

2005 No. 650

PENSIONS

**The Pension Protection Fund (Maladministration) Regulations
2005**

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| <i>Made</i> - - - - | <i>10th March 2005</i> |
| <i>Laid before Parliament</i> | <i>10th March 2005</i> |
| <i>Coming into force</i> - - | <i>6th April 2005</i> |

The Secretary of State for Work and Pensions, in exercise of the powers conferred upon him by sections 208(1), (3), (4)(a), (b), (c)(ii) and (d)(ii), (5) and (6), 315(2), (4) and (5) and 318(1) of the Pensions Act 2004(a), and of all other powers enabling him in that behalf, by this instrument, which contains regulations made before the end of the period of six months beginning with the coming into force of the provisions of that Act by virtue of which they are made(b), hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pension Protection Fund (Maladministration) Regulations 2005 and shall come into force on 6th April 2005.

(2) In these Regulations—

“the Act” means the Pensions Act 2004;

“the complainant” means a person entitled to make a relevant complaint.

Duty to investigate and give a decision

2. The Board must investigate and give a decision on any matter complained of in a relevant complaint.

Time for making a complaint

3.—(1) Subject to paragraph (2) a complainant must make a relevant complaint in writing and must send it to the Board before the end of a period of 28 days beginning with the date on which

(a) 2004 c. 35. The Pensions Act 2004 is modified in its application to partially guaranteed schemes by the Pension Protection Fund (Partially Guaranteed Schemes) Regulations 2005 (S.I. 2005/277), in its application to hybrid schemes by the Pension Protection Fund (Hybrid Schemes) (Modification) Regulations 2005 (S.I.2005/449), and in its application to multi-employer schemes by the Pension Protection Fund (Multi-employer Schemes) (Modification) Regulations 2005 (S.I.2005/441). Section 318(1) is cited because of the meaning there given to “modifications”, “prescribed” and “regulations”.

(b) See section 317(2) of the Pensions Act 2004 which provides that the Secretary of State must consult such persons as he considers appropriate before making regulations by virtue of the provisions of that Act (other than Part 8). This duty does not apply where regulations are made before the end of six months beginning with the coming into force of that Act by virtue of which the regulations are made.

the complainant first knew of, or ought reasonably to have known of, the act or omission in respect of which the complaint is made.

(2) Where the circumstances of a case are such that, in the opinion of the Board, it is reasonable for a relevant complaint to be made after the end of the period specified in paragraph (1), the Board must give a decision if the complaint is made within such further period as the Board considers to be reasonable.

Form of complaint

4.—(1) A relevant complaint must include—

- (a) the name and address of the complainant;
- (b) the grounds on which the complaint is made;
- (c) the date on which the complainant first became aware of the act or omission;
- (d) in the case of a person who is a representative of the complainant, his name and address and whether that address is the address to be used for the purposes of the complaint.

(2) The complaint must be signed and dated by the complainant or, as the case may be, his representative.

Matters to be considered in giving a decision

5. In giving a decision under regulation 2 the Board must take into account—

- (a) any information or documentation provided by the complainant or, as the case may be, his representative;
- (b) any other matters that appear to it to be relevant, including any document produced or information provided in accordance with a notice given under section 191 of the Act (notices requiring provision of information).

Time for giving decision

6.—(1) Subject to paragraph (2) the Board must give a decision under regulation 2 before the end of a period of 28 days beginning with—

- (a) the day on which it receives the relevant complaint; or
- (b) the last day by which any documents or information that the Board has required a person to provide in accordance with a notice given under section 191 of the Act are to have been provided,

whichever is the later.

(2) If the Board is not able to give a decision before the end of the period specified in paragraph (1) it must send an interim reply to the complainant setting out the expected date for issuing the decision.

Powers on giving a decision

7. In giving a decision under regulation 2 the Board may pay such compensation to the complainant as it considers appropriate.

