

**2005 No. 3273****PENSIONS****The Financial Assistance Scheme (Appeals)  
Regulations 2005**

*Made - - - - 28th November 2005*

*Coming into force in accordance with regulation 1(1)*

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The Secretary of State for Work and Pensions makes the following Regulations in exercise of the powers conferred by sections 213(4)(d), 286(1) and (3)(g)(i) and (i), 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(**a**).

In accordance with section 8(1) of the Tribunals and Inquiries Act 1992(**b**), the Secretary of State has consulted the Council on Tribunals before making any procedural rules made under, or by virtue of, section 213(4)(d) of the Pensions Act 2004(**c**) in respect of the functions of the Ombudsman for the Board of the Pension Protection Fund.

In accordance with section 316(2)(h) and (n) of the Pensions Act 2004, a draft of this instrument was laid before Parliament and approved by a resolution of each House of Parliament.

This instrument contains regulations which 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 the regulations are made(**d**).

**Citation, commencement and extent**

**1.**—(1) These Regulations may be cited as the Financial Assistance Scheme (Appeals) Regulations 2005 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Northern Ireland.

**Interpretation**

**2.** In these Regulations—

“the Act” means the Pensions Act 2004;

“the FAS Regulations” means the Financial Assistance Scheme Regulations 2005(**e**);

“the FAS Internal Review Regulations” means the Financial Assistance Scheme (Internal Review) Regulations 2005(**f**);

“the FAS Information and Payments Regulations” means the Financial Assistance Scheme (Provision of Information and Administration of Payments) Regulations 2005(**g**);

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(a) 2004 c. 35. Sections 168, 190 and 203 are modified by S.I. 2005/1986 (see regulation 4 and paragraphs 4, 5 and 15 of Schedule 1); section 213(4)(d) is modified by regulation 3(3), and applied, as modified, by regulation 2, of S.I. 2005/3256; section 286 is modified in its application to multi-employer schemes by S.I. 2005/441 as amended by S.I. 2005/993 and 2005/2113; section 318(1) is cited because of the meaning there given to “prescribed” and “regulations”.

(b) 1992 c. 53.

(c) Regulation 22 of these Regulations is made under section 213(4)(d), as modified by regulation 3(3), and applied, as modified, by regulation 2, of S.I. 2005/3256.

(d) See section 317 of the Pensions Act 2004 (“the Act”) which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of the Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of the provisions of that Act by virtue of which the regulations are made.

(e) S.I. 2005/1986 as amended by S.I. 2005/3256.

(f) S.I. 2005/1994 as amended by S.I. 2005/3256.

(g) S.I. 2005/2189 as amended by S.I. 2005/3256.

“the Ombudsman” means the PPF Ombudsman or a Deputy PPF Ombudsman;

“appeal” means an appeal—

- (a) against a review decision or subsequent review decision; and
- (b) made to the Ombudsman under these Regulations;

“appellant” means any interested person who—

- (a) is entitled under regulation 4 to make an appeal; and
- (b) makes an appeal;

“beneficiary” means a qualifying member or, after his death, his survivor <sup>1</sup>or surviving dependant<sup>◀</sup>;

“Deputy PPF Ombudsman” means a person appointed under section 210(1) of the Act (deputy PPF Ombudsmen) to act as a deputy to the PPF Ombudsman;

<sup>2</sup>“early retiree assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not a person is entitled to a payment in accordance with regulation 17H of the FAS Regulations (payments to qualifying members receiving a pension from the qualifying pension scheme before entitlement to an annual payment or ill health payment).<sup>◀</sup>

<sup>3</sup>“ill health eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not the scheme manager is satisfied that a qualifying member is unable to work due to ill health and is likely to continue to be so unable to work until normal retirement age for the purposes of regulations 17A(1) (ill health payments) and 17B(1) (interim ill health payments) of the FAS Regulations;

“ill health payment assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to the amount of an ill health payment payable to a beneficiary in accordance with regulation 17A of, and <sup>2</sup>Schedule 2A, 5 or 6<sup>◀</sup> (determination of ill health and interim ill health payments) to, the FAS Regulations;<sup>◀</sup>

<sup>2</sup>“indexation assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to the amount of any annual increase to an annual payment or ill health payment determined in accordance with Schedules 2 to 6 to the FAS Regulations or as to the amount of any annual increases to a payment determined in accordance with Schedule 7 to the FAS Regulations;<sup>◀</sup>

“interested person”, in relation to an appeal, means any person who is entitled under regulation 6(1) of the FAS Internal Review Regulations<sup>(a)</sup> (applications for a review of a reviewable determination) to make an application for the review of the determination to which the review decision or subsequent review decision relates;

<sup>2</sup>“lump sum assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not regulation 17D of the FAS Regulations (lump sum payments) applies in respect of a qualifying member and the amount of any lump sum determined in accordance with regulation 17D of the FAS Regulations;<sup>◀</sup>

“member assessment decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to the amount of an annual payment payable to a qualifying member <sup>3</sup>or a survivor <sup>1</sup>or surviving dependant<sup>◀</sup> of that qualifying member<sup>◀</sup> of a qualifying pension scheme in accordance with regulation 17 of, and <sup>2</sup>Schedule 2, 3 or 4<sup>◀</sup> to, the FAS Regulations (annual payments; determination of annual and initial payments)<sup>(b)</sup>;

“member eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a

<sup>1</sup>Words inserted in defns. of “beneficiary” & “member assessment decision” by reg. 34(2)(a) of S.I. 2009/1851 as from 10.7.09.  
<sup>2</sup>Defns. of “early retiree assessment decision”, “indexation assessment decision” & “lump sum assessment decision” inserted & words substituted in defns. of “ill health payment assessment decision” & “member assessment decision” in reg. 2 by reg. 21(2)(a)-(e) of S.I. 2010/1149 as from 2.4.10.

<sup>3</sup>Defns. of “ill health eligibility decision” & “ill health payment assessment decision” and words in defn. of “member assessment decision” inserted by reg. 20(2)(a) of S.I. 2008/1903 as from 17.7.08.

(a) Regulation 6(1) is amended by regulations 5(4) and (8) of S.I. 2005/3256.

(b) Regulation 17 and Schedule 2 are amended by regulation 4(3) and (5), respectively, of S.I. 2005/3256.

