

1997 No. 794

PENSIONS

The Occupational Pensions Regulatory Authority
(Determinations and Review Procedure)
Regulations 1997

<i>Made</i> - - - -	<i>12th July 1997</i>
<i>Laid before Parliament</i>	<i>14th 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 on him by sections 10(1), 96(2) and (5), 124(1) and paragraph 13 of Schedule 1 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(1) of the Tribunals and Inquiries Act 1992(b) and after consultation with such other persons as he considers appropriate as required by section 120(1) of the Pensions Act 1995(c), by this instrument hereby makes the following regulations:

PART I

PRELIMINARY

Citation, commencement, interpretation and extent

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

(2) In these Regulations-

“the 1995 Act” means the Pensions Act 1995;

“the Authority” means the Occupational Pensions Regulatory Authority established by section 1 of the 1995 Act;

“review” means a review of a determination made by the Authority.

(3) In these Regulations, a reference-

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

(b) in a regulation to a numbered paragraph is to the paragraph in that regulation bearing that number.

(4) Except for regulations 3(2) and 21, these Regulations shall apply to Northern Ireland.

PART II

DETERMINATIONS AND REVIEW PROCEDURE

Notification of determination and right to apply for a review

2. Where the Authority make a determination, they shall send to such persons as appear to them to be directly affected a notice in writing which contains the determinations, the reasons for that determination and which specifies the right to apply for a review of that determination and the time limit for making such an application.

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

(b) 1992 c.53. See paragraph 21(d) of Schedule 3 to the Pensions Act 1995 which adds the Occupational Pensions Regulatory Authority 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(1) of the Pensions Act 1995 which provides that the Secretary of State must consult such persons as he considers appropriate before making any regulations by virtue of Part I of that Act.

Application to the Authority for a review

3.—(1) An application to the Authority for the review of a determination shall be made in writing, signed by the applicant and shall state—

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

(2) For the purposes of section 96(2) of the 1995 Act (decisions the Authority must review on application being made within prescribed period), the prescribed period is 28 days beginning with the date of the notice referred to in regulation 2.

(3) The applicant shall send with any application, or within 14 days thereafter, a copy of the documents on which he intends to reply for the purposes of the review.

(4) The Authority may, in any particular case, extend the time limit prescribed in paragraph (2), or in any corresponding provision in force in Northern Ireland, whether or not it has already expired.

(5) Where an application will, or is likely to be, received outside the time limit prescribed in paragraph (2), or in any corresponding provision in force in Northern Ireland, the application shall include with the application for a review a statement of the reasons on which he relies to justify the delay, and the Authority must consider any such statement in deciding whether or not to extend the time limit.

(6) Notwithstanding paragraph (1), the Authority may allow an application for a review to be treated as properly made even if the requirements of paragraph (1) are not met.

(7) The applicant may, at any time before he is notified of the date of the review, or, with the leave of the Authority, at any time after he is so notified, amend the grounds referred to in paragraph (1)(c) and submit any documents upon which he wishes to rely in support of those grounds as amended.

Notification of decision to review or not to review

4.—(1) Subject to paragraph (4), where the Authority receive an application for a review, they shall decide whether to review the determination in question.

(2) Where the Authority decide to review a determination, whether or not pursuant to an application for a review, they shall, within 28 days of making the decision, send to the applicant, if any, and to such other persons as they consider the justice of the case may require, a notice in writing containing the following information—

- (a) their decision to review that determination; and
- (b) the right to submit written representations in accordance with regulation 5.

(3) Where the Authority decide not to review a determination they shall, within 28 days of making the decision, send to the applicant, and to such other persons as they consider the justice of the case may require, a notice in writing containing the following information—

- (a) their decision not to review that determination;
- (b) the reasons for the decision not to review;
- (c) the applicant's right to appeal to the court on a question of law; and
- (d) the time limit for making such an appeal.

(4) On an application to which section 96(2) of the 1995 Act applies, or any corresponding provision in force in Northern Ireland, the Authority shall within 28 days of receipt of the application send to the applicant, and to such other persons as they consider the justice of the case may require, a notice in writing containing the information referred to in paragraph (2)(b).

