allows the Secretary of State to make arrangements to enable or assist the scheme manager to carry out its functions. Such arrangements can include the determination of any actuarial factor which is to be applied when determining the amount of FAS payments. Actuarial factors are used in the FAS to make various adjustments, for example to reduce payments when a member qualifies for early payment from the FAS because of ill health.

48. Current Regulations provide an example of where such factors might apply. However, given the range of circumstances in which actuarial factors might be used within the FAS, the Government is amending the Regulations to provide a generic reference to factors applied in determinations under these FAS Regulations, as it believes that this better reflects the actual operation of the scheme and is a more pragmatic provision than an illustrative list of references.

## **Asset Transfers**

### **The valuation of assets and liabilities in schemes transferring assets to government.**

49. To protect the interests of beneficiaries in schemes transferring assets to government, the 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 beneficiaries.

50. The FAS scheme manager will then calculate a notional pension. The notional pension and any increases that could have been paid as at the transfer date will



be compared with the payment that the FAS would pay as standard to the beneficiary and the beneficiary will receive the higher amount.

51. Because it is not intended that all FAS qualifying schemes will transfer assets to government, the legislation allows for certain schemes and members to be exempted from the valuation and transfer requirements necessary for schemes transferring assets to government.
52. We are amending the Regulations to clarify that members that have had their entitlement to a pension from their scheme fully discharged by a lump sum are not subject to the valuation and transfer requirements.

## **Underpin arrangements in schemes transferring assets to government**

53. Some qualifying schemes offered a pension arrangement based on the member receiving either a defined benefit pension or, if it was of higher value, a money purchase benefit. The money purchase benefit, therefore, underpins the defined benefit pension.
54. When a scheme winds up the priority order that was operable at the point wind up commences is applied. The priority order applicable to schemes entering FAS means that some members with underpin benefits could have ended up with little or no pension, even though they had a money purchase pot which they might have believed to have ring-fenced assets. This is because of where underpin benefits fall in the applicable priority order.
55. The Government does not believe this to be an issue for members with underpin benefits in those schemes which discharged what liabilities they could prior to entering the FAS. This is because it understands such schemes usually discharged the money purchase benefit, if it exceeded the defined benefit value, before applying the priority order to the remaining scheme assets.
56. However, when a scheme transfers all its assets to government under the current FAS arrangements, there is a risk that such members would not receive the appropriate value of their money purchase pot. The Government wishes to avoid the possibility of members suffering such an impact when assets are transferred to Government and assistance calculated.
57. In order to address this situation government is considering how this issue should be dealt with under the FAS Regulations to ensure that where a member's money purchase pot is in excess of their defined benefit entitlement, the member will receive the value of that pot. The Government is considering two options:

**Option A:** To require trustees to discharge the money purchase underpin pot, where it exceeds the defined benefit pension, prior to transferring the assets to the FAS, thus removing it from the asset share calculation;

**Option B:** To convert the money purchase underpin pot, where it exceeds the defined benefit pension, into a notional pension and provide FAS assistance on that amount.

58. There are two dates by reference to which such an assessment could occur. These are the:

- crystallisation date as described in winding up legislation (usually the day before scheme wind-up commenced);
- calculation date (that is, the date selected under a FAS valuation).

59. The crystallisation date has the advantage that it is consistent with the assessment of membership classes and the general approach to wind-up in schemes not going through the FAS process. Use of this date does, however, create difficulty with regard to investment values and the availability of scheme data.

60. The calculation date has the advantage of being administratively easier, particularly with reference to option B, by being the date by which other FAS calculations are undertaken and for which data will be readily available. However, it does introduce a different date from that used to establish member priority and from that used in non-FAS schemes winding up under the general legislation.

61. Under Option A, removing this payment from the asset share calculation, however, could have a detrimental impact on the remaining members. This is due to the interaction between the actual reduction in assets that occurs when discharging the money purchase pot and the calculation of the asset share available for other members. If the remaining asset shares were calculated after the money purchase benefits have been discharged in full, the asset shares for remaining members could go down, as there would be fewer assets in the scheme.

62. To avoid this happening the regulations would have to allow the flexibility for the asset share calculation to treat the money purchase benefit as if it equalled that members asset share, calculated in line with the priority order, and not the higher actual money purchase actually discharged. This means that all members will have their assistance calculated on their unreduced asset share. The asset share guidance would be amended to reflect this.

