

1997 No. 724

PENSIONS

The Pensions Compensation Board (Determinations and Review Procedure) Regulations 1997

<i>Made</i> - - - -	<i>10th March 1997</i>
<i>Laid before Parliament</i>	<i>13th March 1997</i>
<i>Coming into force</i>	<i>6th April 1997</i>

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The Secretary of State for Social Security, in exercise of the powers conferred upon him by section 78(8), 80(4) and 124(1) of, and paragraph 12 of Schedule 2 to, the Pensions Act 1995(a), and of all other powers enabling him in that behalf, after consultation with the Council on Tribunals as required by section 8 of the Tribunals and Inquiries Act 1992(b), by this instrument, which is made before the end of the period of 6 months beginning with the coming into force of the provisions of Part I of the Pensions Act 1995 by virtue of which it is made(c), hereby makes the following Regulations-

PART I

PRELIMINARY

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Pensions Compensation Board (Determinations and Review Procedure) Regulations 1997 and shall come into force on 6th April 1997.

(2) In these Regulations-

“the Act” means the Pensions Act 1995;

“Board” means the Pensions Compensation Board established under section 78(1) of the Act;

“Order” means the Pensions (Northern Ireland) Order 1995(d);

“review” means a review of a determination by the Board of a question which it is within their functions to determine.

(3) In these Regulations, a reference-

(a) to a numbered regulation is to the regulation in these Regulations bearing that number;

(a) 1995 c.26. Section 124(1) is cited for the meaning given to “regulations”.

(b) 1992 c.53. See paragraph 21(d) of Schedule 3 to the Pensions Act 1995 which adds the Pensions Compensation Board to the list of tribunals under the direct supervision of the Council on Tribunals in paragraph 35 of Schedule 1 to the Tribunals and Inquiries Act 1992.

(c) See section 120(2)(c) of the Pensions Act 1995. This provides that the requirement to consult does not apply where regulations are made before the end of 6 months beginning with the coming into force of the provisions of Part I of the Pensions Act 1995 by virtue of which they are made.

(d) S.I. 1995/3213 (N.I. 22).

- (b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number;
- (c) in a regulation to a lettered or numbered sub-paragraph is to the sub-paragraph in that regulation bearing that letter or number.

PART II PROCEDURE ON DETERMINATIONS

Interpretation

2. For the purposes of this Part, “application” means an application to the Board for compensation under section 82 or, as the case may be, Article 80 of the Order, and the word “applicant” shall be construed accordingly.

Acknowledgment of application

3. The Board shall, within 14 days of receipt of an application, send to the applicant a written notice-

- (a) acknowledging receipt of the application; and
- (b) setting out the steps to be taken by the Board in determining the application.

Withdrawal of application, death of applicant and continuance

4.—(1) After an application has been sent or delivered to the Board at its proper address it may not be withdrawn without the Board’s consent in writing which consent shall not be unreasonably refused.

(2) Where an applicant dies or is unable or unwilling to continue with an application, the Board may appoint such other person as it thinks fit as a successor to the applicant, if such other person consents in writing, and the application shall be carried on by such other person in substitution for the applicant.

Holding of oral hearing

5. The Board may hold an oral hearing in respect of any question which it is within their functions to determine and the requirements in this Part of these Regulations in respect of such hearings shall apply.

Notice of oral hearing

6.—(1) Where the Board decides to hold an oral hearing, they shall fix the date, time and place for the hearing and, not less than 28 days before that date, send to the applicant, and to such other persons as it appears to them the justice of the case may require, a notice in writing specifying the date, time and place of the hearing, and the manner in which it is to be conducted.

(2) The notice referred to in paragraph (1) shall also ask the person notified to confirm within 14 days of receipt of the notice whether or not that person or his representative, if any, will attend the hearing, and if so, the names and addresses of the witnesses, if any, that person or his representative intends to call.

Requirements applying to oral hearings

7.—(1) An oral hearing shall be in public except where the Board are satisfied that, by reason of the disclosure of intimate personal or financial circumstances, commercially sensitive information, or information communicated or obtained in confidence, it is just and reasonable for the hearing, or part of it, to be in private.

(2) The Board may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Board, to disrupt the hearing.

