

Statutory Document No. 332/01



**BUILDING SOCIETIES ACT 1986
FINANCIAL SUPERVISION ACT 1988
INVESTMENT BUSINESS ACTS 1991 TO 1993
BANKING ACT 1998
CORPORATE SERVICE PROVIDERS ACT 2000
RETIREMENT BENEFITS SCHEMES ACT 2000**

FINANCIAL SERVICES REVIEW REGULATIONS 2001

*Approved by Tynwald: 19th June 2001
Coming into operation: 21st June 2001*

In exercise of the powers conferred on the Council of Ministers by section 4B of the Building Societies Act 1986 ^(a), section 5A of the Financial Supervision Act 1988 ^(b), section 15 of the Investment Business Act 1991 ^(c), section 24 of the Banking Act 1998 ^(d), section 18 of the Corporate Service Providers Act 2000 ^(e) and section 38 of the Retirement Benefits Schemes Act 2001 ^(f), and of all other enabling powers, the following Regulations are hereby made :-

**PART 1
GENERAL**

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Financial Services Review Regulations 2001 and shall come into operation on 21st June 2001.

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- (a) 1986 c. 7. Section 4B is inserted by the Fiduciary Services Act 2005
(b) 1988 c. 16. Section 5A is inserted by the Fiduciary Services Act 2005
(c) 1991 c.18.
(d) 1998 c.4.
(e) 2000 c. 13.
(f) 2000 c.14.

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(2) In these Regulations-

“application” means an application under any of the review provisions for the review of a decision of the regulatory authority;

“the Committee” means a review committee appointed under any of the review provisions;

“disputed decision” means the decision of the regulatory authority in respect of which an application for a review is made;

“document” includes information recorded in writing or any other form;

“regulatory authority” means-

(a) in the case of a review under ***the Building Societies Act 1986, the Financial Supervision Act 1988***, the Investment Business Act 1991, the Banking Act 1998 or the Corporate Service Providers Act 2000, the Financial Supervision Commission;

(b) in the case of a review under ***the Insurance Act 1986 or*** the Retirement Benefits Schemes Act 2000, the Supervisor under that Act;

“the Reply” has the meaning given by regulation 10(1)(a);

“the review provisions” means -

(a) ***section 29B of the Insurance Act 1986;***

(aa) ***section 4B of the Building Societies Act 1986;***

(ab) ***section 5A of the Financial Supervision Act 1988;***

(ac) ***section 15 of the Investment Business Act 1991***

(b) section 24 of the Banking Act 1998,

(c) sections 17 and 18 of the Corporate Service Providers Act 2000; and

(d) section 38 of the Retirement Benefits Schemes Act 2000;

“the Statement of Case” has the meaning given in regulation 4(1)(a).

PART 2 APPLICATIONS

Applications for review: notice of membership, etc.

2. (1) An application must be made within 28 days of the date on which the regulatory authority gave notice to the applicant of the disputed decision.

(2) An application must be made in the form set out in Schedule 1.

Appointment of Committee: notice of membership, etc.

3. (1) After the appointment of the Committee in relation to any disputed decision, it must without delay meet to -

- (a) appoint a chairman; and
 - (b) give notice of its appointment to the applicant and to the regulatory authority.
- (2) The notice under paragraph (1) shall state-
- (a) the names of the members of the Committee;
 - (b) the name of the clerk of the Committee; and
 - (c) the address to which the parties should send documents concerning the review,

and shall be accompanied by a copy of the application form addressed to the Chief Secretary by the applicant.

Statement of Case

4. (1) The applicant must -
- (a) send 4 copies of the material specified in Schedule 2 (in these Regulations referred to as “the Statement of Case”) so that it is received by the Committee not later than the end of the period of 28 days beginning with the date on which the application is served on the Chief Secretary; and
 - (b) at the same time send one copy of the Statement of Case to the regulatory authority.
- (2) Where, at the end of the period within which the applicant is required to send his Statement of Case he has not done so he shall be treated as having withdrawn his application but without prejudice to regulation 29(1).

Amendment of Statement of Case

5. (1) The applicant may at any time before the date by which he must send the Statement of Case under regulation 4(1) -
- (a) amend the grounds of review identified in the Statement of Case; or
 - (b) withdraw or amend any of the other material in the Statement of Case; or
 - (c) supply any further material.
- (2) After that date, the applicant may -
- (a) amend the grounds of review identified in the Statement of Case; or
 - (b) withdraw or amend any of the other material in the Statement of Case; or
 - (c) supply any further material,
- only with the leave of the Committee.