63. Option B would mean that members would receive FAS assistance for the value of their money purchase pot, where it exceeded the defined benefit pension.

There would still be a need to adjust the asset share for other members and it would require the money purchase pot to be correctly valued with reference to the appropriate date. Care would need to be exercised to not underwrite the investment fluctuations that could occur to the money purchase pot during the wind-up process. The Government would also wish to avoid the suggestion that it was providing money purchase based payments in anything but these specific underpin circumstances.

**Q8. The Government welcomes comments on:**

- **which of these two options would be preferable to ensure there is equitable treatment between members with money purchase underpins and other members in such schemes; and**
- **by reference to which date the assessment should be made.**

**It would also welcome comments on the operational implications of either approach.**

## **The transfer of assets, rights and liabilities**

64. Changes in the current Pensions Bill to the Pensions Act 2004 are intended to allow for the FAS Regulations to be made simpler and more transparent.

65. Currently, the FAS Regulations allow for the assets (and some related rights and liabilities) of some FAS schemes to transfer to the Secretary of State by modifying parts of the Pensions Act 2004 through Schedule 1 of the FAS Regulations. This approach was taken following informal discussions prior to scrutiny by the Joint Committee on Statutory Instruments in order to allow assets to transfer to the Secretary of State's ownership rather than the Board of the PPF in its role as FAS scheme manager. However, it can be difficult for readers to follow these provisions as it requires them to refer to two sets of legislation.

66. A change in the current Pensions Bill will simplify matters by amending the list of matters the FAS Regulations may cover to include the transfer of assets to a person prescribed in regulations – that is, the Secretary of State.

67. As a result of this change, provisions in respect of the transfer of assets to the Secretary of State can clearly now be covered in one place: amended Part 9 of the draft FAS Regulations.

68. The new provisions in Part 9 of the Regulations are intended to deliver the same outcomes as the modifications to the Act previously set out in Schedule 1. Under the amended Regulations:

- the property and rights ('assets') held by or vested in the trustees or managers as trustees or managers of the scheme are transferred to the Secretary of State;
- certain rights and liabilities will transfer to the Secretary of State, whilst others will be discharged or remain with trustees; and
- the trustees will be discharged of remaining defined benefit pension obligations (all other defined benefit pension obligations having already been discharged).

69. These provisions are intended to allow trustees to wind up the scheme by providing a discharge in respect of defined benefit pension obligations, whilst ensuring that the Secretary of State does not take on inappropriate liabilities, such as money purchase liabilities that can be discharged by the trustees.

## **Administrative Changes**

### **Delegation of determinations on ill health, severe ill health and terminal illness, and payments to survivors**

70. The FAS scheme manager has the power under paragraph 18(2) of Schedule 5 to the Pensions Act 2004, as modified under Schedule 1 of these regulations, to delegate certain functions, for example the making of determinations in respect of the 'amount of payments to beneficiaries'.

71. The Government intends to extend this power to allow the FAS scheme manager to delegate determinations made in respect of:

- ill health, severe ill health and terminal illness applications;
- whether or not, in cases where there is no surviving spouse or civil partner, a surviving partner who was not nominated by the member to receive payments from their pension scheme is eligible for FAS, on the basis that the partner was cohabiting with, and financially dependent or interdependent with, the member at the time of the member's death; and
- whether a surviving child, at the time of the member's death, was financially dependent on the member and under the age of 18, or under age 23 and attending a full time education course, or is incapable of working full time due to a disability within the meaning of the Disability Discrimination Act 1995.

72. Applications to the FAS scheme manager in respect of ill health have already increased and applications on the other issues are expected to increase. This extension will allow the determinations to be delegated by the FAS scheme manager to its commercial provider. The FAS scheme manager's commercial provider already has the power to gather relevant information and has experience

of making determinations of this type. By enabling delegation of these determinations, beneficiaries will be provided with a more streamlined and therefore efficient service.

