
DRAFT STATUTORY INSTRUMENTS

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The Pensions (Northern Ireland) Order 2005

PART III

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 6

REVIEWS, APPEALS AND MALADMINISTRATION

Review etc. by the Board

Meaning of “reviewable matters”

188.—(1) For the purposes of this Chapter, “reviewable matter” means a matter mentioned in Schedule 8.

(2) Regulations may provide, in relation to any reference in that Schedule to a failure by the Board to do any act or make any determination, that—

- (a) the reference is to be construed as a reference to a failure by the Board to do the act or make the determination within a prescribed period, and
- (b) the reference is to be construed as not including a failure to do the act or make the determination which first occurs after a prescribed time.

(3) Regulations may make provision suspending the effect of any determination, direction or other act of the Board, or any notice given or issued by it, which relates to a reviewable matter until—

- (a) the period within which the matter may be reviewed by virtue of this Chapter has expired, and
- (b) if the matter is so reviewed—
 - (i) the review and any reconsideration,
 - (ii) any reference to the PPF Ombudsman in respect of the matter, and
 - (iii) any appeal against his determination or directions,has been finally disposed of.

(4) Regulations may amend Schedule 8 by—

- (a) adding to it any other description of determination, act or failure of, or matter determined or for determination by, the Board, or
- (b) removing from it any such determination, act, failure or matter for the time being mentioned in it.

(5) Regulations under paragraph (4) may also modify any provision of this Part in consequence of provision made by virtue of sub-paragraph (a) or (b) of that paragraph.

Review and reconsideration by the Board of reviewable matters

189.—(1) Regulations must—

- (a) provide for the Board, on the written application of an interested person, to give a decision (“a review decision”) on any reviewable matter, and
- (b) require a committee of the Board constituted for the purposes of this Article (the “Reconsideration Committee”), on the written application of an interested person following a review decision, to reconsider the reviewable matter and give a decision (“a reconsideration decision”).

(2) In paragraph (1) “interested person”, in relation to a reviewable matter, means a person of a description prescribed in relation to reviewable matters of that description.

(3) Regulations under paragraph (1) may—

- (a) permit a review decision in respect of a reviewable matter of a prescribed description to be made otherwise than on an application, and
- (b) permit a reconsideration decision in respect of such a matter to be made otherwise than on an application.

(4) Regulations under paragraph (1) must provide for the Board’s powers on making a review decision or reconsideration decision to include power—

- (a) to vary or revoke the determination, direction or other decision already made by the Board in respect of the reviewable matter,
- (b) to substitute a different determination, direction or decision,
- (c) to provide for such variations, revocations or substitutions, or any determinations, directions or other decisions made as a result of the review decision or reconsideration decision, to be treated as if they were made at such time (which may be a time prior to the making of the review decision or reconsideration decision) as the Board considers appropriate,
- (d) to provide for any notice varied, substituted, issued or given by the Board as a result of the review decision or reconsideration decision, to be treated as if it were issued or given at such time (which may be a time prior to the making of the review decision or reconsideration decision) as the Board considers appropriate,
- (e) generally to deal with the matters arising on the review decision or reconsideration decision as if they had arisen on the original determination, direction or decision,
- (f) to pay such compensation as the Board considers appropriate to such persons as it may determine, and
- (g) to make savings and transitional provision.

(5) Regulations under paragraph (1) must include provision—

- (a) about applications under the regulations for a review decision or reconsideration decision in respect of a reviewable matter, including the times by which they are to be made,
- (b) requiring notice—
 - (i) of such applications, or
 - (ii) of a decision of the Board or the Reconsideration Committee by virtue of paragraph (3) to give a review decision or reconsider a reviewable matter otherwise than on such an application,

to be given to interested persons in relation to the matter,

- (c) with a view to securing that individuals concerned in giving a reconsideration decision were not concerned in the reviewable matter in respect of which the decision is to be made,

- (d) as to the procedure for reaching and giving decisions under the regulations, including—
 - (i) rights of interested persons to make representations to the Reconsideration Committee on a reconsideration under regulations made under paragraph (1)(b), and
 - (ii) the times by which decisions are to be given, and
- (e) requiring notice of the review decision or the reconsideration decision in respect of a reviewable matter to be given to interested persons in relation to the matter.
- (6) Provision required by paragraph (5)(c) may modify paragraphs 15 and 16 of Schedule 5 to the Pensions Act 2004 (c. 35) (membership and procedure of committees of the Board).

