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

DRAFT STATUTORY INSTRUMENTS

2005 No.

PENSIONS

The Pension Protection Fund (Investigation by PPF Ombudsman of Complaints of Maladministration) 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)(i) 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 214(1), (2)(a) to (j) and (l), 315(2)(a), (4) and (5) and 318(1) of the Pensions Act 2004(**2**), and of all other powers enabling him in that behalf, 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 that Act by virtue of which they are made(**3**), makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Investigation by PPF Ombudsman of Complaints of Maladministration) Regulations 2005.

(2) These Regulations 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;

"the applicant", in relation to a reference, means the person who made the relevant complaint about the referable matter that is the subject of the reference 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**) *See* section 317(2)(c) of the Pensions Act 2004 which provides that the obligation under section 317(1) of that Act for the Secretary of State to consult such persons as he considers appropriate before making regulations by virtue of the provisions of the Act (other than Part 8) 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.

"Investigation Committee" means the committee of the Board referred to in section 208(3)(b) of the Act (investigation by the Board of complaints of maladministration);

"referable matter" has the meaning given by regulation 2(3);

"the referring party" means the person who makes the reference under regulation 2 (but see regulation 16 (representation));

"relevant complaint" has the meaning given by section 208(2) of the Act (meaning of "relevant complaint").

Reference of a referable matter

2.—(1) This regulation applies where, following a decision by the Board on matters complained of in a relevant complaint, those matters complained of—

(a) have been investigated by the Investigation Committee and a decision given by it under regulations made under section 208(3)(b) of the Act; or

(b) have been the subject of an application for such an investigation and decision by the Investigation Committee on which no decision has been given by that Committee by the relevant date.

(2) Any referable matter may be referred to the PPF Ombudsman by—

(a) the applicant; or

(b) any other person to whom regulations made under section 208(4)(d)(ii) of the Act require notice of the decision to be given or, if that person is required to be given notice as the representative of another person, that other person.

(3) For the purposes of these Regulations a matter is a referable matter if it is a matter that—

(a) has been the subject of a relevant complaint in respect of which the Board has given a decision under regulations made under section 208(3)(a) of the Act; and

(b) either—

(i) has been the subject of an investigation by the Investigation Committee in respect of which it has given a decision under regulations made under section 208(3)(b) of the Act; or

(ii) has been the subject of an application for such an investigation and decision by the Investigation Committee on which no decision has been given by that Committee by the relevant date.

(4) In this regulation "the relevant date" means—

(a) the date on which the Investigation Committee is required to give the decision under regulations made under section 208(4)(c)(ii) of the Act; or

(b) if, on an application made to him by the applicant, the PPF Ombudsman is of the opinion that—

(i) there is no real prospect of the Investigation Committee giving the decision by that date; and

(ii) the matter should be investigated and determined by him,

the date he notifies to the applicant and any other person to whom regulations made under section 208(4)(d)(ii) of the Act require notice of the decision to be given as being the date by which he considers it reasonable that the decision should have been given.

Time for making a reference

3. A reference under regulation 2 must be sent to the PPF Ombudsman—

(a) in the case of a referable matter within regulation 2(3)(b)(i), before the end of the period of 28 days beginning with the date that notice of the Investigation Committee's decision under regulations made under section 208(4)(d)(ii) of the Act was sent to the referring party; and

(b) in the case of a referable matter within regulation 2(3)(b)(ii), before the end of the period of 28 days beginning with–

(i) the date that is the relevant date for the purposes of that regulation; or

(ii) the date on which the relevant date is notified to the person making the reference under regulation 2(4)(b),

whichever is the later.

Form and content of a reference

4.—(1) A reference under regulation 2 must be made in writing and must include—

(a) the name and address of the referring party;

(b) a copy of the relevant decision;

(c) the date on which notice of that decision was given;

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

(e) if a representative has been appointed under regulation 16 to make the reference on behalf of another person, that person's name and address and whether that address is the address to be used for the purposes of the reference.

(2) In paragraph (1) "the relevant decision" means—

(a) in the case of a referable matter within regulation 2(3)(b)(i), the decision of the Investigation Committee mentioned in that regulation; and

(b) in the case of a referable matter within regulation 2(3)(b)(ii), the decision of the Board mentioned in regulation 2(3)(a).

(3) The reference must be signed and dated by the referring party.

(4) 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 (3) if the identity of the referring party 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.

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

Procedure on receipt of a reference

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

(a) send a written acknowledgement of its receipt to the referring party and the Board; and

(b) if the PPF Ombudsman considers that a person other than the referring party 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;

(**4**) 2003 c. 21.

(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 representations will be copied to the referring party and the Board;

(v) of the person's rights under regulations 8 and 11; and

(vi) of the effect of regulation 14(6).

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

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

(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 referring party's rights under regulations 8 and 11; and

(c) of the effect of regulation 14(6).

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

(5) The notification under paragraph (1)(b) 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 and 4 the PPF Ombudsman must inform the referring party 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 but not regulation 4;

(b) the PPF Ombudsman is satisfied that the referring party can amend the reference 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 referable matter

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

(a) investigate the matter; and

(b) determine what action, if any, the Board should take.

(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 2 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 referred matter involved, but not exceeding 6 months.

(4) In any case where the Board–

(a) states in writing that it does not oppose the complaint of maladministration involved in the referred matter;

(b) withdraws its opposition to the complaint; or

(c) fails to comply with a request from the PPF Ombudsman for information relating to the referred matter before the end of the period within which he 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 the referred matter, the PPF Ombudsman may consider any evidence before him.

(2) The PPF Ombudsman may—

(a) conduct an oral hearing about the matter;

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

(c) consider evidence relating to the matter which was not before the Board or, as the case may be, the Investigation Committee;

(d) refer any question which arises out of the matter 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 15, 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 may 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 any provision to the contrary in these Regulations, the procedure for conducting an investigation of a referred matter 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 request an oral hearing and be heard

8.—(1) The referring party, the Board and any person notified of the reference under regulation 5(1)(b) may—

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

(b) request the PPF Ombudsman to hold an oral hearing about the referred matter; and

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