Draft Regulations laid before Parliament under section 316(2)(h) of the Pensions Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2005 No.

PENSIONS

The Pension Protection Fund (Reference of Reviewable Matters to the PPF Ombudsman) Regulations 2005

Made - - - - 2005

Coming into force in accordance with regulation 1(2)

Whereas a draft of this instrument was laid before Parliament in accordance with section 316(2)(h) of the Pensions Act 2004(**1**) and approved by resolution of each House of Parliament;

Now, therefore, the Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 213(1) to (3), (4)(a) to (d) and (f) and (5)(a) to (d) and (f), 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(**2**), and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992(**3**), by this instrument, which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which the regulations are made(**4**), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Reference of Reviewable Matters to the PPF Ombudsman) Regulations 2005.

(2) These Regulations shall come into force on the day after the day on which they are made.

(3) In these Regulations—

"the Act" means the Pensions Act 2004;

"applicant" means a person who has referred a reviewable matter to the PPF Ombudsman pursuant to regulation 2 or, if that person was acting as the representative of another person, that other person;

(**1**) 2004 c. 35.
(**2**) Section 318(1) is cited because of the meaning there given to "prescribed" and "regulations".
(**3**) 1992 c. 53. Schedule 1 to that Act is amended by paragraph 8 of Schedule 12 to the Pensions Act 2004.
(**4**) *See* section 317(2)(c) of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made.

"party to the reference" means—

(a) the applicant; and

(b) the Board;

"Reconsideration Committee" means a committee of the Board constituted for the purposes of regulations made under section 207 of the Act (review and reconsideration by the Board of reviewable matters).

Reference of a reviewable matter

2. Where the Reconsideration Committee has given a reconsideration decision in relation to a reviewable matter by virtue of regulations made under section 207(1)(b) or (3)(b) of the Act, that matter may be referred to the PPF Ombudsman by any person who is sent, or required to be sent, a copy of the reconsideration decision under those regulations.

Time for making a reference

3.—(1) Subject to regulation 20(1), a reference of a reviewable matter is made when it is sent to the PPF Ombudsman by a person before the end of the period of 28 days beginning with the date on which that person was sent a notice of the reconsideration decision.

(2) A reference of a reviewable matter may not be made after the end of the period referred to in paragraph (1) in any case where the reviewable matter to which the reference relates is—

(a) the issue of a notice under section 122 of the Act (insolvency practitioner's duty to issue notices confirming status of scheme) by virtue of section 124 of the Act (Board's duty where there is a failure to comply with section 122);

(b) the issue of a determination notice under section 123(4) of the Act (approval of notices issued under section 122);

(c) the issue of a validation notice under regulation 2(5) of the Pension Protection Fund (Entry Rules) Regulations 2005(**5**) (determination to validate or not to validate an estimate and statement provided by the actuary);

(d) the issue of—

(i) a scheme failure notice under section 130(2) of the Act (Board's duty where application or notification received under section 129); or

(ii) a withdrawal notice under section 130(3) of the Act;

(e) the issue of a notice under section 136(2) of the Act (power to validate contraventions of section 135);

(f) the approval of the valuation under section 144(2)(a) of the Act(**6**) (approval of valuation);

(g) the approval of the valuation under section 144(2)(a) of the Act as applied for the purposes of section 160(8) of the Act(**7**) (transfer notice);

(h) the issue of a withdrawal notice under section 146(2)(a) of the Act (schemes which become eligible schemes);

(i) the issue of a withdrawal notice under section 147(2)(a) of the Act (new schemes created to replace existing schemes);

(**5**) S.I. 2005/590 as amended by S.I. 2005/993.

(**6**) Section 144 of the Pensions Act 2004 is modified in its application to an unsecured part of a partially guaranteed scheme by regulation 3(3)(b) of S.I. 2005/277 so as to also apply in respect of the valuation of an unsecured part of such a scheme obtained under section 143 of that Act.

(**7**) *See* regulation 10(1)(b) of S.I. 2005/277 which modifies section 160 of the Pensions Act 2004 so as to insert a new subsection (8) which applies to an unsecured part of a partially guaranteed scheme.

(j) the issue of a withdrawal notice under section 148(3) or (4) of the Act (withdrawal following issue of section 122(4) notice);

(k) the issue of a determination notice under section 152(3) (duty to assume responsibility following reconsideration);

(l) the issue of a determination notice under section 153(6) of the Act (closed schemes).

Form and content of a reference

4.—(1) A reference of a reviewable matter to the PPF Ombudsman must be made in writing and must include—

(a) the name and address of the applicant;

(b) the date on which the decision of the Reconsideration Committee to which the reference relates was given;

(c) a copy of that decision;

(d) the grounds on which the reference is made; and

(e) where the reference is made by a representative of the applicant, the name and address of that representative and whether that address is the address to be used for the purposes of the reference.

(2) The reference must be signed and dated by the person who has referred the matter.

(3) Where the reference is transmitted by means of an electronic communications network, the reference is treated as having been signed for the purposes of paragraph (2) if the identity of the applicant as the person responsible for making the reference can be established from the reference in such manner as the PPF Ombudsman directs for the purposes of this paragraph.

(4) In paragraph (3) "electronic communications network" has the same meaning as in section 32 of the Communications Act 2003(**8**) (meaning of electronic communications networks and services).

