

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—

- (a) send a copy of those representations to the other party to the reference; and
 - (b) make those representations available for inspection by any person notified of the reference under regulation 5(1)(b).
- (4) Where written representations are duly sent to the PPF Ombudsman in accordance with paragraph (2)(b) by a person notified of a reference under regulation 5(1)(b), the PPF Ombudsman must, as soon as practicable—
- (a) send a copy of those representations to each party to the reference; and
 - (b) make those representations available for inspection by any other person notified of the reference under regulation 5(1)(b).
- (5) A request to the PPF Ombudsman to hold an oral hearing must be made in writing and must be sent to the PPF Ombudsman before the end of the period of 28 days beginning with—
- (a) in the case of a party to the reference, the acknowledgement day; or
 - (b) in the case of a person notified of the reference under regulation 5(1)(b), the date on which the notification was sent to that person.
- (6) On receiving such a request, the PPF Ombudsman —
- (a) must consider it; and
 - (b) if he considers that it is not appropriate to hold an oral hearing, must give his reasons in writing to the person making the request.

Delivery of supplementary statement

9.—(1) The applicant may at any time during the investigation of a reference by the PPF Ombudsman, if the PPF Ombudsman consents, submit a supplementary statement in writing in respect of a reference of a reviewable matter.

- (2) The PPF Ombudsman must, as soon as practicable after receiving such a statement—
- (a) send a copy of it to the Board;
 - (b) give notice of the submission in such manner and in such form as he considers appropriate to any person notified of the reference under regulation 5(1)(b); and
 - (c) make it available for inspection by any such person.

Withdrawal and amendment of the reference or supplementary statement

10.—(1) If the PPF Ombudsman consents, the applicant may at any time during the investigation of a reference of a reviewable matter by the PPF Ombudsman—

- (a) withdraw the reference or supplementary statement; or
 - (b) amend the content of the reference or supplementary statement.
- (2) Such a withdrawal or amendment must be made by giving notice in writing to the PPF Ombudsman.
- (3) The PPF Ombudsman must, as soon as practicable after receiving such a notice—
- (a) send a copy of it to the Board;
 - (b) give notice of it in such manner and in such form as he considers appropriate to any person notified of the reference under regulation 5(1)(b); and
 - (c) in the case of an amendment, make it available for inspection by any such a person.

Time and place of oral hearings

11.—(1) If the PPF Ombudsman decides that it is appropriate to hold an oral hearing in connection with his investigation of a reference of a reviewable matter made to him, he must fix the time and place of the hearing, having due regard to any representations made to him by the referring party and the Board about the time and place that would be convenient for them.

(2) The PPF Ombudsman must send a notice of the time and place to—

- (a) each party to the reference;
- (b) a person notified of the reference under regulation 5(1)(b); and
- (c) any other person the PPF Ombudsman considers appropriate.

(3) The notice—

- (a) must be sent not later than 21 days before the date of the hearing or by such later time as each party to the reference agrees; and
- (b) may be given in such manner and take such form as the PPF Ombudsman considers appropriate.

(4) The PPF Ombudsman must include with the notice a statement explaining—

- (a) the purpose of the hearing;
- (b) the rights of each party to the reference, or of any person notified of the reference under regulation 5(1)(b), to—
 - (i) make oral representations at the hearing;
 - (ii) call witnesses at the hearing to give evidence that is relevant to the matter being investigated; and
 - (iii) send written representations to the PPF Ombudsman not later than 14 days before the date of the hearing if they do not intend to attend the hearing;
- (c) that any person notified of the hearing may appoint a person to act on his behalf; and
- (d) that if a party to the reference or a person notified of the reference under regulation 5(1)(b) fails to—
 - (i) attend the hearing; or
 - (ii) send written representations to the PPF Ombudsman at least 14 days before the date of the hearing,

the PPF Ombudsman may decide the matter without providing a further opportunity for that person to make oral or written representations in respect of it.

