Passage of the

Scottish Parliamentary Pensions Bill 2008

SPPB 126
Passage of the Scottish Parliamentary Pensions Bill 2008
SP Bill 14 (Session 3), subsequently 2009 asp 1

SPPB 126
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Foreword

Purpose of the series

The aim of this series is to bring together in a single place all the official Parliamentary documents relating to the passage of the Bill that becomes an Act of the Scottish Parliament (ASP). The list of documents included in any particular volume will depend on the nature of the Bill and the circumstances of its passage, but a typical volume will include:

- every print of the Bill (usually three – “As Introduced”, “As Amended at Stage 2” and “As Passed”);
- the accompanying documents published with the “As Introduced” print of the Bill (and any revised versions published at later Stages);
- every Marshalled List of amendments from Stages 2 and 3;
- every Groupings list from Stages 2 and 3;
- the lead Committee’s “Stage 1 report” (which itself includes reports of other committees involved in the Stage 1 process, relevant committee Minutes and extracts from the Official Report of Stage 1 proceedings);
- the Official Report of the Stage 1 and Stage 3 debates in the Parliament;
- the Official Report of Stage 2 committee consideration;
- the Minutes (or relevant extracts) of relevant Committee meetings and of the Parliament for Stages 1 and 3.

All documents included are re-printed in the original layout and format, but with minor typographical and layout errors corrected.

Where documents in the volume include web-links to external sources or to documents not incorporated in this volume, these links have been checked and are correct at the time of publishing this volume. The Scottish Parliament is not responsible for the content of external Internet sites. The links in this volume will not be monitored after publication, and no guarantee can be given that all links will continue to be effective.

Documents in each volume are arranged in the order in which they relate to the passage of the Bill through its various stages, from introduction to passing. The Act itself is not included on the grounds that it is already generally available and is, in any case, not a Parliamentary publication.

Outline of the legislative process

Bills in the Scottish Parliament follow a three-stage process. The fundamentals of the process are laid down by section 36(1) of the Scotland Act 1998, and amplified by Chapter 9 of the Parliament’s Standing Orders. In outline, the process is as follows:

- Introduction, followed by publication of the Bill and its accompanying documents;
- Stage 1: the Bill is first referred to a relevant committee, which produces a report informed by evidence from interested parties, then the Parliament debates the Bill and decides whether to agree to its general principles;
Stage 2: the Bill returns to a committee for detailed consideration of amendments;
Stage 3: the Bill is considered by the Parliament, with consideration of further amendments followed by a debate and a decision on whether to pass the Bill.

After a Bill is passed, three law officers and the Secretary of State have a period of four weeks within which they may challenge the Bill under sections 33 and 35 of the Scotland Act respectively. The Bill may then be submitted for Royal Assent, at which point it becomes an Act.

Standing Orders allow for some variations from the above pattern in some cases. For example, Bills may be referred back to a committee during Stage 3 for further Stage 2 consideration. In addition, the procedures vary for certain categories of Bills, such as Committee Bills or Emergency Bills. For some volumes in the series, relevant proceedings prior to introduction (such as pre-legislative scrutiny of a draft Bill) may be included.

The reader who is unfamiliar with Bill procedures, or with the terminology of legislation more generally, is advised to consult in the first instance the Guidance on Public Bills published by the Parliament. That Guidance, and the Standing Orders, are available for sale from Stationery Office bookshops or free of charge on the Parliament’s website (www.scottish.parliament.uk).

The series is produced by the Legislation Team within the Parliament’s Chamber Office. Comments on this volume or on the series as a whole may be sent to the Legislation Team at the Scottish Parliament, Edinburgh EH99 1SP.

Notes on this volume

The Bill to which this volume relates was the fifth Committee Bill to be introduced in the Parliament.

Committee Bills are Public Bills introduced by the convener of a committee on the committee’s behalf, rather than by the Scottish Government or by an individual backbench MSP. Such a Bill can be introduced only after the Parliament has agreed to a proposal prepared by the relevant committee (which may follow an inquiry by the committee into the general topic); a Stage 1 report by a lead committee is not required. These procedural differences are reflected in the structure of this volume.

The intention of this volume is to provide a complete picture of the Bill’s passage through the Parliament. In this case, the picture would be incomplete without the Scottish Parliamentary Pension Scheme Committee’s original report into the Scottish Parliamentary Pension Scheme and the need for a Committee Bill. That report, although not formally related to the Bill, is therefore included in this volume. Volume 2 of that report (the written and oral evidence taken by the Committee) was originally published on-line only. The relevant material is included in this volume.

Standing Orders do not require Committee Bills to be accompanied by Explanatory Notes or a Policy Memorandum on introduction. In this case, Explanatory Notes
were provided but a Policy Memorandum was not (the policy being fully explained in the preceding committee report).

At Stage 1, the Bill was considered by the Finance and Subordinate Legislation Committees before being debated by the Parliament. The reports of those committees, and relevant minute extracts and Official Reports where appropriate, are included in this volume.

At Stage 2, a new committee was established to deal with the Bill (the Scottish Parliamentary Pension Bill Committee) as the Bill did not fall within the remit of any existing committee.

No amendments were lodged at Stage 3 so a Marshalled List, Groupings and an “As Passed” version of the Bill were not produced. The Bill was passed in its “As Amended at Stage 2” form.
Scottish Parliamentary Pension Scheme Committee

1st Report, 2008 (Session 3)

Scottish Parliamentary Pension Scheme

Volume 1: Report

Published by the Scottish Parliament on 29 May 2008
Scottish Parliamentary Pension Scheme Committee

1st Report, 2008 (Session 3)

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Scottish Parliamentary Pension Scheme Committee

Remit and membership

Remit:
To inquire into and report with recommendations for a Committee Bill on a replacement for the Scottish Parliamentary Pension Scheme rules and the Grants to Members and Officeholders Order.

Membership:
David McLetchie
Alasdair Morgan (Convener)
Hugh O'Donnell
Peter Peacock (Deputy Convener)

Committee Clerking Team:
Clerk to the Committee
David Cullum

Senior Assistant Clerks
Ruth Cooper
Derek Stein

Support Manager
Stuart Todd
Scottish Parliamentary Pension Scheme Committee

1st Report, 2008 (Session 3)

Scottish Parliamentary Pension Scheme

The Committee reports to the Parliament as follows—

EXECUTIVE SUMMARY

(i) This section of the report sets out the Committee’s recommendations. The reasons for the recommendations are provided in the detailed sections of the report.

(ii) Since 1999 there have been a number of significant legislative changes at a UK level which have affected all pension schemes. The Finance Act 2004 and the Pensions Act 2004 transformed the tax and legal environment in which pensions schemes operate in the UK, necessitating changes to the pension scheme rules.

(iii) There have also been a number of other general legislative changes since 1999 which affect occupational pension schemes, such as the Welfare Reform and Pensions Act 1999 which introduced pension sharing on divorce and the Civil Partnership Act 2004 which established the new status of a civil partner.

(iv) The Parliament agreed on 27 June 2007 that, as a result of these legislative changes, a Scottish Parliamentary Pension Scheme Committee should be established to develop proposals for new scheme rules for consideration by the Parliament.

(v) Changes proposed to members’ and officeholders’ pensions by the Committee are made at no additional cost to public funds. Members are given an opportunity to accrue pension rights more quickly but they must fully fund the additional cost.

(vi) The Committee’s recommendations for inclusion in a Committee Bill to replace the Scottish Parliamentary Pension Scheme rules and the Grants to Members and Officeholders Order are as follows—
Trustees and scheme administration

Recommendation 1. Trustees should be appointed to manage and administer the pension scheme. [paragraph 52]

Transfer of assets and liabilities

Recommendation 2. The assets and liabilities of the scheme be transferred from the SPCB to the trustees subject to discussions on liabilities as outlined in paragraph 53. [paragraph 59]

Trustees

Recommendation 3. An appropriate number of trustees would be a maximum of six. [paragraph 62]

Recommendation 4. All trustees are appointed by the Parliament nominated in a motion put forward by the SPCB. [paragraph 63]

Recommendation 5. Trustees who are not scheme members may be remunerated. [paragraph 64]

Recommendation 6. Trustees may resign by notice to the other trustees and to the Presiding Officer. [paragraph 65]

Staff and professional advisers

Recommendation 7. Provision is made for the trustees to employ staff and advisers. [paragraph 67]

Future role of SPCB

Recommendation 8. The SPCB should set the “employer” contribution rate and pay the same from its budget but that in so doing consideration must be given to the recommendations of the scheme actuary and the views of the trustees. [paragraph 71]

Recommendation 9. Provision be made for future rule amendments to be made by resolution of the Parliament. [paragraph 73]

Scheme membership

Recommendation 10. Participating membership of the pension scheme no longer be available to those age 75 and over. [paragraph 76]

Recommendation 11. Non-salaried posts be removed from the pension rules. [paragraph 78]

Officeholders (including the Law Officers)

Recommendation 12. The benefits of non-MSP officeholders should be equalised with those of MSP members to remove the extent that the current rules treat non-MSP officeholders less favourably. [paragraph 80]
Special pension arrangements for the First Minister and Presiding Officer

Recommendation 13. The existing arrangements for the First Minister and Presiding Officer should be closed to any new incumbents and that the First Minister and Presiding Officer pension provisions should be the same as all other officeholders under the new scheme rules. [paragraph 89]

Pension entitlement

Recommendation 14. Members be given the option of accruing benefits in future at either 1/40th or 1/50th per year and that the additional cost of 1/40th accrual be fully met by an increase in the contribution rate of 5% to 11% applying to those members choosing to opt for 1/40th. [paragraph 94]

Recommendation 15. The current earnings cap be removed and that the scheme maximum pension be 2/3rd final member’s salary without any deduction for retained benefits. [paragraph 98]

Recommendation 16. The restriction preventing a serving MSP or officeholder from receiving their pension or lump sum benefits be retained, with the exception of those approaching 75 about whom we make later recommendations. [paragraph 99]

Commutation

Recommendation 17. The maximum commutation limit for the scheme should be 25% of pension as permitted by the Finance Act 2004. [paragraph 103]

Recommendation 18. Scheme participants should be able to commute part of their pension into a tax-free lump sum immediately before age 75 whilst still serving as an MSP or officeholder or both. [paragraph 105]

Recommendation 19. Provision is made to commute a trivial pension and to pay a tax-free lump sum. [paragraph 107]

Early retirement

Age discrimination
Recommendation 20. The current calculation table should not be included in the proposed bill. [paragraph 112]

Qualifying period
Recommendation 21. The qualifying period of 15 years for early retirement should be removed and early retirement should be made available for all ex-members aged 55 and over. [paragraph 116]

Update and costs
Recommendation 22. Members who are no longer serving MSPs or officeholders should be able to retire from age 55, subject to an actuarially neutral reduction of 4% to their pension for each year below age 65. [paragraph 127]
Preserving existing rights
Recommendation 23. Any greater rights to early retirement under the current rules should be preserved for existing members but only for service up to the end of the current Session. [paragraph 133]

Ill-health provision

Recommendation 24. The scheme adopts a two tier approach to ill-health pensions for serving members and officeholders, as detailed, and that periodic reviews should follow all ill-health pension awards. [paragraph 142]

Recommendation 25. Provision be made to allow those serving members and officeholders with a terminal illness who are not expected to survive for a year to be able to commute their pension entitlement for a lump sum. Survivor pensions will continue to be available following the death of such members. [paragraph 144]

Spouses, partners and children

Spouses and civil partners
Recommendation 26. Spouses’ and civil partners’ pensions should continue for life. [paragraph 158]

Recommendation 27. The discretion to withdraw all or part of a surviving spouse’s pension should not be included in the new rules and that no provision should be made to reduce a surviving spouse’s or civil partner’s pension where the participating member is much older than their partner. [paragraph 163]

Unmarried partners
Recommendation 28. Provision for unmarried partners’ pensions should be made in the new scheme. [paragraph 168]

Children
Recommendation 29. The age limit for a child’s pension should be increased from under 22 to under 23 and that the age limit of 22 for paying a pension to a surviving child who was dependant on the deceased due to physical or mental impairment should be removed. [paragraph 172]

Added years

Recommendation 30. The scheme should continue to allow members to purchase added years and that there be no age restriction beyond conformity with revenue limits of age 75. [paragraph 180]

Recommendation 31. The maximum member’s contribution should be increased to 20% of salary (mirroring the situation at the UK Parliament and the National Assembly for Wales). [paragraph 183]
Pension sharing

Recommendation 32. The scheme allows recipients of a pension credit to be given the choice of an external transfer or membership of the scheme. [paragraph 186]

Other areas

Five year guarantee
Recommendation 33. The rules should continue to allow payment of the current five year guaranteed amounts. [paragraph 192]

Lump Sum Death Benefits
Recommendation 34. The death in service lump sum benefit be four times salary. [paragraph 196]

Short Service Refunds
Recommendation 35. A refund of contributions should only be available within three months of joining the scheme. [paragraph 199]

AVCs
Recommendation 36. No new contracts for AVCs are made on behalf of scheme members. [paragraph 223]

Grants

Resettlement grants
Recommendation 37. The amount of resettlement grant payable be maintained at the equivalent to six months’ salary for each MSP up to the current maximum entitlement; the amount payable to increase from the minimum by one month for each full year of service as an MSP beyond six years. [paragraph 241]

Ill-health grants
Recommendation 38. In future the qualification for the grant be linked to the grounds for an award of an ill-health retirement pension. The amount payable as an ill-health retirement grant would continue to be equivalent to the resettlement grant. [paragraph 244]

Officeholders
Recommendation 39. The period which must elapse after holding any of the officeholder posts before the officeholder grant is payable should be extended to three months. [paragraph 246]

Recommendation 40. The offices of Leader of a Non-Executive Party and the Chief Business Manager of a registered political party with at least 10 MSPs should not be included in the replacement for the Order. [paragraph 247]

Recommendation 41. An officeholder severance grant should be payable to a First Minister and a Presiding Officer who would not qualify for the previous special pension arrangements for these offices. [paragraph 248]
Conclusions and recommendations for a Committee Bill

Recommendation 42. The Parliament agrees to this proposal for a Committee bill as set out in the annexed draft bill under Rule 9.15 of Standing Orders. [paragraph 262]

INTRODUCTION

Proposal

1. The purpose of this report is to make a proposal for a Committee bill on a replacement for the Scottish Parliamentary Pension Scheme rules and the Grants to Members and Officeholders Order (“Grants Order”) under Rule 9.15 of Standing Orders.

Mechanism for changing scheme rules

2. Under section 81(5) of the Scotland Act 1998 provision for the payment of pensions is either by resolution or an Act of the Scottish Parliament. Replacing the current pension schemes by resolution is not possible given some of the changes required and the legal status of the schemes established by the Transitional Order. Primary legislation is therefore required to update the current rules and the Parliament’s Committee bill procedure seems the most appropriate route.

Establishment of the Committee

3. The Scottish Parliamentary Corporate Body (“SPCB”) agreed on 13 June 2007 that as a result of UK legislative changes it was necessary to amend the scheme rules. The SPCB asked the Parliamentary Bureau to consider the matter and it proposed that a bill Committee be established to develop proposals for a Committee bill for consideration by the Parliament. The Parliamentary Bureau recommendation and the Committee remit were agreed by the Parliament on 27 June 2007 and revised on 28 November 2007.

Committee bill procedure

4. A Committee may make a proposal for a bill in the form of a report to the Parliament. The report must be clear that a Committee bill is being proposed, why the bill is necessary and it may be accompanied by a draft bill.

5. If the Parliament agrees to the proposal a bill can be introduced by the Convener of the Committee who becomes the “member in charge”. The bill is referred to the Finance Committee for a report on the financial memorandum and to the Subordinate Legislation Committee if appropriate. Once those committees have reported, a Stage 1 debate takes place. At Stage 2 the bill is referred to a lead committee in the same way as other bills. No members of the original

1 The Scotland Act 1998 (Transitory and Transitional Provisions) (Scottish Parliamentary Pension Scheme) Order 1999 (No. 1082)
committee may be members of the lead committee. Stage 3 is the same as for other public bills.

BACKGROUND

Establishment of the schemes

6. In 1998 the Senior Salaries Review Board (“SSRB”) was asked to make recommendations on appropriate pension arrangements for MSPs and officeholders.²

7. Its priority was to arrive at arrangements which would conform to current good practice and take account of the uncertainties of parliamentary life. The SSRB concluded that the Parliamentary Contributory Pension Scheme (“PCPS”), the occupational pension scheme for the UK Parliament MPs and officeholders, should be taken as the model scheme. Based on this recommendation, a scheme for MSPs and officeholders (“MSP and officeholder pension scheme”) was established on 6 May 1999 by a UK Parliament Transitional Order under the Scotland Act³ (“the Transitional Order”). The Transitional Order also establishes the separate pension scheme for the First Minister and Presiding Officer (“FM/PO scheme”), which was based on the arrangements made by the UK Parliament for the Prime Minister, Speaker and Lord Chancellor.

8. The SPCB is responsible for the management and administration of the MSP and officeholder pension scheme.

9. Throughout this report references to the “pension scheme” are, unless the context requires otherwise, to the MSP and officeholder pension scheme.

Funding of the scheme

10. Unlike some statutory public service schemes but similar to other parliamentary and local government schemes, the Scottish Parliamentary Pension Scheme (“SPPS”) is a funded scheme. Pension benefits payable are therefore fully paid from the contributions paid into the scheme fund. Pensions under the FM/PO scheme are paid directly from the Scottish Consolidated Fund (“SCF”).

11. The pension scheme is an occupational pension scheme. MSPs and officeholders pay contributions at the rate of 6% of their annual salary. The Government Actuary’s Department (“GAD”) is required by the Transitional Order to report on the financial position of the Scottish Parliamentary Contributory Pension Fund (“SPCPF”) every three years, and the SPCB follows its recommendations on

² These are specified as the holders of the following offices: any member of the Scottish Executive (except the First Minister but including the Lord Advocate and Solicitor General for Scotland); the Junior Scottish Ministers; the Deputy Presiding Officers of the Parliament; a Leader (in the Parliament) of a non-Executive Party; the Chief Business Manager (as nominated by the Leader of that Party) of a registered party with which at least 10 MSPs are connected. The Leaders of non-Executive parties and Chief Business Manager do not hold salaried positions at the Scottish Parliament and no pension provision is made.

³ The Scotland Act 1998 (Transitory and Transitional Provisions) (Scottish Parliamentary Pension Scheme) Order 1999 (No. 1082)
the level of contributions to be met from the SCF. An annual contribution rate is recommended by GAD and is currently 20.3% of salary which is also paid into the SPCPF by the SPCB.

Grants to Members and officeholders

12. The SSRB report in November 1998 also covered resettlement grants, ill-health retirement grants and severance arrangements and recommended the Scottish Parliament have similar provision to those at the UK Parliament. The current Grants Order follows those recommendations and was also made as an Order under the Scotland Act 1998.4

LEGISLATIVE CHANGES

13. Since 1999 there have been a number of significant legislative changes at a UK level which have affected all pension schemes. The Finance Act 2004 and the Pensions Act 2004 transformed the legal environment in which pension schemes operate in the UK, necessitating changes to the pension scheme rules.

14. There have been a number of general legislative changes which affect occupational pension schemes5 and the major ones can be summarised as follows—

- the Welfare Reform and Pensions Act 1999 which introduced pension sharing on divorce, where ex-spouses can get membership of a scheme in their own right or a transfer value from the scheme;
- the new status of civil partner introduced by the Civil Partnership Act 2004;
- amendments to pension law made by the Pensions Act 2004; and

15. The Finance Act 2004 sets out a new, simplified tax regime for registered pension schemes. Historically, tax approved pension schemes have had to comply with tax rules in order to benefit from tax advantages, for example an exemption from tax on the pension fund’s investment income and from capital gains; tax relief on member and employer contributions, and tax-free lump sums on retirement (although pensions in payment are subject to income tax).

16. The Finance Act 2004 replaced the eight then existing taxation regimes with a single set of rules, introduced on 6 April 2006. While there was a relaxation of some of the tax limits previously imposed, the general principle remains that for a scheme to benefit from the preferential tax treatment it should remain within the tax rules6.

17. The Transitional Order must be read subject to the general transitional arrangements made under the Finance Act 2004. These arrangements are

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4 The Scotland Act 1998 (Transitory and Transitional Provisions) (Grants to Members and Officeholders) Order 1999 (No. 1081)
5 For example the Local Government Scheme has been amended 11 times since 1999 and the NHS pension scheme 13 times
6 Finance Act 2004, sections 165-168
expected to expire in April 2011 and, if not replaced, would create uncertainty about how parts of the Transitional Order comply with tax rules.

**COMMITTEE APPROACH**

18. The Committee carefully considered the position of elected Members and, in particular, the lack of long-term job security flowing from the uncertainty of re-election. The Committee is aware that concern has been expressed about Members’ prospects for re-employment as a result of losing a seat at the election, (sometimes due to a lower position on a regional list), party de-selection, boundary changes or not standing for re-election. Although there are exceptions, the period of service of an elected politician is relatively short; in most cases, it is not a lifetime career. Absence from the job market for a period of time and changing professional skills can make for a difficult transition on leaving Parliament.

19. The Committee accordingly had to bear in mind the characteristic uncertainty of long-term employment and the associated earnings vulnerability of elected Members. This view was reinforced by Sir John Butterfill MP, where he referred, in oral evidence to “the uncertainties that exist in the profession.”

20. From the outset the Committee has been clear that its overriding aim is to provide a modern equality-proofed range of benefits both now and in the future. A Scottish Parliament pension scheme must strike an equitable and proportionate balance between the level of benefits provided to members and the actual cost of their provision to public funds.

21. In taking forward the remit, the Committee was keen to hear from all existing scheme members including former MSPs. The consultation paper invited comments on the principal matters identified for consideration. Finally the Committee has benefited from advice and evidence from a range of pension experts in particular GAD, Scottish Public Pensions Agency (“SPPA”) and the chairmen of the pension trustees at the UK Parliament and the National Assembly for Wales. The Committee is indebted to all who have provided comment and advice.

22. The report covers the evidence the Committee has received and includes its recommendations for the principal changes in the rules of the pension scheme. Attached at Annexe B is the draft bill containing proposed new rules for the pension scheme.

**CONSULTATION**

23. On 17 October 2007 the Committee published a consultation document and invited comment from MSPs, former MSPs and interested outside bodies on issues to be considered when developing proposals for a replacement for the SPPS and Grants Order. To make it easier for respondents the consultation response form was set out in questionnaire style with background information for

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Scottish Parliamentary Pension Scheme Committee, 1st Report, 2008 (Session 3)

each issue. The consultation paper was also made available on the Scottish Parliament website. The closing date for responses was 17 January 2008.

24. The consultation paper sought views on the following areas.

Mandatory changes

25. These are changes required as a result of legislative changes. Flowing from these are a number of options linked to the principal required change.

Pension sharing on divorce

26. The Welfare Reform and Pensions Act 1999 gave powers to courts to split pension benefits on divorce or annulment proceedings. These powers were extended by the Civil Partnership Act 2004 to the dissolution of civil partnerships. Presently, the SPPS has no rules covering pension sharing but would have to comply with any pension sharing order.

Age 75

27. As a result of the taxation changes in the Finance Act 2004, from 6 April 2006 scheme members are prevented on reaching age 75 from receiving a tax-free lump sum on retirement, receiving tax relief on contributions or payment of a tax-free lump sum after death in service.

Minimum pension age 55

28. The new tax legislation also increased the minimum age for taking early retirement benefits from 50 to 55.

Discretionary changes

29. The Finance Act 2004 allows for discretionary changes within the tax rules. Discretionary changes include areas where the new taxation regime allows more flexibility in areas such as—

- Contribution limits
- Maximum pension available
- Amount of tax-free lump sum on retirement
- Amount of death in service gratuity
- Children’s pension provision
- Additional voluntary contributions and added years
- Trivial commutation of pension benefits
- Ill-health provisions.

30. Each area is considered later in the report.

Age and other equality issues

Early retirement

31. The Committee examined the age equality issues around the early retirement provisions in the pension scheme. Similar rules in other schemes have been judged to be prima facie discriminatory. In particular, the Committee examined the rules which, by combining age and service, in some instances gives
an older person higher benefits than a younger person with more service. Similar issues arise within the rules of the Grants Order.

Refund of contributions

32. In defined circumstances contributions paid by members may be refunded. The Committee considered the age restriction in the current rules to receive a refund which is 65 for men and 60 for women.

Loss of surviving spouse pension on re-marriage or cohabitation

33. The Civil Partnership Act 2004 introduced the new status of civil partner when same sex couples form a legal civil partnership. Occupational pension schemes are required to make provision for civil partners to receive the same pension benefits as spouses. The SPPS rules currently remove the pension for a surviving spouse or civil partner where that person subsequently marries, cohabits or enters into a civil partnership. Consideration is given to whether the pensioner should continue to be penalised for such future relationships.

Unmarried partners

34. Paragraph 15(3) of Schedule 28 to the Finance Act 2004 gives discretion to make provision for unmarried partners' pensions. The Committee noted that both the UK Parliament and the National Assembly for Wales had already made provision for this along with a number of other public sector pension schemes.

Other possible changes

Scheme administration

35. Currently the SPCB is responsible for the management and administration of the pension scheme. The SPCB operates as both “scheme sponsor” and “manager of the fund”. The Committee sought views on whether a separate body of trustees dedicated to the management of the SPCPF should be appointed.

Accrual rate

36. The Committee noted that both the UK Parliament and the National Assembly for Wales members have a choice of pension accrual of either 1/50th or 1/40th whereas the SPPS has one accrual rate of 1/50th. Views on whether a similar option should be available to members of the scheme and how it should be funded were sought.

37. Other areas for possible change identified were—

- Maximum salary applying for pension provision
- Officeholders pension arrangement
- Lord Advocate and the Solicitor General for Scotland pension provision
- First Minister and Presiding Officer pension provision
- Mechanism to make future scheme rule changes.

38. Each area is considered later in the report.

Grants Order
39. The consultation also sought views on each aspect of the current Grants Order.

Responses received

40. A total of 16 responses were received which are reproduced in Volume 2.

EVIDENCE TAKING

41. To encourage further discussion and comment on the consultation paper, the Committee held a lunchtime drop-in session on 12 December 2007 for MSPs at which background information on the pension scheme rules was explained.

42. In addition to its consultation paper and the lunchtime drop-in session the Committee took oral evidence from SPPA, Chairman of the Trustees of the Westminster Parliamentary Contributory Pension Fund, Chairman of the Trustees of the National Assembly for Wales Pension Scheme, GAD and SPCB.

43. The evidence taking meetings were held on 26 February, 11 March and 25 March 2008.

44. Extracts from the minutes of the meetings at which the proposals for a Bill were considered are attached at Annexe A. There is an electronic link from the contents page to the oral evidence from these witnesses.

Cost

45. Throughout its initial work the Committee has been conscious that changes to the Transitional Order will affect funding arrangements for the SPCPF. In order to assist consideration of changes where they might prove significant, where it is possible to cost the effect on the SPCPF, this is provided. These costs have been provided by GAD.

Draft Bill

46. At its meetings throughout this process, the Committee has taken the opportunity to evaluate both oral and written evidence presented to it. The following section of the report contains the outcome of those deliberations and sets out details of the Committee’s proposals. These should be read in conjunction with the draft Scottish Parliamentary Pension Bill which is contained in Annexe B of this report. That draft will form the basis of any Bill introduced into Parliament in the event that the proposal for a Committee Bill is agreed. Changes to that draft prior to introduction can only be minor or technical with a view to improving the drafting.

TRUSTEES AND SCHEME ADMINISTRATION

Trustees

47. The consultation paper at Part 6 sets out the current administrative arrangements for management of the scheme. Under Part B of the Transitional Order, the SPCB is responsible for the management and administration of the
SPCPF. Other UK Parliamentary and Assembly schemes have a separate body dedicated to the management of their members’ pension schemes, which avoids the perception of any conflict of interest and allows trustees dedicated time to consider pensions matters.

48. As the SPCB operates both in the “employer” role providing “employer” or “scheme sponsor” contributions and as administrator of the SPCPF, the Committee considered whether changes to the rules of the scheme should be proposed, avoiding the need for the SPCB to consider the differing financial implications for each side. Most who responded to the question agreed that a separate board of trustees should be appointed.

49. The Committee took evidence from the chairmen of the pension trustees both at the UK Parliament and in the National Assembly for Wales, Mike Pringle MSP (the pension portfolio member of the SPCB), and also received some helpful evidence on the issue from GAD. Sir John Butterfill MP told us that the main duty of the trustees at Westminster—

“is a fiduciary duty to protect the interests of our beneficiaries. We have a secondary duty to consult the scheme sponsor—which, in our case, is the Treasury—and take account of its concerns. In exercising those duties, we have to manage the finances as well as they can be managed, and ensure that the scheme is administered properly.”

50. This is analogous with the role of the SPCB which is—

“responsible for the proper running of the scheme, including funding and collection of contributions; investment of assets; payment of benefits; administration of the scheme; acting in the best interests of scheme members as a whole; ensuring that members’ benefits are secure; and complying with overriding pensions legislation.”

51. In evidence Mike Pringle MSP, on behalf of the SPCB, accepted that—

“There is a potential conflict of interests—or perhaps a perception of such a conflict—for the SPCB, in that it is responsible for funding the pension scheme through the provision of employer pension contributions while it also has a fiduciary duty to act in the best interests of scheme members as a whole. Appointing a board of trustees to act in the interests of scheme members could remove that potential conflict of interests.”

52. The Committee agrees that separation of the roles between the “employer/scheme sponsor” function and the scheme manager function would remove any perception of a conflict of interest and considers that separation would be in the best interests of scheme members. **The Committee recommends that**

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9 Inverted commas are used because the SPCB is not the employer of MSPs. MSPs are elected officeholders, rather than employees. Nevertheless, it is convenient to refer to “employer” or “scheme sponsor” for the purposes of discussing contributions to the pension scheme.


trustees should be appointed to manage and administer the pension scheme.

Transfer of assets and liabilities

53. The Committee has considered whether there should be a clean break of responsibilities and liabilities at such time as trustees are appointed. On taking office the trustees should assume responsibility for all existing assets and these should be transferred to the trustees. The Committee is grateful to the SPCB for its acknowledgement that consideration needs to be given to the position of any scheme responsibilities and liabilities when the trustees take up office.\(^\text{13}\)

54. Trustees will require to take on responsibility for payment of pensions but the Committee is not convinced it is appropriate for them to assume responsibility for any current funding deficits. The Committee heard evidence from a number of witnesses in relation to scheme funding positions and, in particular, cost sharing provisions and noted that no such provisions are in place at present in the other parliamentary and assembly pension schemes. The Committee also notes the acceptance by SSRB and the UK Government that liability for existing funding deficits at Westminster should be excluded from future cost sharing arrangements.\(^\text{14}\)

55. The Committee recognises that if the cost of the scheme to the “employer/scheme sponsor” rises materially then consideration may require to be given to sharing the additional costs involved, or that benefits might require to be reduced. The scheme is not currently in such a position and, while it has been suggested by the SSRB, there are currently no proposals before the UK Parliament or the National Assembly for Wales in relation to cost sharing. The Committee considered that this is a matter for future consideration, in the first instance between the “employer/scheme sponsor” and the scheme trustees.

56. Cost sharing and other possible funding approaches could be discussed under the future funding arrangements which are set out below (at Setting the “employer contribution rate”) involving the SPCB as the scheme sponsor. The Committee do, however, suggest that if cost sharing is to be introduced in the future, in line with the approach recommended by the SSRB to the UK Parliament, any existing scheme funding deficits identified prior to its introduction should be excluded from the cost sharing arrangements. Such deficits would represent historic costs under earlier funding arrangements and it may not be equitable to place these past burdens on current contributing members. While this would be a matter for future funding negotiations between the scheme sponsor and the trustees, the Committee considers that this principle should be borne in mind in any negotiations.

57. As regards responsibility for any current funding deficits when the trustees take over, the Committee notes that there is a triennial valuation of the Fund as at 6 April 2008 currently being conducted in terms of the existing scheme rules. The Committee expects that valuation to be concluded in time for the SPCB to set a

\(^\text{13}\) Scottish Parliamentary Pension Scheme Committee, \textit{Official Report, 25 March 2008}, Col 95
\(^\text{14}\) Review Body on Senior Salaries Report No.64 para 3.52 and Recommendation 7
contribution rate in the current financial year, 2008/09. If there is any deficit in that valuation, it is expected that the contribution rate set under the existing rules would include an element designed to pay off that deficit. If the trustees can be expected to assume responsibility some time in 2009, then they should have comfort that the existing contribution rate set for 2008/09 would be expected to meet the scheme funding obligations as identified in 2008.

58. If, after the trustees take over, they consider that the contribution rate is not sufficient to meet the scheme funding obligations, they can instruct another valuation at any time and are entitled to advise the SPCB that the rate of contributions should be increased. Ultimately, however, it is for the SPCB as scheme sponsor to determine at what rate the contributions are set.

59. The Committee recommends that the assets and liabilities of the scheme be transferred from the SPCB to the trustees subject to discussions on liabilities, as outlined in paragraph 53.

Numbers, nomination, appointment and resignation of trustees

60. The Committee heard evidence that the pension scheme at the National Assembly for Wales has five trustees (of which four are Assembly Members) and understands that provision is made in the rules at the UK Parliament for up to 10 trustees. The UK Parliament recent rule changes require at least one and up to two trustees to be pensioners of the scheme and a former Member of Parliament has become a trustee. All other trustees are serving members. The SPCB has five MSP members, all of whom are responsible for all aspects of its work, including administration of the pension scheme.

61. Responses to the consultation question on the appropriate number of trustees varied between five and 11, with those who commented suggesting that there should be at least one pensioner member.

62. The Committee recommends that having regard to the size of the scheme and the current membership composition that an appropriate number of trustees would be a maximum of six. The Committee agreed that current, deferred and pensioner members will each have contributions to make as trustees but given the relative youth and membership size of the scheme, the Committee makes no recommendations requiring places to be reserved for specific categories of membership. The Committee suggests three members should be required to form a quorum.

63. The Committee recommends that all trustees are appointed by the Parliament nominated in a motion put forward by the SPCB. The Committee does not envisage any active role for the SPCB in selecting or nominating trustees, its function being to put forward nominations received for consideration. However, to try and provide a balance, the draft rules we have prepared suggest that the SPCB in putting forward nominations uses every reasonable endeavour to

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15 Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 37
16 Consultation question 36(b)
17 131 members, 46 deferred members and 16 pensioner members
ensure that at least one scheme member and one pensioner member are appointed. In future years the Committee envisages that the trustees will be closely involved in identifying suitable candidates from within or outwith the Parliament.

64. The Committee agreed with the SPCB that the inclusion of a professional trustee would “bring to the board professional pension knowledge in what is an extremely complex area.” The proposal makes no restriction on who may be appointed, leaving it open to the Parliament to include one or more professional trustees if suitable nominations emerge. To facilitate such a nomination the Committee recommends that trustees who are not scheme members may be remunerated.

65. The Committee recommends that trustees may resign by notice to the other trustees and to the Presiding Officer. To avoid any issues affecting the balance of trustees, those who change their status (e.g. from scheme member to pensioner) will automatically cease to be a trustee six months thereafter unless Parliament resolves otherwise.

Staff and professional advisers

66. From the evidence the Committee received it became clear that running a pension scheme is a complex and important task. The trustees at the UK Parliament and at the National Assembly for Wales each employ external professional advisers to support them in relation to investment, fund management and legal advice, as well as professional actuaries. The SPCB indicated that to ensure the effective management of the scheme it too employs professional support. Mike Pringle MSP, on behalf of the SPCB, indicated that—

“Baillie Gifford is the investment fund manager, and the Scottish Public Pensions Agency provides a pension administration service. The Government Actuary’s Department provides the actuarial services, and the SPCB’s directorate of legal services provides legal advice, using outsourcing firms for specialist pension advice when necessary. Audit Scotland is the external auditor.”

67. Pension law requires the appointment of a scheme actuary, external auditors and fund managers. The Committee recommends that provision is also made in the draft Bill for the trustees to employ staff and advisers. Given that the current rules provide for the expenses of managing the fund, including staff costs, the Committee does not envisage that this will lead to any significant cost increases.

Accounting and investments

68. Pension law requires the keeping of proper accounts and their annual auditing as well as for a scheme actuary to be appointed, who will need to report

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18 Draft Schedule 1 rule 8(2)
19 Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 84
on the fund’s performance at intervals of no more than three years. The draft bill further provides that all reports received by the trustees would require to be laid before Parliament and would therefore be available to the members.

Future role of SPCB

69. In relation to any future role for the SPCB the Committee asked Mike Pringle MSP, on behalf of the SPCB, for views and he indicated that—

“If we move to a board of trustees, the SPCB will, or could, continue to be responsible for providing the funding for the employer pension contributions. The SPCB provides a payroll service for members. We would anticipate it having some continued involvement in deducting members' contributions and remitting them to the pension fund trustees. The SPCB might also continue to provide a parallel service to pay pensions, so a service-level agreement might be required between the SPCB and the trustees. The SPCB would be happy to put forward trustee nominations. Depending on any arrangements that the SPCB reaches with the Scottish Government, there might need to be a role for one of those bodies in determining the scheme sponsor contributions and whether to accept GAD or other actuarial recommendations in full.”

Setting the “employer contribution rate”

70. It is the last point, determining the scheme sponsor or “employer” contribution rate, which is of interest in particular. At the UK Parliament the role is undertaken by the Treasury after discussion with the trustees. The National Assembly for Wales is required to contribute an amount in accordance with the scheme actuary’s recommendation.

71. Consideration needs to be given to the amount to be paid in effect from public funds before the scheme actuary’s recommendation is implemented. The Committee suggests retaining the involvement of the SPCB. The contribution will form part of the SPCB budget and be subject to scrutiny in the same way as the remainder of its budget. Ultimately approval is given to the budget by Parliament. The Committee recommends that the SPCB should set the “employer” contribution rate and pay the same from its budget but that in so doing consideration must be given to the recommendations of the scheme actuary and the views of the trustees.

Future scheme rule changes

72. One final role the Committee envisages for the SPCB is to bring before Parliament any future proposals to amend the scheme rules. Pension law is an area subject to frequent change and it is necessary that a mechanism be established to make alterations required by the general law without resorting to primary legislation. Amendments to the rules may also be required in the light of experience of their operation or for general policy reasons. In line with other public service occupational pension schemes, we think the amendment power should be available to make necessary retrospective changes. Deferred members,
pensioners and current members (in respect of rights already accrued) would have protection against any detrimental changes (as afforded by section 262 of the Pensions Act 2004 or similar arrangements).

73. The Committee has given some thought as to how such changes may operate and considers that similar provisions as provided in relation to changes consequential to the Interests of Members of the Scottish Parliament Act 2006 should be made in Standing Orders. While a matter for the Standards, Procedures and Public Appointments Committee to determine, the Committee would expect that provision be included in Standing Orders for consultation with all members and for the role of the trustees. Changes may emanate from the SPCB but more likely it will be the trustees who make recommendations. However, the Committee considers that the SPCB is the appropriate body to bring proposals before Parliament. There may also be an ongoing need to amend the rules applying to pensions under existing Part S of the Transitional Order\(^{23}\) including any that become payable in the future to surviving dependants. Any changes required are likely to reflect changes being made to the MSP pension rules as a result of revisions to pension law. For that reason we suggest that an identical modification provision be made to cover the pension scheme for the First Minister and Presiding Officer. The Committee recommends that provision be made for future rule amendments to be made by resolution of the Parliament.

\(^{23}\) For First Minister or Presiding Officer
SCHEME MEMBERSHIP

74. Any person serving as a Member of the Scottish Parliament is entitled to be a member of the MSP and officeholder pension scheme. Membership is further extended to those holding the offices of Lord Advocate and Solicitor General for Scotland in the event that they are not serving MSPs. All are automatically entered into the scheme unless they opt out in writing.

75. In the consultation the Committee sought views as to the approach that should be taken in relation to those over 75. Changes made in the Finance Act 2004 remove the tax benefits\(^24\) which apply to scheme members over age 75. The differing approaches taken at the National Assembly for Wales where membership is not permitted and the UK Parliament where membership may continue subject to tax liability and other changes were highlighted.

76. Given the tax changes in the Finance Act the Committee recommends that participating membership of the pension scheme no longer be available to those age 75 and over. As an additional consequence no death in service benefit will be available from the scheme to those over 75.

77. Under the rules of the pension scheme, serving MSPs and officeholders, even if they are no longer participating members of the pension scheme, cannot receive pension benefits until they stand down. For those serving members approaching age 75 the Committee makes separate recommendations at page 25 of the report.

78. In addition to membership as an MSP, those holding certain offices are also eligible to join the pension scheme in their capacity as officeholders. Additional pension benefits accrue to such persons who join the scheme and make contributions during their tenure in office. Two of the offices listed in the current rules are non-salaried\(^25\) and as such do not qualify for membership. The Committee recommends that the non-salaried posts be removed from the pension rules.

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\(^24\) The main areas being no tax relief on scheme contributions, no tax-free death in service benefit and no eligibility for a tax-free lump sum on retirement

\(^25\) Leader of a Non-Executive Party and Chief Business Manager
OFFICEOLDERS (INCLUDING THE LAW OFFICERS)

79. The current rules allow officeholders to be members of the pension scheme, in their capacity as an MSP or as an officeholder (e.g. to date the Law Officers have not been MSPs but are, however, members of the scheme) or both. Members’ contributions are made at the same rate (6%) on the officeholder salary as are paid on the MSP salary and scheme benefits are the same as apply to MSPs.

80. The Committee considers that there seems no reason why such officeholders should not be treated in the same way as MSP members of the pension scheme, therefore, it recommends equalising the benefits of non MSP officeholders to remove the extent that the current rules treat them less favourably. This will allow those officeholders to purchase added years and to receive an enhanced pension on an in-service ill-health retirement. It will also allow pensions for their beneficiaries, following the officeholder’s death, to be calculated on the same basis as for MSPs’ beneficiaries.
SPECIAL PENSION ARRANGEMENTS FOR THE FIRST MINISTER AND PRESIDING OFFICER

81. The First Minister and Presiding Officer pension arrangements ("FM/PO scheme"), which were set up by analogy to the corresponding offices at the UK Parliament (Prime Minister and Speaker of the House), are also included in the Transitional Order. However, the FM/PO scheme, in Part S of the Transitional Order, is separate from the main MSP and officeholder pension scheme. Its benefits are unfunded and paid for directly from the Scottish Consolidated Fund.

82. Under Part S of the SPPS Order the First Minister and Presiding Officer are entitled to an annual pension equivalent to 50% of officeholder salary, payable from the day after ceasing to hold office, irrespective of their age or length of service in the post. No “employee” or “employer” contributions are payable in respect of the First Minister and Presiding Officer pensions. Their pensions are suspended for any period that they subsequently hold another qualifying officeholder position (ministerial or law officer post). There is also provision for survivors’ and children’s pensions.

83. Both officeholders are entitled to an MSP’s pension on the MSP part of their salary at the same rates and on the same conditions as other MSP members of the pension scheme.

84. The consultation sought views on the pension arrangements for the First Minister and Presiding Officer. A majority expressed the view that there should be a minimum qualifying period of one year that had to be served before becoming eligible for the First Minister or Presiding Officer pension and the majority said that entitlement should accrue over a period of at least four years. On withdrawing a former First Minister’s or Presiding Officer’s pension if they subsequently became an officeholder, eight out of 14 consultees who expressed a view said there were no reasons for withdrawing the pension. Of the 12 who expressed a view on a former First Minister or Presiding Officer being allowed to rejoin the scheme as an officeholder the majority had no objections to allowing this to happen.

85. The SSRB report was published following the conclusion of the Committee consultation on 16 January 2008. SSRB commented that the special pension arrangements that existed for the Prime Minister, Speaker of the House of Commons and Lord Chancellor were originally intended to ensure that former holders of these offices should not need to seek further employment, and that the Lord Chancellor should not have to return to legal practice. However, in the modern age future employment opportunities had changed significantly and the SSRB concluded that the special arrangements are no longer justified for future incumbents of these posts. It therefore recommended that the special pension arrangements that exist for the Prime Minister, Lord Chancellor and Speaker of the House of Commons should not be extended to new incumbents but instead the officeholders would be covered by the PCPF. Although the Government agreed with the SSRB’s recommendations for the Prime Minister and Lord Chancellor, it indicated that it did not propose to implement this recommendation with respect to

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26 SSRB Report (No.64), Review of parliamentary pay, pensions and allowances 2007.
future Commons Speakers, considering the position of the Speaker to be substantially different to that of a Prime Minister or Lord Chancellor.  

86. Following publication of the SSRB report and subsequent UK Parliament debate the Committee heard evidence from Mike Pringle MSP, on behalf of the SPCB, who said—

“The SPCB inherited responsibility for those arrangements in 1999. As such, we have no strong views on the policy on those pensions and would rather leave that to the committee to determine. However, the scheme was established as analogous to the arrangements for the Prime Minister and the Speaker at the UK Parliament. If those arrangements are changing, now is the time to change the scheme here and to revisit its purpose.”

87. The Committee also heard evidence from GAD, on the cost of these provisions—

“We were asked to provide costs for that, on the basis of the First Minister and the Presiding Officer continuing in their roles for a four-year parliamentary session. On current pay levels, the net saving from a change from the current position to the position that you describe would be round about £700,000 for the First Minister and about £270,000 for the Presiding Officer.”

Similar costs would be saved for each First Minister and Presiding Officer subsequently elected after such a rule change.

88. The Committee noted that the First Minister and Presiding Officer pension arrangements are analogous to the arrangements for the Prime Minister and the Speaker at the UK Parliament. The Committee also noted the SSRB’s comments on the reasons for the special pension arrangements and its recommendations for future incumbents of these posts. The Committee was aware from previous discussions that the equivalent posts in the National Assembly for Wales and the Northern Ireland Assembly were different from the UK Parliament and the Scottish Parliament in that they had the same pension provisions as all other officeholders. Having taken all the above factors into account the Committee agreed that the special pension arrangements for both the First Minister and Presiding Officer should be removed for new incumbents and that they should have access to the same pension arrangements as other officeholders. The Committee noted the substantial savings to the public fund that could be achieved by removing the special pension arrangements for the First Minister and Presiding Officer.

89. The Committee recommends that the existing arrangements for the First Minister and Presiding Officer should be closed to any new incumbents and that the First Minister and Presiding Officer pension provisions should be the same as for all other officeholders under the new scheme rules.

27 House of Commons Hansard Debates, 24 January 2008, Col 1655
29 Based on each incumbent serving a single 4 year term and aged 55 (First Minister) and 65 (Presiding Officer)
30 Scottish Parliamentary Pension Scheme Committee, Official Report, 11 March 2008, Col 70
PENSION ENTITLEMENT

90. MSPs who pay their contributions become members of the pension scheme. They are entitled to a pension payable from age 65 based on their MSP salary at the time of their retirement. The basic amount they are entitled to as a member of the pension scheme under the current rules is 1/50th of their MSP salary at the time of their retirement for each year of membership.

91. Holders of a qualifying office are also entitled to join the pension scheme and accrue pension based on their length of service in post and their officeholder salary. The Lord Advocate and Solicitor General for Scotland are entitled to become members of the pension scheme even if not also MSPs. Pension accrues at 1/50th for each year office is held and is payable in addition to any accrued MSP pension.

92. Serving members or officeholders are not entitled to receive their pension even if they have reached the normal scheme retirement age of 65. They can remain scheme members and continue to accrue further pensionable service.

93. In the consultation the Committee noted that members of the PCPF and the National Assembly of Wales scheme both had an option to accrue service at the rate of 1/40th per year in return for paying a higher contribution to the fund. Most of those who responded to the question supported a similar option being made available to MSPs and agreed that the additional cost of this be fully met by increased member contributions.

94. GAD advised us that the additional cost involved would be equivalent to a contribution of 5% salary and clarified that this was a higher rate than the equivalent cost at the UK Parliament for reasons which were explained in evidence. The Committee recommends that members be given the option of accruing benefits in future at either 1/40th or 1/50th per year and that the additional cost of 1/40th accrual be fully met by an increase in the contribution rate of 5% to 11% applying to those members choosing to opt for 1/40th.

95. Changes to tax rules removed the previous “earnings cap” maximums for both contributions to and pensions payable from tax approved schemes. The annual and lifetime allowances are now the only current tax restrictions. The scheme, like other tax approved schemes, included maximum limits with reference to the “earnings cap”. It also had an alternative limit for pensions payable (which in practice always proved lower) of 2/3rd of the individual’s actual salary.

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31 For these purposes qualifying offices are members of the Scottish Executive (except the First Minister), junior Scottish Ministers and Deputy Presiding Officer
32 Salary here is the additional allowance paid to holders of these posts.
34 Finance Act 2004
35 The permitted maximum in section 590C of Income and Corporation Taxes Act 1988
36 The allowances at 1 April 2008 are pensionable to the value of £225,000 per annum and £1.6m over a lifetime
96. The Committee considered whether there is any need for a restriction on the amount of pension payable from the fund. The majority of consultation responses suggested that the existing limit of 2/3rd final remuneration be retained. Evidence from GAD recommended that a maximum of 2/3rd of salary be retained to limit fund liability.\(^{37}\)

97. Given that the annual allowance is in place, the Committee sees no reason to restrict the maximum contribution figure by way of an “earnings cap.” All members will require to pay contributions on the full amount of salary.

98. The existing scheme rules include a retained benefit\(^{39}\) restriction which was a requirement of every tax approved scheme under the pre-6 April 2006 taxation rules. The Committee heard evidence from the Chairman of Trustees of the PCPF that its scheme maximum pension was 2/3rd final member’s salary including any retained benefits. The Committee also heard that the cost to the PCPF to remove the retained benefit\(^{40}\) reduction would be equivalent to an increase in contribution of 0.4% or 0.5%.\(^{41}\) GAD confirmed in evidence that removal of the existing retained benefit restriction would not affect Scottish Parliamentary contribution rates.\(^{42}\) Responses to the consultation favoured removal. **The Committee recommends that the current earnings cap be removed and that the scheme maximum pension be 2/3rd final member’s salary without any deduction for retained benefits.**

99. **The Committee also recommends that the restriction preventing a serving MSP or officeholder from receiving their pension or lump sum benefits be retained, with the exception of those approaching 75 about whom we make special recommendations in the next section of our report.**


\(^{38}\) Current maximum £112,800 per annum

\(^{39}\) A retained benefit restriction was a rule requirement of every tax approved scheme under the pre-6 April 2006 taxation rules.

\(^{40}\) Retained benefits are other pension benefits members hold generally from previous employment but also including any AVC’s purchased.


COMMUTATION

100. Part G and Schedule 3 of the Transitional Order set out the rules for commuting part of a pension into a tax-free lump sum. The amount payable is based on service and allows for part of the annual pension entitlement to be exchanged for a tax-free lump sum up to a maximum of $1\frac{1}{2}$ times member's final salary.

101. The rules for commuting part of a pension have changed under the Finance Act 2004\textsuperscript{43} to allow up to a maximum of 25% of the pension entitlement to be exchanged for a tax-free lump sum. The new rules allow greater scope for commutation and could increase the maximum sum available by between 50% and 75% in certain circumstances.

102. In the consultation the vast majority of consultees who expressed a view on this matter agreed that the lump sum limit should be increased in line with the Finance Act 2004. The Committee also heard evidence from GAD, that increasing the maximum commutation limit to 25% of pension would be broadly cost neutral to the scheme—

“...It would be intended to be cost neutral, or as near to that as we could make it in terms of the factors that would be used to convert pension to lump sum. As with any option, there is always a risk of possible selection. Converting pension to lump sum is a good idea for pensioners who are in poor health, because they are not likely to live as long as the average. Practice has shown that a very high proportion of the membership takes up the lump sum option because of the tax advantages. The scope for selection is therefore fairly limited, and we regard the measure as pretty well cost neutral.”\textsuperscript{44}

103. The Committee recommends that the maximum commutation limit for the scheme should be 25% of pension as permitted by the Finance Act 2004.

104. Similar to the restrictions on pensions for those aged 75 and over, the Finance Act 2004 restricts the payment of a tax-free lump sum to anyone who retires at age 75 or over. In the consultation the Committee noted that the PCPF rules were amended to allow MPs to take their lump sum benefits prior to reaching age 75 and have their remaining pension abated (i.e. suspended) until they retire. The consultation therefore sought views on the treatment of tax-free lump sums. Respondents generally suggested that a tax-free lump sum should be allowed for serving MSPs prior to their reaching age 75.

105. The Committee recommends that scheme participants should be able to commute part of their pension into a tax-free lump sum immediately before age 75 whilst still serving as an MSP or officeholder or both.

106. To avoid pension schemes having to pay small pensions the Finance Act 2004\textsuperscript{45} increased the level of pension that can be commuted on triviality grounds.

\textsuperscript{43} Finance Act 2004, section 166 and paragraph 1 of Schedule 29
\textsuperscript{44} Scottish Parliamentary Pension Scheme Committee, \textit{Official Report}, 11 March 2008, Col 71
\textsuperscript{45} Finance Act 2004, section 166 and paragraph 7 of Schedule 29
to 1% of the lifetime allowance (currently equal to a pension of £825 per annum). There is no provision under the current rules to commute a pension on triviality grounds, therefore the consultation sought views on this and an overwhelming majority were in favour of allowing a trivial commutation lump sum.

107. The Committee recommends that provision is made to commute a trivial pension and to pay a tax-free lump sum.
EARLY RETIREMENT

Age discrimination

108. At present, a former MSP who has 15 years of service and who is aged between 50 and 65 may apply for an early retirement pension. The amount of pension immediately payable is reduced by factors which when introduced in 1999 were an improvement on what would have been an actuarially neutral abatement in accordance with the table in Schedule 4 to the current rules. This table takes into account both the age of the member and their length of service and applies a percentage reduction to a member’s pension based on both of these figures.

109. The Committee considered that the use of this table could be seen to be discriminatory and is at the very least inequitable, given that, for example, a 63 year old with 16 years of service would get a higher pension than a 57 year old with 19 years of service. The Committee noted that the UK Parliament has removed this type of calculation from its scheme rules. Instead, MPs elected after 4 November 2004 who have 15 years of service will receive an early retirement pension based on actuarially neutral factors.46

110. In addition, the legal climate on age discrimination in employment has changed significantly in recent years. The High Court in England and Wales took the view that the rule of 85,47 a similar type of pension rule to that currently adopted for early retirement by the SPPS, was prima facie discriminatory on the grounds of age.48 In 2006, the Scottish Local Government Pension Scheme was amended to remove the rule of 85 in order to prevent a breach of the EC Directive (2000/78/EC) on equal treatment in employment and occupation. The then Scottish Executive considered that retaining this rule would breach the terms of the Directive.

111. The Committee, therefore, asked in its consultation paper49 whether the provisions in the current scheme rules should be phased out. Of the eight consultees who expressed a view, five agreed that they should be phased out; two considered that they should not be phased out and one felt that it depended on the length of service involved.

112. Given the possible discrimination inherent in existing rules, together with the reform of similar rules in the UK Parliament and the National Assembly for Wales, the Committee recommends that the current calculation table should not be included in the proposed bill.

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46 For members elected before 4 November 2004, the application of the old rules is being phased out. The new rules will apply to all MPs by 1 April 2009
47 The rule of 85 provided an unreduced pension for those whose age and years of service totalled 85 years.
48 Unison v Secretary of State 2006 EWHC 2373 (Admin).
49 Paragraphs 4.37 to 4.39 of the consultation paper
Qualifying period

113. The Westminster scheme has removed its qualifying period of 15 years of service before a member is eligible for early retirement and the National Assembly for Wales does not apply the rule either. Public sector schemes do not operate a qualifying period other than a minimum two year employment requirement for membership of a pension scheme.

114. It emerged during the seminar held for MSPs on 12 December 2007 that some members with less than 15 years service were unaware that they were not entitled to early retirement pension if unsuccessful at an election when close to retirement age. In addition, 11 out of the 16 respondents to the consultation considered that members who wish to stand down or who are not re-elected should be allowed to receive their benefits early.

115. The Committee considers that the current 15 year qualification period is unnecessarily prohibitive and it agreed with the views of those who responded to the consultation paper. The Committee believes that this provision is out of date and agreed with the view of Grant Ballantine of GAD that—

"the rationale was to provide individuals who had given long service to Parliament with a favourable option of going early with an extra pension, but I do not think that the rationale for that facility exists nowadays."

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116. The Committee, therefore, recommends that the qualifying period of 15 years for early retirement should be removed and early retirement should be made available for all ex-members aged 55 and over.

Long term stability of the fund

117. In order to value the SPPS, the actuary must make an assessment of the future expenditure on benefits for members of the scheme compared to future income from contributions and their investment. Financial assumptions should represent a long-term view of expected future conditions because the scheme can expect to make payments and receive income for a considerable time into the future.

118. The Committee noted that the triennial report on the pension fund undertaken by GAD is used to check whether the actuarial assumptions made in relation to the pension scheme remain valid. In evidence GAD explained that one critical factor in these scheme assumptions is the discount rate, which is applied to calculate the net present value of the future liabilities of the fund. General investment performance and the longevity assumptions made for the scheme are also significant.

52

50 Parliamentary Pensions (Consolidation and Amendment) Regulations 1993, SI 1993/3253, regulation H1(4), inserted by SI 2005/887
51 Scottish Parliamentary Pension Scheme Committee, Official Report, 11 March 2008, Col. 76
52 Scottish Parliamentary Pension Scheme Committee, Official Report, 11 March 2008, Cols. 73 and 74
119. Demographic assumptions are used to consider factors such as mortality, retirement and withdrawal. The most recent calculations for the scheme conducted by GAD\(^53\) anticipate that the average number of years that a pensioner will live beyond normal retirement at age 65 will be 19.5 years for men and 22.6 years for women. GAD also stated in its report that pensions payable to current contributors will continue much further into the future than those currently in payment.

120. The Committee acknowledges the particular uncertainty faced by MSPs and the fact that they may retire early not by personal choice but by circumstance. As the consultation paper highlighted, there are a number of reasons why an MSP may cease to be an MSP. A member may not be re-elected, with the possibility of a lower position on a regional list having a bearing on this, or a member may be required to stand down due to de-selection or boundary changes.

121. The Committee therefore, whilst supporting the policy of encouraging members to continue to work and contribute to the SPPS, also considers that it is fair to provide members aged over 55 with an option to take their pension early should they cease to be an MSP. We are mindful of our overriding aim that the scheme must strike an equitable and proportionate balance between the levels of benefits provided and the actual cost of their provision to members and to public funds. One respondent stated in written evidence—

“Some may never find another job and, in fairness, should be able to apply for a reduced pension.”

Uptake and costs

122. The Committee is also aware of the potential for an increase in uptake of early retirement should this option become more widely available. Easing the eligibility criteria through removing the 15 year rule would open up the option to many more members than previously. GAD noted that one of the great advantages of a defined benefits pension provision is that “there is a pooling of risk, but it should be done in a way that prevents individuals from getting an obvious hit against the scheme.”\(^54\) Evidence at Westminster suggests however, that members of Parliament tend to work beyond retirement age. GAD stated, “Because the Westminster scheme has existed for quite some time, we have good evidence that a significant proportion of members of Parliament work beyond the normal retirement age of 65, or 60, on unreduced benefits with 20 years of service”\(^55\).

123. The Committee considered at length what, if any, reductions should apply to the pension payable in the event that payments commence before the scheme retirement age of 65, bearing in mind that the minimum pension age under the Finance Act 2004 is 55. Through evidence heard and the detailed costings of possible options provided by GAD, the Committee examined the range of factors which influence the need for and cost of early retirement options.

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\(^{53}\) SPPS Valuation as at 31 March 2005 by GAD.


124. Following advice from GAD the Committee established that an actuarially neutral reduction, i.e. one that did not have a cost to the pension scheme, would be a 4% reduction for each year below normal retirement age. This calculation takes into account the proposed removal of the 15 year qualifying period for early retirement. This would mean, for example, that a member who retired at age 60 would have a total reduction to their pension of 20%. The equivalent changes that have been made at the UK Parliament have been based on the different conditions of its scheme.56

125. In evidence, the SPPA explained that most public sector schemes allow for voluntary early retirement. Benefits under these schemes are actuarially reduced by roughly 5% for each year that is taken early and the amount calculated at retirement is applicable for life. Due to recent changes in pensions legislation, from 2010 the minimum pension age will rise from 50 to 55 for all members of the SPPS.

126. The Committee accepts the principle that members of the scheme, on ceasing to be MSPs and officeholders, should be able to access the full value of their pension funds from age 55 onwards. However it also considers that payment of pension prior to the scheme retirement age of 65 should be available on a basis that is equitable to all scheme members and that an appropriate reduction in the amount of pension payable should apply.

127. The Committee therefore recommends that members who are no longer serving MSPs or officeholders should be able to retire from age 55, subject to an actuarially neutral reduction of 4% to their pension for each year below age 65.

Preserving existing rights

128. The Committee also considered whether for existing scheme members there is a need to maintain existing rights to access early retirement provisions. Given the current qualification requirements (age 50/55 and 15 years service) only three members have an existing entitlement in the current session. Each has UK Parliament qualifying service. The Committee considered that such individuals will have accrued rights under the existing rules and that these rights should therefore be protected.

129. The Committee further considered whether other existing members would have justifiable expectations of qualifying under the existing rules in future sessions. Could existing members without accrued rights expect to qualify by accruing sufficient service after being returned for future sessions?

130. In making this decision the Committee accepts the principle that expectations of future service do not give rise to a requirement that the scheme protects future rights which are not yet accrued. Nevertheless, we have considered the desirability of transitional arrangements to preserve expectations of existing members.

131. In considering this the Committee noted that if rights under the current rules continued to accrue for all existing members to the end of Session 4 then a further eight members would accrue a greater benefit in comparison to their prospective entitlement under the proposed replacement rules. While a number of members could potentially have 15 years service by the end of Session 4, most are either below the minimum retirement age of 55, aged over 65 or the benefit in the recommended replacement rules is higher than the current rules provide.

132. Therefore the Committee considers a proportionate transitional arrangement is for all existing members to be able to count further service in the current Session towards the early retirement rights in the current rules. Any non-concurrent service accrued at the House of Commons or the European Parliament would be included in this calculation.

133. The Committee recommends that any greater rights to early retirement under the current rules be preserved for existing members but only for service up to the end of the current Session.
ILL-HEALTH PROVISION

134. The current rules provide for the pension that would be payable at age 65 to be payable before normal retirement age if an MSP member is unable to adequately perform their duties because of illness. The Committee was advised in evidence by the SPCB that three ill-health pensions are in payment.57

135. As a minimum, changes to the current rules are required to align the ill-health payments with the permitted ill-health payments under the Finance 2004 Act.58 For example the new test applied for ill-health retirement requires evidence that the member is and will continue to be incapable of carrying out their occupation.

136. The consultation sought views on this and other possible changes to the ill-health provisions. Principally we suggested a two tier system of benefits payable depending upon the severity of the illness. The consultation also sought views on introducing a review process following an award of ill-health pension. The majority of respondents were in favour of adopting such provisions.

137. Evidence from the SPPA59 indicated that other schemes have moved to a two tier system of benefits related to the severity and effect of the illness, although as yet the schemes it administers had not introduced a facility to review. The National Assembly of Wales, which has introduced a two tier system, has included provisions to allow ill-health pensions to be subject to periodic review. Reviews involve medical evidence to confirm continuing incapability.60

138. The Committee was advised by the Chairman of the PCPF Trustees that they were engaged in discussions with the Leader of the House and Cabinet Office in relation to introducing similar rules. These have been estimated to produce scheme savings.61 The saving estimated for the SPCPF should a similar scheme be introduced was estimated by GAD at 0.3% of salaries.62

139. The Committee noted the evidence received and agreed that the amount of benefit payable should be linked to the degree of ill-health being suffered. It considers that there should be two levels of pension payable. A stringent test should be applicable for severe ill-health pensions, requiring that the member’s ill-health must be such as to prevent the member from performing the duties of any paid occupation, not just performing the duties of an MSP. The pension received following this test would be the same as provided under current rules i.e. enhanced to that payable at age 65. In addition to those who qualify under this test there should be a new lesser category of ill-health benefit for those who are assessed as unable to adequately carry out their duties as an MSP but who could carry out other employment of a different nature. Under this category, members

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58 Finance Act 2004 schedule 28 para 1
60 Scottish Parliamentary Pensions Scheme Committee, Official Report, 26 February 2008, Col 41
61 Equivalent to a reduction in contribution rate of 0.4%. Scottish Parliamentary Pensions Scheme Committee, Official Report, 26 February 2008, Col 41, 50
62 Scottish Parliamentary Pensions Scheme Committee, Official Report, 26 February 2008, Col 78
would receive an ill-health pension based on their years of service with no
enhancement but without any reduction for early payment.

140. The Committee also considers that provision should be introduced to allow
the trustees to require periodical assessment of a person’s condition to confirm
that they continue to qualify for any ill-health benefit.

141. The Committee also considers that enhancement to ill-health benefits
should in future be available to participating officeholders who are not MSPs. On
the grounds of equity in cases of severe ill-health, the Committee considers that
the increase in benefit available to participating officeholders who are not MSPs
should be the same as for MSPs. Accordingly the salary used to multiply the
years of enhanced service should be limited to the salary of an ordinary MSP.

142. The Committee therefore recommends that the scheme adopts a two
tier approach to ill-health pensions for serving members and officeholders,
as detailed, and that periodic reviews should follow all ill-health pension
awards.

143. The Committee also sought views on providing a new benefit for those in
serious ill-health not expected to live for more than a year. In such cases the
pension may, under the Finance Act rules, be fully commuted for a lump sum. All
bar one respondent agreed with this suggestion.

144. The Committee also recommends that provision be made to allow
those serving members and officeholders with a terminal illness who are not
expected to survive for a year to be able to commute their pension
entitlement for a lump sum. Survivor pensions will continue to be available
following the death of such members.

145. The Committee considers that this new proposed provision for serious ill-
health lump sums be equivalent to five years of the pension they would have
received if they had qualified for a severe ill-health pension while in service.

146. The Committee considered whether there should be any restriction on
benefit in circumstances where pre-existing health conditions are known to the
member. The Committee was not persuaded that there was any evidence to
justify any restriction at present. However, mindful of the evidence received from
GAD about pooling of risks and preventing “individuals from getting an obvious hit
against the scheme” the Committee considers that the trustees keep a close
watch on ill-health retirement and whether there is any need for restrictions in the
future.

**Ill-health pension for former members or officeholders**

147. The effect of the separate rules regarding application and calculation of ill-
health pension for former members and officeholders or those who have a prior
period of reckonable service as a participating member should be largely retained.

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(These are contained in Article J2 of the Transitional Order.) The ill-health pension payable to a former member will continue to be immediate payment of the amount of deferred pension that would have been payable had they reached age 65. The requirement in future will be in line with the test for sitting MSPs that they are unable to perform any gainful employment; the current rules require that their retirement from gainful work was a direct consequence of their ill-health.

**Medical evidence**

148. All applications for ill-health related pensions will require to be accompanied by medical evidence from a medical practitioner that the applicant is and will continue to be incapable of carrying on their or any other occupation because of physical or mental impairment.

149. The trustees will be able to require a further medical examination by a medical practitioner nominated by them to assist them in determining an application. The Committee received evidence recommending that such a doctor should have qualifications in occupational health\(^{64}\) and be accredited specialists therein. We note this for consideration by the future scheme administrators in any appointment that they may make.

150. On any subsequent review the trustees will be able to assess the current condition and determine any change by seeking further medical evidence.

**Link to early retirement criteria**

151. In reaching proposals on ill-health retirement the Committee also considered whether there was a possible link between the availability of early retirement on advantageous or other terms and the number of ill-health retirements. The Committee is keen to avoid any unintended consequences arising from its recommendations which might impact on costs to the SPCPF.

152. The SPPA advised that it holds no data on the issue\(^{65}\) and suggested that it would be “hard to found that on evidence.”\(^{66}\) Sir John Butterfill MP also indicated that there is no relationship between the two\(^{67}\) but indicated that “the scheme has been extremely generous in some cases in which medical advisers have been unduly lenient in interpreting the rules.”\(^{68}\) Although later he stated that “We have our own advisers and have indicated to them that the rules should be interpreted firmly.”\(^{69}\)

153. GAD stated that—

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\(^{64}\) HM Treasury Review of Ill-Health Retirement in the Public Sector Paragraph 4.23 and Recommendation 19

\(^{65}\) Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 29

\(^{66}\) Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 30

\(^{67}\) Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 51

\(^{68}\) Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 50

\(^{69}\) Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 51
“there is anecdotal evidence to that effect” although “there has been no credible study to try to show that link.”70

154. If such a link exists the Committee considers that the changes it is recommending to move to a two tier scheme, with the requirement for medical evidence to be provided and the power to the trustees to seek their own opinions from doctors qualified in occupational health, should minimise if not exclude altogether any increase in ill-health pensions.

70 Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 79
SPouseS, PArtNERS AND CHILDREN

Spouses and civil partners

155. Part K of the Transitional Order makes provision for pension entitlement of surviving spouses and children of current or former MSPs and officeholders who were members of the pension scheme. The Transitional Order was amended\(^{71}\) to provide for civil partners’ rights corresponding to spouses’ rights.

156. The Committee recommends the provisions for spouses’ and civil partners’ pensions should remain unchanged except on re-marriage or cohabitation and where a participating member dies within six months of marriage.

157. At present a spouse’s or civil partner’s pension ceases on re-marriage or cohabitation with another person. The principle behind this seems to be that the surviving spouse can rely on a future spouse or partner for income. In the consultation the Committee noted that ceasing a pension on re-marriage or cohabitation with another person had been abolished in the UK Parliament and in most other public sector schemes. However, the consultees who expressed a view on this matter were split. GAD gave evidence—

“It is not significant in relation to past experience. If behaviour does not change and people do not manipulate the system, the cost is relatively small—of the order of a quarter of a per cent or one half of a per cent of pay. However, you have to be careful about what happens if you remove the cessation of a spouse’s pension upon remarriage, particularly if you include unmarried partners, as the cessation of an unmarried partner’s partnership is difficult to identify without being intrusive and seeking a lot of evidence. That situation can be difficult to operate, which is why one or two schemes did away with the cessation provision when they opened up to unmarried partners.”\(^{72}\)

158. The Committee recommends that spouses’ and civil partners’ pensions should continue for life. The Committee noted the relatively small cost involved and the difficulty involved in identifying when someone has re-married or cohabits with another person.

159. Linked to the above is a further provision under K1(6) of the current rules giving the SPCB discretion to withdraw all or any part of a surviving spouse’s pension. This applies where there are no children of the marriage and the marriage took place within six months of the participating member’s death and at the date of marriage the death was to be foreseen. Similar provisions apply to civil partnerships.

160. In the consultation the majority of consultees who expressed a view on this matter agreed that the discretion should be retained. GAD in evidence on this matter commented—

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\(^{71}\) SSI 2005/572 The Civil Partnership Act 2004 (Modification of Subordinate Legislation) Order 2005

\(^{72}\) Scottish Parliamentary Pension Scheme Committee, Official Report, 11 March 2008, Col 67
“However, if you remove the cessation provision, there is a danger that you might encourage people to identify an unmarried partner or marry a partner as they approach the end of their lives – it is a free hit against the scheme, particularly if you do not have to marry anyone but can simply nominate someone. To try to limit that risk, some schemes reduce the level of the spouse’s pension if there is a great age gap between the member and the partner. For example, if the age gap is, say, more than five years, the level of the spouse’s pension is reduced by 2.5 per cent for each year of the age difference, which means that with a 40-year age gap, the spouse’s pension would be practically nothing. That is common in the private sector, and one or two public schemes have started to do it as well.”

161. Another matter, not currently covered under the existing rules, that arose from the GAD evidence was including a provision to reduce a surviving spouse’s or civil partner’s pension where the participating member is much older than their partner.

162. The Committee concluded that as there has not been any pension payable in either of the above circumstances to date and the risk of any such pension becoming payable in the future is low these provisions should not be covered in the new rules.

163. **The Committee recommends that the discretion to withdraw all or part of a surviving spouse’s pension should not be included in the new rules and that no provision should be made to reduce a surviving spouse’s or civil partner’s pension where the participating member is much older than their partner.**

Unmarried partners

164. There is no pension provision under the current SPPS rules for unmarried partners. Both the National Assembly for Wales and the UK Parliament make provision for unmarried partners and, when giving evidence about the schemes that it administers, SPPA stated—

“Unmarried partners will have the same rights as civil partners or married partners. That provision is being introduced into the new scheme.”

165. The Committee heard evidence from Chad Dawtry, Director of Policy, Strategy and Development for the SPPA, on the rules for unmarried partners in other public sector schemes—

“The rule is based on Treasury guidance, and the period is two years.”

166. The Committee also heard evidence from GAD, on the cost to include provision for unmarried partners who said—

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“The costs of extending the scheme to cover unmarried partners largely depend on what is and is not included in the definition of an unmarried partner. If there is a wide and lax definition, any member who does not have a spouse or civil partner will almost have the option of selecting any individual and claiming that they have an unmarried partner. The resulting costs can be significant—they can be 3 or 4 per cent of pay. Most schemes that have gone down that route have opted for a fairly tight definition of an unmarried partner, and have tried to limit the scope of the definition to those who are in relationships that are similar to those that spouses or civil partners are in. In other words, there must be a long-term or permanent commitment that has been established for some time. If the scheme is structured in such a way and is policed fairly regularly, the costs can represent less than 1 per cent of pay.”

167. The Committee agreed that in order to be consistent with other public sector pension schemes provision should be made for unmarried partners in the pension scheme. However, this would be on the condition that the relationship is similar to that of spouses and civil partners and that proof is provided that the relationship has been in existence for a minimum of two years.

168. The Committee recommends that provision for unmarried partners’ pensions should be made in the new scheme.

Children

169. Article K2 of the Transitional Order makes provision for children’s pensions. The only changes considered necessary are those that result from provisions in the Finance Act 2004. That Act allows discretion to increase the maximum age for a child’s pension from under 22 to under 23 and to pay a pension where a surviving child, irrespective of their age, was dependant on the deceased due to physical or mental impairment.

170. The Committee sought views on these matters in the consultation and a small majority agreed that the age limit should be raised and all 13 of the consultees who responded on paying a dependant’s pension due to physical or mental impairment, irrespective of age, agreed that provision should be made for it. On the cost of including provision for this GAD explained—

“The cost of paying a child’s pension for an extra year, for those in full-time education, is minor. It does not alter the funding rate. It is way under 0.1 per cent or something.

The question of extending the coverage to dependent children is somewhat more problematical. There are some similarities to what I said before about selection against the scheme. The issue is identifying whether the child was dependent. It is, perhaps, not too difficult for a member to claim that he is supporting a child who just chooses not to work, for example. You need to be pretty confident that you can establish that a real illness or disability

76 Scottish Parliamentary Pension Scheme Committee, Official Report, 11 March 2008, Col 66
77 Finance Act 2004, paragraph 15 of Schedule 28
prevents the child from working and makes them dependent on the member. That is particularly the case if we say simply that the child must be dependent on the member at the date of the member's death, which sort of writes off what happens between the child being 22 or 23 and being 45, if that is when the member dies. Having a reasonably tight definition or criterion for what qualifies, such as the child being permanently and totally disabled from the age of 23 until the member's death, should ensure that costs are kept relatively small."

171. In light of the minor cost involved and to take account of the position of a child starting further education at age 18 to complete the normal four year Scottish degree course, the Committee agreed to propose an increase in the age limit for a child’s pension from under 22 to under 23. The Committee agreed that the age restriction of 22 for becoming incapacitated should be removed in relation to a surviving child who was dependant on the deceased due to physical or mental impairment. The pension will be payable irrespective of the age of the child, so long as the child is dependant on the member. The limitation on any pension continuing to be paid is that the illness or disability of the child should continue.

172. The Committee recommends that the age limit for a child's pension should be increased from under 22 to under 23 and that the age limit of 22 for paying a pension to a surviving child who was dependant on the deceased due to physical or mental impairment should be removed.

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78 Scottish Parliamentary Pension Scheme Committee, Official Report, 11 March 2008, Col 68
ADDED YEARS

173. At present scheme members have two options within the SPPS rules should they wish to enhance their pension benefits. They can contribute additional voluntary contributions (AVCs) or purchase added years of service.

174. Scheme members can apply to the SPCB to buy a specific number of added years, which will increase the length of service on which their pension is based. As members pay for added years, there are no contributions payable from the SPCPF.

Age limits

175. The current rules place an age limit of 65 on the purchase of added years. However, this is not a universal retirement date as, unlike most pension schemes, retirement is not on the 65th birthday. Retirement for most MSPs occurs at the end of a four year session with Members over age 65 continuing to contribute towards their pension.

176. The Committee considered whether the age restriction should be removed with no restriction on purchasing added years by age providing the person is a participant in the scheme.

177. At its meeting on 18 September 2007, the Committee agreed to consult on the issue of an age limit on the purchase of added years—

“On AVCs and added years, the main question is whether we should continue to provide such a facility. If so, should the purchase of added years be subject to an age limit of 65? Should a portion of an AVC benefit be able to be taken as a tax-free lump sum? Do members agree to seek views on those questions? Members indicated agreement.”79

178. The majority of responses indicated that scheme members should be allowed to purchase added years beyond their 65th birthday.

179. The Committee also took into account evidence from Sir John Butterfill MP, the Chairman of the Trustees of the Westminster PCPF—

“Even the Chancellor of the Exchequer eventually gets a pension that is based on the salary of a back bencher. The only way in which that can be enhanced under the present rules of our scheme is if the member continues after the age of 65 and resumes making contributions. If a member gets to the maximum level before the age of 65, contributions have to cease but, uniquely in our scheme, if they continue after 65, they can resume making contributions without limit. It is not common—not many members do it—but it is technically possible.”80

180. Given that there is no cost to the fund arising as a result of the purchase of added years and the majority who responded to the question were in favour of

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79 Scottish Parliamentary Pension Scheme Committee, Official Report, 18 September 2007, Col 10
80 Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 52
removing the age restriction, the Committee recommends that the scheme continues to allow members to purchase added years and that there be no age restriction beyond conformity with revenue limits of age 75.

Contribution limit
181. The Committee also considered the limit on a member’s contribution towards added years which is specified in the current scheme. This is set currently at 15% of a member’s salary. The effect of buying added years is largely cost-neutral to the pension scheme although, as GAD pointed out in evidence, a large number of pension scheme members who enjoy long life spans in retirement could impact on the scheme funds—

“For that reason, most employers who offer the added-years facility try to limit the scale of the option in order to limit the scale of the risk—it is more a limitation of risk than of cost. If it were a completely unlimited option, the pension scheme would be converted into something that is like an insurance company that offers benefits on pseudo-commercial terms, and that is not really the scheme’s purpose.”81

182. GAD went on to point out that the Committee could increase the attractiveness to members of buying added years by recommending an increase in a member’s contribution without creating a very dramatic effect—

“An easy limit would be to control the contribution input rather than the number of years, in addition to having the two-thirds limit. You could also relax significantly the existing contribution limit—at something like 20 per cent of pay—without exposing the scheme to any great risk. It should look reasonable in relation to a member’s pay. You do not want to get to the stage at which a member who has other resources contributes 60 per cent of pay.”82

183. The Committee recommends a relaxation of the current maximum member’s contribution by increasing the limit to 20% of salary (mirroring the situation at the UK Parliament and the National Assembly for Wales).

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81 Scottish Parliamentary Pension Scheme Committee, Official Report, 11 March 2008, Col 72
82 Scottish Parliamentary Pension Scheme Committee, Official Report, 11 March 2008, Col 72
PENSION SHARING

184. Pension sharing on divorce was introduced by the Welfare Reform and Pensions Act 1999. Pension rights accrued by either, or both, parties may now be shared by a pension sharing order made by the courts or under a joint minute of agreement. There is no current provision in the scheme rules for pension sharing on divorce however the scheme would be required to comply with the terms of any pension sharing order in accordance with the overriding primary legislation.

185. As part of the divorce or dissolution process the assets of a marriage or civil partnership are identified and agreement is reached about how these assets or their cash value are to be shared. A court order then gives an ex-spouse or civil partner individual rights in the form of a pension credit. This is done by calculating either the value of the pension in payment or the value of the benefits accrued to date (equivalent to a transfer value). These values are then apportioned relative to the period of the marriage or civil partnership with the periods outwith excluded.

186. As the SPPS is a funded occupational pension scheme, it can choose to offer either an external transfer or membership of the scheme to the recipient of the pension credit. The Committee recommends that the scheme allows for recipients of a pension credit to be given the choice of an external transfer or membership of the scheme.

187. For those who decide to leave their pension credit with the scheme the pension should be payable from the scheme’s normal retirement age of 65 with the option to take payment earlier from age 60\(^{83}\) on actuarially neutral reduced terms. Very limited options on retirement are available to recipients and we make what provision we can in the proposed rules.

\(^{83}\) Age 60 is the earliest allowable retirement date (section 101C Pensions Schemes Act 1993)
OTHER AREAS

188. The preceding pages have set out a number of our recommendations for changes that are contained in the draft bill. This section covers the other parts of the bill, many of which are unchanged.

**Five year guarantee**

189. The current SPPS rules at Part M create a “guarantee” period of five years running from the date that a member commences receipt of a pension from the scheme. The effect of the “guarantee” is that in the event of death before pension has been paid, for a period of five years, any pension paid to a surviving spouse or civil partner will be increased and paid at the member’s rate. The amount payable is reduced by the amount of any pension payable to an eligible child or children.

190. Part M also makes provision for payment of a lump sum equivalent to the balance of five years’ pension payments to be made to the pensioner member’s executor, where there is no spouse or civil partner and death occurs within the five year period. The Finance Act 2004, while allowing schemes to guarantee pension payments, prevents the commutation of certain “outstanding” payments into lump sums after death. For example, where a surviving spouse also dies within the five years, there will be an ability to continue to pay pension payments to the executor for the balance of the period but no ability to pay a lump sum.

191. For persons who die with no survivors, there continues to be the ability to pay an appropriately designated\(^{84}\) lump sum covering the guaranteed period, provided the member had not reached age 75. For cases over that age only payment of pension for the remainder of the guaranteed period to executors is possible.

192. The Committee recommends that appropriate changes are made to the wording of the rules to comply with the Finance Act 2004, which will in effect continue payment of the current five year guaranteed amounts.

**Reckonable service**

193. Reckonable service continues to be the period during which an MSP or officeholder makes contributions from their salary. Reckonable service may, as at present, be enhanced through transfers-in from other registered pension schemes or by purchasing added years.

**Lump sum death benefits**

194. In the consultation the Committee sought views on whether the amount of the death in service lump sum benefit should be altered from three times salary following relaxations permitted by the Finance Act 2004.\(^{85}\) Responses were

\(^{84}\) A defined Benefits Lump Sum Death Benefit under Paragraph 13 of Schedule 29 of the Finance Act 2004

\(^{85}\) The new maximum limit is £1.6 million
equally divided between retaining the existing level and increasing the benefit to four times salary.

195. The Committee noted that the benefit is reinsured and sought views from GAD. Its advice was that—

"It was sensible to insure the lump sum death benefit in the scheme's early years, as it protected the fund's position when there were very few assets. However, now that the fund stands at £18 million, the scheme's asset base is probably of sufficient size that the death benefits should be self-insured, assuming, of course, that the benefit stays roughly at the current level of three times pay."

196. The Committee considered that the benefit should be brought into line with that of the PCPS and that for the National Assembly for Wales Members' Pension Scheme and recommends that the death in service lump sum benefit be altered to four times salary.

197. The other rules in this Part of the draft remain in line with existing rules.

Short service refunds

198. Under the existing rules a member who has paid pension contributions with less than two years reckonable service and who is not yet entitled to a scheme pension can request a refund. There have been very few repayments to date with those that have been made following a change of post and covering short periods of service.

199. Given that pension accrues under the 1/50th accrual at a rate in excess of £1,000 per annum, the Committee considers that the period during which a member can withdraw from the pension scheme and claim a refund should be reduced. The Committee recommends that a refund of contributions should only be available within three months of joining the scheme.

200. Other rules covering refunds after death are retained although relocated into Part M of the draft rules.

Dual mandate members

201. This Part repeats existing rules which are at rule F4. The effect remains the same with the pension accrual of dual mandate members being linked to the proportion of their salary that they are paid.

Taxes

202. This is a new Part bringing together new taxation restrictions from the Finance Act 2004.

203. When a lifetime allowance tax charge becomes payable as a result of payments from the scheme, the member and the administrator are jointly liable under section 217 of the Finance Act 2004. The rules allow for recovery by the
administrator of any such tax payable in respect of an individual with the possibility of the scheme member’s benefits being reduced unless separate payment arrangements are made. This will generally only arise when members have substantial external pension arrangements which when combined with scheme benefits, take the pension values over the lifetime allowance levels.86

204. Other rules in this section authorise deductions for tax from lump sum benefits in relation to short service refunds. Most significantly they provide a power to prevent the scheme from making unauthorised tax payments. There is an overriding power to reduce any benefit to avoid an unauthorised payment charge or to withhold completely payments which give rise to financial penalties in the form of scheme sanction charges or a de-registration charge under the Finance Act.

205. These latter powers mirror the general transitional arrangements87 which are currently applied to the scheme under the Finance Act 2004. These general arrangements were covered in paragraph 17 and are expected to expire in 2011. By including these rules in the Bill, the benefit of the overriding transitional arrangements will no longer be required.

Transfers

206. A transfer from a pension scheme allows a person to give up all their benefits in the scheme in exchange for a cash value. The employer must convert the benefits that have been built up into a cash equivalent transfer value (CETV).

207. The UK Pensions Schemes Act 1993 and Finance Act 2004 govern the management of transfers into and out of pension schemes. In particular the 1993 Act has a requirement for occupational pension schemes to allow members to transfer the cash equivalent of their rights and the 2004 Act provides that tax registered pension schemes can only make and accept certain transfers. The Committee therefore had to ensure that any of its proposals were compatible with reserved law and that an appropriate level of detail was included on the face of the proposed Bill. Within this context the Committee considered and agreed that the following should be included in the proposed Bill—

Transfer out of the SPPS

- Former participants of the SPPS should be able to transfer equivalent funds into other pension schemes, provided an application is made on or before the applicant’s 64th birthday or six months after the applicant ceases to be a participant, whichever is the later. They should have a total reckonable service of at least three months.

- The trustees must provide a statement of entitlement, setting out the cash equivalent of the former participant’s accrued benefits.

86 Current lifetime allowance limit is £1.6m
87 The Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 (S.I. 2006/364)
• A transfer out sum should not be less than the total of the former participant’s contributions, any transfer-in sums paid or any monies paid to buy added years.

Transfer into the SPPS
• A participant should be able to transfer in a sum from another pension scheme if transfer notice is given before the scheme member’s 64th birthday. The scheme member should have at least three months service.

• The trustees must determine the amount by which a scheme member’s reckonable service is to be increased in accordance with guidance and tables prepared by the scheme actuary.

• The amount transferred in should not be less than the amount that needs to be applied in relation to any entitlement to a guaranteed minimum pension.88

208. Both MSPs and officeholders who are not MSPs should be allowed to transfer in a sum from another pension scheme. (This previously applied to MSPs only).

Miscellaneous

209. Part T of the draft Bill restates existing requirements covering Guaranteed Minimum Pensions (implicit in Part P), assignation of benefits (Part T 1) and small payments to executors following death (Part T 2).

Notices

210. This is a new Part included to make clear the method of communication that is appropriate under the new rules. Setting this out in a separate Part avoids the need to repeat requirements throughout the rules.

AVCs

211. At present scheme members have two options within the SPPS rules should they wish to enhance their pension benefits. They can contribute AVCs or purchase added years of service.

212. AVCs are voluntary contributions made by the scheme member over and above the contribution into the main occupational scheme. This enables the scheme member to build up a fund of money to add to pension benefits on retirement. Under the current SPPS rules, the SPCB is entitled to determine the investment of AVCs.

88 Where a final salary pension has contracted out of the state scheme a guaranteed minimum pension (GMP) relates to the earnings component of the State Pension that the member would have earned while in the employer's scheme, had the member not contracted-out
Recent changes to pension regimes

213. Pension Simplification has been covered already in this report and is the name given to a series of changes introduced by HM Revenue & Customs that came into force on 6 April 2006. Before that, there were limited ways to top up a pension and buying AVCs through an occupational pension scheme was one of the most common.

214. Under the simplification, the many existing sets of rules governing the taxation of pensions were replaced with a single, universal regime. It allows a person to save with more than one pension scheme at the same time. There is no limit on the amount of money a person can save in a pension scheme or the number of pension schemes they can save in (although there are some limits on the amount of tax relief).

Free-standing AVCs

215. Following the changes, a person can now save as much as they like into any number of pensions schemes (company and personal) including through AVCs and free-standing additional voluntary contributions (FSAVCs).

216. FSAVCs differ from ordinary AVCs because they're:

- arranged by the individual, not through an employer;
- paid into a pension scheme run by a financial institution such as an insurance company or bank.

217. The advantages of FSAVCs are:

- a person can continue to pay into a scheme even if that person changes employer;
- they may give the person more investment options.

218. FSAVCs can sometimes be described as an ideal option for ‘job hoppers’ since the AVC provider will remain constant regardless of changes in employment.

219. Some companies no longer offer AVCs following the changes to pension rules, as there are now more options available to individuals for topping up a company pension through other means.

SPPS

220. Scheme members can now make their own FSAVC arrangements (similar to the ones in place in the SPPS scheme) on the open market and cut out the SPCB as the ‘middle man’.

221. In effect all that the SPCB (or trustees) as administrator is doing is undertaking a premium collection facility on behalf of the third party supplier of the pension (the financial institution) ultimately purchased by the AVCs.

222. Historically there may have been benefit to the scheme member in using a scheme facility due to reduced administration charges than would be incurred by arranging the AVC with the financial institution. However, this is thought to have been eroded through increased competition among providers of AVCs.
223. The Committee has considered the operation of the current arrangements in the light of the new tax and pension regime and considers that the AVC facility within the SPPS is unnecessary. The Committee recommends that no new contracts for AVCs are made on behalf of scheme members. The SPCB (or trustees) should continue to administer the small number of existing AVC contracts to ensure that no ‘transfer penalty’ is attached to the scheme member.

224. In considering the above, the Committee was also mindful that participating scheme members still have the opportunity to make voluntary contributions to enhance their pension in the form of purchasing added years.
GRANTS

225. The Scotland Act 1998 (Transitory and Transitional Provisions) (Grants to Members and Officeholders) Order 1999 ("Grants Order") sets out the rules for the payment by the SPCB of—

- resettlement grants for MSPs;
- ill-health retirement grants for MSPs; and
- severance grants to specified officeholders.

226. It is anticipated, in article 2 of the Grants Order, that this legislation would be replaced in time by rules made by the Scottish Parliament under section 81 of the Scotland Act 1998.

227. In relation to all three types of grant, the current Order raises age-related discrimination issues. While the legal environment is different for MSPs as elected officeholders (as compared to employees), it is thought reasonable to consider the provisions in the current Grants Order in the light of equal opportunities legislation.89

228. While payments of the Grant are not made from the pension fund there is a linkage to ill-health retirement criteria. Replacement of the pension legislation offers a suitable opportunity to replace the Grants Order, both pieces of legislation dealing with payments to members on leaving office. The Committee’s remit also specifically covers the Grants Order.

229. The Committee, therefore, included issues relating to the Grants Order in its consultation document.

Resettlement grants

230. The grant is designed to assist with the cost of adjusting to non-parliamentary life. It is, for example, recognised that some MSPs may try to return to an occupation which demands some evidence of continuous professional development or requires registration based on practice of the occupation. In circumstances like these, the former MSP may require a period of retraining before taking up a post. Even if no such barrier exists, in most job search situations, there is - inevitably - a period of time that elapses between finding a suitable vacant post, applying for the post, attending an interview, being offered the position and actually taking up the post.

231. The issue of a resettlement grant was also touched on in the recent SSRB report. It stated that the SSRB had “heard anecdotal evidence of difficulties faced by MPs of all ages in obtaining new employment”.90

232. Under the Order, a resettlement grant is payable to an MSP who does not stand at the next Scottish Parliament election or to a Member who stands but is

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90 Review Body on Senior Salaries, Report No.64 Volume 1, paragraph 5.62
not returned. A resettlement grant is only paid to a Member in the context of an
election (if the Member stands down during the course of a Session, the Member
receives no financial compensation — although see below: ‘ill-health grants’). The
Committee does not recommend any change to this criterion.

233. The Committee took evidence (at its meetings on 26 February 2008\(^91\) and
25 March 2008) \(^92\) on the existing resettlement grant and any possible
replacement. It also noted the SSRB report (its suggestions have since been
remitted for further consideration to Westminster’s Advisory Panel on Members’
Allowances) and the ensuing debate in the House of Commons—

“At the moment, rightly or wrongly, colleagues have a final-year
compensation amount when they finish their service as MPs. Under the
proposal, an MP would get that payment only if their constituency was
abolished or they had been defeated. So when they came to their natural
retirement age, they would have to find a seat they did not want to fight and
they absolutely hoped that they would not win – what would happen if they
did would be a different question. Clearly, that is nonsense. The resettlement
grant and the issue of compensation on leaving office need to be looked at.”\(^93\)

234. To some extent this view was supported by the Sir John Butterfill, Chairman
of the Westminster Trustees. He said—

“I think that the Government thinks the uncertainties that exist in the
profession in which we are engaged are bad enough to warrant some form of
resettlement grant.”\(^94\)

235. Currently, the amount of grant that a Member can expect on leaving the
office of MSP is set out as a table in the Schedule to the Order. The Committee
considered that the use of this table could be seen to be discriminatory on the
grounds of age and that the replacement model should be solely related to length
of service. As one respondent to the consultation document commented—

“Whilst there may be an argument that older members will have more
difficulty in returning to the labour market, retaining different levels of benefits
based on age may contradict age discrimination requirements.”\(^95\)

236. A service-based approach has been adopted in Wales, confirmed in
evidence by Alun Cairns, Chairman of Trustees, where the scheme does not
include age-related criteria (and the SSRB, in its report, recommended this
approach to Westminster)—

\(^91\) http://www.scottish.parliament.uk/s3/committees/spss/or-08/sp08-0201.htm
\(^92\) http://www.scottish.parliament.uk/s3/committees/spss/or-08/sp08-0401.htm
\(^93\) Simon Hughes MP, House of Commons, Hansard Debates, 24 January 2008, pt 0012
\(^94\) Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 54
\(^95\) The Pensions Advisory Service. Written submission to the Scottish Parliamentary Pension
Scheme Committee
“The position in Wales is similar to the position in the House of Commons. There is a scale for the size of the resettlement grant—it depends on how long someone has been a member.”96

237. The Committee noted the regulations in relation to severance payments to local government employees. In evidence, the SPPA explained that in addition to voluntary early retirement, public sector schemes have awarded enhanced pensions to employees who are made redundant or retired on grounds of efficiency. In such cases, the employer pays into the fund the additional costs of providing the enhanced pension. Separate regulations also provide local government employers with the alternative of awarding a lump sum of up to a maximum of 66 weeks’ pay.97

238. Initially the Committee considered a scheme whereby an MSP (regardless of age) would simply receive a resettlement grant equivalent to one month’s salary for each completed year of service.

