

S.I. No. 397 of 2003

PENSIONS OMBUDSMAN REGULATIONS, 2003

The Minister for Social and Family Affairs, in exercise of the powers conferred on her by sections 5 and 38, and sections 126, 131, 132 and 138 (all inserted by section 5 of the Pensions (Amendment) Act, 2002 (No. 18 of 2002)) of the Pensions Act, 1990 (No. 25 of 1990), and with the consent of the Minister for Finance hereby makes the following Regulations:-

Citation and commencement.

1. (1) These Regulations may be cited as the Pensions Ombudsman Regulations, 2003.

(2) These Regulations come into operation on 2nd September 2003.

Definitions and interpretation.

2. (1) In these Regulations –

“Act” means the Pensions Act, 1990 (No. 25 of 1990);

“complainant” means a person by or in respect of whom a complaint is made or a dispute is referred to a relevant person in accordance with article 5 of these Regulations, or as appropriate, to the Pensions Ombudsman under section 131 of the Act;

“relevant person” means -

- (i) in the case of a scheme other than a public authority scheme, the trustees of the scheme,

- (ii) in the case of a public authority scheme, the Minister or Ministers to whom there is a right of appeal;
- (iii) in the case of a PRSA contract, the PRSA provider;

“respondent” means a person responsible for the management of the scheme or PRSA to which the complaint or reference relates;

"public authority scheme" means -

- (i) a statutory scheme to which section 776 of the Taxes Consolidation Act, 1997 (No. 39 of 1997) applies and in relation to which an appeal may be made to a Minister or Ministers, or
- (ii) a scheme where benefits are paid in whole or in part out of moneys provided from the Central Fund or moneys provided by the Oireachtas and the rules of which provide that an appeal may be made to a Minister or Ministers.

(2) In these Regulations, a reference to a sub-article, paragraph or subparagraph is a reference to a sub-article, paragraph or subparagraph of the provision in which the reference occurs, unless it is indicated that some other provision is intended.

Additional persons responsible for the management of a scheme or PRSA. 3.(1) The administrator of a scheme is prescribed for the purposes of section 126(3)(e) of the Act.

(2) The administrator of a PRSA is prescribed for the purposes of section 126(4)(e) of the Act.

(3) In this Article –

(a) for the purposes of sub-article (1), “administrator” in relation to a scheme means -

- (i) any person providing a service in relation to the administration of a scheme;
- (ii) any person to whom the performance of the duties of trustees of a scheme under section 59 (1) or (2) of the Act has been delegated;
- (iii) any person who is the administrator of the scheme for the purposes of section 770(1) of the Taxes Consolidation Act 1997; or
- (iv) any person to whom the application or interpretation of the rules of a scheme has been delegated in accordance with those rules.

(b) for the purposes of sub-article (2), “administrator” in relation to a PRSA has the meaning assigned to it in section 91(1) of the Act.

Disputes of fact or law excluded from jurisdiction of Pensions Ombudsman.

4. A dispute of fact or law that arises in relation to an act done by or on behalf of a person responsible for the management of the scheme may not be investigated by the Pensions Ombudsman if and to the extent that the dispute of fact or law relates to a matter which may be determined by the Pensions Board in accordance with sections 38, 53, 58, 64A and 75 of the Act or by the Director of Equality Investigations in accordance with section 76(1)(g) of the Act.

Procedures for internal resolution of disputes.

5.(1) The trustees of every scheme and every PRSA provider shall establish procedures, in accordance with this article, for dealing of with –

- (a) complaints made by actual or potential beneficiaries, and
- (b) the resolution of disputes arising between actual or potential beneficiaries and persons responsible for the management of the scheme or PRSA,

in relation to the matters set out in sub-article (2).

