
STATUTORY INSTRUMENTS

1988 No. 2256

ECCLESIASTICAL LAW, ENGLAND

The Church of England Pensions Regulations 1988

(approved by the General Synod)

<i>Made</i>	- - - -	<i>8th November 1988</i>
		<i>22nd December</i>
<i>Laid before Parliament</i>		<i>1988</i>
<i>Coming into force</i>	- -	<i>1 April 1989</i>

In exercise of the powers conferred by section 6 of the Clergy Pensions (Amendment) Measure 1972(1) the General Synod hereby approve the following regulations:—

PART I
PRELIMINARY

Citation and commencement

1. These regulations may be cited as the Church of England Pensions Regulations 1988 and shall come into operation on 1st April 1989.

Interpretation

2.—(1) In these regulations—

“actuary” means a Fellow of the Institute of Actuaries or of the Faculty of Actuaries in Scotland employed by the Board for the purposes of the 1961 Measure and these regulations;

“approved scheme” means a pensions scheme approved by the Board and the Commissioners for the purposes of these regulations;

“bishop” includes an archbishop;

“the Board” means the Church of England Pensions Board;

“child” includes a step-child;

“clerk” means any bishop, priest or deacon of the Church of England;

“the Commissioners” means the Church Commissioners;

“diocesan bishop” means the bishop of any diocesan bishopric in England, whenever created, including the bishopric of Sodor and Man;

“ecclesiastical service” means service rendered under the direction of a diocesan bishop or carried on in furtherance of the spiritual or administrative work of the Church of England and recognised as such by a diocesan bishop;

“excepted provision” means a provision of the 1961 Measure which is excepted from section 6(2) of the Clergy Pensions (Amendment) Measure 1972;

“licensed lay worker” means a person who has been admitted by a bishop as a lay worker of the Church of England and who has been authorised by a bishop by licence to serve as such a worker, and includes a person who has been so admitted and has been so authorised otherwise than by licence if on 1st December 1988 he was a member of the Church Workers Pension Fund;

“the 1961 Measure” means the Clergy Pensions Measure 1961(2);

“pensionable service” means—

- (a) stipendiary ecclesiastical service within the area to which these regulations apply in connection with a diocese, cathedral or parish, or in connection with the collegiate churches of Westminster or Windsor;
- (b) service which is treated as pensionable service by virtue of an agreement made or deemed to have been made under regulation 5(1) or (2) of these regulations; and
- (c) service which by virtue of regulation 4(2) of these regulations is treated as having been performed during an interval between service included in sub-paragraph (a) or (b) above;

but, except as provided in regulation 5(2), pensionable service does not include any service in respect of which a clerk, deaconess or licensed lay worker is a member of a pensions scheme other than the principal scheme or an approved scheme;

“principal scheme” means the provisions relating to pensions for clerks, deaconesses and licensed lay workers contained in these regulations and in rules made under section 3 of the Clergy Pensions (Amendment) Measure 1967(3), and known as the Church of England Pensions Scheme;

“a qualifying period of pensionable service” means—

- (a) a period of pensionable service of not less than two years or a succession of periods of such service (whether with or without intervals) amounting in the aggregate to not less than two years, or
- (b) if in exceptional circumstances the Board with the concurrence of the Commissioners determine that in the case of an individual scheme member pensionable service for a period shorter than two years, or for a succession of periods amounting in aggregate to a period shorter than two years, should be treated as a qualifying period, pensionable service for that shorter period;

“retiring age” means in the case of a man the age of 65 years or such earlier age as the General Synod may by resolution from time to time determine and in the case of a woman the age of 60 years or such other age as the General Synod may so determine;

“scheme member” means a clerk, deaconess or licensed lay worker;

“state pensionable age” means pensionable age for the purposes of the Social Security Acts 1975 to 1988;

“stipend” includes salary and other emoluments;

(2) 1961 No. 3.
(3) 1967 No. 1.

“suffragan bishop” means the bishop of any suffragan bishopric in England, whenever created.

(2) For the purposes of these regulations ecclesiastical service is stipendiary if the scheme member receives in respect of that service—

- (a) a payment from the Commissioners' general fund, including any payment out of that fund by way of a guaranteed annuity under section 1 of the Endowments and Glebe Measure 1976(4) or an annual personal grant under section 2 of that Measure;
- (b) a payment from any diocesan fund; or
- (c) a payment from money raised in the parish and given for or allocated to the maintenance of that scheme member;

except that ecclesiastical service is not stipendiary if the only payment received by the scheme member is made to him by way of reimbursement of or contribution to expenses incurred by the scheme member, including the cost of maintaining, heating, lighting and cleaning the property in which he lives or is entitled to live.

(3) For the purposes of these regulations “dependant” has such meaning as the Board, having regard to all the circumstances, may determine in relation to each case.

(4) The Interpretation Measure 1925(5) shall apply for the interpretation of these regulations as it applies for the interpretation of Measures passed by the General Synod.

Extent

3. These regulations extend to—

- (a) the whole of the province of Canterbury, except the Channel Islands, and
- (b) the whole of the province of York, including the Isle of Man.

PART II

PENSIONS FOR SCHEME MEMBERS

Entitlement to pension of scheme members who have performed a qualifying period of pensionable service

4.—(1) Subject to the provisions of these regulations, any scheme member who retires on or after the date on which these regulations come into force and has performed a qualifying period of pensionable service shall be entitled to receive from the Commissioners for the remainder of his life—

- (a) if he retires on or after attaining the retiring age, a pension at the rate applicable to him under Part I of Schedule 1 to these regulations;
- (b) if he retires before attaining the retiring age on the ground that he has become incapable through infirmity of performing the duties of his office or if, having ceased to perform pensionable service before attaining that age and not being in receipt of a pension in respect of that service, he subsequently before attaining that age satisfies the Board that he has become incapable through infirmity of performing pensionable service, a pension at the rate applicable to him under Part II of that Schedule;
- (c) if he retires (otherwise than by reason of infirmity) before attaining the retiring age but not more than five years before he would have attained that age, after having given not less

(4) 1976 No. 4.

(5) 1925 No. 1.

than three months' notice in writing of his intention to do so to the Board, a pension at the rate applicable to him under Part III of that Schedule.

