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STATUTORY INSTRUMENTS

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**2005 No. 1986**

**The Financial Assistance Scheme Regulations 2005**

**PART 5**

**ANNUAL AND INITIAL PAYMENTS**

**[<sup>F1</sup>Annual payments for certain applications in cases of severe ill health**

**17C.**—(1) A qualifying member shall be entitled to an annual payment determined in accordance with Schedule 2 where the conditions in paragraphs (2) and (3) are met.

(2) The condition in this paragraph is that, subject to paragraph (9), the qualifying member makes a written request for an annual payment under this regulation during the period of 12 months beginning with the date on which the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 come into force.

(3) The conditions in this paragraph are that the scheme manager is satisfied that the qualifying member—

- (a) has attained the age of 55;
- (b) suffers from a progressive disease and as a consequence can reasonably be expected to die within five years;
- (c) is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age; and
- (d) is not regarded as a qualifying member by virtue of regulation 15(5).

(4) The date from which a qualifying member is entitled to an annual payment under this regulation is—

- (a) where the scheme manager is satisfied that the conditions in paragraph (3) were met before the date on which the scheme manager receives the written request mentioned in paragraph (2), whichever is the later of—
  - (i) the date on which the scheme manager is satisfied that the conditions in paragraph (3) would first have been met; or
  - (ii) 14th May 2004; or
- (b) in all other cases, the date on which the scheme manager receives the written request mentioned in paragraph (2).

(5) In determining whether or not the scheme manager is satisfied in accordance with paragraph (4)(a), the scheme manager shall have regard to—

- (a) the information available as to the length of time the qualifying member has met the conditions in paragraph (3);
- (b) the medical evidence available, taking into account—

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- (i) such evidence as the scheme manager would have expected the qualifying member to have been able to provide in accordance with Schedule 2 to the FAS Information and Payments Regulations, and
  - (ii) the effect of the lapse of time on the availability of that evidence; and
  - (c) such other matters as the scheme manager considers relevant.
- (6) Paragraphs (4) to (7) of regulation 17 apply to annual payments made under this regulation.
- (7) Paragraph (8) applies where—
- (a) on the date the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 come into force, the qualifying member is receiving a payment in accordance with these Regulations (other than payments for a survivor by virtue of regulation 17(4), 17A(3), 17B(2)(b) or 18(4)); and
  - (b) the qualifying member is entitled to an annual payment in accordance with this regulation.
- (8) Where this paragraph applies, from the date on which the scheme manager determines that the qualifying member is entitled to an annual payment in accordance with this regulation—
- (a) the qualifying member is not entitled to—
    - (i) an annual payment under regulation 17(2);
    - (ii) an annual payment for terminal illness under regulation 17(3); or
    - (iii) an ill health payment under regulation 17A(1); and
  - (b) the scheme manager may not make—
    - (i) an initial payment under regulation 18 in anticipation of an annual payment being payable under regulation 17(2);
    - (ii) an interim ill health payment under regulation 17B(2); or
    - (iii) an initial payment for terminal illness by virtue of [F2regulation 18(4)].
- (9) Where—
- (a) a qualifying member has died;
  - (b) the scheme manager is satisfied that prior to death that qualifying member satisfied the conditions in paragraph (3); and
  - (c) the relevant representative makes a written request in respect of that qualifying member during the time period set out in paragraph (2);
- that qualifying member shall be entitled to an annual payment in accordance with this regulation.
- (10) Any annual payment (or initial payment under regulation 18) payable under paragraph (9) is payable to the estate of the deceased qualifying member.
- (11) For the purposes of paragraph (9), references in these Regulations to “qualifying member” may be construed as references to the deceased qualifying member or to the deceased qualifying member’s estate, as the case requires.
- (12) For the purposes of this regulation—
- “relevant representative” means—
- (a) the survivor of the deceased qualifying member referred to in paragraph (9), or
  - (b) where there is no survivor in relation to that qualifying member, that member’s personal representative; and
- “personal representative” has the meaning given in regulation 2(1) of the FAS Information and Payments Regulations.]

**Textual Amendments**

- F1** Reg. 17C inserted (27.3.2009) by [The Financial Assistance Scheme and Incapacity Benefit \(Miscellaneous Amendments\) Regulations 2009 \(S.I. 2009/792\)](#), regs. 1(1), **7**
- F2** Words in reg. 17C(8)(b)(iii) substituted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), regs. 1, **15** (with reg. 37)

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**Changes to legislation:**

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