(2) The matters prescribed for the purposes of section 132(1) of the Act are the following complaints and disputes-

- (a) a complaint made to a relevant person by or on behalf of an actual or potential beneficiary who alleges that he has sustained financial loss occasioned by an act of maladministration done by or on behalf of a person responsible for the management of that scheme or, as appropriate, PRSA;

(b) any dispute of fact or law that arises in relation to an act done by or on behalf of a person responsible for the management of the scheme or, as appropriate, PRSA, and that is referred to a relevant person by an actual or potential beneficiary.

(3) Subject to sub-articles (4) and (5), the procedures established in accordance with sub-article (1) shall comprise the following steps -

(a) (i) An application for a determination in relation to a complaint or dispute must be made to the relevant person by or on behalf of the actual or potential beneficiary.

(ii) An application under subparagraph (i) shall set out particulars of the complaint or dispute in respect of which a determination is sought.

(iii) The particulars mentioned in subparagraph (ii) shall include —

(A) the full name, address and date of birth of the actual or potential beneficiary,

(B) the address to be used for the service of documents in connection with the complaint or dispute,

- (C) a statement concerning the nature of the complaint or dispute with sufficient details to show why the actual or potential beneficiary is aggrieved, and
 - (D) such other information as the relevant person may reasonably require.
 - (iv) The application shall be in writing and signed by or on behalf of the actual or potential beneficiary.
- (b)
 - (i) The relevant person shall make a determination in relation to a complaint or a dispute and notification of that determination shall be issued to the complainant in writing within three months from the date on which all the particulars specified in article 5(3)(a)(iii) were received.
 - (ii) The notification referred to in article 5(3)(b)(i) shall include -
 - (A) a statement of the determination;
 - (B) a reference to any legislation, legal precedent, ruling of the Pensions Board, ruling or practice of the

Revenue Commissioners or other material relied upon;

- (C) a reference to such parts of any rules of a scheme or clause of a PRSA contract relied upon and, where a discretion has been exercised, a reference to such parts of the rules of a scheme or clause of a PRSA contract by which such discretion is conferred;
- (D) a statement that the determination is not binding upon any person unless, upon or after the making of the determination, the person assents, in writing, to be bound by it; and
- (E) a statement that the complainant should check whether the complaint or dispute is one in respect of which the Pensions Ombudsman has jurisdiction to investigate under section 131 of the Act and that further information can be found in an information booklet available from the office of the Pensions Ombudsman (the address of which shall be given).

(4) Where at the date of receipt of a notification by the trustees of a scheme of a notice of such complaint or dispute, the scheme -

(a) has commenced to be wound up; or

(b) is a “frozen scheme” (within the meaning of Occupational Pension Schemes (Fees) (Amendment) Regulations 2002 (S.I. No. 610 of 2002)), and in which all the participating employers have ceased to trade;

and where the Pensions Ombudsman is satisfied that, prior to the commencement of these Regulations, the parties to the complaint or dispute had made reasonable efforts to resolve it, those efforts shall comprise the steps required for the purposes of this Article.

(5) Where a scheme is one in respect of which -

(a) a person has, prior to the commencement of these Regulations, made a complaint or referred a dispute to the Pensions Board, and

(b) the Pensions Board confirms that it is satisfied that, prior to the commencement of these Regulations, it had completed or terminated an examination of the matter giving rise to the complaint or dispute,

the steps taken in that examination shall, in respect of the person who made the complaint or referred the dispute to the Pensions Board, comprise the steps required for the purposes of this article.

**Procedure for
the conduct
of investigations.**

6. The procedure adopted in connection with the making of complaints, the reference of disputes, and the conduct of investigations by the Pensions Ombudsman shall include the following -

- (a) Where the Pensions Ombudsman proposes under section 131 of the Act to investigate a complaint or dispute he shall supply a copy of the details of the complaint or dispute, together with any amendments or supplementary statements, written representations or other documents received from the complainant, to the respondent.
- (b) Where the Pensions Ombudsman does not propose under Section 131 of the Act to investigate the complaint or dispute, he shall inform the complainant that he does not propose to conduct an investigation and the reasons for his decision.
- (c) Upon receiving a copy of the details of a complaint or dispute, the respondent shall reply to the Pensions Ombudsman which reply shall include -
 - (i) a response to the allegations made in the complaint or dispute;
 - (ii) details of any matters on which it relies in opposing those allegations; and
 - (iii) a statement whether, in the opinion of the respondent, any other person has a direct interest in the subject matter of the

complaint or dispute and if so the name and address of such other person.

