



Department
for Work &
Pensions

Applying the Financial Assistance Scheme increased cap for long service

Public consultation

September 2017

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Introduction

This consultation concerns changes to secondary legislation to increase the current Financial Assistance Scheme (FAS) cap for those with long service in a single scheme.

Whether to apply the long service cap to the FAS and if so at what level it should be set at is not within the scope of this consultation. The government has already considered these matters and the introduction of an increased FAS long service cap was announced by the then Minister for Pensions on 15 September 2016.

The FAS cap is set out in the [Financial Assistance Scheme Regulations 2005](#) (S.I.2005/1986).

About this consultation

Who this consultation is aimed at

We would expect this consultation to be primarily of interest to members of the FAS, pension scheme administrators and the Board of the Pension Protection Fund. However the government welcomes views from any interested parties.

Purpose of the consultation

The purpose of this consultation is to establish whether the draft regulations achieve the policy intent of creating an increased FAS cap for long service, and whether the proposed long service cap operates correctly in the particular circumstances covered in the consultation document. The government welcomes views from interested parties on the draft regulations, including any possible unintended consequences, such as the impact on particular groups.

Also included in this document are the draft regulations to aid understanding of how it is proposed that the FAS long service cap will operate in practice. Respondents are asked to note that the draft regulations are subject to the affirmative resolution procedure and require the approval of both Houses of Parliament.

Scope of consultation

This consultation applies to the United Kingdom.

Duration of the consultation

The consultation closes on Wednesday 25 October 2017.

How to respond to this consultation

Please send your consultation responses to:

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Department for Work and Pensions

ALB Partnership Division

3rd Floor South Zone F

Quarry House

Leeds

LS2 7UA

Email: faslongservice.consultation@dwp.gsi.gov.uk

Government response

We will aim to publish the government response to the consultation on the [GOV.UK](https://www.gov.uk) website. The [consultation principles](#) encourage departments to publish a response within 12 weeks or provide an explanation why this isn't possible. Where consultation is linked to a statutory instrument, responses should be published before or at the same time as the instrument is laid. The report will summarise the responses and say what the government intends to do as a consequence.

How we consult

Consultation principles

This consultation is being conducted in line with the revised [Cabinet Office consultation principles](#) published in January 2016. These principles give clear guidance to government departments on conducting consultations.

Feedback on the consultation process

We value your feedback on how well we consult. If you have any comments about the consultation process (as opposed to comments about the issues which are the subject of the consultation), including if you feel that the consultation does not adhere to the values expressed in the consultation principles or that the process could be improved, please address them to:

DWP Consultation Coordinator
1st Floor
Caxton House
Tothill Street
London
SW1H 9NA

Email: caxtonhouse.legislation@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, including personal information, 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.

To find out more about the general principles of Freedom of Information and how it is applied within DWP, please contact the Central Freedom of Information Team:

Email: freedom-of-information-request@dwp.gsi.gov.uk

The Central FoI team cannot advise on specific consultation exercises, only on Freedom of Information issues. Read more information about the [Freedom of Information Act](#).

The Financial Assistance Scheme

The Financial Assistance Scheme (FAS) is managed by the Board of the Pension Protection Fund (PPF). It makes payments to top up or replace the scheme benefits payable to eligible members of qualifying schemes.

The FAS offers support to pension scheme members where:

- they were a member of an under-funded defined benefit scheme that started to wind up between 1 January 1997 and 5 April 2005,
- their scheme did not have enough money to pay members' benefits, and
- the employer¹ cannot pay the shortfall because it is insolvent, no longer exists or no longer has a legal commitment to pay its debt to the pension scheme,

or

- the scheme started to wind up after 5 April 2005 but is ineligible for help from the PPF because the employer became insolvent before this date.

The FAS pays assistance to eligible members where the funds in the scheme are insufficient to provide annuities that would pay the member their accrued pension entitlement rights.

Broadly, the FAS tops up any scheme pension that will be paid (or is already being paid) to 90% of the pension an eligible member has accrued. The member, therefore, receives a combination of payments from their existing scheme and a top-up payment from the FAS.

The situation is slightly different for so-called "transferring schemes" where members' benefits have not been fully annuitised and the scheme's assets will transfer/have transferred to the government. For members of one of these schemes, FAS payments may be based on what the scheme could have bought for them rather than 90% of their expected pension.

Payments are made to members for life from the later of their scheme's normal retirement age (but not after 65), their 60th birthday or 14 May 2004.

Further information about the FAS can be found on the [PPF website](#).

¹ To be a qualifying scheme, a scheme must have been sponsored by a qualifying employer. The employer must have either had an insolvency event or had paid the debt due to the scheme in full or such proportion as the scheme manager considered appropriate.

Operation of the existing FAS cap

For anyone whose entitlement begins between **1 April 2017 and 31 March 2018**, the combined total of the payments to any one member is restricted to **£34,229** a year for each scheme (different amounts apply depending on the date entitlement starts).

This is called the cap and applies to any pension that is in payment or will be paid. So, if a member's pension was **£39,000** a year from their scheme and the scheme could not pay anything, the FAS would work out 90% of £39,000 (**£35,100**). As the FAS cannot pay more than the cap amount which applies to the member, the member in this example would receive **£34,229**.

The cap is revalued on an annual basis according to the Consumer Prices Index (CPI). Indexation of FAS payments in general is limited to accruals from April 1997 subject to a maximum increase of 2.5%.

