



House of Commons
Public Administration Select
Committee

**The Pensions Bill and
the FAS: An Update**

**Including the
Government Response
to the Fifth Report of
Session 2006-07**

Eighth Report of Session 2006–07



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the FAS: An Update**

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Eighth Report of Session 2006–07

*Report and Appendices, together with formal
minutes*

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The Public Administration Select Committee

The Public Administration Select Committee is appointed by the House of Commons to examine the reports of the Parliamentary Commissioner for Administration, of the Health Service Commissioners for England, Scotland and Wales and of the Parliamentary Ombudsman for Northern Ireland, which are laid before this House, and matters in connection therewith, and to consider matters relating to the quality and standards of administration provided by civil service departments, and other matters relating to the civil service.

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Publications

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at <http://www.parliament.uk/pasc>.

Committee staff

The current staff of the Committee are Eve Samson (Clerk), James Gerard (Second Clerk), Anna Watkins (Committee Assistant), Louise Glen (Secretary) and James Bowman (Senior Office Clerk).

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1 Introduction

1. Last year the Parliamentary Commissioner for Administration (the ‘Parliamentary Ombudsman’) reported on the plight of those who lost their private sector occupational pensions before the pensions protection regime brought in by the Pensions Act 2004 came into operation. They have some potential support through the Financial Assistance Scheme (FAS), funded by the tax payer, but it is nowhere near as generous as that available through the Pensions Protection Fund (PPF), which is supported by a levy. As the Committee charged with examining reports from the Parliamentary Ombudsman, we have a particular interest in those parts of the Pensions Bill which affect the FAS.
2. We have already reported twice on this matter and put forward amendments to the Bill. This Report does not repeat the detail of our earlier work, but brings the story up to date, to assist colleagues when they come to consider Lords Amendments to the Pensions Bill.¹ There are two sets of amendments relating to the Financial Assistance Scheme:
- An amendment which could extend the FAS to schemes where the employer remained solvent (‘solvent employer schemes’);
 - A series of amendments which would transfer administration of the FAS to the PPF; ensure payments from scheme pension age rather than state pension age; and make benefits equivalent to those available through the PPF. The sums required to top-up benefits would first be provided by a loan from the Government, to be repaid from unclaimed assets.
3. We also take the opportunity to publish correspondence between our Chairman and the Minister for Pensions Reform, and the Government Response to our earlier Report. We have been greatly assisted by the efficiency of the Department for Work and Pensions in providing the information we sought, often at short notice. We wish to put our gratitude on record. We are also grateful to the House of Commons Library for its help in our work on pensions over the past year.

2 Solvent Employer Schemes

4. On 4 June 2007 the Lords passed the following amendment:

Insert the following new Clause—

“Financial assistance scheme: qualifying pension schemes

(1) The Financial Assistance Scheme Regulations 2005 (S.I. 2005/1986) are amended as follows.

(2) In regulation 9, sub-paragraph (1)(c) is omitted.

¹ Sixth Report of Session 2005-06, *The Ombudsman in Question: the Ombudsman’s report on pensions and its constitutional implications*, HC 1081, and Fifth Report of Session 2006-07, *Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme*, HC 523

(3) Regulations 11 to 13 are omitted.”²

Currently, the regulations governing the FAS exclude schemes closed by solvent employers; this amendment would remove that exclusion. Members of this Committee had tabled an amendment to the Pensions Bill in the Commons which would have had the same effect. The Government resisted it, and after receiving assurances from the Minister that the Government and the Committee had “the same intention”, the amendment was withdrawn.³ However, the Minister’s response left some doubt about the extent to which he really understood our intentions. In our Report on the *Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme* we explained that we were most concerned about members of schemes which began to wind up before 11 June 2003. Before that date, regulations set requirements for funding based on the Minimum Financial Requirement (MFR). Provided those requirements were met, it was legal for employers to wind up pension schemes whether or not the scheme had enough assets to meet its pension promise in full.

5. On 5 June 2007 the then Minister for Pensions Reform, James Purnell MP, wrote to our Chairman. To our disappointment, his reply did not address the central issue. We replied on 18 June 2007, requesting more information. This correspondence is appended to the Report.