Written representations

5. Any person notified of a review in accordance with regulation 4 may send written representations to the Authority—

- (a) within 21 days of the date of the notice, to give the reasons why that person considers the review should be dealt with by way of an oral hearing;
- (b) at any time until that person is notified of the date fixed for the review, or, with the leave of the Authority, at any time after he is so notified, in relation to the review generally.

Statement of facts

6.—(1) Where the Authority decide to review a determination, they shall prepare a statement of facts relating to the review and shall send that statement to the applicant, or if none, to such persons to appear to them to be directly affected by that determination.

(2) A person notified under paragraph (1) shall reply to the Authority within 28 days of the date of the statement therein referred to, indicating—

- (a) whether and in what respect any of the facts are disputed; and
- (b) subject to regulation 14(2), any other facts which, in the opinion of the person so notified, are relevant to the review.

Dealing with a review by an oral hearing

7.—(1) Subject to paragraph (2), the Authority may—

- (a) if the applicant and such other persons as it appears to the Authority may be directly affected by the review agree in writing; or
- (b) after having regard to the considerations specified in paragraph (3),

decide to determine a review without an oral hearing.

(2) Where the Authority have made an order under section 3 of the 1995 Act (prohibition orders), or where they have made an order under section 29(3) or (4) of that Act (disqualification orders), an oral hearing shall be held for any review of that determination, unless the person prohibited or (as the case may be) disqualified agrees in writing that the Authority may review that determination without an oral hearing.

(3) For the purposes of paragraph (1) the considerations are—

- (a) the wishes of the applicant and of such other persons as it appears to the Authority may be directly affected by the review;
- (b) whether an oral hearing would be likely to cause unreasonable delay in the determination of the review and, in particular, whether such delay would be likely to affect adversely the interests of any person; and
- (c) whether there is, or is likely to be, a conflict of evidence which an oral hearing may help to clarify.

(4) The Authority may hold an oral hearing to determine any question to which these Regulations apply (including any question which the Authority initially decided to review without an oral hearing) if they are satisfied that an oral hearing is desirable, and the requirements of Part II of these Regulations in respect of such hearings shall apply.

Notice of date, time, place and manner of review

8.—(1) The Authority shall fix the date, time and place for the review and whether it is to be dealt with by an oral hearing or not, and, not less than 28 days before that date, send to the applicant, and to such other persons as they consider the justice of the case may require, a notice in writing specifying the date, time, place and manner of the review.

(2) Where the Authority has decided 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 21 days of the date of the notice—

- (a) whether that person or any representative of that person will attend the hearing; and, if so,
- (b) the names, addresses and occupations of the witnesses, if any, that person or his representative intends to call.

(3) The Authority may postpone the date of the review (whether it is to be dealt with by way of an oral hearing or not)—

- (a) where both the applicant and the Authority agree; or
- (b) in exceptional circumstances,

provided that they send to persons notified under paragraph (1), a notice specifying the new date, time and place of the review not less than 28 days before that date.

Withdrawal of application

9. The applicant may at any time before the date fixed for a review withdraw an application by sending to the Authority a notice in writing signed by the applicant which states that the applicant withdraws that application.

Continuance, etc.

10.—(1) This paragraph applies where a person dies after a determination of the Authority to require that person to pay a penalty under section 10 of the 1995 Act, section 168(4) of the Pension Schemes Act 1993(a), or under any corresponding provision in force in Northern Ireland.

(2) Where paragraph (1) applies, the Authority may permit that person's executor or (as the case may be) administrator to make or continue an application for a review as if the personal representative had been substituted for that person.

Review Committee

11.—(1) When the Authority decide to review a determination, they shall appoint three of their members to a committee to dispose of the review (whether it is to be dealt with by way of an oral hearing or not), and none of the members so appointed shall be a member who participated in making the determination which is the subject of the review.

(2) A committee appointed in accordance with paragraph (1) is referred to as "the review committee" in these Regulations.

