

FINANCIAL ASSISTANCE SCHEME

**THE FINANCIAL ASSISTANCE SCHEME AND
INCAPACITY BENEFIT (MISCELLANEOUS
AMENDMENTS) REGULATIONS 2009**

**THE GOVERNMENT RESPONSE TO THE
CONSULTATION**

11 February 2009

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INTRODUCTION

1. The Financial Assistance Scheme (FAS) was designed to help those who had suffered significant losses to their pensions as a consequence of employer insolvency between 1 January 1997 and 5 April 2004. It was first announced on 14 May 2004 but, since then, has been successively extended a number of times, covering more people and offering increased benefits.
2. An operational unit based in York, opened for business on 1 September 2005 to administer the FAS.
3. The purpose of the consultation was to address concerns raised during the consultation on the Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2008 (S.I. 2008/1903) which introduced early reduced payments of FAS for those within five years of their normal retirement age (NRA) who are unable to work due to ill health and who are likely to remain so until they reach their NRA. The concerns raised were that a small number of people with ill health leading to significantly reduced life expectancy could be excluded from early access to FAS because they were not within five years of NRA and not terminally ill within the definition in legislation¹. There were also representations that the actuarial reduction in payments under the ill health provisions was inappropriate where a person was likely to have a significantly shorter life expectancy due to their severe ill health.
4. The Government proposed to address these concerns by providing unreduced early access to FAS payments where a person was aged 55 or over and had a progressive disease from which death might reasonably be expected in the next five years.
5. To help ensure that qualifying members receive payment at these revised levels as soon as possible the written consultation period for the draft Regulations was limited to four weeks and ended on 3 December 2008. Stakeholders agreed that the limited written consultation period would facilitate speedy implementation whilst still providing adequate time for the consultation to be meaningful. Given the limited written consultation period, the Department for Work and Pensions ("the Department") held meetings during that period with representatives from the Trades Unions (GMB, TUC, Unite and Community) and the Pensions Action Group to facilitate their responses. A number of discussions with Dr Ros Altmann also helped facilitate the development of the policy.

¹ Regulation 2 (9) of FAS Regulations 2005 (S.I. 1986) defines a person as "terminally ill" if "he suffers from a progressive disease and his death, in consequence of that disease, can reasonably be expected within six months".

6. This document sets out the main points made in relation to the draft Regulations and provides the Government response. 44 respondents provided their views or those of the organisation they represent; a list of the respondents is contained in an Annex to this document. The Government is grateful for the contribution of all respondents towards developing the final Regulations which were laid on 11 February 2009, with a view to them coming into force by the Easter recess, subject to Parliamentary process and approval.
7. This document describes the policy underpinning the changes being made to the FAS by the Regulations. The Government's comments on the Regulations should not be taken as an authoritative interpretation of the law. Such an interpretation can only be provided by a court.
8. The final Regulations and accompanying Explanatory Memorandum will be available on the Office of Public Sector Information's website at: <http://www.opsi.gov.uk/si/si-2008-index>

And the FAS website at:

<http://www.dwp.gov.uk/lifeevent/penret/penreform/fas>

9. This document is available on the DWP website: <http://www.dwp.gov.uk>
10. A paper copy of this document can be obtained from:
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RESPONSE TO THE CONSULTATION

Discussion

- **It is the Government's duty to provide pensions including ill health pensions.**
11. The Government recognises the difficulties experienced by those who lost their pensions through no fault of their own. However, unreduced ill health pensions are generally only available from ongoing schemes and it has never been the intention that FAS should replicate all the benefits scheme members would have received had their scheme not wound up. The Government believes that the reforms announced on 17 December 2007, including the increase to 90 per cent and indexation in respect of assistance derived from post-1997 service, represents an appropriate settlement for those affected that will result in assistance under the FAS being broadly comparable to compensation paid under the PPF.
- **The five year life expectancy test is too severe and should be relaxed – probably to 10 years.**
12. A number of consultees expressed concern that a five year test was overly restrictive, so the Government looked again at the issue. However, the Government has concluded that a ten-year test would not be operable or fair. The Department's medical advisors advise that it would be impractical to try and apply a test looking more than five years ahead due to the lack of reliable survivability data and the need to take into account the large range of factors, such as lifestyle, which could influence longevity over longer periods.
13. If data on ten-year survival rates were available, the problem of disaggregating the effects of a medical condition from lifestyle and other factors would remain, and the Government does not think that a test requiring such a degree of projection into the future could be other than arbitrary.
14. However, the Government does not expect the life expectancy condition to set a clear cut and dried test. As with the current terminal illness definition, there is room for borderline cases to be brought into the provision because it is not a test of whether someone *will die* in five years, but one of whether their death is a *reasonable expectation*. The Government believes this test works for five years, but that extending it to ten years would make the limits of the test indistinct.

15. The Government is taking a number of steps to ensure that the test does not apply harshly and the Government is seeking to avoid overly complex procedures. For example, the Government does not anticipate requiring members' GPs and other medical advisors to endorse or certificate a person's life expectancy, but will only be seeking information on the person's ill health or disability and the treatment they are receiving.
16. The Government does not want to put GPs in the position of having to appear to be limiting their patient's life expectancy and to have to make judgments on difficult questions which they will not have been trained to answer or which may damage the doctor/patient relationship. The FAS scheme manager will of course have regard to any information these medical advisors provide, but the Government does not anticipate requiring a statement of life expectancy from them.
17. There will be a role for the Department's medical advisors in advising whether the test for early FAS is satisfied, but the final decision will be for the FAS scheme manager. The role of Departmental medical advisors is, broadly, to ensure that evidence presented is fully understood. As in the current terminal illness cases the Government expects that the Department's medical advisors would contact the member's medical practitioners direct for clarification where there is incomplete or contradictory evidence. The Government would also expect to consider the extent to which medical opinions varied in respect of prognosticating the condition in question, and to take this in account when weighing the evidence provided.
18. This approach puts the responsibility for deciding whether the life expectancy condition is met in the hands of the scheme manager, and avoids requiring medical practitioners to give messages to their patients that they think could be harmful.
 - **The Government has exaggerated the difficulty of looking further than five years ahead and there are other ways of assessing eligibility such as using life expectancy data as used by insurance underwriters.**
19. Whilst there is data used by insurance underwriters when offering impaired life products this data is not publicly available and could only be effectively used by employing underwriters to make judgments on the Government's behalf. The Government considered this approach when developing its proposals but concluded that it would be expensive to operate, difficult to explain to members and would be complex and time-consuming to implement.