(d) Subject to sub-paragraph (e), the reply referred to in sub-paragraph (c) shall be in writing, be signed by or on behalf of the respondent and shall be delivered at the office of the Pensions Ombudsman not later than twenty-one days after the date on which the details of the complaint or dispute were received by the respondent from the Pensions Ombudsman.

(e) (i) The respondent may in its reply, or in a separate notice to the Pensions Ombudsman submitted within the twenty-one day period referred to in paragraph (d), request -

(A) further particulars of the complaint or dispute; and

(B) a clarification of any matter as a preliminary issue.

(ii) In the event that further particulars or clarification as aforesaid are sought, the respondent shall reply to the complaint within fourteen days of the particulars or clarification being received.

Pensions Ombudsman 7. The Pensions Ombudsman is specified for the purposes of
may seek determination section 38(3).
of Pensions Board.

GIVEN under the Official Seal of the
Minister for Social and Family Affairs
this 2nd day of September , 2003

MARY COUGHLAN

L.S. Minister for Social and Family Affairs.

The Minister for Finance consents to the making of the foregoing Regulations.

L.S.

GIVEN under the Official Seal of the
Minister for Finance this 2nd day of
September, 2003

CHARLIE McCREEVY
Minister for Finance.

EXPLANATORY NOTE

(This note is not part of the instrument and does not purport to be a legal interpretation).

Section 5 of the Pensions (Amendment) Act, 2002 inserted a new Part XI (sections 126 to 144) into the Pensions Act to provide for a Pensions Ombudsman. These Regulations provide for certain matters in relation to his operation and jurisdiction.

Articles 1 and 2 provide for the citation, commencement and definitions.

The Pensions Ombudsman has jurisdiction to investigate specified complaints against or disputes with persons responsible for the management of an occupational pension scheme (scheme) or Personal Retirement Savings Account (PRSA). Section 126 (3) and (4) specify those who are deemed to be responsible for the management of a scheme or PRSA. **Article 3** of these Regulations extends the category of person deemed to be responsible to include the administrator of a scheme or PRSA.

Article 4 sets out the categories of dispute of fact or law excluded from the jurisdiction of the Pensions Ombudsman. These relate to

- (a) disputes that fall to be determined by the Pensions Board as to whether a scheme is a defined benefit or a defined contribution scheme, whether a member's service in relevant employment may be treated as terminated or whether rules of a scheme conflict with specific Parts of the Pensions Act, and
- (b) disputes to be investigated by the Director of Equality Investigations as to whether an employer complies section 70 of the Pensions Act in relation to equal treatment of his employees in the manner in which they are afforded access to the pension scheme.

Article 5 provides that the trustees of every scheme and PRSA must establish internal procedures for resolution of disputes and sets out certain steps which must be included in those procedures. The article also sets out limited exceptions. These apply

- (a) where the scheme is one in respect of which the complaint or dispute by the person concerned was examined by the Pensions Board prior to the commencement of these regulations, and the Pensions Board is satisfied that it had completed or terminated this examination, or
- (b) where the scheme is a frozen scheme or a scheme which has commenced to be wound up, and where the Pensions Ombudsman is satisfied that reasonable efforts were made to resolve the dispute.

Article 6 provides for certain matters to be included in the procedures adopted in connection with the making of complaints, the reference of disputes and the conduct of investigations by the Pensions Ombudsman.

Article 7 specifies the Pensions Ombudsman as a person who may apply to the Pensions Board to determine the questions referred to in Article 4.

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