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determination as to whether or not a member of a qualifying pension scheme is a qualifying member;

“party to an appeal” means any of the following—

- (a) the appellant;
- (b) the scheme manager; and
- (c) where an appeal relates to a scheme notification decision or a scheme eligibility decision and the occupational pension scheme in question has not completed winding up, the trustees or managers of that scheme, if the trustees or managers are not the appellant;

“potential beneficiary” means any person—

- (a) in respect of whom the information determined in accordance with the fourth item of the table in paragraph 1(2) of Schedule 1 to the FAS Information and Payments Regulations (information to be provided by appropriate persons) is to be provided to the scheme manager in accordance with regulation 3(3)(a) (information to be provided to the scheme manager) of those Regulations(a); but
- (b) who has not yet been determined to be a beneficiary;

“qualifying member” shall be construed in accordance with regulation 15 of the FAS Regulations (qualifying members);

“qualifying pension scheme” shall be construed in accordance with regulation 9 of the FAS Regulations (qualifying pension schemes);

“representative”, in relation to a party to an appeal, means a person appointed under regulation 27 to act as a representative of that party for the purposes of these Regulations;

“review decision” shall be construed in accordance with regulations 4 (duty of scheme manager to give a review decision)(b), 7(1) and (2) (combined or further applications) and 10 (review decisions or subsequent review decisions other than on application) of the FAS Internal Review Regulations;

►<sup>1</sup>“scheme beneficiaries decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to eligibility for and the amount of any payment in accordance with regulation 17G of the FAS Regulations (payments to beneficiaries other than qualifying members, survivors and surviving dependants);◄

“scheme eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not an occupational pension scheme is a qualifying pension scheme in accordance with Part 3 of the FAS Regulations (qualifying pension schemes);

“scheme manager” shall be construed in accordance with regulation 5 of the FAS Regulations (scheme manager);

“scheme notification decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not the details prescribed in regulation 14 of the FAS Regulations (notification of details) have been supplied to the scheme manager in the form and manner, and before the end of the notification period, prescribed in that regulation;

►<sup>1</sup>“section 134 or Article 118 directions decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to the giving of a direction under section 134 of the Act or Article 118 of the Pensions (Northern Ireland) Order 2005;◄

►<sup>2</sup>“severe ill health eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not the scheme manager is satisfied that a qualifying member is entitled to an annual payment under regulation 17(3C) or 17C of the FAS Regulations or—

<sup>1</sup>Defns. of “scheme beneficiaries decision” & “section 134 or Article 118 directions decisions” inserted “member assessment in reg. 2 by reg. 21(2)(f)-(g) of S.I. 2010/1149 as from 2.4.10.

<sup>2</sup>Defn. of “severe ill health eligibility decision” inserted in reg. 2 by reg. 12(2) of S.I. 2009/792 as from 27.3.09.

(a) Regulation 3(3)(a) and Schedule 1 are amended by regulation 6(3)(a) and (4), respectively, of S.I. 2005/3256.

(b) Regulation 4 is substituted by regulation 5(6) of S.I. 2005/3256.

- (a) is unable to work due to ill health;
- (b) is likely to continue to be so unable to work until normal retirement age; and
- (c) suffers from a progressive disease and as a consequence can reasonably be expected to die within five years but, as appropriate, not within six months,

for the purposes of an initial payment under regulation 18(1)(ab) of those Regulations;◀

“subsequent review decision” has the meaning given in regulation 7(2) of the FAS Internal Review Regulations;

▶<sup>1</sup>“surviving dependant” has the meaning given in regulation 2(1) of the FAS Regulations;◀

“survivor” has the meaning given in regulation 2(1) of the FAS Regulations(a) (interpretation).

▶<sup>1</sup>“survivor eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not a person is a survivor or surviving dependant of a qualifying member;◀

▶<sup>2</sup>“terminal illness eligibility decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to a determination as to whether or not the scheme manager is satisfied that a qualifying member is terminally ill for the purposes of regulations 17(3) (annual payments: terminally ill qualifying member) and 18(1)(a)(ii)(bb) (initial payments: terminally ill qualifying member) of the FAS Regulations.◀

▶<sup>3</sup>“valuation approval decision” means a review decision made by the scheme manager under the FAS Internal Review Regulations which relates to the approval of a valuation in respect of the qualifying scheme under regulation 25 of the FAS Regulations (approval of valuation);◀

<sup>1</sup>Defns. of “surviving dependant” & “survivor eligibility decision” inserted by reg. 34(2)(b) & (c) of S.I. 2009/1851 as from 10.7.09.

<sup>2</sup>Defn. of “terminal illness eligibility decision” inserted in reg. 2 by reg. 9 of S.I. 2006/3370 as from 16.12.06.

<sup>3</sup>Defn. of “valuation approval decision” inserted in reg. 2 by reg. 21(2)(h) of Part 4 of S.I. 2010/1149 as from 2.4.10.

### **Appointment of the Ombudsman to hear appeals against review decisions**

3. The following persons are appointed to investigate and determine appeals—
- (a) the PPF Ombudsman;
  - (b) any Deputy PPF Ombudsman.

### **Right to appeal against review decisions**

4. An appeal may be made to the Ombudsman by any interested person to whom a notice of the review decision or subsequent review decision is issued under regulation 16 of the FAS Internal Review Regulations (notice of a review decision or a subsequent review decision)(b).

### **Time for appealing**

5.—(1) An appeal must be made before the end of the period of two months beginning with the date on which the decision against which the appeal is made was given.

- (2) An appeal is made when a notice of appeal is received by the Ombudsman.

### **Notice of appeal**

6.—(1) A person wishing to make an appeal must send a notice of appeal to the Ombudsman.

- (2) The notice of appeal must be in writing and must include—
  - (a) the name and address of the appellant;

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(a) Regulation 2(1) is amended by regulation 4(2)(a) of S.I. 2005/3256.

(b) Regulation 16 is substituted by regulation 5(10) of S.I. 2005/3256.

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<sup>1</sup>Words inserted in reg. 6(2)(b) by reg. 20(3) of S.I. 2008/1903 as from 17.7.08.

<sup>2</sup>Words substituted in reg. 6(2)(b) by reg. 9 of S.I. 2006/3370 as from 16.12.06.

<sup>3</sup>Words inserted in reg. 6(2)(b) by reg. 34(3) of S.I. 2009/1851 as from 10.7.09.

<sup>4</sup>Words inserted in reg. 6(2)(b) by reg. 12(3) of S.I. 2009/792 as from 27.3.09.

<sup>5</sup>Words inserted in reg. 6(2)(b) & (3)(c) by reg. 21(3)(a)-(b) of S.I. 2010/1149 as from 2.4.10.

- (b) where the appeal relates to a member assessment decision ►<sup>1</sup>, an ill health payment assessment decision, an ill health eligibility decision◄ ►<sup>2</sup>, a member eligibility decision ►<sup>3</sup>, a survivor eligibility decision◄►<sup>4</sup>, a severe ill health eligibility decision ►<sup>5</sup>, an early retiree assessment decision, a lump sum assessment decision, an indexation assessment decision, a scheme beneficiaries decision◄◄ or a terminal illness decision◄, the name and address of the beneficiary or potential beneficiary if he is not the appellant;
- (c) where the appeal relates to a scheme notification decision or a scheme eligibility decision, the name and address of the trustees or managers if they are not the appellant;
- (d) if a representative is acting on behalf of the appellant in relation to the appeal, the name and address of that representative, and a statement as to whether that address is the address to be used for the purposes of the appeal;
- (e) the date of the review decision or subsequent review decision against which the appeal is made;
- (f) a copy of that decision; and
- (g) the grounds on which the appeal is made.