- (3) The Committee may grant leave under paragraph (2) if it is satisfied-
- (a) that the circumstances are such that it would not be reasonable to expect the applicant to have made the amendment or withdrawal or supplied the material within the time allowed under paragraph (1); and
 - (b) that the amendment or withdrawal (if made), or the material (if supplied), is capable of significantly affecting the outcome of the review.

(4) Where the Committee grants leave under paragraph (2), it may do so on such terms as are reasonable.

- (5) The applicant must send-
- (a) four copies of every amendment or every item of material to the Committee; and
 - (b) one copy to the regulatory authority.

(6) Where, under paragraph (5), the copy is sent after the regulatory authority has sent its Reply to the Committee, the Committee must invite the regulatory authority to send a revised Reply to the Committee so that it is received before the end of the period of 14 days beginning with the date of the invitation.

(7) The Committee must not decide the review before the end of any period allowed under paragraph (6).

Withdrawal of application

6. The applicant may withdraw his application at any time.

PART 3

RESPONSE TO THE APPLICATION

Acknowledgement

7. (1) On receiving the Statement of Case, the Committee must without delay send an acknowledgement of its receipt to the applicant.

(2) This regulation is subject to regulation 8.

Misconceived, etc. applications

8. (1) Where a Statement of Case has been received by the Committee, and at the end of the period within which the applicant is required to send the Statement of Case under regulation 4, the Committee is of the opinion that the Statement of Case reveals no valid

grounds of review, or that the review is otherwise misconceived, it may serve a notice to that effect on the applicant.

(2) A notice under this regulation must state the Committee's reasons for its opinion and inform the applicant that the review will not proceed unless the applicant informs the Committee in writing within 14 days of the date of the notice that he wishes it to proceed.

(3) Where a notice is given under this regulation in relation to a review, unless the applicant informs the Committee in writing before the end of the period of 14 days starting with the date of the notice, that he wishes to proceed with the review, he shall be treated as having withdrawn his application.

Incomplete reviews

9. (1) Where a Statement of Case has been received by the Committee, and it considers that the review could be decided more fairly and efficiently if the applicant provided further material, the Committee may serve on the applicant a notice to that effect, inviting him to supply that material to the Committee within 14 days of the date of the notice.

(2) Where the Committee serves a notice under paragraph (1), it must at the same time inform the regulatory authority that it has done so.

(3) Where the Committee has served a notice under paragraph (1), the time limit imposed by regulation 10 shall not begin until the expiry of the period within which the further material may be supplied.

(4) The Committee must without delay send to the regulatory authority a copy of any material it receives under this regulation.

Reply by the regulatory authority

10. The regulatory authority must -

- (a) send 4 copies of the material specified in Schedule 3 (in these Regulations referred to as "the Reply") so that they are received by the Committee not later than the end of the period of 28 days beginning with the first date on which the regulatory authority received the copies of the Statement of Case; and
- (b) at the same time send one copy of the Reply to the applicant.

Withdrawal of opposition

11. Where the regulatory authority states in the Reply or at any time in writing that it does not seek to uphold the disputed decision, the Committee must without delay revoke or, as the case requires, vary the decision of the regulatory authority.

PART 4

PREPARATION FOR DECIDING THE REVIEW

Representations by interested persons

12. (1) The Committee must as soon as practicable send to-
- (a) any person named by the applicant or the regulatory authority as having a direct interest in the subject matter of the review, and
 - (b) any other person whom the Committee is satisfied has such a direct interest, copies of the documents supplied by each party in relation to the review, together with an invitation to send written representations to the Committee so that they are received before the end of a period of 21 days beginning with the date of that invitation.
- (2) The Committee must as soon as practicable send to each of the parties a copy of any representations received under this regulation, together with an invitation to send written comments on them to the Committee so that they are received before the end of the period of 14 days beginning with the date of that invitation.
- (3) The Committee must not decide the review before-
- (a) the end of the period allowed for making representations under paragraph (1), or
 - (b) the end of any period allowed for making comments under paragraph (2),
- whichever is the later.

Experts

13. (1) The Committee may, if it thinks that any technical question arises in relation to the review on which it would be desirable for the Committee to have the assistance of an expert, appoint a person having appropriate qualifications to enquire into and report on the matter and, if either party requests, to attend the hearing and give evidence.
- (2) The Committee must supply the regulatory authority and the applicant with a copy of any report received under paragraph (1) in advance of the hearing.

