



# Church of England Pensions Measure 2018

2018 No. 9

## PART 3

### THE PAST SERVICE SCHEME

#### *General*

#### **31 Liability of Church Commissioners**

- (1) The Church Commissioners are liable to meet—
  - (a) the cost of a pension arising from the retirement or death of a clerk, deaconess or licensed lay worker in so far as the pension is attributable to service before 1 January 1998,
  - (b) the cost of a lump sum payment arising from the retirement of a clerk, deaconess or licensed lay worker in so far as the payment is attributable to service before that date, and
  - (c) the cost of a lump sum payment arising from the death of a clerk, deaconess or licensed lay worker before that date.
- (2) The amount of a pension or lump sum for the purposes of subsection (1) includes any increase in the rate or amount, any augmentation or any award of supplementary pension, whether made before or after 1 January 1998.
- (3) The amounts required by the Board for payments under the past service scheme must, subject to subsection (4), be paid by the Church Commissioners out of their general fund.
- (4) The Commissioners may, until 31 December 2025, apply capital funds for the purpose of meeting the cost of any pension or lump sum due to be paid under the past service scheme; and “capital funds” means funds held by the Commissioners the income of which forms part of their general fund.

---

*Status: This is the original version (as it was originally enacted).*

---

- (5) The Commissioners may make to the Board grants out of their general fund or loans for any purpose connected with—
  - (a) the payment of pensions to retired members of the past service scheme;
  - (b) the payment of pensions to surviving spouses and civil partners and to children and dependants of deceased members of the past service scheme.
- (6) It is up to the Commissioners to decide the amount of a grant or loan under subsection (5) and the terms on which a loan is made under that subsection.
- (7) The Commissioners may make payments to the Board out of their general fund to meet as much of the Board's administrative expenses as appears to the Board to be proportionate to the work it undertakes in the administration of the past service scheme.

### **32 Payments for deaconesses and licensed lay workers**

- (1) The Church Commissioners may make payments out of their general fund to the Board for the purpose of providing or augmenting—
  - (a) pensions for deaconesses and licensed lay workers, for their surviving spouses or civil partners and for their children and dependants under the past service scheme or in respect of service which ended before 1 December 1988;
  - (b) lump sums paid or payable under the past service scheme to deaconesses and licensed lay workers on retirement.
- (2) The power to make a payment under this section is in addition to the duty to meet the liabilities under section 31.
- (3) A payment under this section may be made on whatever terms and conditions the Commissioners and the Board agree.
- (4) The Board must apply the payments it receives under this section in such manner as it thinks fit for the purpose in question; but, before doing so, it must consult the Commissioners.
- (5) The ways in which the Board may carry out its function under subsection (4) include applying all or part of a payment to the workers' fund or any other fund established for the purpose in question.

### **33 Administration of scheme etc.**

- (1) The Board must continue to administer the past service scheme.
- (2) The things which the Board may do for the purpose of exercising that function include—
  - (a) entering into agreements for the receipt and payment of actuarial equivalents of contributions or pensions;
  - (b) borrowing money to make payments of pensions or lump sum payments in respect of deceased clerks;
  - (c) securing money borrowed under paragraph (b) in whatever manner and on whatever terms and conditions the Board thinks fit.

- (3) The Church Commissioners may, after consulting the Board, give the Board general directions as to the exercise by the Board of its functions in connection with the past service scheme.
- (4) The Commissioners may give a direction under subsection (3) only if it appears to them to be necessary or appropriate for securing a due balance between—
  - (a) the amount of the liability imposed on their general fund by virtue of section 31(3), and
  - (b) the resources of their general fund available for meeting that liability.
- (5) The Board must give effect to any direction given under subsection (3).