**Q9. The Government welcomes comments on the proposal that the FAS scheme manager should be able to delegate determinations relating to ill health, severe ill health, terminal illness and the financial dependency or interdependency of certain survivors to the FAS scheme manager's commercial provider.**

### **Transfer of investigation of complaints of maladministration by the FAS scheme manager to the Board of the Pension Protection Fund and the Pension Protection Fund Ombudsman**

73. Currently the investigation of complaints of maladministration by the FAS scheme manager (the Board of the PPF) are undertaken internally and a decision given. The complainant may then ask the Independent Case Examiner (ICE), to review this decision if they feel that their complaint has not been settled satisfactorily. Following this the person, if still dissatisfied, may apply to their Member of Parliament to have the matter referred to the Parliamentary Health Service Ombudsman (PHSO). There are no time limits for making the initial complaint to the FAS scheme manager. There is a six month time limit to go from the scheme manager to ICE and, in general, a 12 month time limit to go from ICE to the PHSO.

74. The Government is proposing that complaints of maladministration concerning the FAS should, after the first consideration by the scheme manager, follow the pattern established for the PPF. As the FAS scheme manager is the Board of the PPF and complaints of maladministration concerning the PPF already falls under the remit of the PPFO, this approach will simplify the administration, as different information will no longer need to be provided to PPF and FAS beneficiaries and those beneficiaries with both FAS and PPF entitlement will only need to access one system if they wish to make a complaint. In addition, staff at the PPF will not need to be trained to manage two different processes. This proposal means that complaints would be considered:

- a. firstly by the FAS scheme manager (the Board of the PPF). A person will have 28 days to complain from the day they have identified the possible maladministration; then, if necessary,
- b. by the PPF investigation committee. A person will have 28 days from the day they receive the scheme manager's decision to refer their complaint to the committee; and subsequently
- c. by the Pension Protection Fund Ombudsman (PPFO). Again, a person will have 28 days to refer their complaint to the PPFO, from the day they receive the investigation committee's decision.

It is intended to include in these regulations modifications to the provisions in the Pensions Act 2004 which govern the PPFO (sections 209 to 218) so that these apply appropriately to complaints made under these Regulations but these modifications are not included in this draft.

75. This proposal means that neither ICE nor the PHSO will be involved in considering FAS complaints. However if either of these bodies are in the process of making a decision on a complaint when these regulations come into force, they will give a decision on the issues. ICE will advise the person concerned of their next recourse and applicable time frames. It will be seen from the above, that the time limits for taking complaints through the system will change under this proposal. Therefore, the Government proposes:

- a. to apply the 28 day limit for complaints to the scheme manager only to complaints covering actions of the FAS scheme manager which occur after the date these Regulations come into force. Any complaints about actions which occurred prior to these Regulations coming into force will, as at present, have no time limit; and
- b. where a person has, before these Regulations come into force, had a decision from the FAS scheme manager, but had not yet gone to ICE, they will have no time limit for a referral to the PPF investigation committee.

**Q10. The Government would welcome comments on the proposal that the investigation of complaints of maladministration by the FAS scheme manager should be transferred to the PPFO. The Government would also welcome any comments on the time limits and specifically whether there should be a time limit imposed on complaints to the scheme manager concerning issues arising before these regulations come into force.**

## **Payments in cases of maladministration**

76. Regulations made under section 208 of the Pensions Act 2004 may confer on the Board of the PPF the power to make 'compensation payments' in relation to persons it believes have suffered injustice in consequence of maladministration by the PPF.

77. It is proposed that regulation 15(c) of the Pension Protection Fund (Maladministration) Regulations 2005 (SI 2005/650) is extended to enable the Board of the Pension Protection Fund in its role as FAS scheme manager to make compensation payments in circumstances where it has been proven that maladministration has occurred and this has caused:

- financial loss;
- gross inconvenience;
- gross embarrassment, humiliation, or unnecessary personal intrusion; or

- significant impact on physical or mental health;

These payments of compensation will be made in accordance with Her Majesty's Treasury guidance on Managing Public Money<sup>1</sup>.

**Q11. The Government would welcome comments on the proposal that the FAS scheme manager should be able to make compensation payments in respect of maladministration.**

### **Death before the FAS calculation date**

78. Where pension scheme assets transfer to the FAS, the existing FAS Regulations provide for the calculation of asset shares for FAS qualifying members in order to enable the calculation of annual payments and the reconciliation of payments already made.

79. There are certain survivors who have an entitlement under the pension scheme but who are not classed as qualifying members for the purposes of the FAS. These survivors are known as 'non qualifying members' for FAS purposes.

80. These non qualifying members, for example, surviving grandparents or siblings, would not ordinarily receive payments from the FAS. However, they would be paid by the FAS by reference to their asset share where the FAS is taking in the assets of the scheme and therefore the responsibility for ongoing payments of pension.

