EXPLANATORY MEMORANDUM TO

THE FINANCIAL ASSISTANCE SCHEME (INCREASED CAP FOR LONG SERVICE) REGULATIONS 2018

2018 No.

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument relates to the Financial Assistance Scheme (FAS) which is operated by the Board of the Pension Protection Fund (PPF) and allows any FAS member who has 21 years or more pensionable service within a single pension scheme to have their existing cap increased by 3 percent for each full year of pensionable service over 20 years subject to a maximum of double the standard FAS cap.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Other matters of interest to the House of Commons

3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Scotland and Northern Ireland.

4. Legislative Context

4.1 FAS, which is established under the Pensions Act 2004[1], provides financial assistance to members of certain occupational pension schemes where the scheme has insufficient funds to pay members' benefits and the sponsoring employer cannot pay the shortfall because it is insolvent or no longer has a legal obligation to the pension scheme. The FAS provides financial assistance in relation to schemes that started to wind up between 1 January 1997 and 6 April 2005. After this date, eligible individuals would receive compensation from the PPF. The level of the PPF compensation cap is currently subject to a reference to the Court of Justice of the European Union in the case of *Grenville Hampshire* (C - 17/17). The key issue raised by the reference is whether the Article 8 of Directive 80/987/EEC[2] on the protection of employees in the event of the insolvency of their employer requires every employee, irrespective of the size or cost, to receive no less than 50 percent of their expected pension benefits. This is not accepted by the Board of the PPF or the Secretary of State for Work and Pensions who is an interested party in the case.

4.2 The Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986)[3] provide for a cap to be imposed on the amount of financial assistance payable to FAS members.

[1] https://www.legislation.gov.uk/ukpga/2004/35/contents
[2] http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31980L0987&from=EN
[3] http://www.legislation.gov.uk/uksi/2005/1986/contents/made

This statutory instrument is necessary as new legislation is required to allow the FAS to pay a higher amount of assistance to capped FAS (Financial Assistance Scheme) members who have long service in a single pension scheme.

5. Extent and Territorial Application

5.1 The extent of this instrument is the United Kingdom.

5.2 The territorial application of this instrument is the United Kingdom.

6. European Convention on Human Rights

6.1 The Minister for Pensions and Financial Inclusion Guy Opperman MP has made the following statement regarding Human Rights:

"In my view the provisions of the Financial Assistance Scheme (Increased Cap for Long Service) Regulations 2018 are compatible with the Convention rights"

7. Policy background

What is being done and why

7.1 On 15 September 2016 a written statement[4] was provided to Parliament announcing the Government's intention to introduce a revised cap to take account of long service in the PPF (Pension Protection Fund) and the FAS.

7.2 The FAS does not provide a complete replacement of an individuals lost pension. The FAS ensures that members generally receive 90 per cent of the expected pension (the pension accrued at the point the scheme began to wind up) subject to a cap.

7.3 For any member of the FAS whose entitlement begins between 1 April 2017 and 31 March 2018, the combined total of the payments to any one member is capped at £34,229 a year. So, if a member's pension was £39,000 a year from their pension scheme and that scheme could not pay the pension, the FAS would work out 90 percent of £39,000 which is £35,100. As the FAS cannot pay more than the cap amount which applies to the member, the member in this example would receive £34,229 in FAS assistance. The cap is revalued on an annual basis according to the consumer prices index.

7.4 The cap exists to limit costs in the FAS and to deter excessive risk taking and malpractice by scheme administrators and trustees whereby decisions could be taken that result in the insolvency of the company, in the knowledge that their pension benefits would in effect be insured by the FAS. This is a common feature of insurance and financial compensation or assistance schemes.

