

1977 No. 1146

ECCLESIASTICAL LAW

The Clergy Occupational Pensions Scheme Regulations 1977

<i>Made (approved by the General Synod)</i>	-	7th July 1977
<i>Laid before Parliament</i>		14th July 1977
<i>Coming into Operation</i>		6th April 1978

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

Citation, commencement and interpretation

1.—(1) These regulations may be cited as the Clergy Occupational Pensions Scheme Regulations 1977 and shall come into operation on 6th April 1978.

(2) In these regulations, unless the context otherwise requires—

“the Act” means the Social Security Pensions Act 1975(b);

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

“salary”, in relation to any clerk, means the emoluments from his service in employment which in relation to him is contracted-out employment by reference to the Scheme, being emoluments from which income tax is deductible by virtue of regulations made under section 204 of the Income and Corporation Taxes Act 1970(d);

“the Scheme” means the provisions relating to pensions for clergy and their widows and dependants contained in the Clergy Pensions Measures 1961 to 1972(e), any rules made under section 3 of the Clergy Pensions (Amendment) Measure 1967(f) and any regulations made under section 6(1) of the Clergy Pensions (Amendment) Measure 1972, including these regulations, and known as the Clergy Pensions Scheme;

“scheme year” means a period of twelve months ending on 31st March; and other expressions have the same meanings as in the Act or the 1961 Measure, as the circumstances require.

(3) For the purposes of these regulations the amount of the final salary, or last salary before death, of any clerk shall be determined—

(a) by ascertaining the amount of his salary in the scheme year which ended not more than twelve months before the date on which he attained the retiring age or, if earlier, the date on which he died or for any other reason ceased to serve in employment which in relation to him is contracted-out employment by reference to the Scheme; and

(a) 1972 No. 5 (b) 1975 c. 60. (c) 1961 No. 3. (d) 1970 c. 10.
(e) 1961 No. 3; 1967 No. 1; 1972 No. 5. (f) 1967 No. 1.

(b) by excluding from that amount so much as would, if expressed as a weekly rate, be equal to one and a half times the lower earnings limit and so much, if any, as would, if so expressed, exceed the upper earnings limit.

(4) In paragraph (3) above references to the lower and upper earnings limits, in relation to any earnings, are references to the lower and upper limits referred to in section 1 of the Social Security Pensions Act 1975 as in force when the earnings are paid.

(5) Any reference in these regulations to any provision made by or contained in any enactment (including a Measure) or instrument shall, except insofar as the context otherwise requires, be construed as a reference to that provision as amended or extended by any enactment or instrument (including these regulations) and as including a reference to any provision which it re-enacts or replaces, or which may re-enact or replace it, with or without modification.

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

Guaranteed minimum pension for certain clerks and their widows

2.—(1) This regulation shall apply if the service of a clerk in any employment becomes contracted-out employment by reference to the Scheme and it shall then override any other provisions of the Scheme which are inconsistent with it except regulation 4(2) and (3) below and section 16 of the 1961 Measure (commutation of widow's pension if not more than £30 a year).

(2) If a clerk has a guaranteed minimum under section 35 of the Act in relation to the pension provided for him by the Scheme—

(a) the weekly rate of that pension at the date on which he attains pensionable age shall not be less than his guaranteed minimum under that section ; and

(b) if he dies at any time and leaves a widow, the weekly rate of the pension provided for her under the Scheme shall not be less than half that guaranteed minimum.

(3) Where this regulation applies in the case of any clerk who retires or dies without having performed a qualifying period of pensionable service, then, notwithstanding anything in section 1(1) or 10(1) of the 1961 Measure—

(a) the clerk on attaining pensionable age shall be entitled to a pension under the Scheme, the weekly rate of which is equal to his guaranteed minimum ; and

(b) if he dies at any time and leaves a widow, she shall be entitled to a pension under the Scheme, the weekly rate of which is equal to half that guaranteed minimum.

(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 clerk in question having regard to the period in respect of which the pension is paid.

Rates of pension of certain clerks

3.—(1) This regulation applies to a clerk 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 Scheme.

(2) If the annual rate of the pension to which a clerk to whom this regulation applies is entitled under the Scheme would be higher if it were determined in accordance with paragraph (3) below instead of sections 1(1) and 2(1) of, and Schedule 1 to, the 1961 Measure, the pension to which he is so entitled shall be payable at that higher rate.

(3) For the purpose of paragraph (2) above the annual rate of the pension of a clerk to whom this regulation applies shall be determined by multiplying $1\frac{1}{4}$ per cent. of his final salary by the number of his years of pensionable service in employment which in relation to him is contracted-out employment by reference to the Scheme or by such number of those years as will produce an annual rate equal to half his final salary, whichever is less.

