
STATUTORY INSTRUMENTS

2005 No. 1986

The Financial Assistance Scheme Regulations 2005

PART 1

GENERAL

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Financial Assistance Scheme Regulations 2005 and shall come into force—

- (a) for the purposes of this regulation, regulation 4 and paragraphs 4, 5, 15 and 16 of Schedule 1 in so far as they relate to regulation 4, for the purpose only of the making of regulations, on the day after the day on which these Regulations are made;
- (b) in so far as these Regulations apply in relation to civil partnerships, on 5th December 2005; and
- (c) for all other purposes, on 1st September 2005.

(2) These Regulations extend to Northern Ireland.

Interpretation

2.—(1) In these Regulations—

“the Act” means the Pensions Act 2004 and references to a numbered section are, unless the context otherwise requires, to a section of the Act^{M1};

“the Northern Ireland Order” means the Pensions (Northern Ireland) Order 2005^{M2} and references to a numbered Article are, unless the context otherwise requires, to an Article of that Order;

“the 1993 Act” means the Pension Schemes Act 1993^{M3};

“the 1995 Act” means the Pensions Act 1995^{M4};

“the FSMA” means the Financial Services and Markets Act 2000^{M5};

“the ICTA” means the Income and Corporation Taxes Act 1988^{M6};

“the Commissioners of HMRC” means the Commissioners of Her Majesty's Revenue and Customs;

“annual payment” means the amount payable to a beneficiary in respect of each year determined in accordance with regulation 17 and Schedule 2;

“beneficiary” means a qualifying member or, after his death, his survivor;

“initial payment” means a payment made to a beneficiary in accordance with regulation 18;

“multi-employer scheme” and “relevant public authority” have the meanings given in section 307(4) or, as the case may be, Article 280(4);

Status: Point in time view as at 24/11/2005.

Changes to legislation: There are currently no known outstanding effects for the The Financial Assistance Scheme Regulations 2005. (See end of Document for details)

“notification period” shall be construed in accordance with regulation 14(5)(b);

“qualifying member” shall be construed in accordance with regulation 15;

“qualifying pension scheme” shall be construed in accordance with regulation 9;

“scheme manager” shall be construed in accordance with regulation 5;

“survivor” means, in relation to a member [^{F1}or former member] of a qualifying pension scheme who has died—

(a) the member's widow or widower; or

(b) the member's surviving civil partner,

but shall not include a person who comes within paragraph (a) or (b) but who is regarded as a qualifying member by virtue of regulation 15(5);

“tax approved scheme” means a scheme which is approved or was formerly approved under section 590 (conditions for approval of retirement benefit schemes) or 591 ^{M7} (discretionary approval) of the ICTA or in respect of which an application for such approval has been duly made but has not been determined;

“trustees or managers” shall be construed in accordance with the definition in section 124(1) of the 1995 Act,

and other expressions have the meaning given to them in the Act or, as the case may be, in the Northern Ireland Order.

(2) References in these Regulations to provisions of the 1993 Act, the 1995 Act, the Welfare Reform and Pensions Act 1999 ^{M8} and to the Social Security Contributions and Benefits Act 1992 ^{M9} include references to the provisions in force in Northern Ireland corresponding to those provisions.

(3) In these Regulations, “insurance company” means—

(a) a person who has permission under Part 4 of the FSMA to effect or carry out contracts of long-term insurance; or

(b) an EEA firm of the kind mentioned in paragraph 5(d) of Schedule 3 to that Act (certain direct insurance undertakings) which has permission under paragraph 15 of that Schedule (as a result of qualifying for authorisation under paragraph 12 of that Schedule) to effect or carry out contracts of long-term insurance,

and in this paragraph, “contracts of long-term insurance” means contracts which fall within Part 2 of Schedule 1 to the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 ^{M10}.

(4) Paragraph (3) shall be read with—

(a) section 22 of the FSMA (regulated activities);

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.

(5) In these Regulations, “normal retirement age” means, subject to paragraph (6), in relation to a member of an occupational pension scheme, the age specified in the rules of that scheme at which that member will normally retire.

(6) Where the normal retirement age—

(a) determined in accordance with paragraph (5) is more than 65, that age shall be 65;

(b) cannot be determined in accordance with paragraph (5) from the rules of the qualifying pension scheme, that age shall be such age as the scheme manager shall determine having regard to the rules of that scheme and to such other information as he considers relevant.

(7) [^{F2}Subject to paragraph (8), in these Regulations,] “appointed representative” means—

- (a) a person whose name, address and appointment by a beneficiary or by a person who believes himself to be a beneficiary (“^{F3}possible] beneficiary”) for the purposes of—
- (i) notifying the scheme manager of the details prescribed in regulation 14(1) and (3); or
 - (ii) receiving payments made under these Regulations,
- have been notified to the scheme manager in a document signed by the beneficiary or ^{F3}possible] beneficiary in question or by his legal representative and whose appointment has been consented to by the scheme manager; or
- (b) where a beneficiary or a ^{F3}possible] beneficiary—
- (i) dies; or
 - (ii) is otherwise incapable of acting for himself,
- and there is no person appointed under sub-paragraph (a) in respect of that beneficiary or ^{F3}possible] beneficiary, a person who has been appointed by the scheme manager to act as the beneficiary's or the ^{F3}possible] beneficiary's representative for the purposes of these Regulations.

^{F4}(8) If a beneficiary or a possible beneficiary appoints a person under sub-paragraph (a) of paragraph (7), and then—

- (a) dies, or
- (b) becomes otherwise incapable of acting for himself,

the person appointed under sub-paragraph (a) of that paragraph is deemed to have been appointed under sub-paragraph (b) of that paragraph.