(3) The notice of appeal must be signed and dated by—

- (a) the appellant;
- (b) if a representative is acting on behalf of the appellant in relation to the appeal, that representative, and
- (c) where the appeal relates to a scheme notification decision ►<sup>5</sup>, a section 134 or Article 118 directions decision, a valuation approval decision◄ or a scheme eligibility decision, the trustees or managers of the scheme if they are not the appellant.

(4) A notice of appeal that is sent by means of an electronic communications network is treated as having been signed if the identity of the persons who are required by paragraph (3) to sign the notice of appeal can be established from the notice.

(5) The Ombudsman may give directions as to the manner in which the identity of those persons can be established from the notice of appeal.

(6) In paragraph (4), “electronic communications network” has the same meaning as in section 32 of the Communications Act 2003(a) (meaning of electronic communications networks and services).

**Procedure on receipt of notice of appeal**

7.—(1) As soon as practicable after receiving a notice of appeal that is made in accordance with regulations 5 and 6, the Ombudsman must—

- (a) send an acknowledgement of its receipt to each party to the appeal, or, if applicable, to that party’s representative; and
- (b) where an appeal relates to a scheme notification decision or a scheme eligibility decision, take reasonable steps to publicise to all other interested persons in relation to the appeal the fact that the appeal has been made.

(2) The acknowledgement must state the date on which the notice of appeal was received.

(3) The acknowledgement sent to the appellant, or, if applicable, to the appellant’s representative, must inform the appellant or representative—

- (a) that any information or documents provided in support of the notice of appeal will be—
  - (i) copied to the other parties to the appeal, and
  - (ii) where the appeal relates to a scheme notification decision or a scheme eligibility decision, made available for inspection by all other interested persons; and

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(a) 2003 c. 21.

- (b) about the binding nature of any determination or direction given or made by the Ombudsman, as described in regulation 24.

(4) When the Ombudsman sends an acknowledgement to the scheme manager, he must also send a copy of the notice of appeal.

(5) An acknowledgement sent by the Ombudsman under this regulation must be in writing, but, subject to that, may be made in such manner as the Ombudsman considers appropriate.

(6) Where the appeal relates to a scheme notification decision or a scheme eligibility decision, the publicity given under paragraph (1)(b) must—

- (a) inform interested persons who are not parties to the appeal of their right to—
  - (i) make written representations under regulation 11(1), and
  - (ii) request an oral hearing under regulation 13(1);
- (b) specify the date by which—
  - (i) those written representations must be received by the Ombudsman, and
  - (ii) a request for an oral hearing must be made,which must be not less than 28 days beginning with the day on which the Ombudsman publicises the existence of the notice of appeal; and
- (c) include information about the binding nature of the Ombudsman's decision, as described in regulation 24.

#### **Procedure where appeal not duly made**

**8.**—(1) As soon as practicable after receiving a notice of appeal that is not made in accordance with regulations 5 and 6, the Ombudsman must inform the appellant, or, if applicable, the appellant's representative, that it was not duly made and that, unless paragraph (2) applies, he will not be investigating the matter in question.

(2) The Ombudsman may investigate an appeal which is not made in accordance with regulation 6 where—

- (a) the appeal was made within the time limit specified in regulation 5;
- (b) the Ombudsman is satisfied that the appellant, or, if applicable, the appellant's representative, can amend the notice of appeal so that it is made in accordance with regulation 6 within such period as the Ombudsman requests; and
- (c) the notice of appeal is so amended.

#### **Duty to investigate and determine appeal**

**9.** Where an appeal is made in accordance with regulations 5 and 6, the Ombudsman must—

- (a) investigate and determine the matter; and
- (b) determine what action, if any, the scheme manager should take.

#### **Conduct of investigation: general**

**10.**—(1) Except as otherwise provided in these Regulations, the procedure for conducting an investigation into the matters arising on an appeal is such as the Ombudsman considers appropriate in the circumstances of the case.

(2) In particular, the Ombudsman may—

- (a) make such inquiries as he sees fit;
- (b) consider any evidence before him, including evidence which was not before the scheme manager when the determination in question was made or reviewed;
- (c) conduct an oral hearing in relation to the appeal, whether or not a request for an oral hearing is made under regulation 13;

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- (d) give such directions as to the conduct of any oral hearing as he sees fit;
  - (e) investigate the matters arising on the appeal on the basis of written evidence before him, without holding an oral hearing;
  - (f) refer any question which arises out of the appeal to a person who, in the Ombudsman's opinion, is able to provide an expert opinion in relation to that question; and
  - (g) deal together with any matters that—
  - (h) arise in respect of two or more appeals made to him, and
    - (i) are the same, or substantially the same.
- (3) Subject to paragraph (4), the Ombudsman may also—
- (a) obtain information from such persons and in such manner as he sees fit; and



- (b) in particular, by notice in writing, require any person who, in the Ombudsman's opinion, is able to produce documents relevant to the matters arising on the appeal to produce such documents in the manner, at the place and within the period specified in the notice.

(4) No person can be compelled for the purposes of any investigation to give evidence or produce any document which he could not be compelled to give or produce in civil proceedings before a court.

(5) In paragraph (4), "court" means—

- (a) in England and Wales, or in Northern Ireland, a county court; and
- (b) in Scotland, the sheriff court of any sheriffdom in Scotland.

### **Written representations: general**

**11.—(1)** The following persons may make written representations to the Ombudsman in relation to an appeal—

- (a) the parties to the appeal; and
- (b) where an appeal relates to a scheme notification decision or a scheme eligibility decision, any interested person in relation to the appeal who is not a party to the appeal.

(2) Any written representations made by a party to an appeal must be sent to the Ombudsman before the end of the period of 28 days beginning with the day on which the Ombudsman sent an acknowledgement of receipt of notice of appeal to that party under regulation 7.

(3) Where an appeal relates to a scheme notification decision or a scheme eligibility decision, any written representations made by an interested person who is not a party to the appeal must be sent to the Ombudsman by the date specified by the Ombudsman in the publicity given under regulation 7(1)(b).

(4) Paragraph (5) applies to a person who has received a reply from the Ombudsman under regulation 14(3) or 26(3) stating that the Ombudsman is satisfied that that person is an interested person in relation to the appeal.

(5) Any written representations made by a person to whom this paragraph applies must be sent to the Ombudsman before the end of—

- (a) the period specified in paragraph (3); or
- (b) the period of 14 days beginning with the day on which the Ombudsman sent the reply under regulation 14(3) or 26(3) to that person,

whichever is later.