(5) If the PPF Ombudsman considers it to be necessary to alter the time or location of the hearing, he must give the persons specified in paragraph (2) notice of the alteration not less than seven days before—

- (a) the date on which the hearing was to have taken place; or
- (b) if it is earlier, the date on which it is to take place after the alteration,

or at such later time as each party to the reference may agree.

(6) The PPF Ombudsman may, if he considers it necessary, adjourn the hearing.

(7) In any case where the hearing is so adjourned, no further notice need be given by the PPF Ombudsman under this regulation if the time and place at which the hearing will be reconvened are announced before the adjournment.

Attendance at oral hearings

12.—(1) At an oral hearing—

- (a) each party to the reference;
- (b) any person notified of the reference under regulation 5(1)(b); and
- (c) any person appointed by a person within sub-paragraphs (a) or (b) to act on his behalf at the hearing,

may call witnesses to give evidence that is relevant to the matter being investigated.

(2) Not later than 14 days before the date of the hearing, each party to the reference, or any person notified of the reference under regulation 5(1)(b), must—

- (a) inform the PPF Ombudsman in writing about—
 - (i) whether that person intends to attend or be represented at the oral hearing; and
 - (ii) whether that person intends to call any witnesses to give evidence at the hearing and, if so, the names of those witnesses; and
- (b) if that person or a person so appointed intends to call a witness at the hearing, provide the PPF Ombudsman with an outline summary in writing of the evidence of the witness.

(3) If any person notified of the time and place of a hearing under regulation 11 fails to attend the hearing, the PPF Ombudsman may—

- (a) adjourn the hearing; or
- (b) conduct the hearing and determine the matter based on the evidence before him.

(4) The PPF Ombudsman has the same power as the court—

- (a) in respect of the attendance and the examination of witnesses, including the examination of witnesses abroad; and
- (b) in respect of the production of documents.

(5) But the PPF Ombudsman may at an oral hearing receive evidence of any fact which appears to him to be relevant, notwithstanding that the evidence would be inadmissible in civil proceedings before a court, and must admit evidence which would be admissible in such proceedings and is relevant.

(6) In paragraphs (4) and (5), “the court” means—

- (a) in England and Wales, a county court; and
- (b) in Scotland, the sheriff.

Oral hearings usually to be held in public

13.—(1) An oral hearing must be held in public unless in the opinion of the PPF Ombudsman it is appropriate for the hearing, or any part of it, to be held in private.

(2) Where a hearing, or any part of a hearing, is held in private, the PPF Ombudsman may permit any person to attend the hearing or, as the case may be, the part held in private.

(3) A person whose conduct has disrupted or is likely to disrupt a hearing may be excluded by the PPF Ombudsman.

Council on Tribunals

14. A member of the Council on Tribunals or the Scottish Committee of the Council on Tribunals may—

- (a) attend an oral hearing held by the PPF Ombudsman whether that hearing, or any part of it, is held in private or in public; and
- (b) be present during the course of any deliberations involving the PPF Ombudsman and his staff which take place immediately after an oral hearing,

but shall not take part in the investigation or any determination.

Costs and expenses

15.—(1) Where, under regulation 7(2)(d), the PPF Ombudsman refers a question which arises out of a reference of a reviewable matter made to him to a person who, in his opinion, is able to provide an expert opinion in relation to that question, the PPF Ombudsman may pay that person such amount as he considers reasonable in respect of costs or expenses reasonably incurred by that person in connection with that referral.

(2) Where an oral hearing is held, the PPF Ombudsman may pay—

- (a) the applicant;
- (b) any person notified of the reference under regulation 5(1)(b);
- (c) any witness who has been requested to attend the hearing and give evidence;
- (d) any person to whom notice of the hearing was sent under regulation 11(2)(c); or
- (e) any person appointed under regulation 11(4)(c),

such amount as the PPF Ombudsman considers reasonable in respect of costs or expenses reasonably incurred by that person, with the prior approval of the PPF Ombudsman, in connection with the person's attendance at the hearing.

