



Department  
for Work &  
Pensions

## **Consultation on the draft Financial Assistance Scheme (Increased Cap For Long Service) Regulations 2018**

### **The government response**

December 2017

# Introduction

On 18 September 2017 the Government published a consultation on the draft 'Financial Assistance Scheme (Increased Cap for Long Service) Regulations 2018'. The consultation closed on 25 October 2017 and sought views on whether:

- the draft Regulations achieve the policy intent of increasing the current Financial Assistance Scheme (FAS) cap for those with long service in a single scheme.
- there were any unintended consequences resulting from the draft Regulations.
- the Regulations as currently drafted would allow the FAS to increase the long service cap for all eligible groups with long service in a single scheme.

The Government received a total of 13 responses and is grateful to all the respondents listed at (Annex A). This document is the Government's response to the points raised in response to the consultation.

If approved following debate, in a resolution of, each House of Parliament, the Regulations will come into force as soon as Parliamentary time allows. The current intention is that Regulations will come into force on the 6 April 2018.

Once published, the regulations will be available on the [UK Legislation website](#).

# The Consultation Responses

## **The FAS increased cap for long service**

The Government did not ask for comments on the policy behind the FAS itself, which was settled when the Pensions Act 2004 received Royal Assent and the Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) (“the FAS Regulations”) came into force. A number of respondents commented on the FAS scheme itself and the Government’s policy to cap the amount of assistance that FAS members can receive. As these points are outside the scope of this consultation, the response document does not cover these points.

The Government is grateful to those respondents who provided comments on the draft Regulations in response to the specific consultation questions which we have responded to in turn below.

**Question 1 - Do the draft regulations achieve the policy intent of increasing the current FAS cap for those with long service in a single scheme as described in the consultation paper?**

Four out of the thirteen consultation respondents answered question 1. Three respondents agreed that the draft regulations would operate as intended. One respondent suggested that the draft Regulations should be amended to include a definition of pensionable service which they believed would provide the FAS with greater clarity on which periods of pensionable service should be included when determining which FAS members are eligible for the long service cap. The same Respondent also suggested that there was scope for confusion about members who have transferred in as they will have benefits attributable to a period of service but not under the scheme. It was also suggested that the FAS scheme manager<sup>1</sup> should issue new guidance to explain how the existing powers to deem the length of pensionable service will be used.

### Government response

FAS Regulations do not contain a definition of pensionable service. At present 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 (the draft Regulations also make it clear that pensionable service in a different pension scheme does not count towards a person’s service for the cap). The FAS then uses this information to calculate assistance, and determine

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<sup>1</sup> The Pension Protection Fund (PPF) is the FAS Scheme Manager. The FAS Scheme Manger is responsible for administering the Financial Assistance Scheme and making payments to individuals.

which members are eligible for the increased cap for long service. Due to this, and a desire to maintain a consistent approach across FAS Regulations as a whole, the Government does not believe that it is essential to include an explicit definition of pensionable service for the Regulations to operate as intended. In addition, the FAS scheme manager also has the power to issue guidance to individual schemes on matters which are relevant to their scheme. The Government considers that this is sufficient to ensure that pension schemes understand which periods of pensionable service are within the scope of the long service cap, but will keep the matter under review as the long service cap beds in.

The consultation document contained a proposal to amend the FAS Regulations so that pensionable service accrued in the member's own right and a pension credit arising from a divorce or dissolution settlement would not be added together for the purposes of the increased cap for long service. The Government now acknowledges that applying this policy to the calculation of the FAS long service cap would require significant changes to the way in which FAS assistance is calculated overall, and has concluded that it would not be proportionate to proceed with this change given the small number of people affected by the cap. Therefore, benefits attributable to a pension credit and pensionable service will continue to be added together for both the increased cap for long service and the standard cap.

<b>Question 2 - Are you aware of any unintended consequences resulting from the draft regulations?</b>
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Three out of the thirteen consultation respondents answered question 2. Two respondents felt that the draft regulations would not result in unintended consequences. One respondent suggested a number of minor technical amendments to the draft Regulations to make the operation of new provisions on the long service cap clearer. The same respondent also stated that the Regulations that were consulted on did not clearly achieve the policy intention in relation to when eligible FAS members would begin to receive the increased assistance. The consultation document stated, "the increase will not be backdated and takes effect from the member's first pay day on or after the regulations come into force."

As consulted on, the draft Regulations meant that eligible FAS members who are already in receipt of capped assistance would not be entitled to receive any increase in their FAS payments until the first payment date after Regulations come into force. If the FAS long service cap comes into force on 6 April 2018 as planned, existing FAS member's who qualify for the increased cap would not become entitled to increased assistance until 21 May 2018.

Government response

Having carefully considered these points, in relation to the first, the Government has made minor amendments to the drafting to put it beyond doubt that a person who

meets the eligibility criteria will receive the standard cap amount plus a further amount equal to 3% of the standard cap amount for each whole year of pensionable service that exceeds 20 years, subject to an overall maximum of twice the standard cap amount.

The consultation draft has also been amended to make it clear that existing FAS members who are already eligible for the long service cap will be entitled to additional assistance payments from the date that the FAS long service cap comes into force, not their next pay day, if later. If the coming into force day falls part way through a payment date then eligible members will receive any arrears due following the increase on the member's first payment date after the coming into force date.

**Question 3 - Do the regulations as currently drafted allow the FAS to increase the long service cap for all groups with long service in a single scheme?**

Four out of the thirteen consultation respondents answered question 3. Two respondents felt that the draft regulations would allow the FAS to apply the long service cap for all eligible groups. Two respondents requested a technical change to the draft Regulations in respect of survivor benefits to ensure that survivors who were in receipt of survivor benefits before the deceased member's pension scheme wound up can also benefit from the increased cap for long service. Suggestions were made to put beyond doubt that both groups of survivors - (1) those already in receipt of a survivor's pension from the scheme at the date of scheme wind up and (2) survivors of a FAS member who was receiving FAS assistance before they died - are eligible for the FAS long service cap.

Government response

The consultation draft has been amended to put it beyond doubt that both groups of survivors are eligible for the long service cap. In particular, revised regulation 17AA (9) now makes it clear that, FAS must treat those already in receipt of a survivor's pension when the scheme winds up who do not have any pensionable service of their own as having a length of pensionable service based upon the service of the deceased original scheme member.

# **Annex A**

## **List of Respondents**

The Pensions Management Institute

The Pension Action Group

The Pension Advisory Service (TPAS)

Community

The Pension Protection Fund

Association of Pension Lawyers

Robin Bradford

Chris Price

Jane Goodman

David Stratton

Philip Branch

William Bennington

Robert Thomson