
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Financial Assistance Scheme (“FAS”) is established by the Financial Assistance Scheme Regulations 2005 (S.I.2005/1986) (“the FAS Regulations”) to allow payments to be made to, or in respect of, certain members of certain occupational pension schemes where the liabilities of those schemes to, or in respect of, those members are unlikely to be satisfied in full.

These Regulations make provision for the Ombudsman for the Board of the Pension Protection Fund, or a Deputy PPF Ombudsman, (“the Ombudsman”) to investigate and determine appeals against review decisions made by the scheme manager of FAS.

Regulation 1 cites the title and sets out the commencement and extent provisions, and regulation 2 is the interpretation provision.

Regulation 3 provides for the Ombudsman to be appointed to investigate and determine appeals against determinations of the scheme manager under the Financial Assistance Scheme (Internal Review) Regulations 2005 (S.I. 2005/1994).

Regulation 4 specifies the persons who may appeal to the Ombudsman.

Regulation 5 specifies the time limits for appealing.

Regulation 6 prescribes the contents of a notice of appeal.

Regulation 7 sets out the procedure that must be followed by the Ombudsman on receipt of a notice of appeal.

Regulation 8 provides for what is to happen if an appeal is not duly made. The Ombudsman has a discretion to allow the appeal to proceed in certain circumstances.

Regulation 9 requires the Ombudsman to investigate the matters arising on an appeal and to determine what action, if any, the scheme manager should take.

Regulation 10 makes general provision in respect of the conduct of investigations and sets out the steps that the Ombudsman may take.

Regulation 11 provides for the making of written representations in respect of the appeal, a time limit for making such representations and for the existence of written representations to be publicised where the appeal relates to a scheme notification decision or a scheme eligibility decision. Regulation 12 makes further provision about written representations where the appeal relates to a scheme notification decision or a scheme eligibility decision. It enables the Ombudsman to consider whether the person making the written representations is an interested person and specifies the consequences of the Ombudsman’s decision.

Regulation 13 gives the parties and interested persons (where the appeal relates to a scheme notification decision or a scheme eligibility decision) the right to request an oral hearing and specifies the time limit for making such a request. It also sets out the procedure to be followed if a request for an oral hearing is refused. Regulation 14 makes further provision about requests for an oral hearing where the appeal relates to a scheme notification decision or a scheme eligibility decision. It enables the Ombudsman to consider whether the person requesting the hearing is an interested person and specifies the consequences of the Ombudsman’s decision.

Regulation 15 provides that the appellant, or, where applicable, the appellant’s representative, may submit a supplementary statement in respect of an appeal and provides for the Ombudsman to send a copy of it to the other parties to the appeal and (in the case of appeals relating to scheme notification

and scheme eligibility decisions) to publicise the existence of the supplementary statement to interested persons.

Regulation 16 enables an appellant (or his representative) to withdraw or amend a notice of appeal or a supplementary statement at any time during the course of the Ombudsman's investigation and sets out the procedure to be followed where the Ombudsman consents to the withdrawal or amendment.

Regulation 17 sets out the notice that must be given, and other requirements that must be complied with, in cases where the Ombudsman has decided to hold an oral hearing.

Regulation 18 makes general provision in respect of the attendance of parties and witnesses at an oral hearing. In particular, it specifies the steps that must be taken before the hearing and sets out what the Ombudsman may do if a party to an appeal does not attend an oral hearing and does not send written representations. It also deals with the Ombudsman's powers to examine witnesses, obtain documents and admit evidence. Regulation 19 makes further provision about attendance at an oral hearing where the appeal relates to a scheme notification decision or a scheme eligibility decision. It enables the Ombudsman to consider whether the person making the written representations is an interested person and specifies the consequences of the Ombudsman's decision.

Regulation 20 provides for an oral hearing to be held in public unless, in the opinion of the Ombudsman, it is appropriate for such a hearing, or any part of it, to be held in private.

Regulation 21 enables a member of the Council on Tribunals or a member of the Scottish Committee of the Council on Tribunals to be present at an oral hearing held in relation to an appeal and to be present during any deliberations which take place immediately after the hearing.

Regulation 22 enables the Ombudsman to pay reasonable costs and expenses to specified persons who attend an oral hearing; and to direct any party to an appeal, who, in his opinion, acted vexatiously or unreasonably, to pay reasonable costs and expenses to specified persons who attend an oral hearing in relation to the appeal.

Regulation 23 makes general provision about the steps that must be taken when the Ombudsman determines an appeal.

Regulation 24 provides that any determinations and directions given by the Ombudsman are binding on the parties to the appeal and, in the case of appeals relating to scheme notification and scheme eligibility decisions, on all interested persons.

Regulation 25 enables the Ombudsman to combine two or more appeals, where the appeal relates to a scheme notification decision or a scheme eligibility decision, in respect of the same matter, and to make a single determination with directions in respect of all of them. It also enables the Ombudsman to select one of a number of appeals as being representative of the interests involved in those appeals and to give a single determination in respect of them. Regulation 26 then makes further provision about combining appeals in relation to interested persons.

Regulation 27 provides for a party to an appeal to appoint a representative to act on his behalf. It also provides for the Ombudsman to appoint a person to act as a representative of a party to an appeal where the party dies or is otherwise incapable of acting for himself.

Regulation 28 imposes restrictions on the disclosure of information or documents supplied to any person under these Regulations. It also permits the Ombudsman to disclose, in certain circumstances, information obtained for the purpose of the appeal to the persons specified in the regulation.

Regulation 29 enables the Ombudsman to extend any period of time for doing an act under these Regulations and gives the Ombudsman powers in relation to trivial, frivolous, scandalous and vexatious documents. It also allows the Ombudsman to order the discontinuance of an investigation if he considers it appropriate to do so.

Regulation 30 provides that the Ombudsman must not delegate certain functions to any of his staff.

Regulation 31 permits the Ombudsman to publish a report of any investigation carried out under these Regulations.

Regulation 32 provides for the effect of any irregularities resulting from a failure to comply with these Regulations and for the correction of any clerical mistakes in a determination made or a direction given by the Ombudsman under these Regulations.

Regulation 33 provides for what is to happen if a person on whom documents are to be served either cannot be found or has died.

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 Pensions Act 2004 (c. 35) 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.

In accordance with the requirement in section 8 of the Tribunals and Inquiries Act 1992 (c. 53), the Secretary of State consulted the Council on Tribunals before making any procedural rules made under or by virtue of section 213 of the Act (regulation 22 of these Regulations is made under section 213(4)(d) of the Act, as modified by S.I. 2005/3256.

A Regulatory Impact Assessment has not been published for this instrument as it has only a negligible impact on business, charities and voluntary bodies.