

GENERAL SYNOD**CHURCH OF ENGLAND FUNDED PENSIONS SCHEME
(DEBT APPORTIONMENT) (AMENDMENT) RULES 2008****EXPLANATORY MEMORANDUM****Legislative background**

Section 75 of the Pensions Act 1995 (as amended by the Pensions Act 2004 and Regulations made in 2008) has the effect that an employer participating in a defined-benefit pension scheme cannot ‘walk away’ from its liabilities. The section achieves this by providing that a debt (known as a “Section 75 debt”) becomes due from such an employer in the following three circumstances:

- (i) on the insolvency of that employer;
- (ii) if, in the case of a multi-employer scheme, that employer ceases to employ active members of the scheme at a time when one or more other employers continues to do so (a so-called “employment cessation event”); or
- (iii) on the winding-up of a scheme, at a time designated by the trustees after winding-up has commenced (when, in the case of a multi-employer scheme, a debt falls due from all employers participating in the scheme immediately before the process leading to winding-up commenced).

The debt for a given employer is calculated as the sum of:

- liabilities in respect of its own employees and former employees; and
- a proportionate share of all “orphan” liabilities. (Liabilities are “orphan” if they arose during employment with an entity which is no longer an employer (e.g. an entity which previously employed members of the scheme but no longer does so); additionally, legislation provides that if a member’s actual employer cannot be identified, the liabilities for that member are treated as orphan.)

For this purpose, liabilities must be valued on a ‘buy-out’ basis, i.e. by reference to the estimated cost of securing liabilities with an insurer. This places a considerably higher value on the liabilities than the basis used by pension scheme trustees to value benefits for the purposes of ongoing contributions.

The calculation of the debt for an employer in a multi-employer scheme is complex, time-consuming and expensive. It is, however, possible for the calculation to be simplified, if the scheme rules specify in a “scheme apportionment arrangement” how the debt is to be apportioned between the different employers.

Application to the Church of England Funded Pensions Scheme (‘CEFPS’)

“Employer”, “employment” and related terms are defined broadly in the 1995 Act and encompass those church bodies (the “Responsible Bodies”) which have a statutory obligation to make pension contributions to the CEFPS in respect of scheme members for whom they are responsible under section 4 of the Pensions Measure 1997. This will be the case even where technically there is no employment relationship between the CEFPS member and the Responsible Body.

The CEFPS Responsible Bodies divide into two broad categories:

- (i) the Diocesan Boards of Finance and the Church Commissioners; and
- (ii) smaller entities (including theological colleges, certain charities and university colleges).

The majority of the scheme members are the responsibility of the bodies in category (a). It is the bodies in category (b), however, which cause a difficulty for the purposes of Section 75 debt. This is because:

- the probability of an “employment cessation event” arising is higher, since bodies in category (b) typically have very small numbers of scheme members; and
- the costs of carrying out the calculations (which requires professional advice) are often disproportionate to the size of the debt, although the amounts involved can be large in the context of the individual Responsible Bodies (particularly for those that are charities).

The Church of England Pensions Board (‘CEPB’) has therefore resolved to amend the scheme rules of the CEFPS to make a scheme apportionment arrangement.

The new rule 20

The new rule 20 contains a scheme apportionment arrangement for the CEFPS. It provides for CEPB to designate each Responsible Body as either a Major or Minor Responsible Body (rule 20.3). Section 75 debt will then be calculated differently according to whether a Responsible Body is a Major or a Minor Responsible Body. Responsible Bodies in category (a) above will be designated Major Responsible Bodies, while those in category (b) are likely to be designated as Minor Responsible Bodies. Those bodies which are to be designated as Major Responsible Bodies have been consulted on CEPB’s proposals and have all given their assent.

Section 75 debt apportioned to Minor Responsible Bodies will be nominal in amount (rule 20.4(i)). The Major Responsible Bodies will have apportioned to them both their own share of debt liability and the remainder of the total debt that is not apportioned to the Minor Responsible Bodies (rule 20.4(ii)). The scheme apportionment arrangement contained in rule 20, by providing for only nominal debt to be apportioned to Minor Responsible Bodies, avoids a number of the difficulties mentioned above in relation to Responsible Bodies in category (b).

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