6. The Minister was concerned that extension of FAS to solvent employer schemes would be too wide, and could pose moral hazard to schemes still winding up. He told us:

A trustee from a scheme with an insolvent employer (and so qualified for FAS) has told us that on recent extension of FAS, promising negotiations with an overseas parent on voluntary contributions worth several million pounds were broken off, as the government had effectively made the contribution irrelevant to the level of benefit received by scheme members. We do not want to recreate this circumstance many times over for those schemes that have solvent sponsoring employers in this country.⁴

7. However, as the Government itself concedes, there is no legal obligation on such employers:

No legal recourse would be available in relation to the employer debt legislation for pre 11 June 2003 wind-ups, if solvent employers had met their legal obligation to pay the debt calculated in accordance with the legislation.⁵

The Government Response printed with this Report reveals that the Government has accepted the Ombudsman’s first finding, namely, that official information on occupational

2 Lords Amendment No 16, Bill 146

3 HC Deb, 18 April 2007, c352

4 See Appendix 1

5 Fifth Report of Session 2006-07, *Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme*, HC 523, Appendix 3, p 23.

pensions was “sometimes inaccurate, often incomplete, largely inconsistent and therefore potentially misleading, and that this constituted maladministration”.⁶

8. The Government’s reluctance to commit itself to supporting those in solvent employer schemes means that it is using the position of scheme members to exert pressure on employers. This is not acceptable. The losses suffered by scheme members are identical, whether or not an employer still exists. The employers’ actions might have been deplorable, but they were certainly legal. We agree that solvent employers who left members of their pension scheme without the benefits to which they were entitled have a moral obligation to fulfil their pension promises. Nonetheless, the Government should not use the indigence and distress of those who have suffered considerable losses to try to blackmail them to do so.

9. The Minister’s reply to our Chairman revealed that he had held discussions with the Pensions Regulator to consider what more the Government might do to make solvent employers honour their promises, but gave no indication of what could be done.⁷ The Minister also reminded us that changes to the FAS do not require primary legislation. Although that is so, neither House has power to amend secondary legislation, and only the Executive can bring it forward. **Primary legislation is the only way Parliament can be sure of securing assistance for those whose schemes were wound up by solvent employers. The House should consider any Government assurances extremely carefully before it gives up this weapon.**

3 The Pensions Lifeboat

10. We support the general principle that FAS benefits should be aligned to those in the PPF; members of our Committee have in the past put forward amendments to achieve this. That general point requires no further elucidation. The Government has commissioned a review which may increase the amounts payable under the FAS, and an announcement has been promised “very soon”.⁸ However the review is not due to publish even an interim report until the end of July; its final report is expected before the end of the year. Any assessment of the increase in benefit can only be speculative. We do not have the expertise to comment on whether the proposals for a review of unclaimed assets stand a realistic prospect of success. However, there is one point where some clarification may assist the House in considering the Lords amendments: delays in making FAS payments.

11. Many people have written to us in distress at having little or no pension payment. There are two difficulties. First, the FAS supports those of 65 and over; those whose schemes set a lower retirement age must wait for payment. Even after that age has been reached, delays in making FAS payments are an additional cause of distress. The FAS website states:

The FAS scheme manager has the discretion to make ‘initial payments’ to eligible members of schemes that are still winding up who have reached the age of 65, where

6 See Appendix 2

7 Appendix 1

8 HC Deb, 11 July 2007, col 1454

he considers that that the trustee is making scheme interim payments of a reasonable level to the members in question. Survivors and the terminally ill can also receive initial payments.

5 When a scheme is advised that it qualifies for FAS, the trustees and/or administrators are also informed that they can ask for initial payments on behalf of relevant members. If they express an interest then we ask them to provide information about these members, levels of any interim payments they are already making and estimates of those members' expected pension.⁹

10 It is clear that, in principle, top up payments can be made while winding-up continues, and trustees should seek to ensure that their members receive the assistance they are due. However, our own experience suggests that there may be delays even after trustees have provided the relevant information.