(3) The Authority shall nominate a member of the review committee as Chairman of the review committee.

(4) If, as the commencement of a review, any one member of the review committee other than the Chairman is absent, the review may—

- (a) with the consent of the applicant, or,
- (b) where there is no applicant, with the consent of such other persons as the review committee or its remaining members consider the justice of the case may require,

by conducted by those remaining members, and in that event shall be deemed to be properly constituted.

(5) A decision of the review committee may be taken by a majority and the decision shall record whether it was unanimous or taken by a majority: provided that where the review committee is constituted by an even number of members, the Chairman of the review committee shall have a second or casting vote.

Copies of relevant documents

12. The review committee shall send to the applicant, and to such other persons as they consider 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 Authority have in their possession not less than 28 days before the date fixed for the review.

Oral hearings

13.—(1) An oral hearing of a review shall be in public, except where the review committee consider 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 following persons shall be entitled to attend, and, in the case of persons listed in sub-paragraphs (a), (e) and (f), to be heard, at an oral hearing whether or not it takes place in public—

(a) 1993 c. 48. Section 168 was substituted by section 155 of the Pensions Act 1995.

¹Reg. 13(2)(d) omitted by art. 81 of S.I. 2008/2683 as from 3.11.08.

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- (a) the applicant;
- (b) a member of the Authority who is not appointed to the review committee;
- (c) the chief executive of the Authority;
- (d) ¹◀
- (e) a witness called by the applicant or the Authority or by any other person entitled to be heard;
- (f) such other persons as it appears to the Authority the justice of the case may require.

Summoning of witnesses

14.—(1) The Authority may by summons require any person in the United Kingdom to attend as a witness at an oral hearing of a review at such time and place as may be specified in the summons and, subject to paragraph (2), at the hearing to answer any questions, produce any documents or otherwise furnish any information relating to any matter in question in the review.

(2) No person shall be compelled to give any evidence or produce any document or other material that he could not be compelled to give or produce in a court of law.

(3) In this regulation, “document” includes information recorded in any form, and any reference to production of a document, in relation to information recorded otherwise than in legible form, is to producing a copy of the information in legible form.

Procedure at oral hearings

15.—(1) The review committee shall conduct the oral hearing of the review in such manner as they consider most appropriate for the clarification of the issues before them and generally for the just handling of the proceedings, and, where necessary, may adjourn the proceedings.

(2) Subject to paragraph (3), the applicant, and such other persons as the review committee consider the justice of the case may require, shall be entitled to give evidence, to call witnesses, to question any witnesses, and to address the review committee both on evidence and generally on the subject matter of the review.

(3) The review committee 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 committee 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.

(5) The review committee may require evidence to be given on oath or affirmation and for that purpose may administer an oath or affirmation in due form.

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

(7) If the applicant, or any other person who has notified the Authority of his intention to attend or be represented at the hearing, fails to attend or be represented, the review committee may dispose of the review in the absence of that person or may adjourn the hearing to a later date: provided that before disposing of a review in the absence of any such person the review committee shall consider any written representations sent by him under regulation 5, any reply sent by him under regulation 6(2), and, in the case of an applicant, his application under regulation 3(1) and the documents sent by him under regulation 3(3).

Notification of decision

16.—(1) The decision of the Authority following a review shall be recorded in a document which shall also contain a statement—

- (a) of the reasons for their decision; and

- (b) of the right of appeal to the court on a question of law and the time limit for making such an appeal,

and shall be signed and dated by the Chairman of the review committee.

(2) The Authority shall send a copy of the document recording the decision to the applicant, if any, and to such other persons as appear to them to be directly affected, as soon as is reasonably practicable after the decision is made.

(3) The Authority 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 document submitted in relation to an application which they have reason to believe is commercially sensitive or confidential for any other reason; and

- (b) any evidence heard in private,

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

Representation

17. 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.

Time

18.—(1) Subject to the provisions of regulation 3(4), where the Authority is satisfied that a person to whom these Regulations apply (other than the Authority) could not reasonably be expected to send any document, or documents of any description, within the time limit imposed in these Regulations, they may extend the time limit, whether or not it has already expired, in relation to that document or documents of that description.