239. However, the Committee went on to consider the situation of an MSP who is perhaps returned to the Parliament (either through the regional system or a by-election) near to the end of a Session. The MSP would perhaps only be entitled - under the scheme outlined above - to the equivalent of one or two months’ salary and faces the employment challenges set out earlier.

240. The Committee acknowledged that the current minimum amount that an MSP receives is 50% of salary and agreed that the minimum grant should remain at the equivalent to six months’ salary. Using that rationale, the Committee also considered keeping the maximum level of grant at 100% of salary but using a formula of one month of salary for each completed year of service - accrued above the minimum level of six months of salary - in place of the existing scale.

241. The Committee recommends that the amount of resettlement grant payable be maintained at the equivalent to six months’ salary for each MSP up to the current maximum entitlement; the amount payable to increase from the minimum by one month for each full year of service as an MSP beyond six years.

Ill-health retirement grant

242. Currently a grant is payable to a Member who ceases to be a member before the end of a Session on the grounds of ill-health, has not reached age 65 and is deemed unable to adequately perform their duties. The grant payable is equal to that which would have been payable as a resettlement grant. Medical evidence is submitted by the Member with an application for an ill-health retirement grant.

243. An ill-health retirement grant is payable in place of a resettlement grant (a Member receives one or other but not both). In effect, it provides a resettlement

96 Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 54
97 Scottish Parliamentary Pension Scheme Committee, Official Report, 26 February 2008, Col 25
amount to an MSP who leaves office during a parliamentary session for a reason outwith his or her control.

244. **The Committee recommends that in future the qualification for the grant be linked to the grounds for an award of an ill-health retirement pension.** The amount payable as a grant would continue to be equivalent to the resettlement grant (in line with the recommendations above: ‘resettlement grants’). A Member may apply for this grant; it would remain discretionary and not automatic on standing down. As the SPCB would retain discretion over the award, it would be able to assess and make awards to MSPs who may not be members of the pension scheme and therefore do not qualify for an ill-health pension.

**Officeholders**

245. A person who holds a specified office (for example, one of the Law Officers or a Scottish Minister) receives a grant when they cease to hold that post. An officeholder does not necessarily have to be an MSP (to date none of the Law Officers have been MSPs). The grant is similar to a severance grant and is designed to help bridge the gap while the officeholder adjusts to the lower income or re-establishes commercial or voluntary interests which may have had to be relinquished to avoid any conflict of interest whilst in office. The grant is an amount equal to one quarter of the additional annual salary that was being paid to that person in respect of the office held immediately before he or she left it.

246. Under the existing Order there requires to be at least three weeks between leaving the post and eligibility for the grant. This prevents any payments to officeholders who are moving to hold another office or who are re-appointed, say after an election. The Committee considered whether a period of three weeks out of office is long enough to justify the need for and payment of a resettlement grant and has decided that the period should be longer. **The Committee recommends that the period which must elapse after holding any of the officeholder posts before the grant is payable should be extended to three months.**

247. The Committee reviewed the list of offices that attract a severance grant. Specifically, the offices of Leader of a Non-Executive Party and the Chief Business Manager of a registered political party with at least 10 MSPs are not salaried posts and the rationale for payment cannot apply as it does to paid officeholders. **The Committee recommends that the offices of Leader of a Non-Executive Party and the Chief Business Manager of a registered political party with at least 10 MSPs not be included in the replacement for the Order.**

248. **The Committee recommends that an officeholder severance grant should be payable to a First Minister and a Presiding Officer who would not qualify for the previous special pension arrangements for these offices (as a consequence of the proposed changes in paragraph 89 of this report).** The Committee considered the formula proposed for MSPs on leaving office and, in line with that, a First Minister or a Presiding Officer (on leaving office) should receive a minimum one-off grant of 50% of the additional annual salary that was being paid to that person in respect of the office. The Committee considered the transition from First Minister or Presiding Officer is sufficiently difficult to merit a distinctive amount of grant. As with the MSP resettlement grant, the grant to a First
Minister or Presiding Officer would accrue beyond the minimum at the rate of one month per completed year of service in that post from seven years up to a maximum of 12 years.
TRANSITIONAL PROVISIONS

249. The new rules contained in the Bill will take effect on commencement but will be subject to transitional arrangements. Where applicable, the relevant areas of the report refer to these arrangements. Other transitional protections contained in the draft Bill are in the following areas—

First Minister and Presiding Officer

250. The existing rules covering the First Minister and Presiding Officer will continue to cover those already entitled to or receiving a pension. This protection extends to the existing rights of surviving spouses, civil partners or children.

Accrual rate

251. The draft bill allows for existing scheme members to choose to retain their accrual rate of 1/50th and the associated contribution rate. Members can alter the accrual rate of their pension but only following an election or, if not an MSP, in taking up a new appointment as an officeholder.

Reckonable service

252. Provision is made for previous service in the scheme to be recognised by the new scheme.

253. Members and officeholders who are participating in the scheme directly before the rule changes are to carry their existing service into the new scheme. These members are treated as having made 1/50th accrual rate contributions during this period of service.

254. Similar provision is made for the calculation of officeholder pensions for those who were participating officeholders under the existing rules.

Pensioner, survivor and children’s pensions

255. The new rules will apply to all existing pensions and also to those with deferred pension rights.

Unmarried partners

256. Payment of a survivor pension to an unmarried partner is provided for in the new rules. The transitional provision allows this to be paid to the unmarried partners of members who are current or former participants on or after the new rules come into effect.

Minimum transfer payment

257. Provision has been made to safeguard a minimum transfer payment for existing members who have made contributions, transferred payment or purchased added years under the 1999 scheme rules.
Added years

258. The existing scheme rules for the purchase of added years are protected for those who purchased or applied for purchase of added years before the new rules come into force. These years are treated as accruing at $\frac{1}{50}$. 
CONCLUSIONS AND RECOMMENDATION FOR A COMMITTEE BILL

259. In this report the Committee sets out how and why it has reviewed the existing rules and procedures for members’ and officeholders’ pensions and grants and makes numerous recommendations to modernise. The recommendations take account of the new legislative framework with which pension schemes must comply as well as taking account of changes made or being considered by the UK Parliament and the National Assembly for Wales.

260. The Committee recommends the appointment of trustees in place of the SPCB to administer the scheme and also a method to make future changes (whether required as a result of legislative change or for other reasons). A draft Bill is attached, containing details of the proposed scheme rules and incorporating a replacement for the Grants Order.

261. Changes to members’ and officeholders’ pensions are made at no cost to public funds while giving members an opportunity to accrue pension rights more quickly provided they fully fund the additional cost.

262. The Committee recommends that the Parliament agrees to this proposal for a Committee bill, as set out in the annexed draft bill, under Rule 9.15 of Standing Orders.
List of abbreviations

**AVCs** - Additional Voluntary Contributions

**GAD** - Government Actuary’s Department

**FSAVC** - Free-Standing Additional Voluntary Contribution

**HMRC** - Her Majesty’s Revenue and Customs

**PCPF** - Parliamentary Contributory Pension Fund: Westminster

**PCPS** - Parliamentary Contributory Pension Scheme: Westminster

**RPI** - Retail Price Index

**SCF** - Scottish Consolidated Fund

**SSRB** - Senior Salaries Review Board

**SPCPF** - Scottish Parliamentary Contributory Pension Fund

**SPCPS** - Scottish Parliamentary Contributory Pension Scheme

**SPPA** - Scottish Public Pensions Agency

**SPPS** - Scottish Parliamentary Pension Scheme

**SPCB** - Scottish Parliamentary Corporate Body
ANNEXE A: EXTRACTS FROM MINUTES

1st Meeting, 2007 (Session 3), Tuesday 18 September 2007

1. Declaration of interests: The oldest member present, Alasdair Morgan, invited members to declare any relevant interests. The following interests were declared—

   Alasdair Morgan as an owner of a pension entitlement with the Westminster Parliamentary Contributory Pension Scheme.
   Peter Peacock as an owner of shares in Standard Life plc, a pension with Standard Life plc and a former office holder.
   Hugh O'Donnell as an owner of a private pension transferred into the Scottish Parliamentary Pension Scheme.
   David McLetchie as an owner of pension policies from previous employment.

2. Choice of Convener: The Committee chose Alasdair Morgan as its Convener.

3. Choice of Deputy Convener: The Committee chose Peter Peacock as its Deputy Convener.

4. Scottish Parliamentary Pension Scheme inquiry: The Committee considered and agreed its approach to the inquiry.

5. Scottish Parliamentary Pension Scheme inquiry: The Committee considered an issues paper and agreed what should be included in its draft consultation paper.

6. Scottish Parliamentary Pension Scheme inquiry – witness expenses: The Committee agreed to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in the inquiry.

7. Decision on taking business in private: The Committee agreed to consider its draft consultation paper at its next meeting in private.

2nd Meeting, 2007 (Session 3), Tuesday 2 October 2007

1. Scottish Parliamentary Pension Scheme inquiry (in private): The Committee considered and agreed its draft consultation paper and list of consultees.

1st Meeting, 2008 (Session 3), Tuesday 5 February 2008

1. Decision on taking business in private: The Committee agreed to take items 2 and 3 in private. The Committee also agreed to consider in private at future meetings the main themes arising from evidence sessions and the draft report on its consultation into the Scottish Parliamentary Pension Scheme.
2. Scottish Parliamentary Pension Scheme Consultation (in private): The Committee agreed its approach to evidence taking and to take oral evidence from—

Scottish Parliamentary Corporate Body;  
Government Actuary’s Department;  
Scottish Public Pensions Agency;  
Chairman of the Trustees, Westminster Parliamentary Contributory Pension Fund; and  
Chairman of the Trustees, National Assembly for Wales Pension Scheme.

3. Scottish Parliamentary Pension Scheme Consultation (in private): The Committee considered the responses to its consultation and agreed to further consider the main issues and themes arising during oral evidence sessions; the Committee agreed to the publication of responses on the Committee’s webpage.

2nd Meeting, 2008 (Session 3), Tuesday 26 February 2008

1. Scottish Parliamentary Pension Scheme Inquiry: The Committee took evidence from—

Chad Dawtry, Director of Policy, Strategy and Development, Christine Marr, Policy Manager and David Lauder, Policy Manager, Scottish Public Pensions Agency;  

and then from—

Sir John Butterfill MP, Chairman of the Trustees, Westminster Parliamentary Contributory Pension Fund and Alun Cairns AM, Chairman of the Trustees, National Assembly for Wales Pension Scheme.

2. Scottish Parliamentary Pension Scheme Inquiry (in private): The Committee considered the evidence taken under item 1.

3rd Meeting, 2008 (Session 3), Tuesday 11 March 2008

1. Decision on taking business in private: The Committee agreed to take item 4 in private.

2. Scottish Parliamentary Pension Scheme Inquiry: The Committee took evidence from—

Grant Ballantine, Senior Consulting Actuary, Government Actuary’s Department.

3. Scottish Parliamentary Pension Scheme Inquiry (in private): The Committee considered the main themes arising from evidence taken under item 2.
4. Scottish Parliamentary Pension Scheme Inquiry (in private): The Committee considered the commutation of pension and agreed its approach to this area.

4th Meeting, 2008 (Session 3), Tuesday 25 March 2008

1. Decision on taking business in private: The Committee agreed to take item 4 in private.

2. Scottish Parliamentary Pension Scheme Inquiry: The Committee took evidence from—

   Mike Pringle MSP, Member of the Scottish Parliamentary Corporate Body and Ian Leitch, Director of Resources and Governance, Scottish Parliament.

3. Scottish Parliamentary Pension Scheme Inquiry (in private): The Committee considered the main themes arising from evidence taken under item 2.

4. Scottish Parliamentary Pension Scheme Inquiry (in private): The Committee considered a paper by the Clerk.

5th Meeting, 2008 (Session 3), Tuesday 6 May 2008

1. Decision on taking business in private: The Committee agreed to take item 2, and all future considerations of its draft report, in private.

2. Scottish Parliamentary Pension Scheme Inquiry (in private): The Committee considered a draft report. A number of changes were agreed to.

6th Meeting, 2008 (Session 3), Tuesday 13 May 2008

1. Scottish Parliamentary Pension Scheme Inquiry (in private): The Committee considered a revised draft report. A number of changes were agreed to.

7th Meeting, 2008 (Session 3), Tuesday 20 May 2008

1. Scottish Parliamentary Pension Scheme Inquiry (in private): The Committee considered and agreed its report.
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Schedule 2—Grants payable on leaving office
Schedule 3—Transitional provisions and savings
Scottish Parliamentary Pensions Bill

[DRAFT]

An Act of the Scottish Parliament to set out rules which are to govern the Scottish Parliamentary Pension Scheme; to provide for the payment of resettlement grants to individuals when they stop being members of the Scottish Parliament or holding certain offices; and for connected purposes.

1 Scottish Parliamentary Pension Scheme

(1) The Scottish Parliamentary Pension Scheme is to continue but is to be governed from the coming into force of this section in accordance with the pension scheme rules set out in schedule 1.

(2) The Scottish Parliamentary Contributory Pension Fund (and all the SPCB’s functions, rights, liabilities and obligations in relation to that Fund) are transferred to and vest in the Fund trustees appointed under those new rules.

(3) Schedule 3 makes further transitional provisions and savings.

2 Grants payable on leaving office

Schedule 2 sets out circumstances in which the SPCB is to pay grants to individuals after they have served as MSPs or held certain offices.

3 Modification of pension schemes etc.

(1) The Scottish Parliament may resolve to modify—

(a) the Scottish Parliamentary Pension Scheme,

(b) the grants scheme set out in schedule 2, or

(c) the pension scheme for First Ministers and Presiding Officers which is comprised in Part S of the 1999 pensions order.

(2) A resolution may, in particular, modify—

(a) the rules set out in schedule 1,

(b) schedules 2 or 3, or

(c) the 1999 pensions order.

(3) A resolution may—

(a) make different provision for different purposes,

(b) make provision having retrospective effect.
The Clerk of the Parliament must send a copy of a resolution to the Queen’s Printer for Scotland immediately after it is passed. Articles 5, 7(1), 8 and 9 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (SI 1999/1096) apply in relation to that copy resolution as if it were a Scottish statutory instrument.

4 Interpretation

In this Act—


“Scottish Parliamentary Pension Scheme” means the pension scheme constituted by the 1999 pensions order (but does not include the pension scheme for First Ministers and Presiding Officers which is comprised in Part S of that order),

“Scottish Parliamentary Contributory Pension Fund” means the fund established by article B1 of the 1999 pensions order, and

“SPCB” means the Scottish Parliamentary Corporate Body.

5 Commencement

(1) The following provisions come into force on Royal Assent—

(a) this section,

(b) sections 4 and 6,

(c) rules 8 to 11 of the scheme set out in schedule 1 (and section 1(1) in so far as it introduces those rules), and

(d) paragraph 4 of schedule 3 (and section 1(3) in so far as it introduces that paragraph).

(2) Section 3 also comes into force on Royal Assent (but, during the period before the rest of this Act comes into force, a motion for a resolution under that section may be moved only by a member of the SPCB).

(3) The rest of this Act comes into force on the first day of the month which follows the month which includes the day falling 6 months after Royal Assent.

6 Short title

This Act is called the Scottish Parliamentary Pensions Act 2008.
SCHEDULE 1
(introduced by section 1(1))

SCOTTISH PARLIAMENTARY PENSION SCHEME

1 This schedule sets out the rules of the Scottish Parliamentary Pension Scheme (“the scheme”).

PART A
THE PENSION FUND

The Pension Fund

2 “The Pension Fund” means the Scottish Parliamentary Contributory Pension Fund.

Payments to and from Fund

3 (1) The following payments are to be made from the Pension Fund—
(a) all pensions and lump sums payable under the scheme, and
(b) all amounts payable by the Fund trustees under the scheme.
(2) The Fund trustees must pay all sums they receive under the scheme into the Pension Fund.

PART B
FUND TRUSTEES

Fund trustees

4 The “Fund trustees” are the individuals appointed under and holding office in accordance with this Part.

Functions

5 The Fund trustees’ principal function is to administer the Pension Fund, and to manage and apply its assets, in accordance with the scheme.

Number of trustees

6 There are to be at least 3 but no more than 6 Fund trustees.

Eligibility

7 A person who is prevented by the Pensions Act 1995 (c.26), or by any other enactment or rule of law, from being a trustee of a pension scheme is barred from being a Fund trustee.
Appointment of Fund trustees

8 (1) The Scottish Parliament may resolve to appoint as a Fund trustee any individual nominated by the SPCB as suitable to hold that office.

(2) The SPCB must, when deciding who to nominate—
   (a) do its best to ensure that the Fund trustees include a scheme member and a scheme pensioner, and
   (b) have regard to any recommendation by the incumbent Fund trustees.

(3) A Fund trustee appointment has immediate effect (unless the Scottish Parliament resolves otherwise).

(4) The Court of Session may appoint a Fund trustee only on an application under section 19(2) of the Trusts (Scotland) Act 1921 (c.58).

(5) The Fund trustees do not have power to assume new trustees.

Remuneration, allowances and expenses

9 (1) A Fund trustee may be remunerated, or receive allowances, from the Pension Fund for acting as a Fund trustee only if the following conditions are met—

   **Condition 1** The Fund trustee is not, and has never been, a scheme member.

   **Condition 2** The other Fund trustees, before appointment, recommend to the SPCB that the Fund trustee be remunerated or entitled to allowances.

   **Condition 3** The SPCB’s nomination to the Scottish Parliament specifies that remuneration or allowances are to be paid.

(2) Expenses properly incurred by the Fund trustees in connection with the performance of their functions are to be paid from the Pension Fund.

Resignation

10 (1) A Fund trustee may resign by giving notice of resignation to the Presiding Officer and the other Fund trustees.

(2) A resignation has effect immediately on the notice of resignation being given.

(3) This rule does not apply where there is a sole trustee.

Removal

11 (1) A Fund trustee is removed from office only if—

   (a) the Scottish Parliament resolves to end the Fund trustee’s tenure,
   (b) the Fund trustee becomes barred from being a Fund trustee (see rule 7), or
   (c) removed in accordance with rule 12.

(2) A Parliamentary resolution passed on a division for the purposes of this rule has effect only if voted for by at least two-thirds of the voting MSPs.
Change of status

12 (1) This rule applies—
(a) where a Fund trustee who was a scheme member when appointed becomes a deferred pensioner or a scheme pensioner,
(b) where a Fund trustee who was a deferred pensioner when appointed becomes a scheme member or a scheme pensioner, and
(c) where a Fund trustee who was a scheme pensioner when appointed has payment of his or her pension suspended under rule 41.

(2) Where this rule applies—
(a) the Fund trustee must give notice of change of status to the Presiding Officer and the other Fund trustees, and
(b) the Fund trustee’s tenure is to end 6 months after he or she stops being a scheme member, deferred pensioner, or scheme pensioner (unless the Scottish Parliament resolves otherwise).

Member-nominated trustees

13 Nothing in the scheme overrides section 241 of the Pensions Act 2004 (c.35).

Accordingly—
(a) the SPCB must nominate as suitable to be a Fund trustee any individual who the Fund trustees recommend for the purposes of fulfilling their obligations under that section, and
(b) rule 6 does not prevent the SPCB from so nominating an individual (or the appointment of an individual) if the appointment—
   (i) would result in more than 6 Fund trustees holding office, and
   (ii) would ensure that at least one-third of the Fund trustees are appointed in accordance with that section.

Procedure

14 The Fund trustees may regulate their own procedure (in so far as not regulated by the scheme).

Quorum

15 A meeting of the Fund trustees is quorate if—
(a) 3 or more Fund trustees are present, or
(b) where fewer than 3 Fund trustees hold office, if both trustees are (or the sole trustee is) present.

Staff and advisers

16 The Fund trustees may—
(a) employ staff on such terms as they think fit,
(b) seek advice from any person.
**Fund management**

17 The Fund trustees must monitor the performance of any fund manager they appoint.

**Indemnity insurance**

18 The Fund trustees may obtain insurance designed to indemnify them against any personal liability arising in connection with the performance (or purported performance) of their functions.

**Delegation**

19 (1) The Fund trustees may authorise any person (including one or more of themselves) to perform, or to authorise others to perform, any of their functions to the extent authorised.

(2) An authorisation does not affect the Fund trustees’ responsibility for delegated functions or their ability to perform those functions themselves.

**Validity of acts**

20 (1) A decision, authorisation or other act of the Fund trustees is not invalidated—

(a) by any change to the individuals (or to the status or eligibility of individuals) holding office as Fund trustees,

(b) by any defect in the nomination or appointment of a Fund trustee, or

(c) by the fact that fewer than 3 Fund trustees held office.

(2) The Fund trustees are free to vary or revoke any previous decision or authorisation (but such a variation or revocation may reduce the scheme benefits to which any individual is entitled only if made in accordance with any other scheme rule).

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**PART C**

**SCHEME MEMBERS**

**MSP members**

21 Every serving MSP aged under 75 is to participate in the scheme as an “MSP member” (unless the MSP opts out under rule 23).

**Office-holder members**

22 (1) Every individual aged under 75 holding a qualifying office is to participate in this scheme as an “office-holder member” (unless the individual opts out under rule 24).

(2) An individual holds a qualifying office by being—

(a) the Presiding Officer,

(b) a deputy Presiding Officer,

(c) one of the Scottish Ministers, or

(d) a junior Scottish Minister.
MSP opt-out

23 (1) An MSP may opt out of the scheme by giving notice to the Fund trustees. This rule does not prevent an MSP who is also a holder of a qualifying office from opting out as an office-holder member only under rule 24 (but such an MSP may not opt out as an MSP member only).

(2) Where an MSP opts out within 3 months of first being elected as an MSP—
   (a) the MSP is to be treated—
      (i) as having never been an MSP member,
      (ii) as having not been an office-holder member for any period since the election, and
   (b) any scheme member contributions made since being elected are to be repaid to the MSP.

(3) In any other case, an MSP who opts out stops being a scheme member on whatever date the Fund trustees decide is the earliest practicable date after they receive the opt-out notice.

Office-holder opt-out

24 (1) The holder of a qualifying office may opt out of the scheme as an office-holder member only by giving notice to the Fund trustees.

(2) Where the holder of a qualifying office opts out within 3 months of being appointed to that office—
   (a) the office-holder is to be treated as having not been an office-holder member since being appointed, and
   (b) any scheme member contributions made in respect of office-holder’s salary since being appointed are to be repaid to the office-holder.

(3) In any other case, a holder of a qualifying office who opts out under this rule stops being an office-holder member on whatever date the Fund trustees decide is the earliest practicable date after they receive the opt-out notice.

MSP opt-in

25 An individual who has opted out of the scheme may, if subsequently elected as an MSP, opt back into the scheme as an MSP member with effect from the election date by—
   (a) giving notice to the Fund trustees within 3 months of being elected, and
   (b) paying to the Fund trustees by the due date the amount which they certify as the amount of scheme member contributions which would have been made from the individual’s MSP salary payments between the election date and the next day on which a scheme member contribution is to be made.

“due date” means the 28th day after the Fund trustees give their certification to the office-holder (or any later day as the Fund trustees may specify).
Office-holder opt-in

26 (1) An individual who has opted out of the scheme (or who has opted out as an office-holder member only) may, if subsequently appointed to hold any qualifying office, opt back into this scheme as an office-holder member with effect from the appointment date by—

(a) giving notice to the Fund trustees within 3 months of being appointed, and
(b) paying to the Fund trustees by the due date the amount which they certify as the amount of scheme member contributions would have been made from the individual’s office-holder salary payments between the appointment date and the next day on which a scheme member contribution is to be made.

“due date” means the 28th day after the Fund trustees give their certification to the office-holder (or any later day as the Fund trustees may specify).

(2) An MSP may not opt back into the scheme as an office-holder member unless that individual also opts back in as (or already is) an MSP member.

PART D

Contributions

Scheme member contributions

27 The person responsible for paying a scheme member’s salary must—

(a) deduct an amount (a “scheme member contribution”) from each salary payment (but see rule 30), and
(b) pay the scheme member contribution to the Fund trustees.

References in other scheme rules to scheme member contributions being made are to be read as references to deductions under this rule.

Amount of scheme member contribution

28 Higher rate scheme member contributions are be deducted under rule 27 (unless the scheme member concerned chooses to make lower rate scheme contributions).

Procedure for changing scheme member contribution rate

29 (1) A scheme member may, by giving notice to the Fund trustees, choose to make lower rate scheme member contributions instead of higher rate scheme member contributions (or vice versa).

(2) Such a notice may be given only within 3 months of—

(a) being elected (or re-elected) as an MSP, or
(b) where the scheme member is not an MSP, being appointed (or re-appointed) as the holder of a qualifying office.

(3) The notified change has effect from the first day of the 3 month period within which the notice was given and—

(a) the Fund trustees must pay to the scheme member an amount equal to any excess of scheme member deductions deducted from the scheme member’s salary payments in respect of that period, or (as the case may be)
(b) the scheme member must pay any shortfall in scheme member contributions in respect of that period to the Fund trustees.

(4) If a scheme member fails to repay a shortfall, the Fund trustees may recover the shortfall by directing the person responsible for paying the scheme member’s salary to adjust subsequent scheme member contributions accordingly.

Relief from liability to make scheme member contributions

30 (1) An MSP member is to stop making scheme member contributions from MSP salary when he or she obtains sufficient reckonable service as an MSP to entitle him or her to the maximum annual MSP pension permitted by rule 38(2).

(2) Such an MSP member is to begin making scheme member contributions again only if his or her MSP salary increases.

(3) Those contributions are to be made—
   (a) only in respect of the amount by which the MSP salary is increased, and
   (b) at the rate which applied when the MSP member stopped making scheme member contributions in respect of his or her full MSP salary.

(4) Scheme member contributions are not to be made from the office-holder salary of an office-holder member whose reckonable service as an office-holder already entitles him or her to the maximum office-holder pension entitlement permitted by rule 39(4).

(5) Such an office-holder member is to begin making scheme member contributions again only if his or her office-holder salary increases.

(6) Those contributions are to be made—
   (a) only in respect of the amount by which the office-holder salary is increased, and
   (b) at the rate which applied when the office-holder member stopped making scheme member contributions in respect of his or her full office-holder salary.

(7) If—
   (a) the Fund trustees have accepted an individual’s application to buy added years, but
   (b) the individual has not yet paid for those added years in full,
the individual’s reckonable service as an MSP or office-holder is to be treated for the purposes of this rule as including the period by which his or her reckonable service will be increased on payment of the last instalment or lump sum.

Contributions when salary not drawn

31 The person responsible for paying the salary of a scheme member who chooses not to draw that salary (or any part of it) must—
   (a) deduct amount A from the funds available to pay the salary (or that part of it), and
   (b) pay that amount to the Fund trustees.

“Amount A” is an amount equal to the scheme member contributions which would have been deducted had that salary (or that part of it) been paid.
Contributions from the Scottish Consolidated Fund

32 (1) A sum must be paid into the Pension Fund from the Scottish Consolidated Fund in respect of each financial year.

(2) It is for the SPCB to determine the amount of each annual sum, after having regard to—
   (a) the scheme actuary’s recommended rate for future contributions (see rule 103(3)(c)), and
   (b) any advice from the Fund trustees on the rate of future contributions.

PART E
RECKONABLE SERVICE

Reckonable service as an MSP

33 (1) A period for which an MSP member makes scheme member contributions from salary payments in respect of MSP salary is a period of reckonable service as an MSP.

(2) An individual’s “reckonable service as an MSP” means the total of—
   (a) the period described in rule 33(1) or (if more than one) the total of such periods, and
   (b) any amount by which that period is increased under Part N (transfers) or Part O (added years).

Reckonable service as an office-holder

34 (1) A period for which an office-holder member makes scheme member contributions from salary payments in respect of office-holder salary is a period of reckonable service as an office-holder.

(2) An individual’s “reckonable service as an office-holder” means the total of—
   (a) the period described in rule 34(1) or (if more than one) the total of such periods, and
   (b) any amount by which that period is increased under Part N (transfers) or Part O (added years).

Total reckonable service

35 An individual’s “total reckonable service” is the total of any periods in which the individual obtains—
   (a) reckonable service as an MSP only under rule 33(1),
   (b) reckonable service as an office-holder only under rule 34(1), and
   (c) reckonable service as both an MSP and office-holder under both those rules.

Measuring reckonable service

36 A period of reckonable service is measured in years and fractions of a year (unless the contrary intention appears).
PART F

PENSIONS

Scheme pension

37 (1) A pension (a “scheme pension”) is to be paid to every individual who—
   (a) has reckonable service as an MSP or office-holder,
   (b) is aged 65 or over, and
   (c) is neither an MSP nor the holder of a qualifying office.

(2) Unless this scheme otherwise provides, the annual scheme pension payable to such an individual is an amount equal to the total of—
   (a) the annual MSP pension payable in accordance with rule 38, and
   (b) the annual office-holder pension payable in accordance with rule 39.

Amount of MSP pension

38 (1) The annual MSP pension payable to an individual is an amount equal to—

\[
\text{MSP’s final salary} \times \left( \frac{A}{50} + \frac{B}{40} \right)
\]

where—

“\(A\)” is the individual’s reckonable service as an MSP during which lower rate scheme member contributions were made, and

“\(B\)” is the individual’s reckonable service as an MSP during which higher rate scheme member contributions were made.

(2) Where an individual’s annual MSP pension (including any enhancement made by virtue of other scheme rules) exceeds the individual’s annual MSP pension cap, the annual MSP pension payable to the individual is to be reduced to the individual’s annual MSP pension cap.

An individual’s “annual MSP pension cap” is two-thirds of the individual’s final salary as an MSP (ignoring any reduction in final salary by virtue of section 82(2) of the Scotland Act 1998 (c.46)).

Amount of office-holder pension

39 (1) The annual office-holder pension payable to an individual is an amount equal to the total of the individual’s office-holder pension entitlements.

(2) An individual obtains an office-holder pension entitlement in respect of each period for which he or she holds a qualifying office.

(3) The amount of an office-holder pension entitlement for such a period is calculated as follows—

\[
\text{office-holder’s final salary in respect of period} \times \left( \frac{A}{50} + \frac{B}{40} \right)
\]
where—

“A” is the individual’s reckonable service as an office-holder accrued when holding the office concerned in respect of which the individual made lower rate scheme member contributions, and

“B” is the individual’s reckonable service as an office-holder accrued when holding the office concerned during which the individual made higher rate scheme member contributions.

(4) Where an individual’s annual office-holder pension (including any enhancement made by virtue of other scheme rules) exceeds the individual’s annual office-holder pension cap, the annual office-holder pension payable to the individual is to be reduced to the individual’s annual office-holder pension cap.

An individual’s “annual office-holder pension cap” is—

(a) two-thirds of the final salary amount used to calculate the individual’s office-holder pension entitlement, or

(b) where an individual has more than one such entitlement, two-thirds of the highest such final salary amount.

Duration of scheme pension

40(1) A scheme pension is payable from the day on which the individual concerned is first entitled to receive it.

(2) Pension payments need not begin unless the individual entitled to the scheme pension has—

(a) notified the Fund trustees that he or she wishes pension payments to begin, and

(b) given the Fund trustees such information as they may reasonably require—

(i) about the individual’s entitlement to any other pension,

(ii) to calculate their liability for a lifetime allowance charge or any other tax,

(iii) to make the payments.

This rule does not affect the date from which a scheme pension is payable.

(3) Pension payments are to continue for the rest of the individual’s life (see rule 41 for exception).

(4) Pension payments are to be made monthly in arrears (or in other instalments of no longer than one year as the Fund trustees may determine).

Suspension of scheme pension

41(1) Pension payments are to be suspended for any period during which the individual who would otherwise be entitled to them is—

(a) an MSP, or

(b) the holder of a qualifying office.

(2) When such a suspension ends—
(a) the individual concerned is to be treated from then on as if he or she had not been entitled to an ill-health pension, and

(b) a corresponding reduction is to be made—

(i) to the individual’s pension payments, and

(ii) to any added years obtained by virtue of rule 86(2)(a)).

**PART G**

**RETIREMENT LUMP SUMS**

*Right to commute pension into a lump sum*

42 (1) An individual may commute a portion of the individual’s scheme pension into a lump sum (a “retirement lump sum”) by giving notice (a “commutation notice”) to the Fund Trustees.

(2) A commutation notice is valid only if it—

(a) is given before the earlier of—

(i) the day on which a scheme pension is first paid to the individual,

(ii) the individual’s 75th birthday,

(b) specifies the proportion of the individual’s scheme pension that the individual wants to commute into a retirement lump sum, and

(c) provides the Fund trustees with such other information as they may reasonably require to—

(i) determine the amount payable, and

(ii) satisfy themselves that, if paid, the retirement lump sum would be a “pension commencement lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.29).

*Payment of retirement lump sum and corresponding reduction in pension*

43 (1) An individual who gives a valid commutation notice is to be paid a retirement lump sum of an amount equal to the lower of—

(a) the amount which the Fund trustees determine to be equivalent to the proportion of the individual’s scheme pension specified in the commutation notice, or

(b) the permitted maximum (construed in accordance with paragraph 2 of Schedule 29 to the Finance Act 2004 (c.12)).

(2) The annual scheme pension payable to an individual who is to be paid a retirement lump sum is to be reduced by an amount which the Fund trustees determine to be appropriate in consequence of the individual’s entitlement to the retirement lump sum.

(3) A determination of the Fund trustees’ for the purposes of this rule must be—

(a) certified by the scheme actuary, or

(b) made in accordance with guidance and tables prepared by the scheme actuary.
**Special rule for commutation by individual approaching the age of 75**

44 (1) This rule applies to an individual who—

(a) gives a valid commutation notice before reaching the age of 75, and

(b) would not (but for this rule) be entitled to be paid a scheme pension at that time by reason only of being a serving MSP or the holder of a qualifying office.

(2) Despite rule 37(1)(c)—

(a) an individual to whom this rule applies is to be entitled to be paid a scheme pension from the day before the member’s 75th birthday, but

(b) the amount of scheme pension so payable is to be nil until the individual is neither an MSP nor the holder of a qualifying office.

**Commuting trivial amounts**

45 (1) The Fund Trustees may pay a lump sum (a “one-off lump sum”) to an individual if the following conditions are met—

**Condition 1** The individual applies to the Fund trustees for payment of a one-off lump sum instead of a scheme pension.

**Condition 2** The Fund trustees are satisfied that, if paid, the one-off lump sum would be a “trivial commutation lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

(2) The amount of one-off lump sum to which an individual is entitled on any day is an amount equal to the value of the individual’s uncrystallised rights under the scheme on that day (as determined by the Fund trustees in accordance with section 212 of the Finance Act 2004 (c.12)).

(3) A determination of the Fund trustees must be—

(a) certified by the scheme actuary, or

(b) made in accordance with guidance and tables prepared by the scheme actuary.

(4) Payment of a one-off lump sum extinguishes the rights of all persons to receive scheme benefits in respect of the recipient.

**PART H**

**EARLY RETIREMENT**

**Early retirement**

46 (1) An individual is eligible to take early retirement if the individual is—

(a) 55 or over but is not yet 65, and

(b) neither an MSP nor the holder of a qualifying office.

(2) An eligible individual may take early retirement by giving notice (an “early retirement notice”) to the Fund Trustees.

(3) Despite rule 37(1), an individual who takes early retirement is entitled to be paid his or her scheme pension from—

(a) the date on which the early retirement notice is given, or
(b) such later date as the individual may specify in the early retirement notice.

(4) The annual scheme pension payable to an individual is to be reduced by the appropriate percentage.

“appropriate percentage” is calculated as follows—

\[(65 \text{ less individual’s age at retirement (in years)}) \times 4\]

(5) The reduction in scheme pension is to continue to have effect after the individual reaches the age of 65.

**PART I**

**ILL-HEALTH**

**Serious ill-health pension**

47 An individual is entitled to a serious ill-health pension if the Fund Trustees are satisfied that the following conditions are met—

**Condition 1** The individual resigns as or otherwise stops being an MSP or, as the case may be, the holder of a qualifying office as a direct consequence of a health condition.

**Condition 2** At that time, the individual would be entitled to a scheme pension but for the fact that the individual is not yet 65 years old.

**Condition 3** The individual applies to the Fund Trustees for a serious ill-health pension.

**Condition 4** The health condition prevents the individual from doing any gainful work.

**Condition 5** The health condition is expected to be permanent and to continue to prevent the individual from doing gainful work.

**Condition 6** The application is accompanied by evidence that a doctor is satisfied that conditions 4 and 5 are met.

**Ordinary ill-health pension**

48 An individual is entitled to an ordinary ill-health pension if the Fund Trustees are satisfied that the following conditions are met—

**Condition 1** The individual resigns as or otherwise stops being an MSP or, as the case may be, the holder of a qualifying office as a direct consequence of a health condition.

**Condition 2** At that time, the individual would be entitled to a scheme pension but for the fact that the individual is not yet 65 years old.

**Condition 3** The individual applies to the Fund Trustees for an ordinary ill-health pension.

**Condition 4** The health condition—

(a) prevents the individual from adequately performing the duties of an MSP or, as the case may be, the holder of a qualifying office, but
(b) does not prevent the individual from doing other gainful work.

**Condition 5** The health condition is expected to be permanent and to continue to prevent the individual from adequately performing the duties mentioned in condition 4(a).

**Condition 6** The application is accompanied by evidence that a doctor is satisfied that conditions 4(a) and 5 are met.

### Deferred pensioner’s ill-health pension

49 A deferred pensioner is entitled to a deferred pensioner’s ill-health pension if the Fund Trustees are satisfied that the following conditions are met—

**Condition 1** The deferred pensioner applies to the Fund Trustees for a deferred pensioner’s ill-health pension.

**Condition 2** The deferred pensioner is under 65.

**Condition 3** The deferred pensioner has stopped doing gainful work as a direct consequence of a health condition.

**Condition 4** At the time of stopping work the deferred pensioner would be entitled to a scheme pension but for the fact that the deferred pensioner is not yet 65 years old.

**Condition 5** The health condition prevents the deferred pensioner from doing gainful work.

**Condition 6** The health condition is expected to be permanent and to continue to prevent the deferred pensioner from doing gainful work.

**Condition 7** The application is accompanied by evidence that a doctor is satisfied that conditions 4 and 5 are met.

### Amount of serious ill-health pension

50 (1) Part F (Pensions) applies with the following modifications to an individual who is entitled to a serious ill-health pension and who has reckonable service as an MSP—

(a) the individual is to be treated as having been aged 65 on the relevant day,

(b) the individual’s reckonable service as an MSP is to be increased by a period equal to the period of reckonable service as an MSP that the individual would obtain if the individual were to be an MSP member from the relevant day until the individual’s 65th birthday,

(c) if the individual was a dual mandate MSP on the relevant day (or would have been had he or she been an MSP on that day), that increased period of reckonable service as an MSP is to be reduced by the same proportion as the MSP’s salary was (or would have been) reduced on that day,

(d) the individual is to be treated as having made scheme member contributions during that increased period of reckonable service as an MSP at the rate which applied to the individual on the relevant day, and

(e) the individual’s reckonable service as an office-holder (if any) is not increased.
(2) Part F (Pensions) applies with the following modifications to an individual who is entitled to a serious ill-health pension and who has reckonable service as an office-holder only—

(a) the individual is to be treated as having been aged 65 on the relevant day, and
(b) the amount of annual office-holder pension payable to the individual is to be increased by an amount equal to—

\[
A \times \frac{B}{C}
\]

where—

“A” is the annual salary payable to an MSP by virtue of section 81(1) of the Scotland Act on the relevant day,

“B” is the period to the period of reckonable service as an office-holder that the individual would have obtained if the individual had continued to hold a qualifying office from the relevant day until the individual’s 65th birthday, and

“C” is—

(i) if higher rate scheme member contributions were being made on the relevant day, 40,

(ii) if lower rate scheme member contributions were being made on the relevant day, 50.

(3) In this rule, “relevant day” means the day on which the individual resigned as or otherwise stopped being, an MSP or, as the case may be, the holder of a qualifying office.

Amount of ordinary ill-health pension

Rule 37 applies to an individual who is entitled to an ordinary ill-health pension as if the individual reached the age of 65 on the day on which the individual resigned as or otherwise stopped being an MSP or, as the case may be, the holder of a qualifying office.

Amount of deferred pensioner’s ill-health pension

Rule 37 applies to an individual who is entitled to a deferred pensioner’s ill-health pension as if the individual reached the age of 65 on the day on which the application for the pension was made.

Review of ill-health pension entitlments

(1) The Fund Trustees may review an individual’s entitlement to an ill-health pension at any time before the individual reaches the age of 65 (and may carry out such a review at regular intervals determined by them).

(2) The Fund Trustees may require an individual whose entitlement is being reviewed to provide evidence from a doctor on the individual’s state of health.
(3) The Fund Trustees may, if satisfied following a review that the individual’s state of health no longer prevents the individual from doing gainful work, determine that the individual—
   (a) is no longer to be entitled to an ill-health pension, or
   (b) is to be entitled to an ordinary ill-health pension instead of a serious ill-health pension (where they remain satisfied that the individual’s state of health still prevents the individual from adequately performing the duties of an MSP or a holder of a qualifying office).

(4) The Fund trustees may determine that an individual who refuses to be examined in accordance with rule 54, or who otherwise fails to co-operate with a review, is no longer to be entitled to an ill-health pension.

(5) If the Fund trustees make a determination under this rule—
   (a) pension payments are to stop or, as the case may be, be reduced from the date of the determination, and
   (b) the scheme is to operate in relation to the individual from then onwards as if the individual had not been entitled to an ill-health pension or, as the case may be, to a serious ill-health pension.

Medical examinations

54 (1) The Fund Trustees may require—
   (a) an applicant for an ill-health pension, or
   (b) an individual whose entitlement to an ill-health pension is being reviewed, to be examined by a doctor nominated by them.

(2) The cost of any doctor’s examination is to be borne by the Fund Trustees or the examinee (as the Fund trustees may determine).

Ill-health lump sums: life expectancy of less than one year

55 (1) An individual is entitled to be paid a lump sum (an “ill-health lump sum”) instead of a scheme pension if the following conditions are met—

   Condition 1 The individual applies to the Fund trustees for an ill-health lump-sum.

   Condition 2 The individual is neither an MSP nor the holder of a qualifying office.

   Condition 3 The individual has reckonable service as an MSP or as an office-holder.

   Condition 4 The Fund trustees are otherwise satisfied that, if paid, the ill-health lump sum will be a “serious ill-health lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.29).

(2) An ill-health lump sum is to be equal to 5 times the annual scheme pension—
   (a) in the case of an applicant aged 65 or over, which would otherwise be payable to the individual.
(b) in the case of an applicant aged under 65, which would be payable if the individual became entitled to a serious ill-health pension from the day on which the ill-health lump sum is payable.

(3) Payment of an ill-health lump sum extinguishes all the recipient’s rights to receive scheme benefits.

PART J
SURVIVING PARTNERS AND CHILDREN
CHAPTER 1
SCHEME PENSION ENTITLEMENT

Meaning of “scheme pension entitlement”

56 (1) References in this Part to a deceased individual’s “scheme pension entitlement” are to be construed in accordance with this rule.

(2) The “scheme pension entitlement” of an individual who died while being a scheme member—

(a) if the individual died when aged 65 or over, is the annual amount of scheme pension which would have been payable to the deceased if he or she had not been an MSP or the holder of a qualifying office on the day on which he or she died, or

(b) if the individual died when aged under 65, is the annual amount of scheme pension which would have been payable to the deceased if the deceased had become entitled to (and had been paid) a serious ill-health pension on the day on which he or she died.

(3) The “scheme pension entitlement” of an individual who died while being a deferred pensioner is the annual amount of scheme pension which would have been payable to the deceased if he or she had been (on the day on which he or she died)—

(a) aged 65, and

(b) neither an MSP nor the holder of a qualifying office.

(4) The “scheme pension entitlement” of an individual who died while being a scheme pensioner is—

(a) where the deceased received a retirement lump sum, the annual amount of scheme pension which would have been payable to the deceased immediately before he or she died had the pension not been reduced under rule 43(2),

(b) where the deceased did not receive a retirement lump sum, the annual amount of scheme pension being paid to the deceased immediately before he or she died.

(5) The “scheme pension entitlement” of a deceased individual whose entitlement to scheme benefits was extinguished by rule 55(3) before he or she died is the annual amount of scheme pension which would have been payable to the deceased if—

(a) the ill-health lump sum had not been paid to the deceased,

(b) the deceased had stopped being a scheme member on the day on which the ill-health lump sum was paid,

(c) the deceased had become entitled to a scheme pension on that day, and

(d) where that day was before the deceased’s 65th birthday—
the deceased had been entitled to a serious ill-health pension from that day
(see rule 47), and

(ii) the deceased’s scheme pension had been enhanced and paid accordingly
(see rule 50).

(6) A deceased individual who was a scheme pensioner when he or she died only because of
rule 44(2) is to be treated for the purposes of this rule as having been a deferred
pensioner at that time.

CHAPTER 2
PARTNER’S PENSION ETC.

Partner

57 (1) “Partner”, in relation to any deceased individual, means—

(a) the individual’s spouse or civil partner, or

(b) where no such person survives the deceased, any individual falling within this
rule.

(2) An individual falls within rule 57(1)(b) if—

(a) the deceased nominated the individual as his or her partner by giving notice to the
Fund trustees at least 6 months before death, and

(b) the Fund trustees are satisfied—

(i) that the individual and the deceased lived together as if they were husband
and wife or, as the case may be, civil partners for the period of 2 years
which immediately preceded the deceased’s death,

(ii) that neither the individual nor the deceased lived with any other person in
such a relationship (or with a spouse or civil partner) during that period,

(iii) that, during that period—

(A) the individual was financially dependant on the deceased, or

(B) the individual’s financial relationship with the deceased was one of
mutual dependence, and

(iv) that the individual and the deceased were not, immediately before the
deceased died, prevented by law from either marrying or becoming civil
partners.

Partner’s pension

58 (1) A pension (a “partner’s pension”) is to be paid to a surviving partner of any individual
who dies while being—

(a) a scheme member,

(b) a deferred pensioner, or

(c) a scheme pensioner.

(2) The annual partner’s pension so payable is 5/8ths of the deceased’s scheme pension
entitlement.
Enhancement of initial partner’s pension

59 (1) This rule applies where Amount A is less than Amount B for any part of the 3 month period following the death of a scheme member or a scheme pensioner.

(2) Amount A is the total of—
   (a) the amount of partner’s pension to be paid to the surviving partner for the 3 month period (or the relevant part of it), and
   (b) the amount of children’s pension to be paid to the surviving partner for the 3 month period (or the relevant part of it) on condition that the partner applies it for the benefit of an eligible child.

(3) Amount B is—
   (a) where the deceased was a scheme member, the amount of the salary payments which would have been paid for the 3 month period (or the relevant part of it) if the deceased had lived and had continued to be paid the same salary, or
   (b) where the deceased was a scheme pensioner, the amount of scheme pension which would have been payable for the 3 month period (or the relevant part of it) if the deceased had lived.

(4) Where this rule applies, the partner’s pension is to be increased by the difference between amount A and amount B.

Duration of partner’s pension

60 (1) A partner’s pension is payable from the day after the day on which the deceased partner died.

(2) Pension payments need not begin unless the individual entitled to them has given the Fund trustees—
   (a) notice of that entitlement, and
   (b) such information as they may reasonably require—
      (i) about the surviving partner’s entitlement to any other pension,
      (ii) to calculate their liability for a lifetime allowance charge or any other tax,
      (iii) to make the payments.

This rule does not affect the date from which a partner’s pension is payable.

(3) Pension payments are to continue for the rest of the surviving partner’s life.

(4) Pension payments are to be made monthly in arrears (or in such other instalments of no longer than one year as the Fund trustees may determine).

Partner’s trivial lump sum

61 (1) The Fund trustees may pay a lump sum (a “partner’s trivial lump sum”) to an individual who is entitled to a partner’s pension if the following conditions are met—

   Condition 1 The individual applies to the Fund trustees for payment of a partner’s trivial lump sum instead of a partner’s pension.
**Condition 2**
No payment relating to the deceased has been made to the individual by way of—

(a) a partner’s pension, or

(b) a death in service lump sum.

**Condition 3**
The individual is not entitled to receive pension payments under rule 69.

**Condition 4**
The Fund trustees are satisfied that, if paid, the partner’s trivial lump sum would be a “trivial commutation lump sum death benefit” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.29).

(2) The amount of a partner’s trivial lump sum is to be an amount equal to the value of the individual’s scheme benefits (as determined by the Fund trustees).

(3) Such a determination must be—

(a) certified by the scheme actuary, or

(b) made in accordance with guidance or tables prepared by the scheme actuary.

(4) Payment of a partner’s trivial lump sum extinguishes all the individual’s rights to receive scheme benefits in respect of the deceased.

**CHAPTER 3**

**CHILDREN’S PENSIONS**

*Children’s pensions*

62 (1) A pension (a “children’s pension”) is to be paid in respect of any period during which there are eligible children of any individual who dies while being—

(a) a scheme member,

(b) a deferred pensioner, or

(c) a scheme pensioner.

(2) The annual children’s pension so payable is—

(a) when a partner’s pension is also payable, amount A,

(b) when no partner’s pension is payable, amount B.

(3) Amount A is—

(a) where there is one eligible child, 1/4 of the deceased’s scheme pension entitlement.

(b) where there are two or more eligible children, 3/8ths of deceased’s scheme pension entitlement.

(4) Amount B is—

(a) where there is one eligible child entitled to receive the pension, 5/16ths of the deceased’s scheme pension entitlement.

(b) where there are two or more eligible children entitled to receive the pension, 5/8ths of deceased’s scheme pension entitlement.
Eligible children

63 (1) A “child”, in relation to a deceased individual, includes—

(a) an adopted child, and

(b) a stepchild who, when the deceased died, was—

(i) financially dependent on the deceased, or

(ii) dependent on the deceased because of physical or mental impairment.

(2) A deceased’s child is an “eligible child” for any period starting on or after the date of the deceased’s death during which any of the following conditions are met—

Condition 1  The child is born and aged 17 or under.

Condition 2  The child—

(a) is aged over 17 but under 23,

(b) was, when the deceased died—

(i) financially dependant on the deceased, or

(ii) aged 17 or under, and

(c) would, in the opinion of the Fund trustees, be financially dependant on the deceased had the deceased survived.

Condition 3  The child—

(a) was dependant on the deceased because of physical or mental impairment when he or she died, and

(b) would, in the opinion of the Fund trustees, still be so dependant had the deceased survived.

Payment of children’s pension

64 (1) A children’s pension is payable—

(a) from the start of the first period in respect of which rule 62(1) requires it to be paid, and

(b) during the rest of that period (and any subsequent period in respect of which that rule requires it to be paid).

(2) It is for the Fund trustees to decide to who a children’s pension (or any part of it) is to be paid.

(3) Where a children’s pension (or any part of it) is paid to a person other than the eligible children in respect of whom it is paid (the “intended beneficiaries”), the recipient must—

(a) apply such proportion of the amount paid as the Fund trustees may direct for the benefit of each intended beneficiary, or

(b) where no direction is made, apply the amount paid (without discretion) for the benefit of the intended beneficiaries.

(4) If the recipient does not so apply a pensions payment (or any part of it), the Fund trustees may—
(a) recover the misappropriated amount from the recipient, and
(b) take such action as they think fit in order to ensure that any recovered amount is
applied for the benefit of the intended beneficiary.

For example, the Fund trustees may deduct an amount equal to the misappropriated
amount from any future amount to be paid to the recipient under the scheme.

(5) The Fund trustees may withhold payment of a children’s pension (or any part of it) if
they are not satisfied that arrangements are in place to ensure that it will be applied for
the benefit of the intended beneficiary.

Any withheld amounts are to be paid as soon as the Fund trustees are satisfied that such
arrangements are in place.

(6) Pension payments need not begin unless the Fund trustees have received—
(a) notice of an eligible child’s entitlement, and
(b) such information as they may reasonably require—
   (i) about the eligible child’s entitlement to any other pension,
   (ii) to calculate their liability for a lifetime allowance charge or any other tax,
   (iii) to make the payments.

This rule does not affect the date from which a children’s pension is payable.

(7) Pension payments are to be made monthly in arrears (or in other instalments of no
longer than one year as the Fund trustees may determine).

PART K
LUMP SUM DEATH BENEFITS

Death in service lump sum

65 (1) The Fund trustees may pay a lump sum (a “death in service lump sum”) on the death of
any scheme member—
   (a) to the deceased’s nominee, or
   (b) where there is no such nominee, to the deceased’s personal representatives.

But they may do so only if satisfied that, if paid, the death in service lump sum would be
a “defined benefits lump sum death benefit” for the purposes of Part 1 of Schedule 29 to
the Finance Act 2004 (c.12).

(2) A death in service lump sum is to be the greater of—
   (a) 4 times the scheme member’s annual salary at the time of death, or
   (b) the scheme member contributions, with interest, paid before death (exclusive of
       any short service refund).

Nominations for death in service lump sum

66 (1) A scheme member may nominate any person as his or her nominee by giving notice to
the Fund trustees in such form as they may require.

Such a nomination may—
   (a) nominate 2 or more persons, and
(b) where it does so, may specify the proportion of any death in service lump sum which is to be paid to each nominee.

(2) A scheme member may withdraw a nomination at any time by giving notice to the Fund trustees in such form as they may require.

(3) A nomination in force when the scheme member dies is invalid in so far as—
   (a) it nominates an individual who was the scheme member’s partner when the nomination was made but was not his or her partner when he or she died, or
   (b) the Fund trustees consider that it would not be reasonably practicable to pay a death in service lump sum to a nominee.

(4) The proportion of any death in service lump sum which would, but for rule 66(3), have been paid to invalidated nominees is to be paid to the deceased’s personal representatives.

Deferred pensioner lump sum

67 (1) A lump sum (a “deferred pensioner lump sum”) is to be paid to the personal representatives of a deferred pensioner who dies (aged under 65) leaving no—
   (a) surviving partner, or
   (b) surviving child who, at the time of death, is an eligible child or is unborn.

But such a payment may be made only if the Fund trustees are satisfied that, if paid, the deferred pensioner lump sum would be a “defined benefits lump sum death benefit” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

(2) A deferred pensioner lump sum is to be equal to the amount of scheme member contributions, with interest, made by a deferred pensioner.

PART L

5 YEAR GUARANTEE

Initial pension period

68 A scheme pensioner’s “initial pension period” is the period of 5 years beginning on the day on which he or she is first entitled to receive a scheme pension (not counting any intervening period of less than 5 years in which pension payments are suspended under rule 41 or reduced under rule 44).

Guaranteed pension for surviving partner

69 (1) Where a scheme pensioner dies during his or her initial pension period and leaves a surviving partner—
   (a) the surviving partner’s entitlement to be paid a partner’s pension is suspended for the remainder of the initial pension period, and
   (b) the scheme member’s scheme pension is to continue to be paid for the remainder of his or her initial pension period (but is to be paid to the surviving partner instead of to the scheme member).

(2) Where a children’s pension is payable in respect of the deceased, the pension payable under this rule is to be reduced—
(a) for the 3 months following death, by the amount of children’s pension payable to
the surviving partner during that period, and
(b) for the remainder of the initial pension period, by the total amount of children’s
pension payable during that period.

(3) Where the surviving partner dies during the deceased’s initial pension period, the
pension payable under this rule is to be paid to the surviving partner’s personal
representatives.

Guaranteed lump sum where scheme pensioner dies aged under 75 with no surviving partner

70 (1) A lump sum (a “guaranteed lump sum”) is to be paid to the personal representatives of
any scheme pensioner who—
   (a) dies before the end of his or her initial pension period,
   (b) was aged under 75 when he or she died, and
   (c) does not leave a surviving partner.

But such a payment may be made only if the Fund trustees are satisfied that, if paid, the
guaranteed lump sum would be a “defined benefits lump sum death benefit” for the
purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

(2) A guaranteed lump sum is to be equal to—
   (a) the amount of scheme pension which would have been paid to the deceased from
time of death until the end of his or her initial pension period, less
   (b) the amount of children’s pension (if any) which the Fund trustees consider likely
to be payable from that time until the end of that period.

(3) This rule applies if the Fund trustees consider that a guaranteed lump sum should have
been more than the amount paid because they have revised their estimate of the amount
of children’s pension which they consider likely to be payable.

Where this rule applies, an additional lump sum is to be paid to the scheme member’s
personal representatives of an amount equal to the difference between the amount paid
and the guaranteed lump sum which the Fund trustees consider should have been paid.

Guaranteed pension where scheme pensioner dies aged 75 or over with no surviving partner

71 (1) Where a scheme pensioner—
   (a) dies before the end of his or her initial pension period,
   (b) was aged 75 or over when he or she died, and
   (c) does not leave a surviving partner,
the scheme member’s scheme pension is to continue to be paid for the remainder of his
or her initial pension period (and is to be paid to the scheme member’s personal
representatives).

(2) A pension payable under this rule is to be reduced by the amount of any children’s
pension payable during the same period.
PART M

SHORT SERVICE REFUNDS

Payment of short service refunds

72 (1) A sum (a “short service refund”) is to be paid to an individual if the following conditions are met—

Condition 1 The individual is no longer a scheme member.

Condition 2 The individual is not a scheme pensioner.

Condition 3 The individual has fewer than 3 months total reckonable service.

Condition 4 The individual has applied to the Fund trustees for payment of a short service refund.

Condition 5 The Fund trustees are satisfied that, if paid, the full amount of the short service refund will be a “short service refund lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

(2) A short service refund is to be equal to—

(a) the amount of scheme member contributions paid by the individual, less

(b) the amount of any contributions equivalent premium paid in respect of the individual (see section 55(2) of the Pensions Act 1993 (c.48)).

Extinction of scheme benefits

73 Payment of a short service refund extinguishes the rights of all persons to receive scheme benefits in respect of the recipient.

PART N

TRANSFERS

CHAPTER 1

TRANSFERS OUT

Statement of entitlement

74 (1) An individual’s “transferable sum” is the amount of cash equivalent set out in a statement of entitlement which the Fund trustees provide to the individual under section 93A of the Pension Schemes Act 1993 (c.48) (but see rules 76 to 78 which provide for enhancement and reduction of transferable sums).

(2) That section applies for the purposes of this scheme in relation to an individual who—

(a) is aged 64 or over, and

(b) stopped being a scheme member no longer than 6 months ago,

in the same way as it applies in relation to an individual aged under 64.
Transfers to other pension schemes

An individual’s transferable sum must be transferred from the Pension Fund if the following conditions are met—

**Condition 1** The individual—
(a) has been but is no longer a scheme member, and
(b) is not a scheme pensioner.

**Condition 2** The individual has total reckonable service of at least 3 months.

**Condition 3** The Fund trustees have given the individual a statement of entitlement in pursuance of section 93A of the Pension Schemes Act 1993 (c.48).

**Condition 4** The individual gives the Fund trustees notice (a “transfer-out notice”)—
(a) specifying the way in which the transferable sum is to be transferred, and
(b) setting out any other information which the Fund trustees may reasonably require in relation to the transfer.

**Condition 5** The transfer-out notice is given before the later of—
(a) the day falling 6 months after the individual stopped being a scheme member, and
(b) the individual’s 64th birthday.

**Condition 6** The transfer-out notice is given within 3 months of the guarantee date relating to the statement of entitlement (see section 93A(2) of the Pension Schemes Act 1993 (c.48)).

**Condition 7** The way in which the transferable sum is to be transferred is permitted by section 95(2) of the Pension Schemes Act 1993 (c.48).

**Condition 8** The transfer—
(a) would be a recognised transfer for the purposes of section 169 of the Finance Act 2004 (c.12), and
(b) is not prohibited by any other enactment.

**Condition 9** The transferable sum has been certified by the scheme actuary.

Enhancement of transferable sum

A transferable sum of less than amount A is to be increased to amount A

**Amount A**, in relation to an individual, means the total of—
(a) the individual’s scheme member contributions,
(b) any transfer-in sums paid into the Pension Fund in relation to the individual, and
(c) any instalments or lump sums paid by the individual to buy added years.
Reduction of transferable sum

Where section 96(2) of the Pensions Act 1993 (c.48) applies in relation to a transfer under rule 75, the Fund trustees may reduce the transferable sum by an amount equal to the proportion of that sum which represents the individual’s accrued rights—

(a) to a guaranteed minimum pension, or
(b) attributable to service in contracted-out employment (within the meaning of section 8 of the Pensions Scheme Act 1993 (c.48)).

Transfer payment

(1) Where rule 75 requires a transfer to be made, the transferable sum is to be paid from the Pension Fund in the way specified in the transfer-out notice by no later than—

(a) the individual’s 65th birthday, or
(b) if later, the day falling 6 months after the transfer notice was given.

(2) If payment is made later than 6 months after the guarantee date relating to the statement of entitlement by reference to which the transferable sum was determined, the transferable sum is to be increased by—

(a) the amount, if any, by which it falls short of what the transferable sum would have been if the guarantee date had been the date of payment, or
(b) if greater, the amount of interest on the transferable sum calculated on a daily basis over the period from the guarantee date to the date of payment (calculated at an annual rate of 1% above the Bank of England base rate).

Time limits

The Fund trustees may extend any time limit set out in this Chapter in relation to a particular transfer if they think it reasonable to do so.

Extinction of scheme benefits

A transfer under rule 75 extinguishes the rights of all persons to receive scheme benefits in respect of the individual (other than any accrued rights in respect of which the transferable sum was reduced under rule 77).

CHAPTER 2

TRANSFERS IN

A sum (a “transfer-in sum”) may be paid from another pension scheme into the Pension Fund in relation to a scheme member if the following conditions are met—

**Condition 1** The scheme member gives the Fund trustees notice (a “transfer-in notice”) specifying—

(a) the amount of the transfer-in sum, and
(b) the pension scheme which is to make the payment.

**Condition 2** The transfer-in notice is given before the scheme member’s 64th
birthday.

**Condition 3** The scheme member has at least 3 months total reckonable service.

**Condition 4** The pension scheme which is to make the payment is—
(a) registered for the purposes of Part 4 of the Finance Act 2004 (c.12) (see section 150 of that Act), or
(b) a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169 of that Act).

**Condition 5** The transfer-in sum is the amount, if any, which requires to be applied in relation to any entitlement to a guaranteed minimum pension arising in respect of the transfer-in sum.

**Condition 6** The transfer is not prohibited by rule 83.

**Condition 7** Any condition imposed by the Fund trustees in relation to the transfer is met to their satisfaction.

**Effect of transfer in**

82 (1) The reckonable service of any scheme member in respect of whom a transfer-in sum is paid into the Pension Fund is to be increased as follows—
(a) where the scheme member is an MSP member, the scheme member’s reckonable service as an MSP is to be increased by an amount determined by the Fund trustees,
(b) where the scheme member is an office-holder member but not an MSP—
   (i) the scheme member’s reckonable service as an office-holder is to be increased by an amount determined by the Fund trustees, and
   (ii) that increase is, for the purposes of rule 39(3), to be attributed to the period in office being served when the transfer-in sum is paid.

(2) The increased period of reckonable service is, for the purposes of rule 38(1) or, as the case may be, 39(3), to be treated as a period during which higher rate scheme member contributions were made.

(3) The Fund trustees must determine the amount by which a scheme member’s reckonable service is to be so increased—
(a) as at the date on which the transfer-in sum is paid into the Fund, and
(b) in accordance with guidance and tables prepared by the scheme actuary.

**Limitation on transfers in**

83 (1) A transfer-in sum is not to be paid if the Fund trustees consider that the corresponding increase in reckonable service, when taken with the scheme member’s anticipated reckonable service, would (but for rule 38(2) or 39(4)) entitle the scheme member to—
(a) an annual MSP pension of more than the individual’s annual MSP pension cap, or
(b) an annual office-holder pension of more than the individual’s annual office-holder pension cap.
(2) An applicant’s “anticipated reckonable service” is the reckonable service as an MSP or, as the case may be, office-holder which the scheme member would obtain if he or she—

(a) continued as an MSP member (and continued making scheme member contributions at the same rate) until the next ordinary general election day, or (as the case may be)

(b) continued to hold the same office and to be an office-holder member (and continued making scheme member contributions at the same rate) until the next ordinary general election day (or such other day as the Fund trustees may determine).

PART O
ADDED YEARS

Added years

84 (1) A scheme member may increase his or her reckonable service by buying added years in accordance with this Part.

(2) Added years can be bought as years and as fractions of years.

(3) An individual who is an MSP member may apply to buy added years in respect of reckonable service as an MSP only.

(4) An individual who is an office-holder member but not an MSP may apply to buy added years in respect of reckonable service as an office-holder only.

Buying added years by instalments

85 (1) The Fund trustees may accept a scheme member’s application to buy added years by monthly instalments payable if the following conditions are met—

**Condition 1** The application states the number of added years which the applicant wishes to buy.

**Condition 2** The application states whether the applicant wishes to pay instalments for a period ending on—

(a) his or her 65th birthday, or

(b) the next ordinary general election day.

**Condition 3** The applicant has satisfied the Fund trustees that he or she is in good health.

**Condition 4** The applicant has given the Fund trustees any information that they reasonably require in relation to the application.

**Condition 5** Rule 89 does not require the Fund trustees to reject the application.

(2) An accepted application is irrevocable.

(3) Instalments are payable by the scheme member from the first day of the month following acceptance until the end of the period for which instalments are payable.

(4) The amount of the instalments is to be determined—
(a) by the scheme actuary, or
(b) by the Fund trustees in accordance with guidance or tables prepared by the scheme actuary.

(5) On payment of the last instalment, the scheme member’s reckonable service as an MSP or, as the case may, as an office-holder is increased by the number of added years bought.

(6) The increased period of reckonable service is, for the purposes of rule 38(1) or, as the case may be, 39(3), to be treated as a period during which higher rate scheme member contributions were made.

(7) Where added years are bought by an office-holder member who is not an MSP, the increase in reckonable service is, for the purposes of rule 39(3), to be attributed to the period in office being served when the added years are bought.

**Interruption of service**

86 (1) This rule applies—
   (a) where an MSP member buying added years by monthly instalments stops being an MSP before paying the last instalment, and
   (b) where an office-holder member (who is not an MSP) buying added years by monthly instalments stops holding his or her current office (or becomes an MSP) before paying the last instalment.

(2) Where this rule applies no more instalments are payable and the individual’s reckonable service as an MSP or, as the case may be, office-holder is increased—
   (a) where the individual died or left the scheme in circumstances entitling him or her to a serious ill-health pension, by the number of added years by which it would have increased if all the instalments had been paid, or
   (b) where the individual leaves the scheme in any other circumstance, by a number of added years calculated as follows—

\[
A \times \frac{B}{C}
\]

where—

“A” is the number of added years the individual applied to buy,

“B” is the period (in days) in respect of which instalments have been paid, and

“C” is the period (in days) for which instalments would have been paid had the individual remained in the scheme continuously.

**Resumption of service as MSP member**

87 (1) This rule applies where—
   (a) an MSP member’s application to buy added years by monthly instalments is accepted by the Fund trustees but the individual concerned stops being an MSP member (otherwise than in circumstances entitling him or her to a serious ill-health pension) before paying the last instalment,
(b) the individual subsequently rejoins the scheme as an MSP member before the end of the period for which instalments were originally payable, and

(c) the individual, within 3 months of so rejoining, notifies the Fund trustees of his or her intention to resume paying instalments.

(2) Where this rule applies—

(a) instalments (of the same amount as before) are payable from the day on which the individual rejoined the scheme until the end of the period for which instalments were originally payable,

(b) the individual’s reckonable service as an MSP is reduced by the amount by which it was previously increased under rule 86(2), and

(c) when the last instalment is paid (or, if earlier, when the individual next leaves the scheme), the individual’s reckonable service as an MSP is increased by a number of added years calculated as follows—

\[
A \times \frac{B}{C}
\]

where—

“A” is the number of added years the individual applied to buy,

“B” is the total of the periods (in days) before and after the break in service in respect of which instalments have been paid, and

“C” is the period (in days) for which instalments would have been paid had the individual remained in the scheme continuously.

Buying added years by lump sum

88 (1) The Fund trustees may accept a scheme member’s application to buy added years by lump sum if the following conditions are met.

**Condition 1** The application states the number of added years which the applicant wishes to buy.

**Condition 2** The applicant has satisfied the Fund trustees that he or she is in good health.

**Condition 3** The applicant has given the Fund trustees any information that they reasonably require in relation to the application.

**Condition 4** Rule 89 does not require the Fund trustees to reject the application.

(2) The lump sum is payable by the scheme member during the period of 6 months following acceptance (and the right to buy added years in pursuance of an accepted application is extinguished at the end of that period).

(3) The amount of the lump sum is to be determined by the Fund trustees by reference to the MSP’s salary on the day he or she applied to buy added years.

(4) Such a determination must be—

(a) certified by the scheme actuary, or
(b) made in accordance with guidance or tables prepared by the scheme actuary.

(5) On payment of the lump sum, the scheme member’s reckonable service as an MSP or, as the case may be, as an office-holder is increased by the number of added years bought.

(6) The increased period of reckonable service is, for the purposes of rule 38(1) or, as the case may be, 39(3), to be treated as a period during which higher rate scheme member contributions were made.

(7) Where added years are bought by an office-holder member who is not an MSP, the increase in reckonable service is, for the purposes of rule 39(3), to be attributed to the period in office being served when the added years are bought.

**Limitations on buying added years**

89 (1) The Fund trustees must reject an application to buy added years if the corresponding increase in reckonable service, when taken with the applicant’s anticipated reckonable service, would (but for rule 38(2) or 39(4)) entitle the applicant to—

(a) an annual MSP pension of more than the individual’s annual MSP pension cap, or

(b) an annual office-holder pension of more than the individual’s annual office-holder pension cap.

(2) An applicant's “anticipated reckonable service” is the reckonable service as an MSP or, as the case may be, office-holder which the applicant would obtain if he or she—

(a) continued as an MSP member (and continued making scheme member contributions at the same rate) until—

(i) where applying to buy by monthly instalments, the end of the period for which instalments are payable, or

(ii) where applying to buy by lump sum, the next ordinary general election day, or

(b) continued to hold the same office and to be an office-holder member (and continued making scheme member contributions at the same rate) until—

(i) where applying to buy by monthly instalments, the end of the period for which instalments are payable, or

(ii) where applying to buy by lump sum, the next ordinary general election day (or such other day as the Fund trustees may determine).

(3) The Fund trustees must reject an application to buy added years if they consider—

(a) that an annual allowance charge may arise under section 227 of the Finance Act 2004 (c.12) in respect of the applicant in any tax year in which an instalment or lump sum would be payable if the application were accepted,

(b) that a lifetime allowance charge may arise under section 214 of the Finance Act 2004 (c.12) in respect of the applicant (or may so arise if the application were accepted), or

(c) that the total of—

(i) the amount which the applicant would pay for added years in any tax year, and

(ii) the amount of scheme member contributions to be made by the applicant in that year,
would exceed 20% of the salary payments to be made to the applicant in that year.

Multiple applications

90 The Fund trustees may accept more than one application by a scheme member to buy added years by instalment or lump sum (and may, in particular, accept two or more applications to buy added years by instalments payable in overlapping periods).

PART P

PENSION SHARING

Pension credit members

91 (1) A “pension credit member” is an individual on whom rights are conferred by the Fund trustees in accordance with paragraph 1(2) of Schedule 5 to the Welfare Reform and Pensions Act 1999 (c.30).

(2) It is for the Fund trustees to determine the benefits to which a pension credit member is to be entitled.

But those benefits may consist only of—

(a) a right to be paid a pension from the age of 65,

(b) a right to take early retirement when aged between 60 and 65 and accordingly to be paid a reduced pension,

(c) a right to be paid a lump sum instead of a pension where the member has not yet received a pension and is not expected to live for longer than one year because of a health condition,

(d) a right to be paid a lump sum instead of a pension where that lump sum would be a trivial commutation lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12),

(e) where a pension credit member dies within 5 years of first receiving a pension, a right to have the pension paid to a surviving partner, dependant children or personal representatives for the remainder of the 5 year period,

(f) where a pension credit member dies before first receiving a pension, a right to have a lump sum paid to a surviving partner, dependant children or personal representatives of an amount equal to 25% of the cash equivalent of the benefits attributable to the corresponding pension credit (within the meaning of Chapter 4 of Part 4 to the Pension Schemes Act 1993 (c.48)).

(3) An individual’s benefits as a pension credit member are to be provided separately from any other benefits to which the individual may be entitled under the scheme.

(4) A rule which extinguishes an individual’s right to receive scheme benefits on being paid a lump sum does not extinguish any separate rights which the individual may have to receive benefits as a pension credit member (or as a surviving partner, dependant child or personal representative of such a member).

Pension debit members

92 (1) A “pension debit member” is an individual whose scheme benefits have been reduced under section 31 of the Welfare Reform and Pensions Act 1999 (c.30).
(2) When calculating a deceased individual’s “scheme pension entitlement” for the purposes of Chapter 3 of Part J (see rule 56), any reduction of the deceased’s scheme benefits by way of a pension debit is to be ignored.

(3) A pension debit member may not replace scheme benefits by buying added years which the member would not have been able to buy had those benefits not been reduced.

(4) This rule applies for the purposes of calculating the amount of any death in service lump sum or deferred pensioner lump sum payable in respect of a pension debit member.

(5) The proportion of scheme member contributions attributable to the period before the pension debit member’s scheme benefits became subject to the pension debit is to be reduced by the percentage by which those benefits were reduced.

Part 4 of the Welfare Reform and Pensions Act 1999 (c.30) sets out—

(a) when a pension debit member’s scheme benefits become subject to a pension debit (see sections 28 and 29 of that Act), and

(b) the percentage by which those benefits are to be reduced (see section 31 of that Act).

Death of ex-partner before discharge of pension credit liability

93 (1) This rule applies where an individual entitled to a pension credit (see section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c.30)) dies before the Fund trustees have discharged their liability in respect of that credit.

(2) Where this rule applies, the Fund trustees may pay a lump sum to the individual’s personal representatives of any amount they think fit (up to a maximum of 25% of the pension credit).

PART Q

DUAL MANDATE MSPS

Dual mandate MSPs

94 A “dual mandate MSP” is a serving MSP whose salary is reduced under section 82 of the Scotland Act 1998 (c.46).

Pension reduction for dual mandate MSPs

95 The following adjustments are to be made when doing the calculation set out in rule 38(1) in respect of any individual who was a dual mandate MSP during any period in which the individual was an MSP member—

(a) any reduction in final salary by virtue of section 82(2) of the Scotland Act 1998 (c.46) is to be ignored,

(b) when determining A, any period of reckonable service as an MSP in respect of which the individual—

(i) made lower rate scheme member contributions, and

(ii) was a dual mandate MSP,

is to be reduced by the same proportion as the MSP’s salary was reduced during that period by virtue of section 82(2) of the Scotland Act 1998 (c.46), and
(c) when determining B, any period of reckonable service as an MSP in respect of which the individual—

(i) made higher rate scheme member contributions, and

(ii) was a dual mandate MSP,

is to be reduced by the same proportion as the MSP’s salary was reduced during that period by virtue of section 82(2) of the Scotland Act 1998 (c.46).

PART R

TAXES

2004 Act terms

96 In this Part—

“the 2004 Act” means the Finance Act 2004 (c.12),

“event” means a benefit crystallisation event listed in the table in section 216 of the 2004 Act,

“lifetime allowance charge” has the meaning given by section 214 of the 2004 Act, and

“scheme administrator” means the scheme administrator of this scheme for the purposes of section 217 of the 2004 Act (see sections 270 to 274 of the 2004 Act).

“unauthorised charge” means an unauthorised payments charge (see section 208 of the 2004 Act) or an unauthorised payments surcharge (see section 210 of the 2004 Act).

Payment of lifetime allowance charge by scheme administrator

97 (1) The scheme administrator may pay a lifetime allowance charge for which the administrator is liable under section 217 of the 2004 Act.

(2) But such a payment may be made only if the individual with whom the scheme administrator is jointly and severally liable—

(a) requests the scheme administrator to make the payment on or before the date of the event in respect of which the lifetime allowance charge arises, and

(b) pays the amount concerned to the scheme administrator on or before that date.

Payment of lifetime allowance charge from Pension Fund

98 (1) If rule 97(2) prevents the scheme administrator from paying a lifetime allowance charge for which the administrator is liable under section 217 of the 2004 Act, the charge is to be paid from the Pension Fund.

(2) Following such a payment, a reduction is to be made—

(a) where liability arose in respect of event 8, to the amount or value of the transferred sums or assets, or

(b) where liability arose in respect of any other event, to the amount or value of the benefits payable from the Fund to or in respect of the individual with whom the scheme administrator was jointly and severally liable.
(3) A reduction under rule 98(2) must, in the scheme actuary’s opinion, fully reflect the corresponding amount paid under rule 97.

**Deductions for tax arising on lump sum payments**

99 Any tax due under section 205 of the 2004 Act in respect of a short service lump sum (see rule 72) is to be deducted from that sum before it is paid.

**Reduction of benefits which would otherwise attract unauthorised charge**

100 Where an unauthorised charge would (but for this rule) arise in respect of any payment from the Pension Fund, that payment must be—

(a) reduced to an amount just below the amount which would otherwise cause that charge to arise, or

(b) where no such reduction is possible, withheld in accordance with rule 101.

**Prohibition on payments which would give rise to liability for certain taxes**

101 (1) Nothing in this scheme authorises any payment from the Pension Fund if making that payment would give rise to liability for a scheme sanction charge (see section 239 of the 2004 Act) or a de-registration charge (see section 242 of the 2004 Act).

(2) Any payment which would, but for this rule, be made under the scheme is not to be made.

**PART S**

**ACCOUNTS, AUDIT AND ACTUARIAL REPORTS**

**Accounts**

102 (1) The Fund trustees must keep proper accounts (and must, in particular, prepare annual statements of account for each financial year).

(2) The Fund trustees must, within 7 months of the end of each financial year—

(a) arrange for the audit of the annual accounts for that year, and

(b) lay a copy of the annual accounts and audit report before the Scottish Parliament.

**Actuarial reports**

103 (1) The “scheme actuary” is the person appointed by the Fund trustees in accordance with section 47(1)(b) of the Pensions Act 1995 (c.26).

(2) The Fund trustees may obtain an actuarial report on this scheme at any time they think fit (and must do so at intervals of no more than 3 years).

(3) An actuarial report is to include—

(a) a report on the general financial position of the Pension Fund,

(b) an actuarial valuation of the Pension Fund’s assets and liabilities, and

(c) the scheme actuary’s recommended rate for future contributions under rule 32 (expressed as a percentage of scheme member salary payments).
The Fund trustees must lay a copy of each actuarial report before the Scottish Parliament within 3 months of obtaining it.

PART T

MISCELLANEOUS

Dispute resolution procedure

104 Section 50 of the Pensions Act 1995 (c.26) requires the Fund trustees to make and implement arrangements for the resolution of disputes.

Guaranteed minimum pension

105 (1) Any individual who is entitled to a guaranteed minimum pension under the scheme in respect of any transfer-in sum is, on attaining pensionable age, to be paid a pension for the rest of the individual’s life at a weekly rate of not less that his or her guaranteed minimum (if any) under sections 14 to 16 of the Pension Schemes Act 1993 (c.48).

“pensionable age” is to be construed in accordance with paragraph (a) of the definition of that term in section 181 of the Pension Schemes Act 1993 (c.48).

(2) The commencement of payment of a pension payable under this rule is to be postponed if the individual concerned is an MSP or the holder of a qualifying office on the day on which it becomes payable.

(3) Such a postponement is to last—
   (a) until the earlier of—
      (i) the day on which the individual is neither an MSP nor the holder of a qualifying office, or
      (ii) the day falling 5 years after the first day of the postponement, or
   (b) for such longer period as the individual may consent to.

Restriction on assignability etc.

106 Despite paragraphs (a) to (c) of section 91(5) of the Pensions Act 1995 (c.26), assignations, surrenders and commutations of the type described in those paragraphs are not permitted in relation to scheme benefits (except insofar as permitted explicitly by any scheme rule).

Payments due in respect of deceased individuals

107 (1) This rule applies where a deceased’s scheme entitlement is no more than the amount for the time being applicable in relation to the enactments mentioned in section 6 of the Administration of Estates (Small Payments) Act 1965 (c.32).

A deceased’s “scheme entitlement” is the total of—
   (a) any amounts due to the deceased under the scheme at the time of death, and
   (b) any amounts payable to the deceased’s personal representatives under the scheme (ignoring any amounts due by way of interest accruing after death).

(2) Where this rule applies, the Fund trustees need not require confirmation or other proof of title before paying amounts due to—
(a) the deceased’s personal representatives, or
(b) any person appearing to the Fund trustees to be beneficially entitled to the
deceased’s estate.

(3) The recipient of any amount so paid is to be liable to account for that amount (and the
Fund trustees are to be relieved from any such liability).

*Formal communications*

108 (1) A “formal communication” means any—
(a) notice,
(b) application,
(c) request, or
(d) certification,
made or given under or for the purposes of this Act.

(2) A formal communication must be in writing.

(3) A formal communication is made or given to a person if it is—
(a) delivered, or sent by post, to—
   (i) where the formal communication is being delivered to the Fund trustees or
   an MSP, the Scottish Parliament,
   (ii) where the formal communication is being sent to the holder of a qualifying
   office (who is not an MSP), the office-holder’s principal office, or
   (iii) in any other case, the usual or last known abode of the person to whom the
   formal communication is delivered or sent, or
   (b) sent in some other way (including by electronic means) which the sender
   reasonably considers likely to cause it to be delivered on the same or next day.

(4) A formal communication which is sent by electronic means is to be treated as being in
writing if it is received in a form which is legible and capable of being used for
subsequent reference.

(5) A formal communication sent in the way described in rule 108(3)(b) is, unless the
contrary is proved, to be treated as having been delivered on the day after it is sent (or, if
that day falls on a weekend or a bank holiday, on the next weekday which is not a bank
holiday)

“bank holiday” means a day which is a bank holiday in Scotland by virtue of the
Banking and Financial Dealings Act 1971 (c.80).
PART U

KEY TERMS

Interpretation

109 (1) In this scheme—

“deferred pensioner” means an individual who is not entitled to receive a scheme pension by virtue only of being—

(a) aged under 65, or

(b) an MSP, or the holder of a qualifying office, who is aged 75 or over,

“doctor” means a fully registered person within the meaning of the Medical Act 1983 (c.54),

“elected” means returned as an MSP by virtue of the Scotland Act 1998 (c.46) (and includes being appointed as an MSP by virtue of section 10 of that Act),

“final salary”, in relation to an MSP or the holder of a qualifying office, means—

(a) the MSP salary or, as the case may be, office-holder salary paid to the individual during the last 12 months (whether continuous or not) during which the individual was an MSP member or, as the case may be, office-holder member, or

(b) if the individual made scheme member contributions from MSP salary or, as the case may be, office-holder salary for fewer than 12 months, the amount determined by doing the following calculation—

\[
\frac{A \times B}{365}
\]

where—

“\(A\)” is the MSP salary or, as the case may be, office-holder salary paid to the individual during the period for which scheme member contributions were made from that salary, and

“\(B\)” is the number of days for which scheme member contributions were made,

“financial year” means a year ending with 31 March,

“guaranteed minimum pension” has the meaning given by section 8 of the Pensions Scheme Act 1993 (c.48),

“higher rate scheme member contribution” is a scheme member contribution of 11% of salary,

“ill-health pension” means—

(a) a serious ill-health pension,

(b) an ordinary ill-health pension, or

(c) a deferred pensioner’s ill-health pension,

“lower rate scheme member contribution” is a scheme member contribution of 6% of salary,
“MSP” means a member of the Scottish Parliament (but also includes an individual to whom an MSP salary is payable after dissolution by virtue of section 83(4) of the Scotland Act 1998 (c.46)),

“ordinary general election day” means a day on which an ordinary general election scheduled to be held under section 2(2) of the Scotland Act 1998 (c.46),

“rule” means a rule set out in this scheme,

“salary” means—

(a) in relation to an MSP, the salary payable by virtue of section 81(1) of the Scotland Act 1998 (c.46) (including any salary payable because of section 83(4) of that Act), and

(b) in relation to a office-holder, the salary payable for holding office,

“salary payment” means—

(a) in relation to a scheme member who is an MSP member only, a payment in respect of the member’s MSP salary,

(b) in relation to a scheme member who is an office-holder member only, a payment in respect of the member’s office-holder salary,

(c) in relation to a scheme member who is both an MSP member and an office-holder member, a payment in respect of the member’s MSP salary or office-holder salary (or both salaries),

“scheme member” means an individual who is an MSP member or an office-holder member (or both an MSP member and an office-holder member),

“scheme pensioner” means an individual entitled to receive a scheme pension,

“SPCB” means the Scottish Parliamentary Corporate Body,

“work” includes work—

(a) under a contract of employment, service or apprenticeship,

(b) as the holder of an office, or

(c) as a self-employed person.

(2) References in this scheme to the amount of an individual’s scheme pension are references to the amount of scheme pension payable to the individual under rule 37(2) and, unless the contrary intention appears, are to be read as including any reduction or enhancement to that amount attributable to—

(a) rules 43(2), 44(2), 46(4), 50 or 95, or

(b) section 31 of the Welfare Reform and Pensions Act 1999 (c.30) or any other enactment,

and references to the annual amount of an individual’s scheme pension are to be construed accordingly.

(3) References in this scheme to an amount of scheme member contributions “with interest” are references an amount equal to—

(a) the amount of those contributions, and

(b) compound interest of 4% each year accruing from the date each contribution was paid (calculated with annual rests).
The words and expressions listed in the left column of the following table are defined or otherwise explained for the purposes of the scheme by the rules indicated in the right column.

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SCHEDULE 2
(introduced by section 2)

GRANTS PAYABLE ON LEAVING OFFICE

MSP resettlement grant

1 (1) The SPCB must pay a grant (an “MSP resettlement grant”) to each individual who—
(a) is an MSP immediately before a dissolution of the Scottish Parliament, but
(b) is not returned as an MSP at the next general election held under Part 1 of the Scotland Act 1998 (c.46).

(2) An MSP resettlement grant is not payable to the personal representatives of an individual who dies before the election concerned.

MSP ill-health retirement grant

2 (1) The SPCB must pay a grant (an “MSP ill-health retirement grant”) to an ex-MSP who applies for such a grant if—
(a) the applicant resigned as an MSP at any time other than immediately before a dissolution of the Scottish Parliament, and
(b) the SPCB is satisfied that the resignation was a direct consequence of a health condition which prevented the applicant from performing adequately his or her duties as an MSP.

(2) The SPCB may, for the purposes of so satisfying itself, require—
(a) an applicant to provide evidence from a doctor of the applicant’s state of health,
(b) an examination of the applicant by a doctor nominated by the SPCB (with examination costs borne as the SPCB may determine).

Amount of MSP grants

3 (1) The amount of an MSP resettlement grant or MSP ill-health retirement grant is to be equal to the appropriate percentage the annual MSP salary payable in accordance with section 81(2) of the Scotland Act 1998 (c.46) when the individual stopped being an MSP.

“appropriate percentage” means the higher of—
(a) 50%, and
(b) \( \frac{A}{12} \times 100 \)

where “A” is the number of complete continuous years for which the individual has been an MSP (up to a maximum of 12).

(2) When determining “A”, any period during which the individual to whom the grant is payable was a dual mandate MSP is to be reduced by the same proportion as the individual’s MSP salary was reduced during that period by virtue of section 82(2) of the Scotland Act 1998 (c.46)).
(3) Sub-paragraph (2) does not apply in relation to any period—
   (a) during which an individual who is an MSP on the day on which this paragraph
       comes into force is an MSP, and
   (b) which occurs before the first general election held under Part 1 of the Scotland
       Act 1998 (c.46) after that day.

Office-holder resettlement grant

4 (1) The SPCB must pay a grant (an “office-holder resettlement grant”) to an individual
       who—
       (a) stops being the holder of a qualifying office, and
       (b) is not appointed as the holder of a qualifying office during the following 90 days.

(2) The amount of an office-holder resettlement grant is to be equal to the appropriate
    percentage of the annual office-holder salary payable to the individual when the
    individual left office.
    “appropriate percentage” means—
    (a) in the case of the Presiding Officer or First Minister, the higher of—
        (i) 50%, and
        (ii) X%, “X” being equal to —
            \[
            \frac{A}{12} \times 100
            \]
        where “A” is the number of complete continuous years for which
        the individual has been Presiding Officer or First Minister (up to a
        maximum of 12),
        (b) in any other case, 25%.

(3) An office-holder resettlement grant is not payable—
    (a) to the personal representatives of an individual who—
        (i) stops holding a qualifying office because he or she dies, or
        (ii) dies during the period of 90 days after the individual stops holding a
             qualifying office, or
    (b) to any individual who, on the day this paragraph comes into force, is or has
        been—
        (i) the Presiding Officer, or
        (ii) the First Minister.

Key terms

5 The following terms have the same meaning in this schedule as they have in the Scottish
    Parliamentary Pension Scheme (see schedule 1)—
    “doctor”
    “dual mandate MSP”
“holder of a qualifying office”
“MSP”
“MSP salary”
“office-holder salary”
“SPCB”
SCHEDULE 3
(introduced by section 1(3))

TRANSITIONAL PROVISIONS AND SAVINGS

Introductory

1 (1) In this schedule—

“new rules day” means the first day of the month which follows the month which includes the day falling 6 months after the Bill for this Act receives Royal Assent,

“new scheme rules” means the rules set out in schedule 1 which govern the scheme from the new rules day,

“1999 scheme rules” means the provisions of the 1999 pensions order which governed the scheme before the new rules day.

(2) Other words and expressions used in this schedule have the same meaning as they have in the new scheme rules (unless the contrary intention appears).

Pension Fund

2 Despite article A3 of the 1999 pensions order, article B1 of the 1999 scheme rules continue to have effect in so far as it establishes the Pension Fund.

Scheme membership

3 An individual is not entitled to participate in the scheme as an office-holder member if, on the new rules day, the individual is or has been—

(a) the Presiding Officer, or

(b) the First Minister.

Scheme member contributions

4 (1) An “existing scheme member” is an individual who—

(a) participates in the scheme in accordance with the 1999 scheme rules when this paragraph comes into force, and

(b) would become a scheme member in accordance with the new scheme rules if still participating in the scheme on the new rules day.

(2) Despite new scheme rule 28, an existing scheme member is to continue to make lower rate scheme member contributions after the new rules day if he or she notifies the SPCB that he or she wishes to do so.

(3) Such a notice is valid only if received at least 14 days before the new rules day.

(4) The SPCB must inform the Fund trustees of every valid notice given to it under this paragraph.

(5) This paragraph does not prevent the existing scheme member from subsequently changing the amount of scheme member contributions in accordance with new scheme rule 29.
Contributions from the Scottish Consolidated Fund

5 The determination under article D3(2) of the 1999 scheme rules which has effect immediately before the new rules day is to have effect after that day as if made under new scheme rule 32(2).

Reckonable service as an MSP

6 (1) This rule applies to an individual who—
   (a) was a “participating member” under the 1999 scheme rules, but
   (b) is not, immediately before the new rules day, entitled to receive a pension in accordance with the 1999 scheme rules.

(2) After the new rules day—
   (a) the “aggregate period of reckonable service as a participating member” which an individual to whom this paragraph applies has obtained under the 1999 scheme rules is to be treated as a period of reckonable service as an MSP for the purposes of the new scheme rules, and
   (b) the individual concerned is to be treated as having made lower rate scheme member contributions during that period.

(3) Where an individual to whom this paragraph applies—
   (a) is purchasing added years by periodical contributions in accordance with Schedule 5 to the 1999 pensions order immediately before the new rules day, or
   (b) has had an application to purchase added years accepted by the SPCB in accordance with Schedule 5 to the 1999 pensions order but has not yet made the lump sum payment,

no part of the added years concerned are to be treated as forming part of the individual’s “aggregate period of reckonable service as a participating member” for the purposes of this paragraph.

Reckonable service as an office-holder

7 (1) This rule applies to an individual who—
   (a) was a “participating office holder” under the 1999 scheme rules, but
   (b) is not, immediately before the new rules day, entitled to receive a pension in accordance with the 1999 scheme rules.

(2) After the new rules day—
   (a) the “aggregate period of reckonable service as a participating office holder” which an individual to whom this paragraph applies has obtained under the 1999 scheme rules is to be treated as a period of “reckonable service as an office-holder” under the new scheme rules, and
   (b) the individual concerned is, for the purposes of new scheme rule 39, to be treated as having obtained a single office-holder pension entitlement in respect of that “aggregate period of reckonable service as a participating office holder” to be calculated as follows—
aggregate period of reckonable service as a participating office holder \( \times \) highest office-holder salary \( \frac{50}{365} \)

where “highest office holder salary” means—

(a) the highest office-holder salary paid to the individual during any period of 12 months (whether continuous or not) for which the individual was a “participating office holder”, or

(b) where the individual was a “participating office holder” for fewer than 12 months, the amount determined by doing the following calculation—

\[
\frac{A \times B}{365}
\]

“A” being the office-holder salary paid to the individual during the period for which the individual was a “participating office holder”, and “B” being the number of days for which the individual was a “participating office holder”.

**Total reckonable service**

The total reckonable service of an individual who participated in the scheme before the new rules day (see new scheme rule 35) includes the “actual period of reckonable service as a participant” which the individual obtained under the 1999 scheme rules.

**Payment of pensions due on new rules day etc.**

Despite article A3 of the 1999 pensions order, the 1999 scheme rules are to continue to have effect (instead of the new scheme rules) in relation to any individual who, immediately before the new rules day, is entitled to receive a pension in accordance with the 1999 scheme rules.

But the SPCB’s functions, rights, liabilities and obligations under the 1999 scheme rules which relate to such individuals are transferred to and vest in the Fund trustees.