15 12. It is likely that the Government is not solely responsible for delays in FAS payments. It has made considerable changes to the scheme to make it simpler and more generous. However, **whatever the generosity of the scheme, and whatever the reasons for delay, the FAS will not help if it takes years to reach those who need it. We recommend the Government find ways of speeding up payment as a matter of urgency.**

Conclusions and recommendations

1. Primary legislation is the only way Parliament can be sure of securing assistance for those whose schemes were wound up by solvent employers. The House should consider any Government assurances extremely carefully before it gives up this weapon. (Paragraph 9)
2. Whatever the generosity of the scheme, and whatever the reasons for delay, the FAS will not help if it takes years to reach those who need it. We recommend the Government find ways of speeding up payment as a matter of urgency. (Paragraph 12)

Appendix 1 – Correspondence with DWP

Letter from James Purnell MP, Minister for Pensions Reform, to the Chairman of the Committee, 5 June 2007:

FINANCIAL ASSISTANCE SCHEME – SOLVENT EMPLOYER SCHEMES

5 You wrote to me on 17th May to enquire about our legislative intentions for under funded pension schemes wound up by solvent employers. I hope this letter clarifies our intentions to your satisfaction.

Your correspondence refers to the debate of 18th April in the Commons on the Pensions Bill. In this session I outlined our proposal to extend the FAS to cover members of
10 pensions schemes that were wound up with a compromise agreement, when enforcing the debt against the employer would have forced the employer into insolvency. This remains our intention. We believe that this will extend the scope of the Financial Assistance Scheme to cover an additional 8,000 people in about 15 schemes.

15 During the course of the debate, I indicated to you that I believed we had the same intention on this issue. I also stated that the Government could not support your amendment as drafted because:

‘Those measures would bring into the FAS any failed scheme, regardless of the solvency of the employer’

You will recall that I also said:

20 ‘The intention is to include all schemes that were wound up unfunded, preventing an employer insolvency. New clause 25 would include schemes in which debt and winding up could not have forced an employer insolvency and, therefore, the employer was healthy enough to fund more of their pension liabilities.’

25 The Government does not believe it is right that solvent employers should be absolved of their pension promises by the Financial Assistance Scheme. There is also an important issue of moral hazard at stake. We know of many circumstances where trustees are negotiating funding settlements with solvent employers through the wind up process of their scheme; we must not make these negotiations irrelevant, removing any incentive for the employer to meet their moral obligations, by including these schemes within the scope
30 of the FAS.

The challenge is in trying to establish whether there are pension schemes in a position analogous to those who have signed compromise agreements, with no solvent employer that could reasonably be expected to make any further contributions to the scheme. We do not know the circumstances of all these schemes. That is why by means of the FAS Assets
35 Review, we are looking into the circumstances of such schemes and have invited representations on behalf of any scheme members who fall outside the current FAS rules and who are faced with significant pension losses. We have already received representations from 12 schemes in this situation, and are reviewing their circumstances.

5 It is important to be clear that we do not need primary legislation to enact any changes to the eligibility rules of FAS that might become desirable once the Review makes its report. For that reason, it would not be sensible to draft legislation that attempts to navigate this complex area before we have fuller details of the circumstances of these schemes, and understand better the consequences of any lines we draw on inclusion and exclusion of particular schemes.

I stated on 18th April that

‘We are trying to achieve the same aims and we are happy to return to the same issue in the other place if necessary.’

10 I hope you will accept my assurances that we will indeed reiterate these commitments in the forthcoming debates, and look forward to the findings of the Review, which will allow us to draft the required legislation.

15 I have attached a Q&A on this issue that was provided to the PASC, which elaborates on some of the issues above.¹ In the meantime, we are considering all the options and I would welcome a meeting to discuss how to handle this difficult issue.

¹ Already published in Appendix 3 to Fifth Report of Session 2006-07, *Pensions Bill: Government Undertakings relating to the Financial Assistance Scheme*, HC 523.

Letter from the Chairman of the Committee to Mr Purnell, 18 June 2007:

Thank you for your letter of 5 June: I have circulated it to my colleagues on PASC.

