

GENERAL SYNOD

**CHURCH OF ENGLAND FUNDED PENSIONS SCHEME (GENERAL)
(AMENDMENT) RULES 2007**

**CHURCH OF ENGLAND FUNDED PENSIONS SCHEME (ACCRUAL
RATES) (AMENDMENT) RULES 2007**

**CHURCH OF ENGLAND FUNDED PENSIONS SCHEME (GUARANTEED
INCREASES) (AMENDMENT) RULES 2007**

EXPLANATORY MEMORANDUM

Three sets of Amendment Rules, amending the Rules of the Church of England Funded Pension Scheme (“the Scheme Rules”), have been made by the Church of England Pensions Board and laid before General Synod for approval. Taken as a whole, they give effect (in so far as it is necessary to amend the Scheme Rules in order to do so) to the recommendations contained in the report of the Archbishops' Council on Clergy Pensions (GS 1660) as well as making a number of technical changes to the Scheme Rules. The latter are being made largely in order to make the Scheme Rules compliant with current pensions legislation and to give effect to relevant decisions taken last year as to how to implement certain matters.

The Pensions Board has made three separate sets of Amendment Rules so that motions to approve the technical changes and to approve amendments to the Scheme Rules necessitated by the recommendations contained in paragraph 52(i) (40-year accrual period) and (iii) (3.5% limit on price indexation) of GS 1660 can be considered as separate items of business. (The recommendation contained in paragraph 52(ii) (to pay only what is guaranteed by the Scheme Rules in respect of post-retirement pension increases) does not require any change to be made to the Rules.)

**THE CHURCH OF ENGLAND FUNDED PENSIONS SCHEME (GENERAL)
(AMENDMENT) RULES 2007 (GS 1667)**

The Church of England Funded Pensions Scheme (General) (Amendment) Rules 2007 (GS 1667) make the technical and other previously agreed changes to the Scheme Rules referred to above. They also make provision for amendment of the Trust Deed that established the Scheme: again these amendments are of a technical nature. A more detailed explanation of the changes follows.

Schedule 1

The amendments to the Trust Deed contained in Schedule 1 reflect:

- (i) the obligation introduced by the Pensions Act 2004 that, in deciding funding matters, the Board must consult with the Responsible Bodies; and
- (ii) the introduction of a further definition of “Responsible Body” as inserted into the Pensions Measure 1997 by the Church of England (Pensions) Measure 2003 (members in receipt of periodical payments under the Incumbents (Vacation of Benefices) Measure 1977 or compensation under the Pastoral Measure 1983).

Schedule 2

Changes arising from the Finance Act 2004

In July 2006 the General Synod approved the Church of England Funded Pension Scheme (Amendment) Rules 2006 (GS 1627) which effected certain changes arising under the Finance Act 2004 together with a number of proposed changes to the operation of the Scheme. The Rules contained in Schedule 2 of the present Amendment Rules consolidate those changes. The changes, as consolidated in Schedule 2, are as follows:

- Amendment of definition of Disability to reflect Finance Act requirements (Rule 1);
- Removal of the limits imposed on the Scheme prior to 6 April 2006 as a consequence of the Scheme’s tax exempt status (Amendments to Rule 1 and 12.5 and consequential amendments throughout); and
- Introduction of ability for the Member to take 25% of voluntary contributions in lump sum form (Rule 14.1).

The Finance Act 2004 also introduced a concept of “unauthorised benefits”. Any benefits which are not specifically authorised by legislation are deemed unauthorised. Payment of an unauthorised benefit incurs tax charges for the recipient and, potentially, the Scheme. The Amendment Rules approved in 2006 included a provision stating that the Board was not required to pay a benefit which would be considered to be unauthorised. The present Amendment Rules repeat this statement (Rule 12.5) and also make amendments throughout the Rules to adjust benefits so that they become authorised. The changes are as follows (where there are associated minor changes not arising from the “unauthorised benefits” issue, they are also dealt with here for convenience):

- Amendment of definition of “Dependant” (Rule 1) to exclude certain persons who, under the Finance Act 2004, cannot qualify as “dependants”. This relates to children of the Member who have reached age 23. The definition has been further amended so that any spouse, civil partner or child under age 23 can always be assumed to be dependent. This is not required by the Finance Act but it reflects the usual position. Note that no benefit is paid as of right to a person who qualifies as a Dependant;

- The definition of “Insurance Company” has been deleted as the changes to legislation mean it is no longer required (Rule 1);
- The Rules are amended to ensure that the lump sum payable on retirement cannot exceed the maximum permitted as a “pension commencement lump sum” under the Finance Act 2004 (Rule 3.1);
- The Rules are amended so that benefits can only be transferred out where the transfer qualifies as a “recognised transfer” (broadly, the transfer must be to another UK tax registered scheme or certain overseas schemes) (Rules 4.3 and 15);
- A restriction has been introduced to ensure that Disability pensions can only be reviewed in the circumstances permitted by the Finance Act 2004 (Rule 5.3);
- The Rules are amended so that a lump sum death benefit cannot be paid if the Member has reached age 75 (Rule 6.4);
- The Rules are amended so that a pension cannot be paid to a child beyond the age of 23 (Rule 7.5) (note that there are transitional arrangements where a pension was in payment to a child or a Member on 5 April 2006 and these are retained (Rule 16));
- There is some difficulty in stopping a pension where a Member returns to work after retirement and the Rules have therefore been amended to ensure that this can be done only where this is consistent with it being an authorised payment (Rule 8.2). This is important because it is arguable that where a pension is capable of being stopped in circumstances which are unauthorised, all instalments of pension are unauthorised;
- Power has been introduced to allow the Trustee to deduct the “lifetime allowance charge” (which applies where the Member’s total benefits exceed the lifetime allowance, currently £1.6 million) and to adjust benefits accordingly (Rule 12.2);
- Where a Member has paid voluntary contributions, the Member must be offered the opportunity to secure those benefits with an annuity provider of the Member’s choice. Otherwise all benefits provided from voluntary contributions will be unauthorised. An amendment has been made to reflect this (Rule 14.1); and
- Benefits can only be commuted on grounds of triviality or of the Member’s serious ill-health in circumstances set out in the Finance Act 2004. Amendments have been made reflecting this (Rules 14.2 and 14.3).

