

**EXPLANATORY MEMORANDUM TO**  
**THE PENSIONS OMBUDSMAN (DISCLOSURE OF INFORMATION)**  
**(AMENDMENT OF SPECIFIED PERSONS) ORDER 2005**

**2005 No.2743**

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
  
2. **Description**
  - 2.1 This instrument concerns the Pensions Ombudsman's power to disclose information. The Pensions Ombudsman may disclose any information which he obtains for the purposes of an investigation that he is carrying out to any person who is included on the list in section 149(6) of the Pensions Schemes Act 1993, if the Ombudsman considers that the disclosure would enable or assist that person to discharge any of that person's functions.
  
  - 2.2 This instrument amends the list by adding the Financial Ombudsman Service and its ombudsmen as persons to whom the Pensions Ombudsman may disclose information.
  
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
  
4. **Legislative Background**
  - 4.1 During the passage of the Pensions Act 2004 the Department became aware that although the Pensions Ombudsman is able to disclose information to the Financial Services Authority, the Financial Ombudsman Service is not currently on the list of persons to whom the Pensions Ombudsman may disclose information.

The contact between the Pensions Ombudsman and the Financial Ombudsman Service already takes place, due to the nature of their work. There are occasions when both parties are required to discuss cases received, in order to establish which ombudsman's office would be appropriate to deal with them. In order to assist both offices in their functions, it would be useful if the Pensions Ombudsman could disclose relevant information gathered during his investigations.

- 4.2 Subsections (5), (6) and (7) of section 149 of the Pension Schemes Act 1993 concern the Pensions Ombudsman's power to disclose information. Subsection (5) enables him to disclose information to any person to whom subsection (6) applies. Subsection (7) is an order-making power, and includes (among other things) a power to amend subsection (6) by adding any person. This is the first use of this power.

## **5. Extent**

- 5.1 This instrument applies to Great Britain.

## **6. European Convention on Human Rights**

- 6.1 The Minister of State for Pensions Reform Stephen Timms Esq MP has made the following statement regarding Human Rights:

In my view the provisions of the Pensions Ombudsman (Disclosure of Information) (Amendment of Specified Persons) Order 2005 are compatible with the Convention rights.

## **7. Policy background**

- 7.1 There is already a great deal of interaction between the Pensions Ombudsman and the Financial Ombudsman Service (FOS); whilst the Pensions Ombudsman has jurisdiction relating to complaints of maladministration in pension schemes, FOS deals with complaints about the sales and marketing of pensions. Section 149(6) sets out the persons to whom the Pensions Ombudsman can disclose information and section 149(7) enables an order to be made to add to the list or exclude some already named, and specify the circumstances in which disclosure may be made.
- 7.2 Therefore the Pensions Ombudsman would like to be able to disclose information to the FOS, and the Secretary of State wishes to use the power provided in section 149(7) to amend subsection 6 and add the following persons:

- a body corporate established in accordance with paragraph 2(1) of Schedule 17 to the Financial Services and Markets Act 2000(1) (the scheme operator of the ombudsman scheme); and
- an ombudsman as defined in paragraph 1 of that Schedule (interpretation).

7.3 Earlier this year DWP consulted with key organisations in the pensions industry during the period 24 January 2005 to 6 March 2005 about draft Statutory Instruments relating to Internal Dispute Resolution procedures and also for disclosure by the Pensions Ombudsman.

7.4 The amendment was generally welcomed, although two organisations, the Association of Pension Lawyers and Tony King an Ombudsman in the Financial Ombudsman Service, voiced some concerns. FOS felt that the way the draft Order had been worded seemed unnecessarily restrictive. The draft Order only permitted disclosure to an individual Ombudsman as defined in paragraph 1 of schedule 17 to the Financial Services and Markets Act 2000 (FSMA), and not to any other member of staff of the Financial Ombudsman Service.

7.5 Accordingly the Order has been redrafted to enable the Pensions Ombudsman to disclose information to the Financial Ombudsman Service Ombudsmen themselves in pursuance of their functions, and to the scheme operator in pursuance of its functions.

## **8. Impact**

8.1 A regulatory impact assessment has not been prepared for this instrument as it has no impact on the cost of business, charities or voluntary bodies.

8.2 The impact on the public sector is nil.

## **9. Contact**

Dee Beard at the Department for Work and Pensions Tel: 020 7712 2768 or e-mail: [dee.beard1@dwp.gsi.gov.uk](mailto:dee.beard1@dwp.gsi.gov.uk) can answer any queries regarding the instrument.