5 I welcome your willingness to consider whether the FAS should be extended to a wider group of schemes wound up by solvent employers. I am puzzled by the fact that you do not address the issue of schemes which were wound up before 11 June 2003.

10 Before that date, companies could close schemes, funded to the minimum funding requirement, even if the benefits promised by the scheme could not be secured for all members. In this case, the trustees would not have been able to prevent the wind up and would have no legal means of ensuring that full benefits were paid once the employer had met its legal obligation to pay the debt calculated in accordance with the legislation. The result will be that some pension scheme members get less (and, in some cases, substantially less) than their expected benefits even though there has been no employer insolvency and no compromise agreement to avoid insolvency. You are concerned that indicating support could be available for members of schemes closed by solvent employers might create moral hazard as negotiations about wind up are still continuing. It would help if you could clarify what negotiations might still be underway in respect of schemes covered by the rules before 15 June 2003.

20 You note that primary legislation is not needed to make changes to the eligibility rules of the FAS. However, the Lords amendments already made to the Pensions Bill will raise this issue. It would be helpful to have a clear indication of the Government's position on schemes wound up by solvent employers before June 2003, before this is considered by the House. It would also be helpful to know whether the Government proposes any way of making solvent employers (where schemes which began wind up before June 2003) honour their promises, other than moral pressure.

Letter from Mr James Purnell, to the Chairman of the Committee, 27 June 2007:

You wrote to me on 18th June seeking further clarification on our legislative intentions for underfunded pension schemes wound up by solvent employers. In your letter, you asked why I had not made specific reference to the issue of schemes wound up by a solvent employer prior to June 2003.

You can be assured that I have asked the Assets Review to consider the position of all other schemes which may seek to contend that they are in such a closely analogous position to schemes with compromise agreements that they also should be brought within the FAS. In practice, for the reasons outlined in your letter, many of these are likely to have started winding up before 11th June 2003.

The review team will publish their interim report before the end of July and their final report before the end of the year. I appreciate the concern for us to set out our detailed intentions earlier, but it is a complex area and we do not yet have sufficient data on which to base the decisions you are asking us to make. I believe that it would not be sensible to draft legislation before we have received the findings of the Assets Review.

As I have previously explained, the Government would not require primary legislation to extend further pension scheme eligibility for FAS, as this can be amended through affirmative regulations, so it is not dependent on the current Pensions Bill.

You also asked that I clarify what negotiations might still be underway in respect of schemes covered by the rules before June 2003. I cannot give you examples of specific negotiations, as these are commercially confidential. But many of the schemes that started winding up before 2003 are still in wind up, and many trustees have told us they are still negotiating with solvent sponsoring employers to maximise their contribution to the pension scheme. We must not make these negotiations irrelevant, removing any incentive on the employer to meet their moral obligations. As an example of the importance of this point, a trustee from a scheme with an insolvent employer (and so qualified for FAS) has told us that on recent extension of FAS, promising negotiations with an overseas parent on voluntary contributions worth several million pounds were broken off, as the government had effectively made the contribution irrelevant to the level of benefit received by scheme members. We do not want to recreate this circumstance many times over for those schemes that have solvent sponsoring employers in this country.

You asked what more the Government might do to make solvent employers honour their promises. I have discussed this issue with the Pensions Regulator, and we are considering what action could be taken. We will want to look closely at the findings of the Review's data gathering exercise before taking any decisions on our actions in this area.

In the meantime, I would welcome the Committee's help in ensuring that any pension scheme members who fall outside of the current FAS rules and who are faced with significant pension losses are advised to make representations to the review team as quickly as possible. I am keen to move to a situation where we can have these debates in full knowledge of the circumstances of these schemes.

Appendix 2 – Government Response to the Fifth Report of the Public Administration Select Committee, Session 2006-07 (HC 523)

Introduction

1. The Government welcomes the Fifth Report of the Public Administration Select Committee, Session 2006–07 which was published on 10th May 2007.
2. The Report relates to the Committee’s investigation into the report by the Parliamentary Commissioner for Administration (the Ombudsman), *Trusting in the pensions promise*, published on 15 March 2006. This report considered the circumstances in which final salary occupational pension schemes were wound up underfunded and the role of Government in this regard.