(3) Where an oral hearing is held and the PPF Ombudsman is of the opinion that—

- (a) the applicant, the Board, any person notified of the reference under regulation 5(1)(b) or any person to whom notice of the hearing was sent under regulation 11(2)(c) acted vexatiously;
- (b) the conduct of the applicant in making or pursuing the reference was unreasonable; or
- (c) the conduct of the Board in opposing the reference was unreasonable,

he may direct the person who acted, as the case may be, vexatiously or unreasonably to pay any such person as is mentioned in paragraph (2)(a) to (e) such amount as the PPF Ombudsman considers is reasonable in respect of the costs and expenses reasonably incurred by that person, with the prior approval of the PPF Ombudsman, in connection with that person's attendance at the hearing.

(4) A direction may be given to the applicant under paragraph (3) despite the fact that he has withdrawn the reference.

(5) The PPF Ombudsman shall not make a direction to a person under paragraph (3) without first giving that person an opportunity to make representations.

Reaching and giving determinations and consequential directions

16.—(1) If the PPF Ombudsman determines that the decision of the Reconsideration Committee in relation to a reviewable matter referred to him was reached correctly, the PPF Ombudsman must—

- (a) determine that it is not appropriate for the Board to take any action in relation to the matter; and
- (b) remit the matter to the Board with any directions.

(2) If the PPF Ombudsman considers that the decision of the Reconsideration Committee in relation to a reviewable matter referred to him was not reached correctly, the PPF Ombudsman—

- (a) must—
 - (i) determine what action, if any, the Board should take in relation to the matter; and
 - (ii) remit the matter to the Board with directions for the Board—
 - (aa) to vary the determination, direction or other decision made by the Reconsideration Committee; or
 - (bb) to revoke and replace the determination, direction or other decision made by the Reconsideration Committee; and
- (b) may direct—
 - (i) that—
 - (aa) any determination, direction or other decision which is to be made by the Board in accordance with any determination made or direction given by him; or
 - (bb) any variation, revocation or substitution of the determination, direction or other decision of the Reconsideration Committee which is to be made by the Board in accordance with any determination made or direction given by him,
is to be treated as if it were made at such time (which may be at a time prior to his determination or direction) as he considers appropriate;
 - (ii) that any notice varied, substituted, issued or given by the Board in accordance with any determination made or direction given by him is to be treated as if—
 - (aa) it were issued or given at such time (which may be a time prior to his determination) as he considers appropriate;
 - (bb) it became binding for the purposes of Part 2 of the Act (the Board of the Pension Protection Fund) at the time at which he makes his determination or gives his direction or at such later time as he considers appropriate;
 - (iii) the Board—
 - (aa) to pay such compensation as he considers appropriate to such persons as he considers appropriate;
 - (bb) to take or refrain from taking such other steps as he may specify.
- (3) The determination and directions must be in writing and must include—
 - (a) a statement of the reasons for them;
 - (b) an explanation as to whether and, if so, to what extent the Board is directed to—
 - (i) vary or revoke a determination, direction or other decision previously made by the Reconsideration Committee;
 - (ii) revoke such a determination, direction or other decision and replace it with a different determination, direction or other decision; and
 - (c) a statement of any legislation relied on by the PPF Ombudsman in reaching the determination.
- (4) The PPF Ombudsman must—
 - (a) give notice of the determination and directions to each party to the reference; and
 - (b) notify the following persons of the determination and directions in such form and manner as he considers appropriate—
 - (i) any person notified of the reference under regulation 5(1)(b); and
 - (ii) any person to whom he has directed that compensation is to be paid.

(5) Subject to section 217 of the Act (determinations of the PPF Ombudsman), the determination and directions are final and binding on—

- (a) the persons to whom notice or notification is given under paragraph (4)(a) or (b);
- (b) any interested person as interpreted in accordance with regulations made under section 207(1)(b) (review and reconsideration of reviewable matters) of the Act.

(6) The Board has the power to do anything that the PPF Ombudsman directs under this regulation.

(7) The Board's power—

- (a) under section 191 of the Act (notices requiring provision of information); and
- (b) under regulations made under section 207(1) of the Act,

shall apply for the purposes of dealing with any matter remitted to it.