The cap may not apply to certain people who are in a transferring scheme. As their FAS payments may be based on what the scheme could have bought for them rather than 90% of their expected pension, they may receive more than 90% of their expected pension and in such cases the cap does not apply.

The FAS long service cap

On 15 September 2016 the then Pensions Minister, Richard Harrington MP, laid a [written statement](#) in the House of Commons announcing the government's intention to introduce a long service cap for the PPF in April 2017 and the FAS in April 2018.

The long service cap for the PPF was introduced, as planned, in April 2017² and the PPF cap now increases at 3% for every year of pensionable service in the scheme above 20 years, subject to a new maximum of twice the standard cap. In line with the written statement, the government now intends to introduce a long service cap to the FAS.

How will the increased cap affect members of the FAS

Following the introduction of the long service cap, FAS members will have their cap increased by 3% for each full year of pensionable service above 20 years when they first become entitled to payments from the FAS, subject to a new maximum of double the standard cap. Only a full year of pensionable service will be counted. Part years will not be included in the calculation.

² See the [Regulations](#) and [Explanatory Memorandum](#)

The increase is applied to the cap amount in place for the member at the time assistance is first put into payment. The increase is not backdated and takes effect from the member's first pay day on or after the regulations come into force, currently expected to be implemented in April 2018.

Example

- FAS member X has 25 years' service in pension scheme Y
- cap is £34,229.00 (2017/18)
- 5 years x 3% = 15%
- 115% of £34,229.00 is £39,363.35 (new cap amount)
- this gives an increase of **£5,134.35**

Application of the FAS long service cap

All FAS members whose assistance is currently capped will be contacted by the FAS to confirm that they meet the qualifying service criteria.

Any FAS members who are in receipt of a FAS payment and have had 21 full years or more qualifying service in a single pension scheme when they first become entitled to a FAS payment will have their payments recalculated.

Members who are eligible for an increase will be notified by the FAS in advance of implementation and a breakdown of the calculation will be provided to them in writing.

Members will be invited to contact the FAS if they believe the calculation is inaccurate.

Initial payments and interim ill health payments

There are members in schemes which have not yet transferred to the FAS. Where the scheme trustee is unable to pay these members the amount they would get from the FAS, the scheme trustee can request initial payments from the FAS, which are then reconciled once the scheme enters the FAS. The existing FAS cap will apply when calculating initial payments and interim ill health payments. The long service cap will not apply. The long service cap, however, will be taken into account when annual payments or ill health payments are finally calculated and arrears paid, where applicable, from the later of the date the regulations come into force or the date the member became eligible for FAS payments.

Indexation

Under FAS regulations annual increases take effect from 1 January each year.

For those FAS members who are in receipt of capped FAS payments on the date the legislation comes into force and entitled to indexation, the existing FAS cap will continue to be used to calculate increases accrued for the period before the

regulations come into force. The FAS long service cap will be used to calculate annual increases going forward.

Survivor assistance

There are 2 groups of survivors who are entitled to assistance payments from the FAS.

The first group is where the original scheme member died before their pension scheme wound up and was therefore in receipt of survivor benefits before the scheme transferred to the FAS. The second group are those who are survivors of a FAS member who was receiving FAS assistance before they died. This group of survivors will receive FAS survivor benefits going forward.

The policy intention is that both groups should be able to benefit from the long service cap. The FAS will contact all FAS members who are affected by the current cap, asking them to provide information on their pensionable service in order to determine who is eligible for an increased cap due to long service. In the case of survivors we expect them to provide the FAS with information on their deceased partner's length of pensionable service. The intention is that, so far as possible, when calculating the long service cap, the survivor will be treated as having the same pensionable service as their deceased partner had when they died. Where a survivor does not have any pensionable service of their own, the FAS can attribute a notional period of pensionable service to the member based on the information they hold about the deceased member's service.

The government is keen to understand whether respondents think that the process outlined above is sufficient to ensure all eligible groups can benefit from the increased cap for long service.

Lump sum and commutation

Where certain conditions are met, a member is able to commute part of their FAS assistance into a cash lump sum payment. Their ongoing periodic payments are reduced to reflect this commutation. Where a member has taken such a lump sum before the regulations come into force, but their FAS assistance increases going forward due to the introduction of the long service cap, an additional lump sum payment will not be made. Any additional assistance due will be paid as part of the member's ongoing annual compensation.

Calculating length of service

Any member who does not have actual pensionable service in relation to all or part of their scheme rights (for example, where a new scheme member transferred their rights from a previous scheme and the new scheme offered a specific amount of pension in return for the transfer) will have a length of pensionable service deemed by the FAS scheme manager.

The FAS scheme manager will also deem a length of service where the member had pensionable service but all, or some, of it cannot be identified and where the member

had no pensionable service (for example, where the person was a pension credit member who had not been given notional service in the scheme).

When determining at what level the FAS cap will be set as for such individuals, no account will be taken of any pensionable service that the qualifying member may have under another qualifying pension scheme. In other words, pensionable service under 2 or more schemes are not added together.

Also, for the purpose of applying the long service cap, pensionable service is only added together if it is from the same source. That is to say, it is either all attributable to the person's pensionable service or all attributable to a pension credit arising from a divorce or dissolution settlement from the same transferor.

Consultation questions

1. Do the draft regulations achieve the policy intent of increasing the current FAS cap for those with long service in a single scheme as described in the consultation paper?
2. Are you aware of any unintended consequences resulting from the draft regulations?
3. Do the regulations as currently drafted allow the FAS to increase the long service cap for all groups with long service in a single scheme?