Legal advice

14. The Committee may, if it thinks that a question of law arises in relation to the review on which it would be desirable to have the advice of a lawyer, appoint an advocate, solicitor or barrister.

PART 5

DECISIONS OF THE COMMITTEE WITHOUT A HEARING

Power to decide the review without a hearing

15. (1) Where, at the end of the period within which the regulatory authority is required to send its Reply-

- (a) the regulatory authority has not done so and the applicant has not requested an oral hearing; or
- (b) the regulatory authority has done so but neither the applicant nor the regulatory authority has requested an oral hearing,

and the Committee does not consider that a hearing is necessary, the Committee may decide the review without a hearing.

(2) Subject to paragraph (3) and regulations 5 and 12, where the Committee may decide the review under this regulation, it must do so as soon as practicable after the end of the period mentioned in paragraph (1).

(3) Before deciding the review the Committee must consider -

- (a) the grounds of review and the applicant's additional material;
- (b) any Reply sent by the regulatory authority;
- (c) any representations or comments received under regulation 12,

and shall decide the review on the basis of the material available to it.

PART 6

THE HEARING

Arrangements for the hearing

Fixing the date for the hearing

16. (1) This Part applies where the review is to be decided on the basis of an oral hearing.

(2) When the Committee has received the Statement of Case and the Reply, it must without delay fix a date for the hearing, bearing in mind -

- (a) the seriousness and complexity of the case;
- (b) the convenience of the parties;
- (c) whether there is to be a pre-hearing review under regulation 20;
- (d) whether representations are to be (or have been) invited under regulation 12.

- (3) The Committee must serve on the parties a notice informing each of them -
- (a) of the time and place of the hearing of the review;
 - (b) where there is to be a pre-hearing review, of the time and place of that review.

(4) The date fixed for the hearing must be no less than 21 days and no more than 42 days after the date of the notice under paragraph (3).

(5) The notice must include guidance regarding the procedure which will apply to the hearing, including in particular information about -

- (a) attending the hearing and bringing documents and evidence;
- (b) calling witnesses;
- (c) the right to be represented or assisted at the hearing,
- (d) the right to receive reasons in writing for the determination made by the Committee, and
- (e) the right to judicial review in respect of the proceedings and decision of the Committee.

Action by applicant and regulatory authority on receiving notice of hearing

17. (1) No less than 14 days before the date fixed for the hearing, the applicant and the regulatory authority-

- (a) must each inform the Committee whether or not he (or it) intends to appear or be represented at the hearing, and which, if any, witnesses he (or it) intends to call, and
- (b) may each, if he (or it) does not intend to appear or be represented at the hearing, send to the Committee further written representations in support of material already sent to the Committee.

(2) The Committee must without delay send to each of the parties a copy of any representations received under this regulation.

Alteration of place or time of the hearing

18. (1) The Committee may alter the time and place of the hearing-

- (a) where both the applicant and the regulatory authority agree, or
- (b) in exceptional circumstances, provided that the altered date of the hearing is not earlier than the original date.

(2) Where the Committee alters the time or place of the hearing under paragraph (1)(b), it must without delay inform the applicant and the regulatory authority in writing of the alteration and the reasons for it.

Publication of notice of hearings

19. The Committee must publish in such manner as the Committee thinks appropriate, taking into account the need for transparency, the importance of each review and the degree of public interest in each review, a list of all reviews for which an oral hearing is to be held and of the time and place fixed for each hearing.

Pre-hearing review

Pre-hearing review

20. (1) Where the Committee has received the Statement of Case and the Reply, it must without delay decide whether it is appropriate to conduct a pre-hearing review with a view to -

- (a) identifying the issues which are likely to be material to the Committee's decision;
- (b) expediting the proceedings at the hearing; and
- (c) assisting in the management of the review.

(2) The Committee may, if it is satisfied that to do so will produce a substantial saving in the cost of the review, determine at the pre-hearing review any question of law arising in relation to the review which it is satisfied will significantly affect its outcome.

(3) The Committee must as soon as practicable send to each of the parties a copy of any determination made under paragraph (2).

Procedure at the hearing, etc.

Hearing to be in public

21. The hearing must be in public except where the Committee is satisfied that the interests of justice will not be prejudiced, and -

- (a) the subject matter-
 - (i) relates to intimate personal or financial circumstances;
 - (ii) is commercially sensitive; or
 - (iii) consists of information communicated or obtained in confidence; or

- (iv) is a matter whose disclosure would not be in the interests of the public or a substantial proportion of the public; or
- (b) for any other reason, it is fair and reasonable for the hearing, or any part of the hearing, to be conducted in private.