(6) As soon as practicable after receiving written representations in accordance with the provisions of this regulation, the Ombudsman must—

- (a) send a written acknowledgement of the receipt of the written representations to the person who made the representations;
- (b) send a copy of the written representations to all parties to the appeal (other than to a party who made the representations in question); and
- (c) where the appeal relates to a scheme notification decision or a scheme eligibility decision, take reasonable steps to publicise to all other interested persons in relation to the appeal—
  - (i) the existence of the written representations, and
  - (ii) any other information the Ombudsman considers appropriate.

**Further provisions relating to written representations where appeal relates to scheme notification decision or scheme eligibility decision**

**12.**—(1) This regulation applies where an appeal relates to a scheme notification decision or a scheme eligibility decision.

(2) Any written representations sent by a person who is not a party to the appeal must state—

- (a) the name and address of the person making the written representations;
- (b) why that person considers himself to be an interested person in relation to the appeal and must include evidence in support (where it is available); and
- (c) the name and address of any representative acting on the person's behalf and whether that address is the address to be used for the purposes of the appeal.

(3) As soon as practicable after receiving written representations from a person who is not a party to the appeal, the Ombudsman must send a reply to that person.

(4) The reply must state—

- (a) whether the Ombudsman is satisfied that the person who sent the written representations is an interested person in relation to the appeal; and
- (b) the reasons for that decision.

(5) Before the Ombudsman sends a reply which states that he is not satisfied that the person who sent the written representations is an interested person in relation to the appeal, he may give that person an opportunity to submit more details in support of his claim.

(6) Where the Ombudsman sends a reply which states that he is not satisfied that the person who sent the written representations is an interested person in relation to the appeal, that person shall not take any further part in the appeal.

(7) Where the Ombudsman sends a reply which states that he is satisfied that the person who sent the written representations is an interested person in relation to the appeal—

- (a) he must also send to the interested person a copy of the notice of appeal and any other written representations which he has received in relation to the appeal; and
- (b) the interested person is to be treated as a party to the appeal for the purposes of regulations 7(3)(a)(i), 13 (except paragraph (3)), 15(2)(a), 16(4)(a), 17(1), (2), (5)(b), (7) and (8)(b), 18(1) to (5), 19(2) and (11), 22(3) and (4), 23(10) and (12)(a), 24(a), 25(5), (7), (8) and (9), 27(1) and (2) and 29(1).

(8) A reply sent by the Ombudsman under this regulation must be in writing, but, subject to that, may be made in such manner as the Ombudsman considers appropriate.

**Request for oral hearing: general**

**13.**—(1) The following persons may request the Ombudsman to hold an oral hearing in relation to an appeal—

- (a) a party to an appeal; and
- (b) where the appeal relates to a scheme notification decision or a scheme eligibility decision, any other interested person in relation to the appeal.

(2) A request to the Ombudsman to hold an oral hearing must be made in writing.

(3) A request for an oral hearing made by a party to the appeal, or, if applicable, the party's representative, must be sent to the Ombudsman before the end of the period of 28 days beginning with the day on which the Ombudsman sent an acknowledgment of receipt of notice of appeal to that party under regulation 7.

(4) Where an appeal relates to a scheme notification decision or a scheme eligibility decision, any request for an oral hearing made by an interested person who is not a party to the appeal must be sent to the Ombudsman within the period specified by the Ombudsman in the publicity given under regulation 7(1)(b).

(5) Paragraph (6) applies to a person who has received a reply from the Ombudsman under regulation 12(3) or 26(3) stating that the Ombudsman is satisfied that that person is an interested person in relation to the appeal.

(6) A request for an oral hearing made by a person to whom this paragraph applies must be sent to the Ombudsman before the end of—

- (a) the period specified in paragraph (4); or
- (b) the period of 14 days beginning with the day on which the Ombudsman sent the reply under regulation 12(3) or 26(3) to that person,

whichever is later.

(7) If the Ombudsman decides to refuse a request for an oral hearing, he must give written reasons for his refusal to the party or interested person making the request.

**Further provisions relating to request for oral hearing where appeal relates to scheme notification decision or scheme eligibility decision**

**14.—(1)** This regulation applies where an appeal relates to a scheme notification decision or a scheme eligibility decision.

(2) Any request for an oral hearing made by a person who is not a party to the appeal (or who is not treated as such under any provision of these Regulations) must be in writing and must state—

- (a) the name and address of the person requesting the hearing;
- (b) why that person considers himself to be an interested person in relation to the appeal and must include evidence in support (where it is available); and
- (c) the name and address of any representative acting on the person's behalf and whether that address is the address to be used for the purposes of the appeal.

(3) As soon as practicable after receiving a request for an oral hearing from a person who is not a party to the appeal, the Ombudsman must send a reply to that person.

(4) The reply must state—

- (a) whether the Ombudsman is satisfied that the person who sent the request for an oral hearing is an interested person in relation to the appeal; and
- (b) the reasons for that decision.

(5) Before the Ombudsman sends a reply which states that he is not satisfied that the person who sent the request for an oral hearing is an interested person in relation to the appeal, he may give that person an opportunity to submit more details in support of his claim.

(6) Where the Ombudsman sends a reply which states that he is not satisfied that the person who sent the request for an oral hearing is an interested person in relation to the appeal, that person shall not take any further part in the appeal.

(7) Where the Ombudsman sends a reply which states that he is satisfied that the person who sent the request for an oral hearing is an interested person in relation to the appeal—

- (a) he must also send to the interested person a copy of the notice of appeal and any written representations which he has received in relation to the appeal; and

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- (b) the interested person is to be treated as a party to the appeal for the purposes of regulations 7(3)(a)(i), 11(1)(a) and (3), 12(2), 15(2)(a), 16(4)(a), 17(1), (2), (5)(b), (7) and (8)(b), 18(1) to (5), 19(2) and (11), 22(3) and (4), 23(10) and (12)(a), 24(a), 25(5), (7), (8) and (9), 27(1) and (2) and 29(1).

(8) A reply sent by the Ombudsman under this regulation must be in writing, but, subject to that, may be made in such manner as the Ombudsman considers appropriate.

**Delivery of supplementary statement**

**15.**—(1) If the Ombudsman consents, the appellant, or, if applicable, the appellant's representative, may, at any time during the Ombudsman's investigation of the matters arising on an appeal, submit a supplementary statement in writing in respect of the appeal.

(2) As soon as practicable after receiving a supplementary statement, the Ombudsman must—

- (a) send a copy of it to the other parties to the appeal; and
- (b) where the appeal relates to a scheme notification decision or a scheme eligibility decision, take reasonable steps to publicise to all other interested persons in relation to the appeal—
  - (i) the existence of the supplementary statement, and
  - (ii) any other information the Ombudsman considers appropriate.

**Withdrawal and amendment of notice of appeal or supplementary statement**

**16.**—(1) The appellant, or, if applicable, the appellant's representative, may, at any time during the Ombudsman's investigation of the matters arising on an appeal, give notice in writing to the Ombudsman that he proposes to—

- (a) withdraw—
  - (i) the appeal, or
  - (ii) a supplementary statement; or
- (b) amend the content of—
  - (i) the notice of appeal, or
  - (ii) a supplementary statement.