Commencement, postponement and suspension of pension

4.—(1) Subject to paragraph (2) below, the pension to which a clerk to whom regulation 3 above applies is entitled under the Scheme shall commence on the date on which he attains pensionable age or, if earlier, the date on which by virtue of section 1 of the 1961 Measure he becomes entitled to receive it.

(2) The commencement of the pension to which such a clerk is so entitled shall be postponed for any period for which he continues in employment, being employment in pensionable service, after the date on which he attains 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.

(3) Section 4 of the 1961 Measure (suspension or reduction of pension in case of service after retirement) applies to a clerk to whom regulation 3 above applies and who is in receipt of a pension under the Scheme as it applies to any other clerk who is in receipt of such a pension except that paragraph (4) below shall have effect in relation to him notwithstanding anything in subsection (3) or (4) of that section.

(4) Where the commencement of the guaranteed minimum pension to which a clerk to whom regulation 3 above applies is entitled under the Scheme 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) of the Act, as amended from time to time.

Commencement of pension of clerk retiring early by reason of infirmity: special provision

5.—(1) This regulation applies to a clerk to whom regulation 3 above applies and who either retires before attaining the retiring age on the ground that he has become incapable through infirmity of performing the duties of his office or is deemed under section 14 of the Incumbents (Vacation of Benefices) Measure 1977(a) (pension of incumbent found to be unable to perform duties attaching to benefice) to have become so incapable.

(2) The commencement of the pension to which a clerk to whom this regulation applies is entitled under the Scheme 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 section 6 of the 1961 Measure shall be evidence that he does consent thereto.

Provisions with respect to pensions of certain widows

6.—(1) This regulation applies to the widow of a clerk who dies while serving in employment which in relation to him is contracted-out employment by reference to the Scheme or after the termination of his service in such employment.

(2) Subject to paragraphs (4) and (5) below, where the annual rate of the pension to which a widow to whom this regulation applies is entitled under the Scheme would be higher if it were determined in accordance with paragraph (3) below instead of section 10 of the 1961 Measure, then, for any period—

(a) for which a Category B retirement pension, widowed mother's allowance or widow's pension is payable to her by virtue of her deceased husband's contributions, or

(b) for which a Category B retirement pension would be so payable but for section 27(6) of the Social Security Act 1975(a),

the pension to which she is so entitled shall be payable at that higher rate.

(3) For the purpose of paragraph (2) above the annual rate of the pension of a widow to whom this regulation applies shall be determined by multiplying five-eighths per cent. of the final salary (or last salary before death) of her deceased husband by the number of his years of pensionable service in such employment as is referred to in paragraph (1) above.

(4) Where the marriage of a widow to whom this regulation applies took place after the termination of her deceased husband's service in such employment and within six months of his death, then, notwithstanding anything in subsection (1A) of section 10 of the 1961 Measure, she shall be entitled to her guaranteed minimum in accordance with regulation 2 above but shall not be entitled to any additional pension unless the Church of England Pensions Board in the exercise of their discretion under that subsection grant such a pension to her.

(5) So much of subsection (1C) of the said section 10 as empowers the said Board to discontinue the payment of a pension to a widow if she remarries shall not apply in relation to a widow to whom this regulation applies, but if she remarries on or after the date on which she attains the age of sixty, that Board may, if they think fit, discontinue that part of her pension which exceeds her guaranteed minimum.

Restriction on transfer of accrued rights

7. Notwithstanding anything in any arrangements made under section 41 or 42 of the 1961 Measure (reciprocal arrangements for transfer of clerk from or to the Scheme to or from certain other schemes), the accrued rights under the Scheme of a clerk whose service in contracted-out employment by

(a) 1975 c. 14.

reference to the Scheme is terminated before he attains pensionable age shall not be transferred to any other scheme in accordance with any such arrangements unless—

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

Further restriction on return of contributions

8. Notwithstanding anything in regulation 7 of the Clergy Pensions (Amendment) Regulations 1975(a), no clerk shall be entitled by virtue of section 7(2) and (7) of the 1961 Measure to be paid any sum by way of the return of contributions or other sum paid by him under an agreement made under section 1(3) or (4) of that Measure in respect of any period of service in employment which in relation to him is contracted-out employment by reference to the scheme.

Amendments

9.—(1) In section 4(3) of the 1961 Measure (rate of pension of clerk who having retired with less than 40 years pensionable service returns to such service and later retires again), for the word “forty” there shall be substituted the words “thirty-seven”.

