

**2009 No. 792**

**PENSIONS**

**SOCIAL SECURITY**

**The Financial Assistance Scheme and Incapacity Benefit  
(Miscellaneous Amendments) Regulations 2009**

*Made* - - - - *26th March 2009*

*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 30DD(5)(c) and 175(3) of the Social Security Contributions and Benefits Act 1992(a) and sections 190(1)(a) and (2), 286, 315(2) and (4) and 318(1) of the Pensions Act 2004(b).

In accordance with section 176(1)(a)(c) of the Social Security Contributions and Benefits Act 1992 and section 316(2)(n) of the Pensions Act 2004, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

The Secretary of State has consulted such persons as the Secretary of State considers appropriate in accordance with section 317(1) of the Pensions Act 2004.

The Social Security Advisory Committee has agreed that the proposal in respect of regulation 2 should not be referred to it(d).

**Citation, commencement and application**

**1.**—(1) These Regulations may be cited as the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 and shall come into force on the day after the day on which they are made.

(2) Regulation 2 does not apply in relation to Northern Ireland.

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(a) 1992 c.4. Section 30DD was inserted by section 63 of the Welfare Reform and Pensions Act 1999 (c.30) and amended by S.I.s 2006/343 and 745; there is provision in Schedule 8 to the Welfare Reform Act 2007 for this section to be repealed, but that provision has not yet been commenced as at the date of coming into force of these Regulations.

(b) 2004 c.35. Section 190 is modified by S.I. 2005/1986 and section 286 was amended by section 18(2) and (3) of the Pensions Act 2007 (c.22) and section 124(2) to (6) of the Pensions Act 2008 (c.30) (although of those subsections, only (2) and (6) have been commenced, for certain purposes, as at the date of coming into force of these Regulations), and is modified by S.I. 2005/441. Section 318(1) is cited because of the meanings it gives to “prescribed” and “regulations”.

(c) Section 30DD(5)(c) was inserted by paragraph 25 of Schedule 2 to the Welfare Reform and Pensions Act 1999.

(d) See section 173(1)(b) of the Social Security Administration Act 1992 (c.5).

## **Amendment of the Social Security (Incapacity Benefit) Regulations 1994**

2.—(1) The Social Security (Incapacity Benefit) Regulations 1994(a) are amended in accordance with this regulation.

(2) After regulation 20 (permanent health insurance), insert—

### **“Financial assistance scheme**

**20A.** For the purposes of section 30DD of the Contributions and Benefits Act (incapacity benefit: reduction for pension payments and PPF periodic payments), “pension payment” includes a payment made under the Financial Assistance Scheme Regulations 2005 to a person who first became entitled to such a payment on or after the date on which the Financial Assistance Scheme and Incapacity Benefit (Miscellaneous Amendments) Regulations 2009 came into force.”.

## **Amendment of the Financial Assistance Scheme Regulations 2005**

3. The Financial Assistance Scheme Regulations 2005(b) are amended in accordance with the following regulations.

4.—(1) Regulation 17 (annual payments) is amended in accordance with this regulation.

(2) In paragraph (2)(c), for “or (3A)(d)” substitute “, (3A) or (3C) or regulation 17C”.

(3) In paragraph (3)(e)—

(a) after “qualifying member is receiving” insert “a payment under paragraph (3C) or”, and

(b) after “payment under regulation 17B(2)” insert “or an annual payment under regulation 17C”.

(4) After paragraph (3B), insert—

“(3C) Except where regulation 17C applies, a qualifying member shall be entitled to an annual payment determined in accordance with Schedule 2(f) where—

(a) that member makes a written request for such a payment;

(b) the member is—

(i) not receiving any payments under these Regulations; or

(ii) receiving only payments for a survivor by virtue of paragraph (4), regulation 17A(3), 17B(2)(b) or 18(4)(g); and

(c) the scheme manager is satisfied that the member meets the conditions in paragraph (3D).

(3D) The conditions in this paragraph are that the qualifying member—

(a) has attained the age of 55;

(b) suffers from a progressive disease and as a consequence—

(i) cannot reasonably be expected to die within six months; and

(ii) 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).

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(a) S.I. 1994/2946. Relevant amending instrument is S.I. 2000/3120.

(b) S.I. 2005/1986 as amended by S.I.s 2005/3256, 2006/3370, 2007/3581, 2008/1432, 1903, 3069 and 3241 (C.147).

(c) Paragraph (2) was amended by S.I.s 2008/1432 and 1903.

(d) Paragraphs (3A) and (3B) were inserted by S.I. 2008/1432.

(e) Paragraph (3) was amended by S.I.s 2005/3256 and 2008/1903.

(f) Schedule 2 was amended by S.I.s 2005/3256, 2006/3370, 2007/3581 and 2008/1432 and 1903.

(g) Regulations 17A and 17B were inserted by, and regulation 18(4) was substituted by, S.I. 2008/1903.

(3E) The date from which a qualifying member is entitled to an annual payment under paragraph (3C) is the date on which the scheme manager receives the written request mentioned in paragraph (3C)(a).”.

(5) In paragraph (6), for “and (5B)” substitute “, (5B) and regulation 17C(8)”.