(9) For the purposes of these Regulations, a person is “terminally ill” at any time if at that time he suffers from a progressive disease and his death, in consequence of that disease, can reasonably be expected within six months.]

Textual Amendments

- F1** Words in reg. 2(1) inserted (24.11.2005) by [The Financial Assistance Scheme \(Modifications and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/3256\)](#), regs. 1(1), **4(2)(a)**
- F2** Words in reg. 2(7) substituted (24.11.2005) by [The Financial Assistance Scheme \(Modifications and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/3256\)](#), regs. 1(1), **4(2)(b)(i)**
- F3** Word in reg. 2(7) substituted (24.11.2005) by [The Financial Assistance Scheme \(Modifications and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/3256\)](#), regs. 1(1), **4(2)(b)(ii)**
- F4** Reg. 2(8)(9) added (24.11.2005) by [The Financial Assistance Scheme \(Modifications and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/3256\)](#), regs. 1(1), **4(2)(c)**

Marginal Citations

- M1** The Act is modified in its application to partially guaranteed pension schemes by [S.I.2005/277](#), in its application to multi-employer schemes by [S.I. 2005/441](#) and in its application to hybrid schemes by [S.I.2005/449](#).
- M2** [S.I.2005/255 \(N.I.1\)](#). The Northern Ireland Order is modified in its application to partially guaranteed pension schemes by [S.R.2005/55](#), in its application to hybrid schemes by [S.R.2005/84](#) and in its application to multi-employer schemes by [S.R.2005/91](#).
- M3** 1993 c. 48.
- M4** 1995 c. 26.
- M5** 2000 c. 8.
- M6** 1988 c. 1.
- M7** Sections 590 and 591 are amended by the [Finance Act 1988 \(c. 39\)](#), **section 35** and Schedule 3, the [Finance Act 1989 \(c. 26\)](#), **sections 75** and 187 and Schedules 6 and 17, the [Finance Act 1991 \(c. 31\)](#),

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Changes to legislation: There are currently no known outstanding effects for the The Financial Assistance Scheme Regulations 2005. (See end of Document for details)

sections 34, 36 and 123 and Schedule 19, the Finance Act 1994 (c. 9), section 107, the Finance Act 1995 (c. 4), section 59 and the Finance Act 1999 (c. 16), section 79 and Schedule 10.

M8 1999 c. 30.

M9 1992 c. 4.

M10 S.I.2001/544.

Commencement of winding up

3.—(1) For the purposes of these Regulations, the time when an occupational pension scheme begins to be wound up shall be determined in accordance with this regulation.

(2) Subject to paragraphs (3) to (6), where the rules of the scheme require or permit the scheme to be wound up and the scheme is wound up under those rules, the scheme begins to be wound up—

(a) either—

(i) at such time as the rules provide that it does so; or

(ii) if the rules make no provision as to that time, at such time as the trustees or managers determine that the scheme shall begin to be wound up; or

(b) as soon as there are no members who are in pensionable service under the scheme,

whichever is the later.

(3) Where the rules of the scheme require or permit the scheme to be wound up but the trustees or managers determine in pursuance of section 38 of the 1995 Act^{M11} or otherwise that the scheme is not to be wound up for the time being, then for the purposes of paragraph (2), in so far as any provision made by the rules of the scheme as to the time when it begins to be wound up is inconsistent with the trustees' or managers' determination, that provision shall be disregarded.

(4) Where under the rules of the scheme, any person other than the trustees or managers may determine that the scheme is to be wound up, or is not to be wound up for the time being, then the references in paragraphs (2)(a)(ii) and (3) to the trustees' or managers' determination shall be taken, in a case where the winding up begins or is deferred by virtue of that other person's determination, as a reference to his determination.

(5) Paragraph (4) applies where such power is vested in the trustees or managers jointly with another person, or in some but not all of the trustees, as it applies where such a power is vested only in a person other than the trustees or managers.

(6) Where—

(a) the scheme manager is satisfied that the scheme began to wind up during the period prescribed in regulation 9(1)(b); but

(b) the exact date on which the scheme began to wind up cannot be determined,

the scheme begins to be wound up on such date, within that period, as the scheme manager determines.

(7) Where—

(a) a scheme is wound up in pursuance—

(i) of an order by the Determinations Panel on behalf of the Regulator under section 11 of the 1995 Act^{M12} (see section 9); or

(ii) of an order of a court; and

(b) the order makes provision as to the time at which the scheme is to begin to be wound up, the scheme begins to be wound up at the time specified in the order or, if none is so specified, the date on which the order takes effect.

Marginal Citations

- M11** Section 38 is amended by the Welfare Reform and Pensions Act 1999, Schedule 12, paragraph 50.
M12 Section 11 is amended by section 22 of the Act.

Application of Parts 1 and 2 of the Act

4.—(1) The provisions of Parts 1 and 2 of the Act specified in paragraph (2) apply for the purposes of these Regulations with the modifications prescribed in Schedule 1.

(2) The specified provisions are—

- (a) section 68 (power for the Regulator to collect information relevant to the Board of the Pension Protection Fund);
- (b) section 85 (power to enable the Regulator to disclose restricted information to the Board);
- (c) section 168 (administration of compensation payable by the Board);
- (d) sections 190 to 204 (except section 202) (information gathering powers of the Board and provisions relating to disclosure of information by the Board); and
- (e) Schedule 8 (permitted disclosures by the Board to facilitate exercise of functions).

