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STATUTORY INSTRUMENTS

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**2005 No. 3273**

**The Financial Assistance Scheme (Appeals) Regulations 2005**

**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
  - (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>F1</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>M1</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.

**F1** Word in [reg. 23\(9\)](#) substituted (10.7.2009) by [The Financial Assistance Scheme \(Miscellaneous Provisions\) Regulations 2009 \(S.I. 2009/1851\)](#), [regs. 1, 34\(4\)](#)

**Marginal Citations**

**M1** See also regulation 4(3) and (5) of, and paragraphs 5 to 16 of Schedule 1 to, [S.I. 2005/1986](#).

**Changes to legislation:**

There are currently no known outstanding effects for the The Financial Assistance Scheme (Appeals) Regulations 2005, Section 23.