

# Pensions Action Group Newsletter

Issue 18

15 March 2008

## Government Publishes First FAS Draft Regulations

On 17 December 2007 the Government promised that it would make sweeping changes to the Financial Assistance Scheme (FAS) including increasing the headline rate of pension from 80% to 90% of 'expected pension'. The first set of draft regulations that will bring about these changes were published on 6 March by the Department of Work and Pensions (DWP).

These regulations will increase the assistance rate from 80% to 90% and allow the FAS to pay members from their scheme normal retirement age, subject to a lower age limit of 60.

In accordance with the agreement between the major parties involved, these draft regulations have been issued for a written consultation period of 2 weeks rather than the normal 12 weeks, with a view to getting increased payments to members as quickly as possible. This means that if you wish to comment on the drafts to the DWP, they need to receive your submission by 19 March.

The full consultation document and details of how you can comment can be found on the DWP website at:

<http://tinyurl.com/2yghqp>

The Minister's statement outlining the scope of the regulations can be found here:

<http://tinyurl.com/2mzc3u>

One issue of concern is that the regulations define the Normal Retirement Age (NRA) as "the age specified in the rules of that scheme at which that member will normally retire." Some schemes allowed members to retire earlier than this without penalty but the FAS (under the current proposals) will not consider that earlier retirement age as the NRA. If you are affected, it means that you will lose FAS payments for those "discretionary" years. If you feel that this is unfair, you need to write to the DWP setting out

your own particular details, and what the loss will mean to you, and arguing that the discretionary age should be honoured.

When the new system is in place, some people will receive significant back-payments. Currently, HMRC is proposing to tax all of this as income in the year it is received. This will push some into paying income tax, or into a higher tax band, so that they end up paying more tax than if the payments had been made at the correct time. This is clearly unjust.

In addition, the DWP are reviewing the annuity factors used to calculate payments when no actual annuity was taken, usually when a member took a transfer value instead (or a tax-free lump sum). People have commented that the factors used to date have been unduly optimistic, leading to reduced FAS payments and the DWP is aiming to correct this. The examples given in the consultation document suggest that the proposed notional annuity payments are reduced by 14-15%, which would lead to significant increases in the assistance paid by the FAS. The DWP is also proposing to recalculate previous assessments where the old annuity factors had been used, which should result in an increase in the level of assistance. There is a 6-week consultation period for these proposals, which may be found here:  
<http://tinyurl.com/3cg5qp>

The proposed notional annuity is indexed up to the Normal Retirement Age, but unindexed thereafter. Some people however who transferred out would have been quoted annuities from their schemes that were indexed in payment (because of their scheme terms) and therefore lower than the notional annuity. These people would therefore lose some of their FAS payments if the annuity factors were used to calculate a notional annuity instead. If your scheme offered indexation in

payment, it is therefore very important that you keep any annuity quotation that you received.

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## **FAS Answers PAG Questions**

Over the last few months, the PAG team have been passing a range of questions and concerns to the FAS Operating Unit and they have now provided us with a comprehensive set of replies which are available as a separate document here:

[www.pensionstheft.org/newsletters/fas-qanda01.pdf](http://www.pensionstheft.org/newsletters/fas-qanda01.pdf)

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## **Government Climbs Down over Court of Appeal**

We understand that the Government has now decided not to appeal against the verdict of the Court of Appeal reported in detail in the last issue of this newsletter. This means that they have accepted the Parliamentary Ombudsman's verdict that they were guilty of maladministration in issuing leaflets that misled people into believing that their company pensions were safe 'whatever happens to your company'.

This opens the door for individuals to make claims against the DWP but they will need to be able to show evidence that they relied on Government information (not scheme information) and that, as a result, they suffered financial losses which are not adequately compensated by the terms of the updated FAS or that they suffered 'outrage, distress, inconvenience and uncertainty', in which consolatory payments may be available. If you feel that you have a valid claim, you should approach the DWP either directly, or through your MP.

A DWP spokesman is reported as saying: *"We have every sympathy for those who have lost their pensions through no fault of their own. That is why we have committed £2.9 billion in net present value to the Financial Assistance Scheme, which will help some 140,000 people affected."*

*"We recognise that the Ombudsman and courts have said that some official information provided under successive Governments was misleading and has contributed to the distress caused to those affected. We have decided to accept the Court of Appeal's ruling on that point and will not be contesting the issue further"*

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## **FAS payments to 7 March 2008**

The FAS are paying 4,938 members, 937 are receiving annual payments and a further 4,001 are receiving initial payments.

A further 684 members will be paid once personal details have been received and confirmed.

A further 1447 members have been assessed and will be paid when they reach age 65.

Gross expenditure on payments to date comes to £15,994,370.64

It is remarkable that there are nearly 700 people who could be receiving payments if only they supplied the FAS with their address and bank details. If you think that you might be one of them, make sure that you contact the FAS to get things moving.