(3) The following persons shall be entitled to attend, and, in the case of persons listed in sub-paragraphs (a), (b), (c) and (f), to be heard, at an oral hearing whether or not it takes place in public-

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- (a) the applicant;
- (b) a witness called by the applicant or the Board or by any other person entitled to be heard;
- (c) the trustees of the scheme to which the application relates;
- (d) a member of the Council on Tribunals or of the Scottish Committee of that Council;
- (e) the secretary to the Board;
- (f) such other persons as it appears to the Board the justice of the case may require.

(4) If the applicant or any other person entitled to be heard fails to attend or be represented at an oral hearing, the Board may-

- (a) unless they are satisfied that there is sufficient reason for such absence, hear and determine the application in the absence of that person; or
- (b) adjourn the hearing.

Procedure at oral hearings

8.—(1) The Board shall conduct the oral hearing in such manner as they consider most suitable to the clarification of the issues before them, and generally as to the just handling of the proceedings.

(2) The applicant and any other person entitled to be heard shall, subject to paragraph (3), be entitled to give evidence, call witnesses, to question any witnesses and to address the Board both on evidence and generally on the subject matter of the hearing.

(3) The Board may receive evidence of any fact which appears to them to be relevant even if such evidence would be inadmissible in proceedings before a court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.

(4) The Board may, if they are satisfied that it is just and reasonable to do so, permit the applicant to rely on grounds for the compensation claim which were not set out in the application, whether or not amended.

Notification of decision

9.—(1) The Board shall, within 14 days of making a determination as to whether to make a payment or payments to the trustees of the scheme to which the application relates, send written notice of their decision to the applicant, and, if different, to the trustees.

(2) The written notice referred to in paragraph (1) shall contain -

- (a) a statement of reasons for the Board's decision;
- (b) where a decision is made to award compensation, details of the terms and conditions, if any, subject to which the payment or payments will be made;
- (c) a statement that there is a right to request a review of the Board's determination as specified under section 80(2) of the Act, or, as the case may be, Article 78(2) of the Order;

and shall be signed by the Chairman of the Board.

PART III REVIEW OF DETERMINATIONS

Interpretation

10. For the purposes of this Part, "application" means, in relation to a determination by the Board of a question which it is within their functions to determine, an application to the Board for a review of that determination, and the word "applicant" shall be construed accordingly.

Application to Board for review

11.—(1) An application shall be made in writing, signed by the applicant and shall state-

- (a) the name and address of the applicant and the nature of his connection with

- the scheme, if any;
- (b) the name and address of the applicant's representative, if any, and whether the Board should send replies or notices concerning the application to that representative rather than to the applicant;
- (c) the grounds upon which a review of the determination is sought;
- (d) the particulars of the determination in respect of which a review is sought;
- (e) whether the applicant wishes to be heard on the application.

(2) Where the applicant wishes to be heard on the application, the Board shall not refuse to hear him unless it appears to them that the application may be disposed of fairly without so doing.

Documents to accompany application

12. The applicant shall submit with the application, or within 28 days thereafter, any documents upon which he wishes to rely in support of his application for review.

Acknowledgement of application

13. The Board shall, within 14 days of receipt of an application, send to the applicant a written notice-

- (a) acknowledging receipt of the application; and
- (b) setting out the steps to be taken by the Board in determining the application.

Amendment of application

14. The applicant may, at any time before receiving notice of the date of the review and after receiving notice of the date of the review, with the leave of the Board, amend the grounds referred to in regulation 11(1)(c), and submit any documents upon which he wishes to rely in support of those grounds as amended.

Withdrawal of application, death of applicant and continuance

15.—(1) The applicant may withdraw an application at any time by sending or delivering to the office of the Board a written notice, signed by the applicant, stating that the application is withdrawn.

(2) Where an applicant dies or is unable to continue with an application, the Board may appoint as a successor to the applicant a person appearing to them to be interested, if that person consents in writing, and the application for a review shall be carried on by that person in substitution for the applicant.

Notification of decision to review or refusal to review

16.—(1) Upon receipt of an application for a review, the Board shall decide whether to review the determination in relation to which the review is sought and within 56 days of receipt of the application send to the applicant, and to such other persons as it appears to the Board the justice of the case may require, a notice in writing containing the information specified in paragraph (2) or, as the case may be, paragraph (3).