**Entitlement of partners and children after new rules day**

Despite the preceding paragraph, the new scheme rules are to govern an individual’s entitlement to receive scheme benefits by virtue of being the partner or child of an individual who—

(a) is entitled to receive a pension on the new rules day, or

(b) died before the new rules day.

This paragraph does not affect payments due or withheld in respect of any period before the new rules day.
Early retirement

11 (1) An individual falls within this paragraph if the individual—
   (a) participated in the scheme before the new rules day,
   (b) has accumulated at least 15 years relevant service before the cut-off date, being
       service which is the total of—
       (i) any period of service as an MSP during which the individual participated in
           the scheme (under the 1999 scheme rules or the new scheme rules), and
       (ii) any period of service as a member of the European Parliament or the House
           of Commons this is not concurrent with any such period of service as an
           MSP, and
   (c) where the individual is under 55, has a “protected pension age” of under 55 in
       relation to the scheme for the purposes of paragraph 22(8) of Schedule 36 to the
       Finance Act (c.12).

(2) Rule 46 applies to an individual falling within this paragraph with the following
    modifications—
    (a) in rule 46(1)(a), for “55” substitute “50”,
    (b) the proportion of the amount of annual scheme pension attributable to reckonable
        service accumulated before the cut-off date is to be reduced under rule 46(4) by
        no more than the appropriate percentage specified in the table set out in schedule
        4 to the 1999 pensions order.

(3) In this paragraph “cut-off date” means the date of the first general election held under
    Part 1 of the Scotland Act 1998 (c.46) after the new rules day.

Partner’s and children’s pensions

12 Where an individual—
   (a) has obtained an “actual period of reckonable service as a participating member” of
       15 years or more under the 1999 scheme rules, and
   (b) takes early retirement after the new rules day,
   the reduction made to the individual’s scheme pension because of early retirement (see
   new scheme rule 46(4)) is to be ignored when calculating the individual’s “scheme
   pension entitlement” for the purposes of new scheme rule 56(1).

5 year guarantee

13 (1) The Fund trustees may, instead of continuing to pay a deceased scheme member’s
        scheme pension under new scheme rule 71, pay to the deceased’s personal
        representatives an amount equal to the lump sum which would have been payable under
        article M4 of the 1999 scheme rules if those had continued in force.

(2) But such a lump sum may be paid only if—
    (a) the deceased participated in the scheme before the new rules day, and
    (b) the payment would, by virtue of paragraph 36 of Schedule 36 to the Finance Act
        2004 (c.12), be permitted by the lump sum death benefit rule (see section 168 of
        that Act).
Lump sum death benefits

14 (1) This paragraph applies where the amount of the lump sum payable under new scheme rule 70(1) in respect of an individual who participated in the scheme before the new rules day is less than the amount which would have been payable in respect of that individual under article N2 of the 1999 scheme rules.

(2) Where this paragraph applies, the lump sum payable under new scheme rule 70(1) is to be enhanced by the difference between the two amounts.

Short service refunds

15 Condition 3 of new rule 72(1) does not apply in relation to an individual who participated in the scheme before the new rules day (but such an individual is entitled to a short service refund only if he or she has fewer than 2 years total reckonable service).

Transfers

16 (1) When applying rule 76 in relation to an individual who participated in the scheme before the new rules day, amount A is to include—

(a) any contributions made in respect of the individual under article D1 of the 1999 scheme rules,

(b) any sums received in respect of the individual under article P6 of the 1999 scheme rules, and

(c) any payments made by the individual under Schedule 5 to the 1999 scheme rules.

(2) Condition 2 in new scheme rule 81 does not apply during the 12 months following the new rules day in relation to an individual who is a scheme member on the new rules day.

Added years

17 (1) This paragraph applies where an individual—

(a) is purchasing added years by periodical contributions in accordance with Schedule 5 to the 1999 scheme rules immediately before the new rules day, or

(b) has had an application to purchase added years accepted by the SPCB in accordance with Schedule 5 to the 1999 scheme rules but has not yet made the lump sum payment.

(2) Where this paragraph applies—

(a) Part Q of (and Schedule 5 to) the 1999 scheme rules are, despite article A3 of the 1999 pensions order, to continue to have effect in relation to those purchases,

(b) the individual’s reckonable service as an MSP is to be increased by any added years purchased by the periodical contributions (including any paid before the new rules day) or lump sum, and

(c) that increased period of reckonable service is, or the purposes of new scheme rule 38(1), to be treated as a period during which lower rate scheme member contributions were made.
(3) The reference in new scheme rule 89(3)(c)(ii) to scheme member contributions is, in relation to the tax year which includes the new rules day, to include any contributions made during that year under paragraph 4 of Schedule 6 to the 1999 scheme rules.

AVC scheme

18 (1) Despite article A3 of the 1999 pensions order, Part R of (and Schedule 6 to) the 1999 scheme rules are to continue to have effect with the following modifications—
   (a) all the SPCB’s functions, rights, liabilities and obligations in relation to the AVC scheme are transferred to and vest in the Fund trustees,
   (b) no individual may become a contributor to the AVC scheme after the new rules day (and sub-paragraphs (1) and (3) of paragraph 3 of Schedule 6 is accordingly to cease to have effect),
   (c) in paragraph 3(2) of Schedule 6, the words from “but” to “participant” are to cease to have effect,
   (d) no transfers may be made to the AVC scheme after the new rules day (and paragraph 4 (4) of Schedule 6 is accordingly to cease to have effect),
   (e) in paragraph 9 of Schedule 6—
      (i) in sub-paragraph (1)(a), for the words from “an” to “1993” substitute “another pension scheme subject to that transfer being a recognised transfer for the purposes of section 169 of the Finance Act 2004 (c.12)”, and
      (ii) in sub-paragraph (1)(c), for “2 years” substitute “3 months”,
   (f) paragraphs 10(1) to (3) and 11 of Schedule 6 are to cease to have effect.

(2) New scheme rule 3 does not apply in relation to benefits payable and AVC contributions received under the AVC scheme.

Guaranteed minimum pension

19 The reference in new scheme rule 105(1) to a “transfer-in sum” includes reference to any sum received under article P6 of the 1999 scheme rules.

Presiding Officer and First Minister pension scheme

20 Despite article A3 of the 1999 pensions order, Part S of the 1999 order is to continue to have effect in relation to—
   (a) any individual who is, or who has been, the First Minister or the Presiding Officer on or before the new rules day,
   (b) the rights of any spouse, civil partner or child of such an individual to receive scheme benefits after the individual dies, and
   (c) any surviving spouse, civil partner or child of an individual who died before the new rules day who has received, or is entitled to receive, scheme benefits in relation to that individual.
General saving

21 Despite article A3 of the 1999 pensions order, the 1999 scheme rules are to continue to have effect in so far as they are needed to give effect to any provisions saved by this schedule.

Disapplication of scheme modifications

22 The modifications set out in regulations made under paragraph 3 of Schedule 36 to the Finance Act 2004 (c.12) no longer apply in relation to the scheme.
Scottish Parliament  
Scottish Parliamentary Pension Scheme Committee  
Tuesday 26 February 2008  

[THE CONVENER opened the meeting at 15:03]

Scottish Parliamentary Pension Scheme Inquiry

The Convener (Alasdair Morgan): Ladies and gentlemen, welcome to the second meeting this year of the Scottish Parliamentary Pension Scheme Committee. I remind members and others to switch off their mobile phones.

Agenda item 1 is to take evidence in our Scottish parliamentary pension scheme consultation. I welcome our first witnesses today, who are from the Scottish Public Pensions Agency. Chad Dawtry is the director of policy, strategy and development at the agency, and Christine Marr and David Lauder are policy managers. I thank them for coming to the meeting. We will move straight to questions.

Hugh O'Donnell (Central Scotland) (LD): Good afternoon. Will Mr Dawtry clarify what the SPPA's principal role is and what its principal functions are in relation to public service pension schemes?

Chad Dawtry (Scottish Public Pensions Agency): Our primary role is pensions administration for the national health service and teachers schemes. We also administer on behalf of the Scottish Parliament and the Northern Ireland Assembly. Our policy remit is regulating the five main schemes in Scotland, not including the civil service scheme of course. We also have an appellant function on behalf of the Scottish ministers.

Hugh O'Donnell: In carrying out those functions, does the SPPA draw on services, for example those of actuaries or legal advisers?

Chad Dawtry: Yes. We use both of those kinds of services. There are three sources of advice for us. The committee might be aware that we draw largely on pensions policy that is developed down south. That is an historical fact. However, when we are taking forward policy developments in Scotland, we take legal advice from the Scottish Government's legal division and actuarial advice that is primarily from the Government Actuary's Department.

The Convener: How can you be sure that legal advice from the Government is not influenced by Government policy and that it relates only to the judgments that you should be making about the pension schemes themselves?

Chad Dawtry: The advice that we get from the Scottish Government is primarily very technical advice about the regulations.

David McLetchie (Edinburgh Pentlands) (Con): Good afternoon. Will you outline for the benefit of the committee the main drivers for pension scheme administrators modifying their rules in recent years, in the way that is now being proposed in relation to the Parliament's scheme?

Chad Dawtry: I will do my best. In 2000, there was a Treasury-led review of public pension schemes, which identified issues around increasing longevity and the need to reform schemes to ensure that they can be paid for in future. After the reforms started, the Finance Act 2004 introduced specific requirements to make changes—there was a lot of discretionary space in there, too. The main drivers are, in effect, longevity and affordability.

David McLetchie: But there have not been governance-type issues, as separate from issues of affordability and the benefits package that the schemes provide.

Chad Dawtry: That has been less of an issue for the public pension schemes, because, of the five schemes that we look after, four are unfunded and one is funded. The funded one is the local government scheme, which has its own governance arrangements.

David McLetchie: Who are the trustees and governors of the local government scheme and how are they elected or selected for that purpose?

Chad Dawtry: There are 11 funds in Scotland, which are administered by 11 administering authorities. I cannot say for certain how the trustees are selected.

David Lauder (Scottish Public Pensions Agency): They are regarded as quasi-trustees. The councillors of the scheme are responsible for the management and investment of the pension funds. They are not trustees in the normal sense of the word, in that the scheme is governed by the scheme regulations—which are imposed, if you will, upon councils—but the councillors have responsibility for the management of the funds.

David McLetchie: I want to focus on recent changes in the law driving changes in the terms of schemes. On the discretions that have been conferred on or taken by trustees of schemes, what sort of things have others been adopting?
David Lauder: Under the Finance Act 2004 there are only a handful of requirements. As you say, the rest of the provisions are permissive options. The act introduces a lifetime allowance and an annual allowance. It increases the minimum pension age from 50 to 55 and pegs the children’s pension at 23. Those are the requirements that the act brings in.

In the past, restrictions were imposed by the Inland Revenue to allow the scheme to have tax-exempt status. The scheme could not provide more than 40 years’ worth of benefits at age 60 and you could not accrue more than 40 years’ service at age 60. There was a limit on the amount of contributions that you could make. You would pay the normal 6 per cent contributions in the local government scheme and there was an overall ceiling of 15 per cent, so if any other options were used, such as additional voluntary contributions or buying added years, you could not pay more than an overall limit of 15 per cent. The Finance Act 2004 removed the Inland Revenue restrictions, so schemes can also remove them, but it is the scheme’s choice. Schemes can retain the restrictions, but they would be scheme rather than revenue restrictions.

David McLetchie: Do schemes maintain such restrictions to limit the reciprocal contribution that would come in from an employer?

David Lauder: That would be one reason for limiting contributions.

There has been criticism of the local government scheme. People can join at the age of 16, so at the age of 60 they would have paid 44 years’ worth of contributions, but would receive only 40 years’ worth of pension benefits. The driver for us was that removing the restrictions because the revenue no longer required them would assist with scheme recruitment and membership, because it would make the scheme more attractive to people.

David McLetchie: I will ask you specifically about the provisions in the schemes that you look after in relation to unmarried partners. What pension rights do unmarried partners of scheme members have? How do those rights compare with those of married partners or civil partners?

David Lauder: Unmarried partners will have the same rights as civil partners or married partners. That provision is being introduced into the new scheme.

David McLetchie: Are the criteria for determining whether people are in an appropriate partnership for the purposes of securing pension benefits consistent across all the schemes?

David Lauder: Yes, I believe so.

David McLetchie: Are they essentially self-certifying, or are any objective criteria applied—without the process being overly intrusive?

David Lauder: I think that people have to provide evidence that the relationship has existed for a period of time.

Chad Dawtry: It is two years.

Christine Marr (Scottish Public Pensions Agency): And that they are interdependent—perhaps that they have a joint bank account.

David McLetchie: So one criterion is the length of the relationship. Let us suppose that people have formed such a relationship and are clearly, to all intents and purposes, committed to one another—they have perhaps bought a house together or have a joint bank account or whatever. If the scheme member died prematurely after they had been together for only six months, nine months, a year or something like that, do your schemes have discretion in relation to people in that situation, or is there an absolute rule that the relationship has to have subsisted for a minimum period of two or three years before the partner benefits?

Chad Dawtry: The rule is based on Treasury guidance, and the period is two years.

David McLetchie: So, as far as you are aware, there is no discretion for a shorter period to be sufficient in the circumstances that I have described.

Chad Dawtry: Not that we are aware of, but we can check that for you.

David McLetchie: That would be helpful, because of the issue about how many rules should be mandatory and how many should be discretionary.

We are, in a sense, playing catch-up. In order to ensure that we have encompassed all the matters that are in the pipeline or are foreseeable, can you advise us whether you are working on further changes to the schemes that you administer to which you might want to draw our attention?

Chad Dawtry: I do not think that there is anything else major. The new Pensions Bill is introducing personal accounts, and we will have to take account of issues around autoenrolment, but I do not think that there is anything else major in the pipeline.

David McLetchie: Finally, we want to consider systems for reviewing our scheme rules in future. How are changes in the rules of SPPA schemes made? What process is involved and who is involved in that process?
Similarly in the NHS scheme, the cost of the early payment is capitalised and the NHS employer is required to pay a lump sum into the fund.

Peter Peacock: This is quite complex, so let me try to get the issue clear in my mind. If people voluntarily opt for early retirement because they have reached the point in their life—after 2010, they will need to be at least 55—where they just want to do something else with their life, such as travelling the world, they can take early retirement in the knowledge that their pension will be actuarially reduced by, on average, roughly 5 per cent per year for life. If, on the other hand, people are made redundant or if the local authority creates an incentive for them to retire early in order to reduce staff or teacher numbers, they can take early retirement without any actuarial reduction and possibly with an enhancement to their service.

Christine Marr: Their pension would not be actuarially reduced—

Peter Peacock: Would there definitely be no actuarial reduction?

Christine Marr: In the local government scheme, people who are made redundant have a right to their pension—

Peter Peacock: Provided that they have reached the age of 55.

Christine Marr: Yes. In the teachers scheme, the matter is at the employer’s discretion. For historical reasons, the teachers scheme seems to be the only one in which there is no such automatic right and it is up to the employer to agree. Because the employer must meet the cost of the early payment, the scheme member does not suffer any penalty. On top of that, the employer could award additional compensation.

Peter Peacock: So the employer might say, “You are 55, but we will give you five years’ enhancement and calculate your pension on the basis that you are 60.”

Christine Marr: Yes. Obviously, there is a maximum amount that can be awarded.

Peter Peacock: When the decision to retire early is not wholly in the hands of the individual—because of redundancy, or because the employer desires to reduce the workforce and therefore offers an incentive to leave—the employer and not the employee would meet the cost of that.

Christine Marr: Yes, that is correct.

Peter Peacock: Thank you. That is helpful.

You have highlighted schemes for teachers and local government employees. When a decision is made on whether someone can go at 55, does the person have to have a minimum number of years...
of service, or is the decision based simply on the person’s age?

Christine Marr: To be eligible, the person has only to qualify for benefits. That happens after two years of service.

Peter Peacock: So, in 2010, provided a person has two years of service and is 55, they will be entitled to early retirement in the way that you describe.

Christine Marr: Yes.

Peter Peacock: Are there no other criteria? Is that the only trigger—that a person be aged 55 and have two years of service?

Christine Marr: Yes, as long as the person has qualified for benefits.

Peter Peacock: You have answered my questions so fully that you have probably covered most of the points that I wanted to raise.

The Convener: In that hypothetical example, in which somebody has paid for two years and then retires and becomes entitled to their pension, they do not get that entitlement made up for another five or 10 years of service, do they?

Christine Marr: That would be at the discretion of the employer, but there would be a maximum amount that they could receive as an enhancement.

The Convener: Determined by what?

Christine Marr: Determined by regulations in subordinate legislation, which would set out how much could be paid.

The Convener: Are these special circumstances that affect certain schemes? Is local government affected?

David Lauder: Under the pensions regulations for local government, if somebody goes at age 50—or at age 55 in 2010—when the employer has requested and initiated the retirement, the person would get their accrued benefits, as Christine Marr said. In addition, the employer can, at its discretion, award additional years of service.

There are also separate regulations—the local government discretionary payments regulations. Under those regulations, the employer has the alternative of awarding a lump sum, up to a maximum of 66 weeks’ pay, I think. Therefore, if an employer intends to provide compensation, there are two alternatives—additional years of service or a lump sum payment.

The Convener: How often will additional years of service be awarded, as a proportion of the number of early retirements?

Christine Marr: For teachers, most employers will award either one or two years. It is not normally more than that. However, I really do not know about the proportion.

David Lauder: Years ago, the tendency among local authorities was to award the maximum in all cases.

The Convener: That could have been up to 10 years.

David Lauder: Yes. However, in recent years local authorities have become more conscious of the costs of making people redundant. The regulations now require each authority or each employer to publish its policy on discretions. The policy might be to award the maximum in all cases, or to award less than that—for example, 50 per cent.

Peter Peacock: Following up on the question that the convener asked a minute ago, would you be able to find out more, when you get back to your office, about the balance between those who volunteer to go early and those who, for one reason or another, are encouraged or required to go early?

Chad Dawtry: We would not have that information to hand, so it would depend how long you were willing to wait.

Peter Peacock: If it were possible to find that information without colossal effort that would bring the organisation to a halt, it would be interesting to know.

David Lauder: We would have to gather information—

Chad Dawtry: From the local authorities themselves.

Peter Peacock: Maybe we should discuss with the clerks after the meeting whether we need that information and get back to you about it.

Let us move on to the question of retirement through ill health. In our consultation, we asked various questions about ill-health retirement. It is very difficult to judge whether someone’s health is sufficiently poor to require them to retire and to leave them unable to fulfil any other occupation.

The consultation talks about ill-health retirement options with the level of benefit depending on the severity of the illness. Broadly speaking, what provision do other schemes, such as those for teachers and local government workers and the other schemes in which you are involved, make for that?

Chad Dawtry: I will start off and my colleagues will deal with the specific schemes. The Treasury review of ill health, which took place a few years ago, was concerned with ensuring that ill-health retirement is better targeted as well as with the
introduction of better workplace management of ill health in general. It talked about having gateways to ill-health retirement and setting up two-tier arrangements. In the most severe cases, if someone could not do their own or any other job, they would get upper-tier arrangements, which would differ depending on which scheme they were in. In cases in which a person was unable to do the job that they had done previously but was capable of undertaking other paid employment, they would get lower-tier arrangements and a reduced amount of accrued benefits.

Peter Peacock: Would it be normal for the other schemes of which you are aware to provide for the trustees of the scheme—whoever they are—clear discretion to review someone’s case once they had retired, to see whether their condition had changed or become less severe than expected?

Chad Dawtry: That tends not to be a feature of the schemes, primarily because of the administrative difficulties associated with that.

Peter Peacock: So, there tend to be set out in the scheme clear trigger points for making a decision.

Chad Dawtry: Effectively, yes.

Peter Peacock: And once that decision is made, it tends not to be reviewed.

Chad Dawtry: It tends not to be reviewed.

Peter Peacock: Are there circumstances in which it is? Is there any exception to that in the schemes?

Christine Marr: It was not introduced for teachers, but we may introduce it in the future. The two-tier ill-health arrangements have been running only since 1 April 2007 but we will evaluate them after a year. The situation may well have to be reviewed.

Peter Peacock: Okay. In thinking about early retirement and ill-health retirement, is there any experience within the schemes of which you are aware that—how can I put this correctly, politely or properly? Is there any relationship that you think exists or might exist between the inability to take early retirement and the ability to take ill-health retirement? Does some relationship exist between the provisions for early retirement and the taking of ill-health retirement?

Chad Dawtry: The quick answer is that we do not have any data on that specific point.

Peter Peacock: So in conversations that you have with other professionals about designing pension schemes, does no one say that if the early retirement provisions are too strict there tend to be more ill-health retirements?

Chad Dawtry: For most of the schemes, the two-tier arrangements have only just kicked in and it might be too early to tell. Anecdotally, in the past there possibly has been a suggestion of that, but it would be hard to find that on evidence.

Peter Peacock: I am grateful for that answer. Clearly, ill-health retirement is significantly more expensive for a scheme than early retirement if the ill-health provisions tend to base someone’s pension on earnings to the age of 65—is that correct?

Chad Dawtry: Yes.

Hugh O’Donnell: Do any of the schemes in which you are involved revisit people who have taken ill-health retirement but who have subsequently gone back into similar paid employment? For example, if a teacher who has retired on the ground of ill health were subsequently to return to a supply list, is there a ceiling on their earning capacity and does anyone monitor whether they earn more than they did as a result of taking ill-health retirement and then being available on the supply list?

15:30

Christine Marr: Such a person would not be allowed to go back to teaching—or, rather, they could, but their pension would stop. If a person retired and was on the upper tier of the new two-tier system, their benefits would be enhanced. The criteria for the upper tier is that the person has to be 90 per cent incapacitated and unable to do any work. If that person felt that they had improved and they wanted to take work out with teaching, they could see their general practitioner and provide us with a certificate. If the GP believed that they were still totally incapacitated, their pension would continue.

Hugh O’Donnell: What would happen in the case of someone taking early retirement as opposed to ill-health retirement?

Christine Marr: A person who takes early retirement can go back to teaching and we give them an earnings limit. Their pension and their earnings from employment must not exceed the salary that they were on with pensions increase added.

Hugh O’Donnell: How is that monitored?

Christine Marr: It is monitored by the SPPA, which writes to the teacher’s employer and asks for details of what the teacher has earned.

Peter Peacock: I have reflected on what you said about the ill-health provisions. I was surprised to learn that comparatively little discretion is held or exercised by trustees when a person has retired. In your experience, is it possible fully to
capture in the regulations for a scheme provisions that adequately cover all ill-health retirements? Is there any discussion between professionals about the need to allow trustees more discretion to judge whether a person’s ill health continues or whether their health has improved or deteriorated?

Christine Marr: We rely on our medical advisers, who follow the guidance for occupational health physicians. They would recommend to us whether the person satisfied the criteria for the lower or upper tier.

Peter Peacock: To be clear, are those medical advisers different from the advisers to the person who was seeking ill-health retirement? The advisers that you mentioned are independent and they advise you.

Christine Marr: Yes. They are appointed by the SPPA.

Peter Peacock: So their job is to scrutinise the medical evidence from the GP, consultant or whatever.

Chad Dawtry: They take a completely independent view of a case, without any bias. Again, that approach was a Treasury recommendation.

Peter Peacock: Once the medical advice has been agreed by both parties or the trustees have taken their decision on the basis of their own medical advice, that tends to be it. The decision is made once and for all.

Chad Dawtry: That tends to be it. I return to the point that the Treasury review was keenly interested in better workplace management of ill health. The notion is that things should be managed before the trigger points are reached. That is the last stage, in effect. The process should be managed before somebody reaches the stage of being let go.

David Lauder: On the local government side, one of the factors that led to the Treasury’s concern about the number of ill-health cases in the past was the fact that the criterion for getting ill-health benefits was simply that the person was permanently incapable of doing their own job. It did not take account of whether they were capable of doing other paid employment. They could walk into that other job the next day, but if they could not do their own job, they would access their pension.

In the two-tier approach, the first tier consists of people who are permanently incapable of doing their own job or any other job. It should be relatively straightforward for occupational health doctors to assess that group. We would not normally expect someone who was assessed as being permanently incapable of doing any work suddenly to improve in the future.

The requirement for the second tier is that the person is permanently incapable of doing their own job but would be capable of doing other paid employment at some future date. We have moved away from the situation in which being unable to do one’s own job was the only criteria for getting a pension for life.

The Convener: You mentioned Treasury guidance in connection with ill-health retirement, and with unmarried partners. Would it be possible for us to have a copy of that guidance? We do not have it at the moment.

Chad Dawtry: In respect of ill health, there is a review that we can give you, rather than guidance. The recommendations came out of that review, which we can certainly provide.

The Convener: Okay. You also mentioned guidance in relation to unmarried partners.

Christine Marr: That was to do with the two-year criterion.

The Convener: If we could obtain the source document for that, that would be great.

The various changes that we have discussed have had funding implications. How have the changes to the various schemes for which you are responsible been funded?

Chad Dawtry: There are four unfunded schemes.

The Convener: Clearly, the unfunded ones do not get funded, but what about the funded ones?

Chad Dawtry: The money still has to be found. There has to be long-term affordability and sustainability. The unfunded schemes have moved from an increase in the low pension age, which has effectively generated savings. Changes under the Finance Act 2004 have allowed people to commute up to 25 per cent of their lump sums. Actuarial assumptions may have been made based on how many people will take that up.

The Convener: Is that a benefit?

Chad Dawtry: That is assumed to be a saving, because people buy that out at a rate of £1 for every £12-worth. On the assumption that people live longer than for 12 years after they retire, the scheme saves money. In the case of local government, one of the ways in which changes have been funded is through increasing employee contribution rates.

The Convener: How have they changed?

Chad Dawtry: They have gone up by 0.3 per cent.

The Convener: That is 0.3 per cent from—
Chad Dawtry: In fact, they have gone up by 0.4 per cent, from an average of 5.9 per cent. Under the current scheme, the figure is 6 per cent for most people, and 5 per cent for manual workers. A banded approach will be taken under the new scheme, but it will average out at 6.3 per cent. The average between those figures of 5 per cent and 6 per cent was 5.9 per cent. Hence, there is a 0.4 percentage point increase.

The Convener: To what extent have those changes addressed the other funding issues, such as increased longevity and the poor performance of the stock market?

Chad Dawtry: The stock market is an issue only in relation to local government and the funded scheme—I will return to that in a second—and the other schemes do not have to concern themselves with that so much. As each package of benefits has been agreed, it has been costed by actuaries, and is projected for 50 years. That is where the affordability and sustainability argument is made, and contribution rates are set in line with that. There are triennial or quadrennial valuations, which allow actuaries to check whether the assumptions that they made in the first instance, and the behaviours of people and of the schemes, have been as they expected.

The Convener: So the schemes have a provision built into them for a review of employees’ contributions, as a result of the valuations.

Chad Dawtry: Teachers and national health service schemes have introduced potential cost-sharing mechanisms and employers’ caps, and there is a commitment to develop a cost-sharing mechanism for the local government scheme. If the valuations show that costs are getting out of kilter, that means in effect that increases in payments for those benefits will be shared between employers and employees. The effect of employers’ caps does not apply to local government. Employers’ caps go so far—and only so far—for employers and taxpayers, and any additional amount is picked up by the employees themselves.

The Convener: When you say that “there is a commitment to develop a cost-sharing mechanism”, that means that it has not yet been developed.

Chad Dawtry: That means that a mechanism has not been developed. One of the main reasons is that there are 11 funds in Scotland. The situation is not as straightforward as it would be for an unfunded scheme. The current aim is for that cost-sharing arrangement to be agreed by April 2010, and introduced with effect from April 2011.

The Convener: Is that on the basis of sharing the costs equally between the two partners?

Chad Dawtry: It is to be on the basis of an equitable sharing arrangement. The devil, of course, will be in the detail.

The Convener: As the committee has no further questions, I thank the members of the Scottish Public Pensions Agency for their evidence, which has been helpful, and for coming along.

I welcome our next panel of witnesses: Sir John Butterfill MP, who is the chairman of the trustees of the parliamentary pension scheme at Westminster; and Alun Cairns AM, who is the chairman of the trustees of the National Assembly for Wales pension scheme. Thank you for coming to give us the benefit of your experience.

I will start with one or two questions on governance. What are the main responsibilities and roles of the trustees of your pension schemes?

Sir John Butterfill MP (Parliamentary Contributory Pension Fund): Our main duty is a fiduciary duty to protect the interests of our beneficiaries. We have a secondary duty to consult the scheme sponsor—which, in our case, is the Treasury—and take account of its concerns. In exercising those duties, we have to manage the finances as well as they can be managed, and ensure that the scheme is administered properly.

The Convener: Does that fiduciary duty extend to getting as good a deal for your members as possible?

Sir John Butterfill: The duty is to ensure that the money is well invested and that the members get a decent return, although that is fixed in our case as a percentage of the retirement salary. However, we are also conscious of the fact that we are the custodians of public funds and therefore must ensure, if we can, that there is no wastage of the money that is used to provide the scheme benefits.

Alun Cairns AM (National Assembly for Wales Members’ Pension Scheme): I concur with what Sir John has said. I add that we have to act within pensions law, which we take for granted, and ensure through appropriate training that each trustee understands their responsibilities, which Sir John has outlined, so that they can carry them out.

The Convener: In carrying out those responsibilities, what support, advice and training has been available to you? How big a job is it for the trustees?

Sir John Butterfill: In our case, it is quite a large scheme. We look after what was nearly £400 million but which is now, with the changes in the stock market, probably nearer to £350 million. We have to ensure that those whom we employ and the trustees themselves manage that money...
professionally, so we have a policy, which we have had for some time, that trustees should undertake training and sit the examinations that the Pensions Management Institute sets. All our trustees go through a training programme when they are appointed and, once they have qualified, are expected to undertake continuing professional development by keeping up with legislation and other trends within the pensions world. They are expected to attend a number of pensions seminars of one sort or another, whether those are on the legal side, the investment side or relating to implementation of legislation. It is expected that all our trustees will have and use such areas of expertise.

15:45

When we started this process, all our trustees sat the examinations: happily, all of them passed. I was rather relieved, as I could not take the exam on the same day as the others, but as they all passed first there was no pressure on the chairman. We regard this as a professional job. In a scheme of this size, we also appoint external advisers, such as an external investment adviser, external lawyers, and external fund managers. We have different fund managers for different areas of investment; for example, we have one set of managers who deal exclusively with bonds, another group who manage hedge funds, a fund of funds manager, equities managers and property managers. We review their performance individually against benchmarks that we and our investment advisers have set.

In addition, we have our own specialist pensions lawyers—they are a division of a larger law firm—and we review their performance periodically. All of those people are subject to review about every three or four years, so they might or might not be reappointed.

The Convener: I will come to Mr Cairns in a minute. It strikes me that the task of your trustees is quite onerous. Do the whips give you an easy time in relation to some of the other potential duties that you might have?

Sir John Butterfill: No, not particularly. It is a very onerous task, and has become much more so in recent years. The Government has been fairly prolific in its legislation on pensions, so we need to keep up to speed on the law. As legislators ourselves, we are conscious that if we do not set an example in scheme fund management, we are letting down Parliament as a whole.

The Convener: Mr Cairns has a younger and smaller scheme. Are the issues relating to that scheme different, or just the same?

Alun Cairns: The issues are different, although the principles are the same, if that makes sense.

For example, the latest estimate—which is some three months old—of the fund is that it is in the region of £10 million. Having been formed as a team of trustees in 1999, we had obligations, as we talked about in response to the earlier question. We took the decision that a pooled fund would be the most sensible way of investing. We needed actuarial advice—we considered the potential cost of going out to tender, and the Government actuary acted as a broad adviser on that. We deemed that at that time the Government actuaries would be best value, and could give us advice as we needed it. The formal advice that we get to date comes from the Government actuaries, who not only act as actuaries, but have given us broad guidance in relation to our plan and our strategy.

We have legal advisers—a Cardiff-based law firm that provides specialist pensions advice—who redraft rules; for example, in relation to the latest pensions act. We have fund managers; Baillie Gifford, an Edinburgh-based fund manager, was appointed based on the broad principles that we agreed in discussions with our legal advisers and the Government actuaries. In addition, we have one dedicated member of staff in the fees office who works full time on the Assembly's pension scheme, and we have part-time support from the head of the fees office and from an assistant within the fees office, which is broadly the equivalent of having two full-time members of staff to carry out administrative roles and responsibilities.

The Convener: You mentioned dealing with the recent changes. What sort of consultation do you undertake of your members—paying members and members who are receiving, or deferred members who might be receiving, pensions—when you make such changes?

Alun Cairns: At the outset in 1999, the make-up of the trustees was based on the principle of there being one trustee per party group, with the Deputy Presiding Officer. Members have moved on, changed roles, become ministers and so on, so the make-up of the trustees has moved away slightly from what it was. Until recently, the need to look after the interests of pensioner members was also met by members retiring and losing elections. Our governance has changed so that the rules are now agreed by the Assembly Commission rather than in an Assembly plenary session, and the commission has expressed a desire to go back to the original formal arrangements in which there was one trustee per party group plus the Deputy Presiding Officer. That is, of course, in order, but we must look after the interests of pensioner members. We have therefore drafted rule changes to allow for an election among pensioner members so that there is an additional trustee to look after...
their interests. I hope that those changes will be agreed shortly.

The Convener: Is it assumed that people from a party group or pensioners will somehow undertake soundings on changes within the group that they represent?

Alun Cairns: Yes. That has generally been how we have worked. We should bear in mind that the changes relating to the Pensions Act 2004 tended to apply to newly elected Assembly members, rather than to existing members. We have not had to take difficult decisions that would mean that members could find themselves at risk of losing out on the potential benefits that were originally laid out.

Sir John Butterfill: We have not only serving members of Parliament on our board of trustees—we also have at least one pensioner trustee at any given time. Recently, we agreed to take a trustee from the recently formed association of former members of Parliament so that it would be represented, but we have made it clear to them that they are not meant to represent any one particular body of opinion; rather, they have a general overall fiduciary responsibility to the fund. People who come from a different perspective enhance our debates. Of course, the terms of the scheme have not changed—it provides the same benefits that it has always provided. Any major changes to our scheme would require statutory action by order under the Parliamentary and other Pensions Act 1987, by whose terms we are governed. We have had to amend that act from time to time—in fact, it needed to be amended following the passing of the Pensions Act 2004. We would go through that process and then proposals could be debated in the House of Commons.

The Convener: What process is followed when the trustees decide that a change is required? Do you go to the Leader of the House of Commons and say, “Look, we need some time for this statutory instrument”?

Sir John Butterfill: Yes. Normally, we would consult the Leader of the House of Commons on changes that we think are necessary, and we would work on that through the Cabinet Office and with the Treasury, if necessary. On reaching agreement, our lawyers would then be involved with the Government’s lawyers in producing an amendment to be put forward by way of an order.

Alun Cairns: Before the Government of Wales Act 2006, which separated the Executive from the Assembly, our pension trustees effectively decided on changes to the rules, based on consultation with each party grouping and supported by the House Committee. Any rule changes would then be presented to the full Assembly to be voted on. That gave the trustees significant autonomy to act as they thought fit. However, the request to change the membership of the trustees in order to look after the interests of pensioner trustees has come from the Assembly Commission. We would need to present our argument to the Assembly Commission, which would accept or reject it. In theory there is probably no difference, but in practice there is, because parties tend to be far more strongly represented on the commission than in the Assembly.

The Convener: Is there any evidence so far that the change has influenced decisions relating to pensions?

Alun Cairns: I can give you only one example. There was a wish to amend the membership of the trustees to bring it more up to date and to ensure that the majority of trustees are current members of the Assembly. Arguably, that is unnecessary, but there will now be a minor rule change to accommodate the request.

Hugh O’Donnell: For clarity, how many members of Parliament and Assembly members are trustees?

Sir John Butterfill: Our trustee board includes about eight members.

Alun Cairns: Four of our trustees are members.

Hugh O’Donnell: Could you tell us in more detail how they were elected or appointed? Was that done within the party system or by an open ballot? How did they come to be there? Were they appointed?

Sir John Butterfill: We proceed through the usual channels. I put the names forward, although it is possible for members to lobby for someone else to be appointed. The Association of Former Members of Parliament lobbied hard to be allowed to put someone forward. We were happy with the name that it put forward and were pleased to accept its request. An order to that effect duly went through.

Alun Cairns: Until recently, the party groups decided who should be appointed. Broadly, that is still the case, although who the trustees should be is now agreed with the commission, on a cross-party basis.

Hugh O’Donnell: You are responsible for schemes of different sizes and scales. What expenses do the trustees incur in managing the fund?

Sir John Butterfill: Ours are pretty significant, but they are reasonable as a proportion of the funds that we manage. We regularly make comparisons with external schemes to ensure both that we are not overspending and that we are not failing to cover matters that we should. For
example, I have joined PensionChair, an organisation comprising the chairmen of trustees of most of the major pension funds in the United Kingdom. We meet regularly to discuss current topics and how we are dealing with them.

PensionChair also provides a consultancy, so that if a member of the organisation has a problem and wants to know how other people are dealing with it, it can be put out on a named or anonymous basis to the whole membership of PensionChair, which will respond. That is a helpful means of consultation that enables us to know that we are not out of step with what is happening elsewhere. It may also help us to discover problems that we did not know we had, because when an issue is raised we have to ask ourselves what we are doing about it, which is useful. We have an arrangement with PensionChair that allows another senior trustee or, on occasion, our head of pensions to go to meetings in my place when I am unable to attend.

Hugh O’Donnell: Is the cost incurred a matter of public record?

Sir John Butterfill: Yes. Everything is set out in our annual report and accounts.

16:00

Alun Cairns: Although I am not familiar with the detail of the parliamentary scheme, it is fair to say that our costs are significantly lower, because of the make-up of our scheme. I mentioned the two full-time equivalent staff in the fees office who are employed by the scheme. There are also the costs of our expert advisers. Whenever the Government actuary joins us to give us broad advice, the standard costs apply. Actuarial costs are significant in the scheme of things, because our general costs are quite low. Whenever actuaries provide a review or a service, the cost that is incurred is significant in comparison with our other costs. We also pay for legal advice from our lawyers. As a result, we tend to manage and to invite actuaries and lawyers only to trustee meetings at which they are needed. However, we have at least one meeting a year at which everyone is present, to ensure that any adviser who wants to can bring something to our attention.

The other cost is from training. We have not followed the professional qualifications that Sir John Butterfill spoke about, but we asked the actuaries and our legal advisers to provide as they saw fit bespoke training that was needed.

Hugh O’Donnell: I move on to trustees’ responsibilities. What decisions do trustees make about investment policy? Are those decisions founded entirely on the professional advice that is given, or are trustees at liberty to put that to one side if they do not want to go down that road?

You will be aware of all sorts of funding fluctuations in recent years that have had an impact on the viability of funds. If they have had an impact on your funds, how have they been handled?

Sir John Butterfill: We have professional investment advisers in addition to fund managers. They advise us on the level of funding that is required, although we use the Government Actuary’s Department too, by statute. We do not slavishly follow the advice that is given. For example, as a fund becomes more mature—when it has more pensioner members than active members—it is normal for the character of the investment portfolio to change. If members are predominantly active, a fund probably invests more in equities or property. As a scheme becomes more mature, the proportion of bonds and more secure investments gradually increases.

I suppose that we are in an unusual position, because we probably have a better guarantee than most external employers’ schemes, so we can be a little more adventurous than we might be if we ran an equivalent fund in the private sector. However, we must agree all of that. We agree our investment strategy with the Leader of the House and the Treasury. Some years ago, the Treasury pushed us quite hard to go much more heavily into bonds, but we resisted that. We accepted that we needed to alter the portfolio to an extent, as the scheme became more mature, but when bonds were at an all-time expensive level and equities were on the floor, we did not think that it was a good idea to sell equities to buy bonds. We said that we would examine that over three years, but we did little about it. That proved to be a good decision, because the equity market improved and the bond market did not. We have that ability, but we must justify our decisions to the scheme’s sponsor.

Alun Cairns: Obviously, when our scheme was formed, it started with a zero balance, so a pooled fund was the most effective and efficient form of investment. Now that we have reached £10 million, many more options are available. The pooled fund that we used is one reason why our costs were low—that relates to the previous question.

Because of the pooled fund, we have not used independent financial advisers, although we have considered that. We were approached by some people and some others were not absolutely satisfied with the investment performance over a certain period, so we looked a lot more closely at the performance of the fund vis-à-vis the rest of the market. Consideration is still being given to calling on external advice, but until now we have been using the Government actuaries to tell us
whether our decision to stay with the fund is justified.

We have decided to hold a lot more in cash than we normally would because the market has been somewhat turbulent of late. It was intended to invest that cash in various vehicles depending on the advice that we received, but the market then became even more turbulent after the sub-prime mortgage crisis in the United States. We are still considering the sort of advice we need, and we are probably still holding more cash than we need. The decision is actively being considered at the moment.

Hugh O’Donnell: Thank you.

Peter Peacock: Mr Cairns, you indicated that you depend on the Government actuaries. I am less clear about the system in London, Sir John. Am I right that, although you take advice from Government actuaries, you also have your own completely independent actuaries? If so, why have you taken that approach?

Sir John Butterfill: We have not. By statute, our only actuary is the Government Actuary’s Department. Some of our investment advisers also have in-house actuarial expertise, which they may draw on in the investment advice that they give, but actuarial approval has to come from the Government actuary.

There was a time when that was set in stone, but in the new climate we could decide to go outside for actuarial advice. That would need an order to go through the House, and we would have to be pretty unsatisfied with the Government actuary’s performance. It has not always been as good as we would have liked and on occasion we have criticised it. On balance, we see no real need to change at the moment, although we could if we wanted to.

Hugh O’Donnell: This is perhaps a hardball question: of the major issues that you have faced in carrying out your responsibilities as trustees, what has been the one that has come out of left field and caused unanticipated difficulty?

Sir John Butterfill: I cannot think of one, although we have recently had to deal with all sorts of changes. For example, the introduction of civil partnerships has required rule changes and adaptation, which have involved additional costs and will do so on an on-going basis. For example, death-in-service benefits now apply to civil partners whereas they previously applied only to spouses.

We are currently dealing with the question of ill-health retirement, which I heard your previous witnesses speak about. We are unhappy with the present system, which is all or nothing—someone is either fit or not—and we intend to move to a system in which the requirements for granting full early retirement are somewhat tougher but there are probably one or possibly two stages below that. We are in consultation on that with the Leader of the House.

The Leader of the House agrees with our proposals, and the Government actuary estimates that it will save us about 0.4 per cent in the wages bill, which is not inconsiderable. It will probably enable us to deal with another problem that has beset us: retained benefits. That has been a contentious issue. The Government legislated on retained benefits in the Finance Act 2004, and retained benefits are no longer a statutory requirement. However, to abandon the retained benefits regime would have a significant cost for our scheme. The Government Actuary’s Department reckons that the cost would probably be about 0.4 or 0.5 per cent—about the same as the expected savings on the changes in relation to early retirement. The Government is offering a trade-off: if we go ahead with one change it will accept the other. In the long term it will do well out of the deal, because retained benefits will fall away over the years and we will not need to operate a retained benefits regime in future.

We have had many problems with guaranteed minimum pensions, on which we were given wrong advice by HM Revenue and Customs, the national insurance contributions office, the Government’s lawyers and our lawyers. There is a mess, which we are sorting out. Of course, the GMP regime has been changed by the Government, so the same problems should not arise in future. However, I flag the issue up for the committee’s careful consideration in relation to the Scottish parliamentary pension scheme.

Alun Cairns: I think that it was the Auditor General for Wales who recommended early that we follow the parliamentary scheme as closely as possible, for administrative purposes and for simplicity. Since then, we have largely been pragmatic; when there has been a need for changes in the pension rules we have made them.

An example that comes to mind is what happened when the widow of a late member became a member of the Assembly, so a beneficiary of the scheme became a contributor. The pension rules did not allow that and needed to be changed. Those are unique circumstances—they might not be unique, because there is another husband-and-wife partnership in the Assembly. In such unusual circumstances, which we would not come across every day, we try to leave as much discretion as possible to the trustees. Because ours is not a standard scheme, the lawyers often say that their advice to us is different from the advice that they would give to trustees of another pension scheme. In the
example that I gave, we used as much discretion as possible to accommodate the situation sensibly, so that there were no particular advantages or costs for anyone. We approached the problem in a pragmatic way, which made sense for the taxpayer and the individual.

Another issue that has crossed our desks, although it has not done so for some time, which could have blown up into a large debate, is ethical investments. The issue raises the question of what is ethical. We go by the statement of investor principles, which says that we must act in the best interests of members, with an eye on ethical issues—I paraphrase loosely, but I can send members the statement. I am thankful that we have not got down to debating which companies we would expect the pooled fund to invest in.

**David McLetchie:** New pensions legislation has driven a number of rule changes in recent years, some of which related to governance and some to a desire to liberalise or simplify the complex rules that govern pension schemes, tax relief and so on. To what extent have funding and affordability issues driven change? Sir John Butterfill talked about changes to ill-health retirement benefits, which I presume are being driven less by the rules than by questions about affordability. Have other benefits in your scheme given rise to similar concern about affordability or justifiability?

**Sir John Butterfill:** Yes. Trustees have been conscious of their duty to the public in the administration of funds. We have considered at our own instigation early retirement and the public sector transfer club, which was imposing a heavy burden on our scheme, because people could transfer in from, for example, modestly paid local authority employment and get the years that they had worked expressed as payments into our scheme. The cost to the scheme was considerable.

16:15

We have now abandoned that, for two reasons. One was the cost. The other was that we thought that it was inequitable for the people who were transferring in from the private sector to get only what the transferred sum of money would buy, whereas those who transferred in from the public sector were getting a huge increase in the total value of their pension pot. The two are now on a par, which I think is morally and ethically correct. We have been considering that, and we have also considered ways to protect the public purse. We would constantly seek to do that.

I will make a recommendation to the committee, although it is more difficult with a small scheme. I will start with some background. When I first became a trustee, there was no professional pensions expertise in the fees office and the whole scheme was managed by civil servants in that office. They were very good, although they did not have any pensions qualifications. They were doing the administration of the scheme, as well as examining how it was run. We outsourced the administration, which I think was a good thing to do. That has not proved any more expensive. In fact, according to our analysis, we saved money by outsourcing the scheme’s administration, compared with what we were paying to members of the fees office.

I have insisted that we have professionally qualified pensions people in the residual area of the pensions department in the fees office. I suggest that that is very important. Unless you have a pensions professional, like our head of pensions, who attends all the trustees meetings, you will not always know the right questions to ask of those to whom you have outsourced administration, investment advice, legal advice or whatever. To have a really well-qualified person in that field is very important. I think that, in the long term, it saves money.

**Alun Cairns:** The rule changes that we made as the result of the most recent pensions legislation were broadly cost neutral. For example, the enhancement of the death-in-service benefit, which was because of a rule change, was financed by drawbacks or withdrawal of enhancements elsewhere. To the taxpayer, those changes were broadly neutral.

There was, however, a cost in one area, when the scheme’s accrual rate changed from fiftieths to fortieths. That was borne by members of the Assembly. The choice was given to each individual member. Some members are running on the scheme of fiftieths; some are running on the scheme of fortieths. From my recollection, the vast majority of AMs are on the scheme of fortieths.

**David McLetchie:** Can members elect either to go on to a fortieths funding basis or to remain on a fiftieths basis?

**Alun Cairns:** Yes.

**David McLetchie:** In your scheme, that change was fully funded by members by their electing to pay higher contributions.

**Alun Cairns:** Yes.

**David McLetchie:** So there was no additional cost to the public purse; the cost was borne by contributing members. Was that the same at the House of Commons, Sir John?

**Sir John Butterfill:** Yes. Initially, the Government actuary calculated that it might cost a little more than a 10 per cent contribution from members in total, but his view now is that the cost is more than covered. The reason for the element
of uncertainty was that we did not know how many members would opt for the higher contribution level and the improved accrual rate. We also did not know how many would be affected by retained benefits and would therefore be unable to benefit from a higher accrual rate because they were already up against the limits imposed by the retained benefits regime. Indeed, it is important that you are aware, as far as you can be, of the extent to which your members have retained benefits, otherwise they might contribute to a scheme from which they are unable to benefit, and they might seek to sue you.

When we made the change to the one fortieth accrual rate, we sent round a questionnaire that included a question on whether members had retained benefits and, if so, whether they realised that that might affect their eligibility. We also said that they must take independent advice. I think that we sent out five such notices to our members, and the response rate was only 50 per cent. Some of them have since taken us to the pensions ombudsman for not telling them that they should not have taken up the different accrual rate. They have lost, but it shows that you have to be careful to ask all the questions when you make such a change. You must ensure that members are aware of the consequences and, most important, that you tell them that they must take independent advice. You must never give advice. You can tell them of the dangers and pitfalls that lurk, but you must then tell people to take their own advice. It is unlawful to give advice.

David McLetchie: Do you have a panel of advisers as an information service?

Sir John Butterfill: No, and you must not. If you do, you influence the advice that members are given. You can give them the address of the Association of Independent Financial Advisers and say that it can recommend someone who might be suitable for their case.

Alun Cairns: The change was far more manageable in our scheme. With only 60 Assembly members—although there were some changes because of elections—it was easy to contact each individual member, make available the figures that would allow for a calculation to be made, and suggest that they seek independent advice.

David McLetchie: Is there an official member of staff in the Assembly, as Sir John has in the House of Commons, who is a pensions adviser to the trustees and who liaises with members, extracts information and explains what happens?

Alun Cairns: Yes. Someone works in the fees office full time on pension matters. He has come from the industry, and he advises the trustees. He is also a sounding board for members should they have factual questions on the transfer in, the processes and so on.

David McLetchie: So he does not provide advice about the desirability of courses of action; he provides clear information and explains how the system works, perhaps relative to what people had in previous employment.

Alun Cairns: Yes.

David McLetchie: You both mentioned changes to your schemes based on the establishment of civil partnerships. What rules do you have on informal partnerships—unmarried partners, whether they are heterosexual or homosexual? What benefits does an unmarried partner have, how do they qualify for them, and how is that verified or established?

Sir John Butterfill: Partners do not qualify unless they are in a civil partnership. Once they are in a civil partnership, they qualify.

Alun Cairns: Our rules are different. This was one of the early rule changes that the trustees brought about as a result of requests from members. It was felt that people in same-sex partnerships were disadvantaged because of how the rules were originally written, so amendments were made. I cannot remember the exact wording, but I can arrange for it to be forwarded to the clerk. It was the best stab that we could make, based on industry practice for people in relationships.

David McLetchie: Whether they were same-sex relationships or heterosexual relationships.

Alun Cairns: Yes.

David McLetchie: For clarification, Sir John, can you confirm that to benefit from the House of Commons scheme a person must be married or in a civil partnership?

Sir John Butterfill: I will do so.

Alun Cairns: The issue brings us back to my point about the trustees having significant discretion to make judgments, according to the criteria that have been set.

Peter Peacock: Further to David McLetchie’s questions, does the option of paying a higher
contribution in order to go to a one fortieth accrual rate endure for members throughout their life in the scheme, or do you end the option of having a one fiftieth accrual rate? Do members continue to have a choice?

Sir John Butterfill: On joining, our members must elect. Their election is irrevocable.

Peter Peacock: Do they continue to have the right to elect in future sessions of Parliament?

Sir John Butterfill: No, they make a once-and-for-all election. They cannot change.

Peter Peacock: I understand. If I were to join the Westminster scheme in 10 years’ time—I am not planning to do so—would I be allowed to elect for fortieths or fiftieths?

Sir John Butterfill: You would.

Discussion is going on with the Government, in the context of retained benefits, about whether we can allow people who elected for fortieths under a misapprehension to change. When those people were forced to make their election, the Government’s stated intention was to legislate on retained benefits. It was well known in tax and accountancy circles that the Government was intending to change the law—it did so in the Finance Act 2004.

Some people who had retained benefits were advised that because the regime was going to be abolished, they might as well go for fortieths. The Government altered the law omissively, but did not alter the rules of our scheme. Many people think that they were unfairly brought into a regime from which they cannot profit. Following a recommendation from the Review Body on Senior Salaries—the senior salaries review body—in its most recent report, that people ought to be able to change, the Government is considering whether they can change and, if so, on what terms.

Alun Cairns: The situation for members of our scheme is similar to the situation in Westminster. There is a one-off decision. However, if someone made a decision when all the facts were not available, I am sure that the trustees would have discretion to consider their case. For administrative purposes, as well as for every other purpose, and to maintain low running costs of the scheme, it was deemed that there should be a one-off decision.

Peter Peacock: Thank you. I will move on.

The witnesses heard from the previous panel some of the evidence on early retirement. Mr Cairns, you mentioned that your advisers acknowledge that to be a parliamentarian is to be in an occupation that is different from many occupations, because we are not in control of our destiny. There are a variety of reasons why a parliamentarian might leave the Parliament: they might be deselected, they might lose their seat, they might lose ranking in a regional list, or the Boundary Commission for Scotland might do away with their seat altogether. In such circumstances, parliamentarians find that they are no longer employed.

I think that I am correct in saying that both the Westminster and the Welsh schemes have maintained the 15-year qualification period before a person can take their pension. Did you consider alternative approaches, for example reducing the number of years? A 54-year-old member who transferred their teachers pension into the scheme but then lost their seat after 14 years’ service might feel a bit aggrieved that they could not access their own money because they failed to qualify by one year. Did you consider the qualification criteria? Why did you stick with the criteria that you have? Will you continue to maintain them?

16:30

Sir John Butterfill: No, I do not think that there is any suggestion of our making any changes. Indeed, we have toughened up our scheme. One of the ways in which we have made savings comes into effect from next year. We have made it that, if somebody takes early retirement, before the age of 65, they will suffer a diminution in their pension. Previously, provided that they could satisfy the 15-year rule and the rule of 80, people could retire without penalty at the age of 60. To reduce the costs of the scheme and to make it fairer in relation to what most people outside the public sector are having to put up with, members will now suffer a diminution if they go before the age of 65. We have done that by creating a gradient. People will not suddenly fall off the edge as from next year: the change will be phased in over a certain period. I cannot remember how long it is, but I think that the phase-in of the new arrangements will take five or six years. There will certainly be a diminution of some sort if people retire before 65, as from next year.

The Convener: If there is going to be a diminution of that kind, particularly if it is eventually to be actuarially based, is there any reason to have a requirement for a minimum number of years’ service? Effectively, people will get only what they and their employers have paid for during their period of service.

Sir John Butterfill: No, that is not quite right. There will still be an element of benefit, certainly during the transitional period.

The Convener: But once the transitional period is over, and the diminution is actuarially based, will
the argument for the 15-year period fall away somewhat?

Sir John Butterfill: We might consider that when we are faced with that situation but, at the moment, we are not inclined to do so.

Peter Peacock: When you reviewed your scheme in Wales, Mr Cairns, were there similar considerations to those that Sir John has outlined?

Alun Cairns: It is fair to say that the 15-year rule is under consideration. The broad principle that we try to apply with this sort of change is that there should be as much flexibility as possible for members, but at no disadvantage or cost to the taxpayer. If something can be justified actuarily, with absolutely no cost to the fund, as trustees we generally support it in principle. Clearly, however, it must come under the pensions acts and regulations.

Peter Peacock: Some members may choose to change their lifestyle and opt for early retirement, but are most cases of early retirement at Westminster and in the Welsh Assembly due to boundary changes, the loss of seats or deselection by one’s party? Can both of you give me a feel for that balance? What gives rise to most early retirement requests?

Sir John Butterfill: I think that it is about 50:50. We do not have a list system, so members do not face the same risk of being deselected by their party, unless they do something extremely naughty. [Laughter.]

The Convener: We will not ask you to go into that.

Hugh O'Donnell: We will not ask for examples.

Peter Peacock: We move on quickly to Mr Cairns.

Alun Cairns: Bearing in mind the fact that we have had only three elections, the general reason why people take early retirement is that they have lost their seat. However, some members have taken early retirement because the experience has not quite lived up to their expectations, or they have had something else more interesting to do.

Peter Peacock: I will move on to the subject of ill-health retirement. Sir John, you referred to the difficulties around this area, and you have said that you are seeking to review the arrangements. Could you expand on your thinking, and on what gives rise to it? Ill health is a difficult area to make judgments on.

Sir John Butterfill: At the moment, the trustees are bound by a rule that says that, if somebody can show that they are no longer well enough in whatever way to continue as a member of Parliament and that they are not likely to have much earning potential outside, they can receive a full pension up to what they would receive if they stayed an MP until they were 65. I would not say that there has been substantial abuse, but we think that the scheme has been extremely generous in some cases in which medical advisers have been unduly lenient in interpreting the rules.

We should bear in mind the fact that there are blind members of Parliament—indeed, we had a blind Home Secretary until not long ago—and several who are in wheelchairs but who continue to work. I think that the level of disability needs to be graduated in terms of eligibility for early retirement due to ill health.

We would not in any way want to resile from paying a pension when somebody was clearly totally incapable of working in the future—because of some terrible brain damage or other disability, for example. We would not find paying in such cases a problem. People with terminal and degenerative illnesses are not an issue for the pension scheme. Other areas are much greyer, and we will certainly look for a change in the rules to enable us to be more flexible in our interpretation. We will need to do that in a way that is defensible. Otherwise, all that we will do is open up a legal nightmare for ourselves and possible references to the pensions ombudsman or the courts.

We will want to establish some criteria, but we may have one or even two tiers below the full element. Someone who, because of their disability, could work but could not possibly earn as much as they were earning as an MP would be in one category; somebody who could earn a bit but not quite as much would be in another category; and somebody who could not earn at all would be in the full category. We are discussing that idea with the Cabinet Office.

Peter Peacock: Are you seeking to gain for the trustees discretion to allocate people to the different categories, based on medical advice and in a defensible way?

Sir John Butterfill: The criteria would have to be defensible.

Peter Peacock: Indeed, but we are discussing essentially a discretion that the trustees would exercise on a case-by-case basis, subject to medical advice.

Sir John Butterfill: That is correct.

Peter Peacock: Mr Cairns, will you outline the situation in Wales?

Alun Cairns: We have our own medical advisers, whom we commission to conduct assessments. They advise us on the criterion of ill health and whether somebody is sufficiently ill not to be able to do their job as an Assembly member—that is the definition that we use. Our
advisers usually come back with a suggestion of a review in three years, five years and then five or 10 years thereafter, and we have always followed their suggestions. In one case, when the advice was that there was no need for a review, the decision was taken still to have a review in three years and then five years. We have been through some reviews, and each has come back stating that the person involved was not sufficiently well to do their job as an Assembly member.

**Peter Peacock:** I want to develop the point further. Sir John, you referred earlier to the degree of leniency or toughness of the medical advice that you receive. It is clearly of greater cost to the pension scheme when somebody retires on the ground of ill health than when they opt for early retirement. However, is there any relationship between those two factors? This might be a spurious contention but, depending on how tough the early retirement provision is, might you see a greater incidence of more lenient medical advice?

**Sir John Butterfill:** No, I do not think so. We have our own advisers and have indicated to them that the rules should be interpreted firmly. With medics, there is always a danger that they are sympathetic to the person who comes to see them, and that is not what they are being asked to do.

**Peter Peacock:** If it is one’s own GP, that is fair enough, but I take the point that you make.

**Sir John Butterfill:** We make it clear to them that they are being asked to exercise their professional judgment. For example, if there was a three-tier system, we would ask them into which tier they would allocate the person concerned. It is easier for us to defend the decision in the event of a challenge if we can say that the category into which the people fall and, therefore, the level of support that they will get are determined by independent medical advice that we have taken. The decision must be defensible.

**Peter Peacock:** Do you have any thoughts on those points, Mr Cairns?

**Alun Cairns:** No. The trustees have discussed the matter, but have not yet decided on any clear way forward if we want to bring about any changes. We are reasonably satisfied with the system that is in place at the moment, but it is always subject to potential review.

**Peter Peacock:** Thank you. That covers my points well.

**The Convener:** We will move on to the senior salaries review body’s recommendations. The previous witnesses talked about cost sharing. What discussions have the witnesses had on that and how might it work out in future?

**Sir John Butterfill:** We have not had any formal discussions with the Government yet, but the SSRB suggested that we might consider alternatives to the present arrangements and determine how they could work.

There are all sorts of graduations in how alternatives might be implemented. One of the SSRB’s suggestions was that we could consider moving in the future to a lifetime average salary pension scheme, as some of the civil service schemes have done. That would not make a big difference to our scheme—or to yours, I suspect—because, although we are told that we have a final salary scheme, we actually have a basic salary scheme. That is not well understood. Whether they have been ministers or not, members retire on a percentage of the salary of the humblest back bencher.

If a member who has been a minister made additional contributions while they were a minister, that is reflected in a formula that, in effect, buys additional years for the additional contributions that they have made, so they get to their full entitlement earlier, but they do not get a larger-than-full pension. Even the Chancellor of the Exchequer eventually gets a pension that is based on the salary of a back bencher. The only way in which that can be enhanced under the present rules of our scheme is if the member continues after the age of 65 and resumes making contributions. If a member gets to the maximum level before the age of 65, contributions have to cease but, uniquely in our scheme, if they continue after 65, they can resume making contributions without limit. It is not common—not many members do it—but it is technically possible.

The point that I am making is that, as shown by the graph that you probably saw in the SSRB’s report, a lifetime average salary scheme is fairly flat and would not make a big difference to our existing arrangements, so we do not think that it is much of a runner. The other possibility would be for us to close the scheme to new entrants and move to a defined contribution scheme for new members. We are prepared to consider that. It is not as attractive as it first appears because there are significant costs in moving to a DC scheme. You run out of new active members, so your run-off is greater and therefore your contributions to service those who are in the old scheme actually increase. There is a cost in moving to a DC scheme that is quite separate from the administrative costs.

16:45

The other problem in moving to a DC scheme is that it creates two classes of members, with benefits of different values. Depending on what the Government, the employer and the individual
contribute, the SSRB might say that those in a DC scheme have a less attractive scheme, so they should get a higher salary. The SSRB currently states that it takes all the benefits into account in deciding what members’ salaries should be. Therefore, you might get a two-tier salary arrangement, which would be difficult administratively and which could be quite expensive and lead to resentment.

The only other possibility is to put a cap on contributions. The Government has suggested that it might be interested in pursuing an arrangement whereby there was a cap on its contribution of 20 per cent of salary, and if members wanted something better than what would buy, they would have to increase their contributions. Similarly, if scheme benefits were enhanced, that could be done only at a cost to members and not at a cost to the sponsor.

We could look at such things. In the private sector, a cap is becoming increasingly common, although it generally operates on the basis that, if costs rise, they will be shared between the sponsor and the members and beneficiaries, which is usually done in proportion to their existing contributions. In our case, the ratio would be, roughly, 20:10, if the Government got to 20 per cent—it is not at 20 per cent at the moment. The Government’s nominal contributions are above that, but that is only to make up for the deficit arising out of the contributions holidays that it took over a period of 14 or 15 years. Instead of making up the deficit in one lump sum, the Government is making it up over 15 years again.

Alun Cairns: I have not looked at the SSRB report in detail, although in the next few days an independent commission is due to report on Assembly members’ salaries, as a result of the change in powers that we inherited last May. The commission has not sought evidence from me, as the chairman of the trustees, although I hoped that it would if it intended to report on the Assembly members’ pension scheme. Obviously, I will look with interest at what comments—if any—the commission comes out with.

When you consider the scale of our scheme as it stands and the broad principle that any additional changes, such as when we moved from fiftieths to fortieths, should be borne by members, it can be seen that it has no additional cost to the taxpayer and that it achieves the greatest flexibility. We would consider any changes that were called for by Assembly members or members of the public in line with that approach.

The Convener: The final thing that I want to cover, since we are dealing with it as well, is the resettlement grant. The SSRB made certain recommendations for changes to that for members who stand down at elections. Do you think that the proposals are fair, sensible and workable?

Sir John Butterfill: I do not think that the Government is likely to implement them, but I am not sure.

The Convener: Is that because they probably would not work or because they are not fair?

Sir John Butterfill: I think that the Government thinks the uncertainties that exist in the profession in which we are engaged are bad enough to warrant some form of resettlement grant.

The Convener: What is the position in Wales, Mr Cairns?

Alun Cairns: The position in Wales is similar to the position in the House of Commons. There is a scale for the size of the resettlement grant—it depends on how long someone has been a member. There have been no changes thus far on that issue, although the independent commission may well comment on it. The commission is conducting a two-stage review. The first stage is looking at the responsibilities of an Assembly member vis-à-vis the role of a member of the Westminster Parliament. We are currently paid 76 or 76.5 per cent of what a member of the Westminster Parliament is paid. Members of the Northern Ireland Assembly are paid 82 per cent of the Westminster salary, and there have been reports that that might go up to 84 per cent.

The second stage will make recommendations on allowances and, I suspect—as I said, I have not been called to give evidence, although I hoped that the commission would ask me for evidence—pension contributions, benefits and resettlement grants.

The Convener: Sir John, you talked about the nominal 20 per cent that the Treasury was or was not paying. Is the nominal figure based on the actuarial valuation of what should be paid, or is that just a historical figure?

Sir John Butterfill: The figure was somewhat under 18 per cent, which was what the Government actuary recommended as being the appropriate contribution for the sponsor. At each revaluation, the Government actuary says what he thinks the contributions ought to be. However, the fact is that successive Governments did not make those contributions, partly because the scheme was initially overfunded, but also because tax legislation at the time—although we are not, strictly speaking, affected by it—did not allow for the overfunding of schemes. Therefore, employers had to stop making contributions once schemes reached a certain level, which I think was 105 per cent.

Those contributions stopped, therefore, under the last Conservative Government, and the
contribution reduction continued for some years under that Government. The present Government continued the reduction, although the justification for it had fallen away, in that the scheme was no longer in surplus; in fact, the contributions should have been made, but were not. The present deficit is about £49 million, which is more than wholly accounted for by the failure of the Government to make the recommended contributions.

The Convener: Thank you. My colleagues have no further questions, so I thank Sir John Butterfill and Alun Cairns for giving evidence. Their evidence was succinct and will be very helpful to us in our deliberations. I hope that they have enjoyed their brief trip up to Scotland and that we will see them again.

Sir John Butterfill: Thank you, convener—it was too brief.

The Convener: We agreed at our previous meeting to take in private our consideration of the evidence.

16:52

Meeting continued in private until 17:09.
Scottish Parliament

Scottish Parliamentary Pension Scheme Committee

Tuesday 11 March 2008

[THE CONVENER opened the meeting at 15:01]

Decision on Taking Business in Private

The Convener (Alasdair Morgan): I welcome members to the third meeting in 2008 of the Scottish Parliamentary Pension Scheme Committee and remind them to switch off their mobile phones.

Under agenda item 1, the committee will decide whether to take in private item 4, which follows on from an item that was previously taken in private. Members may wish to note that the paper that we will consider will be made public once we finalise our deliberations on it.

Do members agree to take agenda item 4 in private?

Members indicated agreement.

Scottish Parliamentary Pension Scheme Inquiry

15:02

The Convener: Under agenda item 2, we will take evidence in our Scottish parliamentary pension scheme inquiry. I welcome Grant Ballantine, who is our sole witness today. He is a senior consulting actuary in the Government Actuary’s Department.

We will move straight to questions, of which we have many. I shall ask the first. What, in general, does the Government Actuary’s Department do? To whom do you give your wisdom?

Grant Ballantine (Government Actuary’s Department): Our main role in the Government Actuary’s Department is to provide actuarial advice on the Scottish parliamentary pension scheme. Normally, such advice would be provided to a set of trustees or, in the absence of trustees of unfunded schemes, to the managers of those schemes. I suppose that technically, our SPPS client is the Scottish Parliamentary Corporate Body, but in practice we deal with matters through the Executive. We see the SPCB once every two or three years when we produce reports. With respect to the advice that we provide, our main function is to carry out a full actuarial valuation every three years, which determines the contribution rate that the SPCB is to pay. In addition, we have on-going work in supplying factors and providing financial advice on the running of the scheme.

The Convener: Obviously, you provide advice on a range of schemes other than the Scottish parliamentary pension scheme—you deal with other similar Government schemes.

Grant Ballantine: GAD’s main function is to provide actuarial advice to public sector bodies, particularly on pensions. We also do a bit of insurance work, for example, but we deal mainly with pension schemes. We provide advice on most of the main unfunded public service schemes, such as those for Scottish teachers and the Scottish national health service. We also advise the Westminster Parliament, National Assembly for Wales and Northern Ireland Assembly bodies. We provide advice on the parliamentary contributory pension scheme at Westminster, the National Assembly for Wales’s scheme and the Northern Ireland Assembly’s scheme. We fulfil much the same function for them as we fulfil for the SPPS.

The Convener: When any of those bodies is considering changing the rules, as we are, is your advice simply a matter of saying, “This is what you can do and it will cost you such-and-such”?
Grant Ballantine: Essentially, that is it. Our advice has two aspects. Our basic duty is to provide costings for changes or possible changes that our client—the trustees, the Assembly or whoever—initiates. We are also sometimes asked more generally for advice: what would be sensible, what the options are and what other bodies do in similar situations.

The Convener: In your first answer, you mentioned the three-year actuarial valuation. You also produce an annual report. What is the difference between the two?

Grant Ballantine: By the annual report, do you mean the costings that are produced for the SPCB accounts?

The Convener: Yes.

Grant Ballantine: That function is rather different. What the SPCB does in that respect is what private sector companies are required to do by the Accounting Standards Board, which lays down reporting requirements for United Kingdom companies. About six, seven or eight years ago, the board issued financial reporting standard 17, which in effect required private sector companies to report annually their pension liabilities and assets and prescribed the basis on which that had to be done. Public sector bodies such as the SPCB have decided to do something analogous, although they are not required to do so—not by the ASB, anyway. The annual publication to which you referred contains a numerical calculation that we do, consistent with what the ASB requires of private sector companies. It is therefore made on a somewhat different basis from the on-going valuation.

The Convener: In the valuation to 31 March 2005, to which you referred, you recommended an increase in the employer’s contribution rate to 0.8 per cent to cover the accumulated deficit. I understand that that recommendation was accepted and implemented, yet the deficit that was reported in the accounts was £4.86 million. Does that represent a contradiction?

Grant Ballantine: The calculations are made on different bases. The approach that the ASB prescribes for private sector companies, which we follow for the Parliament in the annual financial report, is driven by a bond-type approach. The discount rates are driven by the yield on corporate bonds and the ASB requires liabilities to be discounted using the yield on AA-rated corporate bonds. That is not as conservative as a gilt rate, but it is much more conservative than what most pension schemes would hope to earn. From a funded pension scheme that has substantial investment in equities and other alternatives such as property and infrastructure, trustees would hope to generate extra returns on top of bond returns.

In an on-going actuarial valuation, it is quite common to take some credit for the expected outperformance of equities and other assets relative to bonds. That justifies the use of a somewhat higher discount rate than the discount rate of AA-rated corporate bonds. The main reason for the different results is that the liabilities on the annual accounting requirement are discounted at a lower interest rate than is assumed to be justifiable for an on-going valuation.

The Convener: For those of us who are worried about the health—or otherwise—of our scheme, are you saying in effect that we should not look closely at the annual accounts but that we should worry, or not worry, about the three-year valuation?

Grant Ballantine: Yes. To say that you should not worry might be an overstatement, but the three-year actuarial valuation is the more important determinant of the SPPS’s long-term wellbeing. That is what drives the cash contributions from the employer, or the SPCB in this case.

Naturally, the annual financial reporting is of some relevance. It is an answer that is received on a particular basis and it is, depending on how interest rates change relative to equities, likely to be extremely volatile from one year to the next. Members might have seen press reports about assessments of private sector funding schemes, which within the past 12 months have fluctuated from a surplus of £30 billion to an overall deficit of £90 billion. If you take such a short-term approach to assessment of liabilities, you can get very big swings in a relatively short time.

The Convener: That is helpful.

As you might be aware, the Review Body on Senior Salaries has carried out some work on various matters relating to our Westminster colleagues and has, with regard to pensions, suggested that cost sharing be introduced to cover future shortfalls. How would such a system operate if it was introduced in the Scottish Parliament?

Grant Ballantine: That is a very good question. I am not sure that anyone knows exactly how such a system might apply.

The Convener: I think that that has been said about one or two of the senior salaries review body’s recommendations, but never mind.

Grant Ballantine: Of course, it is not only the SSRB that is going down that road: the UK Government has already implemented cost sharing in the main public service schemes. The teachers’ system has already been agreed in principle, the NHS and the civil service are
following closely behind and a consultation document has been issued on the local government scheme.

It is pretty clear what the SSRB is getting at. Any variation in the assessed costs above or below a certain base level—which is, as far as I am aware, pretty vaguely defined as far as the parliamentary contributory pension fund is concerned—is shared 50:50 or 40:60, as agreed through an adjustment of contribution rates or benefits. It has also been suggested that with cost sharing up to a certain level there should be an absolute cap on employer contributions. With the civil service pension scheme, for example, there is a proposal to cap employer contributions at 20 per cent—the SSRB has proposed the same for the PCPF—and I believe that the schemes for teachers and the NHS have a 14 per cent cap on employer contributions.

That is a broad outline. An awful lot of detail has to be sorted out before we can really get to the nitty-gritty of any likely impact.

The Convener: So, simply talking about cost sharing does not really tell you very much at all. It all depends on how the costs are shared.

Grant Ballantine: I suppose so. It tells you something, but you have to establish first the baseline and secondly whether, for example, past service deficits, investment fluctuations or fluctuations in pensioner liabilities that impact on active members will be taken into account. Once you have done all that, you have to decide whether costs will be shared 50:50 or 40:60; whether cost sharing will be applied through an increase in contributions; whether it will affect the future service of active members, which means that pensioners and deferreds will get away scot free if costs increase or will benefit if there is a surplus; whether there is an option for the parties involved to decide between a mix of benefit reduction and contribution increases; and how any cap will be applied. The SSRB has suggested that, if costs break the 20 per cent cap, the scheme in question should be fundamentally reviewed.

As I have said, a lot of detail has to be sorted out before we can say exactly how such a system will apply. However, the principle is that, depending on the baseline, costs might be split 50:50 between the member and the employer up to a certain level, after which the member contributes 100 per cent.

The Convener: Because our scheme is relatively young, it was decided that there should be a pooled fund arrangement for investing our assets. Is such an approach still appropriate? Unless there have been sudden changes in the stock market, I believe that our assets are approaching £18 million.

15:15

Grant Ballantine: Yes, that is still appropriate at that level, although that is not to say that you could not go down another route if you so wished. The SPCB’s current investment manager, Baillie Gifford, has indicated that it would not normally consider a pooled fund for anything less than £30 million, but it is prepared to make an exception for the SPPS. You can still take a mix-and-match approach, using different pooled funds and asset strategies. The pooled fund for a relatively small scheme is generally about economies of scale and benefits of diversification that would be difficult to replicate with a segregated direct portfolio within the UK equity market, for example.

The Convener: Okay. We now have some questions on funding.

David McLetchie (Edinburgh Pentlands) (Con): As you may be aware, the committee is considering giving members the option of accruing pensions at one fortieth of their salary for each year of service in addition to continuing with the existing increments of one fiftieth for accruals. It is intended that, if a member chooses the accrual rate of one fortieth, that will be fully funded by the member’s own contributions and not in any way by employer—that is, taxpayer—contributions. What additional contribution would be required of scheme members over and above the existing 6 per cent if they were to move from an accrual rate of one fiftieth to an accrual rate of one fortieth?

Grant Ballantine: We have provided a costing on that point and have recommended an extra contribution of around 5 per cent of payroll for the extra benefit.

David McLetchie: That is higher than the additional 4 per cent that was charged of members of Parliament at Westminster when they similarly changed from an accrual rate of one fiftieth to an accrual rate of one fortieth. Can you explain, perhaps by reference to the underlying schemes or the composition of the members, why the extra cost is necessary for this scheme?

Grant Ballantine: Yes. The main reason for the difference is the wretched subject of retained benefits. As you will know, retained benefits are benefits that the member has acquired through membership of a pension scheme in previous employment. Under the rules of both the Westminster scheme and the Scottish scheme as they existed before the Finance Act 2004, members’ benefits that were accrued in the SPPS or the PCPF were subject to an overriding revenue limit that, in broad terms, could not exceed two thirds of their final salary less retained benefits from other pension schemes. A lot of the members at Westminster have retained benefits from other schemes, and some have substantial retained
benefits in relation even to a Westminster MP’s pay level. For example, former barristers can have personal pension pots of £1 million, £2 million or £3 million. The fact that they have significant retained benefits has an impact on the benefits that they can draw from the PCPF.

It is generally quite time consuming to get information on previous benefits. One has to ask the member to provide the information with respect to retained benefits, which is quite a time-consuming operation. The member does not usually want to be bothered with digging into the past and so on. The trustees at Westminster had to mount quite an exercise to get members to tell them what retained benefits they have. They got information back from about half the members, which enabled us to make an assessment of the level of the retained benefits. The existence of those retained benefits has an impact on the costing of the Westminster scheme and it has an impact on the costing of the option to move from an accrual rate of one fiftieth to an accrual rate of one fortieth.

Obviously, if you are accruing benefits at one fortieth rather than one fiftieth, you will hit the limit of two thirds of final pay for fewer years of service than otherwise—broadly speaking, it would be 26 and two thirds years compared with 33 and a third years. Of course, the member might opt for the one fortieth option initially without expecting to have a long career as a member of Parliament but find out, at the end of the day, that he has been paying money for no benefit, because the retained benefits kick in.

We had some hard information in relation to retained benefits in Westminster. That enabled us to say that members would, in general, be provided with lesser benefits if they opted for a fortieth than one might expect from simply looking at the difference between a fortieth and a fiftieth. That is the major difference between the 5 per cent and 4 per cent costing.

In Scotland, we have not got any information on retained benefits. It is not necessary to get that information in relation to the young scheme. As the convener mentioned, the retained benefits do not impact until members retire.

We have costed the 5 per cent figure for the SPPS without any allowance for the impact of retained benefits.

David McLetchie: Can you explain why the basic employer contribution rate at Westminster is lower than the equivalent rate here, when the additional amounts to cover previous scheme deficits are excluded?

Grant Ballantine: If you exclude the deficits, you are looking at something like 19.5 per cent against something like 18.5 per cent or 18.1 per cent—there is a difference of about 1 per cent or just over. That is primarily due to the different demographic assumptions that we have made. The PCPF valuation was carried out on the same date as the SPPS valuation—effectively, 31 March 2005. In both cases, we used similar discount rates, which were, broadly, 3.5 per cent in excess of price increases and 2 per cent in excess of earnings increases, both for the SPPS and the PCPF. There is no difference there; the difference is entirely on the demographic side.

Looking at the comparison, the biggest single factor—which does not account for the whole difference, but might account for half of the difference or a bit more—is the assumed pattern of retirement ages, which is the age at which the pensions commence. Again, because the Westminster scheme has existed for quite some time, we have good evidence that a significant proportion of members of Parliament work beyond the normal retirement age of 65, or 60, on unreduced benefits with 20 years of service. Some of them, as you probably know, continue to be MPs into their 70s, and even into their 80s. Based on that evidence, we were able to make a credible assumption that a proportion of members will continue working beyond normal retirement age.

We do not have that evidence in relation to the SPPS as yet, although it might eventually emerge. For the initial costings of the scheme, we have adopted a prudent approach of assuming that members will retire when they reach 65, or at the end of the parliamentary session after they reach 65, and that some will take advantage of the early retirement provisions and go at 60 on unreduced benefits, once they have 20 years of service.

The main difference between the two costings is the earlier retirement age that has been assumed in relation to the SPPS and the somewhat later retirement age in relation to the PCPF.

David McLetchie: Speaking of older members—one of whom I will become at some point—people’s life expectancy is increasing, particularly males. What impact do you expect that to have on scheme funding?

In addition, there is a difference between the proportions of females and males in the Scottish Parliament and the proportions in Westminster. The Scottish Parliament has a far higher proportion of female members than the Westminster Parliament has. Given the different compositions of the Parliaments, what assumptions do you make about life expectancies?

Grant Ballantine: You are right that women are more expensive than men.

David McLetchie: I am glad that you said that, although it is borne out by my personal experience.
Hugh O’Donnell (Central Scotland) (LD): We certainly could not comment.

Grant Ballantine: The higher proportion of women is a minor factor. This Parliament has a higher proportion of women, so there is a slightly more expensive mix of members here than there is at Westminster, but it is not a major issue.

Mr McLetchie’s question on life expectancy is highly relevant. One might say in a one-line answer that the impact of life expectancy is potentially worrying. There seems to be no end to the pace at which life expectancy is increasing. Old codgers are constantly defying the actuarial expectations.

For the 2005 valuation of the SPPS, we used the latest tables published by the actuarial profession—the 1992 continuous mortality investigation bureau tables. Those consist of pension tables for males and females, and built into them are improvement factors to allow for future improvement. For the 2005 valuation, therefore, we used the 1992 tables projected forward to 2005 with the built-in improvement factors. We also applied the same improvement factors to all future years. So we used the tables in 2005, and incorporated the improvement factors that were considered appropriate when the 1992 tables were drawn up. The improvement factors vary by age and sex, but, by and large, the improvement factors are less than 1 per cent per annum, and involve mortality rates dropping by 1 per cent per annum, or a bit less, indefinitely in the future.

Experience of the past five years or so, looking at wider bodies of experience than is available from either the SPPS or the PCPF, such as big pension schemes or the population as a whole, indicates that, at some ages, mortality improvement is up to 3 per cent per annum rather than 1 per cent per annum. In other words, mortality improvement at the older ages of 65 and above is happening significantly faster than it was even 10 years ago. In that context, since the 2005 assessment, the Office for National Statistics, which takes some advice from GAD on the projections, has produced 2006-based population projections that have built in to them significantly greater assumed mortality improvements than any previous set of tables has had. In addition, the actuarial profession has worked on updated tables that were produced in 2000, although they do not have a specific assumed allowance for future improvement.

Also, much work has been done on causes of death and on how improvement might be affected in the future. Of course, nobody knows how improvement will be affected—it is a guessing game—but all the recent evidence suggests that improvement will accelerate even faster than in the past. If that happens—good heavens—we will be paying pensions for 100 years, if we are not careful. There is therefore a real worry about longevity.

Another factor is that the Pensions Regulator has just issued a consultation document on the minimum improvements that it would be looking for.

Having regard to all that, it is beyond doubt that we will have to incorporate a larger allowance for greater assumed improvement at the 2008 assessment than we did at the 2005 assessment, moving from 1 per cent to not necessarily 3 per cent, but something a lot bigger than 1 per cent. In an extreme scenario, 2 per cent of pay could easily be added to pension costs in a longer-term assessment.

15:30

David McLetchie: So 2 per cent of salaries could be added to costs as a result of improvements, although such an amount would be borne between employer and employee.

Grant Ballantine: That is right. I have not done any calculations, but the figure would be of that order.

David McLetchie: I would like to move on to other changes that would impact on costs. At the moment, there is no provision for unmarried partners of members. It has been proposed that the scheme could be expanded to cover not only members’ spouses but members who are in civil partnerships and members who are cohabiting in a long-term relationship but are not formally married or in a formal civil partnership. From your experience of other schemes, what costs are associated with extending the categories of surviving partners and spouses?

Grant Ballantine: As you say, the scheme provides for legal spouses’ benefits. Since 2005, I think, it has also covered civil partners, to some extent.

The costs of extending the scheme to cover unmarried partners largely depend on what is and is not included in the definition of an unmarried partner. If there is a wide and lax definition, any member who does not have a spouse or civil partner will almost have the option of selecting any individual and claiming that they have an unmarried partner. The resulting costs can be significant—they can be 3 or 4 per cent of pay.

Most schemes that have gone down that route have opted for a fairly tight definition of an unmarried partner, and have tried to limit the scope of the definition to those who are in relationships that are similar to those that spouses or civil partners are in. In other words, there must
be a long-term or permanent commitment that has been established for some time. If the scheme is structured in such a way and is policed fairly regularly, the costs can represent less than 1 per cent of pay.

David McLetchie: Currently, many people in society are in cohabiting relationships as opposed to married relationships—I am thinking for the moment about people in heterosexual relationships. In the past, a member would have the choice of being married or single. From an actuarial standpoint, is the previous proportion of people who were married now split between formally married people and cohabites? Is the former married total the equivalent of the present married total plus the present cohabiting total?

Grant Ballantine: That is a good question, but there are not enough data on small schemes to get a credible answer to it. However, we should consider the population statistics as a whole. It is true that the proportion of younger people who are married has declined and that the trend is extending, so that the proportion of people in their middle ages—even those in their 60s and so on—who are married is declining. It seems that the trend in the past 20 or 30 years is that lower proportions of people are marrying. By extrapolation, that might be expected to impact on people of all ages in the next 30 years or so. It is reasonable to postulate that those who are not married to their partners will fill the gap resulting from the drop in the proportion of people who are married, although some partnerships will be caught and brought under the new definition that did not come under the old definition. The falling proportion of those who are marrying will be offset somewhat, but the offset will not be complete.

David McLetchie: At the moment, the pension given to a surviving spouse or civil partner terminates when they remarry or enter into a new civil partnership. Would removing that rule and continuing to pay a pension to a remarried or repartnered spouse or civil partner be a particularly expensive burden on the scheme? Is that regarded as significant?

Grant Ballantine: It is not significant in relation to past experience. If behaviour does not change and people do not manipulate the system, the cost is relatively small—of the order of a quarter of a per cent or one half of a per cent of pay. However, you have to be careful about what happens if you remove the cessation of a spouse’s pension upon remarriage, particularly if you include unmarried partners, as the cessation of an unmarried partner’s partnership is difficult to identify without being intrusive and seeking a lot of evidence. That situation can be difficult to operate, which is why one or two schemes did away with the cessation provision when they opened up to unmarried partners.

However, if you remove the cessation provision, there is a danger that you might encourage people to identify an unmarried partner or marry a partner as they approach the end of their lives—it is a free hit against the scheme, particularly if you do not have to marry anyone but can simply nominate someone. To try to limit that risk, some schemes reduce the level of the spouse’s pension if there is a great age gap between the member and the partner. For example, if the age gap is, say, more than five years, the level of the spouse’s pension is reduced by 2.5 per cent for each year of the age difference, which means that with a 40-year age gap, the spouse’s pension would be practically nothing. That is common in the private sector, and one or two public schemes have started to do it as well.

David McLetchie: From the celebrity pages, we can all think of relationships that have such a wide age gap, but I do not know if we are the sort of people who are likely to fall into that category.

Hugh O’Donnell: Speak for yourself, Mr McLetchie.

David McLetchie: This is a lot more entertaining than I thought it was going to be.

What would be the cost of increasing the age limit for a child’s pension from 22 to 23 and of introducing a dependant’s pension for children who become incapacitated at age 23 or over?

Grant Ballantine: The cost of paying a child’s pension for an extra year, for those in full-time education, is minor. It does not alter the funding rate. It is way under 0.1 per cent or something.

The question of extending the coverage to dependent children is somewhat more problematical. There are some similarities to what I said before about selection against the scheme. The issue is identifying whether the child was dependent. It is, perhaps, not too difficult for a member to claim that he is supporting a child who just chooses not to work, for example. You need to be pretty confident that you can establish that a real illness or disability prevents the child from working and makes them dependent on the member. That is particularly the case if we say simply that the child must be dependent on the member at the date of the member’s death, which sort of writes off what happens between the child being 22 or 23 and being 45, if that is when the member dies. Having a reasonably tight definition or criterion for what qualifies, such as the child being permanently and totally disabled from the age of 23 until the member’s death, should ensure that costs are kept relatively small.

David McLetchie: So the focus should be on long-term or near-permanent incapacity to minimise costs.
Grant Ballantine: That is right.

David McLetchie: The scheme's current practice of reinsuring members' death-in-service benefits apparently costs £48,000 in premiums. Should we continue that practice or should the scheme take on its own burden in that respect?

Grant Ballantine: It was sensible to insure the lump sum death benefit in the scheme's early years, as it protected the fund's position when there were very few assets. However, now that the fund stands at £18 million, the scheme's asset base is probably of sufficient size that the death benefits should be self-insured, assuming, of course, that the benefit stays roughly at the current level of three times pay.

David McLetchie: So do you recommend that the scheme should review that matter imminently, annually or during the triennial review?

Grant Ballantine: It should not be necessary to review it annually, but it could be considered in conjunction with or immediately after the triennial review.

Hugh O'Donnell: Under the current scheme rules, office-holders who are not MSPs are excluded from a number of benefits, such as buying added years and the enhancement to survivors' pensions on a member's death in service. What extra costs would be involved in giving those office-holders the same rights and entitlements?

Grant Ballantine: I want to go back a stage to postulate the rationale behind that approach, which, of course, follows the Westminster approach. Indeed, the initial provisions in the SPPS were almost a carbon copy of the Westminster provisions.

It was felt that office-holders' earnings were often temporary, transient and volatile; sometimes they went up and sometimes they went down. Moreover, ministers might get sacked, come back, get sacked again and come back again. The nature of the job is different to that of a permanent, full-time MP or MSP.

Because of that volatility, you could get some capricious results with benefits. It can be down to happenstance, for example, whether someone dies very high up or very low down the Cabinet ranks, and one might be faced with difficult cases in which a junior minister just promoted to Cabinet minister appears to get a windfall benefit while a Cabinet minister who is demoted loses out entirely. That capriciousness was the reason for excluding benefits that, depending on pay at a particular point, might be substantial. The pay of an MP or MSP is, on the other hand, fairly stable. Of course, you could extend those rights and entitlements to office-holders, as long as you were prepared to accept the volatile nature of the potential outcomes.

As for the enhancements that you mentioned, I have to say that there have not been many cases of death in service or ill-health retirement. If the incidence of such cases were to remain low, the costs in relation to office-holders would be quite modest.

Added years are a trickier issue. The ministerial salary tends to be temporary and to fluctuate, so the concept of an added year has limited relevance. However, it might be possible to allow office-holders to buy an added year of MSP service.

15:45

Hugh O'Donnell: You will know that we are considering other changes. What financial savings could be made if the First Minister and the Presiding Officer did not have special pension arrangements and were instead treated as office-holders in the current SPPS scheme?

Grant Ballantine: We were asked to provide costs for that, on the basis of the First Minister and the Presiding Officer continuing in their roles for a four-year parliamentary session. On current pay levels, the net saving from a change from the current position to the position that you describe would be round about £700,000 for the First Minister and about £270,000 for the Presiding Officer.

Hugh O'Donnell: That is nearly £1 million.

Grant Ballantine: Yes, over a four-year period.

Hugh O'Donnell: On a different topic, what would be the cost of removing the earnings cap but retaining the two-thirds pension limit?

Grant Ballantine: The cost would be virtually nothing in the medium term. I understand that, at present, no one would be above the earnings cap, which I think is about £112,000 at present. The First Minister might just be getting there.

The extra contributions would apply to earnings above the cap. There would of course be a cost—the member and the employer would pay—but the impact on the overall percentage contribution rate would be minimal. There could, however, be longer-term costs—compared with the current situation—if earnings were to increase significantly faster than the earnings cap.

There is some merit in the proposal, as all relevant earnings would be pensionable. The earnings cap might be difficult to justify 10 years down the road. It will not be imposed by HM Revenue and Customs but will be self-imposed by the scheme. Unless you had a pretty good
rationale for keeping it, removing it might be a convenient simplification.

Hugh O'Donnell: Can you confirm that increasing the maximum commutation limit to 25 per cent of pension in line with the revenue limits would be cost neutral to the scheme?

Grant Ballantine: Yes—it would be intended to be cost neutral, or as near to that as we could make it in terms of the factors that would be used to convert pension to lump sum. As with any option, there is always a risk of possible selection. Converting pension to lump sum is a good idea for pensioners who are in poor health, because they are not likely to live as long as the average. Practice has shown that a very high proportion of the membership takes up the lump sum option because of the tax advantages. The scope for selection is therefore fairly limited, and we regard the measure as pretty well cost neutral.

Hugh O'Donnell: If a scheme member buys added years, subject to the current limit in the scheme of 15 per cent of salary, is there a cost to the scheme?

Grant Ballantine: There is not intended to be a cost. The added-years factors are intended to be cost neutral, with full costs to the member, not to the employer. However, the actuary does not always get his sums right.

Hugh O'Donnell: That is a bold admission to make on the record.

Grant Ballantine: You might have deduced it from my earlier comments about life expectancy increasing.

With the best will in the world, nobody can predict the future of human demography and people’s financial circumstances. All that the actuary can do is make reasonable assumptions. The added-years facility is not expected to have a cost, but there would still be a risk to the employer—the SPCB in this case. If it turned out to be more expensive, the SPCB would have to pick up the bill. For that reason, most employers who offer the added-years facility try to limit the scale of the option in order to limit the scale of the risk—it is more a limitation of risk than of cost. If it were a completely unlimited option, the pension scheme would be converted into something that is like an insurance company that offers benefits on pseudo-commercial terms, and that is not really the scheme’s purpose.

Hugh O'Donnell: Given those comments, am I right in saying that if the cap were removed completely and we retained only the two-thirds pension limit, would the scheme be exposed to a higher level of risk?

Grant Ballantine: Yes, although you might want to consider having tighter limits for the 59-year-old who has done only one term—or been employed for four years—and, if he can afford it, wants to buy 20 added years.

Hugh O'Donnell: Knowing what each year costs to buy, I see that as an extremely unlikely scenario.

The Convener: Have you any suggestions for what the limits might be, Mr Ballantine? What would be reasonable?

Grant Ballantine: An easy limit would be to control the contribution input rather than the number of years, in addition to having the two-thirds limit. You could also relax significantly the existing contribution limit—at something like 20 per cent of pay—without exposing the scheme to any great risk. It should look reasonable in relation to a member’s pay. You do not want to get to the stage at which a member who has other resources contributes 60 per cent of pay. I suggest that a limit of something like 20 or 25 per cent of pay would be reasonable.

Hugh O'Donnell: Thank you for your patience with me; this is my final question. With the removal by the Finance Act 2004 of the maximum amount of pension—two thirds of final salary—that can be accrued, is there any reason to restrict the amount of pension payable from the fund?

Grant Ballantine: Yes, one could advance some reasons. First, the more pension provided, the more the cost. Initially, the cost might not seem very large, particularly in a very young scheme such as the SPPS, because it is not likely that many members will reach the two-thirds limit for many years, whereas a significant minority of the Westminster scheme members are above the limit.