(8) If the Board is directed under this regulation to—

- (a) vary a determination, direction or other decision previously made by the Reconsideration Committee; or
- (b) replace such a determination or direction or other decision with a different determination direction or other decision,

it must send a copy of the varied or replacement determination, direction or other decision to the applicant, the PPF Ombudsman and any person notified of the reference under regulation 5(1)(b).

Combining references

17.—(1) Where—

- (a) two or more references of a reviewable matter are made to the PPF Ombudsman in connection with the same reviewable matter; and
- (b) the references are made on the same or substantially the same grounds and are supported by the same or substantially the same evidence,

for the purposes of these Regulations, he may treat them as a single reference and make a single determination with directions, and references in these Regulations to the reference are to be read accordingly.

(2) Such a single determination may relate to all the references or the PPF Ombudsman may—

- (a) treat one or more of the references as representative of them all; and
- (b) make a single determination with directions relating to the representative reference or references.

(3) Where a reference of a reviewable matter (“the first reference”) has been determined under these Regulations, the PPF Ombudsman may make determinations and give directions on the same basis in respect of other references if they are made on the same or substantially the same grounds and supported by the same or substantially the same evidence as the first reference.

(4) For the purposes of paragraph (3), it does not matter whether the other references were made before or after the first reference.

(5) Where it appears to the PPF Ombudsman appropriate to do so, he may include in one determination—

- (a) his determination of a reference under these Regulations; and
- (b) his determination of a matter referred by virtue of regulations made under section 214 of the Act (investigation by the PPF Ombudsman of complaints of maladministration).

(6) If the PPF Ombudsman proposes to exercise the powers under paragraph (1), (2), (3) or (5) he must notify the relevant persons of the proposal and of those persons' rights under paragraph (8).

(7) The notification under paragraph (6) may be made in such manner and take such form as the PPF Ombudsman considers appropriate.

(8) Any relevant person may make written representations to the PPF Ombudsman before the end of the period of 14 days beginning with the day on which the relevant persons are notified under paragraph (6), objecting to the proposal as respects the reference in relation to which he is a relevant person.

(9) On receiving such representations about a reference, the PPF Ombudsman—

- (a) must consider them; and
- (b) if he considers that it is appropriate to exercise the powers in question in relation to the reference in the way proposed in the notification, give his reasons in writing to the relevant person making the representations.

(10) For the purposes of this regulation, a person is a relevant person in relation to a reference if he is—

- (a) the applicant;
- (b) the Board; or
- (c) a person notified under regulation 5(1)(b) in respect of the reference or required to be so notified.

Representation

18.—(1) An applicant, or a person notified of a reference of a reviewable matter under regulation 5(1)(b), may appoint a person to act as his representative for the purposes of these Regulations by sending written notice of the appointment to the PPF Ombudsman.

(2) Where an applicant or a person notified of a reference of a reviewable matter under regulation 5(1)(b)—

- (a) dies;
- (b) is a minor; or
- (c) is otherwise incapable of acting for himself,

the PPF Ombudsman may allow a person to represent, or to continue to represent, that person for the purposes of these Regulations.

(3) In any case where by virtue of this regulation a representative is acting on behalf of a person for the purposes of these Regulations, any reference to the person in these Regulations is to be read as a reference to the representative acting in his capacity as such, except where the context otherwise requires.

Restriction on use of documents and information provided for investigations

19. It is a condition of the supply or making available for inspection of any document or other information under these Regulations that any person to whom it is supplied or made available for inspection may only use it—

- (a) for the purposes of the reference;
- (b) if the PPF Ombudsman proposes to exercise or has exercised his power under regulation 17(1), (2) or (3) in respect of the reference, for the purposes of any other reference as to which he is exercising that power; or

- (c) if the PPF Ombudsman proposes to exercise or has exercised his power under regulation 17(5) to include in one determination—
 - (i) his determination of a reference of a reviewable matter under these Regulations; and
 - (ii) his determination of a matter referred to him under regulations made under section 214 of the Act (investigation by the PPF Ombudsman of complaints of maladministration),for the purposes of the matter referred to him under regulations made under section 214 of the Act.