(2) Where there is an interval not exceeding three months or such longer interval as the Board may in exceptional circumstances allow between two periods of service performed by any scheme member (being pensionable service under sub-paragraph (a) or (b) of the definition of pensionable service in regulation 2(1) above), then for the purpose of determining whether that scheme member has performed a qualifying period of pensionable service or of determining the length of the qualifying period of pensionable service performed, he shall be treated as having performed pensionable service during that interval; and if the pensionable service on one or both sides of the interval is part-time service, he shall be treated as having performed during that interval service either of the nature performed by him before the interval or of that performed by him afterwards, whichever is of greater benefit to the scheme member.

(3) Where the pensionable service performed by a scheme member is being performed under the direction of a diocesan bishop, the notice required to be given under paragraph (1)(c) above shall be given to that bishop as well as to the Board.

Powers of Board to enter into agreements under which certain service is treated as pensionable

5.—(1) The Board may enter into an agreement with any clerk, deaconess or licensed lay worker or with the employer of any clerk, deaconess or licensed lay worker under which service performed by the clerk, deaconess or lay worker which is service to which this paragraph applies (but is not pensionable service under sub-paragraph (a) of the definition of pensionable service in regulation 2(1) above) is treated as pensionable service for the purposes of these regulations, and any such agreement may if the Board think fit require the clerk, deaconess or lay worker concerned or, as the case may be, the employer to pay to the Commissioners such sum or sums of money as the Board may determine having regard to the nature of the service performed and to the cost of treating that service as pensionable service.

The service to which this paragraph applies is—

- (a) service as a clerk, deaconess or licensed lay worker, or
- (b) service otherwise in furtherance of the spiritual or administrative work of the Church of England,

whether performed within or outside the area to which these regulations apply, except service in respect of which the clerk, deaconess or licensed lay worker concerned is a member of any pensions scheme other than an approved scheme.

(2) Where a clerk, deaconess or licensed lay worker ceases to be a member of a pensions scheme, other than the principal scheme or an approved scheme, without becoming entitled to any retirement benefit under it, the Board may enter into an agreement with the clerk, deaconess or lay worker under which the service in respect of which he was a member of that scheme is treated as pensionable service for the purposes of these regulations, and any such agreement may, if the Board think fit, require the clerk, deaconess or lay worker concerned to pay to the Commissioners such sum or sums of money as the Board may determine.

Increase of pensions

6.—(1) The Commissioners shall have power to give to the Board from time to time directions for increasing the rates of pension payable under the preceding provisions of these regulations to scheme members or to any class or description of scheme members, including in particular scheme members described by reference to the time when they became or become entitled to pensions under these regulations.

(2) The Commissioners may augment, by such amount as may be agreed with the Board and for such period as may be so agreed, the pension payable under the preceding provisions of these regulations to any individual scheme member.

(3) If the Board consider that for any year the total income of any scheme member who is in receipt of a pension under these regulations is or is likely to be less than such amount as the Board with the concurrence of the Commissioners may for the purposes of this subsection determine in relation to that year, the Board may request the Commissioners to pay to that member such supplementary pension, not exceeding the amount needed to bring the scheme member's total income for the year in question up to the amount so determined in relation to that year, as the Board may determine in accordance with general directions of the Commissioners.

In this paragraph "total income" in relation to any scheme member means the total income of the member from all sources as estimated by the Board, and in the case of a member who is living with his or her spouse means the aggregate of the member's total income and that of the spouse as so estimated; and in estimating the total income of any person the Board may disregard such part of the income of that person as in the special circumstances of the case they think fit.

Entitlement to pension on grounds of infirmity

7.—(1) A scheme member shall not be entitled to receive a pension under these regulations on the ground that he has become incapable through infirmity of performing the duties of his office, or that, having ceased to perform pensionable service before attaining the retiring age, he has become incapable through infirmity of performing pensionable service, unless the Board are satisfied, after considering medical evidence and such other evidence as is in their opinion necessary, that the scheme member is so incapable and that the infirmity is likely to be permanent.

(2) A decision of the Board under paragraph (1) above entitling a scheme member to a pension on the ground that he has become incapable through infirmity of performing the duties of his office or of performing pensionable service shall be made subject to a condition that further medical evidence may be subsequently required by the Board from time to time as they may direct.

(3) If a scheme member fails to comply with a condition imposed under paragraph (2) above or if the Board are satisfied after considering further medical evidence that the scheme member has become capable of performing pensionable service, the Board may suspend or reduce the pension, as they think fit.

(4) A scheme member who is dissatisfied with—

- (a) a decision of the Board under paragraph (1) above that he has not become incapable as mentioned in that paragraph or that the infirmity is not likely to be permanent, or
- (b) a decision of the Board under paragraph (3) above to suspend or reduce the pension,

may appeal therefrom to a board of two or more referees appointed by the Board as suitable persons to consider that appeal, and the decision of the board so appointed shall be final.

(5) Where a pension is suspended or reduced under paragraph (3) above and subsequently the Board are satisfied after considering further medical evidence that the scheme member is incapable of performing pensionable service, the member shall be deemed to have retired again, and regulation 9(2) below shall apply as it applies on the second retirement of a scheme member whose pension is suspended or reduced under that regulation.

Death of member within one year of retirement

8. Where a scheme member who is entitled to a pension under these regulations dies within one year from the date on which he retired or is deemed to have retired, the Commissioners shall pay to his legal representatives the pension that would have been payable to him under these regulations in respect of that year less any instalment thereof previously paid to him; and in calculating the pension

that would have been payable to him the Commissioners shall not take into account any augmentation of pension made under regulation 6(2) or supplementary pension paid under regulation 6(3).

Suspension or reduction of pension in case of service after retirement

9.—(1) If a scheme member who—

- (a) is in receipt of a pension under these regulations and
- (b) has not attained, in the case of a woman, the age of 65 years or, in the case of a man, the age of 70 years,

performs after retirement service which is pensionable service, the Board shall have power to suspend or reduce that pension as they think fit.

(2) Where the pension of a scheme member who has retired after performing less than 37 years' pensionable service is suspended or reduced under paragraph (1) above, then, on his second retirement, he shall be paid a pension at such rate as the Board think fit having regard to the additional period of pensionable service performed, not being a rate lower than that received by him before the pension was suspended or reduced.