(3) Subject to paragraph (5), the provisions of Parts 1 and 2 of the Act which are applied by paragraph (1), shall apply to Northern Ireland for the purposes of these Regulations, with the prescribed modifications, as if those provisions extended to Northern Ireland.

(4) Section 88(4) shall also apply to Northern Ireland for the purposes of these Regulations as if that provision extended to Northern Ireland.

(5) Sections 197 to 201 and 203 shall apply to Northern Ireland only in so far as they relate to disclosure or provision of information—

- (a) by or to the scheme manager;
- (b) by any person who receives information directly or indirectly from the scheme manager;
- (c) by any person for the purpose of enabling or assisting the scheme manager to exercise his functions; and
- (d) by trustees or managers of occupational pension schemes in respect of matters relating to these Regulations.

(6) In so far as this regulation extends provisions to Northern Ireland—

- (a) a person may not be required under or by virtue of those provisions to produce, disclose or permit the inspection of protected items within the meaning given in section 311(2) to (4); and
- (b) if a person claims a lien on a document, its production under any provision made by, or by virtue of, those provisions, does not affect the lien.

PART 2

ESTABLISHMENT OF THE FINANCIAL ASSISTANCE SCHEME

Scheme manager

5.—(1) The financial assistance scheme established by these Regulations shall be managed by the Secretary of State.

Status: Point in time view as at 24/11/2005.

Changes to legislation: There are currently no known outstanding effects for the The Financial Assistance Scheme Regulations 2005. (See end of Document for details)

(2) References in these Regulations—

- (a) to the scheme manager are to the Secretary of State acting in his capacity as manager of the financial assistance scheme;
- (b) to the Secretary of State are to the Secretary of State acting other than in that capacity.

Funding

6.—(1) Any payments which are required to be made in accordance with these Regulations shall be paid out of a fund which is held, managed and applied by the scheme manager (“the fund”).

(2) The Secretary of State shall pay amounts into the fund out of monies provided by Parliament.

(3) The Secretary of State may pay other amounts into the fund where he—

- (a) is notified in writing that a person wishes to pay an amount into the fund;
- (b) is of the opinion that that amount can be paid into the fund; and
- (c) receives that amount.

Annual reports

7.—(1) The Secretary of State must prepare a report on the financial assistance scheme for each financial year.

(2) Each report must deal with the operation of the financial assistance scheme in the financial year for which it is prepared and in particular—

- (a) the number of persons who have received payments under these Regulations; and
- (b) the total amount of those payments.

(3) The Secretary of State must lay before each House of Parliament a copy of every report prepared by him under this regulation.

(4) In this regulation, “financial year” means—

- (a) the period beginning on 1st September 2005 and ending on 31st March 2006; and
- (b) each successive period of 12 months.

Delegation

8. The scheme manager may make arrangements for any of his functions conferred by, or by virtue of, these Regulations to be exercised, in accordance with those arrangements, by a person on his behalf.

PART 3

QUALIFYING PENSION SCHEMES

Qualifying pension schemes

9.—(1) An occupational pension scheme shall be a qualifying pension scheme for the purposes of these Regulations where—

- (a) immediately before the time when the scheme began to wind up, it was neither a money purchase scheme nor a scheme of a description prescribed in regulation 10;

- (b) the scheme began to wind up during the period beginning on 1st January 1997 and ending on 5th April 2005;
 - (c) the employer in relation to that scheme satisfies the condition in regulation 11 or in relation to a multi-employer scheme, the condition in regulation 12 is satisfied; and
 - (d) the details prescribed in regulation 14 have been notified to the scheme manager by a person, in the form and manner and before the date prescribed in that regulation.
- (2) The following shall be treated as separate schemes for the purposes of these Regulations—
- (a) in relation to an occupational pension scheme which is not a tax approved scheme but contains one or more sections which, by virtue of section 611(3) of the ICTA ^{M13} (definition of “retirement benefits scheme”), are treated by the Commissioners of HMRC as a tax approved scheme, those sections which are so treated;
 - (b) sections of sectionalised multi-employer schemes as defined for the purposes of regulation 12,
- and references in these Regulations to schemes shall be construed accordingly.

Marginal Citations

M13 Section 611(3) is amended by the Finance Act 1999, section 79 and Schedule 10 and by the Finance Act 2000 (c. 17), section 61 and Schedule 13.

Other schemes which are not qualifying pension schemes

10. The following are descriptions of schemes for the purposes of regulation 9(1)(a)—
- (a) a public service pension scheme under the provisions of which there is no requirement for assets related to the intended rate or amount of benefit under the scheme to be set aside in advance (disregarding requirements relating to additional voluntary contributions);
 - (b) a scheme which is made under section 7 of the Superannuation Act 1972 ^{M14} or under Article 9 of the Superannuation (Northern Ireland) Order 1972 ^{M15} (superannuation of persons employed in local government service etc.) and provides pensions to persons employed in local government service;
 - (c) a scheme which is made under section 2 of the Parliamentary and Other Pensions Act 1987 ^{M16} (power to provide for pensions for Members of the House of Commons etc.);
 - (d) a scheme which is established under section 48 of the Northern Ireland Act 1998 ^{M17} (pensions of members), or which was established under Part 2 of the Ministerial Salaries and Members' Pensions Act (Northern Ireland) 1965 ^{M18} or Article 3 of the Assembly Pensions (Northern Ireland) Order 1976 ^{M19};
 - (e) a scheme in respect of which a relevant public authority has given a guarantee or made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet its liabilities;
 - (f) a scheme which provides relevant benefits within the meaning of section 612(1) of the ICTA but which is neither a tax approved scheme nor a relevant statutory scheme within the meaning of section 611A of that Act ^{M20} (definition of “relevant statutory scheme”);
 - (g) a scheme—
 - (i) which has been categorised before 18th April 2005, by the Commissioners of Inland Revenue, and on or after that date, by the Commissioners of HMRC, for the purposes of its approval as a centralised scheme for non-associated employers;

Status: Point in time view as at 24/11/2005.