Investigation by the Board of complaints of maladministration

- 190.**—(1) Regulations must make provision for dealing with relevant complaints.
- (2) For the purposes of this Chapter, “relevant complaint” means a complaint—
- (a) by a person who is or might become entitled to compensation under the pension compensation provisions, or
 - (b) by a person who has made or may make an application under Article 165 (fraud compensation),
- alleging that he has sustained injustice in consequence of maladministration in connection with any act or omission by the Board or any person exercising functions on its behalf.
- (3) Regulations under paragraph (1) must—
- (a) provide for the Board to investigate and give decisions on matters complained of in relevant complaints, and
 - (b) provide for a committee of the Board, on applications following such decisions, to investigate matters complained of and give decisions on them.
- (4) Such regulations may, in particular, make provision—
- (a) about the making of relevant complaints and applications under the regulations, including the times by which they are to be made,
 - (b) with a view to securing that individuals concerned in giving a decision were not concerned in the matter which is the subject of the relevant complaint in question,
 - (c) as to the procedure for reaching and giving decisions under the regulations, including—
 - (i) rights of prescribed persons to make representations to the Board, on an investigation under regulations made under paragraph (3)(b), and
 - (ii) the times by which decisions are to be given, and
 - (d) requiring notice—
 - (i) of a relevant complaint under the regulations, or
 - (ii) of a decision under the regulations in respect of the complaint,to be given to prescribed persons in relation to the matter.
- (5) Regulations under paragraph (1) may confer power on the Board to pay such compensation as it considers appropriate to such persons as it considers have sustained injustice in consequence of the matters complained of.
- (6) The power conferred by paragraph (4)(b) includes power to modify paragraphs 15 and 16 of Schedule 5 to the Pensions Act 2004 (c. 35) (membership and procedure of committees of the Board).

The PPF Ombudsman

The PPF Ombudsman

191.—(1) The Department may by order make provision—

- (a) about the reimbursement of the PPF Ombudsman in respect of any expenses incurred by him in the performance of his functions;
- (b) about the staff of the PPF Ombudsman and the provision of facilities (including additional staff) to him;
- (c) about the delegation of the functions of the PPF Ombudsman to his staff or to any such additional staff;
- (d) conferring powers to enable the PPF Ombudsman to obtain such information and documents as he may require for the performance of his functions; and
- (e) about restrictions on the disclosure of information held by him.

(2) The Department must pay to the PPF Ombudsman such sums as may be required to be paid by the Department to or in respect of the PPF Ombudsman by virtue of an order under paragraph (1).

(3) Regulations may provide for the imposition of a levy in respect of eligible schemes for the purpose of meeting expenditure of the Department under paragraph (2) or of the Secretary of State under section 209(6) of the Pensions Act 2004 (c. 35).

(4) Where regulations make such provision, paragraphs (2), (3), (5), (6) and (7) of Article 103 (administration levy) apply in relation to the levy as they apply in relation to an administration levy (within the meaning of that Article), except that in paragraph (7) of that Article the reference to paragraph (1) of that Article is to be read as a reference to paragraph (3) of this Article.

References to the PPF Ombudsman

Reference of reviewable matter to the PPF Ombudsman

192.—(1) Regulations must make provision—

- (a) for a reviewable matter to be referred to the PPF Ombudsman following a reconsideration decision under regulations made under paragraph (1)(b) of, or by virtue of paragraph (3) (b) of, Article 189 in respect of the matter, and
- (b) for the PPF Ombudsman—
 - (i) to investigate and determine what (if any) is the appropriate action for the Board to take in relation to the matter, and
 - (ii) to remit the matter to the Board with directions for the purpose of giving effect to his determination.

(2) Regulations under paragraph (1) must make provision about the making of references to the PPF Ombudsman, including provision—

- (a) about the descriptions of persons who may make them,
- (b) about the manner of making such references, including the times by which they are to be made, and
- (c) for prescribed persons to be notified of—
 - (i) references made under the regulations, and
 - (ii) determinations and directions given under the regulations.

(3) Regulations under paragraph (1) must—

- (a) require the PPF Ombudsman to conduct an oral hearing in relation to any reviewable matter referred to him under the regulations or to dispose of the matter on the basis of written representations,
 - (b) enable the PPF Ombudsman to consider evidence relating to the matter which was not available to the Board or the Reconsideration Committee, and
 - (c) make other provision about the procedure for conducting investigations, and reaching and giving determinations, under the regulations, including the times by which determinations are to be given.
- (4) The provision that may be made by virtue of paragraph (3)(c) includes provision—
- (a) conferring rights on prescribed persons—
 - (i) to make representations to the PPF Ombudsman in relation to a reviewable matter referred to him by virtue of this Article,
 - (ii) to be heard or represented at any oral hearing by the PPF Ombudsman in relation to such a matter,
 - (b) about the consideration of evidence by the PPF Ombudsman, including—
 - (i) production of documents,
 - (ii) oral hearings,
 - (iii) expert evidence,
 - (iv) attendance of witnesses,
 - (c) conferring rights on prescribed persons to continue a reference made by a person who has died or is otherwise unable to act for himself,
 - (d) as to the costs or expenses of prescribed persons,
 - (e) conferring rights on prescribed persons to apply for a stay in relation to prescribed legal proceedings which begin after the reference is made and conferring power on the relevant court to make an order staying the proceedings if it is satisfied of prescribed matters, and
 - (f) for securing that any determination or direction of the PPF Ombudsman under the regulations is binding on prescribed persons.
- (5) Regulations under paragraph (1) may include provision—
- (a) conferring power on the PPF Ombudsman to direct the Board to pay such compensation as he considers appropriate to such persons as he may direct,
 - (b) conferring power on the Board to make such payments,
 - (c) conferring power on the PPF Ombudsman to direct that—
 - (i) any determinations, directions or other decisions which are made by the Board in accordance with any determination or direction given by him, or
 - (ii) any variations, revocations or substitutions of its determinations, directions or other decisions which are made by the Board in accordance with any determination or direction given by him,are to be treated as if they were made at such time (which may be a time prior to his determination or direction) as he considers appropriate,
 - (d) conferring power on the PPF Ombudsman to direct that any notice varied, substituted, issued or given by the Board in accordance with any determination or direction given by him is to be treated—
 - (i) as if it were issued or given at such time (which may be a time prior to his determination or direction) as he considers appropriate;