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## **FAS Admits First Six Solvent Schemes**

*by Jenna Towler*

THE first six pension schemes backed by solvent employers have been admitted into the Financial Assistance Scheme. Pensions minister Mike O'Brien said around 4000 scheme wind-up victims from the schemes may now be eligible for financial help.

Schemes belonging to building materials supplier Expamet, agricultural machinery retailer Fredk H Burgess, car battery maker Lucas Yuasa, Dragon Cosmetics, industrial textile manufacturer J & D Wilkie, and insurance company Norman Butcher have all been admitted.

The next step is for the FAS operational unit to work with the trustees of the six schemes to obtain information as quickly as possible on members who may be potentially eligible for payment to enable the FAS unit to make assessments and start making payments.

*From Professional Pensions 11-03-2008*

## PROVISIONAL TIMETABLE FOR IMPLEMENTING FAS REFORMS

<b>First package of regulations</b>	
<i>Type of legislation</i>	Regulations (secondary)
<i>Key changes</i>	<ul style="list-style-type: none"> <li>• Change headline rate of assistance to 90% (subject to cap)</li> <li>• Make FAS payable from scheme NRA (subject to lower age of 60)</li> <li>• Make related changes to revaluation rules.</li> </ul>
<i>Date issued for consultation</i>	Written Consultation period of 2 weeks from 6 <sup>th</sup> March 2008 to 20 <sup>th</sup> March 2008 for draft Regulations. 6 weeks from 6 <sup>th</sup> March to 18 <sup>th</sup> April 2008 for annuity factors. <b>Consultation documents available now</b>
<i>Target date for Regulations to come into force</i>	By 30 <sup>th</sup> May 2008. <i>(However, please note the operational unit intends to complete the recalculation of all eligible members and survivors currently receiving payments by August 2008).</i>

<b>Primary legislation</b>	
<i>Type of legislation</i>	Pensions Bill 2007
<i>Key changes</i>	<ul style="list-style-type: none"> <li>• Powers to make members who are due to receive full scheme benefits eligible members of FAS</li> <li>• Technical amendments in relation to information gathering, and clarification of current powers.</li> <li>• Extending the halting of annuitisation beyond 25<sup>th</sup> June 2008</li> </ul>
<i>Target date for provisions to become law</i>	July 2008 (if Bill receives Royal Assent before summer recess of Parliament) October 2008 (if Bill does not receive Royal Assent before summer recess)

<b>Second package of regulations</b>	
<i>Type of legislation</i>	Regulations (secondary)
<i>Key changes</i>	<ul style="list-style-type: none"> <li>• To allow qualification for certain schemes which began to wind-up between the relevant dates, which have a solvent employer, where the full buyout debt did not apply.</li> <li>• Early reduced payment for certain members who are ill and unable to work</li> <li>• Removal of the requirement on trustees to apply for initial payments for members</li> <li>• Removal of access to Deemed Buyback for qualifying FAS members.</li> <li>• Changes to information requirements on trustees and scheme professionals.</li> </ul>
<i>Target date to issue for consultation</i>	End of March 2008
<i>Target date for Regulations to come into force</i>	By 30 <sup>th</sup> July 2008

### **Third package of regulations**

<i>Type of legislation</i>	Regulations (secondary)
<i>Key changes</i>	<ul style="list-style-type: none"><li>• Set out calculation basis for payments to those members who would have received over FAS levels from their scheme</li><li>• Method for maintaining value of the cap</li><li>• Indexation of post-97-service-related assistance</li><li>• Other changes to normalise the current operation of FAS with revised scheme.</li><li>• Taking over remaining assets in schemes</li></ul>
<i>Target date to issue for consultation</i>	To be confirmed
<i>Target date for Regulations to come into force</i>	To be confirmed

*However, please note that all requirements and timescales are subject to alteration as a result of formal consultation and Parliamentary processes*

(Source: DWP Trustee Update, dated 6 March 2008)

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### **PAG Meeting with FAS**

*By Richard Nicholl*

We attended an update meeting with FAS on 28 February, and can report that the FAS team is making good progress with the legislation and regulations required to bring in the changes from the December announcement. The consultation document is expected to be published on time on March 6th, and we will have an opportunity to make our comments on any part of that.

Much more work has been done to their IT systems so that as soon as the legislation is in place people who are eligible for the 90% will get it paid, probably from the end of May.

More detailed discussion took place on other aspects of the new amendments, and throughout the meeting the FAS team showed that they were listening, and where possible, responding to our concerns.

With regard to the question raised last night by Hugh Small, they confirmed that Ros was correct,

and the spouse's pension will be paid irrespective of whether the original scheme had a spouse benefit, although I think most schemes did have this provision.

We are pleased with the progress being made, the spirit of the meeting was very positive, and we are grateful for the individual FAS team members who have been working so hard since December to meet the deadlines.

Our next meeting is scheduled for next month when the topic will be the consultation document.

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### **Previous issues**

You can download previous issues of the newsletter from (inserting the number of the issue you want):

[www.pensionstheft.org/newsletters/  
newsletter01.pdf](http://www.pensionstheft.org/newsletters/newsletter01.pdf)

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