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STATUTORY INSTRUMENTS

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**1988 No. 2256**

**The Church of England Pensions Regulations 1988**

**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 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<sup>(1)</sup>,

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<sup>(2)</sup>;
- (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;

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(1) 1870 c. 91.

(2) 1948 No. 1.

- (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.