(3) The rate of pension payable to any scheme member under these regulations shall not be increased by reason of the performance by him of pensionable service after retirement unless his pension has been suspended or reduced under this regulation.

Provisions as to date of retirement

10.—(1) For the purposes of these regulations a scheme member who—

- (a) before attaining the retiring age ceases to perform pensionable service without receiving a pension in respect of that service, and
- (b) subsequently before attaining that age satisfies the Board that he has become incapable through infirmity of performing pensionable service,

shall be deemed to have retired on the date on which the Board determine that they are so satisfied.

(2) For the purposes of these regulations a scheme member who—

- (a) before attaining the retiring age ceases to perform pensionable service, and
- (b) on the date on which he attains that age is neither performing such service nor in receipt of a pension in respect of such service,

shall be deemed to have retired on that date.

(3) A clerk who—

- (a) is deposed from Holy Orders, or
- (b) executes a deed of relinquishment under the Clerical Disabilities Act 1870(6),

is still a clerk for the purposes of these regulations, and if at the date on which the clerk is so deposed or on which that deed is recorded in the diocesan registry under section 4 or 5 of that Act the clerk has attained the retiring age he shall be deemed to have retired on that date, and if at that date he has not attained the retiring age he shall be deemed to have retired on the date on which he attains that age.

Application for pension

11. An application for the pension to which a scheme member is entitled under this Part of these regulations shall be made in such manner as the Board may determine; and where a member is

incapacitated from making such an application himself, the Board may authorise some other person to make the application on his behalf.

Return of certain payments

12.—(1) The payments to which this regulation applies are—

- (a) any contribution paid under Part 1 of the Clergy Pensions Measure 1948(7);
- (b) any sum received by the Board in respect of a clerk ordained before 1st January 1948 under an agreement made or deemed to have been made under regulation 5 above;
- (c) any sum received by the Board in respect of service performed after 31st December 1954 by a clerk ordained after 31st December 1947 under an agreement made or deemed to have been made under regulation 5 above;
- (d) any sum received by the Board in respect of service performed by a clerk ordained before 1st January 1948 under reciprocal arrangements made or deemed to have been made under regulation 23 or 24 below;
- (e) any sum received by the Board in respect of service performed after 31st December 1954 by a clerk ordained after 31st December 1947 under reciprocal arrangements made or deemed to have been made under regulation 23 or 24 below.

(2) Subject to paragraph (5) below, where a clerk in respect of whom the Board has received any payments to which this regulation applies ceases to perform pensionable service and is not entitled to receive immediately a pension under these regulations, the Board, on an application made in such form as the Board may determine, may forthwith, and shall upon his attaining the retiring age or retiring before that age by reason of infirmity without being so entitled, request the Commissioners to pay him such sum as is specified in paragraph (4) below; but no payment shall be made to a clerk who makes an application under this paragraph after he has become entitled to a pension under these regulations.

(3) Subject to paragraph (6) below, where a clerk in respect of whom the Board has received any payments to which this regulation applies dies before receiving a pension under these regulations, the Commissioners shall pay to his personal representatives such sum as is specified in paragraph (4) below; except that no payment shall be made under this subsection in respect of a clerk who has received a payment under subsection (2) above.

(4) The sum to be paid under this regulation—

- (a) in the case of payments mentioned in paragraph (1)(a) above, shall be such sum as is equal to the aggregate of all the contributions payable by the clerk, together with compound interest at the rate of two and a half per cent per annum with annual rests upon each such contribution calculated from the date of the payment thereof to the date of repayment under paragraph (2) or to the date of death in the case of repayment under paragraph (3), after deducting therefrom any arrears of contributions due from the clerk together with interest at the rate of five per cent per annum calculated from the respective dates on which the contributions in arrear were due;
- (b) in the case of any other payments to which this regulation applies, shall be such sum as is equal to the aggregate of all the payments received in respect of the clerk, together with compound interest at the rate of two and one half per cent per annum with annual rests upon each payment calculated from the date of the payment thereof to the date of the repayment under paragraph (2) or to the date of death in the case of repayment under paragraph (3).

(5) No clerk shall be entitled under paragraph (2) above to be paid any sum by way of return of any sum paid by him under an agreement made or deemed to have been made under regulation 5 above—

- (a) in respect of any period of service in employment which in relation to him is contracted out employment by reference to the principal scheme; or
- (b) in respect of any period of service after 5th April 1975 (not being service mentioned in sub-paragraph (a) above) unless that period is less than two years and a payment has been or is to be made to him by way of return of any sum paid by him under an agreement made or deemed to have been made in respect of a period of service before 6th April 1975.

(6) No payment shall be made by virtue of paragraph (3) above to the personal representatives of a deceased clerk in respect of—

- (a) any sum received in respect of that clerk on or after 1st December 1988 under an agreement made or deemed to have been made under regulation 5 above, or
- (b) any sum received on or after that date under reciprocal arrangements made or deemed to have been made in respect of that clerk under regulation 23 or 24 below.

(7) The Commissioners shall have power to deduct from any sum payable under this regulation an amount equal to the amount of any income tax payable by the Commissioners in respect of that sum.

(8) The rights conferred by this section shall be incapable of being assigned, charged or anticipated and in the case of bankruptcy shall not pass to the trustee of the bankrupt's estate.

Pensionable service performed after return of payment

13. Where a clerk who has received a payment under regulation 12(2) above subsequently performs pensionable service, he shall not be entitled to receive on retirement a pension in respect of the service in relation to which that payment was made, except that—

- (a) he shall have the right on repaying to the Commissioners the amount paid to him together with—
 - (i) an amount equal to any deduction made under regulation 12(4) in respect of arrears or under regulation 12(7) in respect of income tax, and
 - (ii) compound interest thereon at the rate of two and one half per cent per annum with annual rests calculated from the date of payment to him,

to be reinstated in the possession of all the rights to which he would have been entitled if no payment had been made under regulation 12(2); and

- (b) if he does not avail himself of that right, the Board shall have power, at their discretion, to reinstate the clerk wholly or partly in the possession of those rights upon such terms and conditions as the Board think fit.