81. However, if a non qualifying scheme member dies before the date on which the FAS valuation is undertaken, the pension scheme does not have an ongoing liability for that deceased person at the date of FAS valuation, but the pension scheme might owe some arrears of pension.

82. Currently, trustees of pension schemes are required to pay these arrears to the estate of the deceased person prior to transfer of the scheme assets to the FAS. This means that the payments to the non qualifying member are concluded and the matter resolved before the pension scheme transfers to the FAS.

83. The Government has considered whether there is a need to change these arrangements and has reached the conclusion that no change is necessary as this group of beneficiaries have no ongoing relationship with the FAS.

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<sup>1</sup> [http://www.hm-treasury.gov.uk/psr\\_managingpublicmoney\\_publication.htm](http://www.hm-treasury.gov.uk/psr_managingpublicmoney_publication.htm)

## **Death between the calculation date and transfer of assets**

84. Where a member dies between the calculation date and the date the transfer notice is given, there may be arrears of the scheme pension due to that member. It is the Government's intention that the pension scheme will pay these arrears before the assets are transferred to government.

85. However, where the member had no FAS entitlement (for instance where the person took early retirement from the scheme, but did not reach his first FAS entitlement date before death) it is currently possible for the FAS scheme manager to pay any arrears for the scheme pension.

86. These draft Regulations allow the FAS Scheme Manager to also pay arrears of this type where the member had a FAS entitlement at the date of death. This provision is intended to be used only exceptionally, where the pension scheme has failed to, or is unable to, discharge the arrears.

**Q12. The Government welcomes comments on the proposal that the FAS scheme manager is able to make payments of pension arrears to the estates of members who die between the calculation date and the transfer of assets.**

**Q13. The Government is also interested in comments on the intention that the pension scheme is generally expected to pay arrears of pension prior to transfer where death occurs between the calculation date and the transfer if it is possible to do so.**

## **General Issues**

**Q14. The Government would like comments on whether the draft Regulations achieve the aims set out in this consultation document.**

**Q15. The Government would also welcome comments on the potential effect of these 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.**



## 4. Consolidation of the FAS regulations

87. Since the introduction of the FAS there have, to date, been eight sets of amending regulations.
88. Following the coming into force of the original FAS Regulations 2005, the continued extension of the scheme has resulted in the need to produce a number of sets of amending regulations the size of which has created additional complexity in reading across the various sets of Regulations. By way of example, the FAS (Miscellaneous Amendments) Regulations 2010 ran to some 73 pages and the FAS (Miscellaneous Provisions) Regulations 2009 ran to 40 pages.
89. During debates on the FAS (Miscellaneous Amendments) Regulations 2010, Parliament agreed that consolidation of the FAS Regulations would be appropriate at the earliest opportunity to reduce their complexity.
90. To that end, the attached set of draft Regulations does not just reflect the changes set out in Section 3. They are a full set of regulations which have been laid out in a more logical order and made simpler to understand.
91. In particular we would like to draw attention to the fact the ill-health payments are no longer a separate category of payment and that the legislation dealing with asset transfer has been imported from the current primary legislation. These consolidation and simplifications anticipate the proposed changes to the FAS primary legislation in the current Pensions Bill. Obviously, if Parliament rejects the proposed amendments in the Pensions Bill, these draft Regulations will need to be re-drafted to reflect this.
92. While amendments have been made to clarify the intention of specific regulations or paragraphs, this consolidation does not change the entitlement or coverage of schemes and members beyond those indicated in the earlier section on changes. The Government would therefore welcome responses on whether this goal has been achieved or whether any circumstances have been inadvertently not covered by the consolidation.
93. To facilitate this consideration a destination table has been produced and published with this consultation. In addition to referencing where current regulations are specified in the consolidated regulations, we have indicated where the revised legislation contains a proposed change as set out in the section above.

**Q16. The Government would welcome views on whether the consolidation of and simplification of the Regulations will deliver the same outcomes as before for relevant members. This question may be of particular interest to pensions and legal professionals.**

## **Consequential amendments**

94. The consolidation of the main FAS Regulations means that a number of the existing amending regulations are no longer required either entirely or in part. In addition, legislative cross references in other sets of regulations that deal with the FAS, in particular those dealing with internal review, appeals and the provision of information, need to be altered. The draft Consequential Provision Regulations published with this consultation make these consequential amendments.