(2) Where the time prescribed by these Regulations for doing any act expires on a public holiday, the act is in time if done on the next following day which is not a public holiday.

Irregularities

19.—(1) Any irregularity resulting from failure to comply with any provision of these Regulations before the review committee has reached its decision shall not of itself render the proceedings void.

(2) Where any such irregularity comes to the attention of the review committee, the review committee may, and must if it considers any person may have been prejudiced by the irregularity, before reaching its decision give such directions as it thinks just to cure or waive the irregularity.

(3) Clerical mistakes in any written statement of a decision following a review, or errors arising in such a document from an accidental slip or omission, may be corrected by the Chairman of the review committee certifying the correction in writing on the document.

Method of sending or delivering documents, etc.

20.—(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 it is sent to that person's appropriate address by post;
(b) if it is delivered to that person or left at that person's appropriate address.

(2) The appropriate address for the Authority is the address of the office of the Authority^(a).

(3) The appropriate address of any other person to whom any such documents 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.

(a) The office of the Occupational Pensions Regulatory Authority is Invicta House, Trafalgar Street, Brighton, East Sussex BN1 4DW

PART III

TIME LIMITS FOR PAYMENT OF CIVIL PENALTIES

Time limits for payment of civil penalties under section 10(1) of the 1995 Act

12. For the purposes of section 10(1) of the 1995 Act (civil penalties) the period prescribed for the payment of a penalty to the Authority shall be 28 days from the date of the notice in writing sent by the Authority requiring payment of that penalty.

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

12th March 1997

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

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Occupational Pensions Regulatory Authority (“the Authority”) is established under section 1 of the Pensions Act 1995 (c.26).

In the Regulations, Part I contains provision as to their citation, commencement, interpretation and extent; Part II provides for the procedures to be followed in the review of determinations by the Authority; and Part III provides the time limit for payment of a civil penalty imposed by the Authority.

Regulation 1 concerns the citation, commencement, interpretation and extent of the Regulations.

Regulation 2 concerns the requirements on the Authority when they make a determination.

Regulation 3 concerns how an application for a review is to be made.

Regulation 4 concerns the procedure to be followed by the Authority when they receive an application for a review or when they decide to review a determination of their own motion.

Regulation 5 provides for written representations to be made to the Authority in connection with a review.

Regulation 6 concerns the preparation of a statement of facts in connection with a review.

Regulation 7 concerns the circumstances in which the Authority may deal with a review other than by way of an oral hearing. It also provides for circumstances when an oral hearing must be held.

Regulation 8 concerns requirements relating to the notification of the date, time, place and manner of the review.

Regulation 9 concerns when a review may be withdrawn and the procedure to be followed.

Regulation 10 concerns the circumstances in which an application for a review of a determination may be made or continued after the death of the person in respect of whom the determination was made.

Regulation 11 concerns the establishment of a committee by the Authority to dispose of a review.

Regulation 12 provides for the copying of a relevant documents relating to a review to interested persons.

Regulation 13 provides for the circumstances in which the Authority may hold an oral hearing in private rather than in public and for the persons entitled to attend any hearing whether held in private or not.

Regulation 14 gives the Authority power to summon witnesses to attend an oral hearing of a review.

Regulation 15 concerns procedural requirements at oral hearings.

Regulation 16 provides requirements relating to the content and notification of decisions on review and also relating to their publication.

Regulation 17 concerns applications for a review which are made or continued by a person acting on behalf of another.

Regulation 18 concerns the circumstances in which certain time limits may be extended.

Regulation 19 concerns the correction of irregularities.

Regulation 20 concerns the procedures for sending or delivering documents.

Regulation 21 provides the time limit for payment of a civil penalty imposed by the Authority for the purposes of section 10(1) of the Pensions Act 1995.

An assessment of the compliance costs 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, 11th Floor, The Adelphi, 1-11 John Adam Street, London WC2N 6HT.