Secondly, the reason why the SSRB and others involved were prepared to recommend an accrual rate a bit above the average—either a fiftieth or even a fortieth—was to provide a faster accrual of benefits for members who are exposed to career interruption in a way that a normal employee is not. Members of Parliament and MSPs are likely to have their careers interrupted for reasons that, in the main, are nothing to do with them.

Hugh O’Donnell: A nice caveat.

Grant Ballantine: Shorter-than-expected average service was one reason that justified the higher accrual rate. If you justify the higher accrual rate on the basis of shorter-than-expected service and then give that higher accrual rate to those who are lucky enough to stay in for the long term, they might get two bites at the cherry.

Peter Peacock (Highlands and Islands) (Lab): I must confess that the triennial valuation report has not been high on my reading list, but I took the trouble to read it a couple of weeks ago and found
it fascinating, as I am finding your evidence fascinating.

It is clear from the report and your evidence that managing the funds requires you to take a long-term view to ensure that the funds are sufficiently buoyant over a long time to meet all their obligations. In fact, you said earlier that you apply improvement factors to “all future years”, which seems to mean eternity. You also said that because the SPPS scheme is new—it is immature, in that sense—there is not the same actuarial experience underpinning assumptions as there is with the Westminster scheme.

I want to apply some of that to our situation to get a complete grasp of it. My understanding of the historical and current situation is that members’ contributions are fixed and that any variation in the fund’s buoyancy is dealt with by the employer’s contribution, which maintains the fund. However, if the fund outperformed the actuarial assumptions, there could be a reduction in the employer’s contribution such that the fund then underperformed in relation to the assumptions—or a variation could cause an underperformance—meaning that the employer’s contribution might have to increase again.

I understand that you use the triennial report to check whether the actuarial assumptions remain valid, so you make a judgment only every third year about whether a pattern is emerging. For example, the long staying-on rates experienced at Westminster, which are beginning to show themselves here, mean that you must make certain actuarial assumptions. Is that the basic process? Every third year, you check the actuarial assumptions against performance.

Grant Ballantine: That is absolutely the case.

Peter Peacock: Another point that comes out from the report is the huge number of factors that affect the fund. You have touched on some of them: market performance; real interest rates; the balance between men and women in the fund; the fund’s assets; life expectancy; age of retiral; and transfers in and out. In your experience, does one factor dominate decisions about changes in the employer’s contribution every third year? Does market performance dominate everything else, or are the factors evenly spread?

Grant Ballantine: On the assumptions that the actuary makes at the three-yearly assessment, the critical factor is the discount rate—the assumed investment return against the real investment return, and the assumed investment return against excessive price increases.

Peter Peacock: Is that affected by a factor of many times?

Grant Ballantine: Yes, the weighting is about 50 or 60 per cent. The second most critical factor is the longevity assumption. If you sort that and the discount rate, the rest of the factors are unlikely to have a huge impact, although they will have some impact.

In terms of experience, anything can happen. However, the biggest factor that impacts on experience from one three-year period to the next is generally investment performance. If it is a good time for the markets, that will have a favourable impact on the fund; if it is a bad time for the markets, that will have a bad impact on the fund. In most cases, that is the single biggest experience factor.

Peter Peacock: I noted that, although the report refers to the issues that I want to come on to—early retiral, ill-health retiral and widow’s and widower’s pensions—one is mentioned as a specific factor in its own right. I assume that that is because it is assumed that members of the Scottish Parliament will retire, on average, at 64 rather than at 65. Does that assumption embrace the actuarial assumptions about early retiral, ill-health retiral and widow’s and widower’s pensions? Is my assumption broadly fair?

Grant Ballantine: Yes. Dealing first with the early retirement point, the assumptions that we have made are broadly equivalent to assuming an average retirement age of 64. That is an amalgam of people whom we assume will retire at the normal retirement age of 65 and a few whom we assume will carry on until the end of the parliamentary session, when they will be 64, 67 or whatever. We also take into account that individuals could retire at 60 with, for example, 20 years of service. That would give rise to extra costs. We said that 64 was the equivalent average age. However, we valued the pensions for those who could qualify for an unreduced pension at 60 as if they would retire at 60.

16:00

Peter Peacock: The headline average figure is 64 for the Parliament, but various assumptions are caught up in that. Under the scheme, nobody currently qualifies for early retirement because of the requirement for 15 years of service. If someone has not served 15 years—and none of us could have—they will not qualify. However, as the years go by, more and more people will meet the 15-years requirement, will have reached the age of 60, and will have made sufficient contributions. Ten years from now, more people will be eligible for early retirement. Do the costings and the average figure of 64 under the current scheme take that into account? Is that a correct assumption on my part?

Grant Ballantine: Not quite. You mentioned earlier that the actuary has to take a long-term
view. We look at the current membership and come up with a hypothesis of when they are going to retire—say in 15 or 20 years’ time. For example, for a 50-year-old who already had five or six years of past service, we would say that he might be able to retire at 63 on an unreduced pension. We would factor that into our calculations. In a way, that is not quite considering the worst possible case but it is looking at the prudent or costly case. Therefore, unless the mix of membership were to change, we would not expect an increase in costs just because existing members have served an additional period in the Parliament, because such costs have already been built in. Of course, things might also go the other way: it is possible that, over time, people will reach 60 with 20 years of service but will want to continue being an MSP.

Peter Peacock: The built-in costing assumptions would be reviewed during a triennial review. If it were found that patterns were changing, would you have to consider changing the actuarial assumptions?

Grant Ballantine: Yes.

Peter Peacock: If, for example, you discovered in 15 years’ time during a triennial review that more people were retiring early than you had assumed, would you consider that as a single factor in relation to what the employer’s contribution might be, or, indeed, what the contribution of both employee and employer might be if costs were shared in future? Alternatively, would you balance the factor of an increase in early retirements against the factor of market performance during the same triennial period, or against other factors such as transfers or a shift in the balance of men and women in the fund? Would all the factors go into the melting pot to allow you to say, “Right, in the next three-year period, we will have to adjust the contributions by X?”

Grant Ballantine: At the present time, we certainly take the latter approach: the rules do not allow contributions to be varied for one particular factor. All the factors are lumped together and it is the end result that applies. However, we consider each individual factor when we analyse the overall experience to see whether anything has to be changed. Within reason, we can identify the impact of individual factors on the financial position of the scheme. Heaven help us if, in future, we have to vary contribution rates to take account of every demographic element.

Peter Peacock: Indeed.

Will you clarify one point for me? At Westminster, people tend to serve for longer than the assumed length of service here, and they therefore collect less pension over their life. Is the average retirement age in the Westminster scheme reckoned to be, say, 64.3 years, or 65.1 years? Is there a variance between the two schemes? Roughly, what effect would a variance of 0.5 per cent have on costs?

Grant Ballantine: I do not have the average retirement age for PCPF members at my fingertips.

Peter Peacock: Perhaps you could find that out in the future.

Grant Ballantine: Yes. A one year difference in the average retirement age might affect costs by around 0.5 per cent of pay.

Peter Peacock: So a 1 per cent shift in the average age—

Grant Ballantine: I am talking about a one year shift in the retirement age. If the average retirement age is 64 rather than 65, the standard contribution rate would increase by around 0.5 per cent of pay.

Peter Peacock: Okay. Thanks.

We have taken evidence from people in other parts of the pensions administration system on what is happening with other funds. What criteria are used in public sector schemes to determine qualification for early retirement? Is there a standard set of rules or do the rules vary, in your experience?

Grant Ballantine: Most public and private sector schemes have a two-year qualifying period before a person becomes entitled to a preserved pension, but once they get past that period there is no qualifying period for normal retirement, early retirement or late retirement. That applies across the board. It is the qualifying period in the parliamentary scheme that is unusual.

Peter Peacock: What is the rationale for having a minimum qualifying period of 15 years before early retirement is available under the Scottish parliamentary pension scheme and the Westminster scheme?

Grant Ballantine: That takes us back to the possibility that the service of an MP or MSP may be short or that their career may be interrupted. I assume that the rationale was to provide individuals who had given long service to Parliament with a favourable option of going early with an extra pension, but I do not think that the rationale for that facility exists nowadays. I will put things in another way. There is an opposite pressure nowadays. Given people’s increasing longevity and the increasing proportion of the population who are likely to be aged over 65 in the next 30 years, people should be encouraged to stay at work and the system should be made to reward people who continue to work rather than those who retire early.
Grant Ballantine: We have heard evidence about people choosing to retire. You alluded to the fact that MSPs and MPs often do not have a choice about when they retire—would that things were different, but they are not. We have heard evidence about other schemes. Under the local government scheme, for example, if there is a reorganisation and people are made redundant—I am not talking about people in local government who want to change their lifestyle and leave early—there may not be an actuarial reduction in their pensions. I understand that the teachers pension scheme is broadly similar. Are there standard rules on actuarial reductions for people who voluntarily retire early?

Peter Peacock: Yes. In most voluntary early retirement schemes nowadays, actuarial reduction factors apply so that the scheme is not financially exposed by members’ individual choices. Normally, there would be a full actuarial reduction.

Grant Ballantine: Different schemes have different approaches, but by and large a reduction factor of between 4 and 5 per cent a year would be cost neutral. Quite a lot of schemes have a 4 per cent reduction factor. That would be fair under the SPPS.

Peter Peacock: Okay, but we are assuming that the person has retired voluntarily.

Grant Ballantine: Yes. The position is different in redundancy cases.

The Convener: What would the actuarial reduction be if it happened under the SPPS?

Grant Ballantine: Different schemes have different approaches, but by and large a reduction factor of between 4 and 5 per cent a year would be cost neutral. Quite a lot of schemes have a 4 per cent reduction factor. That would be fair under the SPPS.

Peter Peacock: We asked a range of questions on ill-health retiral in our consultation. The difficulty lies in determining the severity of an illness and the ability or otherwise of the person to conduct any other comparable form of occupation. What is the broad experience in other schemes? Being a member of Parliament is not typical employment, but what is your view on the issue, in particular on what other schemes offer?

Grant Ballantine: Ill-health retirement in the public services has been a thorny issue for some time. I am talking about the main public service schemes, rather than the parliamentary schemes. As you rightly say, the nature of employment is quite different for members. You will be aware that, at least four years ago, there was a substantial volume of press complaints about the scale of ill-health retirement, particularly in the police service and the fire service and, to some extent, in local government and other public services.

The Treasury set up a working party on ill-health retirement and made various recommendations to tighten up the qualification of ill-health retirement in public service schemes. A contrast was made with private sector schemes, in which the incidence of ill-health retirement seems to be much lower than it is in public service schemes. The main public service schemes have had a torrid time on the ill-health retirement front. However, the steps that were taken five or six years ago have been helpful in limiting the incidence of ill-health retirement. Ill-health retirement needs to be kept under control. If it is not administered properly, it can run away with itself.

For whatever reason, the parliamentary schemes have never really been subject to the same sort of difficulty. I think that that is because most parliamentarians are committed to their work and are not on the lookout for ill-health retirement in the same way that people in some other organisations might be. The incidence of ill-health retirement has been relatively low among members.

Peter Peacock: That being the experience at Westminster, presumably that is reflected in the actuarial discussion that we had earlier about the figures that are used for long-term projections.

Grant Ballantine: Yes.

Peter Peacock: A couple of weeks ago, we took evidence from the chair of the board of trustees to the Westminster scheme. He spoke about a review of the ill-health provisions there and discussed a tiered system, which involved an absolute inability to work in any occupation, an ability to work but not at the same level, and so on—I do not have the details at my fingertips. The chair of the board reckoned that such an arrangement could save the Westminster scheme about 0.4 per cent of payroll. If we were to introduce a similar arrangement, would it be fair to make a broadly similar assumption about the saving on payroll here relative to where we are now, starting off at the same position as Westminster?

Grant Ballantine: That would be a reasonable assumption. The saving would probably be slightly smaller, however. At present, you have a one fiftieth accrual rate, whereas most of the Westminster MPs have a one fortieth accrual rate. The saving might be 0.3 per cent of payroll, rather than 0.4 per cent.

Peter Peacock: You mentioned the need to keep tight control. In your experience, having observed how these matters work, might such a system be best achieved through having a clear tiered arrangement, or, rather than having clarity in that way, could the trustees of the fund—assuming
that we move to a position of having trustees—be
given significant discretion to review the payment
of ill-health pensions and to seek continuing
evidence of that ill health? What is your feel for the
best way of controlling it?

Grant Ballantine: It would be useful to be able
to do both. A two-tier approach is being
considered for the PCPF, and it is already in
place, using similar arrangements, in the civil
service pension scheme. It was a development of
the attempt to adopt a more controlled process,
with a tighter definition for ill-health retirement.
Another factor has been the tighter definition that
the Inland Revenue imposed through the Finance
Act 2004. That approach has been initiated by
those pressures. It is sensible to have a two-tier
structure in which the most generous benefit is
given in cases in which permanent incapacity is
established very clearly and a lesser benefit is
given to own-job disability, if we can call it that.

16:15

Peter Peacock: In public life, there have been
remarkable recoveries from conditions such as
Alzheimer’s disease. Do you argue that,
notwithstanding the tier provisions that are put in
place, we should maintain an ability to review the
evidence on any condition from time to time?

Grant Ballantine: Yes. It would be sensible for
the trustees, or whoever, at least to have the
power to review not only the member’s state of
health, but his earning capacity. If he can still fool
the doctors that he is disabled, but he is earning
megabucks, that may raise questions about
whether he is a genuine ill-health case.

Peter Peacock: You have touched obliquely on
my next point. Is there any actuarial experience
of—or, from observing funds and talking to people
who are involved in the business do you know of—
a link between ill-health provisions and early
retirement provisions in that, if early retirement is
difficult to get, the rate of ill-health retirement
mysteriously rises? Is there any known or believed
link or association between the two?

Grant Ballantine: There is certainly anecdotal
evidence to that effect. The joke in the local
government context used to be that people first
tried for ill-health retirement and if they did not get
that, they tried for redundancy—and if they did not
get that they were forced to accept voluntary early
retirement. However, there has been no credible
study to try to show that link.

Peter Peacock: I understand completely your
point that the decision of one member can be in
effect a cost to all the other members, unless we
are careful to get the balances right. However, to
reflect other comments that you have made, it is to
an extent the nature of any pension fund that

some people who stay on longer in work than
others, perhaps beyond their normal retirement
age, in effect, pay for benefits that others will
enjoy. So we men—we all happen to be men on
this committee—in effect pay for benefits that
women will enjoy for longer than we will. To an
extent, we all pay for collective benefits that we all
share. There is no way of not taking such a
collective view, although I accept your point that
we should not precipitate situations that have
unnecessary consequences. Is that a fair
comment?

Grant Ballantine: That is absolutely right. One
of the great merits of defined benefit pension
provision is that there is a pooling of risks. The
pensioner who dies below the average age in
effect subsidises the pensioner who lives for a
long time. The person who gets an expensive ill-
health pension at the age of 40 and who lives to
be 90 benefits from the other members of the
scheme. There is a pooling of risk, but it should be
done in a way that prevents individuals from
getting an obvious hit against the scheme. There
should be the pooling of unknown risks that are
common to all, but individual in operation.

Peter Peacock: That has been very helpful.

The Convener: As there are no further
questions, I thank Mr Ballantine for his evidence.
As somebody who many years ago had a brief
and inglorious short career as an actuarial trainee,
I was impressed by how succinct, comprehensive
and interesting your evidence was. I think that all
my colleagues were, too. We may be in touch with
you by letter, e-mail or telephone to clear up one
or two points but, in the meantime, thank you for
your time.

Grant Ballantine: I am happy to respond to any
queries. Thank you for your kind comments.

The Convener: We move into private session.

16:19

Meeting continued in private until 17:02.
Decision on Taking Business in Private

The Convener (Alasdair Morgan): Good afternoon, ladies and gentlemen. I apologise for the late start. Welcome to the fourth meeting in 2008 of the Scottish Parliamentary Pension Scheme Committee. I remind members to switch off mobile phones and so on.

Agenda item 1 is to seek members’ agreement to take item 4 in private. Is that agreed?

Members indicated agreement.

The Convener: The paper will be made public once we finalise our deliberations on our report.

Scottish Parliamentary Pension Scheme Inquiry

15:05

The Convener: For agenda item 2, I welcome our witnesses: Mike Pringle MSP, who is a member of the Scottish Parliamentary Corporate Body; and Ian Leitch, who is the Parliament’s director of resources and governance. We will move straight to questions.

I have a general question first. What have been the corporate body’s role and responsibilities in relation to the pension scheme thus far?

Mike Pringle MSP (Scottish Parliamentary Corporate Body): Convener, let me just say that, obviously, I am happy to answer all questions. If I cannot answer a question fully, I will ask Ian Leitch to answer it. If neither of us can answer the question, we will come back to the committee.

In accordance with the scheme regulations at part B of the Scotland Act 1998 (Transitory and Transitional Provisions) (Scottish Parliamentary Pension Scheme) Order 1999, the SPCB is responsible for the management and administration of the pension scheme. The SPCB is therefore responsible for the proper running of the scheme, including funding and collection of contributions; investment of assets; payment of benefits; administration of the scheme; acting in the best interests of scheme members as a whole; ensuring that members’ benefits are secure; and complying with overriding pensions legislation.

The Convener: To get some statistics on record, can you tell us how the membership of the scheme is broken down into current members, retired members, deferred members and so on?

Mike Pringle: The scheme currently has 131 members, 46 deferred members and 16 members who have retired.

The Convener: Of the retired members, how many retired on the grounds of age, ill health, early retirement and so on? How do the figures break down?

Mike Pringle: Two members retired early for various reasons, three members took ill-health retirement and 11 members took age retirement.

The Convener: Given that the corporate body also manages the Parliament’s budget, has it encountered any conflict of interest in its decisions on how it looks after, on the one hand, the Parliament’s budget and, on the other, the interests of the members of the pension scheme?

Mike Pringle: No, I do not think so. As you say, the SPCB operates in both an employer role, by
providing employer contributions, and in an employee role, by looking after the interests of the pension scheme members. However, I should point out that, although the SPCB has an employer role, the position is that MSPs are office-holders and do not have an employer as such.

The Convener: I am thinking about how the pension scheme operates. Obviously, the corporate body manages the Parliament’s budget but, at the same time, it clearly also has a duty to look after the interests of the pension scheme members. Might there be a conflict of interests?

Mike Pringle: There is a potential conflict of interests—or perhaps a perception of such a conflict—for the SPCB, in that it is responsible for funding the pension scheme through the provision of employer pension contributions while it also has a fiduciary duty to act in the best interests of scheme members as a whole. Appointing a board of trustees to act in the interests of scheme members could remove that potential conflict of interests.

The Convener: Has the corporate body taken a view on whether it would like such an eventuality to come to pass, or does it take a neutral stance on the issue?

Mike Pringle: I think that the corporate body currently takes a neutral stance. Ian Leitch might want to add something on that.

Ian Leitch (Scottish Parliament Directorate of Resources and Governance): We are very much in the hands of the committee on this one. We recognise the potential for a conflict of interests. We are also conscious of the moves elsewhere—at Westminster and the National Assembly for Wales—to set up a board of trustees. That might provide some distance between the currently combined roles that the SPCB has. As you rightly point out, convener, as scheme sponsor the SPCB decides employer contributions but it also sets the Parliament’s budget.

The Convener: The Westminster scheme has eight trustees, whereas the Wales scheme has five. Do you have any views on how many trustees might be appropriate for the Scottish parliamentary pension scheme, how they might be elected or appointed and what the quorum of such a board of trustees might be?

Mike Pringle: As you know, the SPCB, which is elected by the Parliament, has five members. It is made up of the Presiding Officer as the chair, plus four other MSPs, and the quorum for any meeting is three. I do not think that the SPCB has any strong views on the number of trustees, but it notes that the evidence of the chairperson of the trustees of the National Assembly for Wales pension scheme—which is similar in size to the SPPS—was that the Wales scheme has five trustees.

MSPs should have the power to elect trustees because it is their own pension scheme. Flexibility to appoint a pensioner or deferred scheme member who could represent the views of former MSPs could be included—that might be a good idea. We would also recommend the ability to appoint a professional trustee, who could bring to the board professional pension knowledge in what is an extremely complex area. However, we do not have any particular view on what the quorum should be, although I note that it is three in Wales. That is perhaps something that the committee would want to decide itself.

Hugh O’Donnell (Central Scotland) (LD): On the current retirement situation, you mentioned that two former members had retired on early retirement grounds and that three had retired on ill-health grounds. Had any applied under either option previously? In other words, did someone who has retired on ill-health grounds previously apply to retire on early retirement grounds?

Mike Pringle: I do not have that information in front of me. I do not know whether Ian Leitch has it.

Ian Leitch: No.

Mike Pringle: We could get it for you.

Hugh O’Donnell: That might be helpful—thank you.

I will move on to more general issues of governance. What professional support outwith the corporate body do you use to ensure the effective management of the scheme?

Mike Pringle: Baillie Gifford is the investment fund manager, and the Scottish Public Pensions Agency provides a pension administration service. The Government Actuary’s Department provides the actuarial services, and the SPCB’s directorate of legal services provides legal advice, using outsourcing firms for specialist pension advice when necessary. Audit Scotland is the external auditor. We are well served by our various professional advisers—in fact, all SPCB members recently went through some considerable discussions with Baillie Gifford.

Hugh O’Donnell: Is any specific training given to SPCB members before they take on those responsibilities?

Mike Pringle: I referred to the discussions with Baillie Gifford, which, as the investment fund manager, has provided trustee-style training for SPCB members. New members of the SPCB have all been through that training. We have attended a number of training sessions on our legal responsibilities, which have to be considered
seriously. That training was provided by the recognised leading specialist solicitor on pension law.

The Pensions Act 2004 requires trustees to have knowledge and understanding of the law relating to pensions and trusts and the principles relating to the funding of occupational schemes and the investment of scheme assets. Although the SPCB and its members are not trustees as such, the view has been taken that, if there was any dispute, a court would likely take the view that the SPCB owed a duty of care to members that is analogous to the fiduciary duty owed by trustees to beneficiaries.

The SPCB is clearly the manager of the scheme, and pensions legislation places many obligations on managers as well as trustees, including communication with members on rights, recovery and reporting on tax, requirements to have proper administration and dispute resolution procedures in place—I could go on. Knowledge of those obligations assists the SPCB in taking reasonable decisions in relation to the pension scheme. As a public body, the SPCB is subject to judicial review, should an unreasonable or irrational decision be taken.

15:15

Hugh O’Donnell: You have referred to the external expertise that the SPCB draws on. What expenses have been incurred in relation to the management of the fund? Are such expenses met by the fund or by another source?

Mike Pringle: The scheme rules regulations—I refer to paragraph 7 of schedule 1 to the 1999 order—say that the expenses of managing the fund are required to be met out of the fund. Such expenses include audit fees, the GAD fees, death-in-service insurance premiums, the investment fund manager’s fees and pension administration costs.

Hugh O’Donnell: Over the period for which the fund has been running, what are the key decisions that the SPCB has made in its role as the manager of the fund?

Mike Pringle: Although the SPCB is the scheme’s sponsor and manager, it is unable to make any changes to the scheme rules because of the legislative basis of the scheme. It has had to decide how general changes to the law since 1999 affect the scheme rules. Thus far, the SPCB has been restricted to ensuring the proper running of the scheme. For example, it has requested that this review be established and taken forward by the committee; decided the scheme funding rates, based on GAD advice; made decisions on discretionary areas of the scheme rules, such as considering ill-health retirement cases, for example; implemented an internal dispute resolution procedure for handling dispute complaints; taken out an insurance policy to pay the death gratuity lump sum that is payable following a death in service, to which we are all entitled, as I discovered only last week; and agreed the scheme’s statement of investment policy.

Hugh O’Donnell: How are the assets of the pension fund invested?

Mike Pringle: The assets of the fund are invested by Baillie Gifford in a pooled fund arrangement.

Hugh O’Donnell: Why did you choose to use the pooled fund arrangement?

Mike Pringle: The scheme’s assets are not huge, in pension terms, and are not sufficient to allow a widely diversified portfolio of investments. Therefore, the SPCB decided that, until the fund has become sufficiently large—which might happen at some point—the best way of investing with suitable diversification and at a reasonable cost would be via a pooled fund that was run by the scheme’s investment fund managers. The trustees in Wales follow a similar arrangement, and we agree with their reasoning for doing so.

Hugh O’Donnell: How does the SPCB ensure that the pension fund is adequately funded? What is the decision-making process for agreeing the appropriate funding levels?

Mike Pringle: The current rules require the fund to be actuarially valued at least every three years. To comply with that requirement, the SPCB commissions GAD to report on the financial position of the fund on a triennial basis. The SPCB then sets the appropriate funding levels for the scheme, based on the advice given by GAD. GAD also advises on the need to continue the death-in-service insurance policy.

David McLetchie (Edinburgh Pentlands) (Con): I apologise to the convener, committee members and our witnesses for my late arrival.

Has the SPCB held any discussions with the Scottish Government or Audit Scotland about the future management and funding of the pension scheme? If so, can you give us an indication of the nature of those discussions?

Mike Pringle: The matter is before this special committee, and it is appropriate that the committee hears evidence and reaches a view. Therefore, we have not engaged in parallel discussions.

David McLetchie: The recommendation that this committee be established as an appropriate course of action was, in a sense, an initiative of the SPCB in its own right, rather than an initiative that was prompted by previous discussions with
the Scottish Executive or Audit Scotland. Is that right?

Mike Pringle: Absolutely.

David McLetchie: You said that the appointment of a board of trustees might remove potential conflicts of interests in the present arrangement. On the future management of the scheme, do you think that the SPCB should have a role beyond contributing moneys out of its budget by way of an employer’s contribution? Do you think that the SPCB should be wholly removed from the process?

Mike Pringle: If we move to a board of trustees, the SPCB will, or could, continue to be responsible for providing the funding for the employer pension contributions. The SPCB provides a payroll service for members. We would anticipate it having some continued involvement in deducting members’ contributions and remitting them to the pension fund trustees. The SPCB might also continue to provide a parallel service to pay pensions, so a service-level agreement might be required between the SPCB and the trustees. The SPCB would be happy to put forward trustee nominations. Depending on any arrangements that the SPCB reaches with the Scottish Government, there might need to be a role for one of those bodies in determining the scheme sponsor contributions and whether to accept GAD or other actuarial recommendations in full.

David McLetchie: Do you envisage that a member of SPCB staff, perhaps within the personnel function of the Parliament, will continue to provide members of the scheme with information about the operation of the scheme and various aspects of its administration, or would that be a wholly divorced function?

Mike Pringle: It would be essential to maintain the link between the two.

David McLetchie: Previous witnesses referred to the Welsh Assembly Commission, which is the National Assembly for Wales’s equivalent of the SPCB and which is the sponsor of the scheme that applies in the Welsh Assembly. Who do you think should fulfil the role of scheme sponsor if the SPCB does not do so in future?

Mike Pringle: We recognise that if the trustees are elected by the Parliament, there might still be a role for the SPCB as the scheme sponsor. If the Parliament is minded to require the SPCB to carry out that role, I am sure—although I cannot provide a complete commitment—that the SPCB would be willing to undertake it.

David McLetchie: I refer to our consultation document and the proposed changes to the scheme rules, which have been under discussion. The consultation document asks for comments on a number of policy areas affecting the rules of the pension scheme. Would the SPCB like to comment on any issues raised in the document in the light of its experience to date?

Mike Pringle: The SPCB has had to operate the rules taking into account the mandatory legislative changes, some of which override the rules. Therefore, the new rules need to ensure consistency with those mandatory legislative changes, such as pension sharing on divorce; the increase in the minimum retirement age to 55; and the new taxation rules that were introduced by the Finance Act 2004.

David McLetchie: Those issues were raised in the consultation document. Are there any policy issues that were not covered in the consultation document that you think it appropriate to draw to our attention for the purpose of informing our report?

Mike Pringle: I do not think so. The consultation document covered all the current and immediately foreseeable issues of which the corporate body is aware.

David McLetchie: The report of the Review Body on Senior Salaries—the SSRB—on the Westminster parliamentary pension scheme suggests that cost sharing between employer and employee be introduced to meet future shortfalls in funding. What is the SPCB’s view on cost sharing and how do you envisage such a scheme operating?

Mike Pringle: There is no provision for cost sharing under the current scheme rules. We have no views on cost sharing, but we are aware of the SSRB’s recommendations and the evidence that was given by the chairperson of the trustees of Westminster’s parliamentary contributory pension scheme that cost sharing should be split proportionately between the employee and the employer. That is linked to the final basis for funding the scheme: if a cost-sharing mechanism is set out in the rules, it may act as another check on the trustees to ensure that the scheme is invested properly. Any shortfall would be made up not only by the Scottish consolidated fund via the scheme’s sponsor, but by members themselves.

David McLetchie: Once we have passed a bill to set up a new pension scheme, how should future changes to amend or update the rules be made?

Mike Pringle: That is a good point. As you know, the SPCB itself is not able to make changes to the current scheme rules. The way in which the scheme was established in 1999 meant that primary legislation through the Scottish Parliament was the only realistic way to update the scheme. Due to the frequency with which the rules of occupational schemes need to be amended to
respond to new pensions, tax or equalities legislation, it is self-evident that there is a need to avoid going through primary legislation every time changes need to be made to the scheme rules.

A method short of primary legislation would be preferable. Given the nature of the scheme, we do not think that it is appropriate for secondary legislation to be made by Scottish ministers, and therefore a method involving a resolution of Parliament should be considered. Whichever method is agreed, it should ensure that all members—current, deferred and pensioners—are consulted on the issues and how to take them forward.

**Peter Peacock (Highlands and Islands) (Lab):** I will move on to the general question of early retirement. Our consultation document asked for comment on provisions for early retirement. What is the SPCB’s view on the current provision of having a minimum qualifying period of 15 years’ membership before early retirement is available to scheme members?

**Mike Pringle:** We noted from your consultation document the discussion about the operation of the abatement table for early retirement once the 15-year hurdle had been reached. We also noted that Westminster is phasing out the application of its corresponding abatement table. As we understand it, the 15-year qualifying period at Westminster will remain. Obviously, our scheme includes that requirement because it followed the Westminster approach in 1999, but we leave it to the committee to decide what, if any, preconditions should be placed on qualifying for early retirement.

**Peter Peacock:** Does the SPCB have a view on what benefits should be available to members who elect to retire early?

**Mike Pringle:** The exact nature of the benefits would be a matter for the committee. It seems appropriate that former members should have access to their accrued benefits, but we expect that there would need to be some adjustment to the actual pension payable to reflect the longer period over which the pension would be likely to be paid.

**Peter Peacock:** As the potential part funders or whole funders of the scheme, do you have a view on how early retirement should be funded?

**Mike Pringle:** Of course, it will ultimately be for the pensions fund to meet the cost of any early retirement. How the fund takes into account the cost of that will depend on which benefits will be provided.

**The Convener:** I have a supplementary question. You said that retiring members “should have access to their accrued benefits.” Can you spell out exactly what you meant? Are those the benefits that they actually paid for?

**Mike Pringle:** I meant the benefits that accrued to them when they paid into the pension scheme.

**Peter Peacock:** I want to pick up on some other points—I know that you have been given some advance warning of our areas of interest, but I am departing from those. We have heard evidence that the local government pension scheme currently provides better benefits than the SPPS in relation to early retirement. Indeed, councillors will now qualify to become members of the local government scheme. Does the SPCB have a view on whether MSPs, as another elected group of people in Scotland, should have poorer early retirement benefits than councillors?

15:30

**Mike Pringle:** That is an interesting question. In my 10 years as a councillor, I was never able to contribute to a pension scheme. That was a bit upsetting, as the local government pension scheme was probably the best one around. In fact, when my wife started working with Napier University, I advised her to join that scheme as soon as she could.

I do not think that the SPCB has a particular view on the matter. However, given that we are all elected officials at the end of the day, I see no reason why a parliamentary pension scheme should not be as good as the scheme up the road in the city chambers.

**Peter Peacock:** In response to the convener, you said that one of your duties on the corporate body is to protect scheme members. The committee is of the view that, in light of age discrimination considerations, the current early retirement arrangements must change. Over the next 15 to 20 years, if the current provisions are retained, more members will inevitably qualify under them, which will mean that, depending on their age and other factors, some members might be worse off while others might find themselves better off. Should the package that we put together at the end of this process attempt to maintain, as far as possible, the benefits of those who might lose out from any changes that are made?

**Mike Pringle:** That is only fair. The issue is complicated and depends on the age at which people retire. It is very difficult to see how such a problem might be solved, but—

**Peter Peacock:** I agree completely that a solution is not at all apparent but, given your current duty to protect scheme members’ benefits, is it reasonable for the committee to take such an approach?
Mike Pringle: You will have to protect all scheme members, but I do not disagree with your supposition.

Peter Peacock: I realise that I am departing somewhat from the script here, but in the local government scheme—and, to some extent, in the teachers scheme—if scheme members involuntarily retire early, either because of reorganisation or because the council wants to reduce the number of teaching, administrative or other staff, the council might make up the benefits to ensure that those scheme members are not disadvantaged. Is it correct for the employer to protect a member's early retirement package if that early retirement is not voluntary but is caused by changes outwith their control?

Mike Pringle: I am trying to think of an example in which that might happen.

Peter Peacock: Well, with regard to MSPs—

Mike Pringle: If someone suddenly decided that we should have more MSPs, that would be fine, because they would simply be added into the scheme. However, if the number were reduced from 129 to 120, we would lose nine members who might not want to get lost.

Peter Peacock: I am thinking more of members whose seats might simply disappear as a result of boundary reviews, who do not get reselected, or whose seats might simply disappear as a result of boundary reviews, who do not get reselected, or who lose an election. Those members do not volunteer to go; they are volunteered.

Ian Leitch: A distinction should be made between a pension scheme for members and a general occupation scheme for employees. Although the SPCB fulfils the role of employer, MSPs are, as Mr Pringle has already made clear, not employees. They are independent office-holders who cannot be dismissed, although they can be disqualified, for example, on the ground of insanity. [Laughter.]

Peter Peacock: Would you care to define that?

The Convener: I think that we should move on instead.

Ian Leitch: I offer no comment; it is merely a provision in the regulations that govern qualification for office.

Members can also be removed by the electorate, which—correct me if I am wrong—is what I rather suspect you are getting at.

Peter Peacock: It is not just that. I am trying to draw a distinction between a member who seeks early retirement for lifestyle reasons and someone who, because of deselection, a boundary review or an election, effectively loses office.

Ian Leitch: I might be misunderstanding you. If a local government employee, for example, elects to retire early for lifestyle reasons, their employer will not make up their contributions or their pension rights.

Peter Peacock: That is correct.

Ian Leitch: I rather thought that you were trying to argue that, in the case of people who lose out from a boundary review or perhaps from deselection by their party, there should be an obligation on the sponsoring employer to make good the years that they would have had if they had been reselected and elected.

Peter Peacock: I am not arguing that the employer should make good those years. I am seeking to establish your view on whether, in the circumstances that you described, in which the person does not voluntarily opt to retire early but another force acts on them that requires them to go, their benefits should be at least protected and not diminished. That appears to be the case in the local government scheme. People do not pay a penalty if they are reorganised out of local government service, but their pension is not necessarily enhanced as if they had stayed.

Ian Leitch: Yes, but in that case there is a direct employer-employee relationship. There is no such relationship under the MSP scheme.

Peter Peacock: Okay.

Hugh O'Donnell: You said that there is a direct employer-employee relationship in the case that was mentioned. For clarity, if councillors now have access to and are eligible to join the local government scheme, are they covered by the rules that impact on the employer-employee relationship within the scheme? If so, they are protected, but you seem to be suggesting that there should be a different relationship in the case of MSPs.

Ian Leitch: We are not in a position to comment on the relationship of councillors in the new local government scheme. You would have to take evidence from someone who is an expert on that. I was merely commenting on the different positions of local government employees and MSPs. You might well be correct, but someone would need to advise you on that. I cannot offer any expertise in that area.

Peter Peacock: The consultation document also asked for comments on the provisions on ill-health retirement. Does the SPCB have a view on those?

Mike Pringle: We note the options in the consultation document and the evidence that the trustees of the Westminster and Welsh pension schemes gave on a two-tier system that is based on the severity of the illness. The matter is ultimately one for the committee, but we can see the merit in having a graded approach that depends on the severity of the illness from which the person suffers.
Peter Peacock: You can see the merit in that.

Mike Pringle: Yes.

Peter Peacock: I do not want to go into personal details, but you mentioned that three members retired on the ground of ill health in the first eight years of the Parliament. Without going into personal details, can you comment on the issues that arose for the SPCB in considering whether to grant early retirement to those members? What monitoring was undertaken thereafter? Did any issues arise?

Mike Pringle: All those retirements happened before I became a member of the corporate body, so I am not aware of that. I am sure that the corporate body will be more than willing to provide an answer to the question. Clearly, it is not appropriate to comment on individual cases, but I am sure that the corporate body will be quite happy to give you some idea of why those members retired.

Peter Peacock: It is not so much that. I just wonder what issues arose for the corporate body. Perhaps Mr Leitch can comment on that.

Ian Leitch: In the operation of the current scheme, the issue turns on the person’s health and their fitness or otherwise to continue carrying out their role as an MSP. It is a question of taking medical advice and occupational health advice. There has been some argument about whether that should be the sole criterion or whether the person should have to be unfit to do any kind of work, as some pension schemes now require. I might be wrong, but I think that that is the position in the local government scheme. Previously, people had to be unfit to do their own job, but now they have to be unfit—period.

On the one hand, it can be argued with some merit that elected members face particular and peculiar pressures that do not exist for ordinary employees in ordinary schemes. It can therefore be argued that it would be rather harsh if members were required to be unfit to do any work. On the other hand, it can be argued that if someone is unfit only to do their job as an MSP, they should get a partial pension.

The corporate body is conscious that the matter needs consideration and deliberation. Without coming down on one side or the other of the argument, having dealt with individual cases, the corporate body recognises the almost goldfish-bowl existence of an MSP, who must respond almost 24/7. That can be a pressure that some people cannot sustain, although they might be able to do other work, with a pension. The question is difficult. One line of argument is that MSPs and other elected public officials are in a peculiar position.

Peter Peacock: From seeing how the corporate body considered the issues in individual cases—which I do not ask you to go into—do you think that it would be good for the trustees of the scheme or the corporate body to have more discretion to deal with such cases?

Ian Leitch: Yes. More discretion would provide the ability to look beyond the current confines while recognising the earlier point that I made about the peculiar nature of elected office.

Peter Peacock: Mr Pringle said that he thought that there was merit in having a two-tier system for ill-health retirement, such as that which colleagues from Westminster and Wales described, so I will not cover that again. Do you have a view on any other changes that might be necessary to the current rules for early retirement on the ground of ill health?

Mike Pringle: No.

Peter Peacock: After someone had retired on the ground of ill health, would it be right for trustees or the corporate body to have a period in which to review the pension? On what grounds would review be appropriate?

Mike Pringle: As I have said, no review process is in place for the SPPS. If a review were introduced, it could establish that the original condition had worsened, which would allow a higher pension to be paid, or that the original condition had improved, which would lead to a lower pension or no pension being paid. Reviews could take place up to the age of 65 only and how they were undertaken would be at the trustees’ discretion.

Peter Peacock: You think that, given where we are—there is not a huge amount of experience of the situation in the Parliament, thankfully—more discretion would be advisable in all circumstances to allow the corporate body or trustees in the future to monitor and review the position and to ensure that a decision remained appropriate.

Mike Pringle: Yes. I think that that is the way forward.

The Convener: You will be aware that, at Westminster, special arrangements that apply to the Lord Chancellor, the Speaker of the House of Commons and the Prime Minister mean that, in effect, they receive a pension for life when they retire. The recent senior salaries review body report, to which David McLetchie referred, suggested that those arrangements should be done away with and that those office-holders should be treated in the same way as others are. We in Scotland have analogous arrangements for the First Minister and the Presiding Officer. Should they begin to be treated as any other office-holder, such as a minister or a Deputy Presiding Officer, is treated?
Mike Pringle: The corporate body treats those arrangements as a separate pension scheme for the additional salary that is paid to the First Minister and the Presiding Officer. Both those individuals are precluded from the funded pension scheme in respect of those additional office-holder salaries. The cost of their pensions is chargeable directly to the Scottish consolidated fund, so the SPCB is not required to pay it.

The SPCB inherited responsibility for those arrangements in 1999. As such, we have no strong views on the policy on those pensions and would rather leave that to the committee to determine. However, the scheme was established as analogous to the arrangements for the Prime Minister and the Speaker at Westminster. If those arrangements are changing, now is the time to change the scheme here and to revisit its purpose.

Irrespective of the scheme’s continuity or otherwise, there are and will continue to be pensions for whose payment a body needs to have administrative responsibility. It would be inappropriate to give that responsibility to trustees, as funding for those pensions comes directly from the Scottish consolidated fund rather than an invested fund that is made up of contributions and is vested in trustees. The SPCB may therefore continue to administer the existing pensions.

15:45

The Convener: We are also considering the Scotland Act 1998 (Transitory and Transitional Provisions) (Grants to Members and Officeholders) Order 1999 (SSI 1999/1081). Do you want to make any other points about the pension scheme before I ask questions about that order?

Mike Pringle: I think that the general view is that if the bill is passed and if it changes the administrator from the SPCB to trustees, consideration will require to be given at that point to recognising existing responsibilities and liabilities.

The Convener: I turn to SSI 1999/1081. You know that provisions exist for resettlement grants. Briefly, what is the purpose of those provisions? How much has been paid to members as a result of them since the Parliament was set up?

Mike Pringle: Under SSI 1999/1081, a resettlement grant is payable to a member who does not stand for re-election at a Scottish Parliament election or to a member who stands but is not re-elected. The purpose of the grant is to assist with the cost of adjusting to non-parliamentary life. To that extent, it could be considered as being analogous to a redundancy payment on the termination of employment. I suppose that MSPs do not always choose to have their employment terminated—probably most would not want that to happen.

The amount of the resettlement grant is based on a percentage of the yearly salary that the member received immediately prior to the relevant dissolution after which they were not re-elected, and it varies with age after 50 and the length of service in excess of 10 years—it varies between 50 per cent and a maximum of 100 per cent. In addition, provision is made in the order for a member who is suffering ill health to receive the same amount as if they were standing down at an election. The order also makes provision for severance grants to office-holders when they leave office that are equal to a quarter of their salary.

The Convener: How much has been paid as a result of that provision? Where has that money been funded from?

Mike Pringle: I will give the clerks a table, which they can let members have copies of.

The Convener: Okay. Thank you. Do any issues do to with the provision of resettlement grants arise for the corporate body?

Mike Pringle: I suppose that the committee will want to consider whether there is any justification for varying the amount of the grant according to age. The SPCB inherited the provision, as it did the pension scheme order, in 1999, and it has not considered the policy behind it or whether it meets the required objective.

The Convener: The SSRB report to which I referred earlier suggested that resettlement grants be treated more like redundancy payments—I think that you mentioned that that was one reason for having them—and that one month of salary could be paid for each year of service. Do you see that as a sensible change?

Mike Pringle: We noted from the SSRB’s report that it considered the purpose of resettlement grants to be analogous to that of redundancy payments and that it therefore recommended that they should no longer be paid to MPs who retire or resign. We have also noted the comments that a number of members made in the subsequent debate at Westminster. They said that the SSRB may have misunderstood how the grant works and the possible consequences of such a change.

The Convener: I take it that you are saying that if people realised that they would get the payment only if they stood again and were defeated, nobody would voluntarily resign. To put things bluntly, everyone would stand as an independent perhaps in order to get the cash.

Hugh O’Donnell: You may wish to reconsider the phrasing that you have used, convener.
Mike Pringle: I suppose that members could do what a famous Labour member did many years ago. I think that he moved from Fife—

The Convener: Mr Hamilton. I believe that he moved to Cornwall.

Mike Pringle: I thought that he moved to Kent, to a constituency in which the Labour Party had been fourth for many years. He came close to winning the election there—he increased Labour’s percentage of the vote by a substantial amount. People could go off and find an unwinnable seat to stand for, although their party would, of course, have to agree to let them stand for it. I suppose that they could stand on a list as an independent, but I am not sure whether that would count.

The Convener: Yes, but in effect you are saying that there would be significant issues if the payment was restricted to certain categories of members who were standing down and was not offered to others.

Mike Pringle: Yes. One size fits all. Everybody would have to be treated exactly the same.

Peter Peacock: On the question of the severance payment—‘redundancy payment’ may be a better description—has the SPCB taken any evidence on what has happened to former members? Have they been able to resume their careers once they have lost their seats, or have they found that difficult? Does the corporate body have any empirical evidence about that? We all have anecdotal evidence and know former colleagues who have not been able to return to work at the same salary or in the same employment, but has that type of experience been catalogued?

Mike Pringle: No, the SPCB has not taken any evidence on that. It has not investigated what members have done after they have lost their seats.

Nine months after the 2003 election, I read an article in a newspaper—I cannot remember whether it was The Scotsman or The Herald—that listed all the ex-MSPs and said what they were doing. If you want some evidence from after the 2003 election, you might read that article if somebody could find it. I remember being quite surprised and shocked at the considerable number of ex-MSPs who, nine months or so later, had still not found any form of employment. The article generally implied that ex-MSPs found it extremely difficult to get back into work even if they had had a career beforehand. We all know of many MSPs who have had great difficulty in finding another job. I do not know the reason for that—perhaps that is something for the committee to think about.

Hugh O’Donnell: We have referred, in this committee meeting and previously, to the resettlement grant being almost the equivalent of a redundancy payment. You will be aware that there is an age element to the redundancy payment in that it increases once someone is above a particular age—I think that it is 55. Do you see a case for making a similar provision in relation to the resettlement grant, with a minimum threshold and then a rising scale depending on how close to the normal retirement age—which I think is 65—the elected member is?

Mike Pringle: I definitely think that the committee should consider that. We are all aware—even in relation to my previous answer—that the closer someone gets to 65, the more difficult it is for them to get another job, especially one that pays the equivalent of an MSP’s salary.

For example, someone may have been an MSP for 20 years who was previously a qualified lawyer or a banker, or whatever. After 20 years as an MSP, at the age of 59 or 60, with one term left before he gets to retirement age, he loses his seat. That is perhaps not his fault—perhaps he has been an assiduous MSP—but the tide goes out and the tide comes in, and if the tide is going out, there is nothing that one can do. Like Canute, one cannot push back the tide. In that situation, a committed member who has been an MSP for a considerable length of time suddenly finds himself out of a job very close to retirement age. With that in mind, I would have thought that the committee should consider some sort of phased scheme.

The Convener: There are no further questions. I thank Mr Pringle and Mr Leitch for their evidence.

15:54

Meeting continued in private until 16:44.
Written evidence received by the Scottish Parliamentary Pension Scheme Committee

SPPS 1 Lord Steel of Aikwood
SPPS 2 H Moncrieff (member of the public)
SPPS 3 Anonymous 1
SPPS 4 John Swinburne MSP
SPPS 5 Richard Simpson MSP
SPPS 6 Alex Neil MSP
SPPS 7 David Davidson MSP
SPPS 8 Donald Gorrie MSP
SPPS 9 Tony Attubato, The Pensions Advisory Service
SPPS 10 Lord Advocate / Solicitor General (Elish Angiolini QC / Frank Mulholland QC)
SPPS 11 John H Young
SPPS 12 Dennis Canavan
SPPS 13 Anonymous 2
SPPS 14 John Park, MSP
SPPS 15 Anonymous 3
SPPS 16 The Trustees of the Northern Ireland Assembly Members Pension Scheme

Further evidence from Sir John Butterfill MP, Chairman of the Trustees, Westminster Parliamentary Contributory Pension Fund
# SPPS 1

## EVIDENCE FROM LORD STEEL OF AIKWOOD

23 OCT 2007

### RESPONDENT INFORMATION FORM

**SCOTTISH PARLIAMENTARY PENSION SCHEME**

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

<table>
<thead>
<tr>
<th>NAME:</th>
<th>POSTAL ADDRESS</th>
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<tbody>
<tr>
<td>LORD STEEL OF AIKWOOD</td>
<td></td>
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<tr>
<td>ORGANISATION NAME: (if appropriate)</td>
<td></td>
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</tbody>
</table>

1. Are you responding: (please insert an ‘x’ in one box)

   - (a) as an individual
   - (b) on behalf of a group/organisation

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<thead>
<tr>
<th>(a) as an individual</th>
<th>go to Q2</th>
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<th>(b) on behalf of a group/organisation</th>
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**INDIVIDUALS**

2. Do you agree to your response being made available to the public?

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**ON BEHALF OF GROUPS OR ORGANISATIONS**

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

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<th>Yes</th>
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<th>Yes</th>
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</table>

Please read Policy on treatment of written evidence at page 33 and contact the Clerk.

40

164
Office Holders

Q 40 Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder's salary?  
Yes | No

Please explain why.

Lord Advocate and the Solicitor General for Scotland

Q 41 Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?  
Yes | No

Please explain why.

First Minister and Presiding Officer

Q 42 Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?  
Yes | No

Please explain why.

Q 43 Is there any reason why a former First Minister should not be entitled to rejoin the office holder's portion of the SPPS if they hold subsequent ministerial office?  
Yes | No

Please explain why.

Q 44 Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?  
Yes | No

Please explain why.

Write: wrong that someone occupying the post for a short time should qualify.
Q 45(a) Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum? | Yes | No
---|---|---
Q 45(b) If you have answered 'Yes' what period of years is appropriate to achieve maximum pension? | 4 |

**GRANTS TO MEMBERS AND OFFICE HOLDERS**

Resettlement Grant

Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason? | Yes | No
---|---|---
Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down?

Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service?

Ill-Health Retirement Grant

Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant? | Yes | No
---|---|---
Please explain why.

Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions? | Yes | No
---|---|---
Please explain why.

23 OCTOBER 2007
26th October, 2007

Dear Mr Morgan,

I note in the paper that MSP’s are being asked if they want more generous pensions. This is ridiculous. Anyone asked if they want a better pension is going to say yes, and if the past record of MS P’s is taken into account they will be stampeding to answer.

It is high time to stop this incessant greed over salaries, expenses, house allowances, pensions and subsidises meals.

Taxpayers are struggling over higher and higher community tax (despite promises to change this), higher energy bills, petrol and the promise of dearer food because of the weather. Why should they be expected to fork out more and more money to MSP’s?

It is also ridiculous that someone like Henry McLeish who had to resign should be given a large pension, even Mr McConnell who only served six years. What other firm would be so generous - but then other people rarely vote for their own salaries or pensions.

Pensions should be granted in the same way that ordinary pensions are counted i.e. having to work for a certain time to get the full pension or getting a smaller one based on the amount of payments made.

Yours sincerely,
**SPPS 3**

**EVIDENCE FROM ANONYMOUS 1**

- 5 NOV 2007

We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an ‘X’ when there are ‘Yes’/’No’ boxes.

**MANDATORY CHANGES**

**Pension Sharing on Divorce**

<table>
<thead>
<tr>
<th>Q 1</th>
<th>What rights should be available to former spouses/partners of scheme members?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Transfers value into another scheme.</td>
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</table>

**Age 75**

<table>
<thead>
<tr>
<th>Q 2</th>
<th>What approach should be taken at age 75?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Westminster scheme seems OK.</td>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Q 3</th>
<th>What benefits should be payable under the scheme in respect of MSP's aged over 75 who die while in service?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Westminster scheme seems OK.</td>
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</table>

**Minimum Pension Age**

<table>
<thead>
<tr>
<th>Q 4</th>
<th>Do you have any comments on this change?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
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</tbody>
</table>

If you have answered ‘Yes’ please give your comments.

**Transfers to Unregistered Schemes**

<table>
<thead>
<tr>
<th>Q 5</th>
<th>Do you have any comments on this change?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
</tr>
</tbody>
</table>

If you have answered ‘Yes’ please give your comments.
**Lifetime Allowance and Annual Allowance**

<table>
<thead>
<tr>
<th>Q 6</th>
<th>Do you have any comments on these changes?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’ please give your comments.</td>
<td></td>
<td></td>
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</table>

**Future Changes to SPPS Rules**

<table>
<thead>
<tr>
<th>Q 7(a)</th>
<th>Do you agree that the legislation should provide powers to amend scheme rules in the future?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Q 7(b) If you have answered ‘Yes’ by what mechanism should future changes be brought forward?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Subordinate Legislation or Motion to Parliament

<table>
<thead>
<tr>
<th>Q 8(a)</th>
<th>Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?</th>
<th>Yes</th>
<th>No</th>
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<tr>
<td></td>
<td>Q 8(b) If you have answered ‘Yes’, what kind of protection do you think should be included?</td>
<td></td>
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</tbody>
</table>

Presiding Officers to certify that changes do not worsen position

**DISCRETIONARY CHANGES**

**Maximum Pension Available**

<table>
<thead>
<tr>
<th>Q 9</th>
<th>Should the maximum pension limit of 2/3 final remuneration be retained?</th>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
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</table>

Seems reasonable.
<table>
<thead>
<tr>
<th>Q.10</th>
<th>Should the value of “retained benefits” from other schemes be included in the permitted maximum pension?</th>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
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<td></td>
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<tr>
<td></td>
<td>Fairly not to reduce other pensions.</td>
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<td></td>
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</tbody>
</table>

**General Tax Free Lump Sum on Retirement**

<table>
<thead>
<tr>
<th>Q.11</th>
<th>Should the limits on the available lump sum be changed to the revenue maximum of 25% pension?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
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<tr>
<td></td>
<td>Should adopt rates as in Act.</td>
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</table>

**Death in Service Gratuity**

<table>
<thead>
<tr>
<th>Q.12</th>
<th>What level of death in service gratuity should be payable?</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>4 times salary</td>
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</table>

<table>
<thead>
<tr>
<th>Q.13</th>
<th>If the level of gratuity payable is to rise how should the cost to the scheme be funded?</th>
<th></th>
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</thead>
<tbody>
<tr>
<td></td>
<td>However the Department scheme is funded</td>
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</tbody>
</table>

**Children’s Pension**

<table>
<thead>
<tr>
<th>Q.14</th>
<th>Should the maximum age of a child entitled to benefit under the scheme be increased to age 23?</th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Q.15</th>
<th>Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant’s death because of physical or mental impairment?</th>
<th>Yes</th>
<th>No</th>
</tr>
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</table>
Purchase of Added Years

Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years?

Yes  No  

Q 16(b) If so what should the maximum level of contributions be set at?

Please explain why.

It is convenient to be able to arrange for the contributions to be deducted from salary each month.

Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided?

Yes  No  

Please explain why.

Q 18 What should the maximum level of contributions towards added years be set at?

10%  

Q 19 Should members be allowed to purchase added years beyond their 65th birthday?

Yes  No  

Please explain why.

Benefits for any Retained AVC Facility

Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum?

as an ordinary pension.
**Flexible Retirement**

<table>
<thead>
<tr>
<th>Q 21</th>
<th>Should members be entitled to receive their pension while continuing to work as an MSP?</th>
<th>Yes</th>
<th>No (√)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
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<tr>
<td></td>
<td>Illogical.</td>
<td></td>
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**Annual Increases to Pensions**

Q 28 By what percentage should pensions be increased? For example, should members' salaries be linked to RPI or to serving members' salaries or to some other yardstick?

Linked to RPI

**Calculation of Early Retirement Pensions**

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*Account of service Members, MSPs. Council of the Scheme, a pension scheme.*
Office Holders

Q 40 Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder's salary?  
Yes  No

Please explain why.

Lord Advocate and the Solicitor General for Scotland

Q 41 Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?  
Yes  No

Please explain why.

First Minister and Presiding Officer

Q 42 Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?  
Yes  No

Please explain why.

Q 43 Is there any reason why a former First Minister should not be entitled to rejoin the office holder's portion of the SPPS if they hold subsequent ministerial office?  
Yes  No

Please explain why.

Q 44 Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?  
Yes  No

Please explain why.
Q 45(a) Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum?  Yes  No

Q 45(b) If you have answered 'Yes' what period of years is appropriate to achieve maximum pension?  4 years.

**GRANTS TO MEMBERS AND OFFICE HOLDERS**

**Resettlement Grant**

| Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason? | Yes  No |
| Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down? | Yes  **Grant is the payment to staff.** No |

Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service?  **No.**

**Ill-Health Retirement Grant**

| Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant? | Yes  No  **✓** |
| Please explain why. |

Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions?  Yes  No  **✓**
| Please explain why. |
Severance Grant to Office Holders

<table>
<thead>
<tr>
<th>Q 50</th>
<th>Do you have any comments on the severance grant?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered 'Yes' please give comments below.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Should only apply when holder is clearly abandoning a career as an MSP/Minister.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Replacement Options

<table>
<thead>
<tr>
<th>Q 51</th>
<th>Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?</th>
<th>Yes</th>
<th>No</th>
</tr>
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<tr>
<td></td>
<td>If you have answered 'Yes' please give views below.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>As part of Pensions Bill.</td>
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<td></td>
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</table>

Any Other Comments

<table>
<thead>
<tr>
<th>Q 52</th>
<th>Are there any other comments you have on aspects of the parliamentary pension scheme?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No.</td>
</tr>
</tbody>
</table>

Thank you for taking the time to let us have your views.
SPPS 4

EVIDENCE FROM JOHN SWINBURNE

RESPONDENT INFORMATION FORM

SCOTTISH PARLIAMENTARY PENSION SCHEME

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

<table>
<thead>
<tr>
<th>NAME:</th>
<th>POSTAL ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>John Swinburne</td>
<td></td>
</tr>
<tr>
<td>Scottish Conservative Party</td>
<td></td>
</tr>
</tbody>
</table>

1. Are you responding: (please insert an 'x' in one box)

- (a) as an individual [x] go to Q2
- (b) on behalf of a group/organisation [x] go to Q3

INDIVIDUALS

2. Do you agree to your response being made available to the public?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Yes

No Please read Policy on treatment of written evidence at page 33 and contact the Clerk

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
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<td></td>
<td></td>
</tr>
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</table>

Yes

No Please read Policy on treatment of written evidence at page 33 and contact the Clerk
We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an 'X' when there are 'Yes'/'No' boxes.

**MANDATORY CHANGES**

**Pension Sharing on Divorce**

**Q 1** What rights should be available to former spouses/partners of scheme members?

**Existing rights are sufficient.**

Age 75

**Q 2** What approach should be taken at age 75? *This blatant flaw is an insult to the Scottish Parliament. I actually highlighted this in 2006 and held up First Ministers questions in the process. If you are elected as an MSP then everyone should be treated in the same way.*

**Q 3** What benefits should be payable under the scheme in respect of MSP's aged over 75 who die while in service? *See above answer. To treat them differently from younger MSPs is in breach of all equality legislation!*

**Minimum Pension Age**

**Q 4** Do you have any comments on this change?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
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If you have answered 'Yes' please give your comments.

**Transfers to Unregistered Schemes**

**Q 5** Do you have any comments on this change?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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If you have answered 'Yes' please give your comments.
Lifetime Allowance and Annual Allowance

<table>
<thead>
<tr>
<th>Q 6</th>
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<td></td>
<td>Yes</td>
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<tr>
<td></td>
<td></td>
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If you have answered ‘Yes’ please give your comments.

Future Changes to SPPS Rules

| Q 7(a) | Do you agree that the legislation should provide powers to amend scheme rules in the future? |
|        | Yes | No |
| Q 7(b) | If you have answered ‘Yes’ by what mechanism should future changes be brought forward? |

| Q 8(a) | Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued? |
|        | Yes | No |
| Q 8(b) | If you have answered ‘Yes’, what kind of protection do you think should be included? |

DISCRETIONARY CHANGES

Maximum Pension Available

<table>
<thead>
<tr>
<th>Q 9</th>
<th>Should the maximum pension limit of 2/3 final remuneration be retained?</th>
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<td>Yes</td>
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Please explain why.
Q 10 Should the value of "retained benefits" from other schemes be included in the permitted maximum pension?  Yes  No

Please explain why.

**General Tax Free Lump Sum on Retirement**

Q 11 Should the limits on the available lump sum be changed to the revenue maximum of 25% pension?  Yes  No

Please explain why.

**Death in Service Gratuity**

Q 12 What level of death in service gratuity should be payable?

\[ \text{Final Salary} \times 3 \text{ for all irrespective of age!} \]

Q 13 If the level of gratuity payable is to rise how should the cost to the scheme be funded?

\[ \text{By increasing deductions from salary,} \]

**Children's Pension**

Q 14 Should the maximum age of a child entitled to benefit under the scheme be increased to age 23?  Yes  No

Please explain why.

Q 15 Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant's death because of physical or mental impairment?  Yes  No
Please explain why.

**No explanation required.**

### Purchase of Added Years

| Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years? | Yes | No | Yes |
| Q 16(b) If so what should the maximum level of contributions be set at? | 15% of salary |

### Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided? |

| Yes | No |
| Yes |

Please explain why.

**This is up to each individual’s choice.**

### Q 18 What should the maximum level of contributions towards added years be set at? |

| 15% of salary |

### Q 19 Should members be allowed to purchase added years beyond their 65th birthday? |

| Yes | No |
| Yes |

Please explain why.

** Anything else would be (or rather is) requests!**

### Benefits for any Retained AVC Facility

### Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum?

| 25% |

44
### Flexible Retirement

<table>
<thead>
<tr>
<th>Q 21 Should members be entitled to receive their pension while continuing to work as an MSP?</th>
<th>Yes</th>
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<tr>
<td>Please explain why.</td>
<td>NO, THE PUBLIC WOULD NEVER ACCEPT THIS.</td>
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**Lord Advocate and the Solicitor General for Scotland**

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<tr>
<th>Q 41</th>
<th>Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?</th>
<th>Yes</th>
<th>No ✓</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
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</tbody>
</table>

**First Minister and Presiding Officer**

<table>
<thead>
<tr>
<th>Q 42</th>
<th>Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?</th>
<th>Yes</th>
<th>No ✓</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 43</th>
<th>Is there any reason why a former First Minister should not be entitled to rejoin the office holder’s portion of the SPPS if they hold subsequent ministerial office?</th>
<th>Yes</th>
<th>No ✓</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 44</th>
<th>Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?</th>
<th>Yes</th>
<th>No ✓</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>To prevent the scheme falling into disrepute</td>
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</tr>
</tbody>
</table>
Q 45(a) Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum? Yes □ No □

Q 45(b) If you have answered 'Yes' what period of years is appropriate to achieve maximum pension? 4 YEARS

GRANTS TO MEMBERS AND OFFICE HOLDERS

Resettlement Grant

Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason? Yes □ No □

Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down? YES

Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service? NO

Ill-Health Retirement Grant

Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant? Yes □ No □

Please explain why.

WHAT IF THIS WAS YOU?

Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions? Yes □ No □

Please explain why.
Severance Grant to Office Holders

<table>
<thead>
<tr>
<th>Q 50</th>
<th>Do you have any comments on the severance grant?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’ please give comments below.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Replacement Options

<table>
<thead>
<tr>
<th>Q 51</th>
<th>Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’ please give views below.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any Other Comments

<table>
<thead>
<tr>
<th>Q 52</th>
<th>Are there any other comments you have on aspects of the parliamentary pension scheme?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td><strong>The removal of AGIST 75 year old ruling will bring the scheme into the 21st century, why has it taken Scotland 8 years?</strong></td>
</tr>
</tbody>
</table>

Thank you for taking the time to let us have your views.
SPPS 5

EVIDENCE FROM DR RICHARD SIMPSON MSP

Pension Consultation response from Dr Richard Simpson MSP Mid Scotland and Fife

Q 2 What approach should be taken at age 75?
Q 3 What benefits should be payable under the scheme in respect of MSPs aged over 75 who die while in service?

I would support the Westminster approach to allow MSPs to take their lump sum benefits prior to reaching age 75 and have their pension abated (i.e. suspended) until they retire. On withdrawal from the scheme no further pension, added years or AVC contributions are payable. Alternatively, members at age 75 can remain members of the scheme and continue to contribute but without any tax benefits applying and without any rights to receive a lump sum on retirement.

Remove the right to a death in service lump sum gratuity for those over 75. In its place SSPS should guarantee to pay to a nominated person a sum equivalent to the death in service lump sum benefit less any lump sum earlier taken. As the sum cannot under tax rules be paid as a lump sum it is paid as a monthly pension spread equally over the period until the member would have reached age 85.

Minimum Pension Age
Q 4 Do you have any comments on this change?

Provided it means that scheme members can take a pension at 55, forgoing any potential increase in the pension other than indexation then no additional comment

Q 5 None
Q 6 None

Q 7(a) Do you agree that the legislation should provide powers to amend scheme rules in the future?
Yes

Q 7(b) If you have answered ‘Yes’ by what mechanism should future changes be brought forward?
Subordinate legislation

Q 8(a) Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?
Yes

Q 8 (b) An option at the point of change to retain the current payments and rewards subject only to overall UK pension legislation

Q 9 Should the maximum pension limit of 2/3 final remuneration be retained?
No opinion
Q 10 Should the value of “retained benefits” from other schemes be included in the permitted maximum pension?
Yes
General Tax Free Lump Sum on Retirement

Q 11 Should the limits on the available lump sum be changed to the revenue maximum of 25% pension?
Yes
Death in Service Gratuity

Q 12 What level of death in service gratuity should be payable?
Four times salary

Q 14 Should the maximum age of a child entitled to benefit under the scheme be increased to age 23?
Yes

Q 15 Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant’s death because of physical or mental impairment?
Yes

Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years?
Yes but only for added years not for AVC which should be undertaken by members individually

Q 16(b) If so what should the maximum level of contributions be set at?
Only limited by finance and pensions act provided no additional cost is incurred by scheme

Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided?
No

Q 18 What should the maximum level of contributions towards added years be set at?
20% including basic pension

Q 19 Should members be allowed to purchase added years beyond their 65th birthday?
Yes to 70

Q 21 Should members be entitled to receive their pension while continuing to work as an MSP?
Only if over 75

Q 23 Should the SPPS permit very small pensions to be taken as a lump sum?
Yes
Ill-Health Provision

Q 24 What criteria should apply for the payment of an ill-health pension?
Must be a severe and enduring illness from which recovery to a degree allowing the ex-member to work as an MSP is improbable

Q 25 Should any such awards be varied depending upon the severity of the incapacity?
Yes

Q 26 Should there be provision for ill-health pensions to be subject to periodic review?
Yes

Q 27 Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year?
Yes

Q 28 By what percentage should pensions be increased? For example, should members’ salaries be linked to RPI or to serving members’ salaries or to some other yardstick?
RPI

Q 29 Should the existing early retirement pension provisions be phased out?
Yes

Q 30 Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early?
Yes after age 55

Q 31 What, if any, eligibility conditions should apply to early retirement?
They should not seek re-election in another UK parliament or assembly or to the European Parliament

Q 32(a) Do you agree that the age restriction should be equalised for men and women?
Yes

Q 32(b) If you have answered ‘Yes’ what age should that be?
No opinion

Q 33 Should a surviving spouse or partner’s pension cease on remarrying or cohabitation?
Yes spouses or partners often play a massive unsung and unpaid part in support of an MSP and their pension rights should not be affected in anyway by their life choices

Q 34 Should the discretion to refuse pension payment in full or part to a surviving spouse or civil partner who marries or enters into civil partnership when death is imminent continue to apply.
No unless there is good evidence that this is simply to obtain a pension transfer. The committee should consider a length of time where a marriage or civil partnership undertaken in terminal state is simply to regularise a ‘long-standing’ relationship. e.g. 4 years
Q 35(a) Should the scheme permit a spouse/partner to commute part of the pension payable to a lump sum?
Yes

Q 35(b) If yes what maximum amount may be commuted?
25%

Q 36(a) no opinion
Q 36(b) no opinion

Q 37(a) Should there be an option for members to have a 1/40th accrual rate?
Yes
Q 37(b) Who should pay the additional costs involved?
As for Wales and Westminster 10%

Q 38 Should the existing earnings cap linked to the Finance Act be retained?
No opinion

Q 39 Should service in other pension schemes be taken into account when calculating an MSP’s service for early retirement entitlement?
Yes

Q 40 Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder’s salary?
No

Q 41 Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?
No

Q 42 Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?
No but a combined maximum pension and salary that does not exceed their previous income as FM or PO

Q 43 Is there any reason why a former First Minister should not be entitled to rejoin the office holder’s portion of the SPPS if they hold subsequent ministerial office?
No

Q 44 Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?
Yes unless death or severe illness occurs

Q 45(a) Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum?
Yes
Q 45(b) If you have answered ‘Yes’ what period of years is appropriate to achieve maximum pension?
FM 4 years
Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason?
Continue as at present
Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down?
No see above

Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service?
Present table seems reasonable

Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant?
No

Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions
Yes

Q 50 Do you have any comments on the severance grant?
No

Q 51 Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?
No opinion

10 JANUARY 2008
SPPS 6

EVIDENCE FROM ALEX NEIL MSP
31 JAN 2008

RESPONDENT INFORMATION FORM

SCOTTISH PARLIAMENTARY PENSION SCHEME

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

<table>
<thead>
<tr>
<th>NAME:</th>
<th>Alex Neil MSP</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORGANISATION NAME:</td>
<td>(if appropriate)</td>
</tr>
<tr>
<td>POSTAL ADDRESS</td>
<td>Scottish Parliament</td>
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<td></td>
<td>Edinburgh</td>
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<td></td>
<td>EH1 4EP</td>
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</tbody>
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1. Are you responding: (please insert an 'x' in one box)

<table>
<thead>
<tr>
<th></th>
<th>go to Q2</th>
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<tbody>
<tr>
<td>(a) as an individual</td>
<td>✔</td>
</tr>
<tr>
<td>(b) on behalf of a group/organisation</td>
<td>go to Q3</td>
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</tbody>
</table>

INDIVIDUALS

2. Do you agree to your response being made available to the public?

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td>Yes</td>
<td>✔</td>
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<tr>
<td>No</td>
<td>Please read Policy on treatment of written evidence at page 33 and contact the Clerk</td>
</tr>
</tbody>
</table>

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

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<tbody>
<tr>
<td>Yes</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Please read Policy on treatment of written evidence at page 33 and contact the Clerk</td>
</tr>
</tbody>
</table>
We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an 'X' when there are 'Yes'/No' boxes.

**MANDATORY CHANGES**

**Pension Sharing on Divorce**

**Q 1** What rights should be available to former spouses/partners of scheme members?  
50% of relevant earnings between while an M2P

**Age 75**

**Q 2** What approach should be taken at age 75?  

**Q 3** What benefits should be payable under the scheme in respect of MSP's aged over 75 who die while in service?  

**Minimum Pension Age**

**Q 4** Do you have any comments on this change?  
Yes No  

If you have answered 'Yes' please give your comments.

**Transfers to Unregistered Schemes**

**Q 5** Do you have any comments on this change?  
Yes No  

If you have answered 'Yes' please give your comments.
### Lifetime Allowance and Annual Allowance

<table>
<thead>
<tr>
<th>Q 6</th>
<th>Do you have any comments on these changes?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
<td>If you have answered ‘Yes’ please give your comments.</td>
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</tbody>
</table>

### Future Changes to SPPS Rules

<table>
<thead>
<tr>
<th>Q 7(a)</th>
<th>Do you agree that the legislation should provide powers to amend scheme rules in the future?</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’ by what mechanism should future changes be brought forward?</td>
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<tr>
<td></td>
<td>Statutory Instrument</td>
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<thead>
<tr>
<th>Q 8(a)</th>
<th>Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’, what kind of protection do you think should be included?</td>
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</tbody>
</table>

### DISCRETIONARY CHANGES

### Maximum Pension Available

<table>
<thead>
<tr>
<th>Q 9</th>
<th>Should the maximum pension limit of 2/3 final remuneration be retained?</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
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<tr>
<td>Question</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Q10</td>
<td><strong>Should the value of “retained benefits” from other schemes be included in the permitted maximum pension?</strong></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Please explain why.</td>
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<tr>
<td>General Tax Free Lump Sum on Retirement</td>
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<tr>
<td>Q11</td>
<td><strong>Should the limits on the available lump sum be changed to the revenue maximum of 25% pension?</strong></td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Please explain why.</td>
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<tr>
<td>Death in Service Gratuity</td>
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<tr>
<td>Q12</td>
<td><strong>What level of death in service gratuity should be payable?</strong></td>
<td>Same as Westminster</td>
<td></td>
</tr>
<tr>
<td>Q13</td>
<td><strong>If the level of gratuity payable is to rise how should the cost to the scheme be funded?</strong></td>
<td>Same as Westminster</td>
<td></td>
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<tr>
<td>Children's Pension</td>
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<tr>
<td>Q14</td>
<td><strong>Should the maximum age of a child entitled to benefit under the scheme be increased to age 23?</strong></td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Please explain why.</td>
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</tr>
<tr>
<td>Q15</td>
<td><strong>Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant's death because of physical or mental impairment?</strong></td>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>
Please explain why.

Purchase of Added Years

Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years?  
Yes  
No  

Q 16(b) If so what should the maximum level of contributions be set at?  
Enough to provide a pension of 75% of previous income

Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided?  
Yes  
No  

Please explain why.

Q 18 What should the maximum level of contributions towards added years be set at?  
Enough to provide a pension of 75% of previous income

Q 19 Should members be allowed to purchase added years beyond their 65th birthday?  
Yes  
No  

Please explain why.

Benefits for any Retained AVC Facility

Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum?  
25%
Flexible Retirement

Q 21 Should members be entitled to receive their pension while continuing to work as an MSP? | Yes | No
---|---|---
Please explain why.

The pension should be those aged over 75.

Options Available at Retirement

Q 22 Should other matters of flexibility in relation to the options available at retirement be dealt with by the managers/trustees of the scheme? | Yes | No
---|---|---
Please explain why.

Trivial Commutation

Q 23 Should the SPPS permit very small pensions to be taken as a lump sum? | Yes | No
---|---|---
Please explain why.

Ill-Health Provision

Q 24 What criteria should apply for the payment of an ill-health pension?

Independent medical examination which shows person cannot continue & be 17.

Q 25 Should any such awards be varied depending upon the severity of the incapacity? | Yes | No
---|---|---
Please explain why.
Q.26 Should there be provision for ill-health pensions to be subject to periodic review? Yes | No

Please explain why.

Q.27 Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year? Yes | No

Please explain why.

Annual Increases to Pensions

Q.28 By what percentage should pensions be increased? For example, should members' salaries be linked to RPI or to serving members' salaries or to some other yardstick?

[Signature]

Calculation of Early Retirement Pensions

Q.29 Should the existing early retirement pension provisions be phased out? Yes | No

Please explain why.

Elective Early Retirement

Q.30 Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early? Yes | No

Please explain why.
Q 31 What, if any, eligibility conditions should apply to early retirement?

<table>
<thead>
<tr>
<th>OTHER EQUALITY ISSUES</th>
</tr>
</thead>
<tbody>
<tr>
<td>Refund of Contributions</td>
</tr>
<tr>
<td>Q 32(a) Do you agree that the age restriction should be equalised for men and women?</td>
</tr>
<tr>
<td>Q 32(b) If you have answered 'Yes' what age should that be?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Loss of Surviving Spouse Pension on Remarriage or Co-habitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 33 Should a surviving spouse or partner's pension cease on remarriage or cohabitation?</td>
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<tr>
<td>Please explain why.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 34 Should the discretion to refuse pension payment in full or part to a surviving spouse or civil partner who marries or enters into civil partnership when death is imminent continue to apply?</th>
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<tbody>
<tr>
<td>Please explain why.</td>
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<table>
<thead>
<tr>
<th>Commutation of Pension for Lump Sum following Death in Service</th>
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</thead>
<tbody>
<tr>
<td>Q 35(a) Should the scheme permit a spouse/partner to commute part of the pension payable to a lump sum?</td>
</tr>
<tr>
<td>Q 36(b) If yes what maximum amount may be commuted?</td>
</tr>
</tbody>
</table>
**OTHER POSSIBLE CHANGES**

**Scheme Administration**

<table>
<thead>
<tr>
<th>Q 36(a) Should the SPPS continue to be administered by the Scottish Parliamentary Corporate Body or should Trustees be appointed?</th>
<th>SPCB Trustees</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Q 36(b) If trustees, please indicate how many you think appropriate, whether they should include pensioner members and how they could be elected?</strong></td>
<td>At least 50% elected by the members</td>
</tr>
</tbody>
</table>

**Accrual Rate**

<table>
<thead>
<tr>
<th>Q 37(a) Should there be an option for members to have a 1/40th accrual rate?</th>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
<td><strong>Q 37(b) Who should pay the additional costs involved?</strong></td>
<td></td>
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</tbody>
</table>

**Earnings Cap**

<table>
<thead>
<tr>
<th>Q 38 Should the existing earnings cap linked to the Finance Act be retained?</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>Please explain why.</td>
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</tbody>
</table>

**Service**

<table>
<thead>
<tr>
<th>Q 39 Should service in other pension schemes be taken into account when calculating an MSP’s service for early retirement entitlement?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
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</tr>
<tr>
<td>Q 40 Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder’s salary?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>-------------------------------------------------------------------------------------------------</td>
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<tr>
<td>Please explain why.</td>
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</tbody>
</table>

**Lord Advocate and the Solicitor General for Scotland**

<table>
<thead>
<tr>
<th>Q 41 Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?</th>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
<td>Please explain why.</td>
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</table>

**First Minister and Presiding Officer**

<table>
<thead>
<tr>
<th>Q 42 Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

"Favors in relation to non-office holders"

<table>
<thead>
<tr>
<th>Q 43 Is there any reason why a former First Minister should not be entitled to rejoin the office holder’s portion of the SPPS if they hold subsequent ministerial office?</th>
<th>Yes</th>
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</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

"Share [sic] got paid time"

<table>
<thead>
<tr>
<th>Q 44 Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?</th>
<th>Yes</th>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
Q 45(a) Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum?  
Yes | No

Q 45(b) If you have answered ‘Yes’ what period of years is appropriate to achieve maximum pension?

Same terms as for

GRANTS TO MEMBERS AND OFFICE HOLDERS

Resettlement Grant

Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason?  
Yes | No

Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down?

Yes

Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service?

Ill-Health Retirement Grant

Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant?  
Yes | No

Please explain why.

Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions?  
Yes | No

Please explain why.
Severance Grant to Office Holders

<table>
<thead>
<tr>
<th>Q 50 Do you have any comments on the severance grant?</th>
<th>Yes</th>
<th>No</th>
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If you have answered 'Yes' please give comments below.

Replacement Options

<table>
<thead>
<tr>
<th>Q 51 Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?</th>
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<th>No</th>
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</table>

If you have answered 'Yes' please give views below.

Any Other Comments

<table>
<thead>
<tr>
<th>Q 52 Are there any other comments you have on aspects of the parliamentary pension scheme?</th>
</tr>
</thead>
</table>

Thank you for taking the time to let us have your views.

11 JANUARY 2008
EVIDENCE FROM DAVID DAVIDSON

RESPONDENT INFORMATION FORM

SCOTTISH PARLIAMENTARY PENSION SCHEME

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

<table>
<thead>
<tr>
<th>NAME:</th>
<th>POSTAL ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>DAVID DAVIDSON</td>
<td></td>
</tr>
</tbody>
</table>

ORGANISATION NAME: (if appropriate)

1. Are you responding: (please insert an)

<table>
<thead>
<tr>
<th>(a) as an individual</th>
<th>(b) on behalf of a group/organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td>go to Q2</td>
</tr>
</tbody>
</table>

INDIVIDUALS

2. Do you agree to your response being made available to the public?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| No | Please read Policy on treatment of written evidence at page 33 and contact the Clerk |

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

| No | Please read Policy on treatment of written evidence at page 33 and contact the Clerk |


We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an ‘X’ when there are ‘Yes’/’No’ boxes.

**MANDATORY CHANGES**

**Pension Sharing on Divorce**

Q.1 What rights should be available to former spouses/partners of scheme members?

**MUST FOLLOW THE LAW BUT BE COST NEUTRAL TO THE SCHEME AND RECOGNISE RIGHT OF NEW SPouse.**

Age 75

Q.2 What approach should be taken at age 75?

**NO MORE CONTRIBUTION BUT RIGHT TO DRAW DOWN FROM THAT DATE WITH DEATH BENEFIT OF 50%**

Q.3 What benefits should be payable under the scheme in respect of MSP’s aged over 75 who die while in service?

**AS ABOVE**

**Minimum Pension Age**

Q.4 Do you have any comments on this change?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

If you have answered ‘Yes’ please give your comments.

Transfers to Unregistered Schemes

Q.5 Do you have any comments on this change?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

If you have answered ‘Yes’ please give your comments.

**FOLLOW HMRC RULES**
Lifetime Allowance and Annual Allowance

Q 6  Do you have any comments on these changes?  

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

If you have answered 'Yes' please give your comments.

Future Changes to SPPS Rules

Q 7(a) Do you agree that the legislation should provide powers to amend scheme rules in the future?  

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Q 7(b) If you have answered 'Yes' by what mechanism should future changes be brought forward?

AS 3.15  AND 3.17 PROTECTING RIGHTS ACHIEVING   ANY INCREASES COSTS TO THE FUND TO BE SPREAD OVER FUTURE YEARS CONTRIBUTIONS (SAY EIGHT YEARS)

Q 8(a) Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Q 8(b) If you have answered 'Yes', what kind of protection do you think should be included?

NO WORSE THAN A RELATIVE WITH UPLIFTS.

DISCRETIONARY CHANGES

Maximum Pension Available

Q 9  Should the maximum pension limit of 2/3 final remuneration be retained?  

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Please explain why. SUSTAINABILITY OF THE FUND
<table>
<thead>
<tr>
<th>Q 10 Should the value of “retained benefits” from other schemes be included in the permitted maximum pension?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>SUSTAINABILITY OF FUND</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

General Tax Free Lump Sum on Retirement

<table>
<thead>
<tr>
<th>Q 11 Should the limits on the available lump sum be changed to the revenue maximum of 25% pension?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>AS Q 10</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Death in Service Gratuity

<table>
<thead>
<tr>
<th>Q 12 What level of death in service gratuity should be payable?</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>AS NOW</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 13 If the level of gratuity payable is to rise how should the cost to the scheme be funded?</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Increased contributions by</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MSP</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Children's Pension

<table>
<thead>
<tr>
<th>Q 14 Should the maximum age of a child entitled to benefit under the scheme be increased to age 23?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TO COVER FULL TIME EDUCATION</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 15 Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant’s death because of physical or mental impairment?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Please explain why: **Civil Service**

**Purchase of Added Years**

<table>
<thead>
<tr>
<th>Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
</tr>
<tr>
<td>☑</td>
</tr>
</tbody>
</table>

Q 16(b) If so what should the maximum level of contributions be set at?

25%

Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>☑</td>
<td></td>
</tr>
</tbody>
</table>

Please explain why: **Continuity of Current Practice**

Q 18 What should the maximum level of contributions towards added years be set at?

**Maximum that has no cost to scheme**

Q 19 Should members be allowed to purchase added years beyond their 65th birthday?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>☑</td>
<td></td>
</tr>
</tbody>
</table>

Please explain why: **Up to age of session during which they become 65**

**Benefits for any Retained AVC Facility**

Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum?

**Same percentage as current pension scheme**
Flexible Retirement

<table>
<thead>
<tr>
<th>Q 21 Should members be entitled to receive their pension while continuing to work as an MSP?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td>COSTS TO SCHEME</td>
<td></td>
</tr>
</tbody>
</table>

Options Available at Retirement

<table>
<thead>
<tr>
<th>Q 22 Should other matters of flexibility in relation to the options available at retirement be dealt with by the managers/trustees of the scheme?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td>PROFESSIONAL DECISION MADE BUT NOT BY MSPS</td>
<td></td>
</tr>
</tbody>
</table>

Trivial Commutation

<table>
<thead>
<tr>
<th>Q 23 Should the SPPS permit very small pensions to be taken as a lump sum?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td>COST NEUTRAL</td>
<td></td>
</tr>
</tbody>
</table>

Ill-Health Provision

| Q 24 What criteria should apply for the payment of an ill-health pension? | INABILITY TO WORK FULL TIME IN ANY OCCUPATION CHECKED EVERY THREE YEARS |
| Q 25 Should any such awards be varied depending upon the severity of the incapacity? | Yes | No |
| Please explain why. | MALIGN CONDITIONS MAY ALLOW ALTERNATIVE WORK |
Q 26 Should there be provision for ill-health pensions to be subject to periodic review?  
<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Please explain why.  
AS Q 24 /25

Q 27 Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year?  
<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Please explain why.  
FAIRNESS.

Annual Increases to Pensions

Q 28 By what percentage should pensions be increased? For example, should members' salaries be linked to RPI or to serving members' salaries or to some other yardstick?  
PHYSICAL PAYMENTS SHOULD BE LINKED TO "PENSIONER RPI."

Calculation of Early Retirement Pensions

Q 29 Should the existing early retirement pension provisions be phased out?  
<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Please explain why.  
INequality. EXCEPTIONS ON HEALTH.

Elctive Early Retirement

Q 30 Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early?  
<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
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Please explain why.  
OFTEN DIFFICULT TO DETAIL EMPLOYMENT DUE TO PROXITY TO RETIREMENT AGE.
Q 31 What, if any, eligibility conditions should apply to early retirement?

Refund of Contributions

Q 32(a) Do you agree that the age restriction should be equalised for men and women?  
Yes  No
Q 32(b) If you have answered 'Yes' what age should that be?

Loss of Surviving Spouse Pension on Remarriage or Co-habitation

Q 33 Should a surviving spouse or partner's pension cease on remarriage or cohabitation?  
Yes  No
Please explain why. UNFAIR TO WISHES OF DECEASED

Q 34 Should the discretion to refuse pension payment in full or part to a surviving spouse or civil partner who marries or enters into civil partnership when death is imminent continue to apply?  
Yes  No
Please explain why. AVOIDS EXPLOITATION

Commutation of Pension for Lump Sum following Death in Service

Q 35(a) Should the scheme permit a spouse/partner to commute part of the pension payable to a lump sum?  
Yes  No
Q 35(b) If yes what maximum amount may be commuted?
50%
**OTHER POSSIBLE CHANGES**

**Scheme Administration**

<table>
<thead>
<tr>
<th>Q 36(a) Should the SPPS continue to be administered by the Scottish Parliamentary Corporate Body or should Trustees be appointed?</th>
<th>SPCB</th>
<th>Trustees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

| Q 36(b) If trustees, please indicate how many you think appropriate, whether they should include pensioner members and how they could be elected? | \[
\text{SEVEN WITH TWO MEMBERS SERVING FOR THREE YEARS WITH AN OVERLAP FOR CONTINUITY}\\
\] |

**Accrual Rate**

<table>
<thead>
<tr>
<th>Q 37(a) Should there be an option for members to have a 1/40\textsuperscript{th} accrual rate?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Q 37(b) Who should pay the additional costs involved? | Members not Tax Payers |

**Earnings Cap**

<table>
<thead>
<tr>
<th>Q 38 Should the existing earnings cap linked to the Financ Act be retained?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please explain why.

Affordability for Scheme

**Service**

<table>
<thead>
<tr>
<th>Q 39 Should service in other pension schemes be taken into account when calculating an MSP’s service for early retirement entitlement?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>X</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Please explain why.

Full
### Office Holders

<table>
<thead>
<tr>
<th>Q 40 Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder's salary?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why:</td>
<td>ALL MSPS SHOULD RECEIVE SAME TREATMENT.</td>
<td></td>
</tr>
</tbody>
</table>

### Lord Advocate and the Solicitor General for Scotland

<table>
<thead>
<tr>
<th>Q 41 Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why:</td>
<td>AS LONG AS THEIR BASIC CONTRIBUTION IS SAME AS MSP.</td>
<td></td>
</tr>
</tbody>
</table>

### First Minister and Presiding Officer

<table>
<thead>
<tr>
<th>Q 42 Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why:</td>
<td>A MATTER FOR THEM SEPARATE SCHEME RULES BUT THEIR MSP PENSIIONS SHOULD BE THE SAME AS ANY OTHER MSP.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 43 Is there any reason why a former First Minister should not be entitled to rejoin the office holder's portion of the SPPS if they hold subsequent ministerial office?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why:</td>
<td>NOT IF THEY ARE A GENUINE MINISTER WITH A PORTFOLIO RECOGNISED BY PARLIAMENT.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 44 Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?</th>
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<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why:</td>
<td>FAILED TO PAY PAY.</td>
<td></td>
</tr>
</tbody>
</table>
**Q 45(a)** Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum? | Yes | No
---|---|---

**Q 45(b)** If you have answered ‘Yes’ what period of years is appropriate to achieve maximum pension? QUESTION POINTED OUT

---

**GRANTS TO MEMBERS AND OFFICE HOLDERS**

**Resettlement Grant**

| Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason? | Yes | No
---|---|---

| Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down? IF THEY STAND DOWN OTHER THAN THROUGH HEALTH REASONS THEY SHOULD NOT RECEIVE 50% BUT 20% |

| Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service? ALL PAYMENTS SHOULD BE BASED ON SERVICE |

---

**Ill-Health Retirement Grant**

| Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant? | Yes | No
---|---|---

**Please explain why.** ENHANCED PENSION ASSUMES SERVICE UNTIL RETIREMENT SO GRANT SHOULD BE REDUCED TO BE FAIR TO THOSE WHO DO NOT SERVICE UNTIL RETIREMENT

| Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions? | Yes | No
---|---|---

**Please explain why.** WHO DEFINES ‘PERFORM FUNCTION’ THERE SHOULD BE AN EXPECTATION OF TOTAL PERFORMANCE USING DISABILITY ADAPTS SUPPORT
Severance Grant to Office Holders

<table>
<thead>
<tr>
<th>Q 50</th>
<th>Do you have any comments on the severance grant?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’ please give comments below.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ministers etc. get extra salary for performing their duties. No responsibility means no additional money.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Replacement Options

<table>
<thead>
<tr>
<th>Q 51</th>
<th>Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’ please give views below.</td>
<td>Part of Pensions Bill as it covers all UK workers and MPs are their representatives. MPs should not decide pay conditions.</td>
<td></td>
</tr>
</tbody>
</table>

Any Other Comments

| Q 52  | Are there any other comments you have on aspects of the parliamentary pension scheme? Since it is paid by the UK taxpayer it should be governed by UK law and funded by the Treasury. |     |    |

Thank you for taking the time to let us have your views.
SPPS 8

EVIDENCE FROM DONALD GORRIE

RESPONDENT INFORMATION FORM

SCOTTISH PARLIAMENTARY PENSION SCHEME

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

NAME: DONALD GORRIE

ORGANISATION NAME: (if appropriate)

POSTAL ADDRESS

1. Are you responding: (please insert an 'x' in one box)

| (a) as an individual | ✓  | go to Q2 |
| (b) on behalf of a group/organisation |  | go to Q3 |

INDIVIDUALS

2. Do you agree to your response being made available to the public?

| Yes | ✓ |
| No |  |

Please read Policy on treatment of written evidence at page 33 and contact the Clerk

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

| Yes |  |
| No | Please read Policy on treatment of written evidence at page 33 and contact the Clerk |
We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an 'X' when there are 'Yes'/'No' boxes.

**MANDATORY CHANGES**

**Pension Sharing on Divorce**

Q.1 What rights should be available to former spouses/partners of scheme members?

Age 75

Q.2 What approach should be taken at age 75?

Q.3 What benefits should be payable under the scheme in respect of MSP's aged over 75 who die while in service?

**Minimum Pension Age**

Q.4 Do you have any comments on this change? [Yes] [No]

If you have answered 'Yes' please give your comments.

**Transfers to Unregistered Schemes**

Q.5 Do you have any comments on this change? [Yes] [No]

If you have answered 'Yes' please give your comments.
### Lifetime Allowance and Annual Allowance

<table>
<thead>
<tr>
<th>Q 6</th>
<th>Do you have any comments on these changes?</th>
<th>Yes</th>
<th>No✓</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered 'Yes' please give your comments.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Future Changes to SPPS Rules

<table>
<thead>
<tr>
<th>Q 7(a)</th>
<th>Do you agree that the legislation should provide powers to amend scheme rules in the future?</th>
<th>Yes✓</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 7(b)</td>
<td>If you have answered 'Yes' by what mechanism should future changes be brought forward?</td>
<td>Secondary legislation</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 8(a)</th>
<th>Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?</th>
<th>Yes✓</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 8(b)</td>
<td>If you have answered 'Yes', what kind of protection do you think should be included?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### DISCRETIONARY CHANGES

### Maximum Pension Available

<table>
<thead>
<tr>
<th>Q 9</th>
<th>Should the maximum pension limit of 2/3 final remuneration be retained?</th>
<th>Yes✓</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Q 10 Should the value of “retained benefits” from other schemes be included in the permitted maximum pension?</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

General Tax Free Lump Sum on Retirement

| Q 11 Should the limits on the available lump sum be changed to the revenue maximum of 25% pension? | Yes | No |
| Please explain why. |

Death in Service Gratuity

| Q 12 What level of death in service gratuity should be payable? |
| Q 13 If the level of gratuity payable is to rise how should the cost to the scheme be funded? |

Children’s Pension

| Q 14 Should the maximum age of a child entitled to benefit under the scheme be increased to age 23? | Yes | No |
| Please explain why. |

| Q 15 Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant’s death because of physical or mental impairment? | Yes | No |

4
Please explain why.

Purchase of Added Years

Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years? [Yes | No]

Q 16(b) If so what should the maximum level of contributions be set at?

Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided? [Yes | No]

Please explain why.

Q 18 What should the maximum level of contributions towards added years be set at?

Q 19 Should members be allowed to purchase added years beyond their 65th birthday? [Yes | No]

Please explain why.

Benefits for any Retained AVC Facility

Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum?
**Flexible Retirement**

<table>
<thead>
<tr>
<th>Q 21 Should members be entitled to receive their pension while continuing to work as an MSP?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Options Available at Retirement**

<table>
<thead>
<tr>
<th>Q 22 Should other matters of flexibility in relation to the options available at retirement be dealt with by the managers/trustees of the scheme?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Trivial Commutation**

<table>
<thead>
<tr>
<th>Q 23 Should the SPPS permit very small pensions to be taken as a lump sum?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Ill-Health Provision**

<table>
<thead>
<tr>
<th>Q 24 What criteria should apply for the payment of an ill-health pension?</th>
</tr>
</thead>
</table>
| Ill health.

<table>
<thead>
<tr>
<th>Q 25 Should any such awards be varied depending upon the severity of the incapacity?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td></td>
<td>✓</td>
</tr>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Q. 26 Should there be provision for ill-health pensions to be subject to periodic review?  
Yes / No  
Please explain why.

Q. 27 Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year?  
Yes / No  
Please explain why.

Annual Increases to Pensions

Q. 28 By what percentage should pensions be increased? For example, should members’ salaries be linked to RPI or to serving members’ salaries or to some other yardstick?  