PART III

PENSIONS FOR WIDOWS, WIDOWERS AND CHILDREN

Pensions for widows and widowers

14.—(1) Subject to the provisions of this regulation, where a scheme member who has performed a qualifying period of pensionable service dies on or after the date on which these regulations come into force leaving a widow or widower, the widow or widower shall be entitled to receive from the Board for the remainder of her or his life a pension equal to two-thirds of the deceased member's pension.

(2) Where the deceased scheme member's marriage took place after the member's retirement from pensionable service and within six months of the member's death, the widow or widower shall not be entitled to a pension under this section, but the Board may if they think fit grant a pension to the widow or widower.

(3) The Board may if they think fit in exceptional circumstances grant a pension to the widow or widower notwithstanding that the deceased spouse had performed less than two years' pensionable service.

(4) The Board may if they think fit discontinue the payment of a pension to a widow or widower who remarries and may if they think fit resume the payment of a pension terminated on remarriage.

Pensions for children

15.—(1) Subject to the provisions of this regulation, where a scheme member who has performed a qualifying period of pensionable service dies on or after the date on which these regulations come into force leaving a child who has not attained the age of eighteen, the child shall be entitled to receive from the Board a pension of the following amount, that is to say—

- (a) if the scheme member dies leaving a widow or widower, a pension equal to one sixth of the deceased scheme member's pension, or
- (b) if the scheme member did not leave a widow or widower or if the widow or widower is dead, a pension equal to one third of the deceased scheme member's pension.

(2) The aggregate of the pensions that may be granted to the children of a scheme member under this regulation shall not exceed the deceased member's pension after deducting therefrom any pension payable to the widow or widower under regulation 14, and where by virtue of the preceding provision of this paragraph the amount available for pensions for the children of a scheme member is less than the aggregate of the pensions which, but for that provision, would be payable to the children, then the amount of the pension to which each child is entitled shall be determined by dividing the available amount between the children equally.

(3) Any pension under this regulation shall cease to be payable on the date on which the child attains the age of eighteen except that if after that date the child is receiving full-time instruction at an educational establishment or is undergoing full-time training for a trade, profession or vocation, the child shall, subject to paragraphs (5) and (6) below, be entitled to receive that pension while receiving that instruction or undergoing that training.

(4) Where a scheme member dies leaving a child who has attained the age of eighteen and is receiving full-time instruction at an educational establishment or undergoing full-time training for a trade, profession or vocation, the child shall, subject to paragraphs (5) and (6) below, be entitled to receive any pension to which he would have been entitled if he had not attained the age of eighteen at the date of the scheme member's death.

(5) No pension shall be paid to any child by virtue of paragraph (3) or (4) above unless the instruction or training concerned has been approved by the Board.

(6) No pension shall be paid to a child in respect of any period after the 30th June next following the attainment by the child of the age of twenty-three.

(7) The Board may if they think fit in exceptional circumstances grant a pension to a child notwithstanding that the deceased scheme member had performed less than two years' pensionable service.

(8) The Board may if they think fit discontinue the payment of a pension to a child of a deceased scheme member if the widow or widower of that member re-marries and may if they think fit resume the payment of that pension.

Supplementary provisions as to pensions for widows, widowers and children

16.—(1) The Commissioners shall have power to give to the Board from time to time directions for increasing the rate of pension payable to a widow, widower or child under the preceding provisions of this Part of these regulations.

(2) The powers of the Commissioners to give directions under paragraph (1) above shall include power—

- (a) to give directions in respect of a class or description of widows, widowers or children, and in particular in respect of widows, widowers or children described by reference to the time of the deceased scheme member's retirement or death; and
- (b) to give directions for increasing the pension payable to a widow, widower or child to an amount based on what the deceased member's pension or entitlement to pension would have been if the member's period of pensionable service had included such additional number of years as may be specified in the directions or determined thereunder.

(3) The Commissioners may augment, by such amount as may be agreed with the Board and for such period as may be so agreed, the pension payable under the preceding provisions of this Part of these regulations to any individual widow, widower or child.

(4) Where a clerk has received a payment under paragraph (2) of regulation 12 above, and the amount paid to him has not been repaid under regulation 13 above, then, in determining for the purposes of regulations 14 and 15 above whether the clerk has performed a qualifying period of pensionable service, no account shall be taken of the service in relation to which that payment was made.

Meaning of "deceased member's pension"

17.—(1) Subject to the provisions of this regulation, in regulations 14 to 16 above the expression "deceased member's pension" means—

- (a) if at the date of death the scheme member was in receipt of a pension under these regulations, the pension received by the member;
- (b) if at the date of death the scheme member had attained the retiring age but was not in receipt of a pension under these regulations, the pension to which the member would have been entitled if he had retired on the date of his death;
- (c) if at the date of death the scheme member was performing pensionable service but had not attained the retiring age, the pension to which the member would have been entitled under these regulations if on that date the member had retired on the ground that he had become incapable through infirmity of performing the duties of his office;
- (d) if at the date of death the scheme member had ceased to perform pensionable service but had not attained the retiring age and was not in receipt of a pension under these regulations, the pension to which the member would have been entitled if on that date he had become incapable through infirmity of performing pensionable service.

(2) Where the pension of a scheme member has been suspended under regulation 9 above and the member dies while the pension is in suspension, then for the purpose of calculating the rate of pension to which a widow, widower or child is entitled under the preceding provisions of this Part of these regulations, any reference in those provisions to the deceased member's pension shall be construed as a reference to a pension at such rate as the Board think fit having regard to the additional period of pensionable service performed, not being at a rate lower than that received by the member before the suspension.

(3) In determining for the purposes of this regulation the rate of pension received by a scheme member, no account shall be taken of any augmentation or supplementary pension paid under regulation 6 above.

(4) Where a clerk has surrendered to the Board under an agreement made under section 15 of the 1961 Measure a part of his right to a pension under that Measure, he shall for the purposes of this regulation be deemed to have received the pension which he would have received if he had not entered into that agreement.