### **34 Payment of pension etc.**

- (1) A pension under the past service scheme is payable by monthly instalments in arrears, subject to any necessary apportionments.
- (2) The Board may, where a person entitled to a pension under the past service scheme so requests, pay part of an instalment before the end of the month; and it is up to the Board to decide the timing and the amount of the payment.
- (3) A pension under the past service scheme may not be assigned, charged or anticipated and, in the case of bankruptcy, does not pass to the trustee of the bankrupt's estate; and a purported assignment or charge is void.
- (4) But a person entitled to a pension under the past service scheme may, if aged 18 or over and of sound mind, renounce the pension or any part of it by an instrument in writing signed by the member and delivered to the Board; and on a renunciation, the pension determines in whole or part, as the case may be.
- (5) A pension payable under section 23 to a child of a deceased member of the past service scheme may be paid by the Board to—
  - (a) the parent or guardian of the child, or
  - (b) such other person under whose care or with whom the child may from time to time reside as the Board thinks fit.
- (6) The person to whom a pension is paid under subsection (5)—
  - (a) may pay the whole or part of it to the child for his or her absolute use and benefit, and
  - (b) if the whole of the pension is not paid to the child, must apply the amount not so paid towards the maintenance, education or benefit of the child in whatever manner the person thinks fit.
- (7) In subsection (5)(a), “parent”, in relation to a child, includes—
  - (a) a parent of the child who does not have parental responsibility for the child, and
  - (b) a person who is not a parent of the child but who does have parental responsibility for the child.
- (8) Where, on the retirement or death of a member of the past service scheme, any payment due to be made to the Church Commissioners in respect of the member under an agreement under section 5 is in arrears—

---

*Status: This is the original version (as it was originally enacted).*

---

- (a) no instalment of pension may be made under the agreement in respect of the member for so long as the payment remains in arrears, and
  - (b) a pension payable under the agreement is to be retained for as long as necessary and must be applied in discharging the arrears and interest calculated at 5% per annum from the date on which the payment in arrears was due.
- (9) But, where the pension is payable to the surviving spouse or civil partner, or a child or dependant of the member, the Board may waive in whole or part its right to recover the arrears from the member's estate or by retention under subsection (8).
- (10) Where instalments of pension payable to more than one person are retained under subsection (8), the burden of the retention is distributed rateably among those persons in proportion to the amount of the pensions.

### **35 Payment of pension where person lacks capacity**

- (1) This section applies where the Board is satisfied, after considering medical evidence, that a person to whom a pension is payable under the past service scheme (a "pensioner") lacks capacity to manage and administer his or her property and affairs.
- (2) The Board may pay, or may authorise the Church Commissioners to pay, the pension or such part of it as the Board thinks fit to the institution or person having the care of the pensioner for it to be applied for his or her benefit.
- (3) The Board may pay the whole of the remainder (if any) of the pension, or such part of it as the Board thinks fit, in either or both of the following ways.
- (4) Payment may be made to or for the benefit of persons who appear to the Board to be—
  - (a) members of the pensioner's family, or
  - (b) other persons for whom the pensioner might be expected to provide if he or she did not lack capacity to manage and administer his or her property and affairs.
- (5) Payment may be made in reimbursement, with or without interest, of money applied by a person—
  - (a) in payment of the pensioner's debts (whether legally enforceable or not), or
  - (b) for the maintenance or other benefit of the pensioner or of persons mentioned in subsection (4).
- (6) A reference to lacking capacity is to be interpreted in accordance with the Mental Capacity Act 2005.

### **36 Determination of questions**

- (1) The Board is to decide any question arising as to—
  - (a) whether a clerk, deaconess or licensed lay worker has performed or is performing pensionable service;
  - (b) the length of a qualifying period of pensionable service in any given case or the date on which a qualifying period ended;
  - (c) whether a member of the past service scheme satisfies any other conditions for receiving a pension under the scheme or the terms and conditions on which the pension is payable;

---

*Status: This is the original version (as it was originally enacted).*

---

- (d) whether a member of the scheme has retired or the date on which the member retired;
  - (e) the rate at which a pension under the scheme is to be paid;
  - (f) the right of a member of the scheme to a repayment of payments made by him or her;
  - (g) the rights of a surviving spouse or civil partner or of a child or dependant of a member (including whether or not a particular person is a dependant of a member).
- (2) Before making a decision under subsection (1), the Board must give the member or other person concerned, or his or her agent, an opportunity to be heard.