Miscellaneous powers of the PPF Ombudsman

- 20.**—(1) The PPF Ombudsman may—
- (a) extend any period of time for doing any act under these Regulations except—
 - (i) the time for making a reference of a reviewable matter in any case where the reference relates to a reviewable matter listed in regulation 3(2);
 - (ii) the period of six months for giving a determination under regulation 6(3)(b) in respect of a reference of a reviewable matter; and
 - (iii) the time for giving notice under regulation 11(3) or (5); and
 - (b) at any stage of the investigation—
 - (i) order to be struck out or amended any reference of a reviewable matter or any written representation received in respect of such a reference on the grounds that it is trivial, frivolous, scandalous or vexatious; or
 - (ii) order the discontinuance of any investigation if he considers it appropriate to do so.
- (2) Before making any order under paragraph (1)(b), the PPF Ombudsman must—
- (a) send notice that he proposes to make it to the applicant or, as the case may be, the person who made the representation; and
 - (b) give him the opportunity to show cause why such an order should not be made.

Irregularities

- 21.**—(1) Any irregularity resulting from failure to comply with any provisions of these Regulations concerning any proceedings does not of itself render those proceedings void.
- (2) Clerical mistakes in any determination made or direction given under these Regulations or any error in such a document arising from an accidental slip or omission may be corrected by the PPF Ombudsman by certificate under his hand.

Substituted service

- 22.**—(1) This regulation applies if—
- (a) any person to whom any document is required to be sent or delivered for the purposes of these Regulations—
 - (i) cannot be found;
 - (ii) has died and has no known personal representative; or
 - (iii) is out of the United Kingdom; or
 - (b) for any other reason service on such a person cannot be readily effected.
- (2) The PPF Ombudsman may—

- (a) dispense with service on such a person; or
- (b) make an order for substituted service on such other person and in such form (whether by advertisement in a newspaper or otherwise) as he considers appropriate.

Signed by authority of the Secretary of State for Work and Pensions.

2005

Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a reviewable matter to be referred to, and investigated and determined by, the Ombudsman for the Board of the Pension Protection Fund (“the PPF Ombudsman”) following a reconsideration decision given by the Reconsideration Committee of the Board of the Pension Protection Fund under regulation 14(1) or 18(1) of the Pension Protection Fund (Review and Reconsideration of Reviewable Matters) Regulations 2005 (S.I.2005/669).

The Board of the Pension Protection Fund is established by section 107 of the Pensions Act 2004 (c. 35) (“the Pensions Act”) to provide compensation to members of certain occupational pension schemes in the event of insolvency of the scheme’s sponsoring employer and where the pension scheme is underfunded at a certain level. The PPF Ombudsman is established by section 209 of the Pensions Act.

Regulation 2 provides for a reviewable matter to be referred to the PPF Ombudsman.

Regulation 3 provides a time limit of 28 days for making a reference of a reviewable matter.

Regulation 4 makes provision in respect of the form and content of a reference of a reviewable matter.

Regulation 5 requires the PPF Ombudsman to acknowledge in writing his receipt of a reference to each party to the reference and sets out those matters which must be included in the acknowledgement. Regulation 5 also makes provision for the PPF Ombudsman to notify any persons who may be significantly adversely affected by his determination in respect of the reference of specified matters including the fact that the reference has been made, the grounds on which it has been made, and the right to make written representations in respect of the reference or to request and attend an oral hearing.

Regulation 6 requires the PPF Ombudsman to investigate a reviewable matter referred to him and to remit the matter to the Board with directions about what, if any, action the Board should take for the purposes of giving effect to a determination of the PPF Ombudsman. Regulation 6 also provides a time limit of two months from the date on which his investigation is concluded for the PPF Ombudsman to reach and give his determinations, which may be extended.

