

The Baptist Pension Scheme (BPS)

Guidance Note on the Defined Benefit pension implications, in the event of a change to the legal status of an unincorporated church (or other employer) to a Charitable Incorporated Organisation (CIO) or a Limited Company, or to a formal amalgamation of two or more unincorporated churches (or other employers).

Introduction

While these notes refer mainly to a change in legal status of churches they are also fully applicable to restructures involving any other type of employer in the BPS.

These notes apply to churches and other employers in Scotland and all references to CIO are equally applicable to Scottish Charitable Incorporated Organisations (SCIO).

One of the many issues which needs to be considered when a church becomes a Charitable Incorporated Organisation (CIO) or other form of Limited Company, or amalgamates with one or more other churches, is how to deal with any existing funding obligations to the Baptist Pension Scheme Defined Benefit plan.

Under current pension regulations, when the restructure to a CIO or Limited Company occurs, the old, unincorporated church ceases to be an employer for Defined Benefit pension purposes. The change of legal structure therefore creates a cessation event and the requirement for the church immediately to pay any employer debt that arises.

When an amalgamation occurs, at least one and maybe all of the old churches will cease to be employers for pension purposes, with the same effect. In an amalgamation, the "new" church may retain the existing unincorporated status of the amalgamating churches or decide to incorporate as part of the overall amalgamation process.

If the church does not wish to trigger a cessation event and pay its employer debt at the time of the restructure, then it must take appropriate steps to prevent it.

A process is available under the Occupational Pension Scheme (Employer Debt and Miscellaneous Amendments) Regulations 2010, whereby the liabilities which would give rise to the employer debt can be accepted by the new church and accepted by the Pension Trustee, so that a cessation event is deemed not to have arisen.

In essence, the pension liabilities are "rolled over" from the old church to the new one and become the responsibility of the new church.

Important points to note

1. The statutory easement process is cumbersome, although every effort has been made by the Pension Trustee to simplify it for use in a church situation. It needs to be followed fully by the church.
2. The process requires the Pension Trustee to consider each such situation on its merits and it is under no obligation to agree to a transfer of the pension liabilities from the old church to the new one. Therefore, it should not be assumed that going through the process will automatically resolve the potential pension issues arising from incorporation or amalgamation.
3. The Employer Debt Regulations specifically state that the process **cannot** be used retrospectively, so it is essential that churches considering incorporation or amalgamation contact the Scheme Administrators, BBS at an early stage in the process and follow these guidance notes, with regard to both process and timetable. BBS's contact details are:

BBS Consultants & Actuaries Ltd
Canard Court
23-25 St George's Road
Bristol BS1 5UU

Telephone: +44 (0)117 937 8700
Email: baptistpensions@bbs-actuaries.co.uk
4. The church(es) involved in an incorporation or amalgamation will be required to meet any costs falling upon the BPS as a result of the need for the Pension Trustee to consider its application, such as the costs of legal or actuarial advice.
5. The church will need to engage a solicitor to facilitate any restructure and must ensure that the solicitor is fully aware of any potential pension liability the church has to the BPS.
6. The Baptist Union of Great Britain (BUGB) has published detailed guideline notes on incorporation and amalgamation of churches. In general terms, the more closely the new church's structure and constitution is to the recommended standard BUGB model, the more straightforward will be the Pension Trustee's review of the pension aspects.
7. Should a church with existing funding obligations to the BPS Defined Benefit plan, change its legal status through a restructure without informing the Pension Trustee, there may also be serious legal and financial consequences. The regulatory framework states that a decision to cease running its business in the UK by an employer is a notifiable event which must be advised to the Pensions Regulator. Failure to notify the Regulator may be punishable by a fine of up to £50,000. In addition, once the Pension Trustee has learnt of such a restructuring and the dissolution of a scheme employer, the Pension Trustee could ask the Regulator to exercise its powers to issue a contribution notice or financial support direction against the employer.