Power of Board to commute pension for capital sum

18.—(1) Subject to paragraphs (2) and (3) below, where the aggregate pension payable under the preceding provisions of this Part of these regulations is not more than one hundred and four pounds per annum, the Board shall have power to commute the pension for such capital sum as is estimated to be the actuarial equivalent thereof, and the Board—

- (a) if the person entitled to the pension is of full age and capable of giving an effective discharge, shall pay the capital sum to that person, or
- (b) in the case of any other person, shall apply the capital sum for the maintenance, education and benefit of that person in such manner as they may think fit.

(2) The Board shall have power to deduct from any capital sum payable under paragraph (1) above an amount equal to the amount of any income tax payable by the Board in respect of that sum.

(3) Where the aggregate pension payable under the preceding provisions of this Part of these regulations is more than fifty pounds per annum and the person entitled to the pension is of full age and capable of giving his consent, the Board shall not exercise their powers under this regulation unless they have obtained that consent.

PART IV

PROVISIONS RELATING TO CONTRACTED-OUT EMPLOYMENT

Guaranteed minimum pension for certain scheme members and their surviving spouses

19.—(1) This regulation applies if the service of a scheme member in any employment becomes contracted-out employment by reference to the principal scheme and it shall then override any of the preceding provisions of these regulations except regulation 18.

(2) If a scheme member has a guaranteed minimum under section 35 of the Social Security Pensions Act 1975⁽⁸⁾ in relation to the pension to which he is entitled under the preceding provisions of these regulations—

- (a) the weekly rate of that pension at the date on which he attains the state pensionable age shall not be less than his guaranteed minimum under that section; and
- (b) if the member dies at any time and leaves a widow or widower, the weekly rate of pension provided for the widow or widower under these regulations shall not be less than half that guaranteed minimum.

(3) Where this regulation applies in the case of any scheme member who retires or dies without having performed a qualifying period of pensionable service, then notwithstanding anything in regulation 4 or 14 above—

- (a) the member on attaining the state pensionable age shall be entitled to a pension the weekly rate of which is equal to his guaranteed minimum, and
- (b) if the member dies at any time and leaves a widow or widower, the widow or widower shall be entitled to a pension the weekly rate of which is equal to half that guaranteed minimum.

(8) 1975 c. 60.

(4) In paragraphs (2) and (3) above “weekly rate” means, in relation to a pension which is paid otherwise than at weekly intervals, a rate which is equivalent to the guaranteed minimum of the scheme member in question having regard to the period in respect of which the pension is paid.

(5) Any reference in this regulation to a scheme member’s guaranteed minimum shall, so far as it is attributable to the scheme member’s earnings after 5th April 1988, be a reference to that minimum as increased in accordance with the requirements of section 37A of the Social Security Pensions Act 1975 and to the extent of any orders made under that section.

Commencement, postponement and suspension of pension

20.—(1) This regulation applies to a scheme member who retires after performing a qualifying period of pensionable service in employment which in relation to him is contracted-out employment by reference to the principal scheme.

(2) Subject to paragraph (3) below, the pension to which a scheme member to whom this regulation applies is entitled under the preceding provisions of these regulations shall commence on the date on which he attains the state pensionable age or, if earlier, the date on which by virtue of regulation 4 above he becomes entitled to receive it.

(3) The commencement of the pension to which such a scheme member is so entitled shall be postponed for any period for which he continues in pensionable service after the date on which he attains the state pensionable age, but his consent must be obtained for any postponement after the expiration of five years from that date of that part of the pension which consists of his guaranteed minimum.

(4) Regulation 9 above applies to a scheme member to whom this regulation applies and who is in receipt of a pension under these regulations as it applies to any other scheme member who is in receipt of such a pension, except that paragraph (5) below shall have effect in relation to him notwithstanding anything in paragraph (2) or (3) of regulation 9.

(5) Where the commencement of the guaranteed minimum pension to which a scheme member to whom this regulation applies is entitled under the preceding provisions of these regulations is postponed for any period or that pension is suspended during any period, his guaranteed minimum shall be increased to the extent, if any, specified in section 35(6), (6A) and (6B) of the Social Security Pensions Act 1975.

Commencement of pension of scheme member retiring early by reason of infirmity

21.—(1) This regulation applies to a scheme member to whom regulation 20 above applies and who—

- (a) in the case of a clerk, is deemed under section 14 of the Incumbents (Vacation of Benefices) Measure 1977(9) (pension of incumbent found to be unable to perform duties attaching to benefice) to have become incapable through infirmity of performing the duties of his office, or
- (b) in the case of any scheme member, ceases to perform pensionable service before attaining the retiring age without receiving a pension in respect of that service and subsequently before attaining that age satisfies the Board that he has become incapable through infirmity of performing pensionable service.

(2) The commencement of the pension to which a scheme member to whom this regulation applies is entitled under Part II of these regulations shall be postponed until the date on which he attains the retiring age unless he consents to its commencement on the date on which apart from this paragraph it would commence; and the making before the first-mentioned date by him or some

other person on his behalf of an application for the pension in accordance with regulation 11 shall be evidence that he does consent thereto.

Effect of remarriage of widow or widower

22. Where a scheme member dies while serving in employment which in relation to him is contracted-out employment by reference to the principal scheme, or after the termination of service in such employment, and leaves a widow or widower, paragraph (4) of regulation 14 above so far as it enables the Board to discontinue the payment of a pension to a widow or widower who remarries shall apply only in respect of the amount (if any) by which the widow's or widower's pension exceeds her or his guaranteed minimum.

PART V

PROVISIONS AS TO RECIPROCAL ARRANGEMENTS AND ACCRUED RIGHTS

Reciprocal arrangements with other Churches

23.—(1) The Board may, on such terms as the Commissioners may approve, enter into reciprocal arrangements with the authority controlling and administering any pensions scheme providing for pensions for the clergy, or the widows, widowers, children or dependants of the clergy, of any church to which this regulation applies, and any such arrangements may provide that—

- (a) any scheme member who, after performing pensionable service within the meaning of these regulations, begins to minister in any church to which this regulation applies may, if the Board so determine, be transferred to the pensions scheme of that church; and
- (b) any scheme member who, after ministering in any church to which this regulation applies, begins to perform pensionable service within the meaning of these regulations may retain, in such manner and to such extent as the reciprocal arrangements may provide, any right to or expectation of a pension which the member may have already acquired, whether for the member or for the widow, widower, children or dependants of the member.