Background

3. The Ombudsman’s report found, in essence, that government information about the level of protection given to members of occupational pension schemes was maladministrative. It also found that a decision to amend the minimum funding requirement was made incorrectly. The Government rejected the majority of the findings in the report for reasons given in the Government Response published in June 2006.¹ Put simply the Government did not accept that:
 - (a) the relevant Departmental leaflets were maladministrative;
 - (b) the decision to amend the minimum funding requirement was made incorrectly; nor that
 - (c) the link between the Department’s actions and the individual’s pension losses was made.
4. This decision was the subject of a judicial review. The High Court upheld the Department’s view at (b) and (c) above, but decided that official information issued on the security of occupational pensions was defective. The High Court directed the Department to reconsider the Ombudsman’s first recommendation in the light of its finding on maladministration.
5. The Department has appealed the High Court’s ruling. However, it did reconsider the Ombudsman’s first recommendation and for that purpose only accepted the ruling on maladministration.

¹ DWP Response to the Report by the Parliamentary Ombudsman, *Trusting in the Pensions Promise*, Published on 6 June 2006

Extension of FAS following Government reconsideration of the Ombudsman's report

6. As a result of the Secretary of State's reconsideration the FAS has been extended very significantly. The Secretary of State announced this extension in a written statement to the House of Commons dated 28th March 2007.² The FAS will now provide a substantial package of assistance to a significantly extended group of scheme members. In particular:

(a), Eligible scheme members will all have their pension benefits "topped up" to 80% of 'core' pension benefits they would have received (subject to the cap), regardless of the period remaining until they reach normal retirement age;

(b) The cap on assistance is to be more than doubled from £12,000 to £26,000 and the de minimis rule that excludes those whose FAS payment would be £10 or less a week will be removed.

7. As a result of the extension of the FAS, it is expected that some 125,000 will now be eligible to receive assistance under it. The extension has rendered an estimated 85,000 additional scheme members eligible for assistance for the first time, increasing more than three-fold the number of eligible members. In addition, approximately 15,000 of up to 40,000 individuals who were already eligible under the FAS will receive additional assistance as a result of the extension.

8. The public funding of the FAS has increased as a result of the extension from £2.3 billion to £8 billion in cumulative cash terms. This commitment from taxpayers' money equates to more than doubling the cost of the scheme in net present value terms from an estimated £830 million to £1.9 billion.

Ombudsman's recommendations on scheme eligibility

9. The Ombudsman said her recommendations should apply to all individuals:

- who are or were a member of a final salary scheme which commenced wind-up from (a) 6 April 1997 and 31 March 2004 and (b) 1 April 2004 and 6 April 2005; where
- their scheme wound-up with insufficient assets to secure pensions in payment and to pay cash equivalent transfer values in respect of full accrued pension rights to all non-pensioner members or to secure the full liabilities for each non-pensioner in other ways.

10. The key recommendation was that ".....the Government should consider whether it should make arrangements for the restoration of the core pension and non-core benefits promised to all those whom I have identified above are fully covered by my recommendations—by whichever means is most appropriate, including if necessary by payment from public funds, to replace the full amount lost by those individuals".

2 Statement on Occupational Pensions made on 28 March 2007, by the Secretary of State for Work and Pensions.

11. The recommendations did not distinguish between pension schemes that wound up with or without a solvent sponsoring employer. The current report from the Public Administration Select Committee addresses the issue of whether the Financial Assistance Scheme (FAS), which the Government established in May 2004, should be extended to cover those who lost pension rights when a solvent employer wound up a pension scheme.

Financial Assistance Scheme and pension scheme eligibility

12. When FAS was first established the Government defined schemes as eligible if they started winding up between 1 January 1997 and 5 April 2005 as a result of the sponsoring employer becoming insolvent. The Government's view was and remains that solvent employers, who could well be trading profitably, have a moral responsibility to meet their pension promises.