Procedure at the hearing

22. (1) At the beginning of the hearing the Chairman must explain the order of proceedings which the Committee proposes to adopt.

(2) The Committee must conduct the hearing in the manner which it considers most suitable to clarification of the issues before it and generally to fair handling of the proceedings; it shall so far as appears appropriate seek to avoid undue formality in its proceedings.

(3) The applicant and the regulatory authority may appear at the hearing and may be represented or assisted by any person.

(4) If the applicant or the regulatory authority fails to attend or be represented at the hearing, the Committee may hear and, provided they have considered any representations made by a party under regulation 17(1)(b), determine the review in that party's absence.

(5) The Committee must consider any representations made by an interested person under regulation 12.

(6) Subject to paragraph (7), the applicant and the regulatory authority are entitled to give evidence, to call witnesses, to question any witnesses and to address the Committee both on the evidence and generally on the subject matter of the review.

(7) The Committee may at any point in the hearing limit the rights of either party under paragraph (6), provided that it is satisfied that to do so will not prevent the review from being decided fairly.

(8) The Committee may adjourn the hearing, but must not do so unless it is satisfied that it is necessary to do so in order for the review to be decided fairly.

- (9) The time and place fixed for an adjourned hearing must be -
 - (a) announced before the adjournment, or
 - (b) published in accordance with regulation 19.

Evidence

23. (1) Evidence before the Committee may be given orally or, if the Committee so requires, by affidavit or written statement, but the Committee may at any stage of the proceedings request the personal attendance of any deponent or maker of a written statement.

(2) The Committee may receive evidence of any fact which appears to the Committee to be relevant, whether or not the evidence -

- (a) would be admissible in a court of law, or
- (b) was available to the regulatory authority when the disputed decision was taken.

PART 7

DECISION OF THE COMMITTEE

The decision

24. (1) The Committee must decide, taking into account in particular the applicant's grounds of review and the Reply of the regulatory authority whether -

- (a) the disputed decision is based on an error of fact;
- (b) the disputed decision is wrong in law; or
- (c) the regulatory authority's exercise of its discretion in relation to the disputed decision was justified on its merits.

(2) A decision of the Committee may be taken by a majority, and the decision must record whether it was unanimous or taken by a majority.

(3) The decision of the Committee may be made and announced at the end of the hearing, but in any event, whether there has been a hearing or not, must be recorded immediately it is made in a document which must also contain a statement of the reasons for the decision and must be signed and dated by the Chairman.

(4) Where the decision is not announced at the end of the hearing, the Committee must

- (a) within 7 days of the end of the hearing, inform each party of its decision under paragraph (1), and
- (b) as soon as reasonably possible, send to each party a copy of the document mentioned in paragraph (3).

(5) Except where the decision is announced at the end of a hearing, it shall be treated as having been made on the day on which a copy of the document mentioned in paragraph (3) is sent to the applicant.

Publication

25. (1) The Committee must make such arrangements for the publication of the Committee's decisions as it considers appropriate, but in doing so must have regard to the need to preserve the confidentiality of any evidence heard in private or of any confidential material supplied to the Committee.

(2) For the purposes of any arrangements made under paragraph (1), the Committee may make any necessary deletions from the text of a decision.

PART 8

SUPPLEMENTARY

Irregularities

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

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

(3) Clerical mistakes in any document recording a direction, order or decision of the Committee, or errors arising in such a document from an accidental slip or omission, may be corrected by the Committee by certificate under the Chairman's hand.

Documents, etc.

27. (1) Anything required to be sent to or served on any person for the purposes of the review may be-
- (a) delivered to the person personally,
 - (b) sent to him at his appropriate address by post or by recorded delivery, or
 - (c) sent to him by fax or E-mail (electronic mail), or other similar means which are capable of producing a document containing the text of the communication, in which case the document shall be regarded as sent when it is received in a legible form.
- (2) A person's appropriate address for the purposes of paragraph (1) is-
- (a) in the case of a document directed to the Committee, the address published under regulation 3(2)(c);
 - (b) in the case of a document directed to the applicant or his representative, the address stated in the Statement of Case or such other address as may be subsequently notified to the Committee;
 - (c) in the case of a document addressed to the regulatory authority, the address stated in the Reply or such other address as may be subsequently notified to the Committee.