Matters to be included in a decision

8. A decision under regulation 2 must be given in writing and must include—

- (a) reasons for the decision;
- (b) references to any relevant legislation;
- (c) a statement that if the complainant is dissatisfied with it he may refer the matter to a committee of the Board for a further decision;

- (d) the address at which that committee may be contacted.

Notice of a decision

9.—(1) The Board must send a copy of a decision given under regulation 2 to the complainant or, as the case may be, his representative.

(2) Subject to paragraph (3) the Board must send a summary of a decision given under regulation 2 to any person it considers may have sustained injustice in consequence of maladministration in connection with the act or omission in respect of which the decision is made.

(3) Paragraph (2) does not apply where the Board considers that any injustice that a person may have suffered is likely to have been trivial.

Duty of committee of the Board to investigate and give a decision

10. Where the Board has given a decision under regulation 2 a committee of the Board must, on application following the decision, investigate matters complained of and give a decision on them.

Time for making an application to the committee

11.—(1) Subject to paragraph (2) a complainant must make an application under regulation 10 by sending it to the committee of the Board before the end of a period of 28 days beginning with the day on which the Board sends a copy of the decision to the complainant or, as the case may be, his representative in accordance with regulation 9.

(2) Where the circumstances of the case are such that, in the opinion of the committee of the Board, it is reasonable for an application to be made after the end of the period specified in paragraph (1), the committee of the Board must give a decision if the application is made within such further period as the committee considers to be reasonable.

Form of an application

12.—(1) An application made under regulation 10 must be made in writing and must include—

- (a) the name and address of the complainant;
- (b) the date on which the decision under regulation 2 was given;
- (c) the grounds on which the application is made;
- (d) in the case of a person who is acting as the representative of the complainant, his name and address and whether that address is the address to be used for the purposes of the application.

(2) The application must be signed and dated by the complainant or, as the case may be, his representative.

Matters to be considered by the committee in giving a decision

13. In giving a decision under regulation 10 the committee of the Board must take into account—

- (a) any information or documentation provided by the complainant or, as the case may be, his representative;
- (b) any other matters that appear to it to be relevant, including any document produced or information provided in accordance with a notice given under section 191 of the Act.

Time for giving a decision

14.—(1) Subject to paragraph (2) the committee of the Board must give a decision under regulation 10 before the end of a period of 28 days beginning with the day on which—

- (a) it receives the application made under regulation 11; or

- (b) the last date by which any documents or information that the committee of the Board has required a person to provide in accordance with a notice given under section 191 of the Act are to have been provided,

whichever is the later.

(2) If the committee of the Board is not able to give a decision before the end of the period specified in paragraph (1) it must send an interim reply to the complainant setting out the expected date for issuing the decision.

Powers on giving a decision

15. In giving a decision under regulation 10 the committee of the Board may—

- (a) vary or revoke a decision already made by the Board in respect of the matters complained of in the relevant complaint;
- (b) substitute a different decision;
- (c) pay such compensation to the complainant as the committee of the Board considers appropriate.

Matters to be included in a decision

16. A decision given under regulation 10 must be given in writing and must include—

- (a) reasons for the decision;
- (b) an explanation as to whether and, if so, to what extent the decision—
 - (i) varies or revokes the decision already made by the Board in respect of the matters complained of in the relevant complaint;
 - (ii) substitutes a different decision;
- (c) details of any compensation payable by the Board;
- (d) references to any relevant legislation;
- (e) a statement that if the complainant is dissatisfied with the decision he may refer the matter to the PPF Ombudsman;
- (f) the address at which the PPF Ombudsman may be contacted.

Notice of a decision by the committee

17.—(1) The committee of the Board must send a copy of a decision given under regulation 10 to the complainant or, as the case may be, his representative.

(2) Subject to paragraph (3) the committee of the Board must send a summary of a decision given under regulation 10 to any person it considers may have sustained injustice in consequence of maladministration in connection with the act or omission in respect of which the decision is made.

