

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

# DRAFT STATUTORY INSTRUMENTS

2018 No.

## PENSIONS

# The Financial Assistance Scheme (Increased Cap for Long Service) Regulations 2018

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 286, 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(a).

A draft of these Regulations was laid before Parliament in accordance with section 316(2)(n) of that Act(b).

In accordance with section 317(1) of that Act, the Secretary of State for Work and Pensions has consulted such persons as the Secretary of State considers appropriate.

## Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Financial Assistance Scheme (Increased Cap for Long Service) Regulations 2018 and, except as provided for in paragraph (2), come into force on 6th April 2018.

(2) Where a person is entitled to an annual payment or ill health payment under the FAS Regulations on 6th April 2018, these Regulations come into force on the first pay day to occur for that person on or after that date, and for these purposes “pay day” means the day determined in accordance with regulation 19 (time and manner of payment: general provisions) of the FAS Regulations(c).

(3) In these Regulations, “the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(d).

(a) 2004 c.35. Section 286 was amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and by section 124 of the Pensions Act 2008 (c.30) ("the 2008 Act"). Section 286 is modified in its application to multi-employer schemes by S.I. 2005/441 (amended by S.I. 2005/993, 2005/2113, 2008/731, 2010/725, 2011, 2973 and 2012/1688). Section 318(1) is cited because of the meanings given to "prescribed" and "regulations".

(b) Section 316(2)(n) was amended by section 149 of the 2008 Act

(b) Section 316(2)(n) was amended by section 149 of the 2008 Act.  
(c) Regulation 19 was amended by S.I.s 2005/3256, 2008/1903, 2009/1851 and 2010/1149.

(d) Regulation 19  
S.I. 2005/1986.

## **Meaning of “the FAS cap”**

2. After regulation 17A (ill health payments) of the FAS Regulations(a), insert—

### **“Meaning of the FAS cap”**

**17AA.**—(1) This regulation gives the meaning of “the FAS cap” for the purposes of—

- (a) Schedule 2 (determination of annual and initial payments); and
- (b) Schedule 2A (determination of ill health and interim ill health payments)(b).

(2) In this regulation, “the standard amount” has the meaning given in—

- (a) paragraph 7(3) of Schedule 2 in the case of an annual or initial payment; and
- (b) paragraph 7(3) of Schedule 2A in the case of an ill health or interim ill health payment.

(3) The FAS cap for or in respect of a person who has 20 or fewer years of pensionable service at the time when he first becomes entitled to an annual payment or (as the case may be) an ill health payment is the standard amount.

(4) The FAS cap for a person who has more than 20 years of pensionable service at that time is—

- (a) the standard amount; and
- (b) for each whole year of pensionable service that exceeds 20 years of pensionable service, an amount found by multiplying the standard amount by 3%.

(5) If the total amount calculated under paragraph (4)(b) would exceed the standard amount, it is to be treated as being equal to the standard amount.

(6) The FAS cap for the purposes of determining the amount of an initial payment or an interim ill health payment(c) payable to or in respect of a person is the standard amount.

(7) In any case where—

- (a) the scheme manager cannot determine the length of some or all of the person’s pensionable service under the scheme rules(d); or
- (b) the person has benefits under the rules which are not attributable to a particular period of pensionable service,

the scheme manager shall treat the person as having a length of pensionable service as it considers appropriate (in addition to any other pensionable service the person has), having regard to the scheme rules and to such other information as it considers relevant.

(8) When determining the amount of the FAS cap for the purposes of calculating the amount of an annual payment or (as the case may be) ill health payment payable to or in respect of a qualifying member of a qualifying pension scheme, no account shall be taken of any pensionable service that the qualifying member may have under another qualifying pension scheme.

(9) A pension credit member(e) credited with a length of notional pensionable service because of pension credit rights shall be treated for the purposes of this regulation as having pensionable service of that length (in addition to any pensionable service that he is treated as having under sub-paragraph (7)).

(10) Pensionable service relating to more than one benefit under a qualifying pension scheme must only be taken into account for the purposes of this regulation where the benefits are from the same source.

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(a) Regulation 17A was inserted by S.I. 2008/1903 and was amended by S.I.s 2009/792, 2009/1851, 2010/1149 and S.I. 2011/839.

(b) Schedule 2A was inserted by S.I. 2008/1903.

(c) See regulation 2(1) for the meaning of “initial payment” and “ill health payment”.

(d) See regulation 2(1) for the meaning of “scheme rules”.

(e) See regulation 2(1) for the meaning of “pension credit member”.

(11) For the purposes of paragraph (10)—

- (a) where a person is entitled to a benefit under the scheme which is attributable to his pensionable service (“benefit A”), a benefit is from the same source if, at the same time as he becomes entitled to payments under the financial assistance scheme in respect of benefit A, he becomes entitled to payments under the financial assistance scheme in respect of one or more other benefits that are attributable to his pensionable service under the scheme;
- (b) where a person is entitled to a benefit which is attributable to a pension credit from a transferor (“benefit B”), a benefit is from the same source if, at the same time as he becomes entitled to payments under the financial assistance scheme in respect of benefit B, he also becomes entitled to payments under the financial assistance scheme in respect of one or more other benefits that are attributable to a pension credit from the same transferor; and
- (c) benefits are not otherwise from the same source.”.