Calculation of Early Retirement Pensions

Q. 29 Should the existing early retirement pension provisions be phased out?  
Yes / No  
Please explain why.

Elective Early Retirement

Q. 30 Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early?  
Yes / No  
Please explain why.
Q 31 What, if any, eligibility conditions should apply to early retirement?  

**OTHER EQUALITY ISSUES**

Refund of Contributions

| Q 32(a) Do you agree that the age restriction should be equalised for men and women? | Yes | No |
| Q 32(b) If you have answered 'Yes' what age should that be? |

Loss of Surviving Spouse Pension on Remarriage or Co-habitation

| Q 33 Should a surviving spouse or partner's pension cease on remarriage or cohabitation? | Yes | No |
| Please explain why. |

| Q 34 Should the discretion to refuse pension payment in full or part to a surviving spouse or civil partner who marries or enters into civil partnership when death is imminent continue to apply? | Yes | No |
| Please explain why. |

Commutation of Pension for Lump Sum following Death in Service

| Q 35(a) Should the scheme permit a spouse/partner to commute part of the pension payable to a lump sum? | Yes | No |
| Q 36(b) If yes what maximum amount may be commuted? |
### OTHER POSSIBLE CHANGES

#### Scheme Administration

<table>
<thead>
<tr>
<th>Q 36(a) Should the SPPS continue to be administered by the Scottish Parliamentary Corporate Body or should Trustees be appointed?</th>
<th>SPCB</th>
<th>Trustees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 36(b) If trustees, please indicate how many you think appropriate, whether they should include pensioner members and how they could be elected?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Accrual Rate

<table>
<thead>
<tr>
<th>Q 37(a) Should there be an option for members to have a 1/40th accrual rate?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 37(b) Who should pay the additional costs involved?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

#### Earnings Cap

<table>
<thead>
<tr>
<th>Q 38 Should the existing earnings cap linked to the Finance Act be retained?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Please explain why.

#### Service

<table>
<thead>
<tr>
<th>Q 39 Should service in other pension schemes be taken into account when calculating an MSP’s service for early retirement entitlement?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Please explain why.
### Office Holders

<table>
<thead>
<tr>
<th>Q 40</th>
<th>Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder's salary?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
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</tbody>
</table>

### Lord Advocate and the Solicitor General for Scotland

<table>
<thead>
<tr>
<th>Q 41</th>
<th>Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### First Minister and Presiding Officer

<table>
<thead>
<tr>
<th>Q 42</th>
<th>Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 43</th>
<th>Is there any reason why a former First Minister should not be entitled to rejoin the office holder's portion of the SPPS if they hold subsequent ministerial office?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 44</th>
<th>Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Q 45(a)</td>
<td>Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q 45(b)</td>
<td>If you have answered 'Yes' what period of years is appropriate to achieve maximum pension?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**GRANTS TO MEMBERS AND OFFICE HOLDERS**

**Resettlement Grant**

| Q 46(a) | Should the Grant continue to be available to all who cease to be members for whatever reason? | Yes | No | ✓ |
| Q 46(b) | In particular, should it continue to be paid to those who voluntarily stand down? |

Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service?  

**Ill-Health Retirement Grant**

| Q 48 | Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant? | Yes | No | ✓ |
| Please explain why. |

| Q 49 | Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions? | Yes | No | ✓ |
| Please explain why. |
Severance Grant to Office Holders

<table>
<thead>
<tr>
<th>Q 50</th>
<th>Do you have any comments on the severance grant?</th>
<th>Yes</th>
<th>No ✓</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered 'Yes' please give comments below.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Replacement Options

<table>
<thead>
<tr>
<th>Q 51</th>
<th>Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?</th>
<th>Yes</th>
<th>No ✓</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered 'Yes' please give views below.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any Other Comments

<table>
<thead>
<tr>
<th>Q 52</th>
<th>Are there any other comments you have on aspects of the parliamentary pension scheme?</th>
</tr>
</thead>
</table>

Thank you for taking the time to let us have your views.

16 JANUARY 2008
SPPS 9

EVIDENCE FROM TONY ATTUBATO, THE PENSIONS ADVISORY SERVICE

RESPONDENT INFORMATION FORM

SCOTTISH PARLIAMENTARY PENSION SCHEME

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

| NAME: | Tony Attubato |
| POSTAL ADDRESS | 11, Belgrave Road, London SW1V 1RB |
| ORGANISATION NAME: (if appropriate) | The Pensions Advisory Service |

1. Are you responding: (please insert an ‘x’ in one box)

| (a) as an individual | go to Q2 |
| (b) on behalf of a group/organisation | X go to Q3 |

INDIVIDUALS

2. Do you agree to your response being made available to the public?

| Yes | |
| No | Please read Policy on treatment of written evidence at page 33 and contact the Clerk |

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

| Yes | X |
| No | Please read Policy on treatment of written evidence at page 33 and contact the Clerk |
We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an ‘X’ when there are ‘Yes’/’No’ boxes.

**MANDATORY CHANGES**

**Pension Sharing on Divorce**

<table>
<thead>
<tr>
<th>Q 1</th>
<th>What rights should be available to former spouses/partners of scheme members?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Many spouses/partners will not have other pension schemes (they may not be working) and therefore nowhere to take a transfer to. While it is possible for them to open a personal plan just to receive the transfer, it would be best if they could be offered the choice of staying in the scheme or effecting a transfer. This would be considered best practice and we believe that this scheme should be run on the basis of best practice. If they stay in the scheme, their entitlement will initially be expressed as a cash sum (a %age of the member’s transfer value). This cash sum would need to be converted into a preserved pension on a basis consistent with that which was used to calculate the original transfer value. There is a potential liability for the scheme from this approach if the actual experience is significantly different from assumed for the calculations. However, this is a risk consistent with the nature of the scheme and it is for the Trustees to ensure that the actuarial basis used is robust, accurate and fair.</td>
</tr>
</tbody>
</table>

**Age 75**

<table>
<thead>
<tr>
<th>Q 2</th>
<th>What approach should be taken at age 75?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>We are not aware that this is a problem with most other schemes. The new rules introduced in 2006 were intended to bring about greater flexibility for scheme members in terms of accessing their pension without having to cease employment. We would support the need for such flexibility although there is little evidence that many employers have implemented the necessary rule changes. It is right that the Scottish Parliamentary Pension Scheme should give a lead in this area provided it is on a cost neutral basis. We would suggest that for those who leave parliament before age 75, they should be free to draw benefits anytime between 50 (55 from 06/04/2010) and 75. At 75 it should be compulsory. Benefits taken early, i.e. before 65, should be discounted. There should be no provision for any form of benefit accrual after leaving service. For those who are still MPs, we would support a rule change that permits taking the lump sum before 75 while allowing the pension to be abated. However, we see no need to allow further benefit accrual, or ability to pay contributions, beyond age 75. Those who join parliament late in life, at say age 71, would be expected to have made their pension provision in earlier employments. After all, this is what would be expected of those in other occupations.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 3</th>
<th>What benefits should be payable under the scheme in respect of</th>
</tr>
</thead>
</table>
**MSP’s aged over 75 who die while in service?**

On the issue of death in service benefits after age 75, we do not support the provision of an additional pension in lieu of a death lump sum. Members should be treated as having retired on the day before death and the appropriate death in retirement benefits should be paid. This would be the norm in the private sector and it is difficult to see why different rules should apply to MPs. Maybe SMPs may be seen to be more willed to have benefits more aligned to those of their constituents than their Westminster counterparts appear to be.

**Minimum Pension Age**

<table>
<thead>
<tr>
<th>Q 4</th>
<th>Do you have any comments on this change?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes' please give your comments.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>We would suggest that access to retirement benefits be allowed for any member between 55 and 65, irrespective of years of service, provided that the benefits are actuarially reduced so as to be cost neutral.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Transfers to Unregistered Schemes**

<table>
<thead>
<tr>
<th>Q 5</th>
<th>Do you have any comments on this change?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes' please give your comments.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>We see this as a necessary amendment</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Lifetime Allowance and Annual Allowance**

<table>
<thead>
<tr>
<th>Q 6</th>
<th>Do you have any comments on these changes?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes' please give your comments.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Under the old limits on benefits, since the scheme provides 1/50th for each year of service, only a max of 33.33 years would count. A removal of this limit could lead to an increase in the cost of the scheme. It is not a requirement that the Finance Act 2004 provisions that these limits be removed.</td>
<td></td>
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</tr>
</tbody>
</table>

**Future Changes to SPPS Rules**

<table>
<thead>
<tr>
<th>Q 7(a)</th>
<th>Do you agree that the legislation should provide powers to amend scheme rules in the future?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>There most certainly will be future changes and it would seem sensible to have a mechanism for implementing them without having to rely on primary legislation. The one proviso is that</td>
<td></td>
<td></td>
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</tbody>
</table>
amendments which involve cost ought to require the endorsement of the Scottish Parliament.

<table>
<thead>
<tr>
<th>Q 7(b) If you have answered ‘Yes’ by what mechanism should future changes be brought forward?</th>
</tr>
</thead>
<tbody>
<tr>
<td>It would seem that changes could be brought about through Regulation.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 8(a) Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Absolutely! We would be very strongly of the view that you cannot take away rights already accrued.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 8(b) If you have answered ‘Yes’, what kind of protection do you think should be included?</th>
</tr>
</thead>
<tbody>
<tr>
<td>That protection should be in rules and legislation should contain a prohibition to any ability of future regimes being able to amend that rule.</td>
</tr>
</tbody>
</table>

**DISCRETIONARY CHANGES**

**Maximum Pension Available**

<table>
<thead>
<tr>
<th>Q 9 Should the maximum pension limit of 2/3 final remuneration be retained?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
</tr>
</tbody>
</table>

Please explain why.

Yes, the limit for benefits arising from the scheme rules should remain at 2/3rds. There is no reason why a removal of the limits by the 2004 Finance Act should result in an improvement in benefits for certain members at the taxpayer’s expense. The limit can be removed for the purpose of those wanting to accrue additional benefits through AVCs.

<table>
<thead>
<tr>
<th>Q 10 Should the value of “retained benefits” from other schemes be included in the permitted maximum pension?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
</tr>
</tbody>
</table>

Please explain why.

We are not aware of any private sector schemes that have adopted such a change. This is because the effect is to increase benefits from the scheme at the expense of the taxpayer. The only reason why there are no current cost implications for the SPPS is because it does not maintain this information. Undoubtedly, there are likely to be SMPs who have considerable retained benefits from previous employments and careers. However, it should be noted that taking account of retained benefits is not
equitable as between different members. The effect is that those with retained benefits find they are reducing their own future service accrual while those with no or smaller retained benefits get more pension from the scheme for the same service. This could be an argument for doing away with retained benefits but retaining the 2/3rds limit.

**General Tax Free Lump Sum on Retirement**

<table>
<thead>
<tr>
<th>Q 11 Should the limits on the available lump sum be changed to the revenue maximum of 25% pension?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Please explain why.</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>We would agree that the maximum tax free cash should be increased to 25% so long as any additional cash is derived by commutation on a cost neutral basis to the scheme. This then leaves the decision as one of personal choice.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Death in Service Gratuity**

<table>
<thead>
<tr>
<th>Q 12 What level of death in service gratuity should be payable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>As with our attitude to other questions, we see no reason why the 2004 Finance Act provisions should be used as an excuse to increase benefits and so cost. Benefit improvements ought to have a stronger justification, e.g., the benefit levels are not competitive, there is a need to use surplus, the benefit structure does not meet the needs of members, etc. None of these reasons apply in this case. Larger lump sum benefits could be justified if other death benefits, such as spouse’s pension, were reduced to maintain the same value. Since lump sum benefits are payable tax free whereas pensions are taxed, it may be better for beneficiaries if this were to happen.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 13 If the level of gratuity payable is to rise how should the cost to the scheme be funded?</th>
</tr>
</thead>
<tbody>
<tr>
<td>In response to the previous question, we have suggested that one way to justify increasing the death in service lump sum is to do it at the expense of a reduction in the spouse’s/partner’s pension. Alternatively, the member’s contribution could increase by the additional cost. The problem here is that there may be some single members who do not value this benefit and would object to paying more.</td>
</tr>
</tbody>
</table>
### Children's Pension

**Q 14** Should the maximum age of a child entitled to benefit under the scheme be increased to age 23?  
- **Yes**
- **No**

**Please explain why.**

Assuming, as we would expect, the increase in cost is low it would be reasonable to increase the age limit to 23 for those in full time education. This will cover situations like the one mentioned in section 4.16 and we believe in keeping with other pension schemes.

**Q 15** Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant's death because of physical or mental impairment?  
- **Yes**
- **No**

**Please explain why.**

It is likely to be very rare for the scheme to have to pay out benefits in such situations and hence the cost should be low. But the value to those affected is likely to be high. We believe that this would be in line with other pension schemes.

### Purchase of Added Years

**Q 16(a)** Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years? Except for existing contributors to money purchase AVCs.  
- **Yes**
- **No**

**Q 16(b)** If so what should the maximum level of contributions be set at?  
We do not see why there should be a limit imposed by the pension scheme (although the statutory Annual Allowance will apply where relevant) in respect of those already making money purchase AVCs. We assume that there are no cost implications.

**Q 17** Should the current facility to make additional voluntary contributions under the scheme continue to be provided?  
- **Yes**
- **No**

**Please explain why.**

Yes – for existing contributors to AVCs. Because it seems likely that there will be some members who will wish to continue with their AVC fund.

But for the reasons mentioned in 4.23 we see no reason for continuing to offer this to new members or existing members who have not started AVCS.

The same should apply to added years. This would be in line with other pension schemes. Also added years is likely to be a cost to the scheme.
Q 18 What should the maximum level of contributions towards added years be set at?

We see no reason for offering added years to new members or to existing members who have not started added years.

The added years option is likely to be a cost to the scheme.

Current maximum contribution levels should be maintained for existing members who have added years.

Q 19 Should members be allowed to purchase added years beyond their 65th birthday?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
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</tbody>
</table>

Please explain why.

This is likely to have cost implications and we do not believe that this is common practice with pension schemes in general.

Benefits for any Retained AVC Facility

Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum?

Allow 25% of the value of money purchase AVCs, assuming there are no significant costs to the scheme for doing so. This seems to be in keeping with other pension schemes.

Flexible Retirement

Q 21 Should members be entitled to receive their pension while continuing to work as an MSP?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
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</tbody>
</table>

Please explain why.

We think this would offer flexibility at retirement. But early retirement should be on a discounted basis so that offering such flexibility is not a cost to the scheme.

Options Available at Retirement

Q 22 Should other matters of flexibility in relation to the options available at retirement be dealt with by the managers/trustees of the scheme?

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td></td>
<td>X</td>
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</tbody>
</table>

Please explain why.

If other issues arise there seems to be no reason why they should not be considered. Provided they are cost neutral.
Trivial Commutation

Q 23 Should the SPPS permit very small pensions to be taken as a lump sum? Yes X No
Please explain why.
This is a practical way of dealing with very small pensions and would be in keeping with other pension schemes. Although it seems unlikely that many MSPs will fulfil the triviality requirements.

Ill-Health Provision

Q 24 What criteria should apply for the payment of an ill-health pension?
Being unable to carry out any occupation is a much tougher criterion to meet than not being able to carry out your occupation. It seems fairer to members to keep the old definition – (although presumably as mentioned in the consultation paper it needs to be adjusted to allow for permanence).

It may, though, be possible to have two definitions. One for those unable to carry out any occupation and one for those unable to carry out their occupation (MSP/office holder). With a different award level for each – say enhanced service only provided for those unable to carry out any occupation.

Q 25 Should any such awards be varied depending upon the severity of the incapacity? Yes X No
Please explain why.
See answer to question 24.

Q 26 Should there be provision for ill-health pensions to be subject to periodic review? Yes X No
Please explain why.
But this should be limited to ensuring that the ill health facility is not being abused.

Knowing that your ill health pension is being reviewed (or even that it could be) can be distressing for affected scheme members. It may also be a disincentive to get better (say following a medical breakthrough) if they have to worry that signs or attempts at improvement could lead to the ill health pension being withdrawn.

So a light touch review simply to, say, ensure that a person still meets the eligibility criteria should suffice.

One major problem we find with ill health applications (when a member comes to us for help) concerns scheme managers/trustees believing that they cannot establish that a person’s condition is permanent and therefore turning down the application. It is perhaps hard to say that a person will never get better (or
will not do so before the scheme’s retirement age), the ability to review an ill health pension later may make it dealing with such applications easier.

Q 27 Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>X</th>
<th>No</th>
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</thead>
</table>

Please explain why.

The member should be given the option of a serious ill-health lump sum or remaining an active member for death in service benefits. Death in service benefits may be more beneficial for the member. Any serious ill-health lump sum should be an actuarial value based on actuarial advice. Any serious ill-health lump sum should not be available for pensions in payment.

Annual Increases to Pensions

Q 28 By what percentage should pensions be increased? For example, should members’ salaries be linked to RPI or to serving members’ salaries or to some other yardstick?  

To retain purchasing power throughout retirement, pension increases should be retained as RPI, in keeping with other Public Sector Schemes. Please note that Private Sector Schemes generally have a cap on pension increases to protect themselves against times of high inflation

Calculation of Early Retirement Pensions

Q 29 Should the existing early retirement pension provisions be phased out?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>X</th>
<th>No</th>
</tr>
</thead>
</table>

Please explain why.

The current early retirement provisions should be phased out in line with Westminster.

Elective Early Retirement

Q 30 Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>X</th>
<th>No</th>
</tr>
</thead>
</table>

Please explain why.

Provided the early retirement reduction is on a cost neutral basis.

Q 31 What, if any, eligibility conditions should apply to early retirement?  

The only requirement should be that they are aged between 55 and 65.
### OTHER EQUALITY ISSUES

#### Refund of Contributions

<table>
<thead>
<tr>
<th>Q 32(a) Do you agree that the age restriction should be equalised for men and women?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 32(b) If you have answered ‘Yes’ what age should that be?</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>65</td>
<td></td>
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</tbody>
</table>

#### Loss of Surviving Spouse Pension on Remarriage or Co-habitation

<table>
<thead>
<tr>
<th>Q 33 Should a surviving spouse or partner’s pension cease on remarriage or cohabitation?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td>No. It is extremely difficult to keep track of people’s changing circumstances. From our experience, the problem with overpaid pensions can lead to disputes.</td>
<td></td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 34 Should the discretion to refuse pension payment in full or part to a surviving spouse or civil partner who marries or enters into civil partnership when death is imminent continue to apply?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td>To relax the rule could leave this option open to manipulation. Retaining discretion allows a member’s circumstance to properly taken account of.</td>
<td></td>
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</tbody>
</table>

#### Commutation of Pension for Lump Sum following Death in Service

<table>
<thead>
<tr>
<th>Q 35(a) Should the scheme permit a spouse/partner to commute part of the pension payable to a lump sum?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>So long as the spouse/partner has the choice and the benefit is on a cost neutral basis.</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Q 35(b) If yes what maximum amount may be commuted?</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>25% of the pension value</td>
<td></td>
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</table>
OTHER POSSIBLE CHANGES

Scheme Administration

<table>
<thead>
<tr>
<th>Q 36(a) Should the SPPS continue to be administered by the Scottish Parliamentary Corporate Body or should Trustees be appointed?</th>
<th>SPCB</th>
<th>Trustees</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the current arrangement has worked perfectly well we cannot see why there should be any change, so long as members and pensioners are properly represented.</td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Q 36(b) If trustees, please indicate how many you think appropriate, whether they should include pensioner members and how they could be elected?</th>
<th></th>
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Accrual Rate

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<tr>
<th>Q 37(a) Should there be an option for members to have a 1/40th accrual rate?</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>X</td>
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<table>
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<tr>
<th>Q 37(b) Who should pay the additional costs involved?</th>
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Earnings Cap

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<tr>
<th>Q 38 Should the existing earnings cap linked to the Finance Act be retained?</th>
<th>Yes</th>
<th>X</th>
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<tbody>
<tr>
<td>No</td>
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</table>

Please explain why.

Yes, to keep in line with Westminster and Wales

Service

<table>
<thead>
<tr>
<th>Q 39 Should service in other pension schemes be taken into account when calculating an MSP’s service for early retirement entitlement?</th>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>X</td>
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</table>

Please explain why.

No because this would be out of line with the Private Sector.

Office Holders
Q 40 Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder’s salary?

Please explain why.

We see no reason why members of the scheme who contribute on the same basis are provided different levels of benefits unless office holders receive higher benefits in other parts of their remuneration package.

Lord Advocate and the Solicitor General for Scotland

Q 41 Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?

Please explain why.

Similarly to our response to Q40, if conditions of membership correspond to other scheme members it would appear logical that corresponding levels of benefits are the same unless improved remuneration benefits are provided elsewhere.

First Minister and Presiding Officer

Q 42 Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?

Please explain why.

It is common, in our experience, for public sector schemes to abate pensions if the recipient returns to work for the same public sector employer.

Q 43 Is there any reason why a former First Minister should not be entitled to rejoin the office holder’s portion of the SPPS if they hold subsequent ministerial office?

Please explain why.

None that we can identify.

Q 44 Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?

Please explain why.

Given the reducing coverage of final salary pension schemes in the private sector, the provision of a 50% pension without reference to service is very generous and perhaps difficult to justify to the public. If would therefore seem
appropriate that conditions to the payment of this pension are introduced.

Q 45(a) Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum? Yes. For similar reasons to our answer to Q44, it is normal for defined benefit entitlement to have a link to length of service. Therefore, in common with other pension benefits payable it to us is appropriate that a link to length of service is introduced.

Yes  X  No

Q 45(b) If you have answered ‘Yes’ what period of years is appropriate to achieve maximum pension?
We appreciate that the uncertainties of parliamentary life can mean that periods of office are short. Nevertheless, a requirement to serve 4 years to achieve maximum entitlement appears appropriate.

GRANTS TO MEMBERS AND OFFICE HOLDERS

Resettlement Grant

Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason? Given that the Grant is payable regardless of the reason for non-re-election it does not appear to us to be comparable to redundancy payments as these are only payable if the post is actually redundant.

If the Grant is to be retained, and its purpose is to provide similar benefits to redundancy, it would appear appropriate that its payment is at least restricted to members who have stood but are not re-elected.

Yes  X  No

Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down?
As Q46a - Given its purpose, we do not see why it should be paid if a member voluntarily stands down.

Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service?
A purpose of the resettlement grant is to assist with the costs of adjusting to non-parliamentary life. The need for assistance to adjust to non-parliamentary life would seem to be linked to the length of time a member has served. We therefore suggest the benefit should be based on length of service regardless of age. Whilst there may be an argument that older members will have more difficulty in returning to the labour market, retaining different levels of benefits based on age may contradict age discrimination requirements.
Ill-Health Retirement Grant

Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant?  
Yes  No  X

Please explain why.  
The availability of both an enhanced pension and ill-health retirement grant appears to be double provision. It would therefore seem appropriate that an ill-health retirement grant is only payable if a member is not eligible for the early payment of pension on grounds of ill health.

Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions?  
Yes  No  X

Please explain why. To avoid potential disputes the criteria setting out the conditions for payment of an ill-health retirement grant should be clear and unambiguous. It would seem appropriate therefore for some form of test to so that someone’s eligibility can be judge, for example their ability to continue to serve as a member.

Severance Grant to Office Holders

Q 50 Do you have any comments on the severance grant?  
Yes  No  X

If you have answered ‘Yes’ please give comments below.  
The comments we have made regarding the resettlement grant are also applicable here. Consideration could be given to basing the severance grant on length of service as an office holder.

Replacement Options

Q 51 Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?  
Yes  No  X

If you have answered ‘Yes’ please give views below.

Any Other Comments

Q 52 Are there any other comments you have on aspects of the parliamentary pension scheme?

Thank you for taking the time to let us have your views.

16 JANUARY 2008
INQUIRY INTO THE SCOTTISH PARLIAMENTARY PENSION SCHEME

Thank you for your letter of 17 October inviting responses to your consultation paper on the Scottish Parliamentary Pension Scheme ("SPPS"). I have no comments on the bulk of the consultation and wish to respond only to the questions having particular relevance for the Law Officers. I am responding on my own behalf and on behalf of the Solicitor General for Scotland, Frank Mulholland QC. I am content for my response to be made available to the public.

My principal interest is in relation to Question 41.

Question 41: Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing members?

I am not aware of any reason why the Law Officers should be treated differently from other Ministers in the ways identified in paragraphs 6.17 - 6.23 of the consultation paper. The difference in treatment may reflect the fact that at Westminster certain Government Ministers were members of the House of Lords rather than of the House of Commons, and so did not receive an MP's salary. Under the Scotland Act the Law Officers are Ministers in the Scottish Executive and may, but need not, be MSPs. Under the SPPS it would appear that the Law Officers are the only office holders who might not be members of the Parliament and who would therefore be subject to the identified disadvantages. Given that the rate of contribution is the same for all members of the scheme, there does not appear to be any good reason for that distinction either between the Law Officers and other Ministers, or between Law Officers who are not MSPs and Law Officers who are. Indeed on a personal level I am concerned to note that the benefits which would be available to my family on my death are less than they would be if I was an MSP or other Minister.

As it has a bearing on the position of the Law Officers, I would also like to comment on Question 40.
Question 40: Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder's salary?

Similarly I see no obvious reason why the enhancement referred to in paragraph 6.16 should apply only in relation to the MSP element of an office holder's salary and not in relation to the office holder element of the salary, when the contribution from each element is made at the same rate and scheme benefits are otherwise the same.

I have no other comments.

Yours sincerely

ELISH ANGIOLINI
EVIDENCE FROM JOHN H YOUNG

17 JAN 2008

RESPONDENT INFORMATION FORM

SCOTTISH PARLIAMENTARY PENSION SCHEME

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

NAME: John H. Young
MSP 1999 - 2003, Airdrie
ORGANISATION NAME: (if appropriate)

POSTAL ADDRESS:

1. Are you responding: (please insert an ‘x’ in one box)
   (a) as an individual
   (b) on behalf of a group/organisation

   
   (a) as an individual  x  go to Q2
   (b) on behalf of a group/organisation  go to Q3

INDIVIDUALS

2. Do you agree to your response being made available to the public?

   Yes  x  No

   Yes  x  No

   Please read Policy on treatment of written evidence at page 33 and contact the Clerk

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

   Yes  x  No

   Please read Policy on treatment of written evidence at page 33 and contact the Clerk
We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an 'X' when there are 'Yes'/No' boxes.

**MANDATORY CHANGES**

**Pension Sharing on Divorce**

**Q. 1** What rights should be available to former spouses/partners of scheme members?

*Perhaps the same as would happen with most major company pensions. Would be interested to know the final outcome.*

**Age 75**

**Q. 2** What approach should be taken at age 75?

*I retired at 67 years of age, when I was selected by my own party. I known from past political experience political parties would be worried about the death of a member whilst in office - thereby creating a by-election.*

**Q. 3** What benefits should be payable under the scheme in respect of MSP's aged over 75 who die while in service?

*A personal opinion only - the same as those who finish at say 65, or at most 70.*

**Minimum Pension Age**

**Q. 4** Do you have any comments on this change?  

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<th>Yes</th>
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*If you have answered 'Yes' please give your comments.*

*I will be 78 this December - I am perfectly fit - passed medical checks etc. I walk many miles each week. I remain active in a number of areas - my wife died in 2001, but have an ex-MEP who attended the Olympic Games in Athens in 2004.*

**Transfers to Unregistered Schemes**

**Q. 5** Do you have any comments on this change?  

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<tr>
<th>Yes</th>
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*If you have answered 'Yes' please give your comments.*

*I am uncertain about any disadvantages that could exist.*
Lifetime Allowance and Annual Allowance

Q 6 Do you have any comments on these changes? Yes No

If you have answered 'Yes' please give your comments.

Will sufficient funds exist in the years that lie ahead? The number of retired members present calculations could well exceed the required funding.

Future Changes to SPPS Rules

Q 7(a) Do you agree that the legislation should provide powers to amend scheme rules in the future? Yes No

Q 7(b) If you have answered 'Yes' by what mechanism should future changes be brought forward? Uncertain about this - not a simple answer. But it is possible the scheme will have to be amended.

Q 8(a) Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued? Yes No

Q 8(b) If you have answered 'Yes', what kind of protection do you think should be included? Use same protection as company pensioners. Needs considerable study.

DISCRETIONARY CHANGES

Maximum Pension Available

Q 9 Should the maximum pension limit of 2/3 final remuneration be retained? Yes No

Please explain why.

Cost of living almost certainly will continue to rise. Dental treatments often have to be regarded. Treatment will often have to be paid for. Such payments may extend - bearing in mind the arising pressure on health. The massing number of non-U.K. citizens being allowed the country must inflate such costs.

* I exclude Polish dentists whose qualification equal U.K. dentists. There may also be other aliens.
Q 10 Should the value of “retained benefits” from other schemes be included in the permitted maximum pension?  

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<tr>
<th>Yes</th>
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Please explain why.  
THE LIMITS OF COMPANY PENSIONS FOR RETIRED PERSONS MAY BE INCLUDED FOR TAX PURPOSES - BUT IT WOULD BE DIFFICULT TO INCLUDE RETAINED BENEFIT

General Tax Free Lump Sum on Retirement

Q 11 Should the limits on the available lump sum be changed to the revenue maximum of 25% pension?  

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<thead>
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<th>Yes</th>
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Please explain why.  
WOULD REQUIRE CONSIDERABLE CONTEMPLATION

Death in Service Gratuity

Q 12 What level of death in service gratuity should be payable?  

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<tbody>
<tr>
<td>SOMEWHAT SIMILAR TO MOST LARGE COMPANY SCHEMES - THE IDEA DOES REQUIRE SOME STUDY</td>
</tr>
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Q 13 If the level of gratuity payable is to rise how should the cost to the scheme be funded?  

<p>| |</p>
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<tbody>
<tr>
<td>ACTUARIES SHOULD BE CONSULTED</td>
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</table>

Children’s Pension

Q 14 Should the maximum age of a child entitled to benefit under the scheme be increased to age 23?  

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<th>Yes</th>
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Please explain why.

Q 15 Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant’s death because of physical or mental impairment?  

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<thead>
<tr>
<th>Yes</th>
<th>No</th>
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</table>
Please explain why.

PREMATURE INCAPABLE OR
EMPLOYMENT & EARNINGS

Purchase of Added Years

| Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years? | Yes | No |
| Q 16(b) If so what should the maximum level of contributions be set at? |
| * IF THEY WISHED TO DO SO - WOULD REQUIRE CAREFUL STUDY |

| Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided? | Yes | No |
| Please explain why. |
| PROBABLY DUE TO THE SCHEME OF THINGS IN THE FUTURE |

| Q 18 What should the maximum level of contributions towards added years be set at? |
| CAREFUL STUDY BY ACTUARIES |

| Q 19 Should members be allowed to purchase added years beyond their 65th birthday? | Yes | No |
| Please explain why. |
| COULD CREATE POSSIBLE DIFFICULTIES AS PEOPLE LIVING LONGER |

Benefits for any Retained AVC Facility

| Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum? |
| REQUIRES EXAMINATION |
Flexible Retirement

Q.21 Should members be entitled to receive their pension while continuing to work as an MSP?

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<thead>
<tr>
<th>Yes</th>
<th>No</th>
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Please explain why.

**THIS MAY CAUSE DIFFICULTIES TO THE OVERALL.**

**THE WHOLE "NORMAL" PRINCIPLE OF PENSIONS STOPS AFTER EMPLOYMENT CEASES.**

Options Available at Retirement

Q.22 Should other matters of flexibility in relation to the options available at retirement be dealt with by the managers/trustees of the scheme?

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<thead>
<tr>
<th>Yes</th>
<th>No</th>
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Please explain why.

POSSIBLY - CANNOT GIVE DEFINITIVE REPLY.

Trivial Commutation

Q.23 Should the SPPS permit very small pensions to be taken as a lump sum?

<table>
<thead>
<tr>
<th>Yes</th>
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Please explain why.

MAY RELIEVE OVERALL SITUATION.

Ill-Health Provision

Q.24 What criteria should apply for the payment of an ill-health pension?

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<th>Yes</th>
<th>No</th>
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Please explain why.

DISCUSSIONS WITH RELEVANT BODIES OVERALL.

Q.26 Should any such awards be varied depending upon the severity of the incapacity?

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<th>Yes</th>
<th>No</th>
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Please explain why.

IF THE PRINCIPLE IS ESTABLISHED  YES.
Q 26  Should there be provision for ill-health pensions to be subject to periodic review?  
Yes  No  ✓  
Please explain why.

Q 27  Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year?  
Yes  No  ✓  
Please explain why.

Annual Increases to Pensions

Q 28  By what percentage should pensions be increased? For example, should members' salaries be linked to RPI or to serving members' salaries or to some other yardstick?  
Some Other Yardstick

Calculation of Early Retirement Pensions

Q 29  Should the existing early retirement pension provisions be phased out?  
Yes  No  ✓  
Please explain why.  
Depends on Length of Service, If very short could consider pension to be phased out

Elective Early Retirement

Q 30  Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early?  
Yes  No  ✓  
Please explain why.  
Such Members in most case become in their Noted to companies who employed them prior to becoming MSP’s Other may have stood down on health grounds. If an MSP was a parent or mother, one of either may still be rear or child, or other relative, of some other relation
Q 31 What, if any, eligibility conditions should apply to early retirement?

Life threatening illness - see when one parent falls seriously ill and the only person in household to help with that parent. If that parent is an MSP then may have to retire early.

OTHER EQUALITY ISSUES

Refund of Contributions

| Q 32(a) Do you agree that the age restriction should be equalised for men and women? | Yes | No |
| Q 32(b) If you have answered 'Yes' what age should that be? | Depends on circumstances | Cannot avoid age |

Loss of Surviving Spouse Pension on Remarriage or Cohabitation

| Q 33 Should a surviving spouse or partner's pension cease on remarriage or cohabitation? | Yes | No |
| Please explain why. | Probably yes - although there must be some reason already built in - A permission if this is not the case |

Q 34 Should the discretion to refuse pension payment in full or part to a surviving spouse or civil partner who marries or enters into civil partnership when death is imminent continue to apply?

Yes | No |

Please explain why.

Commutation of Pension for Lump Sum following Death in Service

| Q 35(a) Should the scheme permit a spouse/partner to commute part of the pension payable to a lump sum? | Yes | No |
| Q 35(b) If yes what maximum amount may be commuted? |
OTHER POSSIBLE CHANGES

Scheme Administration

<table>
<thead>
<tr>
<th>Question</th>
<th>SPCB</th>
<th>Trustees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 36(a) Should the SPPS continue to be administered by the Scottish Parliamentary Corporate Body or should Trustees be appointed?</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>Q 36(b) If trustees, please indicate how many you think appropriate, whether they should include pensioner members and how they could be elected?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Accrual Rate

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 37(a) Should there be an option for members to have a 1/40th accrual rate?</td>
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<td></td>
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<tr>
<td>Q 37(b) Who should pay the additional costs involved?</td>
<td></td>
<td></td>
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</tbody>
</table>

Earnings Cap

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 38 Should the existing earnings cap linked to the Finance Act be retained?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Service

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 39 Should service in other pension schemes be taken into account when calculating an MSP’s service for early retirement entitlement?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Office Holders

Q.40 Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder’s salary? | Yes | No |
--- | --- | ---
| ✅ | ✔ |

Please explain why.

Generally No. But individuals who hold certain offices carry a greater responsibility and much longer working times.

Lord Advocate and the Solicitor General for Scotland

Q.41 Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members? | Yes | No |
--- | --- | ---
| ✅ | ✗ |

Please explain why.

These titles are legal titles - whether or not outside the above affairs they carry out freelance legal work I do not know. They may have to be allowed to do so.

First Minister and Presiding Officer

Q.42 Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders? | Yes | No |
--- | --- | ---
| ✅ | ✔ |

Please explain why.

Both individuals may have done a number of years. The responsibility is work related. It is an MSP or even more contentious.

Q.43 Is there any reason why a former First Minister should not be entitled to rejoin the officeholder’s portion of the SPPS if they hold subsequent ministerial office? | Yes | No |
--- | --- | ---
| ✗ | ✅ |

Please explain why.

I am not aware of any restriction - must be because I believe on an individual basis

Q.44 Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions? | Yes | No |
--- | --- | ---
| ✅ | ✔ |

Please explain why. It would be ludicrous if say only one week or 3 months were served only served
**GRANTS TO MEMBERS AND OFFICE HOLDERS**

**Resettlement Grant**

| Q 45(a) Should the Grant continue to be available to all who cease to be members for whatever reason? | Yes ✓ | No
| Q 45(b) If you have answered 'Yes' what period of years is appropriate to achieve maximum pension? | Difficult to answer. Would have to be based on the number of years for each session (e.g. 4 years +)

---

**Ill-Health Retirement Grant**

| Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant? | Yes ✓ | No ✓ |
| Please explain why. | | |

*Depends on various circumstances. Each individual case should be treated on its merits.*

**Q 49** Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions? | Yes ? | No ? |
| Please explain why. | Don't quite understand this question. On one hand, it cannot primarily cover on-the-job functions. It would be a case for three months.*
Severance Grant to Office Holders

Q 50  Do you have any comments on the severance grant?  Yes  No ✓
If you have answered 'Yes' please give comments below.

Replacement Options

Q 51  Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?  Yes  No ✓
If you have answered 'Yes' please give views below.

Any Other Comments

Q 52  Are there any other comments you have on aspects of the parliamentary pension scheme?
Believe in many ways a very good scheme. An attempt I believe has been made by the original authors to institute a fair an equitable tally account of all circumstances.

Thank you for taking the time to let us have your views.

17 JANUARY 2008
SPPS 12

EVIDENCE FROM DENNIS CANAVAN
7 JAN 2008

RESPONDENT INFORMATION FORM

SCOTTISH PARLIAMENTARY PENSION SCHEME

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

<table>
<thead>
<tr>
<th>NAME: DENNIS CANAVAN</th>
<th>POSTAL ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORGANISATION NAME: (if appropriate)</td>
<td></td>
</tr>
</tbody>
</table>

1. Are you responding: (please insert an 'x' in one box)

| (a) as an individual | X | go to Q2 |
| (b) on behalf of a group/organisation | | go to Q3 |

INDIVIDUALS

2. Do you agree to your response being made available to the public?

<table>
<thead>
<tr>
<th>Yes</th>
<th>X</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Please read Policy on treatment of written evidence at page 33 and contact the Clerk</td>
</tr>
</tbody>
</table>

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please read Policy on treatment of written evidence at page 33 and contact the Clerk</td>
</tr>
</tbody>
</table>
We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an 'X' when there are 'Yes'/ 'No' boxes.

**MANDATORY CHANGES**

Pension Sharing on Divorce

Q 1 What rights should be available to former spouses/partners of scheme members? The right to a share based on the number of years the former spouse/partner was with the member while he/she served as MSP, provided that share rights are not neutral.

Age 75

Q 2 What approach should be taken at age 75?

Similar to Westminster scheme (as amended).

Q 3 What benefits should be payable under the scheme in respect of MSP's aged over 75 who die while in service?

Similar to Westminster scheme (as amended).

Minimum Pension Age

Q 4 Do you have any comments on this change? Yes No X

If you have answered 'Yes' please give your comments.

Transfers to Unregistered Schemes

Q 5 Do you have any comments on this change? Yes No X

If you have answered 'Yes' please give your comments.
Lifetime Allowance and Annual Allowance

Q 6 Do you have any comments on these changes?  Yes  No

If you have answered 'Yes' please give your comments:

Future Changes to SPPS Rules

Q 7(a) Do you agree that the legislation should provide powers to amend scheme rules in the future?  Yes  No

Q 7(b) If you have answered 'Yes' by what mechanism should future changes be brought forward?
If major changes: primary legislation in the Scottish Parliament
If minor ' ', secondary " "

Q 8(a) Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?  Yes  No

Q 8(b) If you have answered 'Yes', what kind of protection do you think should be included?
Existing pensioners should not suffer any loss of benefits in a similar way to any retrospective legislation.

DISCRETIONARY CHANGES

Maximum Pension Available

Q 9 Should the maximum pension limit of 2/3 final remuneration be retained?  Yes  No

Please explain why.

\( \frac{2}{3} \) of final salary is an adequate income for any pensioner.
Q 10 Should the value of "retained benefits" from other schemes be included in the permitted maximum pension? Yes No

Please explain why. Alternatives come to mind. With benefits from previous employment might find that they have to contribute to the EPS but not receive any benefits in return.

General Tax Free Lump Sum on Retirement

Q 11 Should the limits on the available lump sum be changed to the revenue maximum of 25% pension? Yes No

Please explain why.

It would give members more flexibility of choice while the cost should be broadly neutral.

Death in Service Gratuity

Q 12 What level of death in service gratuity should be payable? 3 x Annual Salary

Q 13 If the level of gratuity payable is to rise how should the cost to the scheme be funded? By increasing members' contributions

Children's Pension

Q 14 Should the maximum age of a child entitled to benefit under the scheme be increased to age 23? Yes No

Please explain why.

Some people may be in full-time education until the age of 25 (e.g. medical students) and the maximum age limit should be increased to 25.

Q 15 Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant's death because of physical or mental impairment? Yes No
Please explain why.
If the child's physical or mental impairment continues after the age of 23 and after the death of the parent, then the child will have continuing needs.

<table>
<thead>
<tr>
<th>Purchase of Added Years</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years?</td>
</tr>
<tr>
<td>Q 16(b) If so what should the maximum level of contributions be set at?</td>
</tr>
</tbody>
</table>

| Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided? | Yes | No |
| Please explain why. | | |
| It gives members the opportunity of contributing more in order to increase their benefits. | | |

| Q 18 What should the maximum level of contributions towards added years be set at? | | |
|Same as current facility| | |

| Q 19 Should members be allowed to purchase added years beyond their 65th birthday? | Yes | No |
|Please explain why. | | |
|Equality of treatment is fairer than again. | | |

Benefits for any Retained AVC Facility

| Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum? | 25% | |
**Flexible Retirement**

<table>
<thead>
<tr>
<th>Q 21</th>
<th>Should members be entitled to receive their pension while continuing to work as an MSP?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) Additional cost implications</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) It might discourage some older MSPs to continue indefinitely.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Options Available at Retirement**

<table>
<thead>
<tr>
<th>Q 22</th>
<th>Should other matters of flexibility in relation to the options available at retirement be dealt with by the managers/trustees of the scheme?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Trustees by definition cannot be trusted to deal with these matters.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Trivial Commutation**

<table>
<thead>
<tr>
<th>Q 23</th>
<th>Should the SPPS permit very small pensions to be taken as a lump sum?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>It might save some administrative costs.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Ill-Health Provision**

<table>
<thead>
<tr>
<th>Q 24</th>
<th>What criteria should apply for the payment of an ill-health pension?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(IN)ABILITY TO WORK</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 25</th>
<th>Should any such awards be varied depending upon the severity of the incapacity?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Ability to work depends on severity of incapacity.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Q 26 Should there be provision for ill-health pensions to be subject to periodic review?</td>
<td>Yes</td>
<td>No</td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-----</td>
<td>----</td>
<td></td>
</tr>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Degree of incapacity and other circumstances might change.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 27 Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Additional costs associated with terminal illness.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Annual Increases to Pensions

<table>
<thead>
<tr>
<th>Q 28 By what percentage should pensions be increased? For example, should members' salaries be linked to RPI or to serving members' salaries or to some other yardstick?</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Linked to serving members' salaries.</td>
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Calculation of Early Retirement Pensions

<table>
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<th>Q 29 Should the existing early retirement pension provisions be phased out?</th>
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</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unfair anomalies described in the Consultation document.</td>
<td></td>
<td></td>
</tr>
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</table>

Elective Early Retirement

<table>
<thead>
<tr>
<th>Q 30 Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Some may move into another job and, in fairness, should be able to apply for a reasoned pension.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Q 31. What, if any, eligibility conditions should apply to early retirement?
   (b) Minimum age
   (c) Minimum number of years' service.

OTHER EQUALITY ISSUES

Refund of Contributions

<table>
<thead>
<tr>
<th>Q 32(a)</th>
<th>Do you agree that the age restriction should be equalised for men and women?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Q 32(b)</td>
<td>If you have answered 'Yes', what age should that be?</td>
<td></td>
<td>60</td>
</tr>
</tbody>
</table>

Loss of Surviving Spouse Pension on Remarriage or Co-habitation

<table>
<thead>
<tr>
<th>Q 33</th>
<th>Should a surviving spouse or partner's pension cease on remarriage or cohabitation?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>It is wrong to assume that the surviving spouse/partner can always rely on a future spouse/partner for income.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 34</th>
<th>Should the discretion to refuse pension payment in full or part to a surviving spouse or civil partner who marries or enters into civil partnership when death is imminent continue to apply?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(a) No one can foist this state of affairs with absolute certainty.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) A couple may have been living together for a long time before eventually deciding to get married.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Commutation of Pension for Lump Sum following Death in Service

<table>
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<tr>
<th>Q 35(a)</th>
<th>Should the scheme permit a spouse/partner to commute part of the pension payable to a lump sum?</th>
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<th>No</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>Q 35(b)</td>
<td>If yes, what maximum amount may be commuted?</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>25%</td>
<td></td>
</tr>
</tbody>
</table>
OTHER POSSIBLE CHANGES

Scheme Administration

Q 36(a) Should the SPPS continue to be administered by the Scottish Parliamentary Corporate Body or should Trustees be appointed?  
SPCB | Yes | No
---|---|---
Trustees | X | X

Q 36(b) If trustees, please indicate how many you think appropriate, whether they should include pensioner members and how they could be elected?  
FIVE.  
At least 2 elected by serving MSPs  
" 2 " pensioners  
" 1 " nominally qualified financial adviser.

Accrual Rate

Q 37(a) Should there be an option for members to have a 1/40th accrual rate?  
Yes | No
---|---
X | X

Q 37(b) Who should pay the additional costs involved?  
Those who have opted for it.

Earnings Cap

Q 38 Should the existing earnings cap linked to the Finance Act be retained?  
Yes | No
---|---
X | X

Please explain why.  
Very few MSPs exceed the existing cap of £108,600

Service

Q 39 Should service in other pension schemes be taken into account when calculating an MSP’s service for early retirement entitlement?  
Yes | No
---|---
X | X

Please explain why.  
It is reasonable that only certain categories of parliamentary service are taken into account. Pension service in any other profession/employment should be factored in relevant.
Office Holders

Q 40. Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder’s salary?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Please explain why.

Lord Advocate and the Solicitor General for Scotland

Q 41. Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Please explain why.

First Minister and Presiding Officer

Q 42. Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Please explain why.

Office holder’s income is adequate.

Q 43. Is there any reason why a former First Minister should not be entitled to rejoin the office holder’s portion of the SPPS if they hold subsequent ministerial office?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Please explain why.

The former First Minister’s pension is only temporary. Earnings and payment will cease once they cease to hold ministerial office.

Q 44. Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Please explain why.

Immediate payment at 50% of First Minister’s salary for life is fair to former Ministers.
### Q 45(a) Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum?  
**Yes**  
**No**

### Q 45(b) If you have answered 'Yes' what period of years is appropriate to achieve maximum pension?  
5 years

### GRANTS TO MEMBERS AND OFFICE HOLDERS

#### Resettlement Grant

| Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason? | Yes | No |
| Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down? | Yes, unless they have voluntarily stood down to avoid expulsion because of misconduct. |

#### Ill-Health Retirement Grant

| Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant? | Yes | No |
| Please explain why. | The pension is for on-going costs. The ill-health retirement grant is to help the sick person to "get better". |

| Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions? | Yes | No |
| Please explain why. | Ability to perform functions should be the sole test. |
Severance Grant to Office Holders

Q 50 Do you have any comments on the severance grant? Yes No
If you have answered 'Yes' please give comments below.

It should be abolished. Ministers and other officeholders receiving more than adequate amounts in their salaries.

Replacement Options

Q 51 Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill? Yes No
If you have answered 'Yes' please give views below.

It would simplify the legislative process if they were all in the same bill.

Any Other Comments

Q 52 Are there any other comments you have on aspects of the parliamentary pension scheme?

Thank you for taking the time to let us have your views.

The (department) Parliamentary Contributory Pension Fund Annual Review 2007 (Page 18) states: "If you are not married or do not have a civil partner, you can still nominate your partner to receive a pension. You must have been in a financially dependent/independent relationship for at least five years at the time of your death. The benefit is open to opposite and same sex partners."

It would be fair to include a similar provision in the Estates Parliamentary Pension Scheme.

I declare a family interest in that I live with my partner and we would like to see the above also apply to same sex partners.

17 JANUARY 2008
EVIDENCE FROM ANONYMOUS 2

17 JAN 2008

We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an 'X' when there are 'Yes'/'No' boxes.

MANDATORY CHANGES

Pension Sharing on Divorce

Q 1 What rights should be available to former spouses/partners of scheme members?

No comment

Age 75

Q 2 What approach should be taken at age 75?

There should be no age discrimination in the scheme.

Q 3 What benefits should be payable under the scheme in respect of MSP's aged over 75 who die while in service?

There should be no age discrimination in the scheme.

Minimum Pension Age

Q 4 Do you have any comments on this change?

Yes | No

If you have answered 'Yes' please give your comments.

MSPs should certainly be allowed to retire from age 55.

Transfers to Unregistered Schemes

Q 5 Do you have any comments on this change?

Yes | No

If you have answered 'Yes' please give your comments.
**Lifetime Allowance and Annual Allowance**

<table>
<thead>
<tr>
<th>Q6</th>
<th>Do you have any comments on these changes?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered 'Yes' please give your comments.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Future Changes to SPPS Rules**

<table>
<thead>
<tr>
<th>Q7(a)</th>
<th>Do you agree that the legislation should provide powers to amend scheme rules in the future?</th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td>Q7(b)</td>
<td>If you have answered 'Yes' by what mechanism should future changes be brought forward?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Approval of a motion in Parliament

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<thead>
<tr>
<th>Q8(a)</th>
<th>Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q8(b)</td>
<td>If you have answered 'Yes', what kind of protection do you think should be included?</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- No one should have their terms and conditions reduced.

**DISCRETIONARY CHANGES**

**Maximum Pension Available**

<table>
<thead>
<tr>
<th>Q9</th>
<th>Should the maximum pension limit of 2/3 final remuneration be retained?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- Bring it in line with H&C rules.
<table>
<thead>
<tr>
<th>Q.10 Should the value of “retained benefits” from other schemes be included in the permitted maximum pension?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**General Tax Free Lump Sum on Retirement**

<table>
<thead>
<tr>
<th>Q.11 Should the limits on the available lump sum be changed to the revenue maximum of 25% pension?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

We should try & simplify the rules & aligning them with HMRC rules will do this.

**Death in Service Gratuity**

<table>
<thead>
<tr>
<th>Q.12 What level of death in service gratuity should be payable?</th>
</tr>
</thead>
<tbody>
<tr>
<td>If times salary in line with House of Commons.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q.13 If the level of gratuity payable is to rise how should the cost to the scheme be funded?</th>
</tr>
</thead>
<tbody>
<tr>
<td>In the last 8 years I do not think there has been any issue here. Therefore the likelihood of extra cost is negligible.</td>
</tr>
</tbody>
</table>

**Children's Pension**

<table>
<thead>
<tr>
<th>Q.14 Should the maximum age of a child entitled to benefit under the scheme be increased to age 23?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q.15 Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant’s death because of physical or mental impairment?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>
**Purchase of Added Years**

<table>
<thead>
<tr>
<th>Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 16(b) If so what should the maximum level of contributions be set at?</td>
<td>Don't know</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td>Seems equitable</td>
<td></td>
</tr>
</tbody>
</table>

| Q 18 What should the maximum level of contributions towards added years be set at? | Don't know |

<table>
<thead>
<tr>
<th>Q 19 Should members be allowed to purchase added years beyond their 65th birthday?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Benefits for any Retained AVC Facility**

| Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum? | Don't know |
Flexible Retirement

<table>
<thead>
<tr>
<th>Q.21</th>
<th>Should members be entitled to receive their pension while continuing to work as an MSP?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Options Available at Retirement

<table>
<thead>
<tr>
<th>Q.22</th>
<th>Should other matters of flexibility in relation to the options available at retirement be dealt with by the managers/trustees of the scheme?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Trivial Commutation

<table>
<thead>
<tr>
<th>Q.23</th>
<th>Should the SPPS permit very small pensions to be taken as a lump sum?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Ill-Health Provision

<table>
<thead>
<tr>
<th>Q.24</th>
<th>What criteria should apply for the payment of an ill-health pension?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Continuation of illness so severe it does not allow continuation in role</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q.25</th>
<th>Should any such awards be varied depending upon the severity of the incapacity?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Q 26 Should there be provision for ill-health pensions to be subject to periodic review? Yes No

Please explain why.

Q 27 Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year? Yes No

Please explain why.

Annual Increases to Pensions

Q 28 By what percentage should pensions be increased? For example, should members' salaries be linked to RPI or to serving members' salaries or to some other yardstick?

Serving Members' Salaries

Calculation of Early Retirement Pensions

Q 29 Should the existing early retirement pension provisions be phased out? Yes No

Please explain why.

It is important to facilitate early retirement if members wish to retire.

Elective Early Retirement

Q 30 Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early? Yes No

Please explain why.

It allows members to retire at an election before their due date, or indeed if they fail to be re-elected.
Q 31 What, if any, eligibility conditions should apply to early retirement?
Over 55?

OTHER EQUALITY ISSUES

Refund of Contributions

Q 32(a) Do you agree that the age restriction should be equalised for men and women? Yes No
Q 32(b) If you have answered ‘Yes’ what age should that be?
There should be flexible retirement & not fixed on any particular age, with the minimum being set at 65.

Loss of Surviving Spouse Pension on Remarriage or Co-habitation

Q 33 Should a surviving spouse or partner’s pension cease on remarriage or cohabitation? Yes No
Please explain why.

Q 34 Should the discretion to refuse pension payment in full or part to a surviving spouse or civil partner who marries or enters into civil partnership when death is imminent continue to apply? Yes No
Please explain why.

Commutation of Pension for Lump Sum following Death in Service

Q 35(a) Should the scheme permit a spouse/partner to commute part of the pension payable to a lump sum? Yes No
Q 35(b) If yes what maximum amount may be commuted?
Don’t know
### OTHER POSSIBLE CHANGES

**Scheme Administration**

<table>
<thead>
<tr>
<th>Q 36(a) Should the SPPS continue to be administered by the Scottish Parliamentary Corporate Body or should Trustees be appointed?</th>
<th>SPCB</th>
<th>Trustees</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Q 36(b) If trustees, please indicate how many you think appropriate, whether they should include pensioner members and how they could be elected?

**Accrual Rate**

<table>
<thead>
<tr>
<th>Q 37(a) Should there be an option for members to have a 1/40th accrual rate?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Q 37(b) Who should pay the additional costs involved? Don't know.

**Earnings Cap**

<table>
<thead>
<tr>
<th>Q 38 Should the existing earnings cap linked to the Finance Act be retained?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Please explain why. Keep it aligned for simplicity.

**Service**

<table>
<thead>
<tr>
<th>Q 39 Should service in other pension schemes be taken into account when calculating an MSP's service for early retirement entitlement?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>x</td>
</tr>
</tbody>
</table>

Please explain why. There should be flexible retirement for anyone over 55.
### Office Holders

Q 40 Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder’s salary?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Please explain why.

### Lord Advocate and the Solicitor General for Scotland

Q 41 Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Please explain why.

### First Minister and Presiding Officer

Q 42 Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Please explain why.

Q 43 Is there any reason why a former First Minister should not be entitled to rejoin the office holder’s portion of the SPPS if they hold subsequent ministerial office?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Please explain why.

Q 44 Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>No</td>
</tr>
</tbody>
</table>

Please explain why.
### GRANTS TO MEMBERS AND OFFICE HOLDERS

**Resettlement Grant**

| Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason? | Yes | No | X | No |
| Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down? | Yes | |

**Ill-Health Retirement Grant**

| Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant? | Yes | No | X | No |
| Please explain why. | Seem fair | |

| Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions? | Yes | No | X | No |
| Please explain why. | 06 up is 1up? | |
Severance Grant to Office Holders

<table>
<thead>
<tr>
<th>Q 50</th>
<th>Do you have any comments on the severance grant?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered 'Yes' please give comments below.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Replacement Options

<table>
<thead>
<tr>
<th>Q 51</th>
<th>Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered 'Yes' please give views below.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Any Other Comments

<table>
<thead>
<tr>
<th>Q 52</th>
<th>Are there any other comments you have on aspects of the parliamentary pension scheme?</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The over-riding issue should be: to allow flexible retirement over the age of 55.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Thank you for taking the time to let us have your views.
SPPS 14

EVIDENCE FROM JOHN PARK MSP

RESPONDENT INFORMATION FORM

SCOTTISH PARLIAMENTARY PENSION SCHEME

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

<table>
<thead>
<tr>
<th>NAME: John Park</th>
<th>POSTAL ADDRESS</th>
<th>Scottish Parliament, Edinburgh, EH99 1SP</th>
</tr>
</thead>
<tbody>
<tr>
<td>ORGANISATION NAME: (if appropriate) MSP</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

1. Are you responding: (please insert an ‘x’ in one box)

<table>
<thead>
<tr>
<th>(a) as an individual</th>
<th>x</th>
<th>go to Q2</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) on behalf of a group/organisation</td>
<td></td>
<td>go to Q3</td>
</tr>
</tbody>
</table>

INDIVIDUALS

2. Do you agree to your response being made available to the public?

<table>
<thead>
<tr>
<th>Yes</th>
<th>x</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Please read Policy on treatment of written evidence at page 33 and contact the Clerk</td>
</tr>
</tbody>
</table>

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please read Policy on treatment of written evidence at page 33 and contact the Clerk</td>
</tr>
</tbody>
</table>
We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an ‘X’ when there are ‘Yes’/‘No’ boxes.

**MANDATORY CHANGES**

**Pension Sharing on Divorce**

<table>
<thead>
<tr>
<th>Q 1</th>
<th>What rights should be available to former spouses/partners of scheme members?</th>
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<tbody>
<tr>
<td></td>
<td>No view</td>
</tr>
</tbody>
</table>

**Age 75**

<table>
<thead>
<tr>
<th>Q 2</th>
<th>What approach should be taken at age 75?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No view</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 3</th>
<th>What benefits should be payable under the scheme in respect of MSP’s aged over 75 who die while in service?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No view</td>
</tr>
</tbody>
</table>

**Minimum Pension Age**

<table>
<thead>
<tr>
<th>Q 4</th>
<th>Do you have any comments on this change? Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’ please give your comments.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>If the minimum age is increased it would seem sensible to remove the 15 years qualifying barrier so that anyone can retire at 55 with a proportionally reduced pension.</td>
<td></td>
</tr>
</tbody>
</table>

**Transfers to Unregistered Schemes**

<table>
<thead>
<tr>
<th>Q 5</th>
<th>Do you have any comments on this change? Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’ please give your comments.</td>
<td></td>
</tr>
</tbody>
</table>
**Lifetime Allowance and Annual Allowance**

<table>
<thead>
<tr>
<th>Q 6</th>
<th>Do you have any comments on these changes?</th>
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<th>No</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

If you have answered ‘Yes’ please give your comments.

**Future Changes to SPPS Rules**

<table>
<thead>
<tr>
<th>Q 7(a)</th>
<th>Do you agree that the legislation should provide powers to amend scheme rules in the future?</th>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 7(b)</th>
<th>If you have answered ‘Yes’ by what mechanism should future changes be brought forward?</th>
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<tr>
<th>Q 8(a)</th>
<th>Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 8(b)</th>
<th>If you have answered ‘Yes’, what kind of protection do you think should be included?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>There should be protection for deferred members and those in receipt of pension and a consideration given to a consultation mechanism for current members.</td>
</tr>
</tbody>
</table>

**DISCRETIONARY CHANGES**

**Maximum Pension Available**

<table>
<thead>
<tr>
<th>Q 9</th>
<th>Should the maximum pension limit of 2/3 final remuneration be retained?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Please explain why.

To minimise future costs to the scheme

<table>
<thead>
<tr>
<th>Q 10</th>
<th>Should the value of “retained benefits” from other schemes be included in the permitted maximum pension?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Please explain why.

No view
General Tax Free Lump Sum on Retirement

Q 11 Should the limits on the available lump sum be changed to the revenue maximum of 25% pension?  
Yes  
No

Please explain why.

To be consistent with the 2004 Act.

Death in Service Gratuity

Q 12 What level of death in service gratuity should be payable?  
It should remain static at 3x salary as this is consistent with other schemes,

Q 13 If the level of gratuity payable is to rise how should the cost to the scheme be funded?

Children’s Pension

Q 14 Should the maximum age of a child entitled to benefit under the scheme be increased to age 23?  
Yes  
No

Please explain why.

To cover dependents in full time education from 18.

Q 15 Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant’s death because of physical or mental impairment?  
Yes  
No

Please explain why.

To ensure maximum support for the dependent on death of member.

Purchase of Added Years

Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years?  
Yes  
No

Q 16(b) If so what should the maximum level of contributions be set at?  
No view
Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided?  
Yes | No
---|---
Please explain why.  
No view

Q 18 What should the maximum level of contributions towards added years be set at?  
No view

Q 19 Should members be allowed to purchase added years beyond their 65th birthday?  
Yes | No
---|---
Please explain why.  
No view

Benefits for any Retained AVC Facility

Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum?  
No view

Flexible Retirement

Q 21 Should members be entitled to receive their pension while continuing to work as an MSP?  
Yes | No
---|---
Please explain why.  
I believe it would inappropriate and add cost to the scheme.

Options Available at Retirement

Q 22 Should other matters of flexibility in relation to the options available at retirement be dealt with by the managers/trustees of the scheme?  
Yes | No
---|---
Please explain why.  
As the trustees will have an overview of the schemes liabilities going forward
and may have to consider individual cases within the rules of the scheme.

Trivial Commutation

Q 23 Should the SPPS permit very small pensions to be taken as a lump sum?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>x</td>
<td></td>
</tr>
</tbody>
</table>

Please explain why.

To avoid the practicalities of having to administer very small pensions.

Ill-Health Provision

Q 24 What criteria should apply for the payment of an ill-health pension?

The criteria should be consistent with the 2004 Act.

Q 25 Should any such awards be varied depending upon the severity of the incapacity?

<table>
<thead>
<tr>
<th>Yes</th>
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<tbody>
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Please explain why.

If the criteria were to be consistent with the 2004 Act it may be that the member, due to the nature of his or her incapacity, can carry out some other working activity different from their employment as an MSP and that should be reflected in the pension paid.

I believe this flexibility would encourage and enable those receiving a pension due to incapacity to keep active as much as possible.

Q 26 Should there be provision for ill-health pensions to be subject to periodic review?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
</tr>
</tbody>
</table>

Please explain why.

To ensure the member is receiving the appropriate level of pension and as an element of effective scheme management.

Q 27 Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year?

<table>
<thead>
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<td></td>
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</table>
Please explain why.

This is consistent with the rules of many other schemes. However it may be that a trustee board could use it’s discretion within the scheme rules as to the level of payment and any subsequent pension.

Annual Increases to Pensions

Q 28 By what percentage should pensions be increased? For example, should members’ salaries be linked to RPI or to serving members’ salaries or to some other yardstick?

Many pensions increase by RPI and are capped at 5%. I think this would be an appropriate level.

Calculation of Early Retirement Pensions

Q 29 Should the existing early retirement pension provisions be phased out?

Please explain why.

No view

Elective Early Retirement

Q 30 Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early?

Please explain why.

Q 31 What, if any, eligibility conditions should apply to early retirement?

There should be a reduction in benefits relative to how close the member is to normal retirement age. I would argue though that with this condition there is no requirement for the member to have 15 years service in the scheme.

OTHER EQUALITY ISSUES

Refund of Contributions
Q 32(a) Do you agree that the age restriction should be equalised for men and women?  
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<th>No</th>
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</thead>
<tbody>
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<td>✗</td>
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</tr>
</tbody>
</table>

Q 32(b) If you have answered ‘Yes’ what age should that be?  
65

---

**Loss of Surviving Spouse Pension on Remarriage or Co-habitation**

Q 33 Should a surviving spouse or partner’s pension cease on remarriage or cohabitation?  
<table>
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<th>Yes</th>
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Please explain why.  
The rules should be consistent with other public sector schemes.

Q 34 Should the discretion to refuse pension payment in full or part to a surviving spouse or civil partner who marries or enters into civil partnership when death is imminent continue to apply?  
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Please explain why.

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**Commutation of Pension for Lump Sum following Death in Service**

Q 35(a) Should the scheme permit a spouse/partner to commute part of the pension payable to a lump sum?  
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</tbody>
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Q 35(b) If yes what maximum amount may be commuted?

---

**OTHER POSSIBLE CHANGES**

**Scheme Administration**

Q 36(a) Should the SPPS continue to be administered by the Scottish Parliamentary Corporate Body or should Trustees be appointed?  
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<th>Trustees</th>
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<td>✗</td>
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</tbody>
</table>

Q 36(b) If trustees, please indicate how many you think appropriate, whether they should include pensioner members and how they could be elected?  

No specific number, but the board should include deferred members, senior Scottish Parliament staff, MSPs and consideration should be given to having at least one independent trustee or perhaps chair?
### Accrual Rate

**Q 37(a)** Should there be an option for members to have a 1/40th accrual rate?

<table>
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**Q 37(b)** Who should pay the additional costs involved?

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### Earnings Cap

**Q 38** Should the existing earnings cap linked to the Finance Act be retained?

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**Please explain why.**

To minimise cost and future liabilities of the scheme.

### Service

**Q 39** Should service in other pension schemes be taken into account when calculating an MSP’s service for early retirement entitlement?

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<td></td>
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**Please explain why.**

I have offered an alternative which does not require minimum service in my answer to question 31.

### Office Holders

**Q 40** Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder’s salary?

<table>
<thead>
<tr>
<th>Yes</th>
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</tr>
</thead>
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<td>x</td>
</tr>
</tbody>
</table>

**Please explain why.**

With particular reference to death in service it would be appropriate and fair to base any pension on the office holders’ salary at that time.
**Lord Advocate and the Solicitor General for Scotland**

<table>
<thead>
<tr>
<th>Q 41 Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**First Minister and Presiding Officer**

<table>
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<th>Q 42 Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?</th>
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</tr>
</thead>
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<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 43 Is there any reason why a former First Minister should not be entitled to rejoin the office holder’s portion of the SPPS if they hold subsequent ministerial office?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 44 Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td>It is inappropriate for both to receive large pensions</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 45(a) Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 45(b) If you have answered ‘Yes’ what period of years is appropriate to achieve maximum pension?</td>
<td></td>
<td></td>
</tr>
<tr>
<td>An option would be to accrue benefits annually over four years or follow the Welsh route and accrue benefits based on contributions made by the</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


individuals based on their enhanced salary and length of service. I agree these issues should be consulted on separately as the payments are not made from the SPPS.

**GRANTS TO MEMBERS AND OFFICE HOLDERS**

**Resettlement Grant**

| Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason? | Yes | No |
| Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down? | No view |

| Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service? | No view |

**Ill-Health Retirement Grant**

| Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant? | Yes | No |
| Please explain why. | No view |

| Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions? | Yes | No |
| Please explain why. | No view |

**Severance Grant to Office Holders**
Q 50  Do you have any comments on the severance grant?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

If you have answered ‘Yes’ please give comments below.

No view

Replacement Options

Q 51  Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

If you have answered ‘Yes’ please give views below.

No view

Any Other Comments

Q 52  Are there any other comments you have on aspects of the parliamentary pension scheme?

I think the most important measure suggested as part of this consultation is to establish a trustee board to ensure the effective management of the scheme.

Thank you for taking the time to let us have your views.

17 JANUARY 2008
SPPS 15

EVIDENCE FROM ANONYMOUS 3

JAN 2008

RESPONDENT INFORMATION FORM

SCOTTISH PARLIAMENTARY PENSION SCHEME

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

<table>
<thead>
<tr>
<th>NAME:</th>
<th>POSTAL ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANONYMOUS (3)</td>
<td>ORGANISATION NAME: (if appropriate)</td>
</tr>
</tbody>
</table>

1. Are you responding: (please insert an 'x' in one box)

   (a) as an individual [x] go to Q2
   (b) on behalf of a group/organisation [ ] go to Q3

INDIVIDUALS

2. Do you agree to your response being made available to the public?

   Yes
   No [ ] Please read Policy on treatment of written evidence at page 33 and contact the Clerk

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

   Yes [ ]
   No [ ] Please read Policy on treatment of written evidence at page 33 and contact the Clerk

40
We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an 'X' when there are 'Yes'/'No' boxes.

**MANDATORY CHANGES**

Pension Sharing on Divorce

Q 1 What rights should be available to former spouses/partners of scheme members?

Age 75

Q 2 What approach should be taken at age 75?

Q 3 What benefits should be payable under the scheme in respect of MSP's aged over 75 who die while in service?

**Minimum Pension Age**

Q 4 Do you have any comments on this change? Yes No

If you have answered 'Yes' please give your comments.

**Transfers to Unregistered Schemes**

Q 5 Do you have any comments on this change? Yes No

If you have answered 'Yes' please give your comments.
Lifetime Allowance and Annual Allowance

Q 6  Do you have any comments on these changes?  Yes  No

If you have answered 'Yes' please give your comments.

Future Changes to SPPS Rules

Q 7(a) Do you agree that the legislation should provide powers to amend scheme rules in the future?  Yes  No

Q 7(b) If you have answered 'Yes' by what mechanism should future changes be brought forward?

Q 8(a) Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?  Yes  No

Q 8(b) If you have answered 'Yes', what kind of protection do you think should be included?

DISCRETIONARY CHANGES

Maximum Pension Available

Q 9  Should the maximum pension limit of 2/3 final remuneration be retained?  Yes  No

Please explain why.

As a teacher more was earned at each. This was not an advantage for others.
Q 10 Should the value of "retained benefits" from other schemes be included in the permitted maximum pension? | Yes | No |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

General Tax Free Lump Sum on Retirement

Q 11 Should the limits on the available lump sum be changed to the revenue maximum of 25% pension? | Yes | No |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Death in Service Gratuity

Q 12 What level of death in service gratuity should be payable? |     |
|---------------------------------------------------------------------|-----|

Q 13 If the level of gratuity payable is to rise how should the cost to the scheme be funded? |     |
|---------------------------------------------------------------------|-----|

Children's Pension

Q 14 Should the maximum age of a child entitled to benefit under the scheme be increased to age 23? | Yes | No |
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Q 15 Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant's death because of physical or mental impairment? | Yes | No |
|-----------------------------------------------------------------------------------------------------|-----|----|

43
Please explain why.

Purchase of Added Years

Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years? Yes No

Q 16(b) If so what should the maximum level of contributions be set at?

No more than any other best practice except available.

Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided? Yes No

Please explain why.

Q 18 What should the maximum level of contributions towards added years be set at?

Q 19 Should members be allowed to purchase added years beyond their 65th birthday? Yes No

Please explain why.

They are still working!

Benefits for any Retained AVC Facility

Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum?

100%
Flexible Retirement

<table>
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<td></td>
<td>only if they are not on a consultative basis</td>
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</table>

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<th>Q 22 Should other matters of flexibility in relation to the options available at retirement be dealt with by the managers/trustees of the scheme?</th>
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Trivial Commutation

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<th>Q 23 Should the SPSS permit very small pensions to be taken as a lump sum?</th>
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Ill-Health Provision

| Q 24 What criteria should apply for the payment of an ill-health pension? | | Some as for civil service (whatever that is) |
| Q 25 Should any such awards be varied depending upon the severity of the incapacity? | Yes | No |
| Please explain why. | | incapacity may not prevent them continuing to work in another occupation |
**Q 26** Should there be provision for ill-health pensions to be subject to periodic review? | Yes | No |
--- | --- | --- |
Please explain why. |  |

**Q 27** Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year? | Yes | No |
--- | --- | --- |
Please explain why. |  |

Annual Increases to Pensions

**Q 28** By what percentage should pensions be increased? For example, should members' salaries be linked to RPI or to serving members' salaries or to some other yardstick? |  |
--- | --- |
RPI + 4 year review by independent body |

Calculation of Early Retirement Pensions

**Q 29** Should the existing early retirement pension provisions be phased out? | Yes | No |
--- | --- | --- |
Please explain why. |  |

Elective Early Retirement

**Q 30** Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early? | Yes | No |
--- | --- | --- |
Please explain why. |  |

Not sure of this
Q 31 What, if any, eligibility conditions should apply to early retirement?

None - people in politics can work to prepare for a retirement from complex roles while held

OTHER EQUALITY ISSUES

Refund of Contributions

<table>
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<tr>
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Loss of Surviving Spouse Pension on Remarriage or Co-habitation

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Commutation of Pension for Lump Sum following Death in Service

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**Accrual Rate**

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Please explain why.
### Office Holders

| Q 40  | Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder’s salary? | Yes | No | ✔ | | Please explain why. |

### Lord Advocate and the Solicitor General for Scotland

| Q 41  | Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members? | Yes | No | ✔ | | Please explain why. |

### First Minister and Presiding Officer

| Q 42  | Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders? | Yes | No | ✔ | | Please explain why. |

| Q 43  | Is there any reason why a former First Minister should not be entitled to rejoin the office holder’s portion of the SPPS if they hold subsequent ministerial office? | Yes | No | ✔ | | Please explain why. |

| Q 44  | Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions? | Yes | No | ✔ | | Please explain why. |
Q 45(a) Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum? | Yes | No
--- | --- | ---
Q 45(b) If you have answered 'Yes' what period of years is appropriate to achieve maximum pension? | |

**GRANTS TO MEMBERS AND OFFICE HOLDERS**

**Resettlement Grant**

Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason? | Yes | No
--- | --- | ---
Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down? | Yes |

Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service? Should be entirely based on length of service in Parliament.

**Ill-Health Retirement Grant**

Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant? | Yes | No
--- | --- | ---
Please explain why. | One on the other, surely |

Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions? | Yes | No
--- | --- | ---
Please explain why. |
Severance Grant to Office Holders

Q 50 Do you have any comments on the severance grant?  Yes  No

If you have answered 'Yes' please give comments below.

Replacement Options

Q 51 Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?  Yes  No

If you have answered 'Yes' please give views below.

Any Other Comments

Q 52 Are there any other comments you have on aspects of the parliamentary pension scheme?

Thank you for taking the time to let us have your views.

17 JANUARY 2008
SPPS 16

EVIDENCE FROM THE TRUSTEES OF THE NORTHERN IRELAND ASSEMBLY MEMBERS PENSION SCHEME

RESPONDENT INFORMATION FORM

SCOTTISH PARLIAMENTARY PENSION SCHEME

Please complete the details below and return it with your response. This will help ensure we handle your response appropriately.

<table>
<thead>
<tr>
<th>NAME:</th>
<th>POSTAL ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Trustees of the Northern Ireland Assembly Members Pension Scheme</td>
<td>Annexe C, Dundonald House</td>
</tr>
<tr>
<td></td>
<td>Stoney Road</td>
</tr>
<tr>
<td></td>
<td>Belfast</td>
</tr>
<tr>
<td></td>
<td>N Ireland</td>
</tr>
<tr>
<td></td>
<td>BT4 3SF</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>ORGANISATION NAME: (if appropriate)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>The Northern Ireland Assembly</td>
<td></td>
</tr>
</tbody>
</table>

1. Are you responding: (please insert an ‘x’ in one box)

(a) as an individual

(b) on behalf of a group/organisation

<table>
<thead>
<tr>
<th>(a) as an individual</th>
<th>go to Q2</th>
</tr>
</thead>
<tbody>
<tr>
<td>(b) on behalf of a group/organisation</td>
<td>X</td>
</tr>
</tbody>
</table>

INDIVIDUALS

2. Do you agree to your response being made available to the public?

<table>
<thead>
<tr>
<th>Yes</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Please read Policy on treatment of written evidence at page 33 and contact the Clerk</td>
</tr>
</tbody>
</table>

ON BEHALF OF GROUPS OR ORGANISATIONS

3. The name and address of your organisation will be made available to the public. Are you also content for your response to be made available?

<table>
<thead>
<tr>
<th>Yes</th>
<th>X</th>
</tr>
</thead>
<tbody>
<tr>
<td>No</td>
<td>Please read Policy on treatment of written evidence at page 33 and contact the Clerk</td>
</tr>
</tbody>
</table>
We would be grateful if you would use this consultation questionnaire for your comments as this will aid our analysis of the responses received.

Please insert an ‘X’ when there are ‘Yes’/‘No’ boxes.

MANDATORY CHANGES

Pension Sharing on Divorce

<table>
<thead>
<tr>
<th>Q 1</th>
<th>What rights should be available to former spouses/partners of scheme members?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The Trustees of the Assembly Members Pension Scheme (AMPS) have not yet considered amending the scheme rules to facilitate this. Should the situation arise prior to any rule changes the legislation will be overriding. Any change will be on a cost neutral basis.</td>
</tr>
</tbody>
</table>

Age 75

<table>
<thead>
<tr>
<th>Q 2</th>
<th>What approach should be taken at age 75?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>AMPS Scheme Members must take any pension commencement tax free lump sum before their 75th birthday. They no longer make contributions to the pension scheme, added years or AVC’s and do not accrue any further service. Pension benefits earned up to this date are held as an abated award.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 3</th>
<th>What benefits should be payable under the scheme in respect of MSP’s aged over 75 who die while in service?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No death gratuity is payable for any AMPS member who is over 75.</td>
</tr>
</tbody>
</table>

Minimum Pension Age

<table>
<thead>
<tr>
<th>Q 4</th>
<th>Do you have any comments on this change?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

If you have answered ‘Yes’ please give your comments.

Transfers to Unregistered Schemes

<table>
<thead>
<tr>
<th>Q 5</th>
<th>Do you have any comments on this change?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

If you have answered ‘Yes’ please give your comments.

Lifetime Allowance and Annual Allowance
**Q 6** Do you have any comments on these changes?  
Yes  
No  
X  

If you have answered ‘Yes’ please give your comments.

**Future Changes to SPPS Rules**

**Q 7(a)** Do you agree that the legislation should provide powers to amend scheme rules in the future?  
Yes  
X  
No  

**Q 7(b)** If you have answered ‘Yes’ by what mechanism should future changes be brought forward?

The AMPS is in a similar position legislatively, except when the Assembly is suspended, when the Secretary of State for Northern Ireland has the power to amend the Scheme by determination. The Trustees are currently seeking legal advice as to the best way to proceed with future rule changes.

**Q 8(a)** Should protection be written into the Bill or the SPPS rules to protect members from future changes which would place them in a worse position as regards scheme benefits they have already accrued?  
Yes  
X  
No  

**Q 8(b)** If you have answered ‘Yes’, what kind of protection do you think should be included?

**DISCRETIONARY CHANGES**

**Maximum Pension Available**

**Q 9** Should the maximum pension limit of 2/3 final remuneration be retained?  
Yes  
X  
No  

Please explain why.

Current AMPS rules retain the maximum limit of 2/3 final salary. This is one of a number of discretionary changes the Trustees plan to consider.

**Q 10** Should the value of “retained benefits” from other schemes be included in the permitted maximum pension?  
Yes  
X  
No  

Please explain why.

Retained benefits are included in the permitted maximum under the current Scheme rules. This is one of a number of discretionary changes the Trustees plan to consider.

**General Tax Free Lump Sum on Retirement**
<table>
<thead>
<tr>
<th>Q 11</th>
<th>Should the limits on the available lump sum be changed to the revenue maximum of 25% pension?</th>
<th>Yes</th>
<th>No X</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Current AMPS regulations limit the maximum lump sum to 1.5 times final salary. This is one of a number of discretionary changes the Trustees plan to consider.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Death in Service Gratuity**

<table>
<thead>
<tr>
<th>Q 12</th>
<th>What level of death in service gratuity should be payable?</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>The AMPS pays a death in service gratuity of 3 times gross salary. This issue is not under consideration at this time.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 13</th>
<th>If the level of gratuity payable is to rise how should the cost to the scheme be funded?</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Increasing the death in service gratuity is not an issue under consideration at this time.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Children’s Pension**

<table>
<thead>
<tr>
<th>Q 14</th>
<th>Should the maximum age of a child entitled to benefit under the scheme be increased to age 23?</th>
<th>Yes</th>
<th>No X</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Currently the AMPS rules provide a pension for a child up to age 17, or 22 if in full time education. The scheme rules allow for provision to continue if the child in question was at the time of the members death dependent on the member because of physical or mental impairment.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Q 15</th>
<th>Should provision be made to provide benefits for adult children who are over 23 who were dependent on the participant at the participant’s death because of physical or mental impairment?</th>
<th>Yes X</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Please explain why.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>See above response</td>
<td></td>
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</tbody>
</table>
Purchase of Added Years

Q 16(a) Should MSPs be allowed to increase their overall contributions to their pension, AVC and to the purchase of added years?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>X</td>
<td></td>
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</tbody>
</table>

Q 16(b) If so what should the maximum level of contributions be set at?

Under the current AMPS rules any additional pension savings is subject to the 15% of salary limit, formerly imposed by the Inland Revenue. This is one of a number of discretionary changes the Trustees will consider.

Q 17 Should the current facility to make additional voluntary contributions under the scheme continue to be provided?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
<td>X</td>
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</tbody>
</table>

Please explain why.

The AVC facility provides choice and convenience to the member at no cost to the Scheme. The small uptake among members of the AMPS scheme (less than 5%) provides little burden on the administration team.

Q 18 What should the maximum level of contributions towards added years be set at?

Under the current AMPS rules any additional pension savings is subject to the 15% of salary limit, formerly imposed by the Inland Revenue. This is one of a number of discretionary changes the Trustees will consider.

Q 19 Should members be allowed to purchase added years beyond their 65th birthday?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Please explain why.

65 is the normal retirement age in the AMPS. Members of the AMPS are not permitted to purchase added years beyond this date.

Benefits for any Retained AVC Facility

Q 20 What, if any, portion of an AVC benefit should be allowed to be taken as a lump sum?

Currently the AMPS requires 100% of monies paid to be used to purchase the members annuity. The Trustees have considered this issue and agreed that allowing members to take a proportion of their AVC fund as a lump sum would provide increased flexibility for the member. This change has not yet been made to the Scheme rules but is one of a number of changes the Trustees will bring before the Assembly.

Flexible Retirement
**Q 21** Should members be entitled to receive their pension while continuing to work as an MSP?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Please explain why.

The Trustees of the AMPS considered this option and have not recommended this.

**Options Available at Retirement**

**Q 22** Should other matters of flexibility in relation to the options available at retirement be dealt with by the managers/trustees of the scheme?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Please explain why.

AMPS Trustees represent and protect the interests of the beneficiaries of the Scheme.

**Trivial Commutation**

**Q 23** Should the SPPS permit very small pensions to be taken as a lump sum?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
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</table>

Please explain why.

This is a minor unresolved issue in the AMPS. Should the issue arise, the legislation will be over-riding.

**Ill-Health Provision**

**Q 24** What criteria should apply for the payment of an ill-health pension?

The AMPS Scheme Rules make provision for an ill health pension, payable if the member ceases to be a participating member of the Assembly due to his ill health, and continues to be unable to carry out the duties of an Member of the Assembly.

**Q 25** Should any such awards be varied depending upon the severity of the incapacity?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td></td>
<td>X</td>
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</tbody>
</table>

Please explain why.

Under the current rules of the AMPS, there is no variation in the calculation of the award due to the severity of the incapacity.
Q 26 Should there be provision for ill-health pensions to be subject to periodic review?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>X</td>
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</tbody>
</table>

Please explain why.

The Trustees of the AMPS retain the right to review ill health pensions at any time, if the member is under the age of 65 and the Trustees have reason to believe that the recipient has recovered to such an extent that the ill health pension would not be granted, were an application to be made at that time.

Q 27 Should provision be made for serious ill-health lump sums to be payable where the member is not expected to live for more than a year?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>

Please explain why.

There is no such provision in the AMPS rules.

Annual Increases to Pensions

Q 28 By what percentage should pensions be increased? For example, should members’ salaries be linked to RPI or to serving members’ salaries or to some other yardstick?

Under the rules of the AMPS, pensions in payment and in deferment are increased annually in line with the RPI.

Calculation of Early Retirement Pensions

Q 29 Should the existing early retirement pension provisions be phased out?

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>X</td>
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</table>

Please explain why.

Current provision is similar to the SPPS, allowing the ‘rule of 80’ to be employed. However, due to recent age legislation, the Trustees are considering amending this provision and plan to recommend introducing voluntary early retirement on a cost neutral basis. This change has not yet been made to the Scheme rules but is one of a number of changes the Trustees will bring before the Assembly.

Elective Early Retirement
Q 30 Should members who wish to stand down or who are not re-elected be allowed to receive their benefits early?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>X</td>
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</table>

Please explain why.

Current AMPS rules do not permit the majority of members to take their pensions before age 65, except in the case of ill health pension or by employing the ‘rule of 80’. The Trustees have agreed that the introduction of voluntary early retirement on a cost neutral basis would provide more flexibility for the Members. This change has not yet been made to the Scheme rules but is one of a number of changes the Trustees will bring before the Assembly.

Q 31 What, if any, eligibility conditions should apply to early retirement?

Any voluntary or elective early retirement should be on a cost neutral basis.

OTHER EQUALITY ISSUES

Refund of Contributions

Q 32(a) Do you agree that the age restriction should be equalised for men and women?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
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</tbody>
</table>

Q 32(b) If you have answered ‘Yes’ what age should that be?

Not applicable to the AMPS.

Loss of Surviving Spouse Pension on Remarriage or Co-habitation

Q 33 Should a surviving spouse or partner’s pension cease on remarriage or cohabitation?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
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</table>

Please explain why.

Current AMPS rules state that the surviving spouse’s pension will cease upon remarriage or cohabitation unless the Trustees consider that there are exceptional reasons for the continued payment of the pension.

Q 34 Should the discretion to refuse pension payment in full or part to a surviving spouse or civil partner who marries or enters into civil partnership when death is imminent continue to apply?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td>X</td>
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</tbody>
</table>

Please explain why.

Current AMPS rules state that the Trustees have discretion to refuse to pay a pension to a surviving spouse if the marriage took place within the 6 months preceding the member’s death, and certain other conditions are satisfied.
**Commutation of Pension for Lump Sum following Death in Service**

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 35(a) Should the scheme permit a spouse/partner to commute part of the pension payable to a lump sum?</td>
<td></td>
<td></td>
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<tr>
<td>Q 35(b) If yes what maximum amount may be commuted?</td>
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</tr>
</tbody>
</table>

**OTHER POSSIBLE CHANGES**

**Scheme Administration**

<table>
<thead>
<tr>
<th>Question</th>
<th>SPCB</th>
<th>Trustees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 36(a) Should the SPPS continue to be administered by the Scottish Parliamentary Corporate Body or should Trustees be appointed?</td>
<td></td>
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</tr>
<tr>
<td>Q 36(b) If trustees, please indicate how many you think appropriate, whether they should include pensioner members and how they could be elected?</td>
<td></td>
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</tr>
</tbody>
</table>

The Trustees of the AMPS do not feel it appropriate to respond. It is a question for the members of the SPPS.

**Accrual Rate**

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 37(a) Should there be an option for members to have a 1/40th accrual rate?</td>
<td></td>
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<tr>
<td>Q 37(b) Who should pay the additional costs involved?</td>
<td></td>
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</tr>
</tbody>
</table>

**Earnings Cap**

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 38 Should the existing earnings cap linked to the Finance Act be retained?</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Please explain why.

The AMPS rules retain the earnings cap.

**Service**

<table>
<thead>
<tr>
<th>Question</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Q 39 Should service in other pension schemes be taken into account when calculating an MSP’s service for early retirement entitlement?</td>
<td>X</td>
<td></td>
</tr>
</tbody>
</table>

Please explain why.

Current AMPS rules permit a members non concurrent service as an MP or MEP to be counted towards qualifying service for favourable early retirement.

**Office Holders**

315
**Q 40** Are there any reasons why office holders should not be treated exactly the same as MSP contributing scheme members in respect of their office holder’s salary?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
<tr>
<td></td>
<td>X</td>
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</table>

Please explain why.

Currently the AMPS has a supplementary scheme for office holders. Benefits become payable along with main scheme benefits although a complex formula provided by the scheme Actuary is used to calculate the value of the benefits.

**Lord Advocate and the Solicitor General for Scotland**

**Q 41** Are there any reasons why the Lord Advocate and the Solicitor General should not be treated exactly the same as all other contributing scheme members?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
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</tbody>
</table>

Please explain why.

The Trustees of the AMPS do not feel it appropriate to respond. It is a question for the members of the SPPS.

**First Minister and Presiding Officer**

**Q 42** Are there any reasons for withdrawing the pensions of former Presiding Officers and First Ministers if they subsequently become office holders?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
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</table>

Please explain why.

Under the rules of the AMPS, the Presiding Officer and First Minister are treated as office holders and make a 6% contribution to the supplementary office holders scheme. They are MLA’s and receive their MLA salary.

**Q 43** Is there any reason why a former First Minister should not be entitled to rejoin the office holder’s portion of the SPPS if they hold subsequent ministerial office?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
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<tbody>
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</tbody>
</table>

Please explain why.

Under the rules of the AMPS there is no restriction on a member rejoining the supplementary scheme on being appointed to an office.

**Q 44** Should there be a minimum qualifying period of say 1 year that has to be served before becoming eligible for First Minister or Presiding Officer pensions?  

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
</tr>
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<tbody>
<tr>
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</table>

Please explain why.

Under the rules of the AMPS there is no similar provision.
Q 45(a) Should pension entitlement for the First Minister and Presiding Officer accrue over a period of years to a maximum?  
Yes | No
---|---

Q 45(b) If you have answered ‘Yes’ what period of years is appropriate to achieve maximum pension?  
Under the rules of the AMPS there is no similar provision.

**GRANTS TO MEMBERS AND OFFICE HOLDERS**

**Resettlement Grant**

Q 46(a) Should the Grant continue to be available to all who cease to be members for whatever reason?  
Yes | No
---|---

Q 46(b) In particular, should it continue to be paid to those who voluntarily stand down?  
This is not considered under the rules of the AMPS.

Q 47 Views are sought on whether someone with less service should receive a higher payment than a younger person with more service?  
This is not considered under the rules of the AMPS.

**Ill-Health Retirement Grant**

Q 48 Should members who retire early due to ill-health continue to be eligible for both an enhanced pension and the ill-health retirement grant?  
Yes | No
---|---

Please explain why.  
This is not considered under the rules of the AMPS.

Q 49 Do you agree that the tests for payment to members who resign due to ill-health during a session should be removed and that payment on ill-health grounds should only be linked to the ability to perform functions?  
Yes | No
---|---

Please explain why.  
This is not considered under the rules of the AMPS.
Severance Grant to Office Holders

<table>
<thead>
<tr>
<th>Q 50</th>
<th>Do you have any comments on the severance grant?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’ please give comments below.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>This is not considered under the rules of the AMPS.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Replacement Options

<table>
<thead>
<tr>
<th>Q 51</th>
<th>Do you have any views on whether the Grants Order should be replaced as part of the proposed Pensions Bill or as a separate Bill?</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If you have answered ‘Yes’ please give views below.</td>
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<td>This is not considered under the rules of the AMPS.</td>
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Any Other Comments

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17 JANUARY 2008
SCOTTISH PARLIAMENTARY PENSION SCHEME COMMITTEE

Further evidence from Sir John Butterfill MP, Chairman of the Trustees, Westminster Parliamentary Contributory Pension Fund, arising from the Scottish Parliamentary Pension Scheme Committee meeting held on Tuesday, 26 February 2008

FROM: SIR JOHN BUTTERFILL FRICS MP

HOUSE OF COMMONS
LONDON SW1A 0AA

4 March, 2008

Dear Mr Cullum,

Parliamentary Contributory Pension Fund

Further to my visit to the Scottish Parliament last week regarding the above, I have investigated the matters raised and now enclose a note prepared for me by our Head of Pensions, giving the details of partners’ pensions and the early retirement terms.

Yours sincerely,

John Butterfill
Partners’ Pensions and Early Retirement Terms

Partners’ Pensions
Spouses of members who are either married or have entered into a civil partnership, are automatically entitled to payment of a Dependant’s pension, upon the death of the member.

Members who are not married, or, have not entered into a civil partnership, can nominate their partner to receive a dependant’s pension, by completing a “Nomination Form”. Rule K2A of the Parliamentary Contributory Pension Fund (PCPF) Regulations details the requirements for a pension to be paid to a partner. In summary, the Regulations state that:

- A declaration (in a form prescribed by the Trustees) must have been completed and, signed and dated by both the member and the partner.
- The Trustees must be satisfied at the time of the member’s death, that the members and partner had been cohabiting in a long-term relationship, had not been prevented from marrying or forming a civil partnership and, were financially dependant or interdependent on each other.

Early Retirement Terms
If a pension is paid early, it will normally be reduced to reflect the fact that it is likely to be in payment for a longer period. However, there are two exceptions to this.

(a) 15 year rule
Where a member has completed over 15 years Qualifying Service (service in the PCPF together with service as a Member of the European Parliament or another UK assembly, except periods when the member was also serving as an MP) by 1st April 2009 (or, if later, the date of the General Election after the May 2005 Election – the “cut off” date), a more generous early retirement reduction factor will be applied to the service built up to the “cut off” date.

(b) Rule of 80
Where a member is aged 60 or over at the time of retirement and, their age plus Qualifying Service totals 80 or more, then the pension in respect of service up to 1st April 2009 (or, if later, the date of the General Election after the May 2005 Election) will be paid in full (i.e. no reduction factor applied). The Rule of 80 does not apply to members who joined after 3rd November 2004.

March 2008

After debate, the motion was agreed to (DT).
Scottish Parliamentary Pension Scheme Committee
(Bill Proposal)

The Presiding Officer (Alex Fergusson): The next item of business is a debate on motion S3M-2068, in the name of Alasdair Morgan, on behalf of the Scottish Parliamentary Pension Scheme Committee, on a proposal for a committee bill.

I remind members that all contributions should be made through the chair.

09:01

Alasdair Morgan (South of Scotland) (SNP): I do not often get the chance to contribute to debates, so I am grateful to the Parliamentary Bureau for scheduling the debate in a prestigious slot. Debates at 9 in the morning on a Thursday tend not to bring out the majority of my colleagues, and I suspect that the fact that the debate falls on the morning after the parliamentary journalists dinner has added to that tendency. However, perhaps the attendance shows either that we are not all self-interested in our pensions, or perhaps that our colleagues have lots of confidence in the committee that is looking after the matter.

