

## STATUTORY INSTRUMENTS

# 1997 No. 358

## PENSIONS

### The Occupational and Personal Pension Schemes (Contracting-out etc: Review of Determinations) Regulations 1997

<i>Made</i>	- - - -	<i>17th February 1997</i>
<i>Laid before Parliament</i>		<i>24th February 1997</i>
<i>Coming into force</i>	- -	<i>6th April 1997</i>

The Secretary of State for Social Security in exercise of his powers under sections 170(8), 181(1), 182(2) and (3) and 183(1) of the Pension Schemes Act 1993<sup>M1</sup> and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals<sup>M2</sup>, hereby makes the following Regulations:

#### Marginal Citations

- M1** 1993 c. 48. Section 170(7) and (8) were inserted by paragraph 70(c) of Schedule 5 to the [Pensions Act 1995 \(c. 26\)](#). Section 181(1) is cited for the meaning given to "prescribe" and "regulations".
- M2** See section 185(8) of the Pension Schemes Act 1993 as amended by paragraph 80(f) of Schedule 5 to the Pensions Act 1995.

#### Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Occupational and Personal Pension Schemes (Contracting-out etc: Review of Determinations) Regulations 1997 and shall come into force on 6th April 1997.

(2) In these Regulations, unless the context otherwise requires—  
"the 1993 Act" means the Pension Schemes Act 1993;  
"the court" means, in England and Wales, the High Court and, in Scotland, the Court of Session.

#### Application of Regulations

2. These Regulations apply to any review under section 19 of the Social Security Administration Act 1992 of any question falling to be determined by the Secretary of State by virtue of section 170(7) of the 1993 Act (questions arising in connection with the issue, cancellation or variation of contracting-out certificates<sup>F1</sup>...and other questions falling to be determined by the Secretary of State under the 1993 Act, not being questions under section 170(1)(e) of that Act<sup>M3</sup>).

*Changes to legislation: The Occupational and Personal Pension Schemes (Contracting-out etc: Review of Determinations) Regulations 1997 is up to date with all changes known to be in force on or before 25 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

#### Textual Amendments

- F1** Words in [reg. 2](#) omitted (6.4.2012) by virtue of [The Pensions Act 2007 \(Abolition of Contracting-out for Defined Contribution Pension Schemes\) \(Consequential Amendments\) Regulations 2011 \(S.I. 2011/1245\)](#), regs. 1(2), [9](#)

#### Marginal Citations

- M3** By virtue of section 170(1)(e) of the Pension Schemes Act 1993, as inserted by section 151 of and paragraph 70(a)(iii) of Schedule 5 to the Pensions Act 1995, any question as to whether an employment is, or is to be treated as, contracted-out falls to be determined under section 17(1) of the [Social Security Administration Act 1992 \(c. 5\)](#) and reviewed accordingly.

### Applications to the Secretary of State for a review of a determination

**3.—(1)** An application to the Secretary of State for the review of a determination shall be made in writing and shall state—

- (a) the name and address of the applicant;
- (b) the names and addresses of the trustees or managers of the scheme;
- (c) particulars of the determination in respect of which a review is sought;
- (d) the reason why the applicant claims that he is a person interested in that determination;
- (e) the grounds on which review of the determination is sought.

(2) Notwithstanding paragraph (1), the Secretary of State may allow an application to be treated as properly made even if the requirements of that paragraph are not met.

(3) If, on receipt of an application for a review of a determination, the Secretary of State decides to refuse to review that determination he shall send written notice to the applicant of—

- (a) that refusal;
- (b) the reasons for it; and
- (c) the right of appeal to the court on a point of law.

(4) If, on receipt of an application for a review of a determination, the Secretary of State decides to review that determination he shall send written notice of the application and of his intention to review that determination to—

- (a) the applicant;
- (b) the trustees or managers of the scheme;
- (c) any other person (including a person who is an employer of persons in service in an employment to which the scheme applies) who in the opinion of the Secretary of State should be given such notice;

and the notice shall state that any person to whom it is given may request a formal hearing of the review and may make representations in connection with the review to the Secretary of State within 21 days of receipt of the notice.

### Formal hearings in connection with reviews

**4.—(1)** If an applicant for a review of a determination or any person to whom notice of the application has been given under paragraph (4) of regulation 3 requests a formal hearing of the application, the Secretary of State shall grant the request unless, after considering the grounds of the application and any reasons given for the request, he is satisfied that the review of the determination can properly be made without such a hearing.

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(2) If the Secretary of State is satisfied that the review can properly be made without a formal hearing, he shall inform the person making the request of its refusal and of the reason for that refusal and may proceed to review the determination without such a hearing, but he shall not proceed to make his review of the determination until he has allowed the person making the request at least 21 days to make any written submissions in connection with the review.

(3) If, in accordance with the provisions of paragraph (1), a request for a formal hearing has been granted, or if no request has been made but the Secretary of State is otherwise satisfied that a formal hearing is desirable, reasonable notice (being at least 21 days or such lesser period as the Secretary of State, with the agreement of all persons to whom notice of the hearing has been given, may think fit) of the time and place of the hearing shall be given to every person to whom notice of the application has been given under paragraph (4) of regulation 3.

