



Buck Consultants Limited

Response to DWP consultation on draft Financial Assistance Scheme (Miscellaneous Provisions) Regulations 2009 and related issues

Introduction and overview

We are pleased to have this opportunity to contribute to this consultation exercise. As employee benefits consultants, we have extensive experience of all aspects of the operation of occupational pension schemes, including winding-up, which sadly is now a regular occurrence with defined benefit schemes – especially in situations that result in a call upon the Financial Assistance Scheme (FAS) or Pension Protection Fund (PPF). We also – through our subsidiary Bevis Trustees limited - have practical experience of being trustees to a number of such schemes.

In principle we support efforts to provide financial assistance to those individuals whose defined benefit schemes have been unable, through lack of funds, to provide the intended benefits. We do have some serious issues over the methods by which this support is provided. In particular the lack of government commitment to stand behind the PPF (which could be structured to involve little, if any cost to the Exchequer), is driving the levy regime operated by the PPF to cause hardship to a number of schemes and their sponsors, and is contributing to the demise of that type of pension scheme.

We note with interest therefore the moves to bring closer together the provisions of the FAS (which is supported by the government) and the PPF. This is to be welcomed on a number of levels, including the opportunity it brings to centralise operations and reduce costs, and to lessen the confusion in the minds of the public as to what the system for the protection of pensions actually is. As we highlight later in respect of our responses to some of the specific questions raised, while the two systems remain technically separate in respect of their funding bases, there will be practical difficulties in bringing responsibility for their operation into the same organisation. However, that is not a valid reason to make the suggested changes, and there is much to support this proposal. We hope that this will be the beginning of a process that eventually sees the unification of all aspects of the approach to relieving the losses caused to pension entitlements by corporate failures.

Section 1: Introduction

Q1. The Government would be interested in whether anyone thinks there could be an adverse impact on the position of disabled people from these changes.

We are not aware at this stage of any adverse impact.

Q2. The Government would be interested in whether anyone thinks there could be an adverse impact on the position of men or women from these changes.

There are of course issues in respect of the relative treatment of men and women, which will have to be addressed at scheme wind up, if they have not previously been addressed. One such issue arises from the rigid rules concerning payment of Guaranteed Minimum Pensions, which still needs to be resolved. However, at this stage we cannot see that the proposals in the consultation paper introduce any new adverse impacts.

Q3. The Government would like any comments in relation to whether the draft regulations achieve the expressed intentions.

We have no comments on this point.

Section 2: The Government's proposals in the structure of the Assistance

Q4. Opinions are sought on the Government's approach to deciding when entitlement should begin.

We consider the proposed approach to be reasonable, as it would reflect the normal provisions of the individual scheme for most members. Although some members who were expecting to benefit from special arrangements will be disappointed, taxpayers are providing assistance for a failure of the scheme's sponsoring employer where the member would otherwise have incurred a loss. The balance between the loss borne by taxpayers and the members needs to be set at a sensible level, and the proposals in our opinion represent just that.

We also agree that FAS should not recognise "unofficial agreements". If it is difficult for a member to prove their entitlement, it is an uncertain liability, which the member should have resolved themselves with their employers and/or the trustees; taxpayers should not be expected to bear this cost, nor the potential of paying a larger benefit than was actually intended. In our experience, a very large proportion of the complaints from members alleging that their benefits are below their correct level, are in fact based upon a misunderstanding of one or more terms of their scheme. If such allegations were to be entertained where members argue, but can produce no supporting evidence, that they have a special benefit the administrative and other costs of the FAS will rise significantly, without appropriate justification.

We are content with the proposals regarding backdating pension commencement and with those regarding early access.

Q5. Comments are invited on this method of reflecting past entitlement to different tranches of accrued rights.

We have no objection in principle to making actuarial adjustments to avoid paying benefits in tranches, subject to this approach being legally acceptable.

Q6. Comments would be welcomed on the treatment of pension step-ups and step-downs in the FAS.