(3) Anything required to be sent to or served on a company is duly sent or served if it is sent to or served on the secretary of the company at its principal or registered address for the time being.

(4) Anything required to be sent or delivered to or served on a partnership is duly sent or served if it is sent to or served on any one of the partners for the time being.

(5) Where anything is sent to any person by registered post or recorded delivery, it shall be treated as if it had been received by that person on the date on which it is received for dispatch by the Post Office.

Time

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

General power of the Committee

29. (1) The Committee may extend any time limit imposed by these Regulations other than that imposed by regulation 2(1) if it is satisfied-

- (a) that the circumstances are such that it would not be reasonable to expect compliance with the time limit; and
- (b) that not to extend the time limit would result in substantial injustice.

(2) The power in paragraph (1) may be exercised whether or not the time limit concerned has already expired.

(3) Subject to the provisions of these Regulations, the Committee may regulate its own procedure.

regulation 2(3)

SCHEDULE 1

**APPLICATION FOR A REVIEW OF A DECISION TAKEN BY THE
REGULATORY AUTHORITY**

To: The Chief Secretary
Government Office
Douglas
Isle of Man

Application for a review under *the Insurance Act 1986 / the Building Societies Act 1986 / the Financial Supervision Act 1988* / the Investment Business Act 1991 / the Banking Act 1998 / the Corporate Service Providers Act 2000 / Retirement Benefits Schemes Act 2000 [*delete as appropriate*] of a decision of the *Insurance Authority / Financial Supervision Commission / Retirement Benefits Schemes Supervisor* [*delete as appropriate*]

1. Full name and address of the applicant and (if different) the address for service of acknowledgement -

2. Information sufficient to identify the disputed decision and its nature[do not include the grounds on which a review is being sought][*continue on separate sheet if necessary*]-

3. Signed by or on behalf of the applicant -

..... Date

Regulation 4(1)

SCHEDULE 2

STATEMENT OF CASE

1. A document stating -
 - (a) the grounds of review in sufficient detail to indicate -
 - (i) to what extent (if any) the applicant contends that the disputed decision was based on an error of fact;
 - (ii) to what extent (if any) he contends that the disputed decision was wrong in law;
 - (iii) to what extent (if any) he is seeking a review of the regulatory authority' s exercise of its discretion in relation to the decision;
 - (b) the name and address and the profession of the person (if any) representing the applicant, and whether the Committee should send documents concerning the review to the representative instead of to the applicant;
 - (c) whether the applicant requests that the review should be decided at an oral hearing; and
 - (d) if, in the opinion of the applicant, any other person has a direct interest in the subject matter of the review, the name and address of such other person.
2. A copy of any document the applicant has received from the regulatory authority notifying him of the disputed decision.
3. A copy of any notice he has received from the regulatory authority, either before or after the regulatory authority took the disputed decision, explaining its reasons for considering or taking the decision.
4. A copy of every other document on which the applicant intends to rely for the purposes of the review.

Regulation 10(1)(a)

SCHEDULE 3

REPLY OF THE REGULATORY AUTHORITY

1. A document stating -
 - (a) that the regulatory authority has received the Statement of Case;
 - (b) whether the regulatory authority seeks to uphold the disputed decision;
 - (c) the address of the regulatory authority;
 - (d) the name, address and profession of the person (if any) representing the regulatory authority and whether the Committee should send documents concerning the review to the representative rather than to the regulatory authority; and
 - (e) if in the opinion of the regulatory authority any other person has a direct interest in the subject matter of the review, the name and address of such other person.

2. Where the regulatory authority seeks to uphold the disputed decision, it must send to the Committee -
 - (a) a statement summarising its answer to each ground of review supplied by the applicant;
 - (b) a copy of every document on which it relies for the purposes of opposing the review;
 - (c) where the applicant has not sent to the Committee a copy of a notice giving the regulatory authority's reasons as mentioned in paragraph 3 of Schedule 2, a statement explaining why it took the disputed decision, and
 - (d) a statement indicating whether or not the regulatory authority requests an oral hearing.

Made 31st May, 2001

J. F. Kissack
Chief Secretary

EXPLANATORY NOTE

(This Note is not part of the Regulations)

These Regulations provide rules of practice and procedure for committees appointed under 15 of the Investment Business Act 1991, section 24 of the Banking Act 1998, section 18 of the Corporate Service Providers Act 2000 and section 38 of the Retirement Benefits Schemes Act 2001. The committees have the power to review many of the supervisory decisions taken by the Financial Supervision Commission and the Insurance Supervisor.