Changes to legislation: There are currently no known outstanding effects for the The Financial Assistance Scheme Regulations 2005. (See end of Document for details)

- (ii) which is not contracted-out in accordance with section 9 of the 1993 Act ^{M21}; and
- (iii) under the provisions of which the only benefits that may be provided on or after retirement (other than money purchase benefits derived from the payment of voluntary contributions by any person) are lump sum benefits which are not calculated by reference to a member's salary;
- (h) a scheme—
 - (i) the only benefits provided by which (other than money purchase benefits) are death benefits; and
 - (ii) under the provisions of which no member has accrued rights (other than rights to money purchase benefits);
- (i) a scheme with such a superannuation fund as is mentioned in section 615(6) of the ICTA ^{M22} (exemption from tax in respect of certain pensions);
- (j) a scheme which does not have its main place of administration registered in the United Kingdom;
- (k) a scheme with fewer than two members;
- (l) a scheme which is a small self-administered scheme for the purposes of the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Small Self-administered Schemes) Regulations 1991 ^{M23} as in force on the day on which this regulation comes into force.

Marginal Citations

M14 1972 c. 11.

M15 S.I.1972/1073 (N.I.10).

M16 1987 c. 45.

M17 1998 c. 47.

M18 1965 c. 18 (N.I.).

M19 S.I.1976/1779.

M20 Section 611A is inserted by the Finance Act 1989 (c. 26), section 75 and Schedule 6, paragraph 15 and amended by the Finance Act 1999, section 52(1) and Schedule 5, paragraph 5.

M21 Section 9 is amended by the 1995 Act, section 136(3) and (4), Schedule 5, paragraphs 21 and 24 and by the Social Security Contributions (Transfer of Functions) Act 1999 (c. 2), Schedule 1, paragraph 35.

M22 Section 615(6) has effect in relation to trust based occupational pension schemes established in respect of persons wholly employed in a trade or undertaking outside of the United Kingdom. It was amended by the Finance Act 1999, section 79 and Schedule 10.

M23 S.I.1991/1614.

Condition to be satisfied by employer

11.—(1) The condition to be satisfied by the employer for the purposes of regulation 9(1)(c), where the scheme is not a multi-employer scheme, is that an insolvency event has occurred in relation to the employer on or before the last day of the notification period.

(2) The reference to the employer in paragraph (1)—

- (a) includes every person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme began to wind up; or

- (b) where the scheme had no active members immediately before the time it began to wind up, includes every person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time at which the scheme ceased to have any active members.

Condition to be satisfied: multi-employer schemes

12.—(1) In relation to a section of a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c) is that an insolvency event has occurred on or before the last day of the notification period—

- (a) in relation to the employer in that section;
- (b) where there is more than one employer in that section, in relation to the principal employer in that section; or
- (c) where there is more than one employer in that section and there is no principal employer in that section, in relation to all the employers participating in that section.

(2) In relation to a multi-employer scheme which is not a sectionalised multi-employer scheme, the condition to be satisfied for the purposes of regulation 9(1)(c) is that an insolvency event has occurred on or before the last day of the notification period—

- (a) in relation to the principal employer; or
- (b) where there is no principal employer, in relation to all the employers participating in the scheme.

(3) The references to the employer in paragraph (1) are—

- (a) to the person who employed persons in the description or category of employment to which the section of the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, to the person who was the employer of persons in the description or category of employment to which the section of the scheme relates or related immediately before the time when the scheme ceased to have any active members in relation to that section.

(4) The references to the employer in paragraph (2) are—

- (a) to the person who employed persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme began to wind up; or
- (b) where the scheme had no active members immediately before the time it began to wind up, to the person who was the employer of persons in the description or category of employment to which the scheme relates or related immediately before the time when the scheme ceased to have any active members in relation to it.

(5) The references to the principal employer in paragraphs (1)(b) and (c) and (2) are to the employer who was the principal employer immediately before the time when the scheme began to wind up.

(6) In this regulation—

“principal employer” means the employer who—

- (a) is the principal employer for the purposes of the scheme, or of a section of a sectionalised multi-employer scheme, in accordance with the rules of the occupational pension scheme; or
- (b) has power to act on behalf of all the employers in the scheme, or in a section of a sectionalised multi-employer scheme, in relation to the rules of that scheme;

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“sectionalised multi-employer scheme” means a multi-employer scheme which is divided into two or more sections and the provisions of the scheme are such that—

- (a) different sections of the scheme apply or applied to different employers or groups of employers (whether or not more than one section applies or applied to any particular employer or groups including any particular employer);
- (b) any contributions payable or paid to the scheme by an employer, or by a member in employment under that employer, are allocated to that employer's section (or if more than one section applies or applied to the employer, to the section which is, or was, appropriate in respect of the employment in question); and
- (c) a specified part or proportion of the assets of the scheme is, or was, attributable to each section of the scheme and cannot or could not be used for the purpose of any other section of the scheme.

Insolvency events

13.—(1) “Insolvency event” shall, for the purposes of regulations 11 and 12, be interpreted in accordance with—

- (a) section 121(2) to (4) (other than subsection (3)(f) of that section); or
- (b) Article 105(2) to (4) and (12) (other than paragraph (3)(f) of that Article),

and the following provisions of this regulation.

