

1996 No. 2475

PENSIONS

The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996

Made - - - - 25th September 1996
Laid before Parliament 2nd October 1996
Coming into force 6th April 1997

The Secretary of State for Social Security, in exercise of the powers conferred by sections 146(4) and (6)(b) and (c), 151A, 181(1) and 182(2) and (3) of the Pension Schemes Act 1993(a), and of all other powers enabling him in that behalf, after agreement by the Occupational Pensions Board that proposals to make these Regulations should not be referred to them(b), by this instrument, which contains regulations which are consequential upon sections 157 and 160 of the Pensions Act 1995, hereby makes the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1996 and shall come into force on 6th April 1997.

(2) In these Regulations—

“the 1993 Act” means the Pension Schemes Act 1993(c);

“the 1995 Act” means the Pensions Act 1995(d);

▶¹“administrator”—

(a) in relation to an occupational pension scheme, means any person concerned with the administration of the scheme, other than a person responsible for the management of the scheme (as defined in section 146(3) of the 1993 Act for the purposes of Part X of that Act), and

(b) in relation to a personal pension scheme, means any person concerned with the administration of the scheme, other than—

(i) a person responsible for the management of the scheme (as defined in section 146(3A) of that Act for the purposes of that Part), or

(ii) a person who is or has been the employer of any member who is or has been an employed earner;”◀.

“actual or potential beneficiaries” has the same meaning as in section 146(7) of the 1993 Act;

“complaint” means a complaint falling within section 146(1)(a) or (b) of the 1993 Act (complaint of maladministration); and

“dispute” means a dispute falling within section 146(1)(c) or (d) of the 1993 Act (disputes of fact or law).

¹Defn. of “administrator” substituted by reg. 15(2) of S.I. 1997/786 as from 6.4.97.

(a) 1993 c. 48. Section 146 was amended by section 157(2) and (3) of the Pensions Act 1995 (c. 26). Section 151A was inserted by section 160 of the Pensions Act 1995. Section 181(1) is cited because of the meaning ascribed to “prescribe” and “regulations”.

(b) See section 185(6) of the Pension Schemes Act 1993 (c. 48) and section 173(1) of the Social Security Administration Act 1992 (c. 5) which states that the requirement to refer proposals to make regulations under Part X of the Pensions Schemes Act 1993 to the Occupational Pensions Board shall not apply in any case where the Board agrees that such proposals shall not be referred to them.

(c) 1993 c. 48.

(d) 1995 c. 26.

Regs. 1A-4

Persons entitled to benefits to be regarded as members for the purposes of section 146(7) of the 1993 Act

¹Reg. 1A inserted by reg. 9(2) of S.I. 1997/3038 as from 12.1.98.

▶¹1A. For the purposes of section 146(7) of the 1993 Act (a) (persons who are actual or potential beneficiaries) a person shall be regarded as a member of a scheme if he is, or has been, entitled to the payment of benefits under it. ◀

Jurisdiction in relation to administrators

2.—(1) The Pensions Ombudsman may investigate and determine a complaint concerning the administration of a personal or an occupational pension scheme made to him by or in respect of an actual or potential beneficiary of the scheme who alleges that he has sustained injustice in consequence of maladministration in connection with an act or omission of an administrator of the scheme.

(2) Where the Pensions Ombudsman commences an investigation under paragraph (1) above, the provisions of Part X of the 1993 Act (the Pensions Ombudsman) shall apply in relation to the administrator as they would apply in relation to a person responsible for the management of the scheme.

Exclusion from jurisdiction: Use of internal disputes procedure

3.—(1) In a case to which section 50 of the 1995 Act applies (internal dispute resolution), the Pensions Ombudsman shall not, subject to paragraph (2) below, investigate or determine a complaint or dispute concerning an occupational pension scheme unless written notice of a decision in respect of that complaint or dispute has first been issued by the trustees or managers of the scheme under ▶²section 50(5)(b)◀ of that Act.

(2) Where, in a case to which section 50 of the 1995 Act applies, an application concerning a complaint or dispute has been made to an occupational pension scheme under the arrangements required by that section, the Pensions Ombudsman may investigate and determine that complaint or dispute in advance of written notice of a decision being issued in respect of it under ▶²section 50(5)(b)◀ of that Act provided he is satisfied that—

- (a) there is no real prospect of a notice being issued within a reasonable period from the date on which the complaint or dispute was received by him in writing; and
- (b) it is reasonable in the circumstances that he should investigate and determine the complaint or dispute.

Exclusions from jurisdiction

4.—▶³(1) The Pensions Ombudsman shall not investigate or determine any complaint or dispute which can be ▶⁴(and is in fact)◀ dealt with under the compulsory jurisdiction of the ombudsman scheme provided for by Part 16 of the Financial Services and Markets Act 2000, other than a complaint or dispute relating to the management of a personal pension scheme. ◀

(2) For the purposes of the investigation or determination of any complaint or dispute, the Pensions Ombudsman shall not make any findings of fact to the effect that a person responsible for the management of an occupational pension scheme has failed to comply with the requirements under the following provisions of the 1995 Act—

- (a) ▶⁵◀
- (b) sections 37 and 76 (payment of surplus or excess assets to the employer),
- (c) section 40 (restriction on employer related investments),
- (d) section 47(1)(a) and (b) (requirement to appoint professional advisers),
- (e) section 49 (requirement to keep books and records), ▶⁵and◀
- (f) ▶⁵◀
- (g) sections 87 and 88 (requirement for money purchase schemes to keep schedules of payments) ▶⁵,

▶⁵or the requirements under Part 3 (scheme funding) and section 241 to 243 (requirements for member-nominated trustees and directors) of the Pensions Act 2004. ◀

(a) Section 146(7) was amended by section 157(3) of the Pensions Act 1995.