We would be happy with the proposed approaches to step-ups and step-downs.

Q7. Comments would be welcomed on this approach (Assistance calculation).

This seems a sensible approach.

Q8. Comments are invited on the Government's intention to increase the FAS cap from 1 April 2007 and to re-assess Assistance for any individual already capped.

We have no objection to the proposals.

Q9. Comments are invited as to whether a fixed cap increased by RPI, or a cap which varies according to age at which Assistance is paid and increased by NAE, is the appropriate approach for the FAS.

We can see no justification for a difference in approach between the FAS and the PPF in this respect.

Q10. Comments are invited on the above method of indexing Assistance and, in particular, on the issue of taking account of the level of indexation secured by the annuity and the method proposed to do so, and

Q11. The method proposed in the draft Regulations assumes that annuities purchased for members will either be flat rate or indexed so as to produce only increases. The Government would welcome evidence of cases where annuities could potentially decrease as a result of deflation.

We do not see any logical reason why the approaches of FAS and PPF should differ here. However, if the Government feels that it has made a binding commitment for such parity of benefits for members of the same scheme, the methodology proposed to deliver on this commitment seems acceptable.

Q12. Comments are invited on whether surviving partners of deceased qualifying members should qualify for survivor payments and, if so, whether the conditions should be as described.

We are happy with the proposals.

Q13. Comments are invited on whether dependent children should qualify for survivor payments and, if so, whether the conditions should be as described.

We are happy with the proposals.

Q14. Comments are invited on whether all legal spouses of a polygamous marriage should qualify for an equal share of a single survivor's Assistance.

We consider the proposals to be acceptable, being consistent with the approach commonly used in schemes. However, there will need to be a mechanism for dealing with any later identified legal spouse(s), along the lines of the arrangements proposed for civil and surviving partners.



Q15. The Government would be interested in any comments on the proposal to offer transitional protection where these draft Regulations would result in a lower entitlement for any qualifying member or survivor who is in receipt of Annual Payments.

We consider the proposals to be acceptable.

Section 3: Administrative Changes

Q16. The Government would be interested in any comments you would like to make about the proposals described above (flexibility to adjust payment terms).

As a point of principle it would be sensible to give scope for flexibility in these areas to reduce administration costs. The particular proposals seem to satisfy this.

Q17. Views are invited on the proposal to reconcile payments made by schemes and FAS from the start of FAS entitlement and prior to wind up.

The proposals are acceptable.

Q18. Views are also invited on the exceptional circumstances in which it might be appropriate for the FAS scheme manager not to bring payments made by the scheme to account in determining future FAS entitlement or recoverable overpayments – these will assist in drawing up the necessary clear and objective criteria against which the FAS scheme manager will exercise the discretionary power.

In principle, the flexibility proposed is acceptable.

Q19. Comments are welcomed on whether this (the information identified in the section) would be an onerous task for trustees, administrators, managers, insurers and others holding relevant information to undertake.

We believe that the provision of this information will not be an unduly onerous task, since the necessary records should have been maintained by the parties now being asked to provide the information.

Q20. The Government would welcome comments on the requirement to obtain quarterly details of scheme expenditure against budget and exception reports of significant changes to investment of the scheme's assets.

In our opinion, good trustees should follow these practices as a matter of course.

Q21. The Government would welcome views on this requirement (notifying FAS of any actual or proposed legal action by the trustees).

Notification of such situations to FAS is appropriate, although the consideration and management of such actions must remain a matter for the trustees alone, not FAS.

Q22. The Government would welcome your comments on the timescales in which information should be provided; in particular, whether the provision of information within one month of a qualifying member's death is reasonable.

Where the information is available, the proposed timescales are reasonable; however, it is not uncommon for trustees or managers to learn of a member's death only some time after the event, so in such cases the time for reporting to FAS should begin when the trustees or managers themselves receive the information.