(2) Where the employer in relation to an occupational pension scheme is a person specified in paragraph (3), an insolvency event shall be treated as having occurred in relation to that employer for the purposes of regulations 11 and 12 where the scheme manager is satisfied that—

- (a) that employer was unlikely to continue as a going concern; and
- (b) that situation applied to that employer on or before the last day of the notification period.

(3) The persons specified in this paragraph are—

- (a) a public body—
 - (i) in relation to which it is not possible for an insolvency event within the meaning of section 121 or Article 105 to occur; and
 - (ii) which is not the employer in relation to an occupational pension scheme in respect of which a relevant public authority has either—
 - (aa) given a guarantee in relation to any part of the scheme, any benefits payable under the scheme or any member of the scheme; or
 - (bb) made any other arrangements for the purposes of securing that the assets of the scheme are sufficient to meet any part of its liabilities;
- (b) a charity (as construed in accordance with the Charities Act 1993^{M24} or the Charities Act (Northern Ireland) 1964^{M25}) which is not a company or other body corporate; or
- (c) a trade union within the meaning given in section 1 of the Trade Union and Labour Relations (Consolidation) Act 1992^{M26} or in Article 3(1) of the Industrial Relations (Northern Ireland) Order 1992^{M27} in relation to which it is not possible for an insolvency event within the meaning of section 121 or Article 105 to occur.

(4) An insolvency event also occurs for the purposes of regulations 11 and 12 where any of the following events occur on or before the last day of the notification period—

- (a) in relation to a company—
 - (i) where an administration order is made—

- (aa) by the court in relation to the company under, or by virtue of any enactment which applies, Part 2 of the 1986 Act (administration orders) (with or without modification); or
 - (bb) by the High Court in relation to the company under, or by virtue of any statutory provision which applies, Part 3 of the Insolvency (Northern Ireland) Order (administration orders) (with or without modification);
 - (ii) where a resolution is passed for a voluntary winding up of the company with a declaration of solvency under section 89 of the 1986 Act or under Article 75 of the Insolvency (Northern Ireland) Order; or
 - (iii) where notice is published in the Gazette that the company has been struck off the register pursuant to section 652 or 652A of the Companies Act 1985^{M28} or Article 603 or 603A of the Companies (Northern Ireland) Order 1986^{M29};
- (b) in relation to a relevant body, where—
- (i) any of the events referred to—
 - (aa) in section 121(3) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the 1986 Act or by or under any other enactment; or
 - (bb) in Article 105(3)^{M30} (insolvency events) occurs in relation to that body by virtue of the application (with or without modification) of any provision of the Insolvency (Northern Ireland) Order or by or under any other statutory provision; or
 - (ii) an administration order is made by the court in respect of the relevant body by virtue of any enactment which applies Part 2 of the 1986 Act or Part 3 of the Insolvency (Northern Ireland) Order (with or without modification);
- (c) in relation to a limited liability partnership, where notice has been published in the Gazette that the partnership has been struck off the register pursuant to section 652 or 652A of the Companies Act 1985^{M31} or Article 603 or 603A of the Companies (Northern Ireland) Order 1986^{M32};
- (d) in relation to a building society, where there is dissolution by consent of the members under section 87 of the Building Societies Act 1986^{M33} (dissolution by consent);
- (e) in relation to a friendly society, where there is dissolution by consent of the members under section 20 of the Friendly Societies Act 1992^{M34} (dissolution by consent); and
- (f) in relation to an industrial and provident society, where there is dissolution by consent of the members under section 58 of the Industrial and Provident Societies Act 1965^{M35} or section 67 of the Industrial and Provident Societies Act (Northern Ireland) 1969^{M36} (instrument of dissolution).
- (5) In this regulation, a reference to Part 2 of the 1986 Act (administration orders) shall, in so far as it relates to a company or society listed in section 249(1) of the Enterprise Act 2002^{M37} (special administration regimes), have effect as if it referred to Part 2 of the 1986 Act as it had effect immediately before the coming into force of section 248 of the Enterprise Act 2002 (replacement of Part 2 of the 1986 Act).
- (6) In this regulation—
- “the 1986 Act” means the Insolvency Act 1986^{M38};
 - “the Insolvency (Northern Ireland) Order” means the Insolvency (Northern Ireland) Order 1989^{M39};

Status: Point in time view as at 24/11/2005.

Changes to legislation: There are currently no known outstanding effects for the The Financial Assistance Scheme Regulations 2005. (See end of Document for details)

“administration order” means an order whereby the management of the company or relevant body, as the case may be, is placed in the hands of a person appointed by the court or, in Northern Ireland, by the High Court;

“the Gazette” means, in respect of companies or limited liability partnerships registered—

- (a) in England and Wales, the London Gazette;
- (b) in Scotland, the Edinburgh Gazette; or
- (c) in Northern Ireland, the Belfast Gazette;

“public body” means a government department or any non-departmental public body established by—

- (a) in relation to Great Britain, an Act of Parliament or by a statutory instrument made under an Act of Parliament to perform functions conferred on it under, or by virtue of, that Act or instrument or any other Act or instrument;
- (b) in relation to Northern Ireland, a statutory provision to perform functions conferred on it under that statutory provision or any other such statutory provision;