²Words substituted in reg. 3(1) & (2) by reg. 6(2)(a) & (b) of S.I. 2008/649 as from 6.4.08.

³Reg. 4(1) substituted by reg. 539 of S.I. 2001/3649 as from 1.12.01.

⁴Words inserted into reg. 4(1) by reg. 37 of S.I. 2002/1555 as from 3.7.05.

⁵Reg. 4(2)(a) & (f) & words in reg. 4(2) omitted & words substituted & inserted in 4(2) & 4(2)(e) by reg. 7 S.I. 2013/627 as from 30.4.13..

Time limit for making complaints and referring disputes

5.—(1) Subject to paragraphs (2) and (3) below, the Pensions Ombudsman shall not investigate a complaint or dispute if the act or omission which is the subject thereof occurred more than 3 years before the date on which the complaint or dispute was received by him in writing.

(2) Where, at the date of its occurrence, the person by or in respect of whom the complaint is made or the dispute is referred was, in the opinion of the Pensions Ombudsman, unaware of the act or omission referred to in paragraph (1) above, the period of 3 years shall begin on the earliest date on which that person knew or ought reasonably to have known of its occurrence.

(3) Where, in the opinion of the Pensions Ombudsman, it was reasonable for a complaint not to be made or a dispute not to be referred before the end of the period allowed under paragraphs (1) and (2) above, the Pensions Ombudsman may investigate and determine that complain or dispute if it is received by him in writing within such further period as he considers reasonable.

Payment of interest on late paid benefit

6.—(1) For the purposes of section 151A of the 1993 Act(a) (interest on late payment of benefit), the prescribed rate of interest shall be the base rate for the time being quoted by the reference banks.

(2) In paragraph (1) above—

(a) “base rate” means the rate for the time being quoted by the reference banks as applicable to sterling deposits or, where there is for the time being more than one such base rate, the rate which, when the base rate quoted by each bank is ranked in a descending sequence of four, is first in the sequence; and

▶(b)“reference banks” means the four largest persons for the time being who—

- (i) have permission under Part 4 of the Financial Services and Markets Act 2000 to accept deposits,
- (ii) are incorporated in the United Kingdom and carrying on there a regulated activity of accepting deposits, and
- (iii) quote a base rate applicable to sterling deposits.◀

▶(3) Paragraph (2)(b) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.◀

Reg. 6(2)(b) substituted and reg. 6(3) inserted by reg. 540 of S.I. 2001/3649 as from 1.12.01.

Revocations

7.—(1) The Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1991(b) and the Personal and Occupational Pension Schemes (Pensions Ombudsman) Amendment Regulations 1996(c) are hereby revoked.

(2) Paragraph 32 of Schedule 2 to the Occupational and Personal Pension Schemes (▶Consequential◀ Amendments) Regulations 1994(d) is hereby revoked.

Word in reg.7(2) amended by reg. 15(3) of S.I. 1997/786 as from 6.4.97.

Saving

8. Anything done under, or by virtue of, any regulation revoked by these Regulations, if it could have been done under or for the purpose of the corresponding provision of these Regulations, shall be deemed to have been done under or by virtue

(a) Section 151A was inserted into the Pension Schemes Act 1993 (c. 48) by section 160 of the Pensions Act 1995 (c. 26).

(b) S.I. 1991/588.

(c) S.I. 1996/1271.

(d) S.I. 1994/1062.

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of the corresponding provision of these Regulations and anything begun under, or by virtue of, any such regulation may be continued under these Regulations as if begun under these Regulations.

Signed by authority of the Secretary of State for Social Security.

25th September 1996

Oliver Heald
Parliamentary Under-Secretary of State,
Department of Social Security

EXPLANATORY NOTE

(This note is not part of the Regulations)

These regulations revoke and replace the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1991 as amended.

Regulation 1 provides for citation, commencement and interpretation.

Regulation 2 extends the Pension Ombudsman's jurisdiction to complaints between actual or potential beneficiaries and the administrators of occupational and personal pension schemes.

Regulation 3 excludes, in certain circumstances, from the jurisdiction of the Pensions Ombudsman cases which have not first been subject to the internal dispute resolution procedures of an occupational pension scheme.

Regulation 4 excludes from the jurisdiction of the Pensions Ombudsman certain complaints or disputes which can be investigated by, or under arrangements made by, a recognised self-regulation organisation or a designated agency under the Financial Services Act 1986. Regulation 4 also precludes the Pensions Ombudsman from making findings of fact in respect of matters regarding which the Occupational Pensions Regulatory Authority has the jurisdiction to impose sanctions under Part I of the Pensions Act 1995.

Regulation 5 prescribes the time limits for making a complaint or referring a dispute to the Pensions Ombudsman.

Regulation 6 prescribes the rate of interest to be applied by the Pensions Ombudsman for the purposes of section 151A of the Pension Schemes Act 1993.

Regulation 7(1) revokes the Personal and Occupational Pension Schemes (Pensions Ombudsman) Regulations 1991 and the Personal and Occupational Pension Schemes (Pensions Ombudsman) Amendment Regulations 1996. Regulation 7(2) revokes paragraph 32 of Schedule 2 to the Occupational and Personal Pension Schemes (Miscellaneous Amendments) Regulations 1994.

Regulation 8 provides a saving.

The Occupational Pensions Board have agreed that proposals to make these Regulations should not be referred to them.

An assessment of the compliance cost to business of the measures arising from the Pensions Act 1995, including these Regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, 11th Floor, Adelphi, 1-11 John Adam Street, London WC2N 6HT.