(4) In any case in which a formal hearing of a review is held such hearing shall be in public except where the Secretary of State is satisfied that, by reason of the confidential or sensitive nature of matters raised, it is just and reasonable for the hearing or any part of it to be in private.

F<sup>2</sup>(5) .....

(6) Any person to whom notice of the hearing has been given under paragraph (3) shall be entitled to be heard at the hearing and may give evidence and call witnesses and shall be given an opportunity of putting questions directly to any witness called at the hearing.

(7) A person who has the right to be heard shall be entitled to be represented by another person whether legally qualified or not.

(8) The Secretary of State may, if he thinks fit, require any person to attend a hearing to give evidence or to produce documents reasonably required for determining the issue before him and may take evidence on oath and for that purpose administer oaths.

(9) If any person to whom notice of the hearing has been given under paragraph (3) fails to appear either in person or by a representative at the hearing, the Secretary of State may proceed with the hearing notwithstanding the absence of any such person or representative.

**Textual Amendments**

**F2** [Reg. 4\(5\)](#) omitted (3.11.2008) by virtue of [Tribunals, Courts and Enforcement Act 2007 \(Transitional and Consequential Provisions\) Order 2008 \(S.I. 2008/2683\)](#), art. 1, [Sch. 1 para. 80](#)

**Procedure for review decision**

5.—(1) The Secretary of State shall, subject to paragraph (2), allow a period of at least 21 days to elapse after the sending of the notices required by paragraph (4) of regulation 3 and he shall then proceed to review the determination as soon as practicable with a view to confirming, varying or revoking it having regard to any representations that he has received.

(2) The Secretary of State may allow a period of less than 21 days to elapse before proceeding to review the determination in accordance with paragraph (1) with the agreement of all persons to whom notice of the application has been given.

(3) If it appears to the Secretary of State that any review involves a question of special difficulty, he may take the advice and assistance of an assessor or assessors having the relevant professional qualifications.

(4) When the Secretary of State has made a determination on a review he shall record that determination in writing and as soon as practicable shall send notice in writing of—

- (a) the determination;
- (b) the reasons for it; and

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(c) the right to appeal to the court on a point of law,  
to every person to whom notice was sent under paragraph (4) of regulation 3.

**Review by the Secretary of State without an application being made**

6. In any case where the Secretary of State enters upon a review of a determination without an application for review being made the provisions of regulations 3(4), 4 and 5 shall apply as if the review were being entered upon consequent upon an application being made, save that the notice referred to under regulation 3(4) shall not refer to any such application and any reference to the applicant shall be disregarded.

**Revocations**

7. The Regulations listed in column 2 of the Schedule are revoked to the extent specified in column 3 of that Schedule.

Signed by authority of the Secretary of State for Social Security.

*Oliver Heald,*  
Parliamentary Under-Secretary of State,  
Department of Social Security

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## SCHEDULE

Regulation 7

## REVOCATIONS

<b>Column 1 Statutory Instrument Number</b>	<b>Column 2 Statutory Instrument</b>	<b>Column 3 Provision Revoked</b>
S.I. 1973/1776	The Occupational Pensions Board (Determinations and Review Procedure) Regulations 1973	The whole of the Regulations
S.I. 1976/185	The Occupational Pensions Board (Determinations and Review Procedure) Regulations 1976	The whole of the Regulations
S.I. 1978/1827	The Contracted-out Employment (Miscellaneous Provisions) (No.2) Regulations 1978	Regulation 3
S.I. 1981/129	The Contracting-out and Preservation (Further Provisions) Regulations 1981	Regulation 4
S.I. 1986/1716	The Contracting-out (Requisite Benefits—Consequential Provisions) Regulations 1986	Regulation 2
S.I. 1987/1114	The Personal and Occupational Pension Schemes (Consequential Provisions) Regulations 1987	Regulations 2 and 3
S.I. 1990/1141	The Personal and Occupational Pension Schemes (Miscellaneous Amendments) Regulations 1990	Regulation 2
S.I. 1994/1062	The Occupational and Personal Pension Schemes (Consequential Amendments) Regulations 1994	Schedule 2, paragraphs 1 and 3 and regulation 2 so far as it relates to them

**EXPLANATORY NOTE**

(This note is not part of the Regulations)

These Regulations provide for the procedure to be adopted in relation to any review of a determination concerning the issue, cancellation or variation of contracting-out certificates or

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appropriate scheme certificates or the review of certain other determinations by the Secretary of State under the Pension Schemes Act 1993 (apart from any question as to whether an employment is or is to be treated as contracted-out). The Regulations have been made following consultation with the Council on Tribunals.

Regulation 2 makes provision for the circumstances in which these Regulations apply.

Regulation 3 makes provision for the procedure to be followed in relation to an application.

Regulation 4 makes provision in relation to the holding of hearings.

Regulation 5 makes provision for the procedure relating to review decisions.

Regulation 6 makes provision for the same procedures to be adopted in relation to a review carried out without an application having been made.

Regulation 7 provides for revocations.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including these Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, 11th Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- Act cert. functs. trans. (pt.prosp.) by [1999 c. 2 s.1\(2\)Sch.2](#)