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STATUTORY INSTRUMENTS

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**1988 No. 2256**

**The Church of England Pensions Regulations 1988**

**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(1), 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.

### **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,

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(1) 1983 c. 20.

- (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(2) 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(3).

(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.

(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

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(2) 1950 c. 27.

(3) S.I.1977/1146.

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<sup>(4)</sup>.

### **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 Com-missioners 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<sup>(5)</sup>.”

### **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.

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(4) 1978 c. 30.

(5) S.I. 1988/2256.