In any event, I am pleased to present to Parliament the Scottish Parliamentary Pension Committee’s report, which recommends that there be a committee bill to replace the existing rules on the Scottish parliamentary pension scheme and the payment of grants to members and office-holders when they leave office. Before I explain why we need such a bill, I thank those who contributed to the process. First, I thank my fellow committee members for their valuable contributions in developing the committee’s report. Secondly, I thank the committee clerks and legal advisers, who worked so hard to support members of the committee. I have to say that those thanks are not simply the conventional ones that we give on all such occasions—I genuinely thank the staff and my colleagues for all the work that they put in on this complex issue. Indeed, in this morning’s short debate, we will be able only to skim over the surface of the matter.

Thirdly, I thank those who responded to our consultation document. Finally, I thank those who came forward and gave oral evidence to the committee, including the Scottish Public Pensions Agency, the Government Actuary’s Department, Sir John Butterfill from the Westminster contributory pension scheme, Alun Cairns, who is chairman of the National Assembly for Wales members’ pension scheme, and our own Mike Pringle, who gave evidence on behalf of the Scottish Parliamentary Corporate Body, which administers the current scheme. In particular,
Grant Ballantine of the Government Actuary’s Department went a long way towards giving an intelligible explanation for, and putting a human face on, what most of us regard as a black art rather than a science. John Butterfill and Alun Cairns showed us the standard of knowledge and expertise that we in the Parliament should expect of any future trustees of our pension fund if we decide to go down the proposed route.

The Scottish parliamentary pension scheme is similar to the parliamentary contributory pension scheme at Westminster and has been in operation since the Parliament was set up in 1999. Looking around the chamber, I see some members—I could even say old lags, if that was a parliamentary term—who have been contributing since the inception of the scheme, just as I have. How time flies when we are really enjoying ourselves. The rules that cover grants for members and office-holders are also similar to the rules that are in place at Westminster. They, too, were introduced in 1999.

Why do we need to change the rules that govern our pensions and grants? First, they were set up under transitional provisions at Westminster and were always intended to be replaced by an act of the Scottish Parliament. Indeed, because of the transitional arrangements, it would not be possible for us to make any changes to the rules that govern pensions and grants without going down the proposed route.

Secondly, and perhaps more significantly, some major legislative changes at United Kingdom level since 1999 have affected all pension schemes. The main ones are in the Finance Act 2004 and the Pensions Act 2004, which have transformed the tax and legal environment in which pensions schemes operate. In fact, some changes have legally to be made by April 2011—doing nothing is not an option.

Having established the need for changes, Parliament set up a cross-party committee to consider and take evidence on the existing rules for the pension scheme and office-holders’ grants and pensions, to report to Parliament on its findings and to set out the changes that we consider necessary and the provisions that should be contained in the proposed bill. To seek views on that, we issued a consultation document on 17 October last year to both current and former MSPs and office-holders, and to a wide range of outside bodies with an interest in pensions. We then took oral evidence from a number of experts whom I have already mentioned. We were mindful of the recommendations that had been made by the Senior Salaries Review Body in Westminster in its triennial report on MPs’ and office-holders’ salaries, pensions and allowances at the beginning of last year, and we were also mindful of the pension arrangements that are currently in place in the other UK parliamentary and assembly bodies.

One of the first issues to consider was the role of the Scottish Parliamentary Corporate Body, which is responsible for management and administration of the scheme. We recognised that, on one hand, the corporate body is responsible for funding the pension scheme through pension contributions from its budget—in effect, from the public purse—while on the other hand it has a fiduciary duty to act in the best interests of scheme members. The committee believes that there is a potential conflict of interests between those two roles or, at least, a perception of such a conflict. That view was also expressed by the corporate body when it gave evidence. We therefore recommend that, in line with other parliamentary and assembly pension schemes in these islands, a separate board of trustees be set up to manage the scheme in order to reduce the potential for any conflict of interests.

To bring the scheme into line with general changes to pension legislation, we recommend that express provision be made for pension sharing on divorce, which was introduced by the Welfare Reform and Pensions Act 1999, and to take account of the new status of civil partner, which was introduced by the Civil Partnership Act 2004.

On scheme benefits, we recommend introducing a second accrual rate of one fortieth, giving members and office-holders the chance to accrue pension benefits more quickly, but at their own expense through a higher contribution rate of 11 per cent. It is worth emphasising that, although an accrual rate of one fortieth may seem generous—our current accrual rate is one fiftieth—it will be paid for entirely by the members. Indeed, we anticipate that the sum total of changes to the pension fund and the other payments that we deal with in the report will show some benefit to the public purse. I hope that that will be borne out when we publish our financial memorandum—if Parliament decides to proceed with a bill.

We also recommend that the amount of pension awarded on ill-health retirement grounds be linked to the degree of ill-health suffered—we consider that there should be two levels of pension payable. A stringent test should be applicable for severe ill-health pensions, requiring that the member’s ill-health must be such as to prevent the member from performing the duties of any paid occupation, not just those of an MSP. The pension received following that test would be the same as that which is provided under the current rules, which is an enhanced pension. A second, and lesser, category of ill-health retirement should be introduced for those who are assessed as being
unable adequately to carry out their duties as an MSP but who could carry out other employment of a different nature. Under that category, an ill-health pension based on years of service would be payable with no enhancement.

The committee believes that the table that is used to calculate early retirement benefits, which is based on age and service, could be seen to be discriminatory or, at the very least, inequitable. We therefore recommend removing that table and instead using actuarially neutral factors to calculate early retirement benefits.

That was a scamper through the report. In summary, we think that our recommendations will deliver a modern, affordable and equality-proofed scheme that will provide a range of benefits that strike an equitable and proportionate balance between the level of benefits and the cost to the public purse.

I move,

That the Parliament agrees to the proposal for a Committee Bill under Rule 9.15 contained in the Scottish Parliamentary Pension Scheme Committee’s 1st Report, 2008 Scottish Parliamentary Pension Scheme (SP Paper 103).

09:10

David McLetchie (Edinburgh Pentlands) (Con): As members of the Scottish Parliament, all of us are members of a public sector pension scheme whose characteristics are that benefits are defined by reference to final salary, that pension payments are index linked and that the employer’s contribution is ultimately paid by the taxpayer.

Like many members, before the Parliament’s arrival, I spent most of my working life in the private sector. I was self-employed and had a retirement plan with Equitable Life, so I assure members that I am sensitive to the pressures and problems that many people have experienced with private sector pension schemes and personal pension plans. As we know, many private sector schemes have been closed to new entrants. The recent experience at Grangemouth shows that proposed changes to schemes have even triggered industrial action.

When four of our members were asked to sit on the Scottish Parliamentary Pension Scheme Committee to examine and update our pension scheme—which we inherited from Westminster as part of the devolution settlement, as the committee’s convener said—all of us were concerned to ensure that any changes that we proposed as a result would be fair and affordable to members and taxpayers alike, and that they would bring the scheme into line with the new rules in legislation governing pensions, and with wider legislative requirements on age and sex discrimination. We were also concerned that any enhancements to the scheme’s provisions would be paid for from members’ contributions or from savings that were achieved elsewhere. I am satisfied that the scheme that is recommended in the committee’s report meets those criteria. On that basis, I am happy to recommend the proposal to Parliament and to invite members to support the motion.

Alasdair Morgan has thanked everyone else, so I thank him for the excellent job that he did of convening the committee in his characteristically canny and pawky style. As he did, I thank the clerks and advisers who steered us through the thickets of pension law.

As members know, economics is described as “the dismal science” and actuaries are described as people who found accountancy too exciting. However, being a member of the committee was interesting. I learned much about a complex subject, and the most important fact that I learned was that all pension schemes—our own, others in the public sector and private sector schemes in the wider world—must be fit for purpose. Pensions represent deferred remuneration to the employer and a savings scheme to the employee. We must ensure that pensions for everyone in our society are fair and balanced, that the rules of schemes and plans reflect society as it is and how people live, and that schemes seek to give people security and dignity in retirement.

I am satisfied that our scheme meets those tests and that the proposed changes are fair, balanced, reasonable and affordable. On that basis, I am happy to support the motion.

09:14

Hugh O’Donnell (Central Scotland) (LD): I do not want the debate to sound like an Oscars ceremony but, like previous speakers, I thank the clerks and particularly the expert witnesses who guided the committee through the minutiae of a complex subject.

It is difficult to say much more than that, although there are many reasons why we members can be regarded as being in a privileged position. Given the wider issues concerning pension schemes, to which Mr McLetchie referred, we are fortunate to be beneficiaries of a good and effective pension scheme that, because of the proposals in our report, will be brought into line with the rules and regulations and which will, critically, place no greater burden on the public purse than it currently does.

As I look round the chamber—I apologise in advance for what I am about to say—it is interesting to see that most members sitting here
are perhaps of more mature years. Perhaps there is an element of vested interest in our being here, in that increasing age does concentrate the mind in such matters.

With those brief remarks, I support the report and the motion in Alasdair Morgan’s name. Again, I thank everyone who was involved in helping us work our way through the subject.

09:16
Andrew Welsh (Angus) (SNP): Pension debates are necessary, but are never the most popular occasions; indeed, their attractiveness is probably proportionate to the age profile of MSPs. The presence of younger members would, indeed, be a sign of remarkable foresight.

The time is right for such a pension review and revision. As a member of the SPCB in the first and second parliamentary sessions, I was involved in approving the original pension scheme. I pay tribute to the parliamentary officials who have ensured its smooth working, because there was no real guide or precedent in this newest of Parliaments. Although the original scheme had some anomalies that have had to be sorted out, most of the original decisions were sound.

However, after nine years, it is the right time to put the whole system to the test, and to update and improve the scheme on the basis of experience. There were no Scottish Parliament pensioners when we started out, and their numbers are not yet great, but I am sure that time will soon cure that problem of scarcity.

The Scottish Parliamentary Pension Scheme Committee and its clerks certainly spread the net widely in their evidence taking, which involved meetings, a lunchtime drop-in session and evidence from trustees of other parliamentary schemes, as well as the oral and written evidence that they received, which the committee has used well.

I wish to address my remarks to a particular aspect of the proposed changes. So far, responsibility for management and administration of the pension scheme has rested on the shoulders of the SPCB. Guardianship of the Parliament’s pension fund provision is, in fact, only one part of the massive range of corporate body responsibilities that cover the day-to-day working of everything that takes place in this building, from clerking, information services, security, staffing, legal and other services, repairs and maintenance, to every daily activity here. The decision making and ultimate responsibility lands on the agenda of the corporate body. Indeed, that fact of life was especially onerous during the long drawn-out saga of the construction of this building.

I therefore welcome report recommendations 1 to 9 regarding changes to the management and administration of the pension scheme, which propose that trustees be appointed to manage and administer the scheme. That will bring the Scottish Parliament scheme into line with the UK Parliament and National Assembly for Wales schemes, which have separate bodies dedicated to management of their members’ pension schemes. The appointment of trustees will ensure that there will be no perceived conflict of interests, and will allow the trustees to be dedicated specifically to considering pension matters. The separation of the roles of employer and scheme sponsor is a sensible way forward for both the SPCB and future trustees. I welcome that recommendation.

The report also set out several consequences of such a division of responsibility and gives clear signposts for future decisions and for the relationship between the SPCB and the trustees regarding assets and liabilities. The report also signposts how the trustees should be appointed and how many there should be; how many staff they should have to advise and assist them; and how the trustees should report to Parliament.

I commend the committee for its balanced approach and for its acknowledgement of the continuing role of the SPCB through standing orders and the process of making changes through parliamentary action. If Parliament agrees to this pension scheme proposal, I wish all future trustees well in their work and decision making, which will affect the wellbeing of every present and future member of our national Parliament. Well done, the committee.

09:20
Peter Peacock (Highlands and Islands) (Lab): Like other members of the Scottish Parliamentary Pension Scheme Committee, I pay tribute to the committee clerks, who helped us through a difficult and complex procedure, and to Alasdair Morgan. I echo Hugh O’Donnell’s observation: it is interesting that with some notable exceptions the members who are present for this debate are of a certain age. I suggest not that those members have a growing interest in the subject, but that they bring commendable experience and wisdom to the proceedings.

As Alasdair Morgan and other members said, the pension provisions for members of the Scottish Parliament are rooted in the Westminster scheme. Since the Parliament was created, various changes have been made to the Westminster and National Assembly for Wales schemes and to the law, which require us to examine and update our scheme. The Parliament has come adrift from its colleague Parliaments at Westminster and in
Wales, which provide the comparators for our scheme, and we will be adrift of legal requirements unless we make changes to our scheme by 2011.

It is worth recording that because members of the Scottish Parliament receive only a percentage of the salary that Westminster members of Parliament receive, they get only a percentage of the pension that Westminster MPs receive. Given the other changes to which I referred, that means that MSPs’ pensions are a percentage of a percentage. I hope that some day the Scottish Parliament will gain confidence and self-respect in its efforts to rectify the anomalies of lower pay and lower pension. I do not suggest in any way that Westminster parliamentarians do not deserve their remuneration—far from it—but it cannot be right to believe that MSPs work less hard or carry less responsibility than do members who serve in Westminster. I hope that the matter will be addressed in the future.

It is worth repeating that the committee’s findings were unanimous, and noting how little commentary on or disagreement with the proposals there was. I am sure that some people outside Parliament will disagree with the proposals—some people might even disagree with the proposition that MSPs should receive a pension. However, everyone needs to plan for his or her retirement. This comment, from the website of the association of former members of Parliament, was pointed out to me recently:

“Few voters or even newspapers ever realise that the average length of service for a Member of Parliament is about 8 years. Sooner or later the guillotine falls. Either the voters feel like a change and sack them, or their local parties deselect them. Or their constituency boundaries change ... Their secretaries and staff also lost their jobs too. What happens to the losers then? Nobody knows ... Many sacked MPs suffer serious problems in getting other jobs.”

Members of all parties know from experience that many colleagues who have not returned to the Scottish Parliament have struggled, sometimes for a long time, to find alternative employment. To try to offset some of those problems, the committee recommended that MSPs should be able to choose—I stress “choose”—to accrue pension rights more quickly than they can do under the existing scheme. However, as Alasdair Morgan said, MSPs will have to fund those accelerated benefits themselves. The cost to MSPs would be an extra 5 per cent of their salary, which would take their contributions to 11 per cent. That is the basis on which we recommended an option to have an accrual rate of one fortieth per year. It is crucial that individual members understand the cost of making that choice. My point about accrual is linked to my point that by definition our profession brings job uncertainty.

It is right that the committee proposed the removal of the rule whereby a member must have 15 years’ service before he or she becomes eligible for early retirement, especially given that a person’s parliamentary career can be very short. Under the proposed new arrangements, members who are over 55 would be able to access their own funds, some of which might have been transferred from other pension funds when they entered Parliament. Therefore, a member would have access to funds at a critical stage of his or her life and career. Under the current arrangements, that cannot happen until a member has served 15 years, which seemed wrong to the committee. Any pension payable under the proposed new rules would be reduced by 4 per cent for each year in which the member was retired before they were 65, for the whole life of the pension, so it would be no soft option. That substantial penalty was recommended following advice from the Government actuary.

As David McLetchie, Hugh O'Donnell, Alasdair Morgan and Andrew Welsh indicated, the changes strike the right balance between the interests and needs of members and the interests of the public purse. They are modest improvements at one level and necessary revisions of the law at another level. They are sensible and measured recommendations and—as Alasdair Morgan said—they will come at no cost to the public purse. I encourage members to support them at decision time.

The Presiding Officer: Before I close the debate, I have a further request from Hugh O'Donnell. I can allow you to make a brief comment, Mr O'Donnell.

Hugh O’Donnell: Thank you, Presiding Officer. I formally apologise to all who are present in the chamber for my late arrival in the midst of Mr Morgan’s opening remarks.

The Presiding Officer: Thank you for that courtesy, Mr O’Donnell.
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Schedule 2—Grants payable on leaving office
Schedule 3—Transitional provisions and savings
An Act of the Scottish Parliament to set out rules to govern the Scottish Parliamentary Pension Scheme; to provide for the payment of resettlement grants to individuals when they stop being members of the Scottish Parliament or holding certain offices; and for connected purposes.

1 Scottish Parliamentary Pension Scheme

(1) The Scottish Parliamentary Pension Scheme is to continue but is to be governed from the coming into force of this section in accordance with the rules set out in schedule 1.

(2) The Scottish Parliamentary Contributory Pension Fund (and all the SPCB’s functions, rights, liabilities and obligations in relation to that Fund) are transferred to and vest in the Fund trustees appointed and holding office in accordance with those rules.

(3) Schedule 3 makes further transitional provisions and savings.

2 Grants payable on leaving office

Schedule 2 sets out circumstances in which the SPCB is to pay grants to individuals when they stop being MSPs or holding certain offices.

3 Modification of pension schemes etc.

(1) The Scottish Parliament may resolve to modify—

(a) the Scottish Parliamentary Pension Scheme,
(b) the grants scheme set out in schedule 2, or
(c) the pension scheme for First Ministers and Presiding Officers which is comprised in Part S of the 1999 pensions order.

(2) A resolution may, in particular, modify—

(a) the rules set out in schedule 1,
(b) schedules 2 or 3, or
(c) the 1999 pensions order.

(3) A resolution may—

(a) make different provision for different purposes,
(b) make provision having retrospective effect.
(4) The Clerk of the Parliament must send a copy of a resolution to the Queen’s Printer for Scotland immediately after it is passed.

Articles 5, 7(1), 8 and 9 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096) apply in relation to that copy resolution as if it were a Scottish statutory instrument.

4 Interpretation

In this Act—


“Scottish Parliamentary Pension Scheme” means the pension scheme constituted by the 1999 pensions order (but does not include the pension scheme for First Ministers and Presiding Officers which is comprised in Part S of that order),

“Scottish Parliamentary Contributory Pension Fund” means the fund established by article B1 of the 1999 pensions order, and

“SPCB” means the Scottish Parliamentary Corporate Body.

5 Commencement

(1) The following provisions come into force on Royal Assent—

sections 4 and 6

this section

rules 4 and 8 to 11 of schedule 1 (and section 1(1) in so far as it introduces them)

paragraph 4 of schedule 3 (and section 1(3) in so far as it introduces that paragraph)

(2) Section 3 also comes into force on Royal Assent (but, during the period before the rest of this Act comes into force, a motion for a resolution under that section may be moved only by a member of the SPCB).

(3) The rest of this Act comes into force on the first day of the month which follows the month which includes the day falling 6 months after Royal Assent.

6 Short title

This Act is called the Scottish Parliamentary Pensions Act 2008.
This schedule sets out the rules of the Scottish Parliamentary Pension Scheme (“the scheme”).

**PART A**

**THE PENSION FUND**

The Pension Fund

2 “The Pension Fund” means the Scottish Parliamentary Contributory Pension Fund.

Payments to and from Fund

3 (1) The following payments are to be made from the Pension Fund—

(a) all pensions and lump sums payable under the scheme, and

(b) all amounts payable by the Fund trustees under the scheme.

(2) The Fund trustees must pay all sums they receive under the scheme into the Pension Fund.

**PART B**

**FUND TRUSTEES**

Fund trustees

4 The “Fund trustees” are the individuals appointed under and holding office in accordance with this Part.

Functions

5 The Fund trustees’ principal function is to administer the Pension Fund, and to manage and apply its assets, in accordance with the scheme.

Number of trustees

6 There are to be at least 3 but no more than 6 Fund trustees.

Eligibility

7 A person who is prevented by the Pensions Act 1995 (c.26), or by any other enactment or rule of law, from being a pension scheme trustee is barred from being a Fund trustee.
Appointment of Fund trustees

8 (1) The Scottish Parliament may resolve to appoint as a Fund trustee any individual nominated by the SPCB as suitable to hold that office.

(2) The SPCB must, when deciding who to nominate—

(a) do its best to ensure that the Fund trustees include a participating member and a scheme pensioner, and

(b) have regard to any recommendation by the incumbent Fund trustees.

(3) A Fund trustee appointment has immediate effect (unless the Scottish Parliament resolves otherwise).

(4) The Court of Session may appoint a Fund trustee only on an application under section 19(2) of the Trusts (Scotland) Act 1921 (c.58).

(5) The Fund trustees do not have power to assume new trustees.

Remuneration, allowances and expenses

9 (1) A Fund trustee may be remunerated, or receive allowances, from the Pension Fund for acting as a Fund trustee only if the following conditions are met—

Condition 1 The Fund trustee is not a scheme member.

Condition 2 The other Fund trustees (if any), before appointment, recommend to the SPCB that the Fund trustee be remunerated or entitled to allowances.

Condition 3 The SPCB’s nomination to the Scottish Parliament specifies that remuneration or allowances are to be paid.

(2) Expenses properly incurred by the Fund trustees in connection with the performance of their functions are to be paid from the Pension Fund.

Resignation

10 (1) A Fund trustee may resign by giving notice of resignation to—

(a) the Presiding Officer, and

(b) the other Fund trustees.

(2) A resignation has effect immediately on the notice of resignation being given.

(3) This rule does not apply where there is a sole trustee.

Removal

11 (1) A Fund trustee is removed from office only if—

(a) the Scottish Parliament resolves to end the Fund trustee’s tenure,

(b) the Fund trustee becomes barred from being a Fund trustee (see rule 7), or

(c) the Fund trustee’s tenure ends under rule 12.

(2) A Parliamentary resolution passed on a division for the purposes of this rule has effect only if voted for by at least two-thirds of the voting MSPs.
Change of status

12 (1) This rule applies—
   (a) where a Fund trustee who was a participating member when appointed becomes a deferred pensioner or a scheme pensioner,
   (b) where a Fund trustee who was a deferred pensioner when appointed—
      (i) becomes a participating member or a scheme pensioner, or
      (ii) has his or her rights to receive scheme benefits extinguished under rule 80, and
   (c) where a Fund trustee who was a scheme pensioner when appointed becomes an MSP or the holder of a pensionable office.

(2) Where this rule applies—
   (a) the Fund trustee must give notice of change of circumstance to—
      (i) the Presiding Officer, and
      (ii) the other Fund trustees, and
   (b) the Fund trustee’s tenure ends 6 months after the change of circumstance occurs (unless the Scottish Parliament resolves otherwise).

Member-nominated trustees

13 Nothing in the scheme overrides section 241 of the Pensions Act 2004 (c.35).

Accordingly—
   (a) the SPCB must nominate as suitable to be a Fund trustee any individual who the Fund trustees recommend for the purposes of fulfilling their obligations under that section, and
   (b) rule 6 does not prevent the SPCB from so nominating an individual (or the appointment of an individual) if the appointment—
      (i) would result in more than 6 Fund trustees holding office, and
      (ii) would ensure that at least one-third of the Fund trustees are appointed in accordance with that section.

Procedure

14 The Fund trustees may regulate their own procedure (in so far as not regulated by the scheme).

Quorum

15 A meeting of the Fund trustees is quorate if—
   (a) 3 or more Fund trustees are present, or
   (b) where fewer than 3 Fund trustees hold office, if both trustees are (or the sole trustee is) present.
Staff and advisers

16. The Fund trustees may—
   (a) employ staff on such terms as they think fit,
   (b) seek advice from any person.

Fund management

17. The Fund trustees must monitor the performance of any fund manager they appoint.

Indemnity insurance

18. The Fund trustees may obtain insurance designed to indemnify them against any personal liability arising in connection with the performance (or purported performance) of their functions.

Delegation

19 (1) The Fund trustees may authorise any person (including one or more of themselves) to perform, or to authorise others to perform, any of their functions to the extent authorised.

   (2) An authorisation does not affect the Fund trustees’ responsibility for delegated functions or their ability to perform those functions themselves.

Validity of acts

20 (1) A decision, authorisation or other act of the Fund trustees is not invalidated—
   (a) by any change to the individuals (or to the status or eligibility of individuals) holding office as Fund trustees,
   (b) by any defect in the nomination or appointment of a Fund trustee, or
   (c) by the fact that it is done when fewer than 3 Fund trustees held office.

   (2) The Fund trustees are free to vary or revoke any previous decision or authorisation (but such a variation or revocation may reduce the scheme benefits to which any individual is entitled only if made in accordance with any other scheme rule).

PART C

PARTICIPATING MEMBERS

MSP members

21. Every serving MSP aged under 75 is to participate in the scheme as an “MSP member” (unless the MSP opts out under rule 23).

Office-holder members

22 (1) Every individual aged under 75 holding a pensionable office is to participate in the scheme as an “office-holder member” (unless the individual opts out under rule 24).
(2) An individual holds a pensionable office by being—
   (a) the Presiding Officer,
   (b) a deputy Presiding Officer,
   (c) one of the Scottish Ministers, or
   (d) a junior Scottish Minister.

MSP opt-out

23 (1) An MSP may opt out of participating in the scheme by giving notice to the Fund trustees.

This rule does not prevent an MSP who is also a holder of a pensionable office from opting out as an office-holder member only under rule 24 (but such an MSP may not opt out as an MSP member only).

(2) Where an MSP opts out within 3 months of first being elected as an MSP—
   (a) the MSP is to be treated—
       (i) as having never been an MSP member, and
       (ii) as having not been an office-holder member for any period since the election, and
   (b) any scheme member contributions made since being elected are to be repaid to the MSP.

(3) In any other case, an MSP who opts out stops being a participating member on whatever date the Fund trustees decide is the earliest practicable date after they receive the opt-out notice.

Office-holder opt-out

24 (1) The holder of a pensionable office may opt out of participating in the scheme as an office-holder member only by giving notice to the Fund trustees.

(2) Where the holder of a pensionable office opts out within 3 months of being appointed to that office—
   (a) the office-holder is to be treated as having not been an office-holder member since being appointed, and
   (b) any scheme member contributions made in respect of office-holder’s salary since being appointed are to be repaid to the office-holder.

(3) In any other case, a holder of a pensionable office who opts out stops being an office-holder member on whatever date the Fund trustees decide is the earliest practicable date after they receive the opt-out notice.

MSP opt-in

25 An individual who has opted out of participating in the scheme may, if subsequently elected as an MSP, opt back into the scheme as an MSP member with effect from the election date by—

(a) giving notice to the Fund trustees within 3 months of being elected, and
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(b) paying to the Fund trustees by the due date the amount which they certify as the amount of scheme member contributions which would have been made from the individual’s MSP salary payments between the election date and the next day on which a scheme member contribution is to be made.

“due date” means the 28th day after the Fund trustees give their certification to the MSP (or any later day as the Fund trustees may specify).

Office-holder opt-in

26 (1) An individual who has opted out of participating in the scheme (or who has opted out of participating as an office-holder member only) may, if subsequently appointed to hold any pensionable office, opt back into the scheme as an office-holder member with effect from the appointment date by—

(a) giving notice to the Fund trustees within 3 months of being appointed, and

(b) paying to the Fund trustees by the due date the amount which they certify as the amount of scheme member contributions which would have been made from the individual’s office-holder salary payments between the appointment date and the next day on which a scheme member contribution is to be made.

“due date” means the 28th day after the Fund trustees give their certification to the office-holder (or any later day as the Fund trustees may specify).

(2) An MSP may not opt back into the scheme as an office-holder member unless that individual also opts back in as (or already is) an MSP member.

PART D

CONTRIBUTIONS

Scheme member contributions

27 The person responsible for paying a participating member’s salary must—

(a) deduct an amount (a “scheme member contribution”) from each salary payment (but see rule 30), and

(b) pay the scheme member contribution to the Fund trustees.

References in other scheme rules to scheme member contributions being made are to be read as references to amounts deducted and paid under this rule.

Amount of scheme member contribution

28 Higher rate scheme member contributions are be deducted under rule 27 (unless the participating member concerned chooses to make lower rate scheme contributions).

Procedure for changing scheme member contribution rate

29 (1) A participating member may, by giving notice to the Fund trustees, choose to make lower rate scheme member contributions instead of higher rate scheme member contributions (or vice versa).

(2) Such a notice may be given only within 3 months of—
(a) being elected (or re-elected) as an MSP, or
(b) where the participating member is not an MSP, being appointed (or re-appointed) as the holder of a pensionable office.

(3) The notified change has effect from the day of the election or appointment and—
(a) the Fund trustees must pay the participating member an amount equal to any excess of scheme member contributions made in respect of that period, or (as the case may be)
(b) the participating member must pay any shortfall in scheme member contributions made in respect of that period to the Fund trustees.

(4) If a participating member fails to repay a shortfall, the Fund trustees may recover the shortfall by directing the person responsible for paying the participating member’s salary to adjust subsequent scheme member contributions accordingly.

Relief from liability to make scheme member contributions

(1) An MSP member is to stop making scheme member contributions from MSP salary when he or she obtains sufficient reckonable service as an MSP to entitle him or her to the maximum annual MSP pension permitted by rule 38(2).

(2) Such an MSP member is to begin making scheme member contributions again only if his or her MSP salary increases.

(3) Those contributions are to be made—
(a) only in respect of the amount by which the MSP salary is increased, and
(b) at the rate which applied when the MSP member stopped making scheme member contributions in respect of his or her full MSP salary.

(4) Scheme member contributions are not to be made from the office-holder salary of an office-holder member whose reckonable service as an office-holder already entitles him or her to the maximum office-holder pension entitlement permitted by rule 39(4).

(5) Such an office-holder member is to begin making scheme member contributions again only if his or her office-holder salary increases.

(6) Those contributions are to be made—
(a) only in respect of the amount by which the office-holder salary is increased, and
(b) at the rate which applied when the office-holder member stopped making scheme member contributions in respect of his or her full office-holder salary.

(7) If—
(a) the Fund trustees have accepted an individual’s application to buy added years, but
(b) the individual has not yet paid for those added years in full,
the individual’s reckonable service as an MSP or office-holder is to be treated for the purposes of this rule as including the period by which his or her reckonable service will be increased on payment of the last instalment or lump sum.
Contributions when salary not drawn

31 The person responsible for paying the salary of a participating member who chooses not to draw that salary (or any part of it) must—

(a) deduct amount A from the funds available to pay the salary (or that part of it), and

(b) pay that amount to the Fund trustees.

“amount A” is an amount equal to the scheme member contributions which would have been deducted had that salary (or that part of it) been paid.

Contributions from SPCB

32 (1) The SPCB must pay a sum into the Pension Fund in respect of each financial year.

(2) The SPCB must, when determining the amount of each annual sum, have regard to—

(a) the scheme actuary’s recommended rate for future contributions (see rule 103(3)(c)), and

(b) any advice from the Fund trustees on the rate of future contributions.

PART E

RECKONABLE SERVICE

Reckonable service as an MSP

33 (1) A period for which an MSP member makes scheme member contributions from salary payments in respect of MSP salary is a period of reckonable service as an MSP.

(2) An individual’s “reckonable service as an MSP” means the total of—

(a) the period described in rule 33(1) or (if more than one) the total of such periods, and

(b) any amount by which that period is increased under Part N (transfers) or Part O (added years).

Reckonable service as an office-holder

34 (1) A period for which an office-holder member makes scheme member contributions from salary payments in respect of office-holder salary is a period of reckonable service as an office-holder.

(2) An individual’s “reckonable service as an office-holder” means the total of—

(a) the period described in rule 34(1) or (if more than one) the total of such periods, and

(b) any amount by which that period is increased under Part N (transfers) or Part O (added years).

Total reckonable service

35 An individual’s “total reckonable service” is the total of any periods in which the individual obtains—
(a) reckonable service as an MSP only under rule 33(1),
(b) reckonable service as an office-holder only under rule 34(1), and
(c) reckonable service as both an MSP and office-holder under both those rules.

Measuring reckonable service

A period of reckonable service is measured in years and fractions of a year (unless the contrary intention appears).

PART F
PENSIONS

Scheme pension

10 37 (1) A pension (a “scheme pension”) is to be paid to every individual who—
(a) has reckonable service as an MSP or office-holder,
(b) is aged 65 or over, and
(c) is neither an MSP nor the holder of a pensionable office.

(2) Unless the scheme otherwise provides, the annual scheme pension payable to such an individual is an amount equal to the total of—
(a) the annual MSP pension payable in accordance with rule 38, and
(b) the annual office-holder pension payable in accordance with rule 39.

Amount of MSP pension

38 (1) The annual MSP pension payable to an individual is an amount equal to—

\[
\text{MSP’s final salary} \times \left( \frac{A}{50} + \frac{B}{40} \right)
\]

where—

“A” is the individual’s reckonable service as an MSP during which lower rate scheme member contributions were made, and

“B” is the individual’s reckonable service as an MSP during which higher rate scheme member contributions were made.

(2) Where an individual’s annual MSP pension (including any enhancement made by virtue of other scheme rules) exceeds the individual’s annual MSP pension cap, the annual MSP pension payable to the individual is to be reduced to the individual’s annual MSP pension cap.

An individual’s “annual MSP pension cap” is two-thirds of the individual’s final salary as an MSP (ignoring any reduction in final salary by virtue of section 82(2) of the Scotland Act 1998 (c.46)).

Amount of office-holder pension

39 (1) The annual office-holder pension payable to an individual is an amount equal to the total of the individual’s office-holder pension entitlements.
(2) An individual obtains an office-holder pension entitlement in respect of each period for which he or she holds a pensionable office.

(3) The amount of an office-holder pension entitlement for such a period is calculated as follows—

\[
\text{office-holder’s final salary in respect of period} \times \left( \frac{A}{50} + \frac{B}{40} \right)
\]

where—

“A” is the individual’s reckonable service as an office-holder accrued when holding the office concerned in respect of which the individual made lower rate scheme member contributions, and

“B” is the individual’s reckonable service as an office-holder accrued when holding the office concerned during which the individual made higher rate scheme member contributions.

(4) Where an individual’s annual office-holder pension (including any enhancement made by virtue of other scheme rules) exceeds the individual’s annual office-holder pension cap, the annual office-holder pension payable to the individual is to be reduced to the individual’s annual office-holder pension cap.

An individual’s “annual office-holder pension cap” is—

(a) two-thirds of the final salary amount used to calculate the individual’s office-holder pension entitlement, or

(b) where an individual has more than one such entitlement, two-thirds of the highest such final salary amount.

**Duration of scheme pension**

40 (1) A scheme pension is payable from the day on which the individual concerned is first entitled to receive it.

(2) Pension payments need not begin unless the individual entitled to the scheme pension has—

(a) notified the Fund trustees that he or she wishes pension payments to begin, and

(b) given the Fund trustees such information as they may reasonably require—

(i) about the individual’s entitlement to any other pension,

(ii) to calculate their liability for a lifetime allowance charge or any other tax,

(iii) to make the payments.

This rule does not affect the date from which a scheme pension is payable.

(3) Pension payments are to continue for the rest of the individual’s life (see rule 41 for exception).

(4) Pension payments are to be made monthly in arrears (or in other instalments of no longer than one year as the Fund trustees may determine).
Suspension of scheme pension

41 (1) Where a scheme pensioner becomes an MSP or the holder of a pensionable office, pension payments are to be suspended until the individual concerned stops being an MSP or the holder of that office.

(2) The amount of any lump sum payable under Part K in respect of an individual who dies when such a suspension has effect is to be reduced by an amount equal to the amount of scheme pension already paid to the individual.

(3) When such a suspension ends in relation to an individual who was entitled to an ill-health pension before the suspension began—

(a) the individual is to be treated from then on as if he or she had not been entitled to an ill-health pension, and

(b) a corresponding reduction is to be made—

(i) to the individual’s pension payments, and

(ii) to any added years obtained by virtue of rule 86(2)(a)).

PART G

RETIREMENT LUMP SUMS

Right to commute pension into a lump sum

42 (1) An individual may commute a portion of the individual’s scheme pension into a lump sum (a “retirement lump sum”) by giving notice (a “commutation notice”) to the Fund trustees.

(2) A commutation notice is valid only if it—

(a) is given before the earlier of—

(i) the day on which a scheme pension is first paid to the individual, and

(ii) the individual’s 75th birthday,

(b) specifies the proportion of the individual’s scheme pension that the individual wants to commute into a retirement lump sum, and

(c) provides the Fund trustees with such other information as they may reasonably require to—

(i) determine the amount payable, and

(ii) satisfy themselves that, if paid, the retirement lump sum would be a “pension commencement lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

Payment of retirement lump sum and corresponding reduction in pension

43 (1) An individual who gives a valid commutation notice is to be paid a retirement lump sum of an amount equal to the lower of—

(a) the amount which the Fund trustees determine to be equivalent to the proportion of the individual’s scheme pension specified in the commutation notice, or
(b) the permitted maximum (construed in accordance with paragraph 2 of Schedule 29 to the Finance Act 2004 (c.12)).

(2) The annual scheme pension payable to an individual who is to be paid a retirement lump sum is to be reduced by an amount which the Fund trustees determine to be appropriate in consequence of the individual’s entitlement to the retirement lump sum.

(3) A determination of the Fund trustees’ for the purposes of this rule must be—
(a) certified by the scheme actuary, or
(b) made in accordance with guidance and tables prepared by the scheme actuary.

Special rule for commutation by individual approaching the age of 75

44 (1) This rule applies to an individual who—
(a) gives a valid commutation notice before reaching the age of 75, and
(b) would not (but for this rule) be entitled to be paid a scheme pension at that time by reason only of being a serving MSP or the holder of a pensionable office.

(2) Despite rule 37(1)(c)—
(a) an individual to whom this rule applies is to be entitled to be paid a scheme pension from the day before the member’s 75th birthday, but
(b) the amount of scheme pension so payable is to be nil until the individual is neither an MSP nor the holder of a pensionable office.

Commuting trivial amounts

45 (1) The Fund trustees may pay a lump sum (a “one-off lump sum”) to an individual if the following conditions are met—

\[ \text{Condition 1} \]
The individual applies to the Fund trustees for payment of a one-off lump sum instead of a scheme pension.

\[ \text{Condition 2} \]
The Fund trustees are satisfied that, if paid, the one-off lump sum would be a “trivial commutation lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

(2) The amount of one-off lump sum to which an individual is entitled on any day is an amount equal to the value of the individual’s uncrystallised rights under the scheme on that day (as determined by the Fund trustees in accordance with section 212 of the Finance Act 2004 (c.12)).

(3) A determination of the Fund trustees must be—
(a) certified by the scheme actuary, or
(b) made in accordance with guidance and tables prepared by the scheme actuary.

(4) Payment of a one-off lump sum extinguishes the rights of all persons to receive scheme benefits in respect of the recipient.
PART H

EARLY RETIREMENT

Early retirement

46 (1) An individual is eligible to take early retirement if the individual is—

(a) 55 or over but is not yet 65, and

(b) neither an MSP nor the holder of a pensionable office.

(2) An eligible individual may take early retirement by giving notice (an “early retirement notice”) to the Fund trustees.

(3) Despite rule 37(1), an individual who takes early retirement is entitled to be paid his or her scheme pension from—

(a) the date on which the early retirement notice is given, or

(b) such later date as the individual may specify in the early retirement notice.

(4) The annual scheme pension payable to an individual is to be reduced by the appropriate percentage.

“appropriate percentage” is calculated as follows—

\[(65 \text{ less individual’s age at retirement (in years)}) \times 4\]

(5) The reduction in scheme pension is to continue to have effect after the individual reaches the age of 65.

PART I

ILL-HEALTH

Serious ill-health pension

47 An individual is entitled to a serious ill-health pension if the Fund trustees are satisfied that the following conditions are met—

1. **Condition 1**: The individual resigns as or otherwise stops being an MSP or, as the case may be, the holder of a pensionable office as a direct consequence of a health condition.

2. **Condition 2**: At that time, the individual would be entitled to a scheme pension but for the fact that the individual is not yet 65 years old.

3. **Condition 3**: The individual applies to the Fund trustees for a serious ill-health pension.

4. **Condition 4**: The health condition prevents the individual from doing any gainful work.

5. **Condition 5**: The health condition is expected to be permanent and to continue to prevent the individual from doing gainful work.

6. **Condition 6**: The application is accompanied by evidence that a doctor is satisfied that conditions 4 and 5 are met.
Ordinary ill-health pension

An individual is entitled to an ordinary ill-health pension if the Fund trustees are satisfied that the following conditions are met—

Condition 1 The individual resigns as or otherwise stops being an MSP or, as the case may be, the holder of a pensionable office as a direct consequence of a health condition.

Condition 2 At that time, the individual would be entitled to a scheme pension but for the fact that the individual is not yet 65 years old.

Condition 3 The individual applies to the Fund trustees for an ordinary ill-health pension.

Condition 4 The health condition—

(a) prevents the individual from adequately performing the duties of an MSP or, as the case may be, the holder of a pensionable office, but

(b) does not prevent the individual from doing other gainful work.

Condition 5 The health condition is expected to be permanent and to continue to prevent the individual from adequately performing the duties mentioned in condition 4(a).

Condition 6 The application is accompanied by evidence that a doctor is satisfied that conditions 4(a) and 5 are met.

Deferred pensioner’s ill-health pension

A deferred pensioner is entitled to a deferred pensioner’s ill-health pension if the Fund trustees are satisfied that the following conditions are met—

Condition 1 The deferred pensioner applies to the Fund trustees for a deferred pensioner’s ill-health pension.

Condition 2 The deferred pensioner is under 65.

Condition 3 The deferred pensioner has stopped doing gainful work as a direct consequence of a health condition.

Condition 4 At the time of stopping work the deferred pensioner would be entitled to a scheme pension but for the fact that the deferred pensioner is not yet 65 years old.

Condition 5 The health condition prevents the deferred pensioner from doing gainful work.

Condition 6 The health condition is expected to be permanent and to continue to prevent the deferred pensioner from doing gainful work.

Condition 7 The application is accompanied by evidence that a doctor is satisfied that conditions 4 and 5 are met.
Amount of serious ill-health pension

50 (1) Part F (Pensions) applies with the following modifications to an individual who is entitled to a serious ill-health pension and who has reckonable service as an MSP—

(a) the individual is to be treated as having been aged 65 on the relevant day,

(b) the individual’s reckonable service as an MSP is to be increased by a period equal to the period of reckonable service as an MSP that the individual would obtain if the individual were to be an MSP member from the relevant day until the individual’s 65th birthday,

(c) if the individual was a dual mandate MSP on the relevant day (or would have been had he or she been an MSP on that day), that increased period of reckonable service as an MSP is to be reduced by the same proportion as the MSP’s salary was (or would have been) reduced on that day,

(d) the individual is to be treated as having made scheme member contributions during that increased period of reckonable service as an MSP at the rate which applied to the individual on the relevant day, and

(e) the individual’s reckonable service as an office-holder (if any) is not increased.

(2) Part F (Pensions) applies with the following modifications to an individual who is entitled to a serious ill-health pension and who has reckonable service as an office-holder only—

(a) the individual is to be treated as having been aged 65 on the relevant day, and

(b) the amount of annual office-holder pension payable to the individual is to be increased by an amount equal to—

\[ A \times \frac{B}{C} \]

where—

“\(A\)” is the annual salary payable to an MSP by virtue of section 81(1) of the Scotland Act on the relevant day,

“\(B\)” is the period of reckonable service as an office-holder that the individual would have obtained if the individual had continued to hold a pensionable office from the relevant day until the individual’s 65th birthday, and

“\(C\)” is—

(i) if higher rate scheme member contributions were being made on the relevant day, 40,

(ii) if lower rate scheme member contributions were being made on the relevant day, 50.

(3) In this rule, “relevant day” means the day on which the individual resigned as or otherwise stopped being, an MSP or, as the case may be, the holder of a pensionable office.
Amount of ordinary ill-health pension

51 Rule 37 applies to an individual who is entitled to an ordinary ill-health pension as if the individual reached the age of 65 on the day on which the individual resigned as or otherwise stopped being an MSP or, as the case may be, the holder of a pensionable office.

Amount of deferred pensioner’s ill-health pension

52 Rule 37 applies to an individual who is entitled to a deferred pensioner’s ill-health pension as if the individual reached the age of 65 on the day on which the application for the pension was made.

Review of ill-health pension entitlements

53 (1) The Fund trustees may review an individual’s entitlement to an ill-health pension at any time before the individual reaches the age of 65 (and may carry out such a review at regular intervals determined by them).

(2) The Fund trustees may require an individual whose entitlement is being reviewed to provide evidence from a doctor on the individual’s state of health.

(3) The Fund trustees may, if satisfied following a review that the individual’s state of health no longer prevents the individual from doing gainful work, determine that the individual—

(a) is no longer to be entitled to a ill-health pension, or

(b) is to be entitled to an ordinary ill-health pension instead of a serious ill-health pension (where they remain satisfied that the individual’s state of health still prevents the individual from adequately performing the duties of an MSP or a holder of a pensionable office).

(4) The Fund trustees may determine that an individual who refuses to be examined in accordance with rule 54, or who otherwise fails to co-operate with a review, is no longer to be entitled to an ill-health pension.

(5) If the Fund trustees make a determination under this rule—

(a) pension payments are to stop or, as the case may be, be reduced from the date of the determination, and

(b) the scheme is to operate in relation to the individual from then onwards as if the individual had not been entitled to an ill-health pension or, as the case may be, to a serious ill-health pension.

Medical examinations

54 (1) The Fund trustees may require—

(a) an applicant for an ill-health pension, or

(b) an individual whose entitlement to an ill-health pension is being reviewed,

to be examined by a doctor nominated by them.

(2) The cost of any doctor’s examination is to be borne by the Fund trustees or the examinee (as the Fund trustees may determine).
55  (1)  An individual is entitled to be paid a lump sum (an “ill-health lump sum”) instead of a scheme pension if the following conditions are met—

Condition 1  The individual applies to the Fund trustees for an ill-health lump-sum.

Condition 2  The individual is neither an MSP nor the holder of a pensionable office.

Condition 3  The individual has reckonable service as an MSP or as an office-holder.

Condition 4  The Fund trustees are otherwise satisfied that, if paid, the ill-health lump sum will be a “serious ill-health lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

(2)  An ill-health lump sum is to be equal to 5 times the annual scheme pension—

(a)  in the case of an applicant aged 65 or over, which would otherwise be payable to the individual,

(b)  in the case of an applicant aged under 65, which would be payable if the individual became entitled to a serious ill-health pension from the day on which the ill-health lump sum is payable.

(3)  Payment of an ill-health lump sum extinguishes all the recipient’s rights to receive scheme benefits.

PART J

SURVIVING PARTNERS AND CHILDREN

CHAPTER 1

SCHEME PENSION ENTITLEMENT

56  (1)  References in this Part to a deceased individual’s “scheme pension entitlement” are to be construed in accordance with this rule.

(2)  The “scheme pension entitlement” of an individual who died while being a participating member—

(a)  where if the individual died when aged 65 or over, is the annual amount of scheme pension which would have been payable to the deceased if he or she had not been an MSP or the holder of a pensionable office on the day on which he or she died,

(b)  where if the individual died when aged under 65, is the annual amount of scheme pension which would have been payable to the deceased if he or she had become entitled to (and had been paid) a serious ill-health pension on the day on which he or she died.
(3) The “scheme pension entitlement” of an individual who died while being a deferred pensioner—
   (a) where if the individual died when aged 65 or over, is the annual amount of scheme pension which would have been payable to the deceased if he or she had not been an MSP or the holder of a pensionable office on the day on which he or she died,
   (b) where if the individual died when aged under 65, is the annual amount of scheme pension which would have been payable to the deceased if he or she had been aged 65 on the day on which he or she died.

(4) The “scheme pension entitlement” of an individual who died while being a scheme pensioner—
   (a) where the deceased received a retirement lump sum, is the annual amount of scheme pension which would have been payable to the deceased immediately before he or she died had the pension not been reduced under rule 43(2),
   (b) where the deceased did not receive a retirement lump sum, is the annual amount of scheme pension being paid to the deceased immediately before he or she died.

(5) The “scheme pension entitlement” of a deceased individual whose entitlement to scheme benefits was extinguished by rule 55(3) before he or she died is the annual amount of scheme pension which would have been payable to the deceased if—
   (a) the ill-health lump sum had not been paid to the deceased,
   (b) the deceased had stopped being a participating member on the day on which the ill-health lump sum was paid,
   (c) the deceased had become entitled to a scheme pension on that day, and
   (d) where that day was before the deceased’s 65th birthday—
      (i) the deceased had been entitled to a serious ill-health pension from that day (see rule 47), and
      (ii) the deceased’s scheme pension had been enhanced and paid accordingly (see rule 50).

(6) A deceased individual who was a scheme pensioner when he or she died only because of rule 44(2) is to be treated for the purposes of this rule as having been a deferred pensioner at that time.

CHAPTER 2
PARTNER’S PENSION ETC.

Partner

57 (1) “Partner”, in relation to any deceased individual, means—
   (a) the individual’s spouse or civil partner, or
   (b) where no such person survives the deceased, any individual falling within this rule.

(2) An individual falls within rule 57(1)(b) if—
(a) the deceased nominated the individual as his or her partner by giving notice to the Fund trustees at least 6 months before death, and

(b) the Fund trustees are satisfied—

(i) that the individual and the deceased lived together as if they were husband and wife or, as the case may be, civil partners for the period of 2 years which immediately preceded the deceased’s death,

(ii) that neither the individual nor the deceased lived with any other person in such a relationship (or with a spouse or civil partner) during that period,

(iii) that, during that period—

(A) the individual was financially dependant on the deceased, or

(B) the individual’s financial relationship with the deceased was one of mutual dependence, and

(iv) that the individual and the deceased were not, immediately before the deceased died, prevented by law from either marrying or becoming civil partners.

Partner’s pension

58 (1) A pension (a “partner’s pension”) is to be paid to a surviving partner of any scheme member who dies.

(2) The annual partner’s pension so payable is 5/8ths of the deceased’s scheme pension entitlement.

Enhancement of initial partner’s pension

59 (1) This rule applies where amount A is less than amount B for any part of the 3 month period following the death of a participating member or a scheme pensioner.

(2) Amount A is the total of—

(a) the amount of partner’s pension to be paid to the surviving partner for the 3 month period (or the relevant part of it), and

(b) the amount of children’s pension to be paid to the surviving partner for the 3 month period (or the relevant part of it) on condition that the partner applies it for the benefit of an eligible child.

(3) Amount B is—

(a) where the deceased was a participating member, the amount of the salary payments which would have been paid for the 3 month period (or the relevant part of it) if the deceased had lived and had continued to be paid the same salary, or

(b) where the deceased was a scheme pensioner, the amount of scheme pension which would have been payable for the 3 month period (or the relevant part of it) if the deceased had lived.

(4) Where this rule applies, the partner’s pension is to be increased by the difference between amount A and amount B.
Duration of partner’s pension

60 (1) A partner’s pension is payable from the day after the day on which the deceased partner
died.

(2) Pension payments need not begin unless the individual entitled to them has given the Fund trustees—
(a) notice of that entitlement, and
(b) such information as they may reasonably require—
   (i) about the surviving partner’s entitlement to any other pension,
   (ii) to calculate their liability for a lifetime allowance charge or any other tax,
   (iii) to make the payments.

This rule does not affect the date from which a partner’s pension is payable.

(3) Pension payments are to continue for the rest of the surviving partner’s life.

(4) Pension payments are to be made monthly in arrears (or in such other instalments of no longer than one year as the Fund trustees may determine).

Partner’s trivial lump sum

61 (1) The Fund trustees may pay a lump sum (a “partner’s trivial lump sum”) to an individual who is entitled to a partner’s pension if the following conditions are met—

   Condition 1 The individual applies to the Fund trustees for payment of a partner’s trivial lump sum instead of a partner’s pension.

   Condition 2 No payment relating to the deceased has been made to the individual by way of—
   (a) a partner’s pension, or
   (b) a death in service lump sum.

   Condition 3 The individual is not entitled to receive pension payments under rule 69.

   Condition 4 The Fund trustees are satisfied that, if paid, the partner’s trivial lump sum would be a “trivial commutation lump sum death benefit” for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (c.12).

(2) The amount of a partner’s trivial lump sum is to be an amount equal to the value of the individual’s scheme benefits (as determined by the Fund trustees).

(3) Such a determination must be—
   (a) certified by the scheme actuary, or
   (b) made in accordance with guidance or tables prepared by the scheme actuary.

(4) Payment of a partner’s trivial lump sum extinguishes all the individual’s rights to receive scheme benefits in respect of the deceased.
CHAPTER 3

CHILDREN’S PENSIONS

Children’s pensions

62 (1) A pension (a “children’s pension”) is to be paid in respect of any period during which there are eligible children of any scheme member who dies.

(2) The annual children’s pension so payable is—
   (a) when a partner’s pension is also payable, amount A,
   (b) when no partner’s pension is payable, amount B.

(3) Amount A is—
   (a) where there is one eligible child, 1/4 of the deceased’s scheme pension entitlement,
   (b) where there are two or more eligible children, 3/8ths of deceased’s scheme pension entitlement.

(4) Amount B is—
   (a) where there is one eligible child entitled to receive the pension, 5/16ths of the deceased’s scheme pension entitlement,
   (b) where there are two or more eligible children entitled to receive the pension, 5/8ths of deceased’s scheme pension entitlement.

Eligible children

63 (1) A “child”, in relation to a deceased individual, includes—
   (a) an adopted child, and
   (b) a stepchild who, when the deceased died, was—
      (i) financially dependant on the deceased, or
      (ii) dependant on the deceased because of physical or mental impairment.

(2) A deceased’s child is an “eligible child” for any period starting on or after the date of the deceased’s death during which any of the following conditions are met—
   Condition 1 The child is born and aged 17 or under.
   Condition 2 The child—
      (a) is aged over 17 but under 23,
      (b) was, when the deceased died—
         (i) financially dependant on the deceased, or
         (ii) aged 17 or under, and
      (c) would, in the opinion of the Fund trustees, be financially dependant on the deceased had the deceased survived.

   Condition 3 The child—
(a) was dependant on the deceased because of physical or mental impairment when he or she died, and
(b) would, in the opinion of the Fund trustees, still be so dependant had the deceased survived.

Payment of children’s pension

64 (1) A children’s pension is payable—
(a) from the start of the first period in respect of which rule 62(1) requires it to be paid, and
(b) during the rest of that period (and any subsequent period in respect of which that rule requires it to be paid).

(2) It is for the Fund trustees to decide to who a children’s pension (or any part of it) is to be paid.

(3) Where a children’s pension (or any part of it) is paid to a person other than the eligible children in respect of whom it is paid (the “intended beneficiaries”), the recipient must—
(a) apply such proportion of the amount paid as the Fund trustees may direct for the benefit of each intended beneficiary, or
(b) where no direction is made, apply the amount paid (without discretion) for the benefit of the intended beneficiaries.

(4) If the recipient does not so apply a pensions payment (or any part of it), the Fund trustees may—
(a) recover the misappropriated amount from the recipient, and
(b) take such action as they think fit in order to ensure that any recovered amount is applied for the benefit of the intended beneficiary.

For example, the Fund trustees may deduct an amount equal to the misappropriated amount from any future amount to be paid to the recipient under the scheme.

(5) The Fund trustees may withhold payment of a children’s pension (or any part of it) if they are not satisfied that arrangements are in place to ensure that it will be applied for the benefit of the intended beneficiary.

Any withheld amounts are to be paid as soon as the Fund trustees are satisfied that such arrangements are in place.

(6) Pension payments need not begin unless the Fund trustees have received—
(a) notice of an eligible child’s entitlement, and
(b) such information as they may reasonably require—
(i) about the eligible child’s entitlement to any other pension,
(ii) to calculate their liability for a lifetime allowance charge or any other tax,
(iii) to make the payments.

This rule does not affect the date from which a children’s pension is payable.
(7) Pension payments are to be made monthly in arrears (or in other instalments of no longer than one year as the Fund trustees may determine).

**PART K**

**LUMP SUM DEATH BENEFITS**

5 **Death in service lump sum**

65 (1) The Fund trustees may pay a lump sum (a “death in service lump sum”) on the death of a participating member—

(a) to the deceased’s nominee, or

(b) where there is no such nominee, to the deceased’s personal representatives.

But they may do so only if satisfied that, if paid, the death in service lump sum would be a “defined benefits lump sum death benefit” for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (c.12).

(2) A death in service lump sum is to be the greater of—

(a) 4 times the participating member’s annual salary at the time of death, or

(b) the scheme member contributions, with interest, paid before death.

**Nominations for death in service lump sum**

66 (1) A participating member may nominate any person as his or her nominee by giving notice to the Fund trustees in such form as they may require.

Such a nomination may—

(a) nominate 2 or more persons, and

(b) where it does so, may specify the proportion of any death in service lump sum which is to be paid to each nominee.

(2) A participating member may withdraw a nomination at any time by giving notice to the Fund trustees in such form as they may require.

(3) A nomination in force when the participating member dies is invalid in so far as—

(a) it nominates an individual who was the participating member’s partner when the nomination was made but was not his or her partner when he or she died, or

(b) the Fund trustees consider that it would not be reasonably practicable to pay a death in service lump sum to a nominee.

(4) The proportion of any death in service lump sum which would, but for rule 66(3), have been paid to invalidated nominees is to be paid to the deceased’s personal representatives.

**Deferred pensioner lump sum**

67 (1) A lump sum (a “deferred pensioner lump sum”) is to be paid to the personal representatives of a deferred pensioner who dies while aged under 75 leaving no—

(a) surviving partner, or
(b) surviving child who, at the time of death, is an eligible child or is unborn.

But such a payment may be made only if the Fund trustees are satisfied that, if paid, the deferred pensioner lump sum would be a “defined benefits lump sum death benefit” for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (c.12).

(2) A deferred pensioner lump sum is to be equal to the amount of scheme member contributions, with interest, made by a deferred pensioner.

PART L

5 YEAR GUARANTEE

Initial pension period

A scheme pensioner’s “initial pension period” is the period of 5 years beginning on the day on which he or she is first entitled to receive a scheme pension (not counting any intervening period of less than 5 years in which pension payments are suspended under rule 41 or reduced under rule 44).

Guaranteed pension for surviving partner

Where a scheme pensioner dies during his or her initial pension period and leaves a surviving partner—

(a) the surviving partner’s entitlement to be paid a partner’s pension is suspended for the remainder of the initial pension period, and

(b) the deceased’s scheme pension is to continue to be paid for the remainder of his or her initial pension period (but is to be paid to the surviving partner instead of to the deceased).

(2) Where a children’s pension is payable in respect of the deceased, the pension payable under this rule is to be reduced—

(a) for the 3 months following death, by the amount of children’s pension payable to the surviving partner during that period, and

(b) for the remainder of the initial pension period, by the total amount of children’s pension payable during that period.

(3) Where the surviving partner dies during the deceased’s initial pension period, the pension payable under this rule is to be paid to the surviving partner’s personal representatives.

Guaranteed lump sum where scheme pensioner dies aged under 75 with no surviving partner

A lump sum (a “guaranteed lump sum”) is to be paid to the personal representatives of any scheme pensioner who—

(a) dies before the end of his or her initial pension period,

(b) was aged under 75 when he or she died, and

(c) does not leave a surviving partner.

(2) A guaranteed lump sum is to be equal to—
(a) the amount of scheme pension which would have been paid to the deceased from time of death until the end of his or her initial pension period, less
(b) the amount of children’s pension (if any) which the Fund trustees consider likely to be payable from that time until the end of that period.

(3) An additional lump sum is to be paid to the deceased’s personal representatives if the Fund trustees consider that the amount of any guaranteed lump sum (or any previous additional lump sum) should have been more than the amount paid (because they have revised their estimate of the amount of children’s pension which they consider likely to be payable).

(4) An additional lump sum is to be equal to the difference between the amount of the guaranteed lump sum (together with any previous additional lump sum) and the amount which the Fund trustees consider should have been paid.

(5) A guaranteed lump sum or additional lump sum may be paid under this rule only if the Fund trustees are satisfied that, if paid, the lump sum would be a “defined benefits lump sum death benefit” for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (c.12).

**Guaranteed pension where scheme pensioner dies aged 75 or over with no surviving partner**

71 (1) Where a scheme pensioner—

(a) dies before the end of his or her initial pension period,

(b) was aged 75 or over when he or she died, and

(c) does not leave a surviving partner,

the deceased’s scheme pension is to continue to be paid for the remainder of his or her initial pension period (and is to be paid to the deceased’s personal representatives).

(2) A pension payable under this rule is to be reduced by the amount of any children’s pension payable during the same period.

**PART M**

**SHORT SERVICE REFUNDS**

**Payment of short service refunds**

72 (1) A sum (a “short service refund”) is to be paid to an individual if the following conditions are met—

*Condition 1* The individual is no longer a participating member.

*Condition 2* The individual is not a scheme pensioner.

*Condition 3* The individual has fewer than 3 months total reckonable service.

*Condition 4* The individual has applied to the Fund trustees for payment of a short service refund.
Condition 5

The Fund trustees are satisfied that, if paid, the full amount of the short service refund will be a “short service refund lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

(2) A short service refund is to be equal to—

(a) the amount of scheme member contributions paid by the individual, less

(b) the amount of any contributions equivalent premium paid in respect of the individual (see section 55(2) of the Pension Schemes Act 1993 (c.48)).

Extinction of scheme benefits

Payment of a short service refund extinguishes the rights of all persons to receive scheme benefits in respect of the recipient.

PART N

TRANSFERS

CHAPTER 1

TRANSFERS OUT

Statement of entitlement

(1) An individual’s “transferable sum” is the amount of cash equivalent set out in a statement of entitlement which the Fund trustees provide to the individual under section 93A of the Pension Schemes Act 1993 (c.48) (but see rules 76 to 78 which provide for enhancement and reduction of transferable sums).

(2) That section applies for the purposes of the scheme in relation to an individual who—

(a) is aged 64 or over, and

(b) stopped being a participating member no longer than 6 months ago,

in the same way as it applies in relation to an individual aged under 64.

Transfers to other pension schemes

An individual’s transferable sum must be transferred from the Pension Fund if the following conditions are met—

Condition 1

The individual—

(a) has been but is no longer a participating member, and

(b) is not a scheme pensioner.

Condition 2

The individual has total reckonable service of at least 3 months.

Condition 3

The Fund trustees have given the individual a statement of entitlement in pursuance of section 93A of the Pension Schemes Act 1993 (c.48).
Condition 4  The individual gives the Fund trustees notice (a “transfer-out notice”)—
(a) specifying the way in which the transferable sum is to be transferred, and
(b) setting out any other information which the Fund trustees may reasonably require in relation to the transfer.

Condition 5  The transfer-out notice is given before the later of—
(a) the day falling 6 months after the individual stopped being a participating member, and
(b) the individual’s 64th birthday.

Condition 6  The transfer-out notice is given within 3 months of the guarantee date relating to the statement of entitlement (see section 93A(2) of the Pension Schemes Act 1993 (c.48)).

Condition 7  The way in which the transferable sum is to be transferred is permitted by section 95(2) of the Pension Schemes Act 1993 (c.48).

Condition 8  The transfer—
(a) would be a recognised transfer for the purposes of section 169 of the Finance Act 2004 (c.12), and
(b) is not prohibited by any other enactment.

Enhancement of transferable sum

76 (1)  A transferable sum of less than amount A is to be increased to amount A.
(2) Amount A, in relation to an individual, means the total of—
(a) the individual’s scheme member contributions,
(b) any transfer-in sums paid into the Pension Fund in relation to the individual, and
(c) any instalments or lump sums paid by the individual to buy added years.

Reduction of transferable sum

77  Where section 96(2) of the Pension Schemes Act 1993 (c.48) applies in relation to a transfer under rule 75, the Fund trustees may reduce the transferable sum by an amount equal to the proportion of that sum which represents the individual’s accrued rights—
(a) to a guaranteed minimum pension, or
(b) attributable to service in contracted-out employment (within the meaning of section 8 of the Pension Schemes Act 1993 (c.48)).

Transfer payment

78 (1)  Where rule 75 requires a transfer to be made, the transferable sum is to be paid from the Pension Fund in the way specified in the transfer-out notice by no later than—
(a) the individual’s 65th birthday, or
(b) if later, the day falling 6 months after the transfer notice was given.

(2) If payment is made later than 6 months after the guarantee date relating to the statement of entitlement by reference to which the transferable sum was determined, the transferable sum is to be increased by—

(a) the amount, if any, by which it falls short of what the transferable sum would have been if the guarantee date had been the date of payment, or
(b) if greater, the amount of interest on the transferable sum calculated on a daily basis over the period from the guarantee date to the date of payment (calculated at an annual rate of 1% above the Bank of England base rate).

Time limits

The Fund trustees may extend any time limit set out in this Chapter in relation to a particular transfer if they think it reasonable to do so.

Extinction of scheme benefits

A transfer under rule 75 extinguishes the rights of all persons to receive scheme benefits in respect of the individual (other than any accrued rights in respect of which the transferable sum was reduced under rule 77).

CHAPTER 2

TRANSFERS IN

A sum (a “transfer-in sum”) may be paid from another pension scheme into the Pension Fund in relation to a participating member if the following conditions are met—

Condition 1  The participating member gives the Fund trustees notice (a “transfer-in notice”) specifying—

(a) the amount of the transfer-in sum, and
(b) the pension scheme which is to make the payment.

Condition 2  The transfer-in notice is given before the participating member’s 64th birthday.

Condition 3  The participating member has at least 3 months total reckonable service.

Condition 4  The pension scheme which is to make the payment is—

(a) registered for the purposes of Part 4 of the Finance Act 2004 (c.12) (see section 150 of that Act), or
(b) a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169 of that Act).
**Scottish Parliamentary Pensions Bill**

**Schedule 1—Scottish Parliamentary Pension Scheme**

**Part N—Transfers**

**Chapter 2—Transfers in**

*Condition 5*  
The transfer-in sum is the amount, if any, which requires to be applied in relation to any entitlement to a guaranteed minimum pension arising in respect of the transfer-in sum.

*Condition 6*  
The transfer is not prohibited by rule 83.

*Condition 7*  
Any condition imposed by the Fund trustees in relation to the transfer is met to their satisfaction.

**Effect of transfer in**

82 (1) The reckonable service of any participating member in respect of whom a transfer-in sum is paid into the Pension Fund is to be increased as follows—

(a) where the participating member is an MSP member, the participating member’s reckonable service as an MSP is to be increased by an amount determined by the Fund trustees,

(b) where the participating member is an office-holder member but not an MSP—

(i) the participating member’s reckonable service as an office-holder is to be increased by an amount determined by the Fund trustees, and

(ii) that increase is, for the purposes of rule 39(3), to be attributed to the period in office being served when the transfer-in sum is paid.

(2) The increased period of reckonable service is, for the purposes of rule 38(1) or, as the case may be, 39(3), to be treated as a period during which higher rate scheme member contributions were made.

(3) The Fund trustees must determine the amount by which a participating member’s reckonable service is to be so increased—

(a) as at the date on which the transfer-in sum is paid into the Fund, and

(b) in accordance with guidance and tables prepared by the scheme actuary.

**Limitation on transfers in**

83 (1) A transfer-in sum is not to be paid if the Fund trustees consider that the corresponding increase in reckonable service, when taken with the participating member’s anticipated reckonable service, would (but for rule 38(2) or 39(4)) entitle the participating member to—

(a) an annual MSP pension of more than the individual’s annual MSP pension cap, or

(b) an annual office-holder pension of more than the individual’s annual office-holder pension cap.

(2) An applicant’s “anticipated reckonable service” is the reckonable service as an MSP or, as the case may be, office-holder which the participating member would obtain if he or she—

(a) continued as an MSP member (and continued making scheme member contributions at the same rate) until the next ordinary general election day, or (as the case may be)
(b) continued to hold the same office and to be an office-holder member (and continued making scheme member contributions at the same rate) until the next ordinary general election day (or such other day as the Fund trustees may determine).

PART O

ADDED YEARS

84 (1) A participating member may increase his or her reckonable service by buying added years in accordance with this Part.

(2) Added years can be bought as years and as fractions of years.

(3) An individual who is an MSP member may apply to buy added years in respect of reckonable service as an MSP only.

(4) An individual who is an office-holder member but not an MSP may apply to buy added years in respect of reckonable service as an office-holder only.

Buying added years by instalments

85 (1) The Fund trustees may accept a participating member’s application to buy added years by monthly instalments payable if the following conditions are met—

Condition 1 The application states the number of added years which the applicant wishes to buy.

Condition 2 The application states whether the applicant wishes to pay instalments for a period ending on—

(a) his or her 65th birthday, or

(b) the next ordinary general election day.

Condition 3 The applicant has satisfied the Fund trustees that he or she is in good health.

Condition 4 The applicant has given the Fund trustees any information that they reasonably require in relation to the application.

Condition 5 Rule 89 does not require the Fund trustees to reject the application.

(2) An accepted application is irrevocable.

(3) The person responsible for paying the participating member’s salary must—

(a) deduct instalments from each salary payment made from the first day of the month following acceptance until the end of the period for which instalments are payable, and

(b) pay them to the Fund trustees.

(4) The amount of the instalments is to be determined—

(a) by the scheme actuary, or

(b) by the Fund trustees in accordance with guidance or tables prepared by the scheme actuary.
(5) On payment of the last instalment, the participating member’s reckonable service as an MSP or, as the case may be, as an office-holder is increased by the number of added years bought.

(6) The increased period of reckonable service is, for the purposes of rule 38(1) or, as the case may be, 39(3), to be treated as a period during which higher rate scheme member contributions were made.

(7) Where added years are bought by an office-holder member who is not an MSP, the increase in reckonable service is, for the purposes of rule 39(3), to be attributed to the period in office being served when the added years are bought.

**Interruption of service**

86 (1) This rule applies—

(a) where an MSP member buying added years by monthly instalments stops being an MSP before paying the last instalment, and

(b) where an office-holder member (who is not an MSP) buying added years by monthly instalments stops holding his or her current office (or becomes an MSP) before paying the last instalment.

(2) Where this rule applies no more instalments are payable and the individual’s reckonable service as an MSP or, as the case may be, office-holder is increased—

(a) where the individual died or left the scheme in circumstances entitling him or her to a serious ill-health pension, by the number of added years by which it would have increased if all the instalments had been paid, or

(b) where the individual leaves the scheme in any other circumstance, by a number of added years calculated as follows—

\[ A \times \frac{B}{C} \]

where—

“\( A \)” is the number of added years the individual applied to buy,

“\( B \)” is the period (in days) in respect of which instalments have been paid, and

“\( C \)” is the period (in days) for which instalments would have been paid had the individual remained in the scheme continuously.

**Resumption of service as MSP member**

87 (1) This rule applies where—

(a) an MSP member’s application to buy added years by monthly instalments is accepted by the Fund trustees but the individual concerned stops being an MSP member before paying the last instalment,

(b) the individual subsequently rejoins the scheme as an MSP member before the end of the period for which instalments were originally payable, and

(c) the individual, within 3 months of so rejoining, notifies the Fund trustees of his or her intention to resume paying instalments.
(2) Where this rule applies—

(a) instalments (of the same amount as before) are payable from the day on which the individual rejoined the scheme until the end of the period for which instalments were originally payable,

(b) the individual’s reckonable service as an MSP is reduced by the amount by which it was previously increased under rule 86(2), and

(c) when the last instalment is paid (or, if earlier, when the individual next leaves the scheme), the individual’s reckonable service as an MSP is increased by a number of added years calculated as follows—

\[ A \times \frac{B}{C} \]

where—

“A” is the number of added years the individual applied to buy,

“B” is the total of the periods (in days) before and after the break in service in respect of which instalments have been paid, and

“C” is the period (in days) for which instalments would have been paid had the individual remained in the scheme continuously.

Buying added years by lump sum

88 (1) The Fund trustees may accept a participating member’s application to buy added years by lump sum if the following conditions are met.

- **Condition 1** The application states the number of added years which the applicant wishes to buy.
- **Condition 2** The applicant has satisfied the Fund trustees that he or she is in good health.
- **Condition 3** The applicant has given the Fund trustees any information that they reasonably require in relation to the application.
- **Condition 4** Rule 89 does not require the Fund trustees to reject the application.

(2) The lump sum is payable by the participating member during the period of 6 months following acceptance (and the right to buy added years in pursuance of an accepted application is extinguished at the end of that period).

(3) The amount of the lump sum is to be determined by the Fund trustees by reference to the MSP’s or, as the case may be, the office-holder’s salary on the day he or she applied to buy added years.

(4) Such a determination must be—

(a) certified by the scheme actuary, or

(b) made in accordance with guidance or tables prepared by the scheme actuary.

(5) On payment of the lump sum, the participating member’s reckonable service as an MSP or, as the case may, as an office-holder is increased by the number of added years bought.
(6) The increased period of reckonable service is, for the purposes of rule 38(1) or, as the case may be, 39(3), to be treated as a period during which higher rate scheme member contributions were made.

(7) Where added years are bought by an office-holder member who is not an MSP, the increase in reckonable service is, for the purposes of rule 39(3), to be attributed to the period in office being served when the added years are bought.

Limitations on buying added years

89 (1) The Fund trustees must reject an application to buy added years if the corresponding increase in reckonable service, when taken with the applicant’s anticipated reckonable service, would (but for rule 38(2) or 39(4)) entitle the applicant to—

(a) an annual MSP pension of more than the individual’s annual MSP pension cap, or
(b) an annual office-holder pension of more than the individual’s annual office-holder pension cap.

(2) An applicant’s “anticipated reckonable service” is the reckonable service as an MSP or, as the case may be, office-holder which the applicant would obtain if he or she—

(a) continued as an MSP member (and continued making scheme member contributions at the same rate) until—

(i) where applying to buy by monthly instalments, the end of the period for which instalments are payable, or
(ii) where applying to buy by lump sum, the next ordinary general election day, or

(b) continued to hold the same office and to be an office-holder member (and continued making scheme member contributions at the same rate) until—

(i) where applying to buy by monthly instalments, the end of the period for which instalments are payable, or
(ii) where applying to buy by lump sum, the next ordinary general election day (or such other day as the Fund trustees may determine).

(3) The Fund trustees must reject an application to buy added years if they consider—

(a) that an annual allowance charge may arise under section 227 of the Finance Act 2004 (c.12) in respect of the applicant in any tax year in which an instalment or lump sum would be payable if the application were accepted,
(b) that a lifetime allowance charge may arise under section 214 of the Finance Act 2004 (c.12) in respect of the applicant (or may so arise if the application were accepted), or
(c) that the total of—

(i) the amount which the applicant would pay for added years in any tax year, and
(ii) the amount of scheme member contributions to be made by the applicant in that year,

would exceed 20% of the salary payments to be made to the applicant in that year.
Multiple applications

90 The Fund trustees may accept more than one application by a participating member to buy added years by instalment or lump sum (and may, in particular, accept two or more applications to buy added years by instalments payable in overlapping periods).

PART P

PENSION SHARING

Pension credit members

91 (1) A “pension credit member” is an individual on whom rights are conferred by the Fund trustees in accordance with paragraph 1(2) of Schedule 5 to the Welfare Reform and Pensions Act 1999 (c.30).

(2) It is for the Fund trustees to determine the benefits to which a pension credit member is to be entitled.

But those benefits may consist only of—

(a) a right to be paid a pension from the age of 65,

(b) a right to commute a portion of that pension into a lump sum,

(c) a right to take early retirement when aged between 60 and 65 and accordingly to be paid a reduced pension,

(d) a right to be paid a lump sum instead of a pension where the member has not yet received a pension and is not expected to live for longer than one year because of a health condition,

(e) a right to be paid a lump sum instead of a pension where that lump sum would be a trivial commutation lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12),

(f) where a pension credit member dies within 5 years of first receiving a pension, a right to have the pension paid to a surviving partner, dependant children or personal representatives for the remainder of the 5 year period,

(g) where a pension credit member dies before first receiving a pension, a right to have a lump sum paid to a surviving partner, dependant children or personal representatives of an amount equal to 25% of the cash equivalent of the benefits attributable to the corresponding pension credit (within the meaning of Chapter 4 of Part 4 to the Pension Schemes Act 1993 (c.48)).

(3) An individual’s benefits as a pension credit member are to be provided separately from any other benefits to which the individual may be entitled under the scheme.

(4) A rule which extinguishes an individual’s right to receive scheme benefits on being paid a lump sum does not extinguish any separate rights which the individual may have to receive benefits as a pension credit member (or as a surviving partner, dependant child or personal representative of such a member).

Pension debit members

92 (1) A “pension debit member” is an individual whose scheme benefits have been reduced under section 31 of the Welfare Reform and Pensions Act 1999 (c.30).
When calculating a deceased individual’s “scheme pension entitlement” for the purposes of Chapter 3 of Part J (see rule 56), any reduction of the deceased’s scheme benefits by way of a pension debit is to be ignored.

A pension debit member may not replace scheme benefits by buying added years which the member would not have been able to buy had those benefits not been reduced.

This rule applies for the purposes of calculating the amount of any death in service lump sum or deferred pensioner lump sum payable in respect of a pension debit member.

The proportion of scheme member contributions attributable to the period before the pension debit member’s scheme benefits became subject to the pension debit is to be reduced by the percentage by which those benefits were reduced.

Part 4 of the Welfare Reform and Pensions Act 1999 (c.30) sets out—

(a) when a pension debit member’s scheme benefits become subject to a pension debit (see sections 28 and 29 of that Act), and

(b) the percentage by which those benefits are to be reduced (see section 31 of that Act).

This rule applies where an individual entitled to a pension credit (see section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c.30)) dies before the Fund trustees have discharged their liability in respect of that credit.

Where this rule applies, the Fund trustees may pay a lump sum to the individual’s personal representatives of any amount they think fit (up to a maximum of 25% of the pension credit).

A “dual mandate MSP” is a serving MSP whose salary is reduced under section 82 of the Scotland Act 1998 (c.46).

The following adjustments are to be made when doing the calculation set out in rule 38(1) in respect of any individual who was a dual mandate MSP during any period in which the individual was an MSP member—

(a) any reduction in final salary by virtue of section 82(2) of the Scotland Act 1998 (c.46) is to be ignored,

(b) when determining A, any period of reckonable service as an MSP in respect of which the individual—

(i) made lower rate scheme member contributions, and

(ii) was a dual mandate MSP,
is to be reduced by the same proportion as the MSP’s salary was reduced during 
that period by virtue of section 82(2) of the Scotland Act 1998 (c.46), and 
(c) when determining B, any period of reckonable service as an MSP in respect of 
which the individual—

(i) made higher rate scheme member contributions, and

(ii) was a dual mandate MSP,

is to be reduced by the same proportion as the MSP’s salary was reduced during 
that period by virtue of section 82(2) of the Scotland Act 1998 (c.46).

PART R

TAXES

2004 Act terms

96 In this Part—

“the 2004 Act” means the Finance Act 2004 (c.12),

“event” means a benefit crystallisation event listed in the table in section 216 of 
the 2004 Act,

“lifetime allowance charge” has the meaning given by section 214 of the 2004 
Act,

“scheme administrator” means the scheme administrator of the scheme for the 
purposes of section 217 of the 2004 Act (see sections 270 to 274 of the 2004 Act), 
and

“unauthorised charge” means an unauthorised payments charge (see section 208 
of the 2004 Act) or an unauthorised payments surcharge (see section 210 of the 
2004 Act).

Payment of lifetime allowance charge by scheme administrator

97 (1) The scheme administrator may pay a lifetime allowance charge for which the 
administrator is liable under section 217 of the 2004 Act.

(2) But such a payment may be made only if the individual with whom the scheme 
administrator is jointly and severally liable—

(a) requests the scheme administrator to make the payment on or before the date of 
the event in respect of which the lifetime allowance charge arises, and

(b) pays the amount concerned to the scheme administrator on or before that date.

Payment of lifetime allowance charge from Pension Fund

98 (1) If rule 97(2) prevents the scheme administrator from paying a lifetime allowance charge 
for which the administrator is liable under section 217 of the 2004 Act, the charge is to 
be paid from the Pension Fund.

(2) Following such a payment, a reduction is to be made—
(a) where liability arose in respect of event 8, to the amount or value of the
transferred sums or assets, or
(b) where liability arose in respect of any other event, to the amount or value of the
benefits payable from the Fund to or in respect of the individual with whom the
scheme administrator was jointly and severally liable.

(3) A reduction under rule 98(2) must, in the scheme actuary’s opinion, fully reflect the
corresponding amount paid under rule 97.

Deductions for tax arising on lump sum payments

Any tax due under section 205 of the 2004 Act in respect of a short service lump sum
(see rule 72) is to be deducted from that sum before it is paid.

Reduction of benefits which would otherwise attract unauthorised charge

Where an unauthorised charge would (but for this rule) arise in respect of any payment
from the Pension Fund, that payment must be—
(a) reduced to an amount just below the amount which would otherwise cause that
charge to arise, or
(b) where no such reduction is possible, withheld in accordance with rule 101.

Prohibition on payments which would give rise to liability for certain taxes

Nothing in the scheme authorises any payment from the Pension Fund if making that
payment would give rise to liability for a scheme sanction charge (see section 239 of the
2004 Act) or a de-registration charge (see section 242 of the 2004 Act).

Any payment which would, but for this rule, be made under the scheme is not to be
made.

PART S
ACCOUNTS, AUDIT AND ACTUARIAL REPORTS

Accounts and audit

The Fund trustees must keep proper accounts (and must, in particular, prepare annual
statements of account for each financial year).

The Fund trustees must, within 7 months of the end of each financial year—
(a) arrange for the audit of the annual accounts for that year, and
(b) lay a copy of the annual accounts and audit report before the Scottish Parliament.

Actuarial reports

The “scheme actuary” is the person appointed by the Fund trustees in accordance with
section 47(1)(b) of the Pensions Act 1995 (c.26).

The Fund trustees may obtain an actuarial report on the scheme at any time they think fit
(and must do so at intervals of no more than 3 years).
(3) An actuarial report is to include—
   (a) a report on the general financial position of the Pension Fund,
   (b) an actuarial valuation of the Pension Fund’s assets and liabilities, and
   (c) the scheme actuary’s recommended rate for future contributions under rule 32
       (expressed as a percentage of participating member salary payments).

(4) The Fund trustees must lay a copy of each actuarial report before the Scottish Parliament
within 3 months of obtaining it.

**PART T**

**MISCELLANEOUS**

104 Section 50 of the Pensions Act 1995 (c.26) requires the Fund trustees to make and
   implement arrangements for the resolution of disputes.

**Guaranteed minimum pension**

105 (1) Any individual who is entitled to a guaranteed minimum pension under the scheme in
   respect of any transfer-in sum is, on attaining pensionable age, to be paid a pension for
   the rest of the individual’s life at a weekly rate of not less that his or her guaranteed
   minimum (if any) under sections 14 to 16 of the Pension Schemes Act 1993 (c.48).

   “pensionable age” is to be construed in accordance with paragraph (a) of the definition
   of that term in section 181 of the Pension Schemes Act 1993 (c.48).

(2) The commencement of payment of a pension payable under this rule is to be postponed
   if the individual concerned is an MSP or the holder of a pensionable office on the day on
   which it becomes payable.

(3) Such a postponement is to last—
   (a) until the earlier of—
       (i) the day on which the individual is neither an MSP nor the holder of a
           pensionable office, or
       (ii) the day falling 5 years after the first day of the postponement, or
   (b) for such longer period as the individual may consent to.

**Restriction on assignability etc.**

106 Despite paragraphs (a) to (c) of section 91(5) of the Pensions Act 1995 (c.26),
   assignations, surrenders and commutations of the type described in those paragraphs are
   not permitted in relation to scheme benefits (except insofar as permitted explicitly by
   any scheme rule).

**Payments due in respect of deceased individuals**

107 (1) This rule applies where a deceased’s scheme entitlement is no more than the amount for
   the time being applicable in relation to the enactments mentioned in section 6 of the
   Administration of Estates (Small Payments) Act 1965 (c.32).
A deceased’s “scheme entitlement” is the total of—

(a) any amounts due to the deceased under the scheme at the time of death, and
(b) any amounts payable to the deceased’s personal representatives under the scheme (ignoring any amounts due by way of interest accruing after death).

Where this rule applies, the Fund trustees need not require confirmation or other proof of title before paying amounts due to—

(a) the deceased’s personal representatives, or
(b) any person appearing to the Fund trustees to be beneficially entitled to the deceased’s estate.

The recipient of any amount so paid is to be liable to account for that amount (and the Fund trustees are to be relieved from any such liability).

Formal communications

108 (1) A “formal communication” means any—

(a) notice,
(b) application,
(c) request, or
(d) certification,
made or given under or for the purposes of this Act.

(2) A formal communication must be in writing.

(3) A formal communication is made or given to a person if it is—

(a) delivered, or sent by post, to—

(i) where the formal communication is being delivered to the Fund trustees or an MSP, the Scottish Parliament,
(ii) where the formal communication is being sent to the holder of a pensionable office (who is not an MSP), the office-holder’s principal office, or
(iii) in any other case, the usual or last known abode of the person to whom the formal communication is delivered or sent, or
(b) sent in some other way (including by electronic means) which the sender reasonably considers likely to cause it to be delivered on the same or next day.

(4) A formal communication which is sent by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.

(5) A formal communication sent in the way described in rule 108(3)(b) is, unless the contrary is proved, to be treated as having been delivered on the day after it is sent (or, if that day falls on a weekend or a bank holiday, on the next weekday which is not a bank holiday).

“bank holiday” means a day which is a bank holiday in Scotland by virtue of the Banking and Financial Dealings Act 1971 (c.80).
PART U
KEY TERMS

Interpretation

109 (1) In the scheme—

“deferred pensioner” means an individual who is not entitled to receive a scheme pension by virtue only of being—

(a) aged under 65, or

(b) an MSP, or the holder of a pensionable office, who is aged 65 or over,

“doctor” means a fully registered person within the meaning of the Medical Act 1983 (c.54),

“elected” means returned as an MSP by virtue of the Scotland Act 1998 (c.46) (and includes being appointed as an MSP by virtue of section 10 of that Act),

“final salary”, in relation to an MSP or the holder of a pensionable office, means—

(a) the MSP salary or, as the case may be, office-holder salary paid to the individual during the last 12 months (whether continuous or not) during which the individual was an MSP member or, as the case may be, office-holder member, or

(b) if the individual made scheme member contributions from MSP salary or, as the case may be, office-holder salary for fewer than 12 months, the amount determined by doing the following calculation—

\[ A \times \frac{365}{B} \]

where—

“A” is the MSP salary or, as the case may be, office-holder salary paid to the individual during the period for which the individual was an MSP member or, as the case may be, office-holder member, and

“B” is the number of days for which the individual was an MSP member or, as the case may be, office-holder member,

“financial year” means a year ending with 31 March,

“guaranteed minimum pension” has the meaning given by section 8 of the Pension Schemes Act 1993 (c.48),

“higher rate scheme member contribution” is a scheme member contribution of 11% of salary,

“ill-health pension” means—

(a) a serious ill-health pension,

(b) an ordinary ill-health pension, or

(c) a deferred pensioner’s ill-health pension,

“lower rate scheme member contribution” is a scheme member contribution of 6% of salary,
“MSP” means a member of the Scottish Parliament (but also includes an individual to whom an MSP salary is payable after dissolution by virtue of section 83(4) of the Scotland Act 1998 (c.46)),

“ordinary general election day” means a day on which an ordinary general election is scheduled to be held under section 2(2) of the Scotland Act 1998 (c.46),

“participating member” means an individual who is an MSP member or an office-holder member (or both an MSP member and an office-holder member),

“rule” means a rule set out in the scheme,

“salary” means—

(a) in relation to an MSP, the salary payable by virtue of section 81(1) of the Scotland Act 1998 (c.46) (including any salary payable because of section 83(4) of that Act), and

(b) in relation to an office-holder, the salary payable for holding office,

and “MSP salary” and “office-holder salary” are to be construed accordingly,

“salary payment” means—

(a) in relation to a participating member who is an MSP member only, a payment in respect of the member’s MSP salary,

(b) in relation to a participating member who is an office-holder member only, a payment in respect of the member’s office-holder salary,

(c) in relation to a participating member who is both an MSP member and an office-holder member, a payment in respect of the member’s MSP salary or office-holder salary (or both salaries),

“scheme member” means an individual who is—

(a) a participating member,

(b) a deferred pensioner, or

(c) a scheme pensioner,

“scheme pensioner” means an individual—

(a) entitled to receive a scheme pension, or

(b) who would be so entitled but for rule 41(1),

“SPCB” means the Scottish Parliamentary Corporate Body,

“work” includes work—

(a) under a contract of employment, service or apprenticeship,

(b) as the holder of an office, or

(c) as a self-employed person.

(2) References in the scheme to the amount of an individual’s scheme pension are references to the amount of scheme pension payable to the individual under rule 37(2) and, unless the contrary intention appears, are to be read as including any reduction or enhancement to that amount attributable to—

(a) rules 43(2), 44(2), 46(4), 50 or 95, or
(b) section 31 of the Welfare Reform and Pensions Act 1999 (c.30) or any other enactment,
and references to the annual amount of an individual’s scheme pension are to be construed accordingly.

(3) References in the scheme to an amount of scheme member contributions “with interest” are references an amount equal to—
(a) the amount of those contributions, and
(b) compound interest of 4% each year accruing from the date each contribution was paid (calculated with annual rests).

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SCHEDULE 2
(introduced by section 2)

GRANTS PAYABLE ON LEAVING OFFICE

MSP resettlement grant

1 (1) The SPCB must pay a grant (an “MSP resettlement grant”) to each individual who—
   (a) is an MSP immediately before a dissolution of the Scottish Parliament, but
   (b) is not returned as an MSP at the next general election held under Part 1 of the
       Scotland Act 1998 (c.46).

2 (2) An MSP resettlement grant is not payable to the personal representatives of an
      individual who dies before the election concerned.

MSP ill-health retirement grant

2 (1) The SPCB must pay a grant (an “MSP ill-health retirement grant”) to an ex-MSP who
      applies for such a grant if—
      (a) the applicant resigned as an MSP at any time other than immediately before a
          dissolution of the Scottish Parliament, and
      (b) the SPCB is satisfied that the resignation was a direct consequence of a health
          condition which prevented the applicant from performing adequately his or her
          duties as an MSP.

3 (2) The SPCB may, for the purposes of so satisfying itself, require—
      (a) an applicant to provide evidence from a doctor of the applicant’s state of health,
      (b) an examination of the applicant by a doctor nominated by the SPCB (with
           examination costs borne as the SPCB may determine).

Amount of MSP grants

3 (1) The amount of an MSP resettlement grant or MSP ill-health retirement grant is to be
       equal to the appropriate percentage of the annual MSP salary payable in accordance
       with section 81(1) of the Scotland Act 1998 (c.46) when the individual stopped being an
       MSP.

       “appropriate percentage” means the higher of—
       (a) 50%, and
       (b) X%, “X” being equal to—

\[
\frac{A}{12} \times 100
\]

       where “A” is the number of complete continuous years for which the individual
       has been an MSP (up to a maximum of 12).

3 (2) When determining “A”, any period during which the individual to whom the grant is
       payable was a dual mandate MSP is to be reduced by the same proportion as the
       individual’s MSP salary was reduced during that period by virtue of section 82(2) of the
       Scotland Act 1998 (c.46)).

3 (3) Sub-paragraph (2) does not apply in relation to any period—
(a) during which an individual who is an MSP on the day on which this paragraph comes into force is an MSP, and
(b) which occurs before the first general election held under Part 1 of the Scotland Act 1998 (c.46) after that day.

5 Office-holder resettlement grant

4 (1) The SPCB must pay a grant (an “office-holder resettlement grant”) to an individual who—
(a) stops being the holder of a pensionable office, and
(b) is not appointed as the holder of a pensionable office during the following 90 days.

(2) The amount of an office-holder resettlement grant is to be equal to the appropriate percentage of the annual office-holder salary payable to the individual when the individual left office.

“appropriate percentage” means—

(a) in the case of the Presiding Officer or First Minister, the higher of—
(i) 50%, and
(ii) X%, “X” being equal to—
\[
\frac{A}{12} \times 100
\]
where “A” is the number of complete continuous years for which the individual has been Presiding Officer or First Minister (up to a maximum of 12),

(b) in any other case, 25%.

(3) An office-holder resettlement grant is not payable—
(a) to the personal representatives of an individual who—
(i) stops holding a pensionable office because he or she dies, or
(ii) dies during the period of 90 days after the individual stops holding a pensionable office, or

(b) to any individual who, on the day this paragraph comes into force, is or has been—
(i) the Presiding Officer, or
(ii) the First Minister.

Key terms

The following terms have the same meaning in this schedule as they have in the Scottish Parliamentary Pension Scheme (see schedule 1)—

“doctor”
“dual mandate MSP”
“holder of a pensionable office”
“MSP”
“MSP salary”
“office-holder salary”
“SPCB”

SCHEDULE 3
(introduced by section 1(3))

TRANSITIONAL PROVISIONS AND SAVINGS

Introductory

1 (1) In this schedule—

“new rules day” means the first day of the month which follows the month which includes the day falling 6 months after the Bill for this Act receives Royal Assent,

“new scheme rules” means the rules set out in schedule 1 which govern the scheme from the new rules day,

“1999 scheme rules” means the provisions of the 1999 pensions order which governed the scheme before the new rules day.

(2) Other words and expressions used in this schedule have the same meaning as they have in the new scheme rules (unless the contrary intention appears).

Pension Fund

2 Despite article A3 of the 1999 pensions order, article B1 of the 1999 scheme rules continue to have effect in so far as it establishes the Pension Fund.

Scheme participation

3 An individual is not entitled to participate in the scheme as an office-holder member if, on the new rules day, the individual is or has been—

(a) the Presiding Officer, or

(b) the First Minister.

Scheme member contributions

4 (1) An “existing participating member” is an individual who—

(a) participates in the scheme in accordance with the 1999 scheme rules when this paragraph comes into force, and

(b) would become a participating member in accordance with the new scheme rules if still participating in the scheme on the new rules day.

(2) Despite new scheme rule 28, an existing participating member is to continue to make lower rate scheme member contributions after the new rules day if he or she notifies the SPCB that he or she wishes to do so.

(3) Such a notice is valid only if received at least 14 days before the new rules day.
(4) The SPCB must inform the Fund trustees of every valid notice given to it under this paragraph.

(5) This paragraph does not prevent the existing participating member from subsequently changing the amount of scheme member contributions in accordance with new scheme rule 29.

Contributions from SPCB

The determination under article D3(2) of the 1999 scheme rules which has effect immediately before the new rules day is to have effect after that day as if made under new scheme rule 32(2).

Reckonable service as an MSP

(1) This paragraph applies to an individual who—

(a) was a “participating member” under the 1999 scheme rules, but

(b) is not, immediately before the new rules day, a “pensioner member” under the 1999 scheme rules.

(2) After the new rules day—

(a) the “aggregate period of reckonable service as a participating member” which an individual to whom this paragraph applies has obtained under the 1999 scheme rules is to be treated as a period of reckonable service as an MSP for the purposes of the new scheme rules, and

(b) the individual concerned is to be treated as having made lower rate scheme member contributions during that period.