“relevant body” means—

- (a) a credit union within the meaning given in section 31(1) of the Credit Unions Act 1979^{M40} or Article 2(2) of the Credit Unions (Northern Ireland) Order 1985^{M41} (interpretation);
- (b) a limited liability partnership within the meaning given in section 57(6) or Article 53(6) (partnerships and limited liability partnerships);
- (c) a building society within the meaning given in section 119 of the Building Societies Act 1986 (interpretation);
- (d) a person who has permission to act under Part 4 of the FSMA (permission to carry out regulated activities);
- (e) the society of Lloyd's and Lloyd's members who have permission under Part 19 of the FSMA (Lloyd's);
- (f) a friendly society within the meaning given in the Friendly Societies Act 1992; or
- (g) a society which is registered as an industrial and provident society under the Industrial and Provident Societies Act 1965 or under the Industrial and Provident Societies Act (Northern Ireland) 1969;

“statutory provision” has the meaning given in section 1(f) of the Interpretation Act (Northern Ireland) 1954^{M42}.

Marginal Citations

- M24** 1993 c. 10.
- M25** 1964 c. 33 (N.I.).
- M26** 1992 c. 52.
- M27** S.I.1992/807 (N.I.5).
- M28** 1985 c. 6. Section 652A is inserted by the [Deregulation and Contracting Out Act 1994 \(c. 40\)](#), [section 13\(1\)](#) and Schedule 5, paragraph 2.
- M29** S.I.1986/1032 (N.I.6). Article 603A is inserted by the [Deregulation and Contracting Out Act 1994](#), section 13(2) and Schedule 6, paragraph 2.
- M30** See also Article 105(12).
- M31** [Sections 652 and 652A](#) are applied to limited liability partnerships by the [Limited Liability Partnerships Regulations 2001 \(S.I.2001/1090\)](#).
- M32** [Articles 603 and 603A](#) are applied to limited liability partnerships by the [Limited Liability Partnerships Regulations \(Northern Ireland\) 2004 \(S.R.2004/307\)](#).

- M33** 1986 c. 53.
- M34** 1992 c. 40.
- M35** 1965 c. 12.
- M36** 1969 c. 24 (N.I.).
- M37** 2002 c. 40.
- M38** 1986 c. 45.
- M39** S.I.1989/2405 (N.I.19).
- M40** 1979 c. 34.
- M41** S.I.1985/1205 (N.I.12).
- M42** 1954 c. 33 (N.I.). Section 1(f) is amended by the [Northern Ireland \(Modification of Enactments No.1\) Order 1999 \(S.I.1999/663\)](#), [Article 2\(1\)](#) and Schedule 1, paragraph 9(1).

Notification of details

14.—(1) Where an occupational pension scheme is winding up, the prescribed details for the purposes of regulation 9(1)(d) are—

- (a) the name of the scheme;
- (b) the pension scheme registration number which is allocated to that scheme in the register;
- (c) the name (and if there has been a change of name, the previous name) and address of any employer of earners in employment to which the scheme relates or has related;
- (d) the name and address of at least one trustee of the scheme.

(2) The persons who may supply the details in paragraph (1) are—

- (a) any trustee of the scheme including a trustee appointed by the Regulator under section 7 or 23(1) of the 1995 Act ^{M43};
- (b) a member of the scheme or his appointed representative;
- (c) a surviving spouse or civil partner of a member of the scheme who has died; or
- (d) any professional adviser in relation to the scheme.

(3) Where an occupational pension scheme has wound up, the prescribed details for the purposes of regulation 9(1)(d) are—

- (a) the name of the scheme; and
- (b) the name (and if there has been a change of name, the previous name) and address of any employer of earners in employment to which the scheme related.

(4) The persons who may supply the details in paragraph (3) are—

- (a) a former trustee or manager of the scheme;
- (b) a former member of the scheme or his appointed representative;
- (c) a surviving spouse or civil partner of a former member of the scheme who has died;
- (d) any former professional adviser in relation to the scheme; or
- (e) any insurance company which is paying annuities to former members of that scheme.

(5) The details in paragraphs (1) and (3) must—

- (a) be notified in writing; and
- (b) have been notified to the scheme manager—
 - (i) no earlier than 1st September 2005; but

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- (ii) by no later than 28th February 2006 or by no later than such later date by which the scheme manager has indicated that he may accept notification of those details in the case of any particular scheme.

Marginal Citations

M43 Section 7 is amended by the Act, Schedule 12, paragraph 36. Section 23 is substituted by section 36(3) of the Act.

PART 4

QUALIFYING MEMBERS

Qualifying members

15.—(1) A member or a former member of a qualifying pension scheme is a qualifying member of that scheme for the purposes of these Regulations where—

- (a) he is a member of the scheme in respect of whom that scheme's pension liabilities are unlikely to be satisfied in full because the scheme has insufficient assets; or
- (b) he had ceased to be a member of the scheme and in respect of whom that scheme's pension liabilities were not satisfied in full, at the time he ceased to be a member, because the scheme had insufficient assets,

and the conditions in paragraphs (2) to (4) are satisfied in relation to that member or former member.

(2) The condition in this paragraph is that the member or former member must have an accrued right to a benefit under the scheme.

(3) The condition in this paragraph is that the member or former member—

- (a) was a member of the qualifying pension scheme immediately before the scheme began to wind up; or
- (b) was not a member of the scheme at that time but became a pension credit member of the scheme on or after the day on which the scheme began to wind up.

(4) The condition in this paragraph is that the member or former member—

- (a) had attained his normal retirement age for the scheme of which he is or was a member as at 14th May 2004;
- (b) had not attained that age as at that date but would attain that age on or before 14th May 2007; or
- (c) had died before attaining that age but would have attained that age on or before 14th May 2007.