There is also an issue in respect of the proposal for notifying of legal proceedings "within 14 days of the appropriate person becoming aware that the action is being contemplated". This requirement is not clear enough where the action is being contemplated by a party other than the one responsible for reporting to FAS. Would the clock start running, for example, from the time the reporter knew the person was unhappy, when they threatened to commence legal proceedings, or when such action was formally commenced?

Q23. The Government would be happy to accept any comments on these issues (reviews and appeals).

We have no objections to these proposals.



Section 4: Actuarial Factors

No comments are sought by the consultation exercise.

Section 5: The Future Operation of the Financial Assistance Scheme

Q24. The Government would welcome views on whether the Board of the PPF should become the FAS scheme manager, including taking on responsibility for administering the FAS.

Conceptually this is a sensible proposal, but for as long as the source of funding for the two bodies remains different the costs must also be transparently separate; this may have an adverse impact on efficiency where services and facilities have to be shared.

Q25. The Government would welcome your views on the proposal to allow the Board of the PPF to delegate certain functions to a commercial provider.

The proposal is sensible, in the best interests of flexibility and economy.

Q26. The Government would welcome your views on the sharing of relevant information with the Board of the PPF and any third party provider.

We have no objection in principle to the sharing of relevant information provided that the information shared is strictly limited to that necessary for the tasks to be performed, and that appropriate and effective measures are in place to ensure its security.

Q27. The Government would welcome your views on the Board of the PPF being able to make payments to pension scheme trustees and managers at its discretion, where schemes have run out of available funds for the purposes given above.

This proposal is essential, to ensure that administrators and other commercial organisations whose help is needed to complete the wind up continue to act. We also agree the proposed restrictions on the list of purposes for which such payments can be made.

Section 6: The Transfer of Scheme Assets to Government

Q28. The Government is keen to learn of any circumstances in which difficulties in separating “FAS assets” from “non-FAS assets” are foreseen.

There will be difficulties in respect of some scheme designs, where for example there is a defined benefit/defined contribution mix where one basis underpins the other so whether the benefit is DB (and within FAS/PPF) or DC (not within FAS/PPF) will vary from member to member. However, the PPF manages to cope with these schemes now, so the same principles should be followed in future.

Q29. Comments would be welcomed on whether specific further accounting guidance will be needed to support this valuation process.

We have no comments on this point.

Q30. Views on this proposal for rolling quarterly valuation dates would be welcomed.

Although there would still be an element of subjectivity over when the FAS manager should call the end of the wind up (and presumably he would be expected to consult with the trustees on this), the proposal would make the trustees' job easier by relieving them of their equitable duty to consider the effect of asset values on the wind up date chosen.

Q31. Views would be welcomed on this approach (preparation of accounts).

We consider the proposals to be a pragmatic approach, and are consistent with current practice in other cases.

Q32. Comments would be welcomed on these proposals and an indication of a suitable period over which DC liabilities might be discharged.

The policy objective should be to wind up the trust as soon as reasonably practicable and these proposals seem to constitute a sensible process to reduce timescales in affected cases. In respect of cases where both DB and DC benefits are payable, if the DC funds are ringfenced, the annuitisation process can be performed contemporaneously with the action on the DB benefits; where the scheme involves underpins, or where there are trivial DC pots, once the process described in the consultation paper has been completed and responsibility for the DB benefits has been transferred out of the scheme, the DC assets can be dealt with straightaway thereafter. However, the timescale for this will depend upon the individual circumstances prevailing, and so it would be inappropriate for legislation to set rigid timescales; instead the requirement should be for trustees to progress matters without undue delay.



Q33. Views would be welcomed on whether it is reasonable to take in relevant assets in these circumstances.

We believe that it is reasonable.

Q34. Comments would be welcomed on the proposal to prevent transfers out of schemes and to prevent winding-up lump sums being offered in relation to DB assets.

We are happy with the proposals.

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March 2009**



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