- (ii) as if it became binding for the purposes of this Part at the time at which he gives his determination or direction or at such later time as he considers appropriate,
- (e) prescribing the circumstances in which any determination or other act of the Board in accordance with any determination or direction given by the PPF Ombudsman, is not to be treated as being a reviewable matter for the purposes of this Chapter, and
- (f) conferring such other powers on the Board as may be required when a matter is remitted to it (including such powers as the Board may have on making a review decision or reconsideration decision under regulations made under Article 189(1)).

Investigation by PPF Ombudsman of complaints of maladministration

193.—(1) Regulations must provide for the investigation and determination by the PPF Ombudsman of such matters as may be prescribed following decisions on relevant complaints given by the Board or the committee of the Board referred to in Article 190(3)(b) under regulations made under that Article.

- (2) Regulations under this Article must make provision—
 - (a) prescribing the descriptions of person who may refer matters to the PPF Ombudsman under the regulations,
 - (b) about the manner in which such references may be made, including the times by which they are to be made,
 - (c) about the procedure for conducting investigations, and reaching and giving determinations, on such references, including the times by which the determinations are to be given,
 - (d) about the powers of the PPF Ombudsman on making such determinations, including—
 - (i) the power to direct the Board to pay such compensation as he considers appropriate to such persons as he considers have sustained injustice in consequence of the matters complained of, and
 - (ii) the power to direct the Board to take or refrain from taking such other steps as he may specify,
 - (e) conferring such powers on the Board as are necessary to comply with such requirements,
 - (f) for prescribed persons to be notified of—
 - (i) references to the PPF Ombudsman under the regulations, and
 - (ii) determinations and directions by the PPF Ombudsman under the regulations,
 - (g) conferring rights on prescribed persons—
 - (i) to make representations to the PPF Ombudsman in relation to a matter referred to him by virtue of this Article,
 - (ii) to be heard or represented at any oral hearing by the PPF Ombudsman in relation to such a matter,
 - (h) about the consideration of evidence by the PPF Ombudsman, including—
 - (i) production of documents,
 - (ii) oral hearings,
 - (iii) expert evidence,
 - (iv) attendance of witnesses,
 - (i) conferring rights on prescribed persons to continue a reference made by a person who has died or is otherwise unable to act for himself,

- (j) as to the costs or expenses of prescribed persons,
- (k) conferring rights on prescribed persons to apply for a stay in relation to prescribed legal proceedings which begin after the reference is made and conferring power on the relevant court to make an order staying the proceedings if it is satisfied of prescribed matters, and
- (l) for securing that any determination or direction of the PPF Ombudsman under the regulations is binding on prescribed persons.

Referral of questions of law

194. The PPF Ombudsman may refer any question of law arising for determination in connection with—

- (a) a reviewable matter referred to him by virtue of regulations under Article 192, or
- (b) a matter referred to him by virtue of regulations under Article 193,

to the High Court.

Publishing reports etc.

195.—(1) If the PPF 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 by virtue of regulations under Article 192 or 193 and of the result of that investigation.

(2) For the purposes of the law of defamation, the publication of any matter by the PPF Ombudsman under or by virtue of any provision of this Chapter shall be absolutely privileged.

Determinations of the PPF Ombudsman

196.—(1) A person bound by a determination or direction by the PPF Ombudsman by virtue of regulations made under Article 192 or 193 may appeal on a point of law arising from the determination or direction to the High Court.

(2) Any determination or direction of the PPF Ombudsman is enforceable in a county court as if it were a judgment or order of that court.

Obstruction etc. of the PPF Ombudsman

197.—(1) This Article applies if any person—

- (a) without lawful excuse obstructs the PPF Ombudsman in the performance of his functions, or
- (b) is guilty of any act or omission in relation to an investigation by the PPF Ombudsman under regulations made under Article 192 or 193, which, if that investigation were a proceeding in the court, would constitute contempt of court.

(2) The PPF Ombudsman may certify the offence to the court.

(3) Where an offence is certified under paragraph (2), the court may—

- (a) inquire into the matter,
- (b) hear any witnesses who may be produced against or on behalf of the person charged with the offence and any statement that may be offered in defence, and
- (c) deal with him in any manner in which the court could deal with him if he had committed the like offence in relation to the court.

(4) In this Article “the court” means a county court.