(5) A person who is not a member or a former member of a qualifying pension scheme is to be regarded as a qualifying member of such a scheme for the purposes of these Regulations where—

- (a) he was entitled to a present payment from a qualifying pension scheme immediately before the scheme began to wind up;
- (b) that payment was attributable to the pensionable service of a former member of that scheme who has died;
- (c) the scheme's pension liabilities in respect of that person are unlikely to be satisfied in full because the scheme has insufficient assets; and

- (d) that person, as at 14th May 2004—
 - (i) had attained the normal retirement age for the member of that scheme in respect of whose pensionable service the payment from that scheme was attributable; or
 - (ii) had not attained that age but would attain that age on or before 14th May 2007.

Insufficient assets

16.—(1) A scheme has or had insufficient assets for the purposes of regulation 15 if—

- (a) in relation to a scheme which is winding up, at any time during the period beginning immediately before the scheme began to wind up and ending immediately before the liabilities of the scheme were discharged; or
- (b) in relation to a scheme which has wound up, immediately before the liabilities of the scheme were discharged,

the assets of the scheme are, or were, insufficient to satisfy in full the liabilities of the scheme.

(2) The liabilities of the scheme which are to be taken into account for the purposes of paragraph (1) are the liabilities of the scheme estimated by reference to the scheme rules but disregarding—

- (a) any provision of the scheme rules which limits the amount of its liabilities by reference to the amount of its assets; and
- (b) any liabilities in respect of money purchase benefits.

(3) The amount or value of the liabilities referred to in paragraph (2) must be estimated on the assumption that the liabilities will be, or have been, discharged by the purchase of annuities of the kind described in section 74(3)(c) of the 1995 Act (discharge of liabilities: annuity purchase).

(4) The liabilities of the scheme which are to be taken into account under paragraph (2) include all expenses (except the cost of the annuities referred to in paragraph (3)) which—

- (a) in the opinion of the trustees or managers of the scheme, are likely to be incurred in connection with the winding up of the scheme; or
- (b) in the case of a wound up scheme, were so incurred.

PART 5

ANNUAL AND INITIAL PAYMENTS

Annual payments

17.—(1) Schedule 2 makes provision for the determination of the amount of annual payments to be paid to, or in respect of, qualifying members of qualifying pension schemes including provision for—

- (a) a cap to be imposed on such amounts; and
- (b) an amount to be paid only where an amount determined under that Schedule is equal to, or exceeds, a specified amount.

(2) Except where paragraph (3) applies, a qualifying member of a qualifying pension scheme shall be entitled to an annual payment determined in accordance with Schedule 2 from—

- (a) 14th May 2004; or
- (b) the day on which the qualifying member attains the age of 65,

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whichever is the later.

(3) Where the scheme manager is satisfied that a qualifying member is terminally ill ^{F5}..., that member shall be entitled to an annual payment determined in accordance with Schedule 2 from the day on which the scheme manager is first notified that that member may be terminally ill.

(4) A survivor of a qualifying member of a qualifying pension scheme shall be entitled to an annual payment determined in accordance with Schedule 2 from—

(a) 14th May 2004; or

(b) the day after the day on which that qualifying member died,

whichever is the later.

(5) The year in respect of which the annual payment is to be made shall be the year starting on the day on which a monthly instalment of the annual payment or, as the case may be, an initial payment, is first payable to a beneficiary by virtue of regulation 19 and in respect of subsequent years, on each anniversary of that day.

[^{F6}(5A) In determining the amount of annual payment that is payable to, or in respect of, a beneficiary for any previous year or years (“arrears payable”), the total of all monthly instalments of an initial payment that have been made to, or in respect of, the beneficiary for any previous year or years is to be deducted from the amount of arrears payable to that beneficiary.

(5B) From the day after the day on which a beneficiary dies, any further monthly instalments of an annual payment that would have been payable to that beneficiary, in respect of that year, cease to be payable.]

(6) [^{F7}Subject to paragraph (5B), annual] payments which are payable to a beneficiary under this Part shall continue for life.

[^{F8}(7) Paragraphs 7 and 8 of Schedule 2 provide for the circumstances in which an annual payment is not payable under this Part.]

Textual Amendments

- F5** Words in reg. 17(3) omitted (24.11.2005) by virtue of [The Financial Assistance Scheme \(Modifications and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/3256\)](#), regs. 1(1), **4(3)(a)**
- F6** Reg. 17(5A)(5B) inserted (24.11.2005) by [The Financial Assistance Scheme \(Modifications and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/3256\)](#), regs. 1(1), **4(3)(b)**
- F7** Words in reg. 17(6) substituted (24.11.2005) by [The Financial Assistance Scheme \(Modifications and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/3256\)](#), regs. 1(1), **4(3)(c)**
- F8** Reg. 17(7) added (24.11.2005) by [The Financial Assistance Scheme \(Modifications and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/3256\)](#), regs. 1(1), **4(3)(d)**

[^{F9}Initial payments

18.—(1) This regulation applies where a qualifying pension scheme is winding up and—

(a) a qualifying member of that scheme—

(i) has attained the age of 64; or

(ii) has not attained that age, but the scheme manager—

(aa) has been notified that a qualifying member is terminally ill; and

(bb) is satisfied as to that fact; or

(b) a qualifying member of that scheme has died and leaves a survivor.

(2) The trustees or managers of the scheme may make a written request to the scheme manager for a payment (“an initial payment”) to be made to, or in respect of, a qualifying member or his survivor—

- (a) in anticipation of an annual payment being payable under this Part to the qualifying member or his survivor; and
- (b) before any monthly instalment of that annual payment is made.