(3) Where an individual to whom this paragraph applies—

(a) is purchasing added years by periodical contributions in accordance with Schedule 5 to the 1999 pensions order immediately before the new rules day, or

(b) has had an application to purchase added years accepted by the SPCB in accordance with Schedule 5 to the 1999 pensions order but has not yet made the lump sum payment,

no part of the added years concerned are to be treated as forming part of the individual’s “aggregate period of reckonable service as a participating member” for the purposes of this paragraph.

Reckonable service as an office-holder

(1) This paragraph applies to an individual who—

(a) was a “participating office holder” under the 1999 scheme rules, but

(b) is not, immediately before the new rules day, a “pensioner member” under the 1999 scheme rules.

(2) After the new rules day—
(a) the “aggregate period of reckonable service as a participating office holder” which an individual to whom this paragraph applies has obtained under the 1999 scheme rules is to be treated as a period of reckonable service as an office-holder under the new scheme rules, and

(b) the individual concerned is, for the purposes of new scheme rule 39, to be treated as having obtained a single office-holder pension entitlement in respect of that “aggregate period of reckonable service as a participating office holder” to be calculated as follows—

\[
\text{aggregate period of reckonable service as a participating office-holder} \times \frac{\text{highest office-holder salary}}{50}
\]

where “highest office-holder salary” means—

(i) the highest office-holder salary paid to the individual during any period of 12 months (whether continuous or not and whether before or spanning the new rules day) for which the individual participates in the scheme (as a “participating office holder” under the 1999 scheme rules or as an “office-holder member” under the new scheme rules) in respect of a pensionable office to which he or she was appointed before the new rules day, or

(ii) where the individual so participates for fewer than 12 months, the amount determined by doing the following calculation—

\[
A \times \frac{365}{B}
\]

where—

“A” is the office-holder salary paid to the individual during the period in which he or she so participates, and

“B” is the number of days for which the individual so participates.

**Total reckonable service**

The total reckonable service of an individual who participated in the scheme before the new rules day (see new scheme rule 35) includes the “actual period of reckonable service as a participant” which the individual obtained under the 1999 scheme rules.

**Payment of pensions due on new rules day etc.**

Despite article A3 of the 1999 pensions order, the 1999 scheme rules are to continue to have effect (instead of the new scheme rules) in relation to any individual who, immediately before the new rules day, is entitled to receive a pension in accordance with the 1999 scheme rules.

But the SPCB’s functions, rights, liabilities and obligations under the 1999 scheme rules which relate to such individuals are transferred to and vest in the Fund trustees.

**Entitlement of partners and children after new rules day**

Despite the preceding paragraph, the new scheme rules are to govern an individual’s entitlement to receive scheme benefits by virtue of being the partner or child of an individual who—
(a) is entitled to receive a pension on the new rules day, or
(b) died before the new rules day.

This paragraph does not affect payments due or withheld in respect of any period before the new rules day.

5 Early retirement

11 (1) An individual falls within this paragraph if the individual—

(a) participated in the scheme before the new rules day,
(b) accumulates at least 15 years relevant service before the cut-off date, being service which is the total of—

(i) any period of service as an MSP during which the individual participated in the scheme (under the 1999 scheme rules or the new scheme rules), and
(ii) any period of service as a member of the European Parliament or the House of Commons that is not concurrent with any such period of service as an MSP, and
(c) where the individual is under 55, has a “protected pension age” of under 55 in relation to the scheme for the purposes of paragraph 22(8) of Schedule 36 to the Finance Act 2004 (c.12).

(2) Rule 46 applies to an individual falling within this paragraph with the following modifications—

(a) in rule 46(1)(a), for “55” substitute “50”,
(b) the proportion of the amount of annual scheme pension attributable to reckonable service accumulated before the cut-off date is to be reduced under rule 46(4) by no more than the appropriate percentage specified in the table set out in schedule 4 to the 1999 pensions order.

(3) In this paragraph “cut-off date” means the date of the first general election held under Part 1 of the Scotland Act 1998 (c.46) after the new rules day.

Partner’s and children’s pensions

12 (1) An individual falls within this paragraph if the individual—

(a) participated in the scheme before the new rules day,
(b) accumulates at least 15 years relevant service before the date of the first general election held under Part 1 of the Scotland Act 1998 (c.46) after the new rules day, being service which is the total of—

(i) any period of service as an MSP during which the individual participated in the scheme (under the 1999 scheme rules or the new scheme rules), and
(ii) any period of service as a member of the European Parliament or the House of Commons that is not concurrent with any such period of service as an MSP, and
(c) takes early retirement after the new rules day.
(2) The reduction made under new scheme rule 46(4) to the scheme pension of an individual falling within this paragraph is to be ignored when calculating the individual’s “scheme pension entitlement” for the purposes of new scheme rule 56.

5 year guarantee

13 (1) The Fund trustees may, instead of continuing to pay a deceased scheme pensioner’s scheme pension under new scheme rule 71, pay to the deceased’s personal representatives an amount equal to the lump sum which would have been payable under article M4 of the 1999 scheme rules if those had continued in force.

(2) But such a lump sum may be paid only if—

(a) the deceased participated in the scheme before the new rules day, and

(b) the payment would, by virtue of paragraph 36 of Schedule 36 to the Finance Act 2004 (c.12), be permitted by the lump sum death benefit rule (see section 168 of that Act).

Deferred pensioner lump sums

14 (1) This paragraph applies where a deferred pensioner lump sum is payable under new scheme rule 67(1) in respect of a deceased individual who participated in the scheme under the 1999 scheme rules.

(2) Where this paragraph applies, any sums deducted from the deceased’s salary in accordance with Part D of the 1999 scheme rules are to be treated for the purposes of new scheme rule 67(2) as being scheme member contributions made by the deceased.

Short service refunds

15 (1) Condition 3 of new scheme rule 72(1) does not apply in relation to an individual who participated in the scheme before the new rules day (but such an individual is entitled to a short service refund only if he or she has fewer than 2 years total reckonable service).

(2) Any sums deducted from the salary of such an individual in accordance with Part D of the 1999 scheme rules are to be treated for the purposes of new scheme rule 72(2) as being scheme member contributions made by the individual.

Transfers

16 (1) When applying rule 76 in relation to an individual who participated in the scheme before the new rules day, amount A is to include—

(a) any contributions made in respect of the individual under article D1 of the 1999 scheme rules,

(b) any sums received in respect of the individual under article P6 of the 1999 scheme rules, and

(c) any payments made by the individual under Schedule 5 to the 1999 scheme rules.

(2) Condition 2 in new scheme rule 81 does not apply during the 12 months following the new rules day in relation to an individual who is a participating member on the new rules day.
Added years

17 (1) This paragraph applies where an individual—

(a) is purchasing added years by periodical contributions in accordance with Schedule 5 to the 1999 scheme rules immediately before the new rules day, or

(b) has had an application to purchase added years accepted by the SPCB in accordance with Schedule 5 to the 1999 scheme rules but has not yet made the lump sum payment.

(2) Where this paragraph applies—

(a) Part Q of (and Schedule 5 to) the 1999 scheme rules are, despite article A3 of the 1999 pensions order, to continue to have effect in relation to those purchases,

(b) the individual’s reckonable service as an MSP is to be increased by any added years in respect of which the periodical contributions (including any paid before the new rules day) or lump sum has been paid, and

(c) that increased period of reckonable service is, for the purposes of new scheme rule 38(1), to be treated as a period during which lower rate scheme member contributions were made.

(3) The reference in new scheme rule 89(3)(c)(ii) to scheme member contributions is, in relation to any tax year including or after the new rules day, to include any contributions made during that year under paragraph 4 of Schedule 6 to the 1999 scheme rules.

AVC Scheme

18 (1) Despite article A3 of the 1999 pensions order, the scheme for making additional voluntary contributions set out in Part R of (and Schedule 6 to) the 1999 scheme rules is to continue to have effect with the following modifications—

(a) all the SPCB’s functions, rights, liabilities and obligations in relation to the AVC scheme are transferred to and vest in the Fund trustees,

(b) no individual may become a contributor to the AVC scheme after the new rules day (and sub-paragraphs (1) and (3) of paragraph 3 of Schedule 6 is accordingly to cease to have effect),

(c) in paragraph 3(2) of Schedule 6, the words from “but” to “participant” are to cease to have effect,

(d) no transfers may be made to the AVC scheme after the new rules day (and paragraph 4 (4) of Schedule 6 is accordingly to cease to have effect),

(e) paragraphs 10 and 11 of Schedule 6 are to cease to have effect—

(i) in sub-paragraph (1)(a), for the words from “an” to “1993” substitute “another pension scheme subject to that transfer being a recognised transfer for the purposes of section 169 of the Finance Act 2004 (c.12)”, and

(ii) in sub-paragraph (1)(c), for “2 years” substitute “3 months”,

(f) paragraphs 10 and 11 of Schedule 6 are to cease to have effect.

(2) New scheme rule 3 does not apply in relation to benefits payable and AVC contributions received under the AVC scheme.
Guaranteed minimum pension

19 The reference in new scheme rule 105(1) to a “transfer-in sum” includes reference to any sum received under article P6 of the 1999 scheme rules.

Presiding Officer and First Minister pension scheme

20 (1) Despite article A3 of the 1999 pensions order, Part S of the 1999 order is to continue to have effect in relation to—

(a) any individual who is, or who has been, the First Minister or the Presiding Officer on or before the new rules day, and

(b) the rights of any person to receive benefits under Part S of the 1999 order in respect of such an individual.

(2) The SPCB is to continue as the manager of the scheme established by Part S of the 1999 order and, in particular, is to determine the extent of any benefits conferred on an individual in respect of that scheme in accordance with paragraph 2(2) of Schedule 5 to the Welfare Reform and Pensions Act 1999 (c.30).

(3) When calculating an individual’s entitlement to benefits under article S2 of the 1999 scheme rules, any reduction of the deceased’s pension by way of a pension debit arising under the Welfare Reform and Pensions Act 1999 (c.30) is to be ignored.

General saving

21 Despite article A3 of the 1999 pensions order, the 1999 scheme rules are to continue to have effect in so far as they are needed to give effect to any provisions saved by this schedule.

Disapplication of scheme modifications

22 The modifications set out in regulations made under paragraph 3 of Schedule 36 to the Finance Act 2004 (c.12) no longer apply in relation to the scheme.
Scottish Parliamentary Pensions Bill
[AS INTRODUCED]

An Act of the Scottish Parliament to set out rules to govern the Scottish Parliamentary Pension Scheme; to provide for the payment of resettlement grants to individuals when they stop being members of the Scottish Parliament or holding certain offices; and for connected purposes.

Introduced by: Alasdair Morgan (on behalf of the Scottish Parliamentary Pension Scheme Committee)
On: 22 September 2008
Bill type: Committee Bill
SCOTTISH PARLIAMENTARY PENSIONS BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. The following documents are published to accompany the Scottish Parliamentary Pensions Bill introduced in the Scottish Parliament on 22 September:
   • Explanatory Notes;
   • a Financial Memorandum;
   • Report by the Auditor General for Scotland; and
   • the Presiding Officer’s Statement on legislative competence.

The Financial Memorandum and Presiding Officer’s statement are required under Rule 9.3 of the Parliament’s Standing Orders. The Report by the Auditor General for Scotland is required under Rule 9.4 of the Parliament’s Standing Orders.
INTRODUCTION

2. These Explanatory Notes have been prepared by the Non-Executive Bills Unit on behalf of Alasdair Morgan MSP, convener of the Scottish Parliamentary Pension Scheme Committee (“the Committee”). They have been prepared in order to assist the reader of the Bill and to help inform Parliamentary debate. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

GLOSSARY OF TERMS AND STATUTES USED IN THE NOTES

4. When the following abbreviated expressions are used throughout these notes their full citation is as shown below. In some places, to assist the reader, the full phrase or title is used.

“the 1993 Act” The Pension Schemes Act 1993 (c.48).
“the 1995 Act” The Pensions Act 1995 (c.26).
“the 1998 Act” The Scotland Act 1998 (c.46).
“the Pensions Act 2004” The Pensions Act 2004 (c.35).

“Annual Allowance” The HMRC limit which sets the maximum value of benefits that an individual is allowed to accrue annually tax-free from contributions to registered pension schemes. The annual allowance provisions are in sections 227-238 of the Finance Act 2004 and the limit for 2007-8 is £225,000.

“AVC scheme” The facility for additional pension savings and benefits which are available through the additional voluntary contribution part of the scheme (previously there was a statutory requirement for occupational schemes to have an additional voluntary contribution facility in terms of section 111 of the Pension Schemes Act 1993, now repealed). The rules in respect of the AVC scheme are set out in Part R and Schedule 6 of the 1999 pensions order.

“the Civil Partnership Act” The Civil Partnership Act 2004 (c.33)
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

“FM/PO scheme” The separate pension scheme for the First Minister and Presiding Officer established by the 1999 pensions order.

“HMRC” Her Majesty’s Revenue and Customs.

“Lifetime Allowance” The HMRC limit which sets the maximum value of benefits that an individual is allowed to accrue tax-free from registered pension schemes in the course of their lifetime. The lifetime allowance provisions are in sections 214-226 of the Finance Act 2004 and the limit for 2008/09 is £1.65 million.

“new rules day” The first day of the first month following the date which occurs six months after Royal Assent. (see section 5(3) of the Bill).

“new scheme rules” The rules contained in Schedule 1 to the Bill.

“office-holder” Holders of pensionable offices, defined in rule 22(2) of Schedule 1 to the Bill, as that of Presiding Officer, deputy Presiding Officer, one of the Scottish Ministers (this includes the First Minister, Ministers appointed under section 47 of the 1998 Act, the Lord Advocate and the Solicitor General for Scotland) or junior Scottish Ministers (appointed under section 49 of the 1998 Act).

“participating members” The participating MSP members and office-holder members as defined in Rule 109 of Schedule 1 to the Bill. See also “deferred pensioners” and “scheme pensioners”, also defined in rule 109, who together with participating members form the different categories of members of the scheme.

“SPCB” Scottish Parliamentary Corporate Body.

“SSRB” Senior Salaries Review Board.

“the Committee” Scottish Parliamentary Pension Scheme Committee.


“the Pension Fund” The Scottish Parliamentary Contributory Pension Fund that was established by article B1 of the 1999 pensions order.


“the scheme” or “the SPPS” The existing Scottish Parliamentary Pension Scheme established by and the rules of which are contained within the 1999 pensions order.
SUMMARY AND BACKGROUND TO THE BILL

5. In 1998 the SSRB was asked to make recommendations on appropriate pension arrangements for MSPs and holders of offices connected to the Parliament. Its priority was to arrive at arrangements which would conform to current good practice and take account of the uncertainties of parliamentary life. The SSRB concluded that the Parliamentary Contributory Pension Scheme,¹ the occupational pension scheme for the UK Parliament MPs and office-holders, should be taken as the model scheme. Based on this recommendation, a scheme for MSPs and office-holders was established on 6 May 1999 by the 1999 pensions order. This is the Scottish Parliamentary Pension Scheme as defined in section 4 of the Bill. The 1999 pensions order also established a separate pension scheme, the FM/PO scheme, which was based on the arrangements made by the UK Parliament for the Prime Minister, Speaker and Lord Chancellor (see Parliamentary and other Pensions Act 1987 (c.45)).

6. The SSRB report in November 1998 also covered resettlement grants, ill-health retirement grants and severance arrangements. It recommended that the Scottish Parliament have similar provisions to those at the UK Parliament. The recommendations were followed and the arrangements were also made under a transitional order; the Grants Order.

7. Under section 81(3) of the 1998 Act, the Parliament can make provision for payment of pensions and gratuities in respect of persons covered by the 1999 pensions order and the Grants Order. Under section 81(5) of the 1998 Act such provision is either by resolution conferring functions on the Scottish Parliamentary Corporate Body (“SPCB”) or by an Act of the Scottish Parliament. Continuing the current scheme and updating the scheme rules by resolution is not possible given some of the changes required and the legal status of the 1999 pensions order. Primary legislation is required to update the current rules.

8. The SPCB is responsible for the management and administration of the scheme. The SPCB agreed on 13 June 2007 that, as a result of UK legislative changes, it was necessary to amend the scheme rules contained in the 1999 pensions order. The SPCB asked the Parliamentary Bureau to consider the matter and it proposed that a bill committee be established to develop proposals for a committee bill for consideration by the Parliament. The Parliamentary Bureau recommendation and the Committee remit were agreed by the Parliament on 27 June 2007 and extended on 28 November 2007. The Committee therefore examined the scheme, the FM/PO scheme and the Grants Order.

9. This Bill is a Committee bill (i.e. a bill initiated by a Parliamentary committee under Rule 9.15 of the Parliament’s standing orders). The Bill resulted from the Scottish Parliamentary Pension Scheme Committee’s inquiry and a draft was contained in the report.

LEGISLATIVE CHANGES

10. Since 1999 there have been a number of significant legislative changes at a UK level which have affected all pension schemes. The Finance Act 2004 and the Pensions Act 2004 transformed the legal environment in which pensions schemes operate in the UK, necessitating changes to the rules in the 1999 pensions order.

¹ S.I. 1993/3253
In addition there have been a number of general legislative changes which affect occupational pension schemes, with the major ones being as follows—

- the 1999 Act which introduced pension sharing on divorce, where ex-spouses can get membership of a scheme in their own right or a transfer value from the scheme; and
- the new status of civil partner introduced by the Civil Partnership Act.

The Finance Act 2004 set out a new, simplified tax regime for registered pension schemes. Historically, tax-approved pension schemes have had to comply with tax rules in order to benefit from tax advantages, for example an exemption from tax on the pension fund’s investment income and from capital gains; tax relief on member and employer contributions, and tax-free lump sums on retirement (although pensions in payment are subject to income tax).

The Finance Act 2004 replaced the eight then existing taxation regimes with a single set of rules, introduced on 6 April 2006. While there has been a relaxation of some of the tax limits previously imposed, the general principle remains that for a scheme to benefit from the preferential tax treatment it should remain within the tax rules.2

The 1999 pensions order as currently constituted must be read subject to the general transitional arrangements made under the Finance Act 2004. These arrangements are expected to expire in April 2011 and, if not replaced, would create uncertainty about how parts of the 1999 pensions order comply with tax rules.

On 17 October 2007 the Committee published a consultation document and invited comment from MSPs, former MSPs and interested outside bodies on issues to be considered when developing proposals for a replacement for the 1999 pensions order and the Grants Order. The consultation paper was also published on the Scottish Parliament website. The closing date for responses was 17 January 2008.

The consultation sought views on a number of areas.

These covered mandatory changes required to maintain compliance with other legislative changes (pension sharing on divorce, age 75 taxation rules and minimum pension age taxation rules).

Discretionary changes mainly linked to changes in the taxation regime following the Finance Act 2004 in areas such as:-

- Contribution limits
- Maximum pension available
- Amount of tax-free lump sum on retirement
- Amount of death in service gratuity

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2 Finance Act 2004, sections 165-168
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

- Children’s pension provision
- Additional voluntary contributions and added years
- Trivial commutation of pension benefits
- Ill-health provisions.

19. Other discretionary areas of possible change included age and other equality issues around early retirement, refund of contributions, loss of surviving spouse pension on re-marriage or cohabitation and unmarried partners.

20. Further possible changes covered by the consultation document included scheme administration, the rate at which pension accrued, changes to the FM/PO scheme and the Grants Order.

The Committee report

21. The Committee report was published on 29 May and the proposal for a Committee bill was agreed by the Parliament after debate on 26 June 2008. The report made recommendations in all the areas mentioned in paragraphs 17-20 and had attached to it a draft Bill containing a revised set of rules to replace the scheme rules in the 1999 pensions order; provisions to continue with modification the FM/PO scheme rules in the 1999 pensions order; and rules to replace those in the Grants Order.

Commentary on sections

Section 1 Scottish Parliamentary Pension Scheme

22. Section 1(1) of the Bill continues the existing scheme while introducing new rules in Schedule 1 to govern it.

23. The SPCB is at present responsible for the management and administration of the scheme. This responsibility includes control and management of the Pension Fund which was established by article B1 of the 1999 pensions order, which vested the Pension Fund in the SPCB.

24. Subsection (2) transfers the Pension Fund and the SPCB’s rights, liabilities and obligations in relation to the Pension Fund to Fund trustees to be appointed under the new rules (see Schedule 1 Part B). The transfer takes effect on the day section 1(2) comes into force, which in terms of section 5(3) is on the first day of the first month following the date which occurs six months after Royal Assent.

25. Subsection (3) introduces Schedule 3 which makes other transitional provisions and savings in respect of the 1999 pensions order in specific circumstances (see paragraph 486 onwards).

Section 2: Grants payable on leaving office

26. Section 2 of the Bill introduces Schedule 2 which sets out the circumstances in which the SPCB is required to pay grants to individuals after they have ceased to serve as MSPs or have stood
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

down from certain positions as office-holders. As the Schedule makes provision for the payment of gratuities made in accordance with section 81(3) of the 1998 Act, it replaces the Grants Order (see article 2 of the Grants Order which states that it will cease to apply on the making of such provision).

Section 3: Modification of pension schemes etc.

27. The detail of the scheme rules will inevitably require amendment to reflect changes in pension law and also any policy changes. An ability to amend pensions and gratuity provisions in the future without using primary legislation is therefore desirable and reflects section 81(5) of the 1998 Act, which allows for provision on pensions and gratuities to be made by resolution.

28. Section 3 of the Bill makes provision for the Parliament by resolution to modify the scheme, the grants scheme set out in Schedule 2 and the FM/PO scheme. The Standing Orders of the Scottish Parliament govern the procedures for motions and resolutions and it is expected that Parliament will consider whether they require to be amended to provide any special procedure for these resolutions.

29. Subsection (1) includes provision for modifications to be made to the scheme by resolution. As the AVC scheme forms part of the scheme the AVC scheme rules saved and modified by paragraph 18 of Schedule 3 can also be amended by such a resolution. Subsection (1) also includes provision for modifications to be made to the FM/PO scheme. The FM/PO scheme is continued in the Bill at paragraph 20 of Schedule 3 only in relation to any individual who is or has been a First Minister or Presiding Officer on or before new rules day. The continued FM/PO scheme may need to be amended in future to keep provisions in line with changes to general pensions law.

30. Subsection (2) sets out what can be modified by resolution. The power covers the new scheme rules (Schedule 1), the new grants rules (Schedule 2) and the transitional and savings provisions (Schedule 3). Subsection (2)(c) also makes provision for modification of the 1999 pensions order. In terms of article A3 of the 1999 pensions order, the order ceases to apply when the new scheme rules come into force. However Schedule 3 of the Bill continues certain articles within the 1999 pensions order. Paragraphs 2, 5, 9, 17, 18 and 20 make provision for specific rules to continue in force and paragraph 21 makes a general provision continuing any rules that are needed to give effect to the provisions specifically saved by the Schedule (see paragraph 486 onwards).

31. Subsection (3) provides that a resolution under section 3 may make different provision for different purposes. The subsection also provides for provisions to have retrospective effect if required. This is a power generally available for pension schemes, allowing changes in benefits to be made to reflect the start of general legislative changes.

32. As the new rules are contained in primary legislation, amendments must be accessible. Subsection (4) makes provision for the publication of any resolution that is subsequently passed by the Parliament to be treated as if it were a Scottish statutory instrument and allows the Queens Printer for Scotland to publish the resolution. This provision is similar to a provision contained in the Interests of Members of the Scottish Parliament Act 2006 (asp 12) which allowed modification by resolution to provisions within the Schedule to that Act.
Section 4: Interpretation

33. Section 4 contains definitions of four terms that are used throughout the Bill. All have been referred to already in these notes.

Section 5: Commencement

34. Section 5 provides for two distinct commencement dates. Subsection (1) provides for a number of provisions to come into force on Royal Assent but only for limited purposes. The limited purposes enable the appointment of trustees and allow participating scheme members to be able to make choices in relation to the level of their scheme member contributions which will apply from the date the remainder of the new scheme rules come into force. The provisions coming into force on the day of Royal Assent are:

- sections 4 and 6 which contain definitions of expressions and the Bill’s short title;
- section 5;
- rules 4 and 8 to 11 of schedule 1 which provide for the appointment, conditions, remuneration, resignation and removal of Fund trustees; and
- paragraph 4 of schedule 3 in relation to the provisions for scheme members determining what level of contributions they wish to make from the date the new scheme rules come into force.

35. Subsection (2) brings section 3 into force on Royal Assent. That section makes provision for modification of the scheme rules, the grants rules, the transitional and saving provisions and the 1999 pensions order. Therefore these provisions could be amended before the general coming-into-force day although the resolution modification power under section 3 is subject to a restriction that, until the remainder of the Act comes into force, only a member of the SPCB may move such a resolution.

36. By virtue of subsection (3) the remainder of the Act comes into force on the first day of the first month following the date which occurs six months after Royal Assent.

SCHEDULE 1

PART A  THE PENSION FUND

37. Part B of the 1999 pensions order established the Fund for the purposes of the scheme set out in that order. The Fund is part of the Scottish Parliamentary Pension Scheme as defined in section 4 of the Bill and governed in accordance with the rules of the scheme as set out in Schedule 1 to the Bill. Most sums payable under and received by the scheme are paid out of and into the Fund (with the exception of AVC contributions).
38. Under the 1999 pensions order, the Fund is vested in and administered by the SPCB (as set out in Schedule 1 to the order). Contributions are made to it by participants and from the SPCB paying scheme sponsor or “employer” contributions from the Scottish Consolidated Fund.

Rule 2: The Pension Fund

39. Rule 2 defines “the Pension Fund”, as the Scottish Parliamentary Contributory Pension Fund; which is the Fund established by article B1 of the 1999 pensions order.

Rule 3: Payments to and from Fund

40. Rule 3 makes provision for payments to be made out of and into the Pension Fund. This rule provides the general authority for such payments to be made but is supplemented by provisions relating to AVCs in paragraph 18 of Schedule 3. The scheme is a funded scheme. That is, over the course of its lifetime, the amount paid into the Pension Fund by way of contributions from the scheme members and the SPCB as the ‘employer’ or scheme sponsor, together with investment returns, is intended to be sufficient to meet all payments due from the scheme.

41. Rule 3(1)(a) provides that all pensions and lump sums payable from the scheme will be made from the Pension Fund. Generally, these are pensions to former MSPs or to the surviving partner or any children of the MSP and lump sum amounts on retirement or death (all as set out in the rules).

42. Rule 3(1)(b) enables the Fund trustees to make other payments which are payable by them under the scheme from the Pension Fund. For example, administration costs of the trustees in running the scheme and authorised payments to be made insofar as these fall within the rules in Part B of Schedule 1 to the Bill. It also covers payments such as transfers of sums of money out of the Pension Fund under Part N; pension sharing arrangements under Part P; taxes under Part R; and any other payments to be made under the scheme.

43. Rule 3(2) provides that the Fund trustees must pay all sums that they receive under the scheme into the Pension Fund. This includes all scheme member contributions (see Part D of Schedule 1) and any investment returns.

44. By virtue of paragraph 18(2) of Schedule 3, rule 3 does not apply to benefits payable and contributions received under the Additional Voluntary Contribution (AVC) scheme. The AVC scheme was established under the 1999 pensions order (Part R and Schedule 6) and provides for additional pension taken in the form of an annuity purchased with the accrued sum at retirement.

45. The AVC scheme established under the 1999 pensions order will continue to have effect and any agreed AVC contracts continue to operate. However, no individual may become a contributor, and no transfers may be made to the AVC scheme, after new rules day. Schedule 3 also vests rights

3 Despite MSPs’ status as office-holders rather than employees, some references are made in these notes to “employer” or “employee” where the terms are more illustrative for referring to pension schemes.
and functions etc in the Fund trustees from the SPCB (paragraph 18(1)(a)) (see paragraphs 544-554). It will be for the Fund trustees to decide how to manage the existing contractual payments from the AVC contributors to the AVC provider.

PART B  FUND TRUSTEES

46. Part B of Schedule 1 replaces Part B and Schedule 1 of the 1999 pensions order and sets out rules covering Fund trustees who will replace the SPCB, as managers of the Pension Fund. The rules cover the detail relating to the functions, appointment and duties of the Fund trustees.

47. To allow for a smooth transition from the SPCB, the provisions to appoint Fund trustees are brought into force on Royal Assent to allow the first trustees to be appointed. Section 1 of the Bill (paragraphs 22-25) applies the new rules to the scheme and transfers the SPCB’s functions, rights, liabilities and obligations to the Fund trustees. That conferral of powers and responsibilities on the Fund trustees comes into force on the first day of the first month following the date which occurs six months after Royal Assent. Until that time, the SPCB continues to administer the Pension Fund in accordance with the 1999 pensions order.

Rule 4: Fund trustees

48. Rule 4 allows only individuals to be appointed and hold office as Fund trustees.

Rule 5: Functions

49. Rule 5 makes clear that the principal function of the Fund trustees is to administer the Pension Fund and to manage and apply its assets under the rules.

50. In Scots law, and as pension scheme trustees, the Fund trustees have additional functions and obligations in exercising their functions at common law and under a wide range of statutory provision, including UK legislation relating to occupational pension schemes.

Rule 6: Number of trustees

51. Under rule 6 there are to be between 3 and 6 Fund trustees. That rule is, however, subject to rule 13 which permits the maximum number to be exceeded in specified circumstances (see paragraphs 73-75).

Rule 7: Eligibility

52. This rule prevents any individual from being or becoming a Fund trustee where they are prevented under any law from holding that position. This specifically includes section 29 of the 1995 Act which contains provisions that disqualify a person from being a pension scheme trustee. The provisions relate to persons with unspent convictions for an offence involving dishonesty or deception, un-discharged bankrupts, anyone who has granted a trust deed for creditors or anyone disqualified from acting as a company director.
53. Any Fund trustee who becomes barred under these provisions is removed automatically from being a trustee without the application of any further formal procedure for removal (rule 11), and any person who purports to be a trustee while disqualified is subject to criminal penalties in terms of section 30 of the 1995 Act.

**Rule 8: Appointment of Fund trustees**

54. Rule 8 provides a procedure for the appointment of Fund trustees.

55. Under rule 8(1) it is for the Parliament to appoint all Fund trustees by resolution. They must be individuals nominated by the SPCB, and determined by the SPCB as suitable to hold office. There is no bar on a person who has previously been a Fund trustee from being re-appointed. It is expected that the Parliament will wish to consider whether any further provision to supplement the rule is required to be included within Standing Orders.

56. Before deciding who to nominate, the SPCB is required by rule 8(2)(a) to do its best to ensure that there is a participating member and a scheme pensioner among the Fund trustees. A participating member is defined in rule 109 and includes an MSP or one of the law officers who is not an MSP. The expectation is that there will always be at least one participating member as a Fund trustee but the formulation recognises only persons willing to serve will be nominated.

57. When putting forward nominations for Fund trustees, the SPCB is also required by rule 8(2)(b) to have regard to any recommendations made by serving Fund trustees.

58. Under rule 8(3), appointments as Fund trustees have immediate effect unless the Parliament otherwise provides in terms of the resolution making the appointment. This could apply, for example, where the SPCB and the Parliament become aware that a serving Fund trustee will be demitting office during a forthcoming recess period. Any appointment of a new Fund trustee to replace that person could be made to take effect from the future departure date to avoid breaching the restriction on fund trustee numbers in terms of rule 6.

59. The Court of Session has power to appoint new trustees at common law and in a variety of circumstances under the Trusts (Scotland) Act 1921 (c.58). Rule 8(4) restricts these powers by permitting the Court only to appoint new Fund trustees in the very limited circumstances where a sole trustee wishes to resign and applies to the court to appoint new trustees under section 19(2). Such an application is only likely to be required as a last resort given the Parliament’s powers to appoint new Fund trustees. The provision is necessary because rule 10(3) would otherwise prevent the resignation of a sole trustee in all circumstances.

60. In a similar way to rule 8(4), rule 8(5) disapplies the powers which the Fund trustees would otherwise have to assume new trustees under section 3(b) of the Trust (Scotland) Act 1921 and, ensures that apart from the limited exception provided in rule 8(4), only the Parliament will be able to appoint Fund trustees.

**Rule 9: Remuneration, allowances and expenses**
61. Rule 9 makes provision for the payment of expenses to all Fund trustees and for payment of remuneration and allowances to certain Fund trustees, subject to certain conditions being met.

62. Rule 9(1) relates to the payment of remuneration or allowances to Fund trustees. Under condition 1, Fund trustees who have at any time been scheme members are excluded from receiving remuneration or allowances for carrying out their duties.

63. Under condition 2 (in respect of a Fund trustee who meets the first condition), the other Fund trustees, if any, must recommend to the SPCB before appointment is made that the nominee should be remunerated or entitled to allowances. Under condition 3, the SPCB must specify when making a nomination to the Parliament that remuneration and allowances are to be paid, thus giving the Parliament an opportunity to determine the appropriateness or otherwise of payment.

64. Rule 9(2) provides that expenses properly incurred by the Fund trustees in connection with their duties as trustees are to be reimbursed from the Pension Fund. This covers all Fund trustees and not just those who receive remuneration or allowances. The cost of any indemnity insurance (see rule 18) is one example of an expense covered by this rule.

**Rule 10: Resignation**

65. Fund trustees may, unless they are a sole trustee, resign at any time and rule 10 sets out the procedure.

66. Under Rule 10(1), a Fund trustee must give notice of resignation to the Presiding Officer and other Fund trustees. No specific period of notice is specified, but the terms of rule 108 apply to such a notice and as a formal communication it should be in writing. Once a resignation has been made to the Presiding Officer and at the same time to the other Fund trustees in terms of subsection (2), it has immediate effect. It is expected that the Parliament will wish to consider whether any further provision to supplement the rule is required within Standing Orders, for example requiring intimation of resignation in the Business Bulletin.

67. Rule 10(3) prevents a sole trustee from resigning under this rule. This avoids there being no Fund trustees in post. This provision has to be read with rule 8(4) which allows resignation of a sole trustee only by application to the Court of Session under section 19(2) of the Trusts (Scotland) Act 1921 (c.58). The sole trustee can resign once the Court appoints new Fund trustees in terms of section 3 of that Act.

**Rule 11: Removal**

68. Rule 11 makes provision for the circumstances in which a Fund trustee is removed from office. The Parliament appoints all Fund trustees and can, by resolution, vote to remove them for any reason and at any time. Under Rule 11(3), any resolution to remove a Fund trustee, if not unanimous, must be supported by at least two-thirds of the MSPs who vote.

69. Removal is automatic in the circumstances set out in rule 11(1)(b) where a Fund trustee becomes disqualified (see rule 7 and paragraphs 52-53 of these notes). Rule 11(c) covers removal
following a change in the status of the Fund trustee, where the Fund Trustee’s tenure automatically comes to an end six months after the change takes effect (see rule 12 and paragraphs 70-72 of these notes).

**Rule 12: Change of status**

70. Under rule 8(2), the SPCB must do its best to ensure that there is at least one participating member or scheme pensioner included in the Fund trustees. Fund trustees may therefore be appointed partly because of their status as a scheme member or scheme pensioner. Any change in status affects the balance of trustees as does changing status from deferred to scheme member or scheme pensioner. Rule 12 makes provision for any change in status to be notified to the Presiding Officer and other Fund trustees and for the affected Fund trustee’s tenure to come to an end unless the Parliament resolves otherwise. This allows consideration to be given to the change in balance of the composition of the Fund trustees.

71. Rule 12(1) sets out the changes of status of Fund trustees which require to be notified. Rule 12(1)(a) covers a participating member leaving the scheme by opting out or by leaving or losing office under age 65 and becoming a deferred pensioner or, if over 65 or taking early retirement, a scheme pensioner. In addition, any participating member approaching age 75 will, by virtue of the operation of the new rules, convert to a deferred or scheme pensioner. Rule 12(1)(b) applies where a deferred pensioner becomes a participating member on re-election or becomes a scheme pensioner at age 65. It also applies where the deferred pensioner opts to transfer their benefits to another pension scheme and all rights to all scheme benefits are extinguished by virtue of a payment being made to another pension scheme under rule 80. Rule 12(1)(c) applies where a scheme pensioner becomes an MSP or the holder of a qualifying office and has their pension suspended under rule 41.

72. There is no obligation to give prior notice in anticipation of a change in status. However, when a change set out in rule 12(1) takes place, the Fund trustee concerned must, under rule 12(2)(a), give notice to that effect to the other Fund trustees and the Presiding Officer. Under rule 12(2)(b) their tenure of office ceases six months after their status changes unless the Parliament resolves otherwise.

**Rule 13: Member-nominated trustees**

73. Section 241 of the Pensions Act 2004 requires that at least one-third of the total number of Fund trustees are member-nominated trustees. Member-nominated trustees are trustees who are nominated as a result of a process in which all active and pensioner members of a pension scheme can participate or are represented by an organisation representing their rights.

74. Rule 13 makes the necessary provision for member-nominated trustees.

75. The rule at (a) requires the SPCB to put forward to the Parliament any individual nominated as a Fund trustee who the Fund trustees recommend for the purpose of fulfilling their obligations to secure member nominated trustees under section 241. Part (b) disapplies the provisions of rule 6 which restricts the maximum number of Fund trustees holding office where the appointment is made to ensure that the minimum number of one-third member-nominated trustees is reached.
Rule 14: Procedure

76. Rule 14 allows the Fund Trustees to regulate the procedures that they follow in administering the Pension Fund in so far as this is not otherwise regulated by the scheme rules.

Rule 15: Quorum

77. Rule 15 sets a quorum for meetings of the Fund trustees at a minimum of three unless there are fewer than three holding post, in which case all must be present.

Rule 16: Staff and advisers

78. Rule 16 provides the Fund trustees with the authority to employ staff and to seek advice from any other person. The rule supplements the powers and requirements placed on trustees to appoint professional advisers (scheme auditor, actuary and fund manager) under section 47 of the 1995 Act.

79. The power in this rule could be used to appoint staff to undertake the day-to-day administration of the pension scheme. The Fund trustees can set the terms of appointment as they see fit. The rule also allows the Fund trustees to seek advice from specialist advisers, for example medical specialists, in relation to health conditions and prognosis.

Rule 17: Fund management

80. Section 47(2) of the 1995 Act requires every occupational pension scheme whose assets include investments to appoint an individual or a firm to act as fund manager on behalf of the trustees. Under section 34 of that Act, while trustees (subject to restrictions imposed by any scheme) may make investments as if they were absolutely entitled to the scheme assets, they may also delegate decisions about investments to their fund managers. Section 34(4) of that Act relieves the Fund trustees from responsibilities in relation to the fund managers’ performance, provided they have satisfied themselves that the person appointed has the appropriate knowledge and experience, is carrying out work competently and complies with the investment principles for the scheme.

81. Under rule 17, the Fund trustees must monitor the performance of the fund manager so that they may satisfy themselves in terms of their responsibilities in relation to the delegation of their authority to make investments.

Rule 18: Indemnity insurance

82. The Fund trustees are restricted by their fiduciary duties from using the fund for personal gain. Rule 18 loosens the restriction to the extent that it permits the Fund trustees to purchase insurance indemnifying them against personal liability claims in connection with their performance of their functions. The cost of the insurance premium to that extent becomes an allowable charge to be met by the Fund as a consequence of this rule.

Rule 19: Delegation
83. Rule 19 permits the Fund trustees to authorise any person, including one or more of the Fund trustees to act on behalf of them all. Their actions are limited to the extent given in the authorisation, which does not need to be in writing.

84. An authorisation does not exempt the Fund trustees from responsibility that would otherwise fall upon them for the delegated task unless that exemption is otherwise provided in law (see paragraph 80 of these notes for such an example). They must, therefore, be satisfied that those authorised have the ability to undertake the task delegated. Likewise it does not prevent them from carrying out a function themselves which was previously delegated.

**Rule 20: Validity of acts**

85. Rule 20(1) ensures that decisions, authorisations and acts of the Fund trustees are not invalidated by defective appointments, changes in those holding the office of Fund trustee or in the event that there are fewer than three trustees holding office.

86. Rule 20(2) allows the Fund trustees to vary or revoke decisions made by or authorisations granted by previous Fund trustees. That power is not applicable in relation to decisions which have the effect of reducing scheme benefits to any person, unless the decision is made under other scheme rules. It would not, however, prevent a change where the new decision increases benefits.

87. This rule generally prevents Fund trustees from reversing discretionary decisions made by their predecessors. For example, a decision to allow a scheme member to purchase added years could not be unilaterally revoked by the Fund trustees. Similarly, an initial decision to award an ill-health pension could not be reversed. However, the scheme provides for a subsequent review of these benefits and the pension could be reduced or revoked under these provisions at a later stage because that would constitute a new decision using other rules.

**PART C PARTICIPATING MEMBERS**

88. Part C of Schedule 1 sets out rules covering who is entitled to participate in the pension scheme as an MSP and office-holder at any given time, together with rules on how an MSP or office-holder may opt-out of or opt-in to the scheme. These rules replace the rules contained at Part C of the 1999 pensions order.

89. The term “participating member” is defined in rule 109 to include the participating MSP members and office-holder members. It should be noted that there are other categories containing individuals who remain as members of the scheme in a different capacity. These are deferred pensioners and scheme pensioners, also defined in rule 109, who are members of the scheme but not “participating members”.

**Rule 21: MSP members**

90. Rule 21 provides that every serving MSP under age 75 is automatically a participating member of the pension scheme as an “MSP member”, unless the MSP opts out (see rule 23 for the MSP opt-out).
91. On reaching age 75, individuals no longer qualify for tax relief in relation to pension scheme membership available under the Finance Act 2004. At that age serving MSPs are excluded from participating membership and cease to make contributions. Their pension rights are frozen in that they do not accrue further reckonable service and their pension becomes payable only when they cease to be an MSP (see Part F). Other rights in relation to commutation for a lump sum and death benefits are covered at Parts G and K.

92. Under rule 30, an MSP member stops making scheme member contributions from their salary when they obtain sufficient reckonable service as an MSP to entitle them to the maximum annual MSP pension. The figure takes into account the salary of an MSP, office-holder or the aggregate of both. A serving MSP excused from making contributions from their salary as they have reached the limit of their annual MSP pension cap remains a “participating member” in terms of this rule.

Rule 22: Office-holder members

93. Rule 22 makes provision for the membership of the pension scheme of pensionable office-holders. On reaching age 75, serving office-holders can no longer be “participating members” and cease to make contributions. Their pension rights are frozen in that they do not accrue further reckonable service and their pension becomes payable only when they cease to be either an MSP or hold a pensionable office (see Part F). Other rights in relation to commutation for a lump sum and death benefits are covered at Parts G and K.

94. Rule 22(1) provides that every individual aged under 75 holding a pensionable office is a participating member of the pension scheme as an “office-holder member”, unless the individual opts out (see rule 24 for the office-holder opt-out).

95. The pensionable offices, which are defined in rule 22(2), are that of Presiding Officer, deputy Presiding Officer, one of the Scottish Ministers (this includes the First Minister, Ministers appointed under section 47 of the 1998 Act, the Lord Advocate and the Solicitor General for Scotland) or junior Scottish Ministers (appointed under section 49 of the 1998 Act). Section 44 of the 1998 Act makes provision for the composition of the Scottish Executive and for the members of the Scottish Executive to be referred to collectively as the “Scottish Ministers”.

96. Altered pension arrangements are made for First Ministers and Presiding Officers. The previous separate pension entitlement granted to them under Part S of the 1999 pensions order is not repeated in the Bill for future holders of such offices. However, existing and former First Ministers and Presiding Officers continue to qualify under the separate arrangements (see paragraph 20 of Schedule 3). Therefore, corresponding transitional provision is made in paragraph 3 of Schedule 3 to exclude such individuals from also being office-holder members in the funded scheme. See paragraph 492.

Rule 23: MSP opt-out

97. Rule 23 permits any participating member to opt-out of the scheme as a participant by notification in writing (see rule 108) to the Fund trustees.
98. This rule further provides that an MSP who is an office-holder member may opt-out of the pension scheme as an office-holder member while remaining in it as an MSP member but not vice versa. This is because the office-holder pension is an addition to the MSP pension and not a separate pension in itself.

99. Members may opt out of the scheme at any time but where they opt out within three months of first being elected as an MSP, rule 23(2) provides refund provisions. Such members will be treated as never having been scheme members either as MSPs or office-holders and any contributions paid by the member will be refunded.

100. Where an MSP chooses to opt out within three months of an election and has previously accrued pension rights under the scheme, no refund of contributions can be made. The new period of scheme membership to the date of their opting out will be added to their earlier period. Such members are excluded by the terms of the Finance Act 2004 from receiving a refund of contributions and rule 23(2) therefore refers to “first being elected”.

101. Rule 23(3) applies to members who opt out of participating membership more than three months after being elected or re-elected. Upon receiving notice of the MSP opt-out, the Fund trustees will determine a date for the termination of the MSP membership to the scheme. That date is to be as soon as is practically possible, which is likely to be the end of the period covered by the payment of the last contribution deducted from the MSP's salary.

Rule 24: Office-holder opt-out

102. Rule 24 makes provisions for office-holder members to opt-out of the pension scheme as office-holder members by giving notice in writing (see rule 108) to the Fund trustees.

103. If an office-holder member opts out within three months of being appointed to a relevant office, rule 24(2) provides that the office-holder will be treated as never having been an office-holder member since their appointment. Any contributions paid by the office-holder since being appointed will be refunded.

104. Rule 24(3) applies to qualifying office-holders who opt out of office-holder membership after more than three months of being appointed. Upon receiving notice of the office-holder opt-out, the Fund trustees will determine a date for the termination of the office-holder membership to the scheme. That date is to be as soon as is practically possible, which is likely to be the end of the period covered by the payment of the last contribution deducted from the office-holder’s salary.

Rule 25: MSP opt-in

105. If an individual who has opted out of the scheme is subsequently elected as an MSP, rule 25 sets out provisions which enable that individual to apply to rejoin as an MSP member of the scheme. Opt-in must be made by giving the Fund trustees written notification (see rule 108) within three months of election. Opt-in becomes effective from the election date.
106. A member opting in to the scheme has to pay to the Fund trustees the amount of contributions which would have been payable between the election date and the next day on which a scheme member contribution is due to be deducted from the MSP salary. Any outstanding sums must be paid by the “due date”, which is by the 28th day after the trustees have given the member details of the amount of scheme contributions payable, unless the Fund trustees determine that a longer period applies.

Rule 26: Office-holder opt-in

107. Rule 26 provides that an opted-out office-holder may apply to rejoin the scheme as an office-holder member. If they are an MSP, they must also be an MSP member. Opt-in must be made by giving the Fund trustees written notification (see rule 108) within three months of their appointment to a qualifying office. The opt-in becomes effective from the appointment date.

108. The office-holder opting in to the scheme has to pay to the Fund trustees the amount of contributions which would have been payable between the date they took up office and the next deduction taken directly from their salary. Any outstanding sums must be paid by the “due date” which is by the 28th day after the trustees have given the member details of the amount of scheme contributions payable, unless the Fund trustees determine that a longer period applies.

109. Rule 26(2) provides that an MSP who had also been an office-holder member and had opted out of the scheme as an office-holder member may not rejoin the scheme as an office-holder member unless they are or become an MSP member.

PART D CONTRIBUTIONS

110. Part D of Schedule 1 sets out the arrangements for obtaining scheme member contributions from an MSP’s salary, office-holder salary or both. It also makes provision for a yearly direct contribution from the SPCB, in effect the scheme sponsor’s contribution, into the Fund. These rules replace Part D of the 1999 pensions order.

Rule 27: Scheme member contributions

111. Rule 27 requires the SPCB, as the organisation currently responsible for paying a participating member’s salary, to deduct a pension contribution from each participating member’s salary and pay it to the Fund trustees. The Fund trustees must pay any sums received into the Pension Fund under rule 3(2).

112. The rule provides that references in other scheme rules to “scheme member contributions” are to be read as deductions under this rule.

Rule 28: Amount of scheme member contribution

113. The higher rate scheme member contribution is 11% of salary. That rate is the default rate for contributions unless participating members elect to pay the lower rate scheme member contribution of 6% of salary (see rule 29). Definitions for the scheme member contribution rates
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

referred to in this Part are set out in rule 109. Rules 38 and 39 provide that during the period when higher rate scheme member contributions are paid pension will accrue at $\frac{1}{40}$th of final salary and when lower rate scheme member contributions are made the accrual rate is $\frac{1}{50}$th of final salary.

**Rule 29: Procedure for changing scheme member contribution rate**

114. Rule 29(1) allows a participating member to alter their scheme contribution rate from the higher to the lower rate or vice versa by giving notice to the Fund trustees.

115. Under rule 29(2) a participating member must give written notice to the Fund trustees to change their contribution rate. An MSP participating member can only change their contribution rate within three months of being elected (or re-elected) and a non-MSP participating member who holds a qualifying office (Lord Advocate or Solicitor General for Scotland) can only make the change within three months of being appointed (or re-appointed). The rule makes no provision for an MSP office-holder to elect to change contribution rates on election to an office, the effect being that office-holders who do not opt out as office-holder members must pay scheme contributions towards their office-holder pension at the same rate as they pay towards their MSP pension.

116. The effect of rule 29(3) is that any notified change in contribution rate will be backdated to the date of being elected or appointed. In the case of a change from the higher rate to the lower rate, any overpaid contributions will be refunded to the participating member. In the case of a change from the lower rate to the higher rate, the participating member must pay any shortfall in contributions.

117. A transitional provision is made in Schedule 3 at paragraph 4 for those who are existing participating members before the new rules come into force and want to elect to pay the lower contribution rate of 6%. They must notify the SPCB of that intention at least 14 days before the new rules come onto force (see paragraphs 493-496).

**Rule 30: Relief from liability to make scheme member contributions**

118. Rule 30 makes provision for contributions where a scheme member has sufficient reckonable service to be entitled to the maximum permitted pension under the scheme. Under rule 30(1), an MSP scheme member ceases to pay member contributions where their pension entitlement has reached the maximum allowable under the scheme, which is two-thirds of their salary (see Part F, rule 38(2)).

119. Although the maximum pension entitlement of two-thirds final salary may have been reached, any subsequent increase to an MSP scheme member’s salary would leave room to accrue further pension. Rule 30(2) enables an MSP member to recommence paying scheme member contributions following a salary increase, allowing them to accrue further pension up to two-thirds of the increased salary.

120. Rule 30(3) determines that the MSP scheme member contributions payable under rule 30(2) shall only be for the amount by which the MSP salary increases and at the contribution rate applicable when they stopped making contributions.
121. Rule 30(4), (5) and (6) make similar provisions to rule 30(1), (2) and (3) for office-holders (see Part F, rule 39(4) for office-holder’s maximum pension entitlement).

122. A scheme member can increase their pension entitlement by increasing their reckonable service through the purchase of added years under Part O. Added years may be purchased by lump sum or monthly payments. Rule 30(7) determines that for the purposes of calculating the maximum pension entitlement, the full reckonable service bought through added years, whether yet paid for in full or not, should be included in the calculation.

**Rule 31: Contributions when salary not drawn**

123. Should a participating member, for whatever reason, decide not to receive their salary as an MSP or office-holder, rule 31 makes provision for payment of their scheme member contributions. The rule requires the person responsible for paying the salary, if it was being paid, to pay to the Fund trustees an amount equal to the scheme member contributions that would have been deducted if the salary had been paid. By virtue of the payments being made the individual becomes eligible for the full applicable range of scheme benefits. The rule does not apply to an individual who has opted-out of the pension scheme under rules 23 or 24.

**Rule 32: Contributions from the SPCB**

124. The SPCB, by virtue of rule 27, is required to pay all scheme member contributions deducted from salary to the Fund trustees who then pay the contributions into the Pension Fund. Rule 32 provides that a sum must also be paid directly into the Fund each year by the SPCB.

125. Rule 32(2) allows the SPCB to determine the amount of that sum, providing it takes account of the scheme actuary’s recommended rate for future contributions and any advice received from the Fund trustees. The Fund trustees must obtain an actuarial report from the scheme actuary at intervals of no longer than three years. Such a report must include a recommended contribution rate from the SPCB, which is set as a percentage of a scheme member’s salary (see rule 103(3)).

**PART E RECKONABLE SERVICE**

126. In order to calculate the pension entitlement of a pension scheme member (see Part F) it is necessary to determine the period of service which should be taken into account for that individual. This period is referred to as “reckonable service”. Part E of the Schedule sets out rules determining the meaning and calculation of periods of reckonable service as an MSP or office-holder. It also determines how reckonable service is measured. These rules replace the rules contained in Part E of the 1999 pensions order.

**Rule 33: Reckonable service as an MSP**

127. Rule 33 provides that the period during which an MSP member is making scheme contributions from salary payments is counted as a period of reckonable service.
128. Under rule 33(2)(a), reckonable service as an MSP member is the total of all periods, whether continuous or interrupted, where such contributions are made. That period is increased under rule 33(2)(b) by any additional period of increased reckonable service granted as a result of transferred payments from other schemes under Part N Chapter 2, and added years purchased under Part O.

129. The period of reckonable service used to calculate pension entitlement (see Part F) can also be affected by other provisions in the scheme rules. In particular the period is adjusted to provide for periods where a person had a dual mandate under Part Q. It can be enhanced under the ill-health retirement provisions in Part I.

130. Service as an MSP can also be ignored where rules in relation to short service refunds under Part M, and transfers out under Part N Chapter 1, apply. Periods in respect of which a refund or a transfer out occurs do not count as periods of reckonable service.

Rule 34: Reckonable service as an office-holder

131. Rule 34 makes similar provision to that of rule 33 but in relation to reckonable service as an office-holder. Reckonable service is counted during any period when an office-holder member is making scheme contributions from salary payments. A scheme member can accrue reckonable service as an MSP under rule 33 as well as accruing reckonable service for the same period as an office-holder under rule 34.

132. Under rule 34(2), reckonable service as an office-holder is the total of all periods whether continuous or interrupted, where contributions are deducted from salary. That period can be increased under rule 34(2)(b) by any additional period of increased reckonable service granted as a result of transferred payments from other schemes under Part N Chapter 2, and added years purchased under Part O. Such increases to office-holder reckonable service will only be made when the office-holder member is not also an MSP member (possible for the Lord Advocate or Solicitor General for Scotland).

133. The period of reckonable service used to calculate pension entitlement in Part F in relation to office-holders only can be enhanced under the ill-health retirement provisions in Part I.

134. Service as an office-holder can also be ignored where rules in relation to short service refunds under Part M, and transfers out under Part N Chapter 1, apply. Periods in respect of which a refund or a transfer out occurs do not count as periods of reckonable service.

Rule 35: Total reckonable service

135. Rule 35 provides for the calculation of an individual’s “total reckonable service”. Total reckonable service is used in relation to the calculation of entitlement to short service refunds under Part M and entitlement to transfers under Part N.

136. Total reckonable service is the total of any periods where an individual acquires reckonable service:
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- as an MSP only (under rule 33);
- as an office-holder only (under rule 34); and
- as both an MSP and office-holder (under both rules 33 and 34).

137. The wording of the rule avoids any period of service being double-counted. Any period during which an individual is both an MSP and office-holder would be counted under rule 35(c) only.

Rule 36: Measuring reckonable service

138. Rule 36 sets out that a period of reckonable service as an MSP or office-holder is to be measured in years and fractions of a year.

Transitional provisions re: reckonable service

139. Provision is made in Schedule 3 at paragraphs 6, 7 and 8 to cover the position of members and office-holders under the 1999 pensions order in relation to carrying their existing reckonable service accrued into the new scheme. See paragraphs 499-512 of these notes.

PART F  PENSIONS

140. Part F of Schedule 1 sets out rules covering when the normal pension entitlement of MSPs and office-holders on retirai commences together with rules on how the amount payable is calculated, the maximum pensions payable and the duration of pensions. These rules replace the rules contained at Part F and Schedule 2 of the 1999 pensions order.

Rule 37: Scheme pension

141. Rule 37 sets out the qualifications that must be met for an individual to become entitled to a pension under the scheme. Under rule 37(1) a scheme pension is payable to an individual who has reckonable service (see Part E) as an MSP or office-holder and has reached the age of 65. The age 65 requirement is subject to other scheme rules covering where the individual has taken an early retirement pension (see Part H) or is in receipt of an ill-health pension (see Part I). Rule 37(1) also prohibits entitlement to pensions where an individual is serving as an MSP or office-holder. This is subject to rule 44 which applies to serving MSPs and office-holders age 75 and above. See also rule 40(2) in relation to commencement of pension payments.

142. Rule 37(2) provides that the annual pension payable from the scheme is the total of the MSP pension accrued under rule 38 and the amount of office-holder pension accrued under rule 39. The actual amount of pension payable can vary should other rules apply. This could be due to the individual commuting part of their pension for a lump sum payment (see Part G) or because an
individual’s entitlement to a guaranteed minimum pension⁴ is greater than their scheme entitlement (see rule 105).

143. Rules 37, 38 and 39 recognise that the actual amount of pension payable may vary from a calculation based on actual service alone. This is achieved in the rules by (i) a variation of the definition of reckonable service (see Part E) which covers an increase as a consequence of a purchase of added years under Part O, or transfers in under Part N; or (ii) by other rules (see rule 37(2)). Other rules which can vary entitlement from actual service are those providing for the reduction in scheme benefits under section 31 of the 1999 Act where a pension sharing order has been made (see rule 92) and those allowing for the retention of some of a transfer out value to preserve a guaranteed minimum pension entitlement which a receiving scheme is not willing to accept (see rule 77).

**Rule 38: Amount of MSP pension**

144. Under the new rules members will from new rules day (see paragraphs 36 and 488) automatically begin to accrue pension at 1/40th of final salary for each year of reckonable service and will be required to pay higher contributions. Members can however elect to continue to accrue pension at 1/50th of final salary and pay contributions at the existing rate.

145. Rule 38(1) provides the formula used to calculate the annual MSP pension payable. Rule 109 provides definitions used in the rule of “final salary”, “lower rate scheme member contributions” and “higher rate scheme member contributions”.

146. **Final salary** is defined in rule 109 as the amount of MSP salary paid to the individual during their last 12 months as an “MSP member” (see rule 21). If they were an MSP member for less than 12 months, rule 109(1)(6) applies with the final salary being the actual amount received during the period which is increased to a pro-rata annual figure using the formula.

147. For MSPs who leave the scheme and return later as MSP scheme members, periods of service are aggregated before final salary is applied (see rule 33). For members who cease to be MSPs or office-holders prior to becoming entitled to their pension, their final salary is calculated as above, and up-rated from the date of leaving to the date of retiral.⁵ Up-rating or revaluation is required by Chapter II of Part IV (sections 83-86) and Schedule 3 to the 1993 Act. The relevant percentage increases for schemes to apply are set by means of annual Occupational Pensions (Revaluation) Orders.⁶

148. **Lower rate scheme member contributions** are defined as being scheme member contributions of 6% of salary with **higher rate scheme member contributions** being scheme members contributions of 11% of salary. The difference in contribution amount is the actuarially-

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⁴ Such entitlement would only possibly arise in this scheme in respect of any transferred in service, as such GMP rights are only for periods of employment prior to April 1997 where there was also membership of a SERPS contracted out scheme.

⁵ By an amount set by the Secretary of State under the powers contained in paragraph 2(1) of Schedule 3 to the Pension Schemes Act 1993.

⁶ The Order applying from 1 January 2008 is the Occupational Pensions (Revaluation) Order 2007 SI 2007/3369.
provided figure\textsuperscript{7} to fully meet the increased cost of pension entitlement under the scheme accruing at 1/40\textsuperscript{th} per year when higher rate contributions are paid as opposed to 1/50\textsuperscript{th} per year when lower rate contributions are paid.

149. Using the formula, A is the period of reckonable service during which lower rate scheme contributions were paid divided by 50; B is the period of reckonable service during which higher rate scheme contributions were paid divided by 40. A/50 and B/40 are added together and multiplied by the MSP final salary to produce the amount of annual pension payable. This figure is subject to a maximum set out in rule 38(2). Paragraph 6(2) of Schedule 3 ensures that contributions under the old rules are treated as having been made at the lower rate.

150. Rule 38(2) sets a maximum MSP pension payable under the scheme by reference to an individual’s “annual MSP pension cap”. The annual MSP pension cap is set at two-thirds of an individual’s final MSP salary, ignoring any reduction that is made under section 82(2) of the 1998 Act as a consequence of a member also being a member of the Westminster or European Parliaments (dual mandate members).

151. Where the annual MSP pension cap is exceeded, the annual MSP pension payable is reduced to the level of the annual MSP pension cap (in relation to the effect on future contributions payable by the member when the cap is reached, see also rule 30).

152. The annual MSP pension cap replaces the previous maximum pension rules which were set out at article F5 and Schedule 2 to the 1999 pensions order. Other than the two-thirds salary cap which is retained, the previous limits were linked to former Inland Revenue restrictions which were repealed in the Finance Act 2004. The new Revenue limits are the annual and lifetime allowances\textsuperscript{8} which set the maximum value of benefits that an individual is allowed to accrue tax-free from contributions to registered pension schemes. Where the lifetime allowance is exceeded a tax liability accrues and is recoverable from the member (see Part R). Under existing salaries and contribution limits the annual allowance will not be exceeded by contributions to this scheme alone. If a member’s aggregate contributions including contributions to other schemes exceed the limit, the individual will be liable for the tax charge under section 277 of the Finance Act 2004 (see also rule 89(3) for limitations on purchasing added years in this regard).

**Rule 39: Amount of office-holder pension**

153. Rule 39 makes similar provisions for office-holders to those made in rule 38 for MSPs. The rule sets out the formula which applies to calculate the amount of an office-holder pension that is payable as well as setting a maximum pension payable. The provisions have the identical effect to rule 38 for MSP pension in relation to the calculation of pension entitlement where the member has lower and higher scheme member contribution rates.

154. Rule 39 differs from rule 38 to account separately for separate periods of office-holder service. This recognises the varying nature and salaries attributable to different qualifying office-holder posts an individual may hold in their career, where a final office-holder salary may be much

\textsuperscript{7} Scottish Parliamentary Pension Scheme Committee, 1st Report 2008 (Session 3), paragraph 94 (SP Paper 103)

\textsuperscript{8} Finance Act 2004 sections 227-238
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

less or much more than a salary for an office held earlier in a person’s career. Rule 39(2) makes clear that each period of service as an office-holder entitles the individual to a separate pension entitlement. Under rule 39(3), the value of office-holder benefits accrued are calculated individually before being aggregated for payment purposes.

155. Rule 39(4) applies an office-holder pension cap similar to the MSP pension cap of two-thirds of the final salary of the office-holder (rule 39(4)(a)). However, where there has been more than one office held such an approach would apply multiple caps. Rule 39(4)(b) applies the cap as two-thirds of the highest office-holder salary.

Rule 40: Duration of scheme pension

156. Rule 40(1) makes pension payable from the first day that the individual is entitled to receive it. Under rule 40(3), pension is paid for the remainder of their life (subject to exceptions under rule 41). The entitlement date applies whether or not the individual complies with rule 40(2). Under rule 40(2), before the individual entitled to a pension is able to receive any payments they should first (a) notify the Fund trustees that payments should begin, and (b) give the trustees such information as they require.

157. The required information under rule 40(2)(b) covers other entitlements to pensions the individual has and other information required to calculate any tax liability.

158. Rule 40(4) requires pensions to be paid monthly in arrears but also provides the Fund trustees with discretion to pay by other instalments subject to a minimum of at least one instalment per year.

Rule 41: Suspension of scheme pension

159. Rule 41 supplements rule 37 in making clear that an individual is not entitled to a scheme pension while serving as an MSP or an office-holder. The loss of pension applies even if they have previously qualified for and received a pension (save for the special circumstances of rule 44 for serving members age 75 and over). In the event that a scheme pensioner is elected as an MSP or becomes the holder of a pensionable office (see rule 22(2)), pension payments are suspended under rule 41(1).

160. When the individual again becomes eligible to receive their pension, the period of suspension ends and pension payments resume. Any additional benefits accrued during the period of suspension will be treated as a separate entitlement, although they may ultimately be aggregated for payment purposes.

161. Rule 41(2) restricts the amount of any lump sum death payable should the individual die during their new period as a participating member. The amount payable under Part K is reduced by the amount of scheme pension received before the suspension. Scheme pension includes any retirement lump sum received under Part G.
162. Rule 41(3) details what happens to the amount of pension payable when the original pension was an ill-health pension granted under Part I of the rules.

163. The rules for the award of an ill-health pension include the criteria that the individual stops working as an MSP or office-holder as a direct result of their illness or, in relation to deferred pensioners, stops gainful work, and that they are prevented by the illness from working (rules 47-49). As the individual had been able to resume gainful work as an MSP or office-holder the previous criteria for award of an ill-health pension no longer apply.

164. Under rule 41(3), any enhancement to the pension entitlement awarded as a consequence of the illness is removed. Rule 41(3)(a) provides that any earlier ill-health entitlement is ignored, so the right to be paid before 65 is no longer applicable when the person ceases their subsequent service as an MSP or office-holder. If this subsequent service ends when the person is 65 or older, then rule 41(3)(b)(i) the earlier ill-health enhancement to pension payments is removed and the pension is recalculated based upon actual reckonable service.

165. Similarly, under rule 41(3)(b)(ii) any increase to the ill-health pension attributed to added years partly paid for in instalments before service was interrupted on serious ill-health grounds will be reduced to reflect the amount of added years actually paid for. Rule 86(2)(a) provides that in serious ill-health cases the scheme pensioner gets the benefit of all the added years they have applied for even where they are not fully paid up when the MSP stops being an MSP.

PART G RETIREMENT LUMP SUMS

166. Part G of Schedule 1 sets out the rules for commuting part of a pension into a tax-free lump sum. Part G also makes provision for payment of a one-off trivial commutation lump sum.9 These rules replace the rules contained at Part G and Schedule 3 of the 1999 pensions order.

Rule 42: Right to commute pension into a lump sum

167. Under the Finance Act 2004 a person who is a member of a tax-registered scheme may exchange (commute) part of their pension entitlement for a tax-free lump sum called a “pension commencement lump sum”.10 The maximum portion of pension that may be commuted under the Finance Act 2004 is 25%, otherwise the payment would be an unauthorised payment in terms of section 160 of that Act (see part R, paragraphs 407-421).

168. Under rule 42(1), an individual who qualifies for a scheme pension (under Part F - Pensions, Part H - Early Retirement and Part I - Ill-health) may commute part of their pension into a tax-free lump sum by giving notice to the Fund trustees.

169. Rule 42(2) determines that the notice must be in writing and details the portion of the pension to be commuted at rule 42(2)(b). Rule 42(2)(a) requires the notice to be given before the earlier of the day on which the pension is first paid or the individual’s 75th birthday. Under the rules for payment of a “pension commencement lump sum” a scheme participant aged 75 or over

9 Paragraph 7 of Schedule 29 to the Finance Act 2004
10 Paragraph 1 of Schedule 29 to the Finance Act 2004
cannot commute part of their pension for a pension commencement lump sum and any such payment would be an unauthorised payment. Rule 44 makes special provision for members approaching age 75.

170. Rule 42(2)(c) requires that the individual must also provide information to allow the Fund trustees to determine the amount payable and to confirm that the retirement lump sum would be a pension commencement lump sum. One of the requirements for a “pension commencement lump sum” is that all or part of the scheme member’s Lifetime Allowance is available.

**Rule 43: Payment of retirement lump sum and corresponding reduction in pension**

171. When a retirement lump sum is taken the pension payable is reduced. Rule 43 provides detail on the calculation of the amount of lump sum payable and the corresponding reduction to pension.

172. Rule 43(1) allows the Fund trustees to determine the amount of lump sum payable up to the maximum amount of lump sum (permitted maximum) allowable under the Finance Act 2004.¹¹ The permitted maximum is an amount equivalent to 25% of the pension. Rule 43(1)(a) allows the Fund trustees to commute an amount equivalent to a lower percentage if the individual indicates in the commutation notice that this is what they wish to commute. It is for the Fund trustees to determine the actual amount of lump sum that is equivalent to the pension being commuted. Rule 43(3) requires them to have that amount either certified by the scheme actuary or made in accordance with guidance and tables prepared by the scheme actuary.

173. Under rule 43(2), the amount of pension payable is reduced by the value of any retirement lump sum being paid.

**Rule 44: Special rule for commutation by individual approaching age of 75**

174. Under the Finance Act 2004, a participating member aged 75 or over cannot commute part of their pension into the tax-free “pension commencement lump sum”.¹² Under the scheme, an individual cannot qualify for a scheme pension while they are an MSP or holder of a pensionable office. Therefore a serving MSP or office-holder approaching age 75 may lose the opportunity to commute part of their pension into a “pension commencement lump sum”. Rule 44 therefore makes special provision for serving MSPs and office-holders approaching age 75 to receive a retirement lump sum.

175. Rule 44(1) makes provision for a participating member who would be entitled to be paid a scheme pension, except for them still being an MSP or holder of a pensionable office, to apply to the Fund trustees to commute part of their pension into a tax-free lump sum. The application must be made prior to their 75th birthday so that the individual becomes entitled on the day prior to their 75th birthday. For the lump sum to be payable by the Fund trustees it must not attract an unauthorised payments charge under section 208 of the Finance Act 2004 (see rule 100). In this case, the payment must therefore meet the tests for a “pension commencement lump sum”.

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¹¹ Paragraph 2 of Schedule 29 to the Finance Act 2004
¹² Paragraph 1 of Schedule 29 to the Finance Act 2004
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

particular, it must not be paid later than one year after the day on which an individual becomes entitled to it.

176. Serving MSPs and office-holders aged 75 and over are not eligible to be a participating member and accumulate more service in the pension scheme (see Part C, rules 21 and 22(1)). Rule 44(2) determines that an individual who is an MSP or holder of a pensionable office will be entitled to an annual pension from the day before their 75th birthday but no sum is payable until the individual ceases to be a MSP or holder of a pensionable office. A scheme pension cannot be paid to an individual while they are an MSP or holder of a pensionable office (see rule 37(1) and rule 41). They will receive their retirement lump sum but will not receive their reduced annual pension until they are no longer an MSP or in office.

177. The rule only applies to those persons who give a valid commutation notice under rule 44(1) prior to reaching age 75. Scheme members who do not give a commutation notice, on reaching age 75, become deferred pensioners under the scheme.

**Rule 45: Commuting trivial amounts**

178. Rule 45 makes provision for a small pension to be commuted and paid as a one-off tax-free lump sum. The Finance Act 2004 allows a trivial commutation to be paid where the level of pension does not exceed 1% of the Lifetime Allowance. For the current year 2008/09 this equates to a pension of £825 per annum. Payment of such a sum can be paid only when the individual is between ages 60 and 75.

179. Rule 45(1) makes provision for the Fund trustees to pay on application a one-off lump sum instead of a pension provided it would qualify to be a trivial commutation lump sum as defined in the Finance Act 2004.

180. Rule 45(2) and (3) set out how the value of the lump sum is to be calculated. Pension benefits not in payment are described in the Finance Act 2004 as “uncrystallised benefits”. Under rule 45(2), the Fund trustees determine the value of the individual’s uncrystallised benefits which are being commuted. This is done in accordance with section 212 of the Finance Act 2004 (which sets out a basic formula relating to the value of the pension benefit). Under Rule 45(3), the scheme actuary must either certify the valuation or provide guidance and tables under which the valuation is made.

181. Rule 45(4) makes clear that the payment of a one-off lump sum extinguishes all pension rights, including those of others such as surviving partners and eligible children.

**PART H EARLY RETIREMENT**

182. Part H of the Schedule sets out who is eligible for early retirement and the reduction in the annual scheme pension that applies when retiring early. The rule replaces the rules contained at Part H and Schedule 4 of the 1999 pensions order.

**Rule 46: Early retirement**
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

183. Under the Finance Act 2004, the minimum pension age under which a member of a tax-registered occupational pension scheme can retire early and access their benefits is increased to 55 from 6 April 2010 (see references to “normal minimum pension age” in sections 165 and 279 of that Act).

184. Rule 46(1) makes an individual who is age 55 and over and who has not yet reached the scheme normal retirement age of 65 eligible to take early retirement. Under rule 46(1)(b) they must no longer be an MSP or the holder of a pensionable office. The requirement under the 1999 pensions order for 15 years of actual qualifying service before becoming eligible to take early retirement is not repeated in new scheme rules. Any individual with accrued pension rights is eligible provided they meet the criteria in rule 46(1).

185. Rule 46(3) disapplies the normal retirement from age 65 restriction in rule 37(1), allowing a scheme pension to be paid from the date that the early retirement notice is given under rule 46(2) or such later date as is sought and specified in the early retirement notice.

186. Rule 46(4) determines the annual scheme pension (see rule 37(1) and paragraphs 141-143 of these notes) payable to a person making an application for early retirement. It determines that the annual pension is reduced by an appropriate percentage on early retirement. The appropriate percentage is 4% for each year that the individual is retiring before reaching age 65. For example the reduction for a person retiring early at age 60 would be 20% (5 x 4%).

187. Save for the transitional provisions (see paragraphs 517-523), this calculation replaces the existing rules for calculating a pension payable on early retirement under the 1999 pensions order.

188. The application by a scheme of certain types of early retirement calculation could result in discriminatory treatment of a member or members on the grounds of age. The rules in Part H were framed in light of the equality principles in the Employment Equality (Age) Regulations 2006 and on the assumption that they would apply to the scheme. These Regulations implement into domestic law Directive 2007/78/EC establishing a general framework for equal treatment in employment and occupation.

189. The Employment Equality (Age) Regulations 2006 exempt from discrimination certain rules and practices in or relating to pension schemes. In particular, paragraph 8 of Schedule 2 exempts from discrimination the actuarial calculation of any age-related benefit commencing before the lowest age at which any member can retire without a reduction. In evidence to the Committee, GAD advised that a flat 4% per annum reduction was the lowest level of reduction which would be actuarially neutral for the scheme. This 4% figure has therefore been used in rule 46(4) so that a calculation made under rule 46(4) will be an actuarial calculation in terms of paragraph 8 of Schedule 2 to the Employment Equality (Age) Regulations.

190. Once the reduction has been applied and pension commenced, rule 46(5) makes clear that the reduction continues for the whole duration of the pension payments.

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13 S.I. 2006/1031
14 Scottish Parliamentary Pension Scheme Committee, 1st Report 2008 (Session 3), paragraph 124 (SP Paper 103)
Transitional provisions applying to early retirement

191. Paragraph 11 of Schedule 3 (see paragraphs 517-523) contains transitional provisions preserving some rights to a pension entitlement determined under the calculation rules in the 1999 pensions order.

192. The provisions apply to individuals who were participants on 6 April 2006 under the old scheme rules. Those individuals have a limited right to retire from age 50 where they have at least 15 years relevant service before the “cut-off date” of the first general election after the new rules come into effect.

PART I  ILL-HEALTH

193. Part I of Schedule 1 sets out the rules which apply when a scheme member resigns or stops being an MSP or, when not an MSP, a holder of pensionable office, as a result of a health condition. These rules replace the rules contained in Part J of and paragraph 3 of Schedule 2 to the 1999 pensions order.

194. A distinction is made in the rules between “serious” and “ordinary” ill-health with an enhancement to accrued pension provision being payable to those with a serious health condition. For those with an ordinary health condition, provision is made for accrued pension to commence immediately. Provision is also made for deferred pensioners who suffer ill-health, to have accrued pension paid immediately. Rules also provide for periodic review of the health of individuals in receipt of ill-health pensions.

195. New provision is made for lump sum payments in lieu of pension to be made to scheme members who are diagnosed with less than 12 months to live. The rules also make changes to the existing provisions to ensure compliance with the conditions set down in the Finance Act 2004; in particular the requirements in paragraph 1 of Schedule 28 relating to the permanence of, and the effect on the ability to work caused by, a health impairment.

Rule 47: Serious ill-health pension

196. Rule 47 provides six conditions which must be met before the Fund trustees can be satisfied that an individual becomes entitled to a serious ill-health pension from the scheme. The amount of pension payable is set out in rule 50 (paragraphs 209-218).

197. Condition 1 is met where the individual has resigned or has otherwise stopped being an MSP or the holder of a pensionable office. The reason for the resignation or otherwise stopping work must be as a direct result of a health condition. In most instances, the health condition will lead directly to resignation but the condition may also be met where an individual does not stand for re-election or is not re-appointed to a pensionable office as a direct result of the health condition.

198. Condition 2 requires that the individual must be a scheme member and thus be entitled to a scheme pension but for not having reached age 65. Condition 3 requires that an application for a serious ill-health pension must be made.
199. Conditions 4 and 5 relate to the health condition. That condition must be expected to be permanent and to prevent the individual from doing any gainful work now and in the future. “Work” is defined in rule 109(1) of Schedule 1 and includes work under a contract of employment, service or apprenticeship, as the holder of an office or as a self-employed person. “Gainful” takes its normal meaning and so unpaid work would not, for example, be gainful work.

200. Condition 6 requires that the application be accompanied by evidence from a doctor that the doctor is satisfied that conditions 4 and 5 are met (“doctor” is defined in rule 109(1)).

Rule 48: Ordinary ill-health pension

201. Rule 48 lists six conditions which must be met before the Fund trustees can be satisfied that an individual becomes entitled to an ordinary ill-health pension. The amount of pension payable is set out in rule 51 (paragraph 219).

202. Conditions 1, 2 and 3 are the same as those for serious ill-health pensions (see paragraphs 197-198).

203. Conditions 4 and 5 relate to the health condition that the individual is suffering from. That condition must be expected to be permanent and the Fund trustees need to be satisfied that it will prevent the individual from adequately performing the duties of an MSP or office-holder now and in the future. The health condition is likely to be less serious than for a serious ill-health pension in rule 47 in that it is not a condition that prevents the individual from doing other gainful work. Condition 4(b) envisages that the other gainful work will be less demanding or of a different nature, although this will be a matter for the Fund trustees to be satisfied about in the individual case.

204. Condition 6 requires that the application is accompanied by evidence that a doctor is satisfied that the health conditions in conditions 4(a) (relative to the duties of an MSP or office-holder) and 5 are met.

Rule 49: Deferred pensioner’s ill-health pension

205. Rule 49 lists seven conditions which must be met before the Fund trustees can be satisfied that a deferred pensioner becomes entitled to an ill-health pension. The amount of pension payable is set out in rule 52. A deferred pensioner is defined in rule 109(1) and is a former participating member under the age of 65.

206. Conditions 1, 2 and 4 are similar to conditions 2 and 3 for serious ill-health pensions (see paragraph 198).

207. Condition 3 is similar to condition 1 in rules 47 and 48 for ordinary and serious ill-health pension and requires that the deferred pensioner has stopped doing gainful work as a direct consequence of their health condition.

208. Conditions 5, 6 and 7 are the same as conditions 4, 5 and 6 for serious ill-health pension (see paragraphs 199-200).
Rule 50: Amount of serious ill-health pension

209. Rule 50 sets out how the amount of serious ill-health pension payable is calculated. Separate calculations are made depending upon whether the individual is an MSP (rule 50(1)) or an office-holder only (rule 50(2)).

210. An uplift in benefits is payable under this rule, applied to the portion of salary attributable to that of an MSP. For MSPs who also have reckonable service as an office-holder, that service is not enhanced but the accrued pension becomes payable immediately (without reduction) along with the enhanced MSP portion of pension.

211. Part F of Schedule 1 (Pensions) provides for the calculation of the MSP pension and office-holder pensions together, making the annual scheme pension payable at the normal scheme retirement age of 65. (See rules 37 – 41 and paragraphs 141-165). Part F is applied to an individual entitled to a serious ill-health pension, subject to the modifications in rule 50(1).

212. Rule 50(1)(a) requires that the individual applying for a serious ill-health pension is treated as if they were age 65 on the “relevant day”. Rule 50(3) defines “relevant day” as being the day on which the individual resigned or otherwise stopped being an MSP or office-holder.

213. Rule 50(1)(b) increases the reckonable service as an MSP of an individual who is entitled to a serious ill-health pension. The increase is on the basis that the MSP would have remained an MSP until their 65th birthday and is equal to the period between the relevant date and the date of the MSP’s 65th birthday. For example, for an MSP who falls ill aged 50, the increase in reckonable service would be 15 years (to age 65).

214. Rule 50(1)(c) applies if the individual is a dual mandate MSP in the relevant period (see rule 94 and paragraph 400). In such circumstances the individual’s salary will have been reduced under section 82(2) of the 1998 Act. To ensure that the pension payable is related to that reduction in salary, the increase in the period of reckonable service under rule 50(1)(b) is reduced by the same proportion. For example, if the salary reduction is two-thirds, a dual mandate MSP who falls ill aged 50 will have the increase in reckonable service calculated under rule 50(1)(b) of 15 years (to age 65) reduced by two-thirds to 5 years. The reduced reckonable service is applied to the basic MSP salary.

215. Rule 50(1)(d) provides that the rate of scheme member contributions for the increased period of reckonable service under rule 50(1)(b) is that which applies on the relevant day. For example, if on the relevant day the individual is making higher rate scheme member contributions that rate will be used to calculate the increased reckonable service under rule 50(1)(b) is applied.

216. Rule 50(1)(e) makes clear that the enhancement of reckonable service under rule 50(1)(b) does not apply to reckonable service as an office-holder. The amount of serious ill-health pension payable in respect of office-holder service, if any, will be based upon the amount of reckonable service accrued to the relevant day. That pension will be payable immediately, without any reduction for early payment, in addition to the MSP ill-health pension.
217. Rule 50(2) makes provision in relation to those who only have reckonable service as an office-holder (the current Lord Advocate and Solicitor General for Scotland are not MSPs). Rule 50(2)(a) makes similar provision for them to that made for MSPs under rule 50(1)(a) (paragraph 212).

218. Rule 50(2)(b) provides a formula to calculate the increase to the amount of pension payable. The period of enhancement of reckonable service applying to those who only have reckonable service as an office-holder is calculated in identical manner to that for an MSP (see paragraph 213), but the salary that is applied is restricted to the annual salary payable to an MSP on the relevant day. To take the earlier example, if an office-holder only falls ill aged 50, the increase in reckonable service would be 15 years (to age 65), with the salary used in the calculations being the salary payable to an MSP on the relevant day. As in the case of an MSP, the rate of accrual is linked to the scheme member contributions at the relevant day (see paragraph 215).

**Rule 51: Amount of ordinary ill-health pension**

219. Rule 51 provides for the amount of ordinary ill-health pension payable. The individual applying for an ordinary ill-health pension is treated as if they were age 65 on the date they resigned or otherwise stopped being an MSP or, where they were not an MSP, the holder of a pensionable office. The amount of pension is then calculated under rule 37 (see paragraphs 141-143) and is based on the actual accrued reckonable service. In effect, the amount of pension payable is not reduced although the individual has not reached age 65.

**Rule 52: Amount of deferred pensioner’s ill-health pension**

220. Rule 52 provides for the amount of deferred pensioner’s ill-health pension payable. The individual applying for a deferred pensioner’s ill-health pension is treated as if they were age 65 on the date the application for the pension was made. The amount of pension is then calculated under rule 37 (see paragraphs 141-143) and is based on accrued reckonable service. The final salary of the deferred pensioner is the final salary paid to them while in post, increased in accordance with an Order made under paragraph 2(1) of Schedule 3 to the Pension Schemes Act 1993. In effect, pension accrued to the date of entitlement is paid immediately, without any reduction because the individual has not reached age 65.

**Rule 53: Review of ill-health pension entitlements**

221. Rule 53 makes provision for review by the Fund trustees of an individual’s entitlement to an ill-health pension. Rule 53(1) enables a review to be carried out at any time and at such intervals as the Fund trustees determine until the individual reaches age 65.

222. Under rule 53(2), the Fund trustees can require a pensioner to provide evidence from a doctor on their state of health.

223. Rule 53(3) sets out the powers of the Fund trustees if, following a review, they are satisfied that the individual is no longer prevented from doing gainful work by reason of his or her state of health. If so satisfied, the Fund trustees can either determine that the individual is no longer entitled to an ill-health pension (rule 53(3)(a)) or, where the individual is entitled to a serious ill-health
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

...pension, that they should be entitled to an ordinary ill-health pension (rule 53(3)(b)). In the latter case, the Fund trustees would have to remain satisfied that the individual would not be able to perform the duties of an MSP or holder of a pensionable office.

224. Rule 53(4) provides that the Fund trustees may determine that, if a person refuses to undergo a medical examination under rule 54 (see paragraph 226) or fails to cooperate with a review, they are no longer entitled to an ill-health pension.

225. Rule 53(5)(a) provides that, where the Fund trustees have made a determination under rule 53 that the individual is no longer entitled to an ill-health pension, the pension payments are to stop. It also provides that, where the Fund trustees have determined that the individual is entitled to an ordinary ill-health pension, the pension payments are to be reduced. Under Rule 53(5)(b), when an ill-health pension is stopped or reduced the individual is treated as if they had never been entitled to an ill-health pension. The effect of rule 53(5)(b) is that when the individual next becomes entitled to receive a scheme pension no account is taken of the previous ill-health entitlement. This is similar to the provision in rule 41(3) (see paragraphs 162-165).

**Rule 54: Medical examinations**

226. Rule 54 allows the Fund trustees to require an applicant for an ill-health pension or an individual whose entitlement is being reviewed (under rule 53) to be examined by a doctor. The Fund trustees will bear the cost of any such examination (payment for which will be made from the Pension Fund under rule 3(1)(b)) unless they determine that the costs should be borne by the examinee.

**Rule 55: Ill-health lump sums: life expectancy of less than one year**

227. In terms of paragraph 4 of Schedule 29 to the Finance Act 2004, a serious ill-health lump sum benefit may be made from registered pension schemes instead of a pension, provided certain conditions are met. Rule 55 provides for such a payment and lists the conditions applicable.

228. Rule 55(1) lists the conditions which must be met before the individual becomes entitled to be paid an ill-health lump sum. The individual must make an application (condition 1), no longer be an MSP or holder of a pensionable office (condition 2) and have reckonable service in the pension scheme (condition 3).

229. Condition 4 requires that the conditions in paragraph 4 of Schedule 29 to the Finance Act 2004 are met. Those conditions require: that the Fund trustees receive medical evidence that the member is expected to live for less than one year; that all or part of the member’s Lifetime Allowance is available (see paragraph 4); it is paid in respect of an uncrystallised arrangement (see paragraph 180); payment extinguishes all of the member’s entitlement to benefits from the scheme (see paragraph 233); and (see paragraph 272) the member is under 75 years of age.

230. Rule 55(2) sets out the amount payable as an ill-health lump sum which is five times the annual scheme pension, and sets out how that pension is calculated for these purposes.
231. Under rule 55(2)(a), for those over age 65 it is the amount of scheme pension that would otherwise be payable to the individual. That amount would be calculated as set out in Part F of Schedule 1 (rules 37 and 38, see paragraphs 141-152).

232. For persons under age 65, rule 55(2)(b) provides that the amount of annual scheme pension is calculated as if the individual were entitled to a serious ill-health pension (see paragraphs 196-200).

233. Rule 55(3) provides that payment of the ill-health lump sum extinguishes all of the recipient’s rights to receive scheme benefits.

PART J  SURVIVING PARTNERS AND CHILDREN

234. Part J of Schedule 1 covers the pension entitlement of surviving partners and children of current or former MSPs or office-holders who were at the time of their death a scheme member, scheme pensioner or deferred pensioner. The rules covering these pensions comply with the rules in section 167 and Part 2 of Schedule 28 of the Finance Act 2004 (which set out the rules relating to payment of pension death benefits by a registered pension scheme). The rules in Part J replace the rules contained at Part K of the 1999 pensions order.

Rule 56: Meaning of scheme pension entitlement

235. In order to calculate a surviving partner or child’s entitlement to pension, it is first necessary to determine what pension would have been due to the deceased had they survived. The amount of pension that would have been payable depends upon what type of scheme member the deceased was at the time of their death. Rule 56 refers to this as “scheme pension entitlement” and sets out how this is calculated for each type of scheme member.

236. Rule 56(2) sets out how scheme pension entitlement is calculated for persons who die while a participating member. Rule 56(2)(a) determines that, for a participating member who died aged 65, or over this is based on the prospective annual scheme pension that would have been payable had the deceased retired on the day of their death (i.e. was no longer an MSP or office-holder on that day). For an MSP this would be the pension payable under rule 38 and for an office-holder the pension payable under rule 39. Rule 56(2)(b) determines that for a participating member who died under age 65, the prospective annual scheme pension is the annual pension that would have been payable had the deceased become entitled to a serious ill-health pension on the day of their death. For an MSP this would be the pension calculated under rule 50(1) and for an office-holder the pension calculated under rule 50(2).

237. Rule 56(3) determines the scheme pension entitlement for an individual who died while being a deferred pensioner. Under (a) the scheme pension entitlement for a deferred pensioner over 65 is the annual pension that had already been accrued up to the date of death including any reckonable service between ages 65 and 75. For those under 65, (b) determines the scheme pension entitlement is the annual pension that has already been accrued up to the date of death and would have been payable if the person was 65 on that date. For an MSP this would be the pension calculated under rule 38 and for an office-holder the pension calculated under rule 39.
238. Rule 56(4) sets out scheme pension entitlement for those in receipt of a scheme pension and makes clear that any reduction in the pension payable as a result of payment of a retirement lump sum is to be ignored for the purposes of survivor benefits. Under (a) for a scheme pensioner who died and took a retirement lump sum under rule 43(2), scheme pension entitlement is the annual pension that would have been payable at the date of death had it not been reduced under commutation rule 43(2). For a scheme pensioner who died and did not take a retirement lump sum, scheme pension entitlement is the annual pension in payment on the date of their death.

239. Rule 56(5) covers former participating members whose pension rights had been extinguished by taking an ill-health lump sum under rule 55(3) before they died (see paragraph 233). Scheme pension entitlement is the pension that would have been payable if the deceased had received a serious ill-health pension. For an MSP this would be the pension calculated under rule 50(1) and for an office-holder the pension calculated under rule 50(2).

240. In the case of an individual aged 75 or over who died whilst their pension was reduced to nil (under rule 44(2)), rule 56(6) determines that the prospective pension is calculated as if the deceased was a deferred pensioner on their date of death (see paragraph 237). Therefore, the scheme pension entitlement used to calculate the survivor benefits ignores the lump sum commutation taken by such an individual.

Chapter 2 Partners’ pensions

241. Chapter 2 of Part J sets out the rules covering partner pensions and trivial lump sum payments.

Rule 57: Partner

242. Rule 57 provides the definition of a qualifying partner. Under rule 57(1) the deceased’s partner may be a spouse, civil partner or a person who qualifies under rule 57(2) as an “unmarried partner”.

243. For an unmarried partner to qualify for a partner’s pension rule 57(2) determines that the deceased must have notified the Fund trustees in writing of their unmarried partner at least six months immediately before their death. The trustees must also be satisfied based on the evidence they have received that:
(i) The deceased had lived together with their unmarried partner as if husband and wife or civil partners for a period of at least 2 years before the death. The reference to living together as husband and wife or as civil partners mirrors the relationship test in section 25 of the Family Law (Scotland) Act 2006;

(ii) the parties were in an exclusive relationship and neither the deceased or their unmarried partner had lived with any other person in such a relationship or with a spouse or civil partner during the 2 year period;

(iii) during the 2 year period the unmarried partner was financially dependent on the deceased or they were mutually financially dependent – to meet a requirement of the Finance Act 2004 at Schedule 28 (paragraph 15(3)); and

(iv) Immediately before the deceased’s death the deceased and their unmarried partner must not have been prevented by law from marrying or becoming civil partners. As such both parties must not have been the spouse or civil partner of any person and neither party should have been prevented by law from marrying or becoming civil partners because of their age, mental capacity, relationship or other legal restriction.

**Rule 58: Partner’s pension**

244. Rule 58 sets out the qualification conditions for payment of a partner’s pension. Rule 58(1) allows for a partner’s pension to be payable following the death of a participating member, deferred pensioner or scheme pensioner. Rule 58(2) determines that a partner’s pension is $\frac{5}{8}$ths of the deceased’s prospective pension entitlement as described in paragraphs 235-240.

245. Under rule 69, the partner’s pension is suspended for any 5 year guarantee period as a partner will receive a larger entitlement of the deceased’s pension if they qualify for a payment under the 5 year guarantee provisions (see Part L).

**Rule 59: Enhancement of initial partner’s pension**

246. Rule 59 provides for an enhancement of a partner’s pension for three months following the death of a participating member or pensioner to the level of income the member was receiving at that time, in order to give the partner time to adjust financially to the loss of the partner’s income.

247. Rule 59(1) and (4) provide that the amount payable for any part of the three month period is increased where the amount A determined by rule 59(2) is less than the amount B determined by rule 59(3).

248. The amount A in rule 59(2) is the amount of pension that is due to be paid to the surviving partner during the three month period. To that amount is added any children’s pension to be paid to that partner for the benefit of an eligible child during that period.

249. Amount B in rule 59(3) depends upon whether the deceased was a participating member (i.e. a serving MSP or office-holder) or a scheme pensioner at the time of their death. If a scheme member then B is the salary they would have received during the three month period. If a scheme pensioner, B is the amount of scheme pension they would have received during that period.
250. Under rule 59(4) the partner’s pension is increased during the three month period by the difference between amount A and amount B.

**Rule 60: Duration of partner’s pension**

251. Rule 60 determines when a partner’s pension commences and the application and payment details required. Rule 60(1) determines that a partner’s pension is payable from the day after the deceased partner died. Rule 60(2) states that payments to a partner need not begin unless the trustees receive notice of entitlement or any relevant information required to arrange payment, for example, details of any other pensions in payment in order to calculate any tax liability if the Lifetime Allowance limit is breached. The Fund trustees also require banking or other payment details.

252. Rule 60(3) makes clear that a partner’s pension is paid for life. This applies regardless of whether the deceased’s partner subsequently marries, becomes a civil partner or co-habits with another person. Rule 60(4) provides for periodic payments of the pension which is usually monthly in arrears.

**Rule 61: Partner’s trivial lump sum**

253. Rule 61 provides an option, instead of periodic instalments, for certain partner’s pensions to be commuted and paid as a partner’s trivial lump sum known as a “trivial commutation lump sum death benefit”. It is a one off tax-free lump sum paid instead of a monthly pension. Under the Finance Act 2004 a trivial lump sum cannot be paid in respect of a deceased person who was aged 75 or over, and the amount paid must not exceed 1% of the Lifetime Allowance. For the year 2008/09, this equates to a pension of £825 per annum.