Changes arising from age discrimination legislation

On 1 October 2006, the UK introduced discrimination prohibiting discrimination on the grounds of age. These requirements applied to occupational pension schemes from 1 December 2006. From that date, it is no longer lawful to discriminate on grounds of age unless either an exemption applies or the practice is objectively justifiable. The Pensions Board's legal advisers have reviewed the Scheme Rules and advised that it is necessary to amend the lump sum payable on a Member's death in service so that the same benefit is paid regardless of the Member's age at death (presently smaller lump sums are paid for Members aged 65 and above). The Rules have been amended accordingly (Rule 6.1).

Members who have left office and accrued rights

There are now a number of Members who have left office (whether or not they have started to receive a pension). The benefits provisions contained in these Amendment Rules do not apply to such Members; their benefits remain as previously except that the provisions preventing payment of unauthorised benefits will apply (Rule 16). These Amendment Rules also contain wording to the effect that if (contrary to expectations) any change made by them is deemed adversely to affect Members' "subsisting rights" (broadly the pension they have already earned) in a way which is inconsistent with pensions legislation, they are deemed to take effect without inclusion of that change. The Pensions Board's legal advisers have advised the Board that they do not believe there are any such changes.

Documentation of previously agreed change

It has previously been agreed that the period of Pensionable Service which Members must complete before benefits vest should be reduced to 3 months (rather than 2 years). This is reflected in these Amendment Rules (Rule 4 and elsewhere).

Consolidation of previous amendments to Scheme

These Amendment Rules consolidate a number of changes previously adopted as follows: Persons who do not join the Scheme at the first opportunity (Rule 2.4); pensions for civil partners (Rule 7 and elsewhere); opting out (Rule 10).

Other changes consequent on changes to legislation

These Amendment Rules contain a number of other changes made consequent on recent changes to legislation as follows:

- The provisions relating to family leave have been updated to cover all of maternity, adoption, paternity and other family leave (Rule 9). For the first time, the Rules now contain provision dealing with life cover during periods of unpaid leave;
- The Rules now give the Trustees discretion as to whether to permit voluntary contributions; following a change of law, this is no longer a legal requirement (Rule 14.1);

- The provisions relating to actuarial valuations have been updated to reflect current legal requirements (Rule 17.6);
- The provisions relating to refunds of surplus to the Responsible Bodies have been updated to reflect the fact that the previous regime (which permitted a refund where the scheme was 105% funded on a basis prescribed by HMRC) has been replaced with a prohibition on refunds other than where the Scheme is in surplus on the “buy out” basis (i.e. has more assets than would be required to secure benefits in full with an insurer) (Rule 17.7); and
- Statutory references throughout have been updated.

Other minor amendments

Certain further amendments have been made for the purpose of clarification as follows:

- The definition of “Beneficiaries” has been deleted as it is not used;
- The provisions describing the circumstances in which a person can lose the right to benefits have been simplified; essentially, these now reflect the circumstances in which this is permitted by legislation (Rule 12.3). Note that two new provisions have been added. The first permits the Board to reduce benefits to recoup any monies owed by the Member to the Scheme (e.g. if there has been an overpayment). The second allows (but does not require) pension to be forfeited where it is due to a person involved in the Member’s death;
- The provisions relating to pension sharing on divorce have been updated and simplified (Rule 13);
- The provisions relating to payment of expenses have been extended to put beyond doubt that this includes liabilities incurred by the Board as well as amounts which are strictly expenses (Rule 17.5); and
- The provisions relating to the Board’s protection from liability have been clarified (Rule 18).

THE CHURCH OF ENGLAND FUNDED PENSIONS SCHEME (ACCRUAL RATES) (AMENDMENT) RULES (GS 1670)

The Church of England Funded Pensions Scheme (Accrual Rates) (Amendment) Rules (GS 1670) give effect to the recommendation in paragraph 52(i) of GS 1660. They provide that the period required for a full pension should, in respect of pensions earned in service from 1 January 2008, be extended from 37 to 40 years.

**THE CHURCH OF ENGLAND FUNDED PENSIONS SCHEME
(GUARANTEED INCREASES) (AMENDMENT) RULES (GS 1671)**

The Church of England Funded Pensions Scheme (Guaranteed Increases) (Amendment) Rules (GS 1671) give effect to the recommendation in paragraph 52(iii) of GS 1660. They provide that the limit on price indexation is reduced from 5% per annum to 3.5% per annum in relation to future service.

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