(2) A notice given in accordance with paragraph (1)(b) must include notification of the proposed amendment.

(3) The proposed withdrawal or amendment may only be made with the Ombudsman's consent.

(4) As soon as practicable after giving consent under this regulation, the Ombudsman must—

- (a) notify the other parties to the appeal and, where applicable, send them a copy of any amended—
  - (i) notice of appeal, or
  - (ii) supplementary statement; and
- (b) where the appeal relates to a scheme notification decision or a scheme eligibility decision, take reasonable steps to publicise to all other interested persons in relation to the appeal—
  - (i) the existence of the withdrawal or amendment, and
  - (ii) any other information the Ombudsman considers appropriate.

**Time and place of oral hearings**

**17.**—(1) If the Ombudsman decides that it is appropriate to hold an oral hearing in connection with his investigation of the matters arising on an appeal, he must fix the

time and place of the hearing, having due regard to any representations made to him by each party to the appeal, or, if applicable, the party's representative, about the time and place that would be convenient to that party or that representative.

(2) The Ombudsman must send a notice of the time and place of the hearing to each party to the appeal, or, if applicable, to a party's representative.

(3) Where the appeal relates to a scheme notification decision or a scheme eligibility decision, the Ombudsman must take reasonable steps to publicise the time and place of the hearing to all other interested persons in relation to the appeal.

(4) A notice under paragraph (2) must be sent—

- (a) where the appeal relates to a member assessment decision <sup>1</sup>, a member eligibility decision <sup>2</sup>, a survivor eligibility decision <sup>3</sup>, a section 134 or Article 118 directions decision, a valuation approval decision, an early retiree assessment decision, a lump sum assessment decision, an indexation assessment decision, a scheme beneficiaries decision <sup>4</sup>, a severe ill health eligibility decision or a terminal illness decision not later than—

- (i) 21 days before the date of the hearing, or  
(ii) by any later date agreed to by the parties to the appeal; or

- (b) where the appeal relates to a scheme notification decision or a scheme eligibility decision, not later than seven weeks before the date of the hearing.

(5) The Ombudsman must include with a notice under paragraph (2), and in any publicity given under paragraph (3), a statement explaining—

- (a) the purpose of the hearing; and  
(b) the rights and duties of—  
(i) each party to the appeal, and  
(ii) any interested person in relation to the appeal who is not a party to the appeal,

as set out in regulations 18 and 19.

(6) Any publicity given under paragraph (3) must also specify the date by which an interested person must give notice to the Ombudsman under regulation 19(2) if he wishes to make representations at the hearing.

(7) If the Ombudsman considers it necessary to alter the time or place of a hearing, he must—

- (a) send a notice of the alteration to each party to the appeal, or, if applicable, to that party's representative; and  
(b) where the appeal relates to a scheme notification decision or a scheme eligibility decision, take reasonable steps to publicise the alteration to all other interested persons in relation to the appeal.

(8) A notice of the alteration must be sent not later than—

- (a) seven days before—  
(i) the date on which the hearing was to have taken place, or  
(ii) if it is to be held earlier, the date on which the hearing will now take place; or  
(b) any later date agreed to by the parties to the appeal.

(9) A notice under paragraph (2) or (7)(a) must be in writing, but, subject to that, may be sent in such manner as the Ombudsman considers appropriate.

(10) The Ombudsman may, before the conclusion of a hearing, adjourn the hearing if he considers it necessary to do so.

(11) If a hearing is so adjourned, the Ombudsman is not required by this regulation to give notice of, or publicise, the time and place for the resumption of the hearing if the time and place for resumption of the hearing are announced before the adjournment.

<sup>1</sup>Words substituted in reg. 17(4)(a) by reg. 9 of S.I. 2006/3370 as from 16.12.06.

<sup>2</sup>Words inserted in reg. 17(4)(a) by reg. 34(3) of S.I. 2009/1851 as from 10.7.09.

<sup>3</sup>Words inserted in reg. 17(4)(a) by reg. 21(4) of S.I. 2010/1149 as from 2.4.10.

<sup>4</sup>Words inserted in reg. 17(4)(a) by reg. 12(4) of S.I. 2009/792 as from 27.3.09.

**Attendance at oral hearings: general**

**18.**—(1) At an oral hearing, the following persons may make oral representations and call any witnesses to give evidence that is relevant to the matter being investigated—

- (a) each party to the appeal, or, if applicable, that party's representative; and
- (b) where the appeal relates to a scheme notification decision or a scheme eligibility decision, any interested person in relation to the appeal who is not a party to the appeal.

(2) Not later than 14 days before the date of the hearing, each party to the appeal, or, if applicable, his representative, must—

- (a) inform the Ombudsman in writing about whether the party intends—
  - (i) to attend, or be represented at, the oral hearing, and
  - (ii) to call any witnesses to give evidence at the hearing; and
- (b) if the party intends to call any witnesses at the hearing, provide the Ombudsman with—
  - (i) the names of those witnesses, and
  - (ii) a written summary of the evidence of those witnesses (“witness summary”).

(3) Any party to the appeal who decides not to attend, or be represented at, an oral hearing may send written representations for the purpose of the hearing to the Ombudsman not later than 14 days before the date of the hearing.

(4) As soon as practicable after receiving a witness summary or written representations under this regulation, the Ombudsman must—

- (a) send a copy of the witness summary or written representations to the other parties to the appeal; and
- (b) where the appeal relates to a scheme notification decision or a scheme eligibility decision, take reasonable steps to publicise to all interested persons in relation to the appeal—
  - (i) the existence of the witness summary or written representations, and
  - (ii) any other information the Ombudsman considers appropriate.

(5) If the Ombudsman was informed of any party's intention to attend or be represented at the hearing and that party does not attend, is not represented and has not sent written representations in accordance with paragraph (3), the Ombudsman may—

- (a) adjourn the hearing; or
- (b) conduct the hearing and determine the matter on the basis of the evidence before him, without providing a further opportunity for that party to make oral or written representations in respect of it.

(6) For the purposes of an oral hearing, the Ombudsman has the same power as a court in respect of—

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

(7) At an oral hearing, the Ombudsman—

- (a) may 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
- (b) must admit evidence that—
  - (i) would be admissible in such proceedings, and
  - (ii) is relevant.

- (8) In paragraphs (6) and (7), “court” means—
- (a) in England and Wales, or in Northern Ireland, a county court; and
  - (b) in Scotland, the sheriff court of any sheriffdom in Scotland.

**Further provisions relating to attendance at oral hearings where appeal relates to scheme notification decision or scheme eligibility decision**

**19.**—(1) This regulation applies where an appeal relates to a scheme notification decision or a scheme eligibility decision.

(2) An interested person in relation to an appeal who is not a party to the appeal (or who is not treated as such under any provision of these Regulations) must give notice to the Ombudsman if he wishes to—

- (a) make oral representations at the oral hearing; or
- (b) send written representations for the purpose of the oral hearing.