**Q17. Are there any additional consequential amendments that are required to bring into effect the changes made under the consolidation of the main FAS Regulations.**

## 5. List of questions

### Section 3: Proposed changes

**Q1. The Government welcomes comments on the proposal to extend the scheme qualifying conditions for the FAS for certain schemes without a statutory employer.**

**Q2. The Government would be interested in any comments on the proposal to reflect pension sharing orders implemented during the winding of a qualifying pension scheme.**

**Q3. The Government welcomes comments on the proposal that the FAS should pay certain surviving disabled dependants at the level of their survivor notional pension from age 23 for life.**

**Q4. The Government welcomes comments on its proposal to provide a default apportionment of survivor/dependant benefits to be used when calculating notional pensions based on scheme rules where those rules leave apportionment to trustee discretion which has not yet been exercised.**

**Q5. The Government welcomes comments on its proposed changes to the calculation of initial and annual payments in respect of ill-health to ensure that future payments are calculated on the intended basis and on its proposals for dealing with those already in receipt of such payments.**

**Q6. The Government welcomes comments on the way it proposes to deal with those whose payments were not protected from a reduction when the amendments to the FAS Regulations came into force on 10 July 2009.**

**Q7. The Government would welcome any comments on the transitional protection, including the proposed exclusion of two circumstances.**

**Q8. The Government welcomes comments on:**

- **which of these two options would be preferable to ensure there is equitable treatment between members with money purchase underpins and other members in such schemes; and**
- **by reference to which date the assessment should be made.**

**It would also welcome comments on the operational implications of either approach.**

**Q9. The Government welcomes comments on the proposal that the FAS scheme manager should be able to delegate determinations relating to ill health, severe ill health, terminal illness and the financial dependency or interdependency of certain survivors to the FAS scheme manager's commercial provider.**

**Q10. The Government would welcome comments on the proposal that the investigation of complaints of maladministration by the FAS scheme manager should be transferred to the PPFO. The Government would also welcome any comments on the time limits and specifically whether there should be a time limit imposed on complaints to the scheme manager concerning issues arising before these regulations come into force.**

**Q11. The Government would welcome comments on the proposal that the FAS scheme manager should be able to make compensation payments in respect of maladministration.**

**Q12. The Government welcomes comments on the proposal that the FAS scheme manager is able to make payments of pension arrears to the estates of members who die between the calculation and the transfer of assets.**

**Q13. The Government is also interested in comments on the intention that the pension scheme is generally expected to pay arrears of pension prior to transfer where death occurs between the calculation date and the transfer if it is possible to do so.**

**Q14. The Government would like comments on whether the consolidation and simplification of the Regulations achieve the aims set out in this consultation document.**

**Q15. The Government would welcome comments on the potential effect of these 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.**

## **Section 4: Consolidation**

**Q16. The Government would welcome views on whether the consolidation of and simplification of the Regulations will deliver the same outcomes as before for relevant members. This question may be of particular interest to pensions and legal professionals.**

**Q17. Are there any additional consequential amendments that are required to bring into effect the changes made under the consolidation of the main FAS Regulations?**

## 6. How to respond to the consultation?

The Government would be grateful for your comments on any of the points covered by the draft Regulations. 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.

Please send consultation responses to:

E-mail: [caxton.fas-responses@dwp.gsi.gov.uk](mailto:caxton.fas-responses@dwp.gsi.gov.uk)

Post: Financial Assistance Scheme Consultation  
Pensions Protection and Stewardship Division  
Department for Work and Pensions  
Caxton House  
7<sup>th</sup> Floor  
6-12 Tothill Street  
London  
SW1H 9NA

### 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.

### 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.

## The consultation process

The Government values your feedback on how well it consults. If you have any comments on the process of this consultation (as opposed to the issues raised) please contact our Consultation Co-ordinator:

Roger Pugh  
Department for Work and Pensions Consultation Co-ordinator  
Room 2A  
Britannia House  
2 Ferensway  
Hull  
HU2 8NF  
Phone: 01482 609571

Email: [roger.pugh@dwp.gsi.gov.uk](mailto:roger.pugh@dwp.gsi.gov.uk)

## Freedom of Information

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

When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make it clear whom the organisation represents and (where applicable) how the views of members were assembled.

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 purpose 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 which is 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.