5.—(1) Regulation 17A (ill health payments) is amended in accordance with this regulation.

(2) In paragraph (1), for “or (3)” substitute “, (3) or (3C) or 17C”.

(3) In paragraph (6), after “paragraph (7)” insert “and regulation 17C(7)”.

6.—(1) Regulation 17B (interim ill health payments) is amended in accordance with this regulation.

(2) In paragraph (2), for “The scheme manager” substitute “Except where regulation 17C(8)(b)(i) applies, the scheme manager”.

7. After regulation 17B, insert—

**“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—
  - (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 regulation 18(1)(a)(ii) and (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.”.

**8.—(1) Regulation 18 (initial payments)(a) is amended in accordance with this regulation.**

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(a) Relevant amending instruments are S.I.s 2005/3256, 2006/3370, 2007/3581 and 2008/1432.

(2) In paragraph (1), after sub-paragraph (aa) insert—

“(ab) the scheme manager—

- (i) has received a written request under regulation 17(3C)(a) or 17C(2) or (9) from, or in respect of, a qualifying member of that scheme; and
- (ii) is satisfied that that qualifying member is entitled to a payment under regulation 17(3C) or 17C; or”.

(3) In paragraph (4), for “The scheme manager” substitute “Except where regulation 17C(8)(b)(i) or (iii) applies, the scheme manager”.

(4) In paragraph (4A)(a)(ii)—

- (a) for “earlier” substitute “earliest”; and
- (b) at the end of sub-paragraph (bb) add—

“; or

(cc) the day on which the qualifying member becomes entitled to a payment under regulation 17(3C) or 17C;”.

**9.**—(1) Schedule 2 (determination of annual and initial payments) is amended in accordance with this regulation.

(2) In paragraph 4(5)(b)(ii) and (7)(b)(ii) and paragraph 5(8)(b)(ii) and (10)(b)(ii), for “or (3)”, in each place it occurs, substitute “, (3) or (3C) or 17C”.

(3) After paragraph 5 (survivors of qualifying members) insert—

#### **“Payment for an entitlement under regulation 17C**

**5A.**—(1) This paragraph applies where a qualifying member is entitled to an annual payment in accordance with regulation 17C for a period during which that member has previously received a relevant payment.

(2) The annual payment payable to a qualifying member to whom this paragraph applies is determined in accordance with this Schedule.

(3) For any period for which an annual payment under regulation 17C is due to be paid and a relevant payment has previously been paid, the relevant payment is treated as a payment on account of the annual payment under regulation 17C.

(4) Where the amount of the relevant payment so treated equals the amount of the annual payment payable under sub-paragraph (2), no further payment under regulation 17C is due to the qualifying member.

(5) In this paragraph, “relevant payment” means a payment in accordance with these Regulations other than a payment for a survivor by virtue of regulation 17(4), 17A(3), 17B(2)(b) or 18(4).”.

(4) In paragraph 9(2) and (4), after “regulation 17”, in each place it occurs, insert “or 17C”.

(5) In paragraph 10(ba), for “regulation 17(2) and (3)” substitute “regulation 17(2), (3) or (3C) or 17C”.

#### **Amendment of the Financial Assistance Scheme (Internal Review) Regulations 2005**

**10.**—(1) The Financial Assistance Scheme (Internal Review) Regulations 2005(a) are amended in accordance with this regulation.

(2) In regulation 2(1) (reviewable determinations)(b)—

- (a) at the end of sub-paragraph (f) omit “and”, and
- (b) at the end of sub-paragraph (g) add—

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(a) S.I. 2005/1994. Relevant amending instrument is S.I. 2006/3370.

(b) Regulation 2 was amended by S.I.s 2005/3256, 2006/3370 and 2008/1903.

“; or

- (h) whether or not the scheme manager is satisfied that a qualifying member is entitled to an annual payment under regulation 17(3C) or 17C of the FAS Regulations or—
  - (i) is unable to work due to ill health;
  - (ii) is likely to continue to be so unable to work until normal retirement age; and
  - (iii) suffers from a progressive disease and as a consequence can reasonably be expected to die within five years but, as appropriate, not within six months,for the purposes of an initial payment under regulation 18(1)(ab) of the FAS Regulations (“severe ill health eligibility”).”.

(3) In—

- (a) regulation 2(2),
- (b) regulation 3(1)(b),
- (c) regulation 5(1)(c)(ii),
- (d) regulation 6(1)(b),
- (e) regulation 11(2), and
- (f) regulation 16(1)(b) and (2)(b),

after “ill health eligibility”(a), insert “, severe ill health eligibility”.

#### **Amendment of the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005**

**11.—**(1) The Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(b) are amended in accordance with this regulation.

(2) In Schedule 1 (information to be provided by appropriate persons) in paragraph 1(2), after the fifth item of the table insert a sixth item containing—

- (a) in the first column, the words “The scheme manager.”;
- (b) in the second column, the words “In relation to a written request under regulation 17(3C)(a) or 17C(2) or (9) of the FAS Regulations, medical evidence about the qualifying member’s state of health to enable the scheme manager to determine whether the scheme manager is satisfied for the purposes of regulation 17(3C)(c) or 17C(3) of those Regulations.”; and
- (c) in the third column, the words “The period of 14 days beginning on the day on which the scheme manager requests the information.”.