What you need to do if you are considering becoming a CIO or other form of limited company

1. The existing non-incorporated church is regarded as an “exiting employer” from the BPS. It must initiate the process by writing to the Pension Trustee asking it to agree that the restructuring should be treated as falling within *Regulation 6ZB of the Occupational Pension Schemes (Employer Debt) Regulations 2005*. A draft letter is provided in Appendix 1 of this guidance note for cases of incorporation.
 2. The church must also send the Pension Trustee the following information:
 - a) A copy of the Constitution of the exiting employer.
 - b) A copy of the latest church accounts.
 - c) Insured and estimated market values of any manse, church or other buildings owned by, or held in trust on behalf of the church.
 - d) Details of the current holding trustee and ultimate trustee of any manse, church or other building and confirmation whether the new incorporated organisation intends to transfer the trusteeship of its property into the new organisation, rather than leave the legal ownership with the current holding trustee.
 - e) Details of any charges over the church assets.
 - f) A copy of the constitutional documentation of the proposed new church.
 - g) Details of the strength of the vote to proceed with the restructuring.
 - h) A copy of the budget for the proposed new church.
 - i) 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 BPS.
 - it is not expected that the restructuring will adversely affect the size of the church membership or regular attendance or continuity of income.
- The Pension Trustee may also request further information to help it make its decision.
3. Should the incorporation also include an amalgamation of two or more existing churches, the above information will be required from each church.
 4. The Pension Trustee will review the information provided, with a view to deciding whether the church’s statement in 2 i) above is supported by the legal and financial information. The Pension Trustee may, but is not bound, to take legal and actuarial advice on the matter. If any such advice is taken, the church will be required to meet the costs.
 5. The Pension Trustee will then notify the church about whether it accepts the statement in 2 i) or not, and the reasons for its decision. If it accepts, then the procedure can continue and the pension liability will be transferred to the new organisation, without triggering a cessation event, provided that the new organisation continues to make monthly deficiency contributions as required under the BPS recovery plan.
 6. If the Pension Trustee does not accept the statement in 2 i), then although there is no reason why the church cannot continue with the restructuring if it wishes, doing so will trigger a cessation event and any employer debt due will need to be paid immediately.
 7. If acceptance is confirmed, the legal transfer of the church’s employees, scheme members, assets and liabilities to the new organisation can then take place, provided the Pension Trustee is satisfied that there has been no change in circumstances that would alter their decision in paragraph 5 above. 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. **The following clause must be included in the transfer agreement to achieve this.**

"In accordance with the requirements of paragraph (13) of Regulation 62B of the Occupational Pension Scheme (Employer Debt) Regulations 2005, as from the Completion Date, the Transferors hereby transfer to the Transferee, and the Transferee hereby assumes, responsibility for all of the assets, employees and members of the Baptist Pension Scheme and the Baptist Union Staff Pension Scheme (together the "Schemes") for which the Transferors are responsible; and all of the Transferors' liabilities, past, present and future in relation to the Schemes are hereby taken over by the Transferee so that the Transferee is responsible for them or is treated as being fully responsible for them for all purposes"

8. The transfer agreement must be completed within 18 weeks of the acceptance decision, unless the Pension Trustee allows a longer period (up to a maximum of 36 weeks).
9. The new church must send a copy of the completed transfer agreement to the Pension Trustee 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.
10. If following the restructuring it turns out that the information supplied by the church was materially incomplete or inaccurate, the Pension Trustee 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 Trustee considered that incorrect information had been supplied or information withheld deliberately. If this extreme step were taken, the Pension Trustee could claim the resulting employer debt from either the new church or the old one.

What you need to do if you are considering a formal amalgamation of two or more existing churches but do not intend the new church to be incorporated.

The procedure in respect of an amalgamation is essentially the same as that for an incorporation and the information required is also the same (see Incorporation Section above), except that information will be required from **each** of the churches being amalgamated and also in respect of the new amalgamated church.

A draft letter for submission to the Pension Trustee is provided in Appendix 2, for cases of amalgamation of two or more existing unincorporated churches which do not intend to incorporate as part of the restructure.

What other factors will the Pension Trustee take into account when considering the church's request?

This section applies only to cases where an incorporation is taking place. It does not apply to an amalgamation of two or more churches which are unincorporated trusts, where the new church structure remains as a trust and no incorporation occurs as part of the amalgamation.

In addition to considering the information provided by the church, the Pension Trustee will also assess the church's potential employer debt to the scheme.

- 1. Where, on incorporation, the church's property assets materially exceed any potential pension employer debt that may arise in the future.**

Where the church's property assets materially exceed any potential pension employer debt that may arise in the future, then provided the other information provided by the church is also acceptable, the Pension Trustee is likely to consent to the restructure.

To protect the BPS financial interest, the Pension Trustee may ask for a Land Registry restriction to be placed on some or all of the church's buildings, particularly in cases where the church's exposure to the BPS is significant. The effect of such a restriction is that the buildings cannot be sold or mortgaged without the consent of the Pension Trustee.