13. Although initially the definition of insolvency was to be along the lines adopted by the Pension Protection Fund, when details of FAS were announced in February 2005³ that definition was broadened, as a result of consultation with industry experts and affected scheme representatives, to include members' voluntary liquidations and employers that went into insolvency some time after wind-up had started. .

14. Reflecting subsequent public representations, the Government has since significantly extended scheme eligibility. The regulations that came into force on 1 September 2005⁴ included employers that had been dissolved.

15. In December 2006, further regulations⁵ came into force which included two additional insolvency events relating to employers that are unlikely to continue as going concerns:

- where an insolvency event has occurred overseas that substantially corresponds to a UK insolvency event; and
- where no insolvency event has occurred or is likely to occur in relation to the employer; the value of the assets of the employer is less than the amount of its liabilities, taking into account its contingent and prospective liabilities; and the employer is unable to pay its debts as they fall due or have fallen due.

16. On 27 February 2007, the Government announced⁶ that the cut-off date for employer insolvency events would be extended from 28 February 2007 to 31 August 2007. This was in response to representations from a small number of pension schemes, who were in negotiation with employers in relation to insolvency and qualification for the Financial Assistance Scheme, that they would like further time to complete this process. The amendments to put this new date into effect will be brought forward in due course. In the meantime the Government will not give effect to the current cut-off date and will consider whether any further extension beyond 31 August 2007 may be required.

3 Statement on the Financial Assistance Scheme made on 22 February 2005 by the Minister for Pensions.

4 The Financial Assistance Scheme Regulations 2005

5 The Financial Assistance Scheme (Miscellaneous Amendments) Regulations 2006

6 Statement on Occupational Pensions made on 27 February 2007 by the Minister for Pensions Reform.

17. In addition, on 18 April 2007, the Government announced⁷ that FAS would be further extended to include pension schemes where the sponsoring employer remained solvent, but where a compromise agreement is in place and when enforcing the debt against the employer would have forced the employer into insolvency. The affirmative regulations to introduce this extension will be laid as soon as possible, subject to public consultation.

18. On 28 March the Secretary of State had announced⁸ a review to examine whether an alternative treatment of the residual funds in affected pension schemes could supplement the committed Government funding of the Financial Assistance Scheme.

19. The detailed terms of reference were published in a letter to MPs by the Minister of State for Pension Reform on 23 April.⁹

20. Whilst the primary focus of the Review is on the use of assets, a further objective is to determine whether there are other pension schemes (in addition to those with compromise agreements) where, although the sponsoring employer did not undergo an insolvency event, it would not be reasonable to expect the employer to have a continuing responsibility for supporting an underfunded scheme.

21. The Minister's letter included an indicative list of schemes potentially eligible for support from the FAS where a compromise agreement is in place.

22. The Department is aware that this is a complex area and there may be scope for debate about the dimensions of the extension of the FAS, in the light of the fact that the FAS now applies to schemes with compromise agreements. The Department is not yet fully apprised of the circumstances and situations of all schemes which may seek to contend that they are in such a closely analogous position to schemes with compromise agreements (albeit having reached that position by another route) that they also should be brought within the FAS, or that there are other reasons why additional categories of schemes with a solvent employer should be brought within the FAS.

23. This is why Ministers asked the Review to consider the position of other schemes. This task is focused on clarification of the scope of the extension of the FAS itself, and ensuring it is consistent with the policy intention that led to the establishment of the FAS and the extension. The Review's objective in relation to any such schemes is to recommend to the Secretary of State how he can ensure any lines drawn for inclusion or otherwise of pension schemes within the FAS are consistent with the policy intent.

24. The review is being led by Andrew Young, Directing Actuary at the Government Actuary's Department, and being advised by a panel of leading external experts assembled to provide experience in key areas. The review will provide an initial view by the end of July and a full report by the end of the year.

7 Statement on the Financial Assistance Scheme made on 18 April 2007 by the Minister for Pensions Reform during the Commons Report on the Pensions Bill.

