

EXPLANATORY MEMORANDUM TO
THE PENSIONS REGULATOR TRIBUNAL RULES 2005

2005 No.690

1. This Explanatory Memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.

2. Description

2.1. This statutory instrument puts into place the practice and procedures to be followed in relation to proceedings before the Pensions Regulator Tribunal. These Rules are divided into five parts, dealing with introductory provisions, preliminary matters before the Tribunal, provisions relating to the hearings, appeals from the Tribunal and general provisions.

2.2. In particular these Rules set out the procedure for:

- making a reference to the Tribunal;
- the Pensions Regulator to file a statement of case and for the applicant to provide a written response;
- direction-making powers by the Tribunal;
- summoning of witnesses, dealing with hearings, publishing decisions and awarding costs and for
- dealing with appeals from the Tribunal's decisions.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1. It is intended that the members of the Financial Services and Markets Tribunal established under the Financial Services and Markets Act 2000 will also be appointed as members of the Pensions Regulator Tribunal, and that both tribunals will share the same facilities and premises. The provisions of the Pensions Act 2004 which provide for the establishment and constitution of the Pensions Regulator Tribunal reflect the equivalent provisions under the Financial Services and Markets Act 2000 in respect of the Financial Services and Markets Tribunal. For this reason, these Pensions Regulator Tribunal Rules 2005 to a large degree reflect the procedure under the Financial Services and Markets Tribunal Rules 2001 (S.I.2001/2476).

3.2. The JCSI brought the Financial Services and Markets Tribunal Rules 2001 to the attention of both Houses on the ground that those Rules were defectively drafted (10th Report of 2001/2). The JCSI's objection was to the exercise of the power under section 133(1)(b) of the Financial Services and Markets Act 2000 in rule 4(2) of the Rules.

3.3. The equivalent power to section 133(1)(b) of the Financial Services and Markets Act 2000 is provided by section 103(1)(c) of the Pensions Act 2004.

Although the Pensions Regulator Tribunal Rules 2005 mirror the Financial Services and Markets Tribunal Rules 2001, this power has not been exercised and no equivalent of rule 4(2) has been made.

4. Legislative Background

- 4.1. The Pensions Act received royal assent in November 2004. The 2004 Act introduces a new a regulatory body - the Pensions Regulator, to investigate suspected breaches of pensions legislation in respect of occupational pension schemes in the UK. The 2004 Act allows for a right of appeal against the determinations of the Regulator to a new independent tribunal - the Pensions Regulator Tribunal.
- 4.2. The Lord Chancellor is empowered to make rules in respect of the conduct of proceedings before the Tribunal in accordance with section 102 and schedule 4 of the Pensions Act 2004.
- 4.3. These Rules form part of a package of instruments relating to the Tribunal. There is to be a legal assistance scheme for the Tribunal. The Lord Chancellor may make regulations governing the provision of legal assistance in connection with proceedings before the Tribunal under section 106 of the 2004 Act. The Pensions Regulator Tribunal (Legal Assistance) Regulations 2005 and the Pensions Regulator Tribunal (Legal Assistance Scheme Costs) Regulations 2005 are to come into force in April 2005, together with these Rules.

5. Extent

- 5.1. This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

- 6.1. Not applicable.

7. Policy Background

- 7.1. The Pensions Regulator, which replaces the Occupational Pensions Regulatory Authority is being set up to protect the benefit of members of occupational pension schemes. The Pensions Regulator is primarily concerned with the running of the scheme as a whole and will investigate suspected breaches of pensions legislation. The Regulator's role will be to look at issues such as how the schemes are run, how pensions contributions are collected, recorded and accounted for and how monies are distributed if a scheme is wound up.

- 7.2. Any person directly affected by a determination of the Regulator, i.e. the trustee, the board of trustees, the employer or manager of a scheme will have a right to refer the matter to the Pensions Regulator Tribunal within 28 days.
- 7.3. The Tribunal will consider each case afresh, either on a point of law or fact and it may consider any evidence whether or not it was available at the time of the Regulator's determination. The Tribunal will have a wide-ranging jurisdiction dealing with references on a number of matters arising from the Regulator's decision such as prohibiting a trustee, disqualifying a trustee or imposing a civil penalty.
- 7.4. The provisions for the Tribunal in the 2004 Act have been closely mirrored on the Financial Services and Markets Act 2000 c.8. These Rules also closely mirror the Financial Services and Markets Tribunal Rules 2001 (SI 2001/2476). The Tribunal will be run by the Department for Constitutional Affairs and will sit alongside the Financial Services and Markets Tribunal.

8. Impact

- 8.1. A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies. The impact was considered during the passage of the Pensions Bill through Parliament.

9. Contact

- 9.1. Jenny Patterson at the Department for Constitutional Affairs (telephone: 020 7210 8728; email Jenny.Patterson@dca.gsi.gov.uk) can answer any queries about the instrument.