(2) A scheme member transferred under this regulation to the pensions scheme of a church to which this regulation applies shall, as from the date of transfer, cease to have any right to receive at any time a pension under these regulations and the widow or widower, children and dependants of the member shall also cease to have any right to receive at any time a pension under these regulations, except that the Board shall have power, on such terms and conditions as the Board may think expedient, to restore to the scheme member the rights which he previously had under these regulations.

(3) This regulation shall apply to any Church or organised body of clergy recognised by the Archbishop of Canterbury for the purposes of this regulation.

Reciprocal arrangements with other pension authorities

24.—(1) The Board may, on such terms as the Commissioners may approve, enter into reciprocal arrangements with the authority controlling and administering any pensions scheme providing for pensions for persons in the service of the Crown, or of any government department or any public or local body, board or authority in England or elsewhere, or providing for pensions for the widows, widowers, children or dependants of such persons, and any such arrangements may provide that—

- (a) any scheme member who after performing pensionable service within the meaning of these regulations enters such service, may, if the Board so determine, be transferred to the pensions scheme of that other authority; and
- (b) any scheme member who after being in such service begins to perform pensionable service within the meaning of these regulations may retain, in such manner and to such extent as the reciprocal arrangements may provide, any right to or expectation of a pension which the member may already have acquired, whether for the member or for the widow, widower, children or dependants of the member.

(2) A scheme member transferred under this regulation to the pensions scheme of another authority shall, as from the date of transfer, cease to have any right to receive at any time a pension under these regulations, and the widow or widower, children and dependants of the member shall also cease to have any right to receive at any time a pension under these regulations, except that the Board shall have power, on such terms and conditions as the Board may think expedient, to restore to the scheme member the rights which he previously had under these regulations.

Restriction on transfer of rights under regulation 23 or 24

25. Notwithstanding anything in any arrangements made or deemed to have been made under regulation 23 or 24 above, the accrued rights under the principal scheme of a scheme member whose service in contracted-out employment by reference to the scheme is terminated before he attains state pensionable age shall not be transferred to any other scheme in accordance with any such arrangements unless—

- (a) the scheme member consents to the transfer; and
- (b) that other scheme is a contracted-out scheme or, if that other scheme is administered wholly or partially outside the United Kingdom, the Occupational Pensions Board approve (whether or not subject to conditions) the arrangements made for the transfer.

Payments by Board in respect of accrued rights of former scheme members

26.—(1) Where a scheme member has ceased to perform pensionable service (whether before or after the coming into force of these regulations) in circumstances such that he has acquired a right to a cash equivalent under Part II of Schedule 1A to the Social Security Pensions Act 1975, the Board shall have power to use that cash equivalent in whichever of the ways the scheme member chooses to exercise the option conferred on him by paragraph 13 of that Schedule.

(2) Where a scheme member has ceased to perform pensionable service (whether before or after the coming into force of these regulations) in circumstances such that a transfer premium in respect of the scheme member may be paid to the Secretary of State under regulations made under section 44A of the Social Security Pensions Act 1975, the Board shall have power to pay that transfer premium in accordance with the provisions of those regulations.

(3) Where a scheme member has ceased to perform pensionable service or has died (whether in either case before or after the coming into force of these regulations) in circumstances such that a contributions equivalent premium may be paid to the Secretary of State under section 42(2) or (3) of the Social Security Pensions Act 1975, the Board shall have power to pay that premium in accordance with the provisions of that Act.

Revaluation of accrued rights

27.—(1) Where a scheme member who has acquired rights under these regulations has ceased to perform pensionable service (whether before or after the coming into force of these regulations) before attaining the retiring age, then if the revaluation condition is satisfied—

- (a) any pension or other retirement benefit payable under these regulations, or under rules made under section 3 of the Clergy Pensions (Amendment) Measure 1967, to that member, as calculated at the date on which the member ceased to perform pensionable service, and
- (b) any pension or other benefit so payable to any other person in respect of that member, as so calculated,

shall be revalued in accordance with the provisions of paragraphs 2 and 6 of Schedule 1A to the Social Security Pensions Act 1975 or in accordance with such other method of revaluation, not being less favourable to the person to whom the benefit concerned is payable, as the Board may determine.

(2) In this regulation “the revaluation condition” has the same meaning as in Part I of Schedule 1A to that Act.

Provisions as to rights accrued under other schemes

28. Where any scheme member has acquired rights under a pensions scheme other than the principal scheme, the Board shall have power to accept any transfer payment made in respect of those rights and to use that payment for the acquisition for that scheme member of such rights under the principal scheme as an actuary may certify to be proper.

PART VI

GENERAL PROVISIONS

Provisions as to payment of pensions

29.—(1) Subject to the provisions of these regulations, every pension under these regulations shall accrue from day to day and shall be payable (subject to any necessary apportionment) by equal quarterly instalments on the first day of January, the first day of April, the first day of July and the first day of October in each year; and if the person entitled to the pension so requests, the Commissioners or the Board, as the case may be, shall have power to make, at such times before the end of each quarter as they may determine, payments of such part of those instalments as they may determine.

(2) A pension under these regulations shall be incapable of being assigned, charged or anticipated and in the case of bankruptcy shall not pass to the trustee of the bankrupt’s estate, and any purported assignment of or charge upon such a pension shall be void; except that a person in receipt of any such pension may, if of full age and of sound mind, by an instrument in writing signed by him and delivered to the Board, renounce his pension or any part thereof and upon such renunciation the pension shall determine accordingly in whole or in part.

(3) Any pension payable under Part III of these regulations to a child of a deceased scheme member may be paid by the Board to the parent or guardian of that child, or to such other person under whose care or with whom the child may from time to time reside as the Board may think fit, and the person to whom the pension is paid may at his discretion pay the whole or any part thereof to the child for his absolute use and benefit and, where the whole pension is not paid to the child, shall apply the pension or the remainder, as the case may be, towards the maintenance, education or benefit of the child in such manner as he may think fit.