(3) A notice under paragraph (2) must be sent to the Ombudsman not later than 21 days before the date of the hearing.

(4) A notice under paragraph (2) must be in writing and must—

- (a) state the name and address of the person giving the notice;
- (b) state why that person considers himself to be an interested person in relation to the appeal and must include evidence in support (where it is available);
- (c) state the name and address of any representative acting on the person’s behalf and whether that address is the address to be used for the purposes of the appeal;
- (d) inform the Ombudsman whether the person intends to call any witnesses to give evidence at the hearing and, if so, the names of those witnesses;
- (e) include a written summary of the evidence that the person intends to give at the hearing or which will be given by witnesses on his behalf; and
- (f) include any written representations which the person wishes to make at the hearing.

(5) As soon as practicable after receiving notice from a person under paragraph (2), the Ombudsman must send a reply to that person.

(6) The reply must state—

- (a) whether the Ombudsman is satisfied that the person who sent the notice is an interested person in relation to the appeal; and
- (b) the reasons for that decision.

(7) Before the Ombudsman sends a reply which states that he is not satisfied that the person who gave the notice is an interested person, he may give that person an opportunity to submit more details in support of his claim.

(8) Where the Ombudsman sends a reply which states that he is not satisfied that the person who gave the notice is an interested person, that person shall not take any further part in the appeal.

(9) Where the Ombudsman sends a reply which states that he is satisfied that the person who gave the notice is an interested person—

- (a) he must also send to the person a copy of—
  - (i) the notice of appeal, and
  - (ii) any written representations and other documents which he has already received in relation to the appeal; and
- (b) the interested person is to be treated as a party to the appeal for the purposes of regulations 7(3)(a)(i), 11(1)(a) and (3), 15(2)(a), 16(4)(a), 17(7) and (8)(b), 18(1) to (5), 22(3) and (4), 23(10) and <sup>1</sup>(12)(2), <sup>1</sup>(a), 24(a), 25(5), (7), (8) and (9), 27(1) and (2) and 29(1).

<sup>1</sup>Words inserted in reg. 19(9)(b) by reg. 9 of S.I. 2006/3370 as from 16.12.06.

(10) A reply sent by the Ombudsman under this regulation must be in writing, but, subject to that, may be made in such manner as the Ombudsman considers appropriate.

(11) As soon as practicable after the Ombudsman sends a reply which states that he is satisfied that the person who gave the notice under paragraph (2) is an interested person in relation to the appeal, he must send to the other parties to the appeal a copy of—

- (a) the notice under paragraph (2); and
- (b) any documents sent to the interested person under paragraph (9)(a) that have not previously been sent to the other parties.

#### **Oral hearings usually to be held in public**

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

(2) Where an oral hearing, or any part of an oral hearing, is held in private, the Ombudsman may permit any person to attend—

- (a) that hearing; or
- (b) that part of the hearing that is held in private.

(3) The Ombudsman may exclude from an oral hearing any person whose conduct has disrupted, or is likely to disrupt, the hearing.

#### **Council on Tribunals**

**21.** A member of the ►<sup>1</sup>Administrative Justice and Tribunals Council◄, or a member of the Scottish Committee of the ►<sup>1</sup>Administrative Justice and Tribunals Council◄, may—

- (a) attend an oral hearing held by the 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 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**

**22.**—(1) Where, under regulation 10(2)(f), the Ombudsman refers a question arising on an appeal to a person who, in his opinion, is able to provide an expert opinion in relation to that question, the Ombudsman may make a payment in respect of the reasonable costs or expenses incurred by that person in connection with that referral.

(2) Where an oral hearing is held, the Ombudsman may pay any person specified in paragraph (3) such amount as he considers reasonable in respect of costs or expenses reasonably incurred in connection with the attendance of that person at an oral hearing.

(3) The persons to whom the Ombudsman may pay an amount in respect of costs or expenses are—

- (a) any party to the appeal, other than the scheme manager;
- (b) a witness who has been requested to attend the hearing and give evidence; and
- (c) any representative of a party.

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

- (a) any party to the appeal, or, if applicable, that party's representative, acted vexatiously;
- (b) the conduct of the appellant in making or pursuing the appeal was unreasonable; or

<sup>1</sup>Words substituted in reg. 21 by art. 302 of S.I. 2008/2683 as from 3.11.08.



(c) the conduct of the scheme manager in opposing the appeal was unreasonable,

the Ombudsman may direct any party who, or whose representative, acted vexatiously or unreasonably, to pay to any person mentioned in paragraph (3) such amount as the Ombudsman considers reasonable in respect of the costs and expenses reasonably incurred by that person in connection with that person's attendance at the hearing.

(5) The Ombudsman may only make a payment under paragraph (2) or (3) if he gave prior approval for the costs and expenses to be incurred.

(6) The Ombudsman may give a direction to the appellant under paragraph (4) despite the fact that the appellant has withdrawn the appeal.

(7) The Ombudsman shall not give a direction to a person under paragraph (4) without first giving that person an opportunity to make representations.

### **Reaching and giving determinations and consequential directions**

**23.—**(1) If the Ombudsman determines that the decision of the scheme manager in relation to the matters arising on the appeal was reached correctly, the Ombudsman must determine that it is not appropriate for the scheme manager to take any action in relation to the matter as a result of the appeal.

(2) A determination made under paragraph (1) must be in writing and must include—

- (a) a statement of the reasons for the determination; and
- (b) a statement of any legislation relied on by the Ombudsman in reaching the determination.

(3) Paragraphs (4) to (9) apply if the Ombudsman considers that the decision of the scheme manager in relation to the matters arising on the appeal was not reached correctly.

(4) The Ombudsman must—

- (a) determine what action, if any, is the appropriate action for the scheme manager to take in relation to the matter; and
- (b) remit the matter to the scheme manager with directions for the scheme manager—
  - (i) to vary the determination, direction or other decision made by the scheme manager, or
  - (ii) to revoke and replace the determination, direction or other decision made by the scheme manager.

(5) The Ombudsman may direct—

- (a) that—
  - (i) any determination, direction or other decision which is to be made by the scheme manager in accordance with any determination made, or direction given, by the Ombudsman, or
  - (ii) any variation, revocation or substitution of the scheme manager's determination, direction or other decision which is to be made by the scheme manager in accordance with any determination made, or direction given, by the Ombudsman,

is to be treated as if it were made at such time (which may be at a time prior to the Ombudsman's determination or direction) as the Ombudsman considers appropriate; and

- (b) that any notice varied, substituted, issued or given by the scheme manager in accordance with any determination made, or direction given, by the Ombudsman is to be treated as if it—
  - (i) were issued or given at such time (which may be a time prior to the Ombudsman's determination) as the Ombudsman considers appropriate, and

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(ii) becomes binding for the purposes of these Regulations at the time at which the Ombudsman makes his determination or gives his direction, or at such later time as the Ombudsman considers appropriate.