(2) In subsections (1) and (7) of section 10 of that Measure (widow entitled in certain circumstances to receive pension equal to one-third of the pension received by her deceased husband or of the pension to which he would have been entitled), for the words “one-third”, wherever occurring, there shall be substituted the words “one-half”.

(3) In section 46(1) of that Measure, in the definition of “retiring age” for the words “seventy years or such other age as the Church Assembly” there shall be substituted the words “sixty-five years or such earlier age as the General Synod”.

(4) In Part I of Schedule 1 to that Measure (calculation of rate of pension of clerk by reference to, among other things, the length of his period of pensionable service and whether it amounts to 40 years or more or less than that period), for the word “40”, wherever occurring, there shall be substituted the words “37” and for the words “one-fortieth” there shall be substituted the words “1/37th”.

(5) Paragraphs (1), (2) and (4) above shall not apply in relation to a clerk who retired or died before the coming into force of these regulations.

(6) In regulation 7 of the Clergy Pensions (Amendment) Regulations 1975 (no clerk entitled by virtue of section 7(2) and (5) of the 1961 Measure to the return of certain sums paid by him except in certain circumstances) for the number “(5)” there shall be substituted the number “(7)”.

This paragraph shall be deemed always to have had effect.

(a) S.I. 1975/136 (1975 I, p. 391).

Revocations

10.—(1) The following provisions of the 1961 Measure, namely,—

- (a) section 1(6) (calculation of period of service) ;
- (b) section 15 (pensions payable to widows and dependants by agreement) ;
- (c) the proviso to section 41(1) and the proviso to section 42(1) (no claim in respect of pension payable by virtue of agreement under section 15 to be transferred to another pensions scheme without consent of clerk concerned),

are hereby revoked, but any agreement made under the said section 15 and in force immediately before the coming into force of these regulations shall continue to have effect notwithstanding the revocation of that section.

(2) Section 2 of the Clergy Pensions (Amendment) Measure 1967(a) (power to commute part of pension) is hereby revoked.

(3) Section 1 of the Clergy Pensions (Amendment) Measure 1972(b) (period of pensionable service to be increased in certain cases) is hereby revoked in relation to clerks who retire or die on or after the coming into force of these regulations.

Approved by the General Synod 7th July 1977.

W. D. Pattinson,
Secretary-General

EXPLANATORY NOTE

(This Note is not part of the Regulations.)

These Regulations contain the provisions which are required to be made to enable the clergy pensions scheme, that is to say, the Clergy Pensions Measures 1961 to 1972 and certain rules and regulations, including these regulations, to be contracted-out under Part III of the Social Security Pensions Act 1975.

Regulations 2 to 6 all relate to the pension of a clergyman or his widow where the clergyman has at any time served in employment which in relation to him is contracted-out employment by reference to the clergy pensions scheme. Regulation 2, which is made in compliance with sections 33(1)(b) and 36(3) of the said Act, makes provision in relation to the guaranteed minimum pension of the clergyman and his widow. Regulation 3 complies with sections 33(1)(a) and 34 of the Act. It provides that if the annual rate of the clergyman's pension would be higher if it were determined in accordance with the regulation rather than the Clergy Pensions Measure 1961, the pension shall be payable at the higher rate. Regulation 4 contains various provisions relating to the commencement, postponement and suspension of the clergyman's pension which are required or permitted to be included in the scheme by sections 33(2) to (4) and 35(6) of the Act. The Occupational Pensions Board requires an occupational pension scheme to

(a) 1967 No. 1. (b) 1972 No. 5.

provide for an early, reduced rate pension to be subject to the member's consent. Regulation 5 so provides where the clergyman retires early by reason of infirmity. Regulation 6 is concerned with the pension of the clergyman's widow. In compliance with section 36 of the Act it provides that if the annual rate of her pension would be higher if it were determined in accordance with the regulation rather than the said Measure of 1961 the pension shall be payable at the higher rate for certain periods. It also describes the circumstances in which the payment of that part of the widow's pension which exceeds her guaranteed minimum may be withheld or discontinued.

Regulation 7 complies with section 38 of the Act by imposing certain restrictions on the transfer from the clergy pensions scheme to another scheme of the clergyman's accrued rights to the requisite benefits under the first-mentioned scheme. By virtue of Regulation 8 no contributions paid by a clerk in respect of a period of service in contracted-out employment may be returned to him.

Most of the amendments and revocations effected by Regulations 9 and 10 are required to ensure that the clergy pensions scheme complies with Part III of the Act.

SI 1977/1146
ISBN 0-11-071146-7



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