Regulation 7 makes general provision in respect of the conduct of investigations by the PPF Ombudsman including. In particular, regulation 7 enables the PPF Ombudsman to investigate the reference on the basis of written evidence before him without holding an oral hearing, to obtain an expert opinion in connection with any question arising from a reference made to him, to require by notice in writing the production of documents to him by any person in connection with a reference and to give directions about the conduct of an oral hearing held by him in respect of a reference.

Regulation 8 provides for the making of written representations in respect of a reference, a time limit for making such representations and for notice to be given to specified persons of any written representations received. Regulation 8 also provides a right to request an oral hearing and to attend and be heard at such an oral hearing.

Regulation 9 makes provision for the applicant to deliver a supplementary statement in respect of a reference at any time during the course of the PPF Ombudsman’s investigation of the reference.

Regulation 10 enables an applicant to withdraw or amend a reference or supplementary statement submitted by him in respect of such a reference with the consent of the PPF Ombudsman.

Regulation 11 provides for the notice and other formal requirements that must be complied with in cases where the PPF Ombudsman has decided that it is appropriate to hold an oral hearing in respect of a reviewable matter referred to him.

Regulation 12 makes general provision in respect of the attendance of witnesses at an oral hearing including provision for an oral hearing to be adjourned or for the hearing to be continued and the matter determined by the PPF Ombudsman where a party to the reference, a witness or other person notified of the date fixed for the hearing fails to attend that hearing.

Regulation 13 provides for an oral hearing to be held in public unless in the opinion of the PPF Ombudsman it is appropriate for such a hearing, or any part of it, to be held in private.

Regulation 14 enables a member of the Council of Tribunals to be present at an oral hearing held in respect of a reviewable matter referred to the PPF Ombudsman and to be present at any deliberations which take place immediately after such a hearing.

Regulation 15 makes provision for the PPF Ombudsman to pay reasonable costs to specified persons in specified circumstances. Regulation 15 also makes provision for the PPF Ombudsman to direct a person to pay the costs and expenses associated with the attendance of any person at an oral hearing if he is of the opinion that that person acted vexatiously or unreasonably in making, pursuing or resisting the reference.

Regulation 16 makes general provision about the reaching and giving of determinations and directions by the PPF Ombudsman including the PPF Ombudsman's powers on making a determination and giving directions. Regulation 16 also makes provision in respect of powers of the Board when dealing with a reviewable matter remitted to it by the PPF Ombudsman.

Regulation 17 makes provision for the PPF Ombudsman to combine references received in respect of the same reviewable matter and to make a single determination with directions in respect of all of them. Regulation 17 also enables the PPF Ombudsman to give one determination in respect of a reference made under these Regulations and a matter referred to him under regulations made under section 214 of the Act and to select one of a number of references as being representative of the interests involved in those references and give a single determination in respect of them. Regulation 17 also makes provision in respect of the binding effect of determinations and directions of the PPF Ombudsman.

Regulation 18 makes provision for an applicant or a person notified of a reference under regulation 5(1)(b) to appoint a person to act as his representative for the purposes of these Regulations. Regulation 18 also makes provision for the PPF Ombudsman to appoint a person to act as an applicant's representative in cases where the applicant dies, is a minor or is otherwise incapable of acting for himself.

Regulation 19 provides for restrictions on the use of information and documents provided for the purposes of an investigation.

Regulation 20 provides for the PPF Ombudsman to extend any period of time for doing an act under the Regulations except the time for making a reference in the case of a reviewable matter described in regulation 3(2) and the time for making his determinations as provided for in regulation 6.

Regulation 21 provides for the effect of any irregularities resulting from a failure to comply with these Regulations or any clerical errors in a determination made or direction given by the PPF Ombudsman. Regulation 21 also provides for the correction of any accidental errors occurring in any such document.

Regulation 22 makes provision for substituted service.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply. However, these Regulations have been made following consultation with the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992 (c. 53).

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Draft Legislation: *This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument:
The Pension Protection Fund (Reference of Reviewable Matters to the PPF Ombudsman) Regulations 2005 No. 2024*

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business.