(3) If a request for an initial payment is made in respect of a qualifying member who dies before any monthly instalment of an annual payment has been made to that qualifying member, the trustees or managers may make a further request that an initial payment be made in respect of any survivor of that qualifying member.

(4) On receipt of a request for an initial payment, the scheme manager may, in his discretion, make an initial payment—

- (a) to the qualifying member in respect of whom the request was made, with effect from whichever is the later of—
 - (i) 14th May 2004; or
 - (ii) the day on which—
 - (aa) the qualifying member attains the age of 65, or
 - (bb) the scheme manager is first notified that the qualifying member is terminally ill,whichever is the earlier; or

- (b) if the qualifying member has died, to a survivor of that qualifying member with effect from whichever is the later of—
 - (i) 14th May 2004; or
 - (ii) the day after the day on which that qualifying member died.

(5) In exercising his discretion under paragraph (4), the scheme manager may only have regard to—

- (a) the amount, if any, of any interim pension that was in payment, is in payment, or is proposed to be paid, from the qualifying pension scheme—
 - (i) to a qualifying member up until his death; or
 - (ii) after his death, to his survivor; and
- (b) any circumstances relating to the scheme which, in the opinion of the scheme manager, are relevant to determining whether an initial payment should be made.

(6) Schedule 2 makes provision for the determination of the amount of initial payments.

(7) If the scheme manager determines that an initial payment may be made under paragraph (4), the initial payment is payable—

- (a) to a qualifying member from the relevant day mentioned in that paragraph until the day on which that qualifying member—
 - (i) would have been paid, or is paid, the first monthly instalment of an annual payment in accordance with regulation 19, if an annual payment were payable, or is payable, to him under this Part; or
 - (ii) dies,whichever is the earlier; and

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- (b) in respect of a qualifying member who has died, to a survivor of that qualifying member from the day after the day on which that qualifying member died until the day on which his survivor—
- (i) would have been paid, or is paid, the first monthly instalment of an annual payment in accordance with regulation 19, if an annual payment were payable, or is payable, to him under this Part; or
 - (ii) dies,
- whichever is the earlier.

(8) From the day after the day on which a beneficiary dies, any further monthly instalments of an initial payment that would have been payable to that beneficiary in respect of that year cease to be payable.

(9) The scheme manager may, at any time before the amount of the annual payment is determined, redetermine the amount of any initial payment paid under paragraph (4) if he is satisfied that the amount being paid by way of initial payment, as determined in accordance with Schedule 2, may be incorrect.

(10) In this regulation, “interim pension” has the meaning given by paragraph 2 of Schedule 2.]

Textual Amendments

F9 Reg. 18 substituted (24.11.2005) by [The Financial Assistance Scheme \(Modifications and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/3256\)](#), regs. 1(1), **4(4)**

PART 6

ADMINISTRATION OF PAYMENTS

Time and manner of payment: general provisions

19.—(1) The scheme manager shall pay the annual payment or an initial payment to the beneficiary or to his appointed representative, in equal monthly instalments on the day of each month specified by the scheme manager for the making of such payments.

(2) For the purposes of paragraph (1), where the amount of a monthly instalment would, but for this paragraph, include a fraction of a penny, that fraction shall be disregarded if it is less than half a penny and shall otherwise be treated as a penny.

(3) The scheme manager shall start to pay the monthly instalments payable to a beneficiary on the first day specified in paragraph (1) which is as soon as reasonably practicable after the day on which—

- (a) the beneficiary becomes entitled to an annual payment under regulation 17(2) to (4); or
- (b) the scheme manager determines that an initial payment may be made under regulation ^[F10]18(4).

(4) Monthly instalments shall be paid by means of direct credit transfer or by such other means as appear to the scheme manager to be appropriate in the circumstances of any particular case.

Textual Amendments

- F10** Word in [reg. 19\(3\)\(b\)](#) substituted (24.11.2005) by [The Financial Assistance Scheme \(Modifications and Miscellaneous Amendments\) Regulations 2005 \(S.I. 2005/3256\)](#), regs. 1(1), **4(5)**

Direct credit transfer

20.—(1) Subject to paragraphs (3) and (4), monthly instalments under regulation 19 may, by an arrangement between the scheme manager and the beneficiary or his appointed representative, be paid by way of direct credit transfer into a bank or other account—

- (a) in the name of the beneficiary, his appointed representative or any other person with the consent of the beneficiary; or
- (b) in the joint names of the beneficiary and any other person or the appointed representative and any other person.

(2) Monthly instalments shall be paid in accordance with paragraph (1) within seven days of the day on which each instalment is payable under regulation 19(1).

(3) The scheme manager may make a particular payment by direct credit transfer otherwise than in accordance with paragraph (1) if it appears to him to be appropriate to do so for the purpose of paying any arrears.

(4) The arrangements under this regulation may be terminated—

- (a) by the beneficiary or his appointed representative, by notice in writing delivered or sent to the scheme manager; or
- (b) by the scheme manager if the arrangement seems to him to be no longer appropriate to the circumstances of the particular case.

(5) A direct credit transfer into the account of an appointed representative or of any person to whom an amount is paid with the consent of the beneficiary, shall be a good discharge to the scheme manager for any sum paid under these Regulations.

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

Philip A. Hunt
Parliamentary Under-Secretary of State,
Department for Work and Pensions

Status:

Point in time view as at 24/11/2005.

Changes to legislation:

There are currently no known outstanding effects for the The Financial Assistance Scheme Regulations 2005.