(6) The Ombudsman may direct the scheme manager to take, or refrain from taking, such other steps as the Ombudsman may specify.

(7) 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 scheme manager is directed to—
  - (i) vary or revoke a determination, direction or other decision that was previously made by the scheme manager, or
  - (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 Ombudsman in reaching the determination.

(8) The scheme manager has the power to do anything that the Ombudsman directs under this regulation.

(9) For the purpose of dealing with any matter remitted to ►<sup>1</sup>it◀, the scheme manager may exercise the powers under Chapter 5 of Part 2 of the Act (gathering information)—

- (a) as specified in regulation 4(2)(d) of the FAS Regulations (information gathering powers); and
- (b) as modified under Schedule 1 to those Regulations for the purposes of those Regulations<sup>(a)</sup>.

(10) The Ombudsman must—

- (a) send to each party to the appeal, or if applicable, that party's representative, a copy of the determination and any directions; and
- (b) where the appeal relates to a scheme notification decision or a scheme eligibility decision, take reasonable steps to publicise the determination and any directions to all other interested persons.

(11) Paragraph (12) applies where the scheme manager is directed by the Ombudsman under this regulation to—

- (a) vary a previous determination, direction or other decision of his; or
- (b) replace such a determination, direction or other decision with a different determination, direction or other decision.

(12) Where this paragraph applies, the scheme manager must—

- (a) send a copy of the varied or replacement determination, direction or other decision to the other parties to the appeal and to the Ombudsman; and
- (b) where an appeal relates to a scheme notification decision or a scheme eligibility decision, take reasonable steps to publicise the varied or replacement determination, direction or other decision to all other interested persons in relation to the appeal.

#### **Binding nature of Ombudsman's determination**

**24.** Subject to the right of appeal provided under section 217(1) of the Act<sup>(b)</sup> (determinations of the PPF Ombudsman), any determinations and directions given or made by the Ombudsman under regulation 23 are binding on—

<sup>1</sup>Words in reg. 23(9) substituted by reg. 34(4) of S.I. 2009/1851 as from 10.7.09.

(a) See also regulation 4(3) and (5) of, and paragraphs 5 to 16 of Schedule 1 to, S.I. 2005/1986.

(b) Section 217(1) is modified by regulation 3(6), and applied, as modified, by regulation 2, of S.I. 2005/3256.

- (a) the parties to the appeal; and
- (b) where an appeal relates to a scheme notification decision or a scheme eligibility decision, all other interested persons in relation to the appeal.

**Combining appeals where appeal relates to scheme notification decision or scheme eligibility decision**

25.—(1) Where, in relation to an occupational pension scheme—

- (a) two or more appeals which relate to a scheme notification decision or a scheme eligibility decision are made to the Ombudsman; and
- (b) those appeals are made on the same, or substantially the same, grounds and are supported by the same, or substantially the same, evidence,

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

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

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

(3) Where an appeal which relates to a scheme notification decision or a scheme eligibility decision (“the first appeal”) has been determined under these Regulations, the Ombudsman may make determinations, and give directions, on the same basis in respect of other such appeals 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 appeal.

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

(5) If the Ombudsman proposes to exercise the powers under paragraph (1), (2) or (3), he must—

- (a) notify the parties to the appeal, or, if applicable, the parties’ representatives, of the proposal and inform them of their rights under paragraph (7); and
- (b) take reasonable steps to publicise the proposal to all other interested persons in relation to the appeal and inform them of their rights under paragraph (7).

(6) A notification under paragraph (5)(a) must be in writing, but, subject to that, may be made in such manner as the Ombudsman considers appropriate.

(7) Any party to the appeal, or, if applicable, a party’s representative, or any interested person in relation to the appeal, may send written representations to the Ombudsman objecting to the Ombudsman’s proposal to exercise his powers under paragraph (1), (2) or (3).

(8) Any party, or, if applicable, representative, must send the written representations objecting to the proposal before the end of the period of 14 days beginning with the day on which the party, or, if applicable, the representative, is notified under paragraph (5)(a).

(9) Any interested person who is not a party to the appeal must send any written representations objecting to the proposal before the end of the period of 28 days beginning with the day on which the proposal is publicised under paragraph (5)(b).

(10) On receiving any written representations sent in accordance with paragraph (8) or (9), the Ombudsman must—

- (a) consider the written representations; and

- (b) if he considers that it is appropriate to exercise the powers in question in relation to the appeal in the way proposed in the notification, give his reasons in writing to the person making the representations.

**Further provisions relating to combining appeals where appeal relates to scheme notification decision or scheme eligibility decision**

**26.—**(1) This regulation applies where an appeal relates to a scheme notification decision or a scheme eligibility decision.

(2) Where a person who is not a party to the appeal (or who is not treated as such under any provision of these Regulations) objects to a proposal by the Ombudsman to exercise his powers under regulation 25(1), (2) or (3), the objections must state—

- (a) the name and address of the person making the objection;
- (b) why that person considers himself to be an interested person in relation to the appeal and must include evidence in support (where it is available); and
- (c) the name and address of any representative acting on the person's behalf and whether that address is the address to be used for the purposes of the appeal.

(3) As soon as practicable after receiving objections from a person under paragraph (2), the Ombudsman must send a reply to that person.

(4) The reply must state—

- (a) whether the Ombudsman is satisfied that the person who sent the objections is an interested person in relation to the appeal; and
- (b) the reasons for that decision.

(5) Before the Ombudsman sends a reply which states that he is not satisfied that the person who sent the objections is an interested person in relation to the appeal, he may give that person an opportunity to submit more details in support of his claim.

(6) Where the Ombudsman sends a reply which states that he is not satisfied that the person who sent the objections is an interested person, that person shall not take any further part in the appeal.

(7) Where the Ombudsman sends a reply which states that he is satisfied that the person who sent the objections is an interested person—

- (a) he must also send to the interested person a copy of—
- (i) the notice of appeal, and
- (ii) any written representations and other documents which the Ombudsman has already received in relation to the appeal; and
- (b) the interested person is to be treated as a party to the appeal for the purposes of regulations 7(3)(a)(i), <sup>1</sup>11(1)(a) and (3), <sup>1</sup>12(2), 13 (except paragraph (3)), 15(2)(a), 16(4)(a), 17(1), (2), (5)(b), (7) and (8)(b), 18(1) to (5), 19(2) and (11), 22(3) and (4), 23(10) and (12)(a), 24(a), 27(1) and (2) and 29(1).

<sup>1</sup>Words inserted in reg. 26(7)(b) by reg. 9 of S.I. 2006/3370 as from 16.12.06.

(8) A reply sent by the Ombudsman under this regulation must be in writing, but, subject to that, may be made in such manner as the Ombudsman considers appropriate.

**Representation**

**27.—**(1) Subject to paragraph (2), a party to an appeal may, by sending written notice to the Ombudsman, appoint a person to act as his representative for the purposes of these Regulations.