#### **Amendment of Schedule 2 to the FAS Regulations**

**3.** Paragraph 7 (cap on expected pension and actual pension) of Schedule 2 to the FAS Regulations (determination of annual and initial payments) is amended as follows(a)—

- (a) in sub-paragraphs (3), (4) and (6), for “the FAS cap” in each place where it appears substitute “the standard amount”; and
- (b) in sub-paragraph (5), for “sub-paragraph (3)” substitute “regulation 17AA (meaning of FAS cap)."

#### **Amendment of Schedule 2A to the FAS Regulations**

**4.** In paragraph 7(3) to (5) (cap on expected pension and actual pension) of Schedule 2A to the FAS Regulations (determination of ill health and interim ill health payments)(b), in each place it appears for “the FAS cap” substitute “the standard amount”.

#### **Transitional provision**

**5.—(1)** This paragraph applies to or in relation to a person where—

- (a) the person is in receipt of an annual payment or (as the case may be) an ill health payment;
- (b) the person first became entitled to that payment before these Regulations come into force for that person; and
- (c) payment to or in respect of that person is restricted in accordance with paragraph 7 of Schedule 2 or paragraph 7 of Schedule 2A.

**(2)** This paragraph applies to or in relation to a person where—

- (a) the person is in receipt of initial payments or (as they case may be) interim ill health payments on or after the day these Regulations come into force); and
- (b) payments to or in respect of that person are restricted in accordance with paragraph 7 of Schedule 2 or paragraph 7 of Schedule 2A;

**(3)** Where paragraph (1) or (2) applies, the amount of an annual payment or (as the case may be) an ill health payment for or in respect of the person is to be recalculated in accordance with regulation 17AA(4)—

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(a) Paragraph 7 was amended by S.I.s 2006/337, 2007/358, 2008/1432, 2009/1851 and S.I. 2011/839.

(b) Paragraph 7(3) to (5) was inserted by S.I. 2009/1851. Sub-paragraphs (3) and (4) were amended by S.I. 2011/839.

- (a) using as “the standard amount”, the standard amount in force for that person at the time the person first became entitled to an annual payment or (as the case may be) an ill health payment; and
  - (b) where the person was entitled to an ill health payment, the original actuarial factor.
- (4) The recalculated amount has effect for such a person from whichever is the later of—
- (a) the date on which the person first became entitled to an annual payment or an ill health payment; or
  - (b) the date on which these Regulations come into force for that person.
- (5) In the case of such a person, nothing in these Regulations affects the amount of the FAS cap used to calculate increases already accrued in relation to periods before the day on which these Regulations come into force for that person under—
- (a) paragraph 9(2)(b) (annual increase to annual payment) of Schedule 2 (determination of annual and initial payments) to the FAS Regulations(a); and
  - (b) paragraph 9(2)(b) (annual increase in ill health payment) of Schedule 2A (determination of ill health and interim ill health payments) to the FAS Regulations(b).
- (6) In this regulation—
- (a) “the original actuarial factor” means the actuarial factor applied in accordance with paragraph 5 (actuarial reduction) of Schedule 2A to the FAS Regulations (determination of ill health payments and interim ill health payments) at the time when the person first became entitled to an ill health payment; and
  - (b) otherwise, expressions used have the same meaning as in the FAS Regulations.

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

Date *Name*  
Parliamentary under Secretary of State,  
Department for Work and Pensions

## EXPLANATORY NOTE

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

The Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) (“the FAS Regulations”) establish a financial assistance scheme (“the Scheme”), allowing for payments to be made to or in respect of certain members or former members of certain occupational pension schemes where the liabilities of the scheme to those members are unlikely to be satisfied in full.

Schedule 2 (determination of annual and initial payments) to the FAS Regulations prescribes the method for calculating the amount of an annual payment for each category of qualifying member or their survivor. It also provides for a cap (“the FAS cap”) to be imposed on the amount of expected or actual pension to be taken into account (paragraph 7). Schedule 2A (determination of ill health and interim ill health payments) makes similar provision in the case of ill health payments.

Regulation 2 of these Regulations inserts a new provision, regulation 17AA (meaning of compensation cap) into the FAS Regulations. It provides for a revised FAS cap dependent on a person’s age and length of pensionable service when the person first becomes entitled to an annual payment or an ill health payment under the Scheme.

(a) Paragraph 9 was substituted by S.I. 2009/1851 and amended by S.I.s 2010/1149 and 2011/839.

(b) Paragraph 9 was inserted by S.I. 2009/1851 and amended by S.I.s 2010/1149 and 2011/839.

The standard amount, calculated in the same way as the current cap, will apply to anyone with pensionable service of less than 21 years. For anyone with 21 years or more pensionable service, the FAS cap will be increased by 3 per cent of the standard amount for each full year over 20 years, to a maximum of double the standard amount. The standard amount will, however, continue to apply in the case of initial and interim ill health payments under the Scheme

Regulations 3 and 4 of these Regulations make amendments to the FAS Regulations consequential on the introduction of the new FAS cap.

Regulation 5 is a transitional provision which provides for how the FAS cap is to be re-calculated where the person is already receiving an annual payment or an ill health payment before these Regulations come into force or the person had been receiving initial payments or interim ill health payments (irrespective of when those payments start).before being paid an annual or ill health payment.

In particular, it provides that the new FAS cap for long service is to be calculated using the standard cap that applied when the person first became entitled to an annual payment or an initial payment under the Scheme (regulation 5(3)). The increased amount takes effect from the date the Regulations come into force or the person first become entitled to an actual payment or an ill health payment, whichever is later (regulation 5(4)).

An impact assessment has not been produced for these Regulations as they have no impact on business or civil society organisations.