- **By restricting eligibility to people with progressive diseases the Government is unnecessarily restricting entitlement.**
20. Early unreduced access to FAS on the grounds of severe ill health is intended to provide help to a limited number of people whose medical condition significantly reduces their life expectancy. The Department's medical advisors believe that the test needs to be restricted to progressive conditions to avoid the test being too open and leading to uncontrolled early access to unreduced FAS payments. This would significantly increase costs and exceed the provision which would have generally been made by schemes.
- **It is not necessary to restrict payments to those over 55.**
21. The argument that the age 55 rule does not need to apply is based on the assertion that under normal pension and tax law unreduced ill health pensions can be taken at any age if the person is unable to carry out their job and is likely to remain unable until they reach normal pension age.
22. The requirement that a person is unable to work due to ill health and likely to remain so until they reach their normal retirement age is the same as that already used in the existing FAS ill health provisions. If the age 55 rule was removed, there could be very significantly increased costs. The age 55 rule also ensures that FAS continues to be focused on those people either over their pension age, or late in their working life.
23. As explained in paragraph 11, it has never been the intention that FAS should replicate all the benefits scheme members would have received had their scheme not wound up.
- **The transitional provisions should also apply where a person is now over normal pension age but might have received payment from an earlier date due to severe ill health.**
24. The Government has agreed that a person should not be barred from receiving payments for a past period just because they have reached their normal pension age and the Regulations now provide for this.
25. The Regulations provide for people who have reached normal pension age during the period between 2004 and the Regulations coming into force to be able to choose to receive payments from an earlier date when they would have satisfied the reduced life expectancy test. This would

allow payments in respect of past periods, but might mean a lower ongoing income payment since it would only be revalued up to the earlier payment date. The Department will provide the necessary information to members before they make this choice. However, this transitional provision is time-limited, with qualifying members who are interested in taking this up needing to make a written request.

- **The transitional provisions should also cater for members who died before the Regulations came into force but who might have benefited from them.**

26. The Government agrees. Where a member, who would probably have satisfied the conditions for payments for past periods had the Regulations been in place at that time, has since died, the Regulations now provide for any surviving spouse, civil partner or where there is no survivor, the personal representative to make an application and choose to have payments from when the member satisfied the criteria (or 14th May 2004, when FAS was first introduced, if later). This too is a time limited provision.

- **That due to the restrictive nature of the test, and the bureaucracy involved in making medical decisions, many of those people the Department has known about for some time might lose out.**

27. The Government recognises that for people who are currently severely ill there will be a number of challenges. Firstly, it may be difficult for these people to obtain relevant information on how their condition was at the relevant time in the past. The Department has already been sent some information relating to these people and it may be time consuming and wasteful to obtain a lot of information afresh on top of what the Department already have, and in some cases it may be impossible to obtain the necessary information as it was not gathered at the relevant time. The position is different for people who fall ill in the future as obtaining information on their current illness and prognosis will be much easier to obtain.

28. So as to not disadvantage the very people whose situation has prompted the adoption of this policy, the Regulations contain a provision enabling the FAS scheme manager to be satisfied that the test is met, but taking account of the effect of the lapse of time on the availability of relevant evidence in transitional cases where the available information makes it likely that the test would be satisfied.

Thanks

29. The Government is most grateful to all those who took the time to comment on the draft Regulations.

LIST OF RESPONDENTS

Name	Organisation
Adrian de Segundo	N/A
Alan Clayton	N/A
Alan Marnes	N/A
Alan Wilson	N/A
Alice Hood	TUC
Alison Duffin	Trustee, APW Electronics Ltd
Amrik Rana	N/A
Bernard Coonan	N/A
Brian Wilson	N/A
Bryan Freake	Unite
Clive Finney	N/A
Colin Sumpster	N/A
Dave Allen	N/A
Dave Tipton	N/A
Dr Rodney Burnham	Royal College of Physicians
Dr Ros Altmann	N/A
Dr Tony Wright MP	Public Administration Select Committee
F Chris Price	N/A
Frank Bramley	N/A
Glen Bates	Capita Hartshead
Graham Buckley	N/A
Jean Edwards	N/A
JJ Blair	N/A
John Essex	N/A
John Hunt	N/A
Julian Cowley	N/A
Katherine Parker	Insolvency Service
Luigi Alessandro	N/A
Matt Ball	Community
Mr S R Pitman	N/A
Mr T Waugh	N/A
N/A	Hewitt Associates
Naomi Cooke	GMB
Neil Crick	N/A
Patricia & Keith Sargent	N/A
Patrick Moloney	N/A
Paul Gill	N/A
Peter & Anthea Beattie	N/A
Peter Chapman	N/A
Peter Humphrey	N/A
Peter Wheeler	N/A
Richard Nicholl	N/A
Robin Houghton	Partnership Group
Terry Monk	Independent Trustee Services Limited
Yvonne Morris	N/A