(3) In Schedule 2 (information to be provided by beneficiaries and potential beneficiaries) in paragraph 1, after the seventh item of the table insert an eighth item containing—

- (a) in the first column, the words “Any qualifying member (or that member’s relevant representative within the meaning of regulation 17C of the FAS Regulations) who makes a written request under regulation 17(3C)(a) or 17C(2) or (9) of the FAS Regulations.”;
- (b) in the second column, the words “Medical evidence about the qualifying member’s state of health to enable the scheme manager to determine whether the scheme manager is satisfied for the purposes of regulation 17(3C)(c) or 17C(3) of the FAS Regulations.”; and
- (c) in the third column, the words “The period of 14 days beginning on the day on which the scheme manager requests the information.”.

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(a) Each regulation referred to in this paragraph was amended by S.I.s 2005/3256, 2006/3370 and 2008/1903.  
(b) S.I. 2005/2189. Relevant amending instrument is S.I. 2005/3256.

## **Amendment of the Financial Assistance Scheme (Appeals) Regulations 2005**

12.—(1) The Financial Assistance Scheme (Appeals) Regulations 2005(a) are amended in accordance with this regulation.

(2) In regulation 2 (interpretation), after the definition of “scheme notification decision” insert—

““severe ill health eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not the scheme manager is satisfied that a qualifying member is entitled to an annual payment under regulation 17(3C) or 17C of the FAS Regulations or—

(a) is unable to work due to ill health;

(b) is likely to continue to be so unable to work until normal retirement age; and

(c) suffers from a progressive disease and as a consequence can reasonably be expected to die within five years but, as appropriate, not within six months,

for the purposes of an initial payment under regulation 18(1)(ab) of those Regulations;”

(3) In regulation 6(2)(b) (notice of appeal), after “a member eligibility decision” insert “, a severe ill health eligibility decision”.

(4) In regulation 17(4)(a) (time and place of oral hearings), after “a member eligibility decision” insert “, a severe ill health eligibility decision”.

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

*Jonathan Shaw*  
Parliamentary Under-Secretary of State,  
Department for Work and Pensions

26th March 2009

### **EXPLANATORY NOTE**

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

These Regulations amend the Social Security (Incapacity Benefit) Regulations 1994 (S.I. 1994/2946), the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) (“the FAS Regulations”), the Financial Assistance Scheme (Internal Review) Regulations 2005 (“the FAS Internal Review Regulations”), the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005 (“the FAS Information and Payments Regulations”), and the Financial Assistance Scheme (Appeals) Regulations 2005 (“the FAS Appeals Regulations”).

The financial assistance scheme provides for payments to be made to, or in respect of, certain members or former members (or their survivors) of certain occupational pension schemes where the liabilities of the scheme to those people are unlikely or unable to be satisfied in full.

Regulation 2 of these Regulations amends the Social Security (Incapacity Benefit) Regulations 1994 to provide that for the purposes of section 30DD of the Social Security Contributions and Benefits Act 1992 a “pension payment” includes a payment under the FAS Regulations made to anyone who first becomes entitled to such a payment on or after the date on which these Regulations came into force.

Regulations 3 to 9 amend the FAS Regulations. In particular—

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(a) S.I. 2005/3273. Relevant amending instruments are S.I.s 2006/3370 and 2008/1903.

regulation 4 amends regulation 17 of the FAS Regulations to insert paragraphs (3C), (3D) and (3E) and make consequential amendments. The new paragraphs provide for a new category of annual payment; that is, they provide for payments to be made to certain persons who meet the conditions set out. This will enable certain persons who suffer from a progressive disease, and as a consequence are likely to have a reduced life expectancy, to receive a payment under the FAS Regulations earlier than they otherwise would have;

regulations 5 and 6 make minor amendments consequential on the new category of annual payment;

regulation 7 inserts new regulation 17C into the FAS Regulations. This is a transitional provision which allows certain persons, who may already be receiving a payment under the FAS Regulations, to request to receive instead the new category of annual payment. It also enables certain persons to receive the new category of annual payment in respect of a past period, provided the scheme manager is satisfied that certain conditions are met;

regulation 8 makes further consequential amendments to regulation 18 of the FAS Regulations; and

regulation 9 amends Schedule 2 to the FAS Regulations, to insert a new paragraph to provide that where a person requests the new category of annual payment under the new transitional provision, regulation 17C, any payment under the FAS Regulations already received by that person is treated as having been paid on account of the new annual payment.

Regulations 10 and 12 amend the FAS Internal Review Regulations and the FAS Appeals Regulations consequentially, to take account of the new category of annual payment.

Regulation 11 amends the FAS Information and Payments Regulations to require certain medical information, to be provided to the scheme manager when requesting the new type of annual payment.

With the exception of regulation 2, before making these Regulations the Secretary of State consulted such persons as he considers appropriate.

An impact assessment has not been published for this instrument as it has only a negligible impact on the private and voluntary sectors.

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