- (2) The decision to review the determination together with a statement of-
 - (a) the right to send written representations to the Board at any time until they receive notification of the date fixed for the review or until such later date as the Board may permit, in relation to the review generally;
 - (b) the right, upon request being made within 28 days of receipt of the written notice referred to in paragraph (1) and regulation 17(1)(a), to have the review conducted by means of oral hearing;
 - (c) the procedure to be followed in relation to the review, whether or not it is conducted by means of an oral hearing.
- (3) The decision to refuse to review the determination together with a statement of-
 - (a) the reasons for the Board's decision; and
 - (b) the right to seek a review of the decision as specified under section 80(2) of the Act, or, as the case may be, Article 78(2) of the Order.
- (4) Where in any particular case it is not reasonably practicable for the Board to give

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such notice as is specified under paragraph (1) within the period therein referred to, the Board shall within that period notify the persons entitled to receive such notice of the date by which it will be given and of the reasons for the delay.

Reviews initiated by the Board

17.—(1) Where the Board decide to review a determination without an application having been made, they shall within 14 days of making such a decision, send to such persons as it appears to them the justice of the case may require—

- (a) a notice in writing containing the information specified in regulation 16(2); and
- (b) a statement of facts relating to the review.

(2) A person who receives a statement of facts such as is referred to in paragraph (1)(b) shall reply to the Board within 28 days of receipt of that statement, indicating—

- (a) whether and in what respect any of the facts are disputed; and
- (b) any further facts which, in the opinion of that person, are relevant to the review.

Decision to review

18. The Board may not authorise any of their members individually to decide whether to review a previous determination to which these Regulations apply.

Notice of date, time, place and manner of review

19.—(1) The Board shall fix the date, time and place for the review and, not less than 28 days before that date, send to the applicant (if any), and to such other persons as it appears to them the justice of the case may require, a notice in writing specifying the date, time and place of the review, and the manner in which it is to be conducted.

(2) Where the Board is to deal with a review by way of an oral hearing the notice referred to in paragraph (1) shall also ask the person notified to confirm within 14 days of receipt of the notice whether that person or his representative, if any, will attend the hearing, and if so, the names and addresses of the witnesses, if any, that person or his representative intends to call.

(3) The Board may, upon the request of the applicant or otherwise, postpone the date of the review (whether or not it is to be dealt with by way of an oral hearing), in the interests of disposing fairly of the matter at issue.

Copies of relevant documents

20. The Board shall, not less than 28 days before the date fixed for the review, send to the applicant (if any) and to such other persons as it appears to them the justice of the case may require, a copy of or sufficient extracts from, or particulars of, any document or other material relevant to the review which the Board have in their possession.

Review Board

21.—(1) The Board may not authorise any of their members individually to review a determination to which these Regulations apply.

(2) The Board, when constituted for the purposes of carrying out a review, is referred to as “the Review Board” in these Regulations.

(3) The person who acts as chairman of the Review Board shall not be the member of the Board who acted as chairman of the proceedings, at which the determination the subject of the review was made.

(4) In the event that the votes of members of the Review Board are equally divided, the chairman of the Review Board shall have a second and casting vote.

Requirements applying to oral hearings

22.—(1) An oral hearing of a review shall be in public except where the Review Board are satisfied that, by reason of the disclosure of intimate personal or financial circumstances, commercially sensitive information, or information communicated or obtained in confidence, it is just and reasonable for the hearing, or part of it, to be in private.

(2) The Review Board may exclude from the hearing, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the Board, to disrupt the hearing.

(3) The following persons shall be entitled to attend, and, in the case of persons listed in sub-paragraphs (a), (d), (e) and (g), be heard at, an oral hearing of a review whether or not it takes place in public-

- (a) the applicant (if any);
- (b) a member of the Board who is not appointed to the Review Board;
- (c) a member of the Council on Tribunals or of the Scottish Committee of that Council;
- (d) a witness called by the applicant (if any) or the Board or by any other person entitled to be heard;
- (e) the trustees of the scheme to which the application relates;
- (f) the secretary to the Board;
- (g) such other person as it appears to the Board the justice of the case may require.

(4) If the applicant or any other person entitled to be heard fails to attend or be represented at an oral hearing of a review, the Review Board may-

- (a) unless they are satisfied that there is sufficient reason for such absence, hear and determine the review in the absence of that person; or
- (b) adjourn the hearing.