7.5 Whilst the cap operates as intended, overall it can have a disproportionate effect on those individuals with long service in a single pension scheme; see the Impact Assessment[5] prepared for the 2014 Pension Act[6]. Some individuals in this situation see their retirement income disproportionately affected by the cap. This is because

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[4] http://www.parliament.uk/written-questions-answers-statements/written-statement/Commons/2016-09-15/HCWS163

[5] https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/210728/pension-protection-fund-compensation-cap-amendments.pdf

[6] https://www.legislation.gov.uk/ukpga/2014/19/contents

they have not had sufficient time to secure additional benefits in a new pension scheme. This instrument will restructure the cap so that these individuals will receive a higher amount of financial assistance.

7.6 This instrument will allow the FAS (Financial Assistance Scheme) to increase the cap by 3 percent for each full year of pensionable service, over 20 years subject to a new maximum of double the standard FAS cap. This will ensure that long serving FAS members will receive a higher proportion of their accrued pension benefits.

7.7 On 6 April 2017 the long service cap[7] was implemented in the PPF (Pension Protection Fund). It is Government policy to ensure parity of treatment between members of the PPF and FAS where possible.

7.8 It is estimated that 290 FAS members will benefit from the introduction of the long service cap over the lifetime of the FAS.

Consolidation

7.9 This formal consolidated text of instruments is available to the public free of charge via 'The National Archive' website[8].

8. Consultation outcome

8.1 The Government consulted on a draft version of Financial Assistance Scheme (Increased Cap for Long Service) Regulations 2018 between 18 September 2017 and 25 October 2017 and a total of 13 responses were received.

8.2 While comments on the underlying policy concerning the long service cap were not in scope of the consultation, 8 respondents commented on various matters related to the policy of the increased FAS cap for long service.

8.3 Two respondents gave technical drafting suggestions to enhance and improve the clarity of the Regulations. These included suggesting that the Regulations could be drafted differently to add more clarity in relation to the determination of pensionable service and the treatment of survivors who qualify for FAS assistance but who do not have any pensionable service of their own. On the former, the Government intends to maintain the current approach whereby the pension scheme trustee informs the FAS scheme manager of the member's scheme entitlement by reference to the definition of pensionable service contained in their pension scheme rules. Amendments have, however, been made to the draft Regulations so that survivors can be treated as having pensionable service and benefit from the long service cap.

8.4 Three respondents welcomed the changes and two believed that the Regulations would operate as intended.

8.5 The Government's response[9] addresses the key points raised and can be found at: https://www.gov.uk/government/consultations/applying-the-financial-assistance-scheme-increased-cap-for-long-service.

[7] http://www.legislation.gov.uk/uksi/2017/324/pdfs/uksi_20170324_en.pd

[8] www.legislation.gov.uk

[9] https://www.gov.uk/government/consultations/applying-the-financial-assistance-scheme-increased-cap-for-long-service

9. Guidance

9.1 The FAS began communicating with capped members on 20 November 2017. FAS members who are capped were asked to provide more information to allow the FAS to determine the length of their pensionable service. The FAS (Financial Assistance Scheme) did not communicate with non-capped members as the change was not relevant to them.

9.2 The FAS will have further communications with capped members from 15 March 2018, and as part of this, will inform capped FAS members if they will receive higher levels of financial assistance once increased FAS cap for long service is implemented.

9.3 FAS scheme manager also has the power to issue guidance to individual schemes on matters which are relevant to their scheme.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is that the introduction of the increased FAS cap for long service gives rise to administrative costs for the FAS of altering their IT systems, processes and communications, which are estimated to be a one-off cost between £500,000 and £700,000.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The PPF publishes an Annual Report[10] which covers its performance over the previous year.

12.2 Reports are published on the GOV.UK website[11]. In addition, it has regular meetings with Department for Work and Pensions officials to review its work and the progress in implementing the long service cap will be included in these reviews.

13. Contact

13.1 Daniel Tinker at the Department for Work and Pensions - Telephone: 01132 327 785 or email: Daniel.Tinker@dwp.gsi.gov.uk can answer any queries regarding the instrument.

[10] https://www.gov.uk/government/publications/pension-protection-fund-annual-report-and-accounts-2016-to-2017
[11] https://www.gov.uk/government/publications