(4) Where on the retirement or death of a scheme member any payments due to be made in respect of the scheme member to the Commissioners under an agreement made or deemed to have been made under regulation 5 above are in arrear—

- (a) no instalment of pension shall be paid under that agreement in respect of that scheme member if and so long as any such payment remains unpaid; and

- (b) any pension payable under that agreement shall be retained for such period as may be necessary and shall be applied in discharging arrears due under the agreement, together with interest at five per cent per annum calculated from the respective dates upon which the payments in arrear were due,

except that, in the case of a pension payable to a widow, widower, child or dependant of a deceased scheme member, the Board may waive wholly or partly their right to recover any arrears from the estate of a deceased scheme member or to recover those arrears by retaining instalments of pension under this paragraph.

(5) Where instalments of pension payable to more than one person are retained under paragraph (4) above, the burden of the retention shall be distributed rateably among those persons in proportion to the amount of those pensions.

Payment of pensions in respect of persons suffering from mental disorder

30.—(1) Where the Board are satisfied after considering medical evidence that a person to whom a pension is payable under these regulations (in this regulation referred to as a “pensioner”) is incapable by reason of mental disorder within the meaning of the Mental Health Act, 1983⁽¹⁰⁾, of managing and administering his property and affairs, the Board may pay, or may authorise the Commissioners to pay, the pension or such part thereof as the Board think fit to the institution or person having the care of the pensioner, to be applied for his benefit, and the Board may pay, or may authorise the Commissioners to pay, the remainder (if any) or such part thereof as the Board think fit—

- (a) to or for the benefit of persons who appear to the Board to be members of the pensioner’s family or other persons for whom the pensioner might be expected to provide if he were not suffering from mental disorder, or
- (b) in reimbursement, with or without interest, of money applied by any person either in payment of the pensioner’s debts (whether legally enforceable or not) or for the maintenance or other benefit of the pensioner or such persons as are mentioned in subparagraph (a) above.

(2) Not less than fourteen days before exercising for the first time in relation to any pensioner their powers under this regulation, the Board shall give to the authority having jurisdiction under Part VII of the Mental Health Act, 1983, notice in writing of their intention specifying the name and address of the pensioner and the amount of the sum in respect of which the Board intend to exercise those powers, and shall at the same time give notice in writing to the pensioner in a form approved by that authority; and where notice is so given the Board may with the agreement of that authority exercise those powers notwithstanding that the period of fourteen days has not expired.

(3) If at any time the authority having jurisdiction under Part VII of the Mental Health Act, 1983 give to the Board notice in writing that they object to the exercise by the Board of their powers under this regulation in relation to any pensioner, those powers shall as from the date of receipt of the notice by the Board cease to be exercisable in relation to that pensioner unless and until that authority withdraws the notice.

Exclusion of certain clerks from provisions of regulations

31. Any clerk who immediately before the coming into force of these regulations was excluded from the provisions of the 1961 Measure shall be excluded from the provisions of these regulations; but the Board may at any time agree to terminate that exclusion on such conditions as they think fit.

(10) 1983 c. 20.

Determination of questions

- 32.—(1) Subject to the provisions of these regulations, if any question arises—
- (a) whether any clerk, deaconess or licensed lay worker is performing or has performed pensionable service,
 - (b) as to the length of the qualifying period of pensionable service performed by any scheme member or the date on which the qualifying period terminated,
 - (c) whether a scheme member satisfies any other conditions laid down for receipt of a pension under Part II of these regulations or the terms and conditions upon which his pension is granted or agreed to be paid,
 - (d) whether a scheme member has retired or on what date he retired,
 - (e) as to the rate at which a pension is to be paid and whether any deductions are to be made therefrom in respect of arrears of payments,
 - (f) as to the right of a scheme member to a repayment of any payments made by him, or
 - (g) as to the rights of a widow, widower, child or dependant of a scheme member under Part III of these regulations (including the question whether any person is a dependant of a member),

it shall be decided by the Board at a meeting specially convened for that purpose.

(2) Before giving a decision under this section the Board shall give the scheme member or other person concerned, or his agent, an opportunity of being heard.

(3) Any person aggrieved by a decision of the Board under this section may, within such period and in such manner as may be laid down by Rules of Court, appeal from that decision to the High Court, and the decision of that Court on any such appeal shall be final.

(4) The Arbitration Act 1950(11) shall not apply to any proceedings under this section.

(5) This regulation is an excepted provision.

Transitional provisions

33.—(1) Any reference in these regulations to a pension or other sum paid or payable thereunder, or to rights thereunder, shall be treated as including a reference to a pension or other sum paid or payable under, or to rights under, the corresponding provision of any enactment revoked by these regulations.

(2) Any agreement made or deemed to have been made under section 1 of the 1961 Measure shall be deemed to have been made under the corresponding provision of regulation 5 and any arrangements made or deemed to have been made under section 41 or 42 of that Measure shall be deemed to have been made under regulation 23 or 24 of these regulations.

(3) Any agreement made under section 15 of the 1961 Measure which is in force immediately before the coming into force of these regulations shall continue to have effect notwithstanding the revocation of the Clergy Occupational Pensions Scheme Regulations 1977(12).

(4) Any pension suspended or reduced under any enactment revoked by these regulations, and any condition imposed on the entitlement to any pension under any such enactment, shall be deemed to have been suspended, reduced or imposed under the corresponding provision of these regulations.

(5) Where any period of time specified in any enactment revoked by these regulations is current at the coming into operation of these regulations, these regulations shall have effect as if the corresponding provision of these regulations had been in force when that period began to run.

(11) 1950 c. 27.

(12) S.I.1977/1146.

(6) Notwithstanding the revocation by these regulations of section 10A(9) of the 1961 Measure, the Commissioners may at the request of the Board authorise the Board to grant a pension to a child of a clerk who died before 1st April 1986, being a child who would have been entitled to a pension under the 1961 Measure if the clerk had died on or after that date.

(7) Where, apart from this paragraph, anything done under or for the purposes of any enactment revoked by these regulations would cease to have effect by virtue of that revocation, it shall have effect as if it had been done under or for the purposes of the corresponding provision of these regulations.

(8) Nothing in this regulation shall be taken as prejudicing the application of sections 16 and 17 of the Interpretation Act 1978(13).

Consequential amendments of Clergy Pensions Measure 1961

34.—(1) After section 40 of the 1961 Measure there shall be inserted the following section—

“Payment by Commissioners in respect of accrued rights.