(3) Paragraph (2) does not apply where the committee of the Board considers that any injustice that a person may have suffered is likely to have been trivial.

Independent investigation of relevant complaints

18.—(1) An investigation or decision by the Board in accordance with regulation 2 must not be made by any person concerned in the matter which is the subject of the relevant complaint.

(2) Where the Board establishes a committee for the purposes of section 208(3)(b) of the Act and regulation 10 of these Regulations, paragraph 15 of Schedule 5 to the Act (the Board of the Pension Protection Fund-committees) applies as if after sub-paragraph (5) there were inserted—

“(6) A committee (or any sub-committee established by the committee under sub-paragraph (2)) established by the Board for the purposes of section 208(3)(b) and any regulations made under that section must not include any person concerned in the matter which is the subject of the relevant complaint.”.

Representation

19.—(1) A complainant may by sending written notice to the Board appoint a person to act as his representative for the purposes of these Regulations.

(2) Where a complainant—

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

the Board may allow a person to represent him.

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

10th March 2005

Malcolm Wicks
Minister of State,
Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the investigation by the Board of the Pension Protection Fund of allegations of maladministration under section 208 of the Pensions Act 2004 (c. 35) (“the Act”).

The Board of the Pension Protection Fund is established by section 107 of the Act to provide compensation for members of certain occupational pension schemes in the event of the insolvency of the scheme’s sponsoring employer and where the pension scheme is underfunded at a certain level.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 provides that the Board must investigate certain complaints.

Regulation 3 provides that an application must generally be made within 28 days of the day on which the complainant became aware of the act or omission by the Board. It makes further provision for the Board to give a decision where an application is made outside this time limit in certain circumstances.

Regulation 4 provides for the form that the complaint must take.

Regulation 5 sets out the matters to be considered by the Board in giving a decision.

Regulation 6 provides for the time by which a decision must be given and makes further provision for an interim reply.

Regulation 7 provides that the Board may pay compensation to the complainant.

Regulation 8 sets out the matters to be included in a decision.

Regulation 9 provides that the Board must send a copy of the decision to the complainant and a summary of the decision to other persons if it considers that they may have suffered injustice, unless the Board considers that any injustice is likely to have been trivial.

Regulation 10 provides that after the Board has given a decision a complainant may apply to a committee of the Board for further investigation of the complaint and a further decision.

Regulation 11 provides that an application must be sent to the committee of the Board within 28 days of the day on which the Board sent the complainant a copy of the decision. It makes further provision for the Board to give a decision where an application is made outside this time limit in certain circumstances.

Regulation 12 provides for the form that an application must take.

Regulation 13 sets out the matters to be considered by the committee of the Board in giving a decision.

Regulation 14 provides for the time by which a decision must be given by the committee of the Board and makes further provision for an interim reply.

Regulation 15 provides for the powers of the committee of the Board in making a review decision, including the power to pay compensation to the complainant.

Regulation 16 provides for matters to be included in a decision by the committee of the Board.

Regulation 17 provides that the committee of the Board must send a copy of the decision to the complainant and a summary of the decision to other persons if it considers that they may have suffered injustice, unless the Board considers that any injustice is likely to have been trivial.

Regulation 18 provides that a person concerned with an act or omission by the Board that gives rise to a complaint of maladministration must not participate in the investigation or a decision in respect of a relevant complaint. Similarly paragraph (2) modifies paragraph 15 of Schedule 5 to the Act in respect of a committee of the Board established to give a decision under regulation 10.

Regulation 19 provides that an application for investigation and a decision in respect of a relevant complaint may be made by a person on behalf of the complainant. It also provides for representation where the complainant dies or is incapable of acting.

As these Regulations are made before the expiry of the period of six months beginning with the coming into force of the provisions of the Act by virtue of which they are made, the requirement for the Secretary of State to consult such persons as he considers appropriate does not apply.

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

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