

GENERAL SYNOD

**THE CHURCH OF ENGLAND FUNDED PENSIONS SCHEME
(EXCLUSION OF INELIGIBLE PERSONS) (AMENDMENT) RULES 2008**

EXPLANATORY MEMORANDUM

Introduction

1. GS1718, presented to the February Group of Sessions of General Synod, was a proposed amendment to the Rules of the Church of England Funded Pensions Scheme (CEFPS) whereby scheme members would be automatically excluded from the scheme in situations where it would be unlawful for the scheme to provide benefits or accept contributions in respect of those people.
2. Debate on the amendment was adjourned in order to allow time for certain concerns raised by Mr Hargreaves-Smith (the Diocesan Registrar of the Diocese in Europe) to be addressed. Those concerns were around the precise wording of the rule change in a number of places and how it would operate in practice particularly in relation to the obligations on the Pensions Board as Trustee of the scheme.
3. In conjunction with its legal advisers, the Pensions Board has reviewed the wording of the amendment and made various changes aimed at addressing the concerns raised.

Purpose of the Amendment

4. The need for this rule amendment was first identified following an issue that arose in connection with clergy working within the Diocese in Europe. As the result of legislation¹ introduced in compliance with a European Directive² a scheme which has members working in another state within the European Economic Area (EEA)³ has to register as a cross-border scheme. If a scheme has members who are classified as cross-border members then it is unlawful to accept contributions in respect of them unless the scheme is registered as cross-border. There are some exceptions to this, particularly if members are judged to be on secondment from a UK-based organisation.
5. One significant effect of becoming a cross-border scheme is that the scheme becomes subject to very much more stringent funding requirements in that any deficiency has to be remedied within a year. Such a requirement would be completely unaffordable for the CEFPS at the present time as it would require a deficit of the order of £352m⁴ to be eliminated.
6. It had been thought that the issue had been dealt with when the legislation first came into force in 2006 on the basis that all the clergy affected fulfilled the secondment criteria. However, during the course of 2008 it became apparent that there were still problems

¹ Occupational Pension Schemes (Cross-border Activities) Regulations 2005

² Directive on the Activities of Institutions for Occupational Retirement Provision (IORP Directive, 2003/41/EC)

³ The EEA comprises the states of the European Union plus Norway, Liechtenstein and Iceland

⁴ Estimated deficiency as at 31 December 2008 based on the most recent annual funding update

which could have resulted in the scheme becoming classified as cross-border. Urgent action was therefore required to find a solution which meant that members were not classed as cross-border, otherwise it would have been necessary to remove those members working within the EEA from membership. Following a significant amount of discussion between the Diocese in Europe, the Pensions Board and the Archbishops' Council it did prove possible to find a solution which enabled members to remain in the scheme without it becoming cross-border. This involved the Diocesan Board of Finance accepting that it, rather than the individual chaplaincies, had the legal responsibility to make pension contributions. **The Bishop has confirmed that he is entirely happy with the revised arrangements and the clergy in the diocese are not affected by the amended rule change.**

7. The issue did, however, demonstrate that a provision was needed for members to be excluded from the scheme in circumstances where it would be unlawful either to accept contributions or pay benefits. Without such a provision, and had it not been possible to find a solution to the Diocese in Europe issue, the Board would have had no option but to register the scheme as cross-border with the severe impact on scheme funding that it would have triggered (which would, in all likelihood, have resulted in the scheme being unviable). The Pensions Board therefore proposes to introduce a rule change to avoid the possibility of a similar situation arising in future.

Rule Amendments

8. These Rules accordingly insert a new Rule 2.2A into the rules of the CEFPS. Rule 2.2A achieves this in two ways:
 - a. First, any person in respect of whom it would be unlawful for the Pensions Board to accept contributions or to provide benefits will not be allowed to join the CEFPS;
 - b. Secondly, where a person is already a member of the CEFPS, if during that person's membership it *becomes* unlawful for the Pensions Board to accept contributions or to provide benefits for that person (for example, because of a change in the law), then that person will automatically cease to be eligible for continued membership of the scheme.
9. In the second situation described above, the member will be treated as having left pensionable service on the date on which it became unlawful to accept contributions or to provide benefits in respect of that member. This will be the case even where it is only at a later date that the Board becomes aware of that person's eligibility having ceased. This provision is important as it will avoid the scheme inadvertently falling foul of a legislative change where the implications are only realised after the new legislation has come into force. General pensions law⁵ requires that the trustee of a scheme notifies a member of his rights and options when pensionable service terminates.
10. It will be noted that para (ii) in the new rule states that the Trustee (the Pensions Board) shall not be obliged to seek any authorisation or permission that may be available even in circumstances where it would be possible to do. The reason for including this provision

⁵ The Occupational Pension Schemes (Disclosure of Information) Regulations 1996

can be readily illustrated by reference to the cross-border issue described above. Technically it would have been possible for the Board to register the scheme as a cross-border scheme which would have meant that it would have been lawful to accept contributions. However, the consequences of that action would have been unacceptable for the Church and probably fatal to the continuation of the scheme. This provision therefore allows a more flexible response to individual circumstances. The Pensions Board has given an undertaking that it will draw the attention of the Archbishops' Council's Deployment, Remuneration and Conditions of Service Committee to any situation of which it becomes aware where the new rule might be triggered. Should such circumstances arise in the future, the Board and the Archbishops' Council envisage that urgent discussions would take place to evaluate the issue and how the impact could be avoided or mitigated before the rule was actually triggered in respect of any individual(s).

11. It must be emphasised that the Pensions Board is not currently aware of any circumstances in which the new provision might be triggered.

Church House, Westminster

June 2009