The buildings of an unincorporated church have a holding trustee which holds the property deeds and the church trustees cannot sell the buildings without the holding trustee's consent. Most churches, on incorporation, retain this property ownership structure and in such circumstances, the Pension Trustee restriction will usually be through completion of the Land Registry RX1 application. The current fee is £40.00 and this must be paid for by the church.

However, an incorporated church can, if it wishes, take over trusteeship of the property previously held by a Baptist trust corporation, so that the legal ownership of the property as well as the beneficial ownership will lie with the new incorporated organisation.

Very few churches have taken this approach to date. Most have chosen not to change the legal arrangements on the property and retain the existing trustee arrangements. However, if the church opts to transfer trusteeship and take over the legal ownership of any or all of its buildings, then the Pension Trustee is likely to request a more formal charge against the property for all pension liabilities, including any potential future employer debt which has not yet been triggered. This is a more complex process than applying for an RX1 restriction and will require the Pension Trustee to incur additional legal costs, which will be payable by the church (cost estimated to be in the range £750-£1,250).

2. Where, on incorporation, the church's assets may be insufficient to settle any potential pension employer debt that may arise in the future.

The trustees of an unincorporated church have a potential personal liability for BPS deficit funding, should the church's assets be insufficient to settle any employer debt due.

The effect of the Pension Trustee agreeing that on incorporation as a CIO or Limited Company, the restructuring is treated as falling within *Regulation 6ZB of the Occupational Pension Schemes (Employer Debt) Regulations 2005*, is to discharge the old unincorporated church from its historic statutory funding liabilities as a former employer for the purposes of section 75 Pensions Act 1995 and Regulation 9 (14A) of the *Occupational Pension Schemes (Employer Debt) Regulations 2005*.

This means that:

- the old unincorporated church has ceased to be a participating employer under the Rules of the Scheme and as it is no longer classed as a former employer under statute, it has no further liabilities under the Rules.
- the previous trustees of the old unincorporated church no longer have a potential personal liability for any unpaid pension debt

This in turn means that if the Pension Trustee gives its agreement, then unless the financial circumstances of the new incorporated church are expected to improve significantly in the immediate future, the new church will be less likely than the old church to be able to meet any liabilities to the BPS (because although the assets of the church will still be available to meet any pension liability, the assets of the previous trustees will not).

In such circumstances, it is unlikely that the Pension Trustee's agreement to the restructure will be given, unless additional assurances can be provided by the church as to how future provision will be made to manage the pension deficit issue.

Churches and other organisations in membership of the Baptist Unions of Great Britain, Scotland or Wales, who find themselves in this position should seek discussions with their local Baptist Association as soon as possible.

Appendix 1 – Example letter to be sent to the Pension Trustee where a change of legal status to an incorporated structure (CIO or Limited Company) is planned

To be sent on Church headed paper

The Trustee
Baptist Pension Trust Limited
C/o BBS Consultants & Actuaries Ltd
Canard Court
23-25 St George's Road
Bristol BS1 5UU

Telephone: +44 (0)117 937 8700
Email: baptistpensions@bbs-actuaries.co.uk

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 Charitable Incorporated Organisation/Company Limited by Guarantee (delete which does not apply). We understand that as an employer within the Baptist Pension Scheme, 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 Trustee 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,

Appendix 2 – Example letter to be sent to the Pension Trustee where an amalgamation of two or more existing churches is planned and the new church will not be incorporated

To be sent on Church headed paper

The Trustee
Baptist Pension Trust Limited
C/o BBS Consultants & Actuaries Ltd
Canard Court
23-25 St George's Road
Bristol BS1 5UU

Telephone: +44 (0)117 937 8700
Email: baptistpensions@bbs-actuaries.co.uk

Dear Sirs

[Church name]

The above church is planning to restructure its operations by formally amalgamating with **XXX Church** and transferring all its assets and liabilities and its operations, activities and staff into a new church to be known as **XXX Church**. The new church will be structured as an unincorporated trust.

We understand that as an employer within the Baptist Pension Scheme, 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 church is both able and willing to assume all the liabilities of the old church in relation to the Scheme and is at least as likely as the old church to meet them. As a consequence the Church Managing Trustees believe that the restructuring is exempt.

I therefore apply formally for the Pension Trustee 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,