

Procedure to follow in the event of a transfer of an unincorporated church to a Limited Company, or an amalgamation of unincorporated churches



**Baptist Ministers'
Pension Trust Limited**
Encouraging Missionary Disciples

1 Introduction

Where a church becomes a Limited Company, the old, unincorporated church ceases to be an employer for pension purposes and the change therefore creates a cessation event with a consequent employer debt, unless steps are taken to prevent this. Similarly, when an amalgamation of two or more churches takes place, at least one and maybe all of the old churches will cease to be employers for pension purposes, with the same effect.

In the Occupational Pension Scheme (Employer Debt and Miscellaneous Amendments) Regulations 2010, which are effective from 6 April 2010, there is a way in which the liabilities which would give rise to the employer debt can be accepted by the new church and registered by the pension trustees, so that the cessation event is deemed not to have arisen.

2 Important points to note

This statutory easement process is cumbersome, although every effort has been made by the Pension Trustees to simplify it for use in a church situation. It requires the Pension Trustee to consider each such situation on its merits and so it should not be assumed that it will automatically resolve the potential pension problems arising from incorporation or amalgamation.

The process cannot be used retrospectively, so it is essential that churches considering incorporation or amalgamation contact the Secretary to the Pension Trustees at Baptist House, PO Box 44, 129 Broadway, Didcot OX11 8RT or pensions@baptist.org.uk at an early stage in the process and follow the guidance given with regard to both process and timetable.

The church involved in an incorporation or amalgamation will be required to meet any costs falling upon the Fund as a result of the need for the Pension Trustee to consider its application, such as the costs of legal or actuarial advice.

3 Procedure required in respect of an incorporation

- 1 The exiting employer must start the process by writing to the Pension Trustees requesting that they make a decision that the restructuring should be treated as falling within Regulation 62B of the Occupational Pension Schemes (Employer Debt) Regulations 2005. We will provide a draft letter to facilitate this.
- 2 The Pension Trustees will ask the Church to provide the following information so that they can make a decision:
 - a) A copy of the Constitution of the exiting employer.
 - b) A copy of the latest church accounts.
 - c) Details of any charges over the assets.
 - d) A copy of the constitutional documentation of the proposed new church.
 - e) Details of the strength of the vote to proceed with the restructuring.
 - f) A copy of the budget for the proposed new church.
 - g) A statement from the Church that it considers the new church to be as likely as, and as willing as, the old church to meet the old church's liabilities in relation to the Pension Scheme.

The Pension Trustees may request further information to help them make their decision.

- 3 The Pension Trustees will review the information provided, with a view to making a decision on whether the church's statement in g above is supported by the legal and financial information. The Pension Trustees may, but are not bound, to take legal and actuarial advice on the matter. They will then notify the church about whether they accept the statement in 2g or not, and the reasons for their decision. If they do, then the procedure can continue; if they do not, then effectively the church is told that proceeding with the restructuring will trigger a cessation event.

- 4 The legal transfer of the church's employees, scheme members, assets and liabilities to the new entity can then take place, provided the Pension Trustees are satisfied that there has been no change that would alter their decision in step 3.. This requires a legally enforceable transfer agreement in writing expressly referring to the transfer of all the pension liabilities in relation to the Pension Scheme. We will provide a draft clause for inclusion in the transfer agreement to facilitate this. The transfer agreement must be completed within 18 weeks of the decision given in step 3, unless the Pension Trustees allow a longer period (up to 36 weeks).
- 5 The new church must send a copy of the completed transfer agreement to the Pension Trustees as soon as possible together with confirmation that the incorporation has taken place (and the date of its completion) and that nothing submitted in 2 above has changed materially since the date of the original submission.
- 6 If following the restructuring it turns out that the information supplied by the Church was materially incomplete or inaccurate, the Pension Trustees may, within the period of six years following the change, withdraw their decision and determine that a cessation event has occurred. It is most unlikely that this step would be taken unless the Pension Trustees considered that incorrect information had been supplied or information withheld deliberately. If this extreme step were taken, the Pension Trustees could claim the resulting employer debt from either the new church or the old one.

4 Procedure required in respect of an amalgamation

The procedure in respect of an amalgamation is essentially the same as that set out in 3 above, except that information will be required in respect of each of the churches being amalgamated and in respect of the amalgamated church.

5 Commentary

While churches may consider this procedure is rather bureaucratic, they should be aware that it is substantially simplified from the procedure advised in a more commercial environment, and that the Pension Trustees will seek to be constructive in considering these matters.

Church Headed Notepaper

*XYZ Church
Address*

Date

The Trustees
Baptist Ministers' Pension Trust Limited
Baptist House
PO Box 44
129 Broadway
Didcot
Oxfordshire
OX11 8RT

Dear Sirs

[Church name]

The above church is planning to restructure its operations by transferring all its assets and liabilities and its operations, activities and staff from the present Unincorporated Association to a Company Limited by Guarantee. We understand that as an employer within the Baptist Ministers' Pension Fund, this transfer could count as a cessation event, and thus trigger an employer debt under the Occupational Pension Schemes (Employer Debt) Regulations 2005, unless it is exempt under the easement mentioned in this letter.

The Church Managing Trustees are satisfied that the restructuring falls within Regulation 6ZB of the Occupational Pension Schemes (Employer Debt) Regulations 2005, and that the new Company is both able and willing to assume all the liabilities of the Unincorporated Association in relation to the Scheme and is at least as likely as the Unincorporated Association to meet them. As a consequence the Church Managing Trustees believe that the restructuring is exempt.

I therefore apply formally for the Pension Scheme Trustees to decide whether the restructuring described above satisfies the easement under Regulation 6ZB such that the restructuring is exempt from the Employer Debt provisions. We will be happy to provide any further information you require.

Yours faithfully,