Procedure at oral hearings

23.—(1) The Review Board shall conduct the oral hearing of the review in such manner as they consider most suitable to the clarification of the issues before them and generally as to the just handling of the proceedings, including where necessary adjournment of the proceedings.

(2) The applicant (if any) and any other person entitled to be heard shall, subject to paragraph (3), be entitled to give evidence, call witnesses, to question any witnesses and to address the Review Board both on evidence and generally on the subject matter of the hearing.

(3) The Review Board may receive evidence of any fact which appears to them to be relevant, even if such evidence would be inadmissible in proceedings before a court of law, but shall not refuse to admit any evidence which is admissible at law and is relevant.

(4) The Review Board may, if they are satisfied that it is just and reasonable to do so, permit the applicant to rely on grounds for the review which were not stated in the application, whether or not amended.

Notification of decision

24.—(1) The decision of the Review Board shall be recorded in a document which shall also contain a statement-

- (a) of the reasons for their decision; and
- (b) of the right to request a review as specified under section 80(2)(a) of the Act, or, as the case may be, Article 78(2)(a) of the Order;

and shall be signed and dated by the chairman of the Review Board.

(2) The Board shall, within 14 days of making the decision, send a copy of the document recording the decision to the applicant (if any), and, if different, to the trustees.

PART IV COMMON PROVISIONS

Representatives

25. Where a person acts on behalf of another, that person may take all such steps and do all such things for the purposes of these Regulations as that other person is by these Regulations required or authorised to take or do.

Extension of time

26. The time appointed by these Regulations for the doing of any act or the taking of any step by any person may be extended by the Board upon such terms, if any, as it appears to them the justice of the case may require, and such extension may be granted although the request therefor is not made until after the expiration of the time appointed.

Irregularities

27.—(1) Any irregularity resulting from failure to comply with any provision of these Regulations shall not, of itself, render the application in question or the proceedings in question void.

(2) Clerical mistakes in any written statement of a determination or errors arising in such a document from an accidental slip or omission may be corrected by the Chairman of the Board or, as the case may be, chairman of the Review Board, certifying the correction in writing on the document.

Method of sending or delivering documents, etc

28.—(1) Any document required or authorised by these Regulations to be sent or delivered to any person shall be duly sent or delivered—

- (a) if sent to that person's proper address by post;
- (b) if delivered to that person or left at that person's proper address.

(2) The proper address for the Board, or the Review Board, is the address of the office of the Board.

(3) The proper address of any other person to whom any such document is to be sent or delivered is the address given by that person, or if none, the last known address of that person, or, in the case of an incorporated company or body, the registered or principal office of that company or body.

Publication of decisions

29. The Board may publish their decisions as they consider appropriate, but in doing so they shall have regard to the need to preserve the confidentiality of—

- (a) any documentary evidence submitted in relation to the application which they have reason to believe is commercially sensitive or confidential for some other reason; and
- (b) any evidence heard in private,

and for that purpose may make any necessary amendments to the text of a decision.

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

10th March 1997

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Pensions Compensation Board (“the Board”) is established under section 78(1) of the Pensions Act 1995. These Regulations make provision as to the procedure to be adopted on any determination by the Board or on any review by the Board of such a determination.

Part I provides for the citation, commencement and interpretation of the Regulations.

Part II concerns the procedure to be adopted by the Board on determinations. It makes provision concerning the acknowledgement of applications and their withdrawal; the applicant’s death; the holding of oral hearings; and notification by the Board of their decisions.

Part III concerns the review by the Board of their determinations. It makes provision as to the manner in which applications are to be made and their acknowledgement; the withdrawal of applications; the applicant’s death; notification of the decision to review or not to review, and of the time, place and manner in which a review will be conducted; the making available of relevant documents; the composition of the Board when they conduct a review; the holding of oral hearings; and notification by the Board of their decisions.

Part IV contains certain provisions common to Parts II and III. They concern persons acting on behalf of others; the extension of time limits; failure to comply with any provision of the Regulations; the sending of documents; and publication of the Board’s decisions.

An assessment of the compliance cost for employers of the measures arising from the Pensions Act 1995, including regulations, has been placed in the libraries of both Houses of Parliament. Copies can be obtained by post from the Department of Social Security, Pensions and National Insurance Directorate, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