8 Statement on Occupational Pensions made on 28 March 2007, by the Secretary of State for Work and Pensions.

9 Letter on the Financial Assistance Scheme sent to MPs by the Minister for Pensions Reform on 23rd April 2007.

Response to the Committee's conclusions and recommendations

Conclusion

We recognize that the Parliamentary Ombudsman's report has already resulted in significant concessions from the Government, and significant improvements in the assistance available to those who have lost their pensions. The Ombudsman system has proved to be effective even in the face of Government resistance. (Paragraph 11 of the report)

25. The Government welcomes the Committee's acknowledgement of the significant extension that was announced in the Budget on 21 March 2007. As a result it is expected that all the estimated 125,000 people who have suffered losses will now receive at least 80% of their core expected pension that is, calculated in accordance with the FAS regulations—around three times the number who would have been helped under the current scheme. This increases the taxpayer's commitment from £2.3bn in cumulative cash terms, to £8bn. This equates to more than doubling the scheme in present value terms, from £830m to £1.9bn.

Recommendation

We recommend that the Government should clarify whether it intends to set aside Parliamentary time next session for any proposals from the review of the FAS which require primary legislation. (Paragraph 13 of the report)

26. The existing primary powers for setting up the FAS in s.286 of the Pensions Act 2004 are already very wide, so it may well be possible to use these powers to make even fundamental changes to the nature of the scheme should the review make such proposals. However, should any proposals from the current review of FAS require primary legislation, a further Pensions Bill is already proposed for a future Parliamentary session. The Bill will continue the reform of the Pensions system and provide the legislative framework for personal accounts. This would provide a suitable vehicle for further primary legislation for FAS if required.

Conclusion

Those who have lost their pension entitlements through scheme wind up by solvent companies face losses, as well as those whose employers became insolvent. Their plight is the result of the inadequate regulatory framework in place between 1997 and 2005 (and, in particular, before June 2003). They, too, lacked clear information about the risks they ran, and had limited opportunities to avoid such losses. They can only be helped by the taxpayer. (Paragraph 20 of the report)

27. Solvent employers, who may well be trading profitably, must have a moral obligation for making good their pension promises to scheme members. It can not be right, as the Committee asserts, that responsibility should rest solely with the taxpayer.

28. In setting up the FAS the Government has sought to maintain a balance between defining insolvency as widely as possible in order to bring schemes and their members into FAS and not absolving ongoing solvent employers, who could themselves make up losses

to members, of their responsibilities. There is also a moral hazard issue at stake—trustees may be negotiating settlements with solvent employers as part of the wind-up process. We must be careful that we do not make these negotiations irrelevant and remove any incentive for an employer to meet their moral obligation by including these schemes within FAS without proper investigation of their circumstances.

Recommendation

The Government has said that it will ask the team reviewing the FAS, which is to report later this year, to consider the position of solvent employer schemes. That is not good enough. We urge the Government to take the opportunity offered by the Pensions Bill, and ensure that the FAS covers members of schemes wound up by solvent employers before the Pension Protection Fund came into operation. (Paragraph 21 of the report)

29. This is a very complex area and the Government is not yet fully apprised of the circumstances and situations of all schemes which may seek to contend that they are in a closely analogous position to schemes with compromise agreements or otherwise contend that their members should be eligible under the FAS. Any pension scheme members who fall outside of the current FAS rules and who are faced with significant pension losses are advised to make representations to the review team as quickly as possible.

30. The review team will publish their interim report before the end of July and their final report before the end of the year. As outlined above, the Government would not require primary legislation to further extend pension scheme eligibility for FAS. This can be amended through affirmative regulations, so is not dependent on the current Pensions Bill.

Formal Minutes

Thursday 12 July 2007

Members present:

Dr Tony Wright, in the Chair

David Burrowes

Paul Flynn

David Heyes

Kelvin Hopkins

Mr Gordon Prentice

Mr Charles Walker

Draft Report [*The Pensions Bill and the FAS: An Update*], proposed by the Chairman, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 12 read and agreed to.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

Several papers were ordered to be appended to the Report.

[Adjourned till Thursday 19 June at 9.45 a.m.]

List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

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