Procedure on receipt of a reference

5.—(1) As soon as practicable after receiving a reference of a reviewable matter that is duly made in accordance with regulations 3(1) and 4, the PPF Ombudsman must—

(a) send a written acknowledgement of its receipt to each party to the reference; and

(b) if the PPF Ombudsman considers that a person other than a party to the reference may be significantly adversely affected by his determination in relation to the matter, notify that person—

(i) that a reference has been made;

(ii) of the grounds on which the reference has been made;

(iii) that the reference and any other documents relating to the reference that are sent to the PPF Ombudsman at any stage in the investigation of the reference, including any written representations made by the person under regulation 8, will be available for inspection at the offices of the PPF Ombudsman;

(iv) that such written representations will be copied to the applicant and the Board;

(v) of the person's rights under regulations 8 and 12; and

(vi) of the effect of regulation 16(5).

(2) The acknowledgement must state the date on which the reference was received.

(3) The acknowledgement sent to the applicant must include a statement—

(**8**) 2003 c. 21.

(a) that any information or documents provided in support of the reference will be—

(i) copied to the Board;

(ii) made available for inspection by any person notified under paragraph (1)(b);

(b) of the applicant's rights under regulations 8 and 12; and

(c) of the effect of regulation 16(5).

(4) The acknowledgement sent to the Board must be accompanied by a notification of the grounds on which the reference has been made.

(5) A notification under this regulation must be made in writing, but subject to that may be made in such manner as the PPF Ombudsman considers appropriate.

(6) Unless paragraph (7) applies, as soon as practicable after receiving a reference that is not duly made in accordance with regulations 3(1) and 4 the PPF Ombudsman must inform the applicant that the reference was not duly made and that he will not be investigating the matter in question.

(7) This paragraph applies if—

(a) the reference is duly made in accordance with regulation 3(1) but not regulation 4;

(b) the PPF Ombudsman is satisfied that the reference can be amended by the applicant so that it is duly made in accordance with regulation 4 within such period as the PPF Ombudsman requests; and

(c) the reference is so amended.

Duty to investigate and determine a reviewable matter

6.—(1) Where a reference of a reviewable matter is duly made in accordance with regulations 3(1) and 4, the PPF Ombudsman must—

(a) investigate the matter and determine what action, if any, the Board should take; and

(b) remit the matter to the Board with directions for the purpose of giving effect to his determination.

(2) The determination must be reached and given before the end of the relevant period.

(3) In paragraph (2), the "relevant period" means—

(a) the period of two months beginning with the date on which the PPF Ombudsman concludes his investigation in relation to the matter; or

(b) such longer period, beginning with that date, as he considers appropriate having regard to the reference of the reviewable matter involved, but not exceeding six months.

(4) In any case where the Board—

(a) states in writing that it does not oppose the grounds upon which the reference of a reviewable matter is made;

(b) withdraws its opposition to such a reference; or

(c) fails to comply with a request from the PPF Ombudsman for information relating to the reference before the end of such period within which the PPF Ombudsman has requested the information to be given,

the PPF Ombudsman may determine the matter forthwith without any further investigation.

Conduct of investigation: general

7.—(1) For the purposes of investigating a reference of a reviewable matter made to him, the PPF Ombudsman may consider any evidence before him.

(2) The PPF Ombudsman may—

(a) conduct an oral hearing in relation to the reference;

(b) investigate the reference on the basis of written evidence before him without holding an oral hearing;

(c) consider evidence relating to the reference which was not before the Board or the Reconsideration Committee;

(d) refer any question which arises out of the reference to a person who, in the PPF Ombudsman's opinion, is able to provide an expert opinion in relation to that question; and

(e) without prejudice to his powers under regulation 17, where references are made on the same or substantially the same grounds and are supported by the same or substantially the same evidence, deal together with any issues arising in respect of two or more references made to him if those issues are the same or substantially the same.

(3) The PPF Ombudsman may by notice in writing require any person who, in the PPF Ombudsman's opinion, is able to produce documents necessary for the purposes of the investigation, to produce such documents in such manner, at such place and within such period as is specified in the notice.

(4) But no person can be compelled for the purposes of any investigation or determination to give evidence or produce any document which he could not be compelled to give or produce in civil proceedings before the court.

(5) In paragraph (4), "the court" means—

(a) in England and Wales, a county court; and

(b) in Scotland, the sheriff.

(6) Subject to the provisions of this regulation and to any provision to the contrary in these Regulations, the procedure for conducting an investigation of a reference of a reviewable matter made to the PPF Ombudsman is such as the PPF Ombudsman considers appropriate in the circumstances of the case and, in particular, he may—

(a) obtain information from such persons and in such manner;

(b) make such inquiries; and

(c) give such directions as to the conduct of any oral hearing,

as he thinks fit.

Written representations and right to be heard

8.—(1) A party to a reference of a reviewable matter, or a person notified of such a reference under regulation 5(1)(b), may—

(a) make written representations to the PPF Ombudsman in respect of the reference;

(b) request that the PPF Ombudsman holds an oral hearing about the reference; and

(c) be heard and represented at any such oral hearing.

(2) Written representations must be sent to the PPF Ombudsman—

(a) by a party to the reference, before the end of the period of 28 days beginning with the day on which the PPF Ombudsman sent a written acknowledgement of his receipt of the reference to that party under regulation 5(1)(a) ("the acknowledgement day");

(b) by a person notified of the reference under regulation 5(1)(b), before the end of the period of 28 days beginning with the date on which the notification was given.

(3) Where written representations are duly sent to the PPF Ombudsman by a party to the reference under paragraph (2)(a), the PPF Ombudsman must, as soon as practicable after receiving them—