(2) Where a party to an appeal—

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

and there is no person appointed under paragraph (1) in respect of him, the Ombudsman may appoint a person to act as that person's representative for the purposes of these Regulations.

(3) A person appointed under paragraph (1) to act as a representative of any person for the purposes of these Regulations may be the same person as the appointed representative of that person within the meaning of regulation 2(7)(a) of the FAS Regulations (meaning of “appointed representative”).

### Restriction on use of documents and information provided for investigations

**28.**—(1) 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 appeal; or
- (b) if the Ombudsman proposes to exercise, or has exercised, his power to combine appeals under regulation 25(1), (2) or (3), for the purposes of any other appeal which is combined with the appeal to which the information or document relates.

(2) The Ombudsman must not disclose any information which he obtains for the purposes of the investigation of matters arising on an appeal under these Regulations unless the disclosure is to—

- (a) a person or body specified in paragraph (3) and the Ombudsman considers that disclosure would enable or assist that person or body to discharge the functions of that person or body; or
- (b) a person specified in paragraph (4) and the Ombudsman considers that disclosure is necessary to enable the Ombudsman to carry out his functions under these Regulations.

(3) The persons or bodies specified in this paragraph are—

- (a) the scheme manager;
- (b) the High Court or the Court of Session (where a question of law arising out of an appeal has been referred to it)(**a**);
- (c) the Regulator;
- (d) the Board;
- (e) the Pensions Ombudsman(**b**);
- (f) the Financial Services Authority(**c**);
- (g) any government department (including a Northern Ireland department);
- (h) a person appointed under—
  - (i) section 167 of the Financial Services and Markets Act 2000(**d**) (appointment of persons to carry out general investigations),
  - (ii) section 168(3) or (5) of that Act (appointment of persons to carry out investigations in particular cases), or
  - (iii) section 284 of that Act (power to investigate),
 to conduct an investigation;
- (i) an inspector appointed under Part 14 of the Companies Act 1985(**e**) (investigation of companies and their affairs; requisition of documents) or under Part 15 of the Companies (Northern Ireland) Order 1986(**f**) (investigation of companies and their affairs; requisition of documents);

(a) See section 215 of the Act as modified by regulation 3(4), and applied, as modified, by regulation 2, of S.I. 2005/3256.

(b) The Pensions Ombudsman is appointed under section 145(2) of the Pension Schemes Act 1993 (c. 48), as amended by section 274(1) of the Act.

(c) The Financial Services Authority has the functions conferred on it by the Financial Services and Markets Act 2000 (c. 8) (see section 1 of that Act).

(d) 2000 c. 8.

(e) 1985 c. 6; see in particular sections 431 (as amended by S.I. 2003/1116 and modified by S.I. 2001/1090) and 432 (as amended by section 55 of the Companies Act 1989 (c. 40) and modified by S.I. 2001/1090).

(f) 1985 c. 6; see in particular sections 431 (as amended by S.I. 2003/1116 and modified by S.I. 2001/1090) and 432 (as amended by section 55 of the Companies Act 1989 (c. 40) and modified by S.I. 2001/1090).

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<sup>1</sup>Words substituted in reg. 28(3)(1) by art. 303 of S.I. 2008/2683 as from 3.11.08.

- (j) a body designated under section 326(1) of the Financial Services and Markets Act 2000 (designation of professional bodies);
  - (k) a recognised investment exchange or recognised clearing house (as defined by section 285 of that Act (exemption for recognised investment exchanges and clearing houses)); and
  - (l) a member of the ►<sup>1</sup>Administrative Justice and Tribunals Council◄ or a member of the Scottish Committee of the ►<sup>1</sup>Administrative Justice and Tribunals Council◄.
- (4) The persons specified in this paragraph are—
- (a) the scheme manager;
  - (b) an appellant, or, if applicable, the appellant's representative;
  - (c) any interested person in relation to an appeal; and
  - (d) any person providing an expert opinion, or other evidence, in connection with an appeal.

**Miscellaneous powers of Ombudsman**

- 29.**—(1) The Ombudsman may—
- (a) extend any period of time for doing any act under these Regulations except the time for sending a notice under regulation 17(4)(a)(i) or (b); and
  - (b) at any stage of an investigation, if he considers it appropriate to do so—
    - (i) order that any notice of appeal, or any written representation received in respect of such an appeal, be struck out or amended on the grounds that it is trivial, frivolous, scandalous or vexatious, or
    - (ii) order the discontinuance of the investigation.
- (2) Before making an order under paragraph (1)(b), the Ombudsman must—
- (a) send notice that he proposes to make the order to—
    - (i) the appellant, or, if applicable, the appellant's representative, or
    - (ii) the person who made the representations; and
  - (b) give him the opportunity to show cause why such an order should not be made.

**Delegation of functions**

- 30.**—(1) Except as provided by paragraph (2), the Ombudsman may delegate the performance of any of his functions under these Regulations to—
- (a) a member of staff appointed by the Ombudsman in accordance with article 3 of the Pension Protection Fund (PPF Ombudsman) Order 2005(a) (staff of the PPF Ombudsman); or
  - (b) an additional member of staff who—
    - (i) is made available to the Ombudsman by the Secretary of State in accordance with article 4 of that Order (additional staff and facilities), and
    - (ii) is authorised by the Ombudsman to perform that function.
- (2) The Ombudsman must not delegate—
- (a) the determination of an appeal under these Regulations;
  - (b) the referral of a question of law under section 215 of the Act (referral of questions of law);
  - (c) the decision to publish a report under regulation 31;
  - (d) the certification of an offence under section 218(2) of the Act(b) (obstruction etc of the PPF Ombudsman).

(a) S.I. 1986/1032 (N.I. 6); *see* in particular Articles 424 (as amended by S.R. 2004 No. 275 and modified by S.R. 2004 No. 307) and 425 (as amended by Article 3 of the Companies (No. 2) (Northern Ireland) Order 1990 (S.I. 1990/1504 (N.I. 10)) and modified by S.R. 2004 No. 307).

(b) S.I. 2005/824, to which there are amendments not relevant to these Regulations.

**Publishing reports of investigations**

**31.** If the Ombudsman considers it appropriate to do so in any particular case, he may publish, in such form and manner as he considers appropriate, a report of any investigation carried out under these Regulations, including the result of that investigation.

**Irregularities**

**32.—(1)** Any irregularity resulting from failure to comply with any provision 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 Ombudsman by certificate under his hand.

**Substituted service**

**33.—(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 Ombudsman may—

- (a) dispense with service on such a person; or
- (b) make an order for substituted service on such other persons, and in such other 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.

*Stephen C. Timms*

28th November 2005

Minister of State,  
Department for Work and Pensions

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(x) Sections 215 and 218 of the Act are modified by regulation 3(4) and (8) respectively, and applied, as modified, by regulation 2, of S.I. 2005/3256.

**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.