40A. The Commissioners shall have power to pay to the Board out of their general fund such sums as are required by the Board for any payments made by them in respect of accrued rights of former scheme members under regulations made under section 6 of the Clergy Pensions (Amendment) Measure 1972.”

(2) In section 44 of the 1961 Measure for the words “other than section thirty-nine” there shall be substituted the words “or of regulations made under section 6 of the Clergy Pensions (Amendment) Measure 1972”.

(3) In section 46(1) of the 1961 Measure—

(a) for the definitions of “clerk” and “clerk in Holy Orders” there shall be substituted—

““clerk” means any bishop, priest or deacon of the Church of England;”

(b) for the definition of “scheme member” there shall be substituted—

““scheme member” means a clerk, deaconess or licensed lay worker, 1”.

Consequential amendment of Clergy Pensions (Amendment) Measure 1967

35. In section 3(1) of the Clergy Pensions (Amendment) Measure 1967 for the words “Part I of the principal Measure” there shall be substituted the words “Part II of the Church of England Pensions Regulations 1988(14).”

Enactments revoked

36. The enactments specified in Schedule 2 to these regulations are hereby revoked to the extent specified in the third column of that Schedule.

(13) 1978 c. 30.

(14) S.I. 1988/2256.

Approved by the General Synod the eighth day of November 1988

L. D. Pattinson
Secretary General

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SCHEDULES

SCHEDULE 1

RATES OF PENSION

PART I

rate where scheme member retires at or above the retiring age

1. Subject to paragraph 2 below, the rate of pension of a scheme member who retires at or above the retiring age after having performed a qualifying period of pensionable service of 37 years or more of whole-time service shall be at the rate specified in the following table in relation to the last office held by the scheme member within the area to which these regulations apply—

Office	Rate £
Archbishops of Canterbury and York	11,340
Bishop of London	10,206
Other diocesan bishops	8,505
Suffragan bishops, deans, provosts and archdeacons	7,088
Other scheme members	5,670

2. Where a scheme member has at any time held within the area to which these regulations apply an office in relation to which the rate of pension specified in paragraph 1 above is at a higher rate than that specified in relation to the last office held by him within that area, the scheme member shall be paid a pension at that higher rate.

3. Where the qualifying period of pensionable service performed by a scheme member is less than 37 years, the rate of pension in respect of the whole-time service shall be calculated by adding together for each complete year of pensionable whole-time service 1/37th of the pension to which he would have been entitled under the preceding provisions of this Schedule if he had performed 37 years' whole-time pensionable service; and where the whole-time pensionable service comprises a broken part of a year the rate shall be increased by adding, in respect of each complete month in the broken part, 1/12th of the amount payable in respect of a complete year.

4. Where the qualifying period of pensionable service performed by a scheme member consists of or includes part-time service performed after 1st January 1987, such proportion of the rate of pension which would have been payable if that service had been whole-time as the Board may determine, in accordance with general directions of the Commissioners, shall be payable in respect of that service; except that in calculating the length of the qualifying period of pensionable service no account shall be taken of any year or part of a year in which the amount received by the scheme member in respect of stipendiary ecclesiastical service is less than such amount as the Board, with the concurrence of the Commissioners, may from time to time determine.

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PART II

rate in cases of infirmity

5. The rate of pension of a scheme member who retires before attaining the retiring age on the ground that he has become incapable through infirmity of performing the duties of his office shall be the rate of pension to which he would have been entitled if he had continued to perform until the retiring age pensionable service of the kind he was performing immediately before retirement and had then retired.

6. The rate of pension of a scheme member who ceases to perform pensionable service before attaining the retiring age without receiving a pension in respect of that service, and who subsequently before attaining that age satisfies the Board that he has become incapable through infirmity of performing pensionable service, shall be the rate of pension to which he would have been entitled if he had attained the retiring age on the date on which he ceased to perform pensionable service.

PART III

rate where scheme member retires not more than five years before reaching retiring age otherwise than by reason of infirmity

7. The rate of pension of a scheme member who, otherwise than by reason of infirmity, retires before attaining the retiring age but not more than five years before he would have attained that age shall be calculated by—

- (a) ascertaining the rate of pension to which he would have been entitled under Part I of this Schedule if he had attained the retiring age on the date on which his pension begins to be payable, and
- (b) deducting therefrom such amount as the Board, after obtaining the advice of an actuary, may with the concurrence of the Commissioners determine.

SCHEDULE 2

ENACTMENTS REVOKED

measures

Chapter	Short title	Extent of repeal
1961 No. 3.	The Clergy Pensions Measure 1961.	Parts I and II. Sections 35 to 37. Sections 41 to 43. Section 45. In section 46, in subsection (1) the definitions of “bishop”, “bishopric”, “Episcopal Pensions Measures” and “suffragan bishop”.

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Chapter	Short title	Extent of repeal
		Schedules 1 and 3.
1972 No. 5.	The Clergy Pensions (Amendment) Measure 1972.	Sections 2 and 3. In section 5, subsections (1) and (2).
1988 No. 4.	The Church of England (Pensions) Measure 1988.	Sections 1 to 4. Section 6. Section 15. Schedule 1. In Schedule 2, paragraphs 2 to 6, 15, 18, 19, 20(a) and (c), 21 and 25 to 33.

instruments

Chapter	Short title	Extent of repeal
1975 No. 136.	The Clergy Pensions (Amendment) Regulations 1975.	The whole instrument.
1977 No. 1146.	The Clergy Occupational Pensions Scheme Regulations 1977.	The whole instrument.
1985 No. 2081.	The Clergy Pensions (Amendment) Regulations 1985.	The whole instrument.

EXPLANATORY NOTE

(This note is not part of the regulations)

These regulations consolidate with minor amendments the law relating to pensions for the clergy and church workers and for their widows, widowers and dependants which is at present contained in the Church of England (Pensions) Measures 1961 to 1988 and in regulations made under section 6 of the Clergy Pensions (Amendment) Measure 1972. The amendments are made solely for administrative purposes and do not prejudice any entitlement to pension benefits. The regulations, being made in exercise of the power contained in section 6 of the 1972 Measure, do not affect the financial and constitutional provisions of the Clergy Pensions Measure 1961.

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