254. Rule 61(1) makes provision for a partner’s trivial lump sum requiring that:

- the partner applies in writing to the trustees for a trivial lump sum instead of an annual pension;
- no payment has been made to the partner in respect of a partner’s pension or a death in service lump sum;
- the partner is not entitled to a 5 year guarantee pension under rule 69; and
- the trustees be satisfied that the trivial lump sum payment would be a trivial commutation lump sum death benefit under Schedule 29 to the Finance Act 2004.

255. Under subparagraph (2), the Fund trustees determine the amount of the partner’s trivial lump sum. Rule 61(3) determines that the amount must be certified by the scheme actuary or calculated in accordance with guidance and tables provided by the scheme actuary.

256. Rule 61(4) makes clear that payment of a one off trivial lump sum extinguishes the partner’s rights to all other benefits under the scheme in respect of the deceased.

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15 Defined in paragraph 20 of Schedule 29 to the Finance Act 2004
16 Schedule 29 to the Finance Act 2004
Chapter 3 Children’s pensions

257. Chapter 3 sets out the rules covering eligibility for and payment of children’s pensions.

Rule 62: Children’s pensions

258. Rule 62(1) determines that a children’s pension may be payable in the event of the death of a participating member, scheme pensioner or deferred pensioner.

259. Rule 62(2), (3) and (4) determine that, where a partner’s pension is payable, the total children’s pension payable will be a quarter of the deceased’s scheme pension entitlement (as calculated under rule 56, see paragraphs 235-240) if there is one child and 3/8ths if there are two or more children (Amount A). Where no partner’s pension is payable the total amount is higher, being 5/16ths of the deceased’s scheme pension entitlement for one child or 5/8ths for two or more children (Amount B).

Rule 63: Eligible children

260. Rule 63 sets out the definition of a child. Under rule 63(1), a child includes an adopted child and a stepchild (providing that when the deceased died the stepchild was financially dependant on the deceased or dependant on the deceased due to physical or mental impairment).

261. Rule 63(2) sets out conditions, one of which must be met for a child to be an “eligible child” at any given time. One of the conditions must always apply although it need not always be the same one.

Condition 1 requires the child to be born and under aged 17.

Condition 2 is directed at older children aged over 17 but under 23 and includes a financial dependency test. It is primarily directed at those in continuing education but could apply in other circumstances. The child must have been financially dependent on the deceased on death or under age 17. To continue to qualify, the Fund trustees must be satisfied that any child would have been financially dependent on the deceased had they survived.

Condition 3 applies to any child who, because of physical or mental impairment, was dependant on the deceased when they died. To qualify for ongoing payments, the Fund trustees must remain satisfied that the dependency would have continued had the deceased survived.

Rule 64: Payment of children’s pension

262. Under rule 64(1), a children’s pension is payable during any period a child qualifies under rules 62 and 63. A children’s pension would normally be paid to the surviving parent, but rule 64(2) gives the Fund trustees discretion to decide who should receive the children’s pension (or any part of it).
263. Rule 64(3) requires that, where a children’s pension is paid to someone other than a qualifying child, the whole pension must be used for the benefit of the child(ren), unless the Fund trustees direct that the proportions are to be different. This may occur where there are a number of eligible children, given that the total amount does not increase although there are more than two eligible children.

264. Rule 64(4) gives the Fund trustees power to recover payment of a children’s pension from the recipient in the event that the recipient is not using it for the benefit of the child. The trustees could take other action to ensure that the money is applied for the benefit of the intended beneficiary. They can seek to recover amounts not used for the child, including reducing future pension payable to the recipient. In addition, rule 64(5) gives the Fund trustees discretion to withhold a children’s pension if it is not being used for their benefit. Any withheld amounts can be paid when the Fund trustees are satisfied that the pension will be used for its intended purpose.

265. Under rule 64(6)(a), the Fund trustees need not commence payment of a children’s pension until they have received notification of the child’s entitlement. This could be the child’s birth or adoption certificate or evidence of financial dependency. Under rule 64(6)(b), the Fund trustees also require details of any other pensions in payment, in order to calculate any tax liability if the Lifetime Allowance is exceeded. The Fund trustees would also require details to allow payments to be made, such as home address and bank details.

266. Under rule 64(7), the pension will be paid monthly in arrears or by any other payment frequency of no longer than one year, as determined by the Fund trustees.

Transitional provisions – partner’s and children’s pensions

267. Paragraphs 10 and 12 of Schedule 3 contain transitional provisions for entitlement to partner’s and children’s pensions.

268. Pensions for individuals will be calculated under the new rules, save where covered by the transitional and saving provisions in Schedule 3. Under paragraph 9, the old rules will apply in respect of a pensioner member i.e. a scheme pensioner. Without paragraph 10, the new provision for an unmarried partner’s pension made under rule 57 (2) would not apply to pensioners or survivors of deceased pensioners. Paragraph 10 applies this new provision to such individuals. Thus eligible unmarried partners of existing scheme pensioners and deceased pensioners qualify under rule 57.

269. The provisions of paragraph 12 apply to those who have 15 years of qualifying service at the date the new rules come into force. If they subsequently take early retirement, for the purposes of calculating a partner’s and/or children’s pension, the paragraph provides for the disregard of any reduction made to the pension as a result of taking early retirement.

PART K LUMP SUM DEATH BENEFITS

270. Part K of Schedule 1 sets out rules which make provision for payment of lump-sum benefit payments in the event of the death of any participating member before retirement. They also make
provision for a payment to the personal representatives of a deferred pensioner who dies leaving no surviving partner or eligible child. These rules replace Part L of the 1999 pensions order.

**Rule 65: Death in service lump sum**

271. Rule 65 provides that the Fund trustees may pay a tax-free lump sum on the death of any participating member. (“participating member” is defined in rule 109(1) as an individual who is an MSP member or an office-holder member (or both)). The sum is payable to the deceased’s nominee (see rule 66 and paragraphs 274-276) or, if there is no nominee, to the deceased’s personal representatives. For a person dying domiciled in Scotland, this will be the deceased’s executors.

272. The sum is payable provided that the Fund trustees are satisfied that it would be a “defined benefits lump sum death benefit” for the purposes of the Finance Act 2004. A lump sum death benefit qualifies as a defined benefits lump sum death benefit where a participating member is under 75 years, the benefit arrangement is specified in the scheme rules and payment is made within two years of the Fund trustees being aware of the date of death. In addition, the death benefit must not be in respect of a trivial commutation, or relate to pension protection or winding up benefits.

273. Rule 65(2) sets the amount of the lump sum as the greater of four times the participating member’s annual salary at the time of death or a refund of the contributions paid by that member with compound interest added at 4% per annum (see rule 109(3)). Salary is defined in rule 109(1) and consists of the amount paid under the 1998 Act to an MSP and/or the amount being paid to the office-holder for holding a particular office, taking account of deductions where the participating member is a dual mandate MSP.

**Rule 66: Nominations for death in service lump sum**

274. Rule 66 allows a participating member to nominate who is to receive any lump sum death benefit payable under rule 65. Under rule 66(1), the participating member does this by giving such written notice as may be required to the Fund trustees and may nominate any person or two or more persons to receive the lump sum, specifying the proportion to be paid to each. Rule 66(2) allows a nomination once made to be withdrawn at any time by subsequent written notice.

275. The Fund trustees are obliged to comply with any nomination properly made unless rule 66(3) applies. Rule 66(3) makes nominations of a partner invalid if the nominee is no longer a partner at the date of death, perhaps following a divorce or other separation agreement. Under rule 66(3)(b), the Fund trustees may also determine that a nomination is invalid if in their opinion it would not be reasonably practicable to make such a payment. This could arise, for example, if the whereabouts of a nominee are unknown and perhaps remain unknown despite reasonable inquiries having being made.

276. Where the Fund trustees determine that a nomination is invalid, rule 66(4) determines that the applicable proportion of the lump sum is paid to the deceased’s personal representatives for distribution as part of their estate.

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17 Finance Act c.12 Schedule 29 Part 2, paragraphs 13, 14, 20 and 21
Rule 67: Deferred pensioner lump sum

277. Rule 67 makes provision for payment of a lump sum refund of contributions on the death of a person under 75 who was a deferred pensioner and entitled to a scheme pension on reaching that age. The lump sum is paid where that person leaves no surviving partner or eligible child. A definition of “deferred pensioner” is provided in rule 109(1).

278. Rule 67(1) makes provision for the Fund trustees to make a payment in the above circumstances, provided that they are satisfied that the payment would be a “defined benefits lump sum death benefit” (see paragraph 295). Payment is made to the personal representatives of the deceased.

279. The amount payable is determined by rule 67(2) as being the amount of scheme member contributions paid by the deferred pensioner with compound interest added at 4% per annum (see rule 109(3)).

PART L 5 YEAR GUARANTEE

280. Part L of Schedule 1 sets out rules which create a “guarantee” period of 5 years running from the date that a scheme pensioner is entitled to receive a pension from the scheme. They replace the rules in Part M of the 1999 pensions order and take account of tax changes under the Finance Act 2004. The effect of the 5 year “guarantee” is that where death occurs before pension has been paid for five years, a surviving spouse or civil partner (surviving partner) receives the same amount of pension that would have been payable to the scheme pensioner until that five year period ends. The amount payable is reduced by the amount of any pension payable for an eligible child or children during that period.

281. Where a scheme pensioner dies under age 75 with no surviving partner within five years of being entitled to a pension, Part L makes provision for payment of a lump sum death benefit to that person’s personal representatives equivalent to the balance of five years’ pension payments. For those who die in the same circumstances but aged over 75, a lump sum death benefit is not allowable under tax rules. Provision is therefore made for pension payments to continue for the balance of the 5 year guarantee period to the deceased’s personal representatives. In either case, if a pension is payable for eligible children the amount payable is reduced.

Rule 68: Initial pension period

282. While scheme pensions (except those to children) are payable for life, rule 68 introduces a 5 year guarantee period for payment of pension by reference to a scheme pensioner’s “initial pension period”. Where a scheme pensioner dies within five years of becoming entitled to a pension, the pension will be paid for the balance of the five-year period after death.

283. Rule 68 makes provision to disregard a period of up to five years where pension payments are suspended under either of rules 41 or 44 where a scheme pensioner is re-elected as an MSP or office-holder. If such a person with up to five years suspended service dies during suspension or after their pension recommences, the guarantee operates for the balance of the five year period after subtracting the payments made prior to suspension.
284. Only five years of suspended pension is disregarded in terms of this rule. The reason for that restriction relates to underlying tax restrictions in the Finance Act 2004. The Act sets out a maximum period of ten years where such a guarantee can apply. Any guarantee can only apply for ten years from the date that entitlement to pension first commences. For a scheme pensioner, the ten year period runs from the date of first entitlement to a pension, irrespective of the fact that pension is suspended. If subsequent service as an MSP or office-holder exceeds five years, that excess period added to the period during which pension was first paid continues to reduce the guarantee period until ten years from initial entitlement have elapsed. After that time no further guarantee can apply even if pension was paid for less than five years.

Rule 69: Guaranteed pensions for surviving partner

285. Rule 69 makes provision in relation to scheme pensioners who die during their initial pension period leaving a surviving partner.

286. The Finance Act 2004 requires that, under such a guarantee provision, instalments of pension continue until the end of the guarantee period and it prevents any outstanding instalments being paid as a lump sum.

287. Rule 69(a) provides that the surviving partner’s pension is suspended for the remainder of the guarantee period. Rule 69(b) provides that, during that time, they are to be paid the full ‘pension that would have been paid to the deceased.

288. However, where a children’s pension is also payable in respect of the deceased pensioner, the amount payable to the surviving partner is reduced under rule 69(2)(b). The amount is reduced by the amount of children’s pension paid during the initial pension period, except for the period covered by rule 69(2)(a). During the initial three-month period following death, the reduction only applies if the children’s pension is paid to the surviving partner. Where any children’s pension is paid to an eligible child or a person other than the surviving partner, the reduction does not apply, in order to ensure that the three month enhancement of pension guarantee for a surviving partner under rule 59 continues to apply.

289. As a consequence of the restrictions in the Finance Act 2004, rule 69(3) makes provision in the event that the surviving partner also dies during the 5 year guarantee period. In that event, the remaining pension payments under the guarantee period continue to be made, paid to the surviving partner’s personal representatives.

Rule 70: Guaranteed lump sum where scheme pensioner dies aged under 75 with no surviving partner

290. If a pension is guaranteed under the new tax regime, then it must be paid as an instalment pension until the end of the “guarantee period” which the Finance Act 2004 refers to as “term certain”. A pension paid to a person with no surviving partner cannot therefore (as was the case

18 Pension Rule 2 in section 165 and paragraphs 2(3)(a) and 3(1)(c) of Schedule 28 to the Finance Act 2004
19 Section 165(1) and Schedule 28 paragraph 2(3)(a) to the Finance Act 2004
under the previous tax regime) be commuted following the member’s death to a lump sum in respect of the remaining instalments due under a 5 year guarantee.

291. However, under the Finance Act 2004\(^\text{20}\) a pension scheme can provide a tax-free lump sum in addition to, or instead of, a guarantee on scheme pension, provided such a payment is a defined-benefits lump-sum death benefit in terms of that legislation. Rule 70 makes provision for such a benefit where a scheme pensioner aged under 75 dies leaving no surviving partner. The rule is expressed in similar terms to the 5 year guarantee under the old tax rules. Such a lump sum is tax-free up to the deceased scheme pensioner’s remaining Lifetime Allowance.

292. Rule 70(1) makes provision for payment of a guaranteed lump sum on the death of a scheme pensioner before the end of their initial pension period (see paragraph 281). The scheme pensioner must be under age 75 when they died and leave no surviving partner. Provided the trustees are satisfied that the lump sum qualifies as a defined-benefits lump-sum death benefit, a lump sum may be paid to the personal representatives of the deceased.

293. Rule 70(2) sets out the amount of the guaranteed lump sum that is payable. The amount is equal to the amount of scheme pension that would have been payable to the deceased until the end of the guaranteed period, less the amount that the Fund trustees estimate will be payable during that period to children of the deceased. Such an adjustment may be made more than once if necessary.

294. Rule 70(3) and (4) provides for additional lump sums to be paid by the trustees where the initial deductions for children’s pension under rule 70(2)(b) were over-estimated. In those circumstances an additional lump sum is to be paid equal to the difference between the amount paid and the amount which the Fund trustees estimated should have been paid, taking their revised estimate for children’s pension into account.

**Rule 71: Guaranteed pension where scheme pensioner dies aged 75 or over with no surviving partner**

295. The Finance Act 2004 under the provisions (see paragraph 272 and footnote 17) restricts payments of “defined benefits lump sum death benefit” to pension scheme members who have not reached age 75. This affects what can be paid under the 5 year guarantee for those who die leaving no surviving partner who are aged over 75 years. Rule 71 makes provision for payments in such circumstances.

296. Rule 71(1) provides for a scheme pension to be paid following the death of a scheme pensioner aged 75 or over for the remainder of their initial pension period when they do not leave a surviving partner. The instalments of pension continue to the end of the initial pension period, payable to the ‘deceased’s’ personal representatives.

297. Under rule 71(2), any instalments of pension paid under this rule will be reduced by the amount of any children’s pension paid during the same period.

**Transitional provisions – 5 year guarantee**

\(^{20}\) Finance Act 2004 c.12, section 167(3) and Schedule 29 paragraph 13
298. Provision is made in Schedule 3 at paragraphs 13-14 to protect the entitlement of existing scheme members under the 1999 scheme rules. In respect of those members, paragraph 13 provides for lump sums up to the equivalent of five years pension payments to continue to be paid in the event of the death of a deceased scheme pensioner over 75 with no surviving partner. Paragraph 14 protects the entitlement of a deferred pensioner’s personal representatives to receive a refund of contributions where the deceased had no surviving partner or children (a “deferred pensioner lump sum under N” of the 1999 scheme rules).

PART M SHORT SERVICE REFUNDS

299. Part M of Schedule 1 sets out the rules for paying a refund of contributions from the pension scheme. Any amount refunded under Part M requires to be a short service refund lump sum as defined under paragraph 5 of Schedule 29 to the Finance Act 2004. These rules replace article N1 of the 1999 pensions order.

Rule 72: Payment of short service refunds

300. Under rule 72(1), a refund is available to former scheme members with fewer than three calendar months reckonable service who apply for a refund at any time prior to becoming a scheme pensioner. A refund cannot be made in respect of office-holder or MSP service only. Under rule 72(2), the refund payable is the amount of contributions paid by the individual, less any amount paid to HMRC under section 55(2) of the 1993 Act for the contributions equivalent premium (CEP) for that individual. The CEP is the amount required to buy back service in the second state pension scheme for the refund period, as the scheme is contracted-out of the second state pension scheme.

Rule 73: Extinction of scheme benefits

301. This rule determines that the payment of a short service refund lump sum extinguishes all pension rights including those of others such as surviving partners and eligible children.

Deductions of tax from refunds

302. Rule 99 is also relevant to Part M as it provides that any short service refund lump sum payable under Part M should be reduced to cover any tax paid by the Fund trustees in respect of the refund in accordance with section 205 of the Finance Act 2004.

Transitional provisions – short service refunds

303. Article N1 of the 1999 pensions order provides for refunds where the individual has less than two years service. Under rules 23(3) and 24(2) of Schedule 1, rights in the scheme now vest after three months. This allows short service benefits to be available prior to the two year service requirement of section 71 of the 1993 Act, but consequently refunds are only available to former members of the scheme with less than three months’ service. Transitional provision for current members is made at paragraph 15 of Schedule 3 allowing existing scheme participants to request a refund of contributions, if they have accrued less than two years total reckonable service.
PART N  TRANSFERS

304. Part N of Schedule 1 sets out the rules governing transfers into and out of the Pension Fund. These rules replace the rules contained at Part P of the 1999 pensions order.

305. Transfers into and out of pension schemes are governed by UK pension and tax legislation. Part N is therefore drafted to be compatible with and complementary to this legislation. Chapters 4 and 5 of Part IV of the Pension Schemes Act 1993 (c48) provide rights for members of schemes to transfer the cash equivalent of their rights under a scheme. Some of these rights result in direct legislative obligations on the Fund trustees, which are not repeated in Part N. Part N should therefore be read in conjunction with Part IV of the Pension Schemes Act 1993 and accompanying secondary legislation.

306. Sections 164 and 169 of the Finance Act 2004 only allow a registered pension scheme to make recognised transfer payments only to another registered scheme or to a qualifying recognised overseas pension scheme, which is taken into account in the rules.

Chapter 1

Transfers Out

Rule 74: Statement of entitlement

307. Rule 74 sets out the definition of a “transferable sum” from the scheme as being that set out in a “statement of entitlement” which the Fund trustees are required to provide under section 93A of the Pension Schemes Act 1993. Under that section, the trustees or managers of a scheme must, on the application of any member, provide the member with a written statement, which is referred to as a “statement of entitlement”. This sets out the amount of the cash equivalent at the guarantee date (see paragraph 312) of any benefits which have accrued to or in respect of the member under the applicable rules.

308. The Fund trustees will calculate the amount of the cash equivalent transfer value in accordance with the 1993 Act and, more specifically, the relevant regulations made under it.²¹

309. Rule 74(2) provides for additional transfer rights to those set out in the 1993 Act. The 1993 Act only requires transfers and statements of entitlement for individuals up to one year prior to the normal retirement age. SPPS transfers can be made after the scheme’s normal retirement age of 65 (a member can contribute to the SPPS up to age 75). Rule 74(2) allows this rule to apply to those aged 64 or over, provided they stopped being a participating member of the scheme no longer than six months ago. Therefore, transfers out are possible for serving MSPs and office-holders over 64 where they have opted out of the scheme under rules 23 or 24.

Rule 75: Transfers to other pension schemes

²¹ The Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847)
310. Rule 75 sets out the conditions to be met in order for a transferable sum to be transferred from the Pension Fund. A transfer must be made if these conditions are met. An individual must not be a participating member or scheme pensioner and must have a total reckonable service of at least three months (conditions 1 and 2). An individual with less than three months’ service is entitled to a refund of contributions rather than a transfer sum. Under Chapter 4 of Part IV of the 1993 Act, the right to a transfer value is required where there is more than two years’ service. More limited rights apply where there is between three months and two years’ service under Chapter 5 of Part IV. As the new scheme rules provide transfer rights to all with more than three months’ service, the requirements of Chapter 5 are exceeded.

311. Under condition 3, the Fund trustees must have provided the individual with a “statement of entitlement”. This will precede the fulfilment of condition 4 which requires an individual to give the Fund trustees a “transfer-out notice” specifying how the transferable sum is to be transferred, i.e. the destination and any other information that the Fund trustees may reasonably require.

312. The “statement of entitlement” uses a guarantee date, which is the date at which the value of the cash equivalent transferring sum is calculated. An individual must provide notice of transfer-out within three months of the guarantee date (condition 6), as well as within six months of stopping being a participating member or becoming 64, whichever is the later (condition 5).

313. The way in which the transfer is to be made must be permitted by section 95(2) of the 1993 Act (condition 7). This means that the trustees or managers of the receiving scheme must be willing and able to accept the transfer and their scheme must meet prescribed requirements. In addition, the transfer should be a “recognised transfer” as per sections 164 and 169 of the Finance Act 2004 (i.e. another registered scheme or a qualifying overseas scheme under the tax legislation) and not prohibited by any other enactment (condition 8).

Rule 76: Enhancement of transferable sum

314. Rule 76 provides for the minimum amount of a transferable sum to be no less that the total of an individual’s contributions, any transfer-in sums and monies used to purchase added years. This rule is provided as a protection should any calculation of a transferring sum lead to a sum smaller than the total of these contributions paid into the Pension Fund by any individual.

315. Schedule 3 paragraph 16(1) makes transitional arrangements in relation to any contributions or payments made and any transfers received under the 1999 scheme rules. Any such monies are to be included within the calculation.

Rule 77: Reduction of transferable sum

316. Rule 77 is a requirement to cover guaranteed minimum pension (GMP) rules (see section 8 of the 1993 Act). Rule 77 provides that accrued rights to a guaranteed minimum pension or

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22 See Regulation 12 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847)
23 Between 1978 and 2002 part of an earner’s National Insurance Contributions (NICs) went toward State Earnings Relation Pension Scheme (SERPS) unless they were a member of a contracted-out occupational pension scheme. Between April 1978 and April 1997 members of contracted-out pension schemes were guaranteed not to have a smaller pension than they would have received under SERPS.
accrued rights attributable to service in contracted-out employment can be deducted by Fund trustees from any sums transferred out of the SPPS and retained in the scheme. This power would be used should section 96(2) of the 1993 Act apply to require rights to be retained in the SPPS, broadly where a receiving scheme is not willing or able to accept benefits attributable to a GMP or contracted-out employment.

**Rule 78: Transfer payment**

317. Rule 78 sets out the time limit for the payment of a transferable sum as being no later than the individual’s 65th birthday or, if later, the day falling six months after the transfer notice was given.

318. Rule 78(2) governs a transfer payment that is made more than six months after the guarantee date. The guarantee date is the date used to calculate the amount of the transferable sum to be paid. Should the payment be delayed by more than six months, the transfer sum is to be increased to either (a) the amount the transfer sum would have been if the guarantee date was the transfer date, or (b) the original transfer sum plus the amount of daily interest.

**Rule 79: Time limits**

319. Whilst the rules provide time limits for the payment of a transferable sum from the scheme, there may be exceptional circumstances where it would not be acceptable to prevent a transfer payment being made outside these time limits. Rule 79 allows the Fund trustees some discretion to extend time limits should they think it reasonable to do so.

**Rule 80: Extinction of scheme benefits**

320. Rule 80 specifies the effect that a transfer has on an ex-’scheme member’s rights in the scheme. These are extinguished once a transfer payment has been made. An exception to this applies where rule 77 required the Fund trustees to retain part of a transfer value to cover GMP rights or rights attributed to contracted-out employment.

**Chapter 2**

**Transfers-in**

**Rule 81: Transfer-in**

321. Rule 81 sets out the conditions that must be met in order for the Fund trustees to accept a transfer sum from another pension scheme. A participating member must provide a “transfer-in notice” setting out the amount of the transfer-in sum and the pension scheme which is making the payment (condition 1). Section 95 of the 1993 Act requires other schemes to give transfer values up to one year prior to normal retirement age, which will be a maximum of 64 for most schemes. The new scheme rules restrict transfers-in to a corresponding age limit so that this notice must be provided before the individual’s 64th birthday (condition 2).
322. The participating member must have at least three months of total reckonable service (condition 3), as prior to this period they do not yet have vested rights in the scheme and may be entitled to a short service refund (Part M). The Finance Act 2004,\(^{24}\) refunds in excess of a member’s contributions under the pension scheme would be an unauthorised payment. The three month minimum in the scheme rules prevents a transfer in and then a refund, which would be an unauthorised payment.

323. Condition 4 requires payment to be made from a pension scheme which is either registered or a qualifying recognised overseas pension scheme for the purposes of Part 4 of the Finance Act 2004. The transfer-in amount should be sufficient to cover any entitlement to a guaranteed minimum pension that arose from the transfer-in (condition 5), (see paragraph 316). Condition 6 is a linkage to the restriction imposed by rule 83 (see paragraph 328).

324. Condition 7 provides the Fund trustees with power to impose further conditions on transfers-in should they require. For example, there may be further requirements from the amendments to the 1993 Act or to the Occupational Pension Schemes (Transfer Values) Regulations 1996\(^ {25}\) or to other legislation which places obligations on trustees before accepting transfer values. Equally there may be factual information which the Fund trustees require before they accept the transfer.

325. As a transitional arrangement, Schedule 3 paragraph 16(2) disapplies condition 2 (where notice of transfer-in must be given before the scheme member’s 64\(^{th}\) birthday) for 12 months from the new rules day for current participating members.

**Rule 82: Effect of transfer-in**

326. Rule 82 sets out how the transfer-in sum is used to provide benefits in the SPPS. Reckonable service in the SPPS is increased by any sum transferred in. Where the participating member is an MSP member, only their reckonable service as an MSP (see rule 33) is increased, even if they are also an office-holder. The increase is an amount to be determined by the Fund trustees. If the participating member is an office-holder but not an MSP, reckonable service as an office-holder (see rule 34) is similarly increased by an amount decided by the Fund trustees and will apply to the office-holder post held at the time at which transfer in is made.

327. Any increased level of service is calculated as being a period when the higher rate scheme member contributions were made, with the result that they will count towards the higher accrual rate of 1/40\(^{th}\) of salary for the purposes of final calculation of pension. Fund trustees must determine by how much an individual’s reckonable service will be increased as at the date of transfer-in, in accordance with guidance and tables provided by the scheme actuary for this purpose.

**Rule 83: Limitation on transfers-in**

328. Rule 83 provides that a transfer-in will not be accepted if, when taken with an individual’s anticipated reckonable service, it would increase the annual MSP or office-holder reckonable

\(^{24}\) Paragraph 5(2) of Schedule 29 to the Finance Act 2004  
\(^{25}\) S.I. 1996/1847
service to such a level that the annual MSP pension cap (rule 38(2)) or annual office-holder pension cap (rule 39(4)) would be exceeded.

329. Rule 83(2) provides that anticipated service should be calculated as being the service the MSP or office-holder would obtain if he or she remained in post until the next ordinary general election day. Therefore, the Fund trustees would add the member’s prior service and the amount of time prior to the next election before deciding if this, added to the proposed increase from the transfer, would exceed the relevant pension cap.

PART O  ADDED YEARS

330. Part O of Schedule 1 sets out rules covering how participating members can enhance their pension benefits by buying extra years of service to add to their actual length of reckonable service. The cost of purchasing added years is determined by an actuarial calculation and in practice will be fixed as a percentage of salary. The amount of an instalment required to buy a fixed amount of additional reckonable service depends on the member’s age. Purchase may be made by lump sum or by way of monthly instalments. "Members pay the full cost of any added years that they purchase.

331. These rules replace the rules contained in Part Q and Schedule 5 of the 1999 pensions order.

Rule 84: Added years

332. Rule 84 allows a participating member to increase the length of their pensionable reckonable service by buying added years. It also specifies that added years may be bought as complete years or as fractions of a year calculated in days.

333. Rules 84(3) and 84(4) recognise that a participating member may be an MSP only, an MSP who is also an office-holder or an office-holder who is not an MSP (the Lord Advocate and the Solicitor General are office-holders but may not necessarily be MSPs). Rule 84(3) specifies that an MSP member (who may also be an office-holder) can only buy added years based on their service and salary as an MSP. Rule 84(4) specifies that an office-holder may buy added years but only if that person is not an MSP and in this case the added years would be added to their office-holder reckonable service and be based on their office-holder salary.

Rule 85: Buying added years by instalments

334. Rule 85 sets out the rules for buying and paying by instalments.

335. In most cases, payment by instalment is likely to be by deductions from the participating member’s salary by the SPCB who will pay that deduction to the trustees. The trustees, however, have power to require another method for making the contributions (to cover, for example, payments by an office-holder who is not in receipt of a salary from the SPCB). In the case of arrears of payment, it will be for the trustees to determine how the arrears should be paid.
Rule 85(1) sets out five conditions that must be met before the Fund trustees can accept an application. The person making the application must be a participating member and make an application to the Fund trustees.

The participating member must state how many years or fractions of years are being sought. The participating member need not state the amount to be paid as this will be calculated by the scheme actuary or by the Fund trustees using information and tables provided by the actuary as set out in rule 85(4).

There is no upper age limit by which the participating member must make an application to buy added years. Normal retirement age is 65 years, so the cost calculations and the periodic calculations are normally determined with reference to that age as outlined in condition 2. For participating members who choose to work and remain as an MSP or office-holder past age 65 years and who decide to purchase added years, the only option is to make periodical payments until the next general election.

Condition 3 requires the participating member to satisfy the Fund trustees that they are in good health. In practice this may mean that the participating member states that they know of no current health condition that would be likely to present an impediment in continuing to carry out their duties. Condition 4 of the rule specifies that the participating member must also produce any other information or evidence that the trustees may reasonably require in relation to the application. This may include further evidence in relation to the application conditions, for example medical evidence.

Condition 5 specifies that the Fund trustees cannot accept an application if it breaches the limitations in rule 89. The limitations are set out in detail at rule 89 and are based on HMRC requirements and include prevention of an increase taking the individual above the annual MSP or office-holder pension cap and an annual limitation of 20% of salary. (see paragraphs 358-366).

Once an application has been accepted, rule 85(2) states that the participating member cannot cancel or retract the application. Rule 85(3) states that the person responsible for paying the participating member’s salary has to deduct an amount determined under this rule from each salary payment. The instalments are to be paid to the Fund trustees. Instalments are paid from the first day of the month after the application has been accepted. The last instalment is paid at the end of the period that has been calculated and notified to the participating member.

As set out in rule 85(5), once all instalments have been paid, the participating member’s period of reckonable service will be increased by the number of added years that they have bought. Rule 85(5) also clarifies that, if the participating member has bought added years in their capacity as an MSP, it is the number of years in that post that is increased. If the participating member has bought added years in their capacity as an office-holder, it is the number of years in that capacity that is increased.

Rule 85(6) requires the purchase of added years to be calculated with reference to the higher rate (1/40ths) accrual rate.
344. Rule 85(7) specifies that for a participating member who is an office-holder but not an MSP, the extra years bought are added to reckonable service in the office held while the purchase is being made (rule 39(3) allows for separate calculations for different offices held). See also rule 86(1)(b) in relation to the position when an office-holder stops holding the position before completing all payment instalments.

**Rule 86: Interruption of service**

345. There are a number of ways in which a participant’s service can be interrupted. Rule 86 makes provision for this and sets out the effect it has on the purchase of added years. Rule 86(1) covers two situations where added years are being purchased by instalments. The first is where an MSP stops being an MSP. The second is where an office-holder who is not also an MSP stops holding office or where an office-holder who is not also an MSP becomes an MSP.

346. Rule 86(2) specifies that, when any of the situations in rule 86(1) occurs, no further instalments are payable. Rule 86 also sets out the calculation of the amount of added years to be added to reckonable service. Under rule 86(2)(a), if the person dies or is entitled to a serious ill-health pension (under Part I), the scheme member is awarded all of the extra years that he or she had been buying. The outstanding balance of the years is treated as if fully purchased and credited in full as reckonable service.

347. Rule 86(2)(b) covers what happens in other cases when service is interrupted (e.g. leaving on ceasing to be an MSP, early retirement or ill-health retirement which is at the reduced benefit level, and including the case where an office-holder is not an MSP but becomes an MSP). The rule provides a calculation for a proportionate amount of the added years to be included in the scheme member’s pension. This calculation is expressed as the number of added years that the scheme member applied to purchase by periodic contributions multiplied by the period (to the nearest day) during which the contributions have been paid. The resultant figure is divided by the total period over which the contributions would have been payable. The amount of reckonable service added is the proportion of the amount originally applied for.

**Rule 87: Resumption of service as MSP member**

348. While some interruptions to service are final, rule 87 makes provision in relation to interruption of service which is of a temporary nature and where the scheme member subsequently rejoins the scheme as a participating MSP member.

349. When service is interrupted but later restarts, an MSP member may resume paying towards the purchase of added years in certain circumstances. In other circumstances, an MSP member may, within three months of rejoining the scheme, apply to restart paying instalments at the previously determined rate.

350. Rule 87(2) sets out the effect that restarting has on reckonable service and the amount and duration of instalments. Under rule 87(2)(a), instalments resume at the previous amount and continue until the end of the original period. By virtue of rule 87(2)(b), the reckonable service added in respect of the original payments is removed and recalculated when the final instalment is paid or, if earlier, when the individual next leaves the scheme.
Rule 88: Buying added years by lump sum

351. A participating member may also - or alternatively - buy added years at any time by applying to the Fund trustees and making a lump sum payment. Rule 88 sets out the rules for buying and paying by a lump sum.

352. Rule 88(1) sets out four conditions which must be met before the Fund trustees can accept an application. These conditions are the same as conditions 1, 3, 4 and 5 of rule 85(1) (see paragraphs 336-340). The one exception is that for lump sum applications the age restrictions on condition 2 of rule 85(1) do not apply in recognition that purchase will be by a single payment.

353. Rule 88(2) requires that a participating member has to pay the relevant lump sum within six months of the date of acceptance by the Fund trustees of the application. If, after an application has been agreed by Fund trustees, the payment is not received on time, the application to buy the added years becomes invalid.

354. The amount to be paid, as described in rule 88(3) and (4), is calculated by the Fund trustees and must be certified by the scheme actuary or made in accordance with any guidance or tables produced by the scheme actuary.

355. When the lump sum has been paid, as set out in rule 88(5), the participating member’s period of service will be increased by the number of added years just bought. Rule 88(5) goes on to clarify that if the participating member has bought added years in their capacity as an MSP, then it is the number of years in that post that is increased. If the participating member has bought added years in their capacity as an office-holder, then it is the number of years in that post that is increased.

356. Rule 88(6) requires the purchase of added years to be calculated with reference to the higher (1/40ths) accrual rate.

357. Rule 88(7) specifies that, for a participating member who is an office-holder but not an MSP, the extra years bought are added to reckonable service in that office held when purchase is being made. (Rule 39(3) allows for separate calculations for different offices held.)

Rule 89: Limitations on buying added years

358. The amount of pension benefits that can be accrued as a participating member are restricted to the amount of the MSP “annual MSP pension cap” (see rule 38(2)) or “annual office-holder pension cap” (see rule 39(4)) as appropriate. Rule 89 places limitations on the buying of added years to prevent reckonable service increased under this Part from exceeding the scheme maximums.

359. Rule 89 also places similar restrictions in situations where an Annual or Lifetime Allowance would arise because the relevant limits would be exceeded by the proposed purchase of added years. Finally, the rule also places an upper restriction of 20% of salary payments on the amount of contribution any participating member may make in a single tax year.
360. Under rule 89(1)(a), the Fund trustees must reject an application to buy added years if the MSPs length of service enhanced by the proposed added years would take the MSPs entitlements over the limit of the annual MSP pension cap. Similarly, under rule 89(1)(b), an application must be rejected if an office-holder’s length of service enhanced by the proposed added years would take the office-holder’s entitlements over the limit of the annual office-holder pension cap.

361. The pension caps are specified in rules 38(2) and 39(4) (see paragraphs 150-155) as two-thirds of the final salary. The amount of the pensionable service required to exceed the cap will depend on whether pension is being accrued at the lower or higher contribution rate (1/50th or 1/40th) per annum (or a combination of both). Where the amount of pensionable service exceeds the cap, the pension is restricted to the two-thirds limit.

362. Rule 89(2) specifies how “anticipated reckonable service” is calculated. Reckonable service is dealt with under Part E.

363. Rule 89(2)(a) defines “anticipated reckonable service” as the service an MSP would obtain if they continued in post, making scheme member contributions at their existing rate. Under (2)(a)(i), the continuation in post is taken to be until the final instalment payment for the added years is made. Under rule 89(2)(a)(ii), when purchasing added years by a lump sum, the continuation in post is taken to be until the date of the next ordinary general election.

364. Rule 89(2)(b) makes identical rules to rule 89(2)(a) in relation to office-holder members, except that the Fund trustees are given an additional discretion to determine the end date when payment is by a lump sum. That date could be earlier or later than the next ordinary general election depending upon the circumstances at the time.

365. Rule 89(3) requires the Fund trustees to reject an application if specified limits would be breached. The first two limits at rule 89(3)(a) and (b) relate to the Annual or Lifetime Allowance. The third limit at rule 89(3)(c) restricts the total amount of scheme member contributions in a tax year to a maximum of 20% of salary payments. That limit includes scheme member contributions and amounts paid for added years.

366. In making a decision under rule 89, the Fund trustees may seek advice from appropriate professional sources such as the scheme actuary using powers at rule 16.

**Rule 90: Multiple applications**

367. Rule 90 entitles a participating member to make more than one application to the Fund trustees to buy added years. The Fund trustees can accept subsequent applications made by a participating member provided the application meets all the criteria set out in this Part.

368. The rule applies to applications to make payments by instalments or by lump sum. Subsequent applications need not specify the same payment method as a previous application.

369. In the event that a participating member is already paying for added years over a period of time by instalments and makes a subsequent successful application to buy more years paid for over...
a period of time by instalments, the periods of time when the payments are being made may overlap.

PART P  PENSION SHARING

370. Part P of the Schedule sets out the rules which will apply where the trustees have to deal with a pension sharing order in respect of the divorce, or the dissolution of the civil partnership, of a member.

371. Pension sharing on divorce or nullity of marriage was introduced by the 1999 Act. Pension sharing was introduced to facilitate a clean-break divorce by enabling the capital value of a pension to be split at the time of divorce. It was extended to be available on the dissolution or annulment of a civil partnership by the Civil Partnership Act 2004 (c.33).

372. Before pension sharing under the 1999 Act, pension assets could still be taken into account for financial provision on divorce. The courts could offset pension assets against other marital assets divided or, following the commencement of section 166 of the 1995 Act, issue an earmarking order. Earmarking orders require a pension scheme to pay an amount direct to the ex-spouse who is not a member but only when the actual pension scheme member’s entitlement arises.

373. The principle of pension sharing is that it gives an ex-spouse or civil partner individual stand-alone pension rights. This takes the form of a pension credit, representing a proportion of the capital value of the scheme member’s shareable pension on divorce or dissolution. The pension scheme then has to discharge its liability in respect of a pension credit granted by a pension sharing order, the manner of discharge depending on the type of scheme and its rules.

Overriding legislation

374. The overriding pension sharing legislation introduced by or made under the 1999 Act broadly provides for pension schemes to give information to allow a pension sharing order to be considered and thereafter to implement any consequent pension sharing order. The split in the pension sharing order may be determined by the courts or by the parties in a joint minute of agreement which takes effect on divorce or dissolution.

375. There are no existing pension sharing provisions in the rules in the 1999 Pensions Order. However, the SPCB managers would still be required to comply with the terms of any pension sharing order in accordance with the overriding legislation.

Summary of Part P

376. Part P makes rules complementary to the overriding legislation. The provisions in Part P are designed to facilitate the transfer of the notional capital value specified in the order into separate scheme rights for the scheme member’s ex-spouse or civil partner (rules 91 and 93). There are also some modifications following the consequent reduction (under section 31 of the 1999 Act) of the pension rights of the MSP or office-holder scheme member (rule 92).
Provision of information, charging and apportionment of capital value

377. Prior to a pension sharing order, the managers or trustees give information on the notional capital value of a member’s pension to enable the parties to a divorce or dissolution to consider a pension sharing order. As the requirements on trustees to supply information to members and their spouses or civil partners are set out in the Pensions on Divorce etc. (Provision of Information) Regulations 2000, they are not repeated in Part P. Similarly, the rules on the calculation of the capital value of the pension rights are prescribed in the Divorce etc. (Pensions) (Scotland) Regulations 2000 and not repeated in Part P. These Regulations already provide for the calculation of either the value of the pension in payment or the value of the benefits accrued to date where the pension is not yet in payment.

378. Also relevant to but not requiring specific coverage in Part P are the Regulations allowing the trustees to charge for the provision of information and for the implementation of pension sharing. The Pension Sharing on Divorce etc. (Charging) Regulations are made under section 41 of the 1999 Act. They specify that the charges are those reasonably incurred by the trustees directly related to an individual case and in accordance with a schedule of charges provided in advance. Charges are payable by the scheme member who is most closely involved with the request and can be recovered by reducing benefits.

379. Once the parties are in receipt of information on the capital values, they or the court will decide if a pension sharing order is appropriate. Any order will specify the proportion of the value that is to be used to create a pension benefit for the former spouse or partner.

Implementation of pension sharing order – internal and external transfers

380. The Fund trustees must discharge liability for a pension credit under a pension sharing order within the four month period specified in section 34 of the 1999 Act. As they are trustees of a funded occupational pension scheme, paragraph 1 of Schedule 5 to the 1999 Act provides how the trustees can discharge their liability. They may implement an external transfer of the value of a person’s pension credit to another scheme which meets the “qualifying arrangement” test. Alternatively, they may allow an internal transfer, that is allow the ex-spouse or civil partner to become a “pension credit member” in the scheme.

381. The Fund trustees’ procedure for implementing these rights needs to follow the procedure under paragraph 1 of Schedule 5 to the 1999 Act and the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000. Again, given the detailed provisions elsewhere, specific rules on implementation procedure are not provided in Part P.

382. Following the procedure for an external transfer will discharge the Fund trustees’ obligations as regards the ex-spouse or civil partner. However, if the pension sharing order is to be implemented by an internal transfer, that is the creation of a separate pension credit for the ex-spouse or civil partner in the scheme, there are ongoing rights within the scheme for the Fund

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26 S.I. 2000/1048
27 S.S.I. 2000/112
28 S.I. 2000/1049
29 S.I. 2000/1053
trustees to govern. Rule 91 therefore provides for these rights for the scheme within the context of the general law.

Rule 91: Rights of pension credit member

383. Rule 91(1) defines a “pension credit member” as being a person on whom pension rights have been conferred within the scheme by the Fund trustees - that is, an internal transfer in accordance with paragraph 1(2) of Schedule 5 to the 1999 Act.

384. The 1999 Act inserted a new Part IVA, Chapter 1 (sections 101A to 101E) into the 1993 Act to set out the minimum benefits that require to be given to pension credit members. There are also detailed provisions on pension credits benefits for trustees to follow in the Pension Sharing (Pension Credit Benefit) Regulations 2000\(^\text{30}\) and the Pension Sharing (Safeguarded Rights) Regulations 2000.\(^\text{31}\)

385. These rules will be met by the Fund trustees and are supplemented to the extent necessary for this scheme by rule 91(2) which sets out the benefits to which a pension credit member is entitled under the scheme. It is for the Fund trustees to determine these benefits and rule 91(2) lists the range of benefits which may be conferred. The range is wider than the minimum requirements in Chapter 1 of Part IVA of the 1993 Act.

386. Rule 91(2)(a) sets the normal retirement age at 65 in line with that for other scheme members and rule 91(2)(b) allows for commutation of a portion, subject to the revenue maximum of 25%, of the pension into a lump sum payment. Rule 91(c) allows early retirement from age 60 onwards. Age 60 is the earliest age permitted for pension credit members under the pension sharing legislation.\(^\text{32}\)

387. Commutation of pension acquired under a pension sharing arrangement is not permitted prior to normal benefit age (65) except in the circumstances covered by rule 91(2)(d) and (e).\(^\text{33}\) These are serious ill-health, when life expectancy is anticipated at less than one year, or where the pension is a trivial amount.\(^\text{34}\)

388. Payment of a pension once commenced continues for the life of the recipient. Rule 91(2)(f) guarantees payments of pension for a minimum period of five years. In the event of the death of the pension sharing credit member within five years of pension commencing, payments to the surviving partner, dependent children or personal representatives would continue until the end of that period.

389. If the pension credit member dies before pension commences, rule 91(2)(g) entitles their surviving partner, dependent children or personal representatives to receive a lump-sum payment. The amount payable is based on a 25% proportion of the value of the pension that the pension credit member would have been entitled to. ’

\(^{30}\) S.I. 2000/1054
\(^{31}\) S.I. 2000/1055 for “safeguarded rights” as provided for by section 68 of the 1993 Act
\(^{32}\) Section 101C of the 1993 Act as inserted by section 37 of the 1999 Act
\(^{33}\) Section 101C of the 1993 Act and Regulations 3 and 4, S.I. 2000/1054
\(^{34}\) Trivial amount for these purposes currently specified in Part 1 of Schedule 29 to the Finance Act 2004 (c.12) as 1% of the standard lifetime allowance (currently £1.6 million)
Rule 91(3) requires that benefits as a pension credit member are separate to any other benefits under the scheme. Rule 91(3) prevents benefits being combined and would only apply in the event that a pension credit member is also entitled to benefits as a scheme member due to their own service as an MSP or office-holder.

Rule 91(4) also applies when a person entitled to benefit as a pension credit member also has a separate entitlement to scheme benefits due to their own service. In the event that those separate scheme benefits are discharged by either payment of a trivial lump sum or a refund of contributions, the pension sharing benefits remain unaffected.

**Rule 92: Specific rules applying to a pension debit member**

In addition to making the internal or external transfer for the pension credit of the ex-spouse or civil partner, the Fund trustees need to make a corresponding reduction of the rights of the other party. This reduction is made under section 31 of the 1999 Act. Rule 92 makes provision for the circumstances of the scheme within this general law.

Rule 92(1) provides a definition of a “pension debit member” as being an individual whose scheme benefits have been reduced in accordance with section 31 of the 1999 Act, as a consequence of a pension sharing order.

A pension debit member’s benefits are reduced so that the amount of benefit will be less when the pension comes into payment or when the death benefit is paid. The reduction reflects the appropriate reduction in benefits, except in the circumstances set out in rule 92(2).

Rule 92(2) provides that any reduction does not affect the pension debit member’s “scheme pension entitlement” for the purposes of calculating any pensions due under Chapter 3 of Part J of these rules (Surviving partners and children’). Scheme pension entitlement is not reduced for the purpose of calculating surviving partners’ and childrens’ pensions where there has been a pension debit following a pension sharing order’.

Rule 92(4) makes provision for a reduction in the amount payable on Death-in-Service but only in relation to the alternative calculation for refund of scheme member contributions paid (see rules 65(2) and 67(2)) when this is higher than the salary multiple. Rule 92(4) makes it clear that the reduction is applied in accordance with the provisions of the 1999 Act.

Rule 92(3) prevents a member whose benefits have been reduced by a pension sharing order from buying back those benefits through the purchase of added years beyond any purchases that they could have made had the order not been made. The general added year restrictions are the “annual MSP pension cap” or “annual office-holder pension cap” (see rules 38(2) and 39(4)) which limit maximum pension entitlement to two-thirds of final salary and the annual purchase limit to 20% of salary or the Annual Allowance (see rule 89(3)(c)). For a pension debit member, these limits will be applied ignoring the pension debit reduction.

**Rule 93: Death before implementation of pension credit**
398. Rule 93 applies when a pension credit member dies in the period before the Fund trustees have discharged the pension credit order either by making an external transfer to a separate scheme or an internal transfer by conferring pension credit member rights on the individual. In these circumstances the default position of the general law is stated in the Pension Sharing (Implementation and Discharge of Liability) Regulations 2000 to be the retention of the entire value of the pension credit by the scheme trustees. However, this can be varied and the rules provide that the Fund trustees may pay a lump sum to the individual’s personal representatives up to a maximum of 25% of the value of the pension credit.

PART Q DUAL MANDATE MSPS

399. Part Q of Schedule 1 sets out the rules for calculating the pension entitlement of “dual mandate MSPs”. These provisions replace the rules contained at Part F4 (1), (2) and (3) of the 1999 pensions order.

Rule 94: Dual mandate MSPs

400. Rule 94 defines a “dual mandate MSP” as a serving MSP who is or has been a paid member of the UK Parliament (an MP) or the European Parliament (MEP) at the same time as being an MSP and had a reduction in MSP salary under section 82(2) of the 1998 Act. The amount of a dual member’s final salary is reduced to one-third of an MSP salary.

Rule 95: Pension reduction for dual mandate MSPs

401. Rule 95 sets out the adjustments which are to be made when calculating the amount of pension due from the scheme in respect of dual mandate MSPs. These adjustments are to be made to the formula contained in rule 38(1) of the Schedule. This formula is used to calculate the amount of annual MSP pension.

402. The adjustments that are to be made are contained in rule 95 (a)–(c).

403. Rule 95(a) provides that any reduction in final salary by virtue of section 82(2) of the 1998 Act is to be ignored.

404. Rule 95(b) applies when determining “A” in the formula contained in rule 38(1). During any period that a dual mandate MSP member made lower rate scheme member contributions from MSP salary payments (the pension of which is accruing at 1/50th per annum). “A” is to be reduced by the same proportion as the MSP’s salary was reduced during that period in accordance with section 82(2) of the 1998 Act.

405. Rule 95(c) applies when determining “B” in the formula contained in rule 38(1). During any period that a dual mandate MSP member made higher rate scheme member contributions from MSP salary payments (the pension of which is accruing at 1/40th per annum). “B” is to be reduced by the same proportion as the MSP’s salary was reduced during that period in accordance with section 82(2) of the 1998 Act.

35 S.I. 2000/1053
406. The adjustments made by rule 95 have the effect of reducing the amount of pension accrued during periods of dual membership by the same proportion as the member’s salary is reduced under section 82(2) of the 1998 Act.

**PART R  TAXES**

407. Part R of Schedule 1 relates to the tax rules which apply to registered pension schemes under Part 4 of the Finance Act 2004. Under section 160 of that Act, a registered scheme is only authorised to make specified payments to or in respect of members. Other payments are “unauthorised payments” and attract charges, meaning that the Fund trustees as scheme administrator may become liable to pay tax charges in respect of such payments (see section 160(5)). The scheme administrator may also become liable to pay tax charges if an otherwise authorised payment is made when the recipient or member’s individual tax allowance exceeds the Lifetime Allowance.

408. Part R enables the Fund trustees to recover tax charges by deduction from an individual’s pension benefits. The Fund trustees may also reduce or withhold an individual’s pension benefits where payment would result in an unauthorised payment and, therefore, charges under the Finance Act 2004. While the provisions in this Part were not included in the scheme rules in the 1999 pensions order, the ability of the manager to withhold payments otherwise attracting an unauthorised payment charge was available as a result of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006\(^36\). As scheme rules having the same effect are now included in this part, S.I. 2006/364 is disapplied by virtue of paragraph 22 of Schedule 3.

**Rule 96: Finance Act 2004 terms**

409. Rule 96 provides a definition of the following key terms referred to under Part R:

i. “the 2004 Act” means the Finance Act 2004 which introduced a new tax regime for registered pension schemes from 6 April 2006;

ii. “event” is a benefit crystallisation event which happens when an individual becomes entitled to a pension benefit. That benefit, together with payment of any other pension benefits, are aggregated together to ensure they do not exceed the Lifetime Allowance limit. There are eight benefit crystallisation events listed in section 216 of the Finance Act 2004;

iii. “lifetime allowance charge” is a tax charge on the individual where the total of their pension entitlements exceed their Lifetime Allowance limit. The Scheme administrator and member are jointly liable for the charge;

iv. “scheme administrator” is the Fund trustees of the scheme for the purpose of identifying joint liability with an individual for any lifetime allowance charges under section 217 of the Finance Act 2004 (sections 270-274 of the Finance Act 2004 provide further detail on the exact liabilities that apply);

v. “unauthorised charge” is defined as two possible tax charges which apply where a payment is made out of the Pension Scheme Fund which is not one authorised to be made under section 164 of the Finance Act 2004. These are the unauthorised payment charge and the unauthorised payments surcharge (see sections 208-210 of

\(^36\) S.I. 2006/364
Rule 97: Payment of lifetime allowance charge by scheme administrator

410. A Lifetime Allowance charge becomes payable as a result of payments from the scheme on a benefit crystallisation which exceeds the individual’s Lifetime Allowance. The individual receiving the benefit and the scheme administrator are jointly and severally liable for payment under section 217 of the Finance Act 2004.

411. Rule 97(1) makes provision for the Fund trustees to pay a lifetime allowance charge on behalf of the member. Under rule 97(2) the trustees may only make payment of the charge if instructed to do so by the individual on or before the date the charge arises. The individual must pay the amount of the charge to the Fund trustees on or before that date.

Rule 98: Payment of lifetime allowance charge from Pension Fund

412. Rule 98(1) determines that, in the absence of the appropriate instruction and payment under rule 97(2), the Fund trustees must pay the lifetime allowance charge from the Pension Fund. Where the charge arises on the Fund because of a transfer of benefits to a qualifying recognised overseas pension scheme (benefit crystallisation event 8 under section 216 of the Finance Act 2004), rule 98(2)(a) requires the Fund trustees to deduct an amount equivalent to the transfer value. For all other crystallisation events, rule 98(2)(b) requires the trustees to deduct the amount charged on the Fund from the individual’s pension benefits.

413. Rule 98(3) requires that any reduction in benefits must, in the scheme actuary’s opinion, reflect the amount of the charge paid under rule 97.

Rule 99: Deductions for tax arising on lump sum payments

414. Under the Finance Act 2004, a short service refund lump sum charge arises where a short service refund lump sum is paid by a registered pension scheme. Part M provides the rules for payment of short service refunds. There is a tax charge on these payments which is calculated in accordance with section 205 of the Finance Act 2004. Rule 99 makes provision for the charge to be deducted from any short service lump sum before it is paid to an individual. In effect, the deduction is equivalent to the income tax relief originally granted on the scheme member’s contributions.

Rule 100: Reduction of benefits which would otherwise attract unauthorised charge

415. Rule 100 makes provision for the reduction of an individual’s benefits where payment of those benefits by the Pension Fund would attract an unauthorised charge (i.e. an unauthorised payment charge or an unauthorised payment surcharge under the Finance Act 2004). Rule 100 seeks to prevent an unauthorised charge from occurring.

416. Rule 100(a) applies in the event that an unauthorised charge would arise in respect of any payment made from the Pension Fund. Rule 100(a) requires the Fund trustees to reduce the amount payable from the Pension Fund to an amount which is just below the threshold which attracts this charge.
417. Where no reduction is possible under (a), rule 100(b) requires the Fund trustees to withhold any payment to the individual in accordance with rule 101.

**Rule 101: Prohibition of payments which would give rise to liability for certain taxes**

418. Rule 101 places further restrictions on payments to individuals in the event that payments from the Pension Fund would give rise to a liability on the scheme for a scheme sanction charge or a de-registration charge.

419. A scheme sanction charge under section 239 of the Finance Act 2004 arises where a registered pension scheme makes an unauthorised payment. The scheme administrator is liable to pay the scheme sanction charge.

420. A de-registration charge under section 242 of the Finance Act 2004 is an income tax charge which applies if HMRC withdraws the registration of a registered pension scheme. The de-registration charge is 40% of the total of the amount of the assets held by the scheme immediately before it ceased to be a registered pension scheme. Deregistration and the charge could apply when more than 25% of a scheme’s fund is paid as unauthorised payments in any 12 month period.

421. Rule 101 prevents any payment which would otherwise be paid from the Pension Fund where that payment would give rise to a scheme sanction charge or a de-registration charge.

**PART S ACCOUNTS, AUDIT AND ACTUARIAL REPORTS**

422. The 1995 Act and the Pensions Act 2004 set out requirements that occupational pension schemes must follow in relation to the keeping and auditing of accounts and the obtaining of actuarial reports. These requirements are applicable to the scheme.

423. Occupational pension schemes should be administered efficiently and demonstrate legal compliance. Annual accounts and audit provide evidence of the health of the Pension Fund and how it is being managed. Together with actuarial reports, they provide information about investment, cost savings or system improvements and point towards the best path for future development.

424. Part S of Schedule 1 supplements the general rules applicable to all occupational pension schemes in relation to the keeping and audit of accounts and preparation of actuarial reports.

**Rule 102: Accounts and audit**

425. Rule 102(1) requires the Fund trustees to keep proper accounts relating to the scheme. The rule specifies that an annual statement of account must be produced for each financial year. The financial year ends on 31 March (see rule 109(1)). Reference should also be made to the requirements of the 1995 Act (section 49 and Regulations made thereunder) which set out responsibilities in relation to record keeping, requiring records to be kept in a prescribed form and manner and for a prescribed period.
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426. Rule 102(2)(a) provides that the Fund trustees must arrange for an audit of the annual accounts within seven months of the end of each financial year. They are able to appoint auditors as required by and subject to the overriding general requirements of occupational pension schemes including those under section 47 of the 1995 Act and relevant statutory instruments.  

427. Rule 102(2)(b) requires that a copy of the annual accounts and audit report are laid before the Parliament, also within seven months of the end of each financial year.

Rule 103: Actuarial reports

Actuaries
428. An actuary is a person qualified to calculate commercial risks and probabilities involving uncertain future events, especially in the context of insurance and life assurance calculations such as premiums, reserves, dividends and annuity rates.

Actuarial valuations
429. In relation to a pension scheme, an actuarial valuation is an assessment, usually carried out every three years, by the Pension Fund actuary, to work out what money needs to be put into the pension scheme in the future to ensure that the pensions can be paid.

430. Rule 103(1) defines the “scheme actuary” as the person appointed by the Fund trustees under section 47(1)(b) of the 1995 Act. That provision requires that an actuary is appointed for every occupational pension scheme by the trustees or managers. Reference should be made to the Occupational Pension Schemes (Scheme Administration) Regulations 1996, specifically Regulation 4(1)(b) which provides that the qualifications of an eligible actuary must be either a Fellow of the Institute of Actuaries, or the Faculty of Actuaries or approved by the Secretary of State.

431. Rule 103(2) requires that the Fund trustees must obtain actuarial valuations at intervals of at least every three years. In addition to this mandatory valuation, the rule also enables the Fund trustees to request a valuation at any time.

432. The content of the actuarial report is set out in rule 103(3). It must include an overview of the general financial position of the Pension Fund and an actuarial valuation of the assets and liabilities. The scheme actuary must also recommend a contribution rate to be paid under rule 32(2)(a). The recommended rate must be shown as a percentage of the participating member salary payments.

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37 See Occupational Pension Schemes (Requirement to obtain Audited Accounts and a Statement from the Auditor) Regulations 1996 (S.I. 1996/1975) which include provisions as to the form and content of the auditor’s statement (Regulation 3 and the schedule to the Regulations). See also the Registered Pension Schemes (Audited Accounts) (Specified Persons) Regulations 2005 (S.I. 2005/3456) which specify classes of people who can and cannot audit tax registered schemes
38 Chapter 14 of the Standing Orders of the Scottish Parliament sets out the Rules for laying reports and documents before the Scottish Parliament
39 S.I. 1996/1715
433. Rule 103(4) provides that a copy of each actuarial report must be laid before the Parliament by the Fund trustees within three months of the Fund trustees obtaining it.

PART T MISCELLANEOUS

434. Part T of Schedule 1 sets out miscellaneous provisions covering resolution of disputes, entitlement to a guaranteed minimum pension for a transfer-in sum, restriction on assignations, surrenders and commutations of pension benefits, small payments for deceased individuals without confirmation or other proof of title and formal communications. These provisions replace the rules contained in Part T of the 1999 pensions order as well as making new provision in other areas.

Rule 104: Dispute resolution procedure

435. Section 50 of the 1995 Act as amended by section 273 of the Pensions Act 2004 sets out requirements relating to the resolution of disputes. It provides that trustees of an occupational pension scheme must ensure that dispute resolution arrangements are made and implemented. The section sets out the types of dispute to which the dispute resolution arrangements apply. The section further provides for the procedure of the dispute resolution arrangements and provides for civil penalties to apply to trustees who fail to take reasonable steps to make or implement dispute resolution arrangements.

436. The Fund trustees are therefore required to put in place the necessary arrangements for the resolution of disputes.

Rule 105: Guaranteed minimum pension

437. Rule 105 makes provision for guaranteed minimum pensions (GMP).

438. GMP is related to the State Earnings Related Pension Scheme (SERPS). SERPS was an additional state pension scheme which was related to earnings, running from 6 April 1978 to 5 April 2002. A person who was in employment may have paid National Insurance Contributions (NICs) into SERPS. However, if they were also a member of a contracted-out occupational pension scheme, they did not pay this part of their NICs and therefore did not earn a pension under SERPS.

439. Between April 1978 and April 1997, members of contracted-out pension schemes were guaranteed not to have a smaller pension from their contracted-out occupational scheme than they would have received under SERPS. If an occupational pension entitlement is less than a GMP entitlement, the occupational pension is increased to match a minimum pension entitlement from the relevant GMP service.

440. As GMP only applied until 1997, no GMP will have directly accrued under the scheme which commenced for the Parliament in 1999. An obligation to pay a GMP entitlement under the scheme will only arise in relation to “transfer-in sums” (see Chapter 2 of Part N for transfers-in).

441. Rule 105(1) makes provision for payment of GMP to any entitled person in accordance with sections 14 to 16 of the Pension Schemes Act 1993. It provides that the pension is paid for the rest
of the individual’s life at a rate equivalent to a weekly rate of not less than the guaranteed minimum. The entitlement is from “pensionable age” as defined in section 181 of the 1993 Act, for GMP purposes 60 for women and 65 for men.

442. Rule 105(2) and (3) cover where GMP entitlement potentially arises earlier than the scheme’s normal retirement age. The right to GMP entitlement from “pensionable age” is read with section 13(4) of the 1993 Act which allows for postponement where employment continues. Rule 105(2) therefore provides that payment of a person’s GMP is postponed where the individual is an MSP or still an office-holder on the day it becomes payable.

443. Rule 105(3) allows a postponement described in rule 105(2) to last either until the individual is no longer an MSP or office-holder, or for up to five years from pensionable age where the person is still in office, whichever is the earlier. The postponement may be for a longer period with the consent of the individual.

444. Transitional provision is made at paragraph 19 of Schedule 3 in relation to transfer-in sums received under article P6 of the 1999 scheme rules (see paragraphs 555-556).

**Rule 106: Restriction on assignability etc.**

445. Rule 106 makes provision in relation to the inalienability of pension benefits.

446. Section 91 of the 1995 Act provides generally for the inalienability of occupational pensions, except to the extent permitted by law. Any pension rights and benefits due under the pension scheme shall not be assignable or chargeable with debts or other liabilities. There are some exceptions to inalienability set out at section 91(5). These exceptions are not mandatory on pension schemes. Rule 106 disapplies the exceptions at paragraphs (a) assignment, (b) surrender and (c) commutation. Assignment, surrender and commutations are therefore not permitted in respect of scheme benefits, other than where the scheme rules specifically permit.

**Rule 107: Payments due in respect of deceased individuals**

447. Rule 107 provides for the ability to pay small amounts of a deceased individual’s scheme entitlement without confirmation or other proof of the title. This applies where the sum due does not exceed the amount specified in an order made in accordance with section 6 of the Administration of Estates (Small Payments) Act 1965 (c.32). The current limit is £5,000 in terms of the Administration of Estates (Small Payments) (Increase of Limit) Order 1984.\(^{40}\) The 1965 Act does not automatically apply to enactments made under the 1998 Act. Rule 107 is necessary to apply the 1965 Act.

448. Under rule 107(1), the scheme entitlement is the sum of any outstanding amounts due to the deceased at the time of death and any amounts payable to the deceased’s personal representatives.

\(^{40}\) S.I. 1984/539
449. Rule 107(2) provides that the Fund trustees are able to make such small payments under this rule without the requirement for confirmation or other proof of title. Payment may be made to the deceased individual’s representative or to any person appearing to the Fund trustees to be beneficially entitled to the estate.

450. Rule 107(3) places liability on the recipient of the payment to account for the amount paid. The Fund trustees are not liable to account for the payment. This is significant in the event that a payment made under this rule is subject to challenge by any other claimant.

**Rule 108: Formal communications**

451. Rule 108 sets out the requirements for formal communications used in relation to the Bill. Provision is made in relation to the form and delivery of communications. This includes provision for the use of electronic media.

452. A formal communication is defined in rule 108(1) as any notice, application, request or certification made or given for any purpose under the Act.

453. Rule 108(2) requires that any formal communication described in rule 108(1) must be in writing.

454. Rule 108(3) makes provision for the delivery of formal communications. Rule 108(3)(a) provides that a communication is considered to be made or given if it is delivered or sent by post to the relevant address. The rule lists the relevant addresses. Communications for the Fund trustees or any MSP should be sent to the Parliament. For holders of a qualifying office who are not MSPs, the address is the office-holder’s principal office. In any other case, the relevant address is the usual or last known abode of the person to whom the communication is being sent.

455. Rule 108(3)(b) provides that communications sent in any other way than as described in rule 108(3)(a) are to be considered as made or given if the sender reasonably thinks that the communication will be delivered on the same or next day. This includes electronic communications.

456. Rule 108(4) makes provision for formal communications sent by electronic means. Under this provision, electronic communications are to be treated as being in writing provided that the communication is legible and capable of being used for future reference.

457. Rule 108(5) makes further provision in relation to rule 108(3)(b). It creates a presumption that the formal communication referred to in that rule is considered as having been delivered on the day after it is sent, unless it can be proved otherwise. Where the next day would fall on a weekend or bank holiday in Scotland, the communication is considered as having been delivered on the next weekday which is not a bank holiday. Scottish bank holidays are defined at paragraph 2 of Schedule 1 of the Banking and Financial Dealings Act 1971 (c.80).

**PART U  KEY TERMS**
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

458. Part U of Schedule 1 contains an interpretation rule and an Index.

459. Rule 109(1) contains definitions of terms used throughout the Bill. Most have been referred to earlier in these notes where a reference to their meaning is needed. These definitions are primarily for the purposes of the scheme rules set out in Schedule 1 but some of the terms are also used for Schedule 2 (see paragraph 5 of Schedule 2) and Schedule 3 (see paragraph 1(2) of Schedule 3). Note that section 4 of the Bill also defines some terms for the purposes of the whole Bill.

460. The defined terms list is supplemented by rule 109(2) which ensures that references to amount of scheme pension are read as including enhancements or reductions to basic entitlement caused by other rules such as lump sum, early retirement and ill-health. Rule 109(3) defines the interest rate for the purpose of rules providing for refunds of contributions with interest.

461. Rule 110 contains a list of defined words and expressions used within the Bill and details of the rule in Schedule 1 in which they are defined or otherwise explained.

SCHEDULE 2  GRANTS PAYABLE ON LEAVING OFFICE

462. As indicated earlier the SSRB report in November 1998, in addition to pensions and pay, covered resettlement grants, ill-health retirement grants and severance arrangements. In relation to gratuities to individuals ceasing to be Members of the Scottish Parliament, it recommended similar provisions to those at Westminster:

- a resettlement grant payable to an MSP who at the election does not stand for re-election or who stands but is not re-elected;

- an ill-health retirement grant payable to an MSP who resigns because of ill-health before attaining age 65. The level of grant is specified as equal to the level of resettlement grant which would have been available had the Member not been re-elected rather than resigning on health grounds; and

- a severance payment payable to relevant remunerated office-holders under age 65 who cease to hold those offices.

463. These recommendations were taken forward in the Grants Order which is replaced by the provisions in Schedule 2 (see article 2 of the Grants Order which anticipated the replacement of that Order with provisions such as those made under section 81(3) of the 1998 Act).

464. While payments of the grants are not made from the Pension Fund, there is a linkage to the ill-health retirement criteria (see rules 47 and 48 of Schedule 1). Membership of the pension scheme is not, however, a criterion for payment of one of the grants but replacement of the 1999 pensions order offered a suitable opportunity to replace the Grants Order.

465. Schedule 2, introduced by section 2 (see paragraph 26), sets out the provisions in relation to grants payable to individuals after they have served as MSPs and office-holders. Specifically,
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

provision is made for the payment of an MSP resettlement grant, MSP ill-health retirement grant and office-holder resettlement grant. The provisions replace those in the Grants Order.

Paragraph 1: MSP resettlement grant

466. Paragraph 1 makes provision for an MSP resettlement grant payable to MSPs who are not returned after an election under the 1998 Act. The grant is designed to assist with the cost of adjusting to non-parliamentary life.

467. Paragraph 1(1) requires that a grant is payable by the SPCB to an individual who has been but is no longer an MSP. To qualify for the grant an individual must have been an MSP when the Parliament was dissolved and not be returned as an MSP at the general election which followed that dissolution. If these circumstances are met, a grant is paid automatically. An MSP will qualify if they were an MSP immediately prior to a general election for the Scottish Parliament and either (i) does not stand for re-election, or (ii) stands for re-election and is not returned. No MSP resettlement grant is payable to an MSP who voluntarily resigns during the course of a parliamentary session, for example for business reasons.

468. The purpose of the grant is to assist the MSP with the costs of adjusting to non-parliamentary life and, therefore, a resettlement grant is only payable to the MSP. It cannot be paid to another person and paragraph 1(2) makes clear that the grant does not form part of an MSP’s moveable estate and cannot be paid to an MSP’s personal representatives in the event that the MSP dies before the relevant election.

Paragraph 2: MSP ill-health retirement grant

469. Paragraph 2 makes provision for the payment of an MSP ill-health retirement grant. The SPCB must pay the grant, upon application, where the MSP resigns during a parliamentary session in direct consequence of a health condition which prevented the MSP from carrying out their duties as an MSP.

470. An ill-health retirement grant is only payable where the MSP resigns during the parliamentary session (paragraph 2(1)(a)). If an MSP stands down after an election for ill-health reasons they will be entitled to an MSP resettlement grant (paragraph 1). An MSP is not entitled to receive both a resettlement grant and an ill-health retirement grant.

471. An ill-health retirement grant is not payable automatically. Paragraph 2 provides that an application must be made in writing to the SPCB. The SPCB must be satisfied that the resignation is a direct consequence of the ill-health and that the member would not, as a result, be able to continue to perform their duties as an MSP adequately.

472. Paragraph 2(2) enables the SPCB to request that the member who has applied for the grant provides medical evidence from a doctor about the health condition. Additionally, paragraph 2(2) enables the SPCB to require the MSP to be examined by a doctor nominated by it. It is for the SPCB to decide who is to pay for any examination carried out by the nominated doctor and where that examination should take place. It is anticipated that, where an examination is carried out under paragraph 2(2)(b), a copy of any report prepared on the examination will be given to the applicant.
The SPCB could, for example, satisfy itself as to an individual’s state of health using similar considerations to those set out in Part I of the pension scheme.

**Paragraph 3: Amount of MSP grants**

473. Paragraph 3 sets out the calculations which determine the amount of the MSP resettlement and the MSP ill-health retirement grants. Both grants are calculated in the same way.

474. Paragraph 3(1) provides that, subject to a minimum of 50%, the amount of grant payable is the percentage of the annual salary paid when the MSP ceased being an MSP, which is equal to one month’s salary for each complete continuous year of service as an MSP. The maximum period of service counted is 12 years.

475. Paragraph 3(2) reduces the period of service taken into account in the calculation of the grant payment to MSPs who were also in receipt of a salary as a member of the House of Commons or the European Parliament (“dual mandate MSP”) at any time during that period. The effect of paragraph 3(2) is to reduce the relevant period of service by the same proportion that their MSP salary was reduced during that period. The current proportion is a reduction of salary by two-thirds, so, for example, if an MSP had been a dual mandate Member for three years, the period counted for calculation of a grant would be reduced by two years.

476. Under the Grants Order, periods of service of dual mandate MSPs are not treated differently to other MSPs. Paragraph 3(3) is a transitional provision which ensures that periods of service already accrued by those MSPs currently serving in the Parliament and accrued until the first general election after that paragraph comes into force, will not be reduced in accordance with paragraph 3(2).

**Paragraph 4: Office-holder resettlement grant**

477. Paragraph 4 provides for an office-holder resettlement grant. An office-holder’ resettlement grant is payable to office-holders when they stop being an office-holder. The grant is similar to the MSP resettlement grant and is designed to help bridge the gap while the office-holder adjusts to a lower income or re-establishes commercial or voluntary interests which may have had to be relinquished to avoid any conflict of interest whilst in office.

478. Paragraph 4(1) requires that the SPCB pays the grant, and that it must be paid when an office-holder ceases to hold pensionable office and has not held another pensionable office within 90 days of leaving office. The office-holder does not have to apply for the grant.

479. The pensionable offices (defined in rule 22(2) of Schedule 1) are that of Presiding Officer, deputy Presiding Officer, one of the Scottish Ministers (this includes the First Minister, Deputy First Minister, the Lord Advocate and the Solicitor General) or a junior Scottish Minister.

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http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-02/sor0321-01.htm
Paragraph 4(2) sets out how the office-holder grant is calculated. The amount of grant to be paid to holders of the offices of Presiding Officer and First Minister is calculated in a different manner to those of all other office-holders.

Paragraph 4(2)(a) determines the amount of grant payable to the First Minister and Presiding Officer. It is calculated in a similar manner to the MSP resettlement and ill-health retirement grant. The amount of grant payable is based on the additional annual salary for holding that post and the length of service as an office-holder. The grant equates to one month of salary for each complete year of service, subject to a minimum amount of 50% and a maximum amount of 100%. The formula at paragraph 4(2)(a) calculates the amount of grant.

Other office-holders receive a lump sum equal to 25% of the office-holder salary. The MSP salary is not included in the calculation which is based on the salary for the specified post.

Paragraph 4(3)(a) prevents the payment of the grant to the office-holder’s personal representatives in the event of death in service while holding that office. It also prevents payment of the grant to the office-holder’s personal representatives if the office-holder dies within 90 days of leaving that office.

Paragraph 4(3)(b) prevents payment of the office-holder resettlement grant to the individuals who hold the posts of Presiding Officer and First Minister when these provisions come into force or to any former holders of these posts. Individuals who qualify for the Presiding Officer and First Minister pension (as set out in the 1999 pensions order) will not be entitled to the payment of this grant.

Treatment of grants for tax purposes

As the schedule is provision for the payments of grants in accordance with section 81(3) of the 1998 Act, section 291 of the Income Tax (Earnings and Pensions) Act 2003 (c.1) (“the 2003 Act”) applies. In relation to MSP and office-holder resettlement grants, this means they are not treated as earnings for tax purposes. They are classed as termination payments and, under Chapter 3 of Part 6 of the 2003 Act, the first £30,000 is exempt from income tax. In the event that a grant is made in excess of £30,000, any amount over and above the first £30,000 is taxed as earned income. In relation to ill-health retirement grants, section 406 of the 2003 Act prevents these grants from being treated as earnings, with the payment being wholly exempt from income tax. There is no tax threshold.

SCHEDULE 3 TRANSITIONAL PROVISIONS AND SAVINGS

Apart from enabling powers that come into effect at Royal Assent, the new scheme rules in the Bill come into effect on new rules day (section 5(3) of the Bill) but will be subject to transitional and saving arrangements (section 1(3)). Schedule 3 provides for the transition from the existing Scottish Parliamentary Pension Scheme rules in the 1999 pensions order to the new scheme rules in Schedule 1. It also saves some provisions of the 1999 pensions order, for example the separate

See definition of salary in rule 109 of Schedule 1
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

pension scheme for First Ministers and Presiding Officers which is comprised in Part S of the 1999 pensions order, albeit that it is saved only in respect of present and past incumbents.

487. As regards the scheme, section 1(1) of the Bill provides that it is continued and is the same scheme as constituted by the 1999 pensions order but is to be operated under different rules (as set out in the Bill). This approach has been preferred in the Bill as opposed to the more complex alternative of creating a new scheme, transferring from and winding up the old scheme. The preferred approach sets the scene for the transitional arrangements as set out in Schedule 3.

Paragraph 1: Introductory

488. Subparagraph 1(1) sets out the interpretation of “new rules day”, “new scheme rules” and “1999 scheme rules.” “New scheme rules” and “1999 scheme rules” refer respectively to the rules contained in the Bill and the existing scheme rules in the 1999 pensions order.

489. Most of the Bill provisions come into force on new rules day (see section 5(3) of the Bill). That date is defined as the first day of the month following six months after Royal Assent. (The first day of the month avoids any administrative difficulties which would arise in collecting contributions from scheme members at two rates in respect of one salary payment).

490. The interpretation of other words and phrases used in this schedule can be found in section 4 of the Bill and at Part U of Schedule 1.

Paragraph 2: Pension Fund

491. Article A3 of the 1999 pensions order specifies that the Order (and, therefore the scheme) will only apply until new legislation, made using the powers under section 81(3) the 1998 Act, comes into force. However, paragraph 2 ensures that the Pension Fund will continue by specifying that article B1 of the Order remains in force so far as it establishes the Pension Fund. See also paragraph 21 of Schedule 3 in relation to continuation of other 1999 scheme rules.

Paragraph 3: Scheme membership

492. Paragraph 3 prevents a current (or any former) Presiding Officer and a current (or any former) First Minister participating in the scheme as an office-holder member on new rules day or thereafter. Such persons are all in receipt of or entitled to special pension arrangements under Part S of the 1999 scheme rules (one half of the salary payable in respect of the office when the person ceases to hold that office). Under the Bill there is no such special provision for future Presiding Officers or First Ministers, who are instead treated as office-holders and allowed to join the scheme in terms of rule 22 of Schedule 1. This transitional provision prevents individuals from being entitled under both old and new arrangements.

Paragraph 4: Scheme member contributions

493. Paragraph 4 sets out the transitional arrangements for existing participating members who wish to continue paying lower rate contributions from new rules day. Under rule 5(1)(d) this provision comes into effect on Royal Assent ensuring that participating members have sufficient
time to comply with the notification procedure required under this provision well in advance of new rules day. An existing participating member is defined in subparagraph 4(1) as a person who is a scheme participant under the 1999 pensions order and who would become an MSP member or office-holder member (or both) on new rules day.

494. The Bill allows participating members to make contributions towards their pensions at one of two rates: either the higher rate of 11% of salary or the lower rate of 6% of salary (see rules 28 and 109). Rule 28 presumes that the participating member will make contributions at the higher rate. Existing participating members are currently under the 1999 scheme rules making contributions to the Pension Fund at 6% (equivalent to the new lower rate). Subparagraph 4(2) provides that an existing participating member may continue to make contributions at the lower rate when the new rules come into force only if the member notifies the SPCB. In terms of subparagraph 4(3), notification must be in writing (see rule 108(1)) and must be received by the SPCB at least 14 days before new rules day.

495. Notification under paragraph 4 is made to the SPCB as the current managers and administrators of the Pension Fund. Once Fund trustees are appointed (under Schedule 1, Part B of the Bill), the SPCB is obliged by subparagraph (4) to inform the Fund trustees of every valid notice that it has received from existing participating members.

496. After new rules day the provisions of rule 29 in relation to altering scheme member contributions apply to all participating members, including those covered by this provision can only thereafter change the contribution rate within three months of a subsequent election or appointment (see paragraphs 114-117).

**Paragraph 5: Contributions from the SPCB**

497. Each financial year, the SPCB pays a sum of money into the Pension Fund (see article D3(1) of the 1999 pensions order). The Government Actuary is required by article D3(2) of the 1999 pensions order to make a recommendation on the amount of contribution required. The SPCB then determines the level of contributions to be met (currently 20.3% of salary).

498. Paragraph 5 specifies that the existing determination as to the contribution rate payable from the SCF (put in place by article D3(2)) will continue to have effect as if it had been made under rule 32 of Schedule 1 to the Bill. In subsequent years, and following recommendations from the scheme actuary, the provisions of rule 32 will apply.

**Paragraph 6: Reckonable service as an MSP**

499. Provision is made in paragraph 6 for service under the 1999 pensions order to be recognised and carried forward for the purpose of calculating reckonable service and the amount of pension payable under the new scheme rules.

500. Subparagraph (1) specifies who the provisions of paragraph 6 apply to. That is those who were participating members making contributions to the Fund from their salary under article A1(2) of the 1999 pensions order. It excludes any who at the new rules day were pensioner members.
501. The pension entitlement for all such previous service will be calculated under the new scheme rules in Schedule 1. Subparagraph (2) sets out how the previous “aggregate period of reckonable service as a participating member” is to be carried forward into the new scheme rules. The “aggregate period of reckonable service as a participating member” is defined at article E2 of the 1999 pensions order. It is the actual period of reckonable service as a participating member together with any increases in reckonable service attributable to sums received by way of a transfer in value or by buying added years. The aggregate period of reckonable service is to be treated as if it was reckonable service as an MSP (see Schedule 1, rule 33). That service is treated under subparagraph (2)(b) as having accrued as a result of making contributions at the lower rate of 6% of salary.

502. Subparagraph (3) makes provision in relation to buying added years not yet fully purchased. Subparagraph (3)(a) applies where an individual, having had an application to buy added years by instalments accepted by the SPCB before the new scheme rules come into effect, is still in the process of paying for those years. In such a case no part of the added years being purchased is included within the aggregate period of reckonable service under subparagraph (2).

503. Alternatively, under subparagraph (3)(b), a participating member may have had an application to buy added years by paying a lump sum accepted by the SPCB before the new scheme rules come into effect but not yet have made payment on new rules day. In such a case no part of the prospective added years falls within the aggregate period of reckonable service under subparagraph (2).

504. In each case the added period of service, when fully paid for, is counted as reckonable service under the new scheme rules set out in Schedule 1 Part E of the Bill (see also the provisions at paragraph 17 of Schedule 3).

Paragraph 7: Reckonable service as an office-holder

505. Similar provision is made for the calculation of office-holder pensions for those who were participating office-holders under the 1999 pensions order and who at new rules day are not pensioner members entitled to their pension.

506. Subparagraph (1) specifies that the provisions of paragraph 7 apply to a participating member who was a participating office-holder (defined as a person making contributions to the Fund from their salary under article A1(2) under the 1999 pensions order) and who at the new rules day is not a pensioner member entitled to receive their pension.

507. The pension entitlement for all such previous service will be calculated under the rules in Schedule 1. Subparagraph (2) sets out how the “aggregate period of reckonable service as a participating office-holder” is to be carried forward into the new scheme rules. The “aggregate period of reckonable service as a participating officeholder” is defined at article E2 of the 1999 pensions order. It is the actual period of reckonable service as a participating office-holder together with any increase in reckonable service attributable to sums received by way of a transfer in value. (There can be no increase due to added years as this was not permissible for office-holders under the 1999 pensions order).
508. When the aggregate period of service accrued under the 1999 pensions order is calculated the pension entitlement in relation to that service is calculated, under subparagraph (2)(b). The formula treats the service as a single aggregated period and applies it to the highest office-holder salary received during any 12 months of the period. For those who are in office at the new rules day, the single aggregated period ends when they leave that office, as opposed to ending on the new rules day.

509. Where the individual was a participating office-holder for less than 12 months, the salary is calculated as the actual salary figure to be paid to the office-holder whilst in post multiplied by 365 and divided by the number of days in the post to give a salary figure for the period.

510. Once the highest office-holder salary has been calculated, it is divided by 50 (reflecting contributions made at the lower rate with pension accruing at 1/50th of salary) and multiplied by the office-holder’s aggregate period of reckonable service.

Paragraph 8: Total reckonable service

511. Total reckonable service is defined in rule 35 (see paragraphs 135-137). Total reckonable service is used in relation to the calculation of entitlement to short service refunds under Part M and entitlement to transfers under Part N.

512. Paragraph 8 makes clear that “actual period of reckonable service as a participant” (see article E1 of the 1999 pensions order) is added to the calculation of total reckonable service made under rule 35. Actual period of reckonable service as a participant is the period of membership of the 1999 scheme rules during which contributions were paid. It is the aggregate of service as an MSP member or office-holder only or as both an MSP member and an office-holder.

Paragraph 9: Payment of pensions due on new rules day etc.

513. As a consequence of article A3 of the 1999 pensions order, the 1999 scheme rules would cease to have effect when provision is made under section 81(3) of the 1998 Act. The rules in the Bill (the new scheme rules) are made in accordance with section 81(3) and will supersede those of the 1999 pensions order, save to the extent that the rules of the 1999 pensions order are saved by the Bill.

514. Paragraph 9 specifies that the pension of any scheme pensioner under the 1999 pensions order continues to be governed by that order and not the provisions in the new rules set out in the Bill. The provision preserves the entitlement expectations and pensions of existing pensioner members, albeit the SPCB’s pension functions including payment obligations are transferred to the new Fund trustees.

Paragraph 10: Entitlement of partners and children after new rules day

515. Whereas paragraph 9 sets out the entitlement of pensioner members prior to the new rules day and the preservation of their rights to be governed under the scheme rules in the 1999 pensions order, paragraph 10 qualifies this for the entitlement of such an individual’s partner or child. The new scheme rules (which provide for wider entitlement) will apply to all partners and children of
individuals who became scheme pensioners prior to the new rules day. Thus, for example, a partner of an existing pensioner will be entitled to a partner’s pension under the new scheme rules provided they meet the conditions specified in rule 57.

516. Similarly, if a person is the partner or child of a scheme member who died before the new rules come into effect, the partner or child’s rights and entitlements are as set out in the new scheme rules. Thus, for example, the provisions in the 1999 pension rules which terminate spouse’s pensions on remarriage will no longer apply and children’s pensions can be paid until age 23 provided the conditions in Chapter 3 of Part J are met.

**Paragraph 11: Early retirement**

517. Paragraph 11 provides for the requirement to maintain existing rights accrued to date by some scheme members to access early retirement provisions. As a result of having at least 15 years’ qualifying service under the existing 1999 scheme rules, some individuals will already have accrued rights to retire early and to have a pension calculated under the existing 1999 scheme rules. These rights are protected where they would result in an earlier entitlement or a greater benefit in comparison to the new scheme rules in the Bill.

518. The provisions also take into account some existing members who have expectations of qualifying under the rules in the 1999 pensions order. All existing members will be able to count their service in Session 3 of the Parliament towards the 15 years relevant service threshold for early retirement (equivalent to the 15-year qualifying service threshold in the existing 1999 scheme rules). If they qualify, and a calculation under the 1999 scheme rules would result in a greater benefit in comparison to the new scheme rules, the existing 1999 scheme rules will apply to them. Any non-concurrent service accrued to the end of Session 3 at the House of Commons or the European Parliament will also be included in the relevant service calculation.

519. The provisions of paragraph 11 apply by virtue of subparagraphs (1)(a) and (b) to those who have been scheme participants under the 1999 pensions order and have 15 years of relevant service (akin to qualifying service under the 1999 pensions order) before the cut off date. The 15 years includes service as an MSP participating member under the 1999 pensions order and any non-concurrent service accrued as a member of the House of Commons or the European Parliament.

520. Subparagraph (1)(c) is a limited qualification provision required to take account of individuals under age 55 who may qualify for an entitlement to a pension from age 50 under the existing 1999 scheme rules, as opposed to the minimum pension age of 55 under the new scheme rules. In order for this transitional paragraph to apply to them (as well as meeting the requirement for 15 years relevant service prior to the cut-off date) they need to have a protected pension age as defined in paragraph 22(8) of Schedule 36 of the Finance Act 2004. Schedule 36 allows some protection for members of pension schemes at 5 April 2006 to continue to apply past 6 April 2010.

521. Subparagraph (2)(a) modifies rule 46 to reflect an early retirement age of 50 instead of 55. As noted above, this will only apply to existing scheme members who meet the requirements of subparagraph (1), i.e. who have 15 years relevant service prior to the cut-off date and have a protected pension age in terms of paragraph 22(8) of Schedule 36 of the Finance Act 2004.
522. Subparagraph (2)(b) preserves the right to have an early retirement pension calculated under the existing 1999 scheme rules where the pension so calculated would be more beneficial. This applies to scheme members whose rights are preserved under subparagraph (1), i.e. they have 15 years relevant service prior to the cut off date (and, if under 55, meet the additional test). Such individuals are given the benefit of the better of the old or new scheme provisions covering early retirement. Under this provision, a comparison is to be made between the reduction specified in the Bill at rule 46(4) and the table of reductions set out in Schedule 4 to the 1999 pensions order. The reduction to be made in the event of a scheme member taking early retirement covered by the provisions of paragraph 11 is not to exceed the relevant percentage specified in the table.

523. Subparagraph (3) defines the cut-off date for the accumulation of relevant service counting towards the minimum required for early retirement under the 1999 pensions order as the date of the first general election after new rules day.

**Paragraph 12: Partner’s and children’s pensions**

524. Paragraph 12 provides additional transitional provision and preserves existing rights in relation to the calculation of partner and children’s pensions for those who take early retirement under the transitional provisions specified in paragraph 11.

525. Part J of Schedule 1 to the Bill sets out the rules in relation to pensions which are to be paid to surviving partners and children who meet the relevant criteria. Rule 56 defines a member’s “scheme pension entitlement” for the purpose of calculating survivor pensions. In relation to the death of scheme pensioners, subparagraph (4) of rule 56 sets out how a member’s scheme pension entitlement is calculated.

526. By contrast, the 1999 scheme rules use the phrase “basic or prospective pension” with the meaning set out in article K5. In relation to a pensioner for the purpose of calculating their basic pension, any reduction as a result of a lump sum payment is ignored along with any reduction as a consequence of early retirement.

527. Paragraph 12 amends the calculation of “scheme pension entitlement” in respect of individuals who qualify for and take early retirement under the provisions of paragraph 11. Any reduction made to their accrued pension at retirement as a result of taking early retirement is to be ignored when calculating their scheme pension entitlement.

**Paragraph 13: 5 year guarantee**

528. Part L of Schedule 1 of the Bill provides a guarantee that a scheme pension once commenced will be paid for a minimum of 5 years. Where the pensioner dies within that 5 year period and the balance is paid as a lump sum to personal representatives because there is no surviving partner, such a benefit is termed under the Finance Act 2004 as a “defined benefits lump sum death benefit” and can only be paid as a lump sum in respect of scheme pensioners who die under age 75. Rule 71 makes provision for pensioners who die within that guaranteed period aged over 75 years leaving no surviving partner by making provision for pension payments to continue for the remainder of the guarantee period, payable to the deceased’s personal representatives.
529. Paragraph 13 preserves the rights of certain pensioner members aged over 75 years as provided by M4 of the 1999 scheme rules to have paid to their personal representatives a lump sum equivalent to the balance of pension due under the 5 year guarantee period, instead of continuing pension payments. Schedule 36 to the Finance Act 2004 contains transitional provision about lump sum death benefits for existing pension scheme members at 5 April 2006. Paragraph 36 of that Schedule permits such members of a registered pension scheme aged over 75 to retain the same rights as younger pensioners to a lump sum death benefit if the member dies within the guarantee period.

530. Under paragraph 13, the Fund trustees are able to pay a lump sum where the former scheme member dies aged 75 or over with no surviving partner, provided the criteria specified in subparagraph (2) is met. The deceased must have been participating in the scheme before new rules day, and the lump sum must be a defined benefits lump sum death benefit permitted under paragraph 36 of Schedule 36 to the Finance Act 2004.

**Paragraph 14: Deferred pensioner lump sums**

531. Paragraph 14 makes provision to protect the rights of certain deferred pensioners to receive a refund of their contributions in the event of their death. The transitional provision only applies to deferred pensioners who participated in the scheme prior to the new rules day and who die after reaching age 65 leaving no surviving partner or eligible child. The provision preserves the rights under article N2 of the 1999 pensions order.

532. Under article N2 of the 1999 scheme rules, a refund of contributions is payable to the executors of an individual who dies without leaving a spouse or eligible child. Such a person would have to have ceased to be a participant, and thus not be entitled to a death-in-service benefit. In addition, they could not be eligible for a pension under the Scheme, thus being under 65 years of age or still serving as an MSP or office-holder (but having opted out of the scheme).

533. Under paragraph 14, a deferred pensioner at the new rules day would still qualify for a refund of contributions payment under N2 which would include old scheme contributions. The rule would not apply to scheme pensioners who would receive an entitlement in terms of rules 70 or 71.

**Paragraph 15: Short service refunds**

534. The existing refund of contribution provision at article N1 of the 1999 pensions order allows a refund of contributions to be made provided all the conditions are met up to the point when an individual has two years reckonable service. Rule 72(1) alters that period to one of three months. Paragraph 15 preserves the two-year period for certain individuals leaving the scheme.

535. Subparagraph 1 of paragraph 15 disapplies Condition 3 of rule 72(1) in relation to the cut-off point of three months for becoming eligible for a short service refund of contributions for those who have participated in the existing scheme before the new rules day. Such members remain entitled to a short service refund if they leave the scheme with fewer than two years of reckonable service. Subparagraph (2) provides that old scheme contributions are included in respect of short service refunds under the new rules. Rule 72(2) provides for a short service refund to be equal to
the amount of scheme member contributions paid by the individual less the amount of any contributions paid by the individual under section 55(2) of the Pensions Act 1993 (c.48)).

**Paragraph 16: Transfers**

536. Paragraph 16(1) makes transitional arrangements in relation to aspects of the transfer rules at part N of Schedule 1. Provision is made to include within a minimum transfer payment for existing scheme member’s contributions, transferred payments received or amounts paid to purchase added years under the 1999 scheme rules. Provision is also made allowing a 12-month transitional period for current members over 64 to be allowed to bring transfer values into the scheme.

537. Rule 76 of Schedule 1 provides for the minimum amount of a transferable sum to be no less than the total of an individual’s contributions, any transfer-in sums received and any monies paid to purchase added years. Subparagraph (1) includes within the minimum calculation of a transfer out value under rule 76 any contributions or payments made and any transfers received or added years purchased under the 1999 pensions order.

538. Subparagraph (2) makes transitional arrangements in relation to sums transferred into the Pension Fund. Under condition 2 of rule 81, notice of an intended transfer into the scheme must be provided before the individual’s 64th birthday. Subparagraph (2) disapplies that condition for 12 months from the date that these new rules come into effect.

**Paragraph 17: Added years**

539. Paragraph 17 makes transitional provisions covering ongoing purchase by MSP members of added years, and where applications to purchase have been accepted but the lump sum payment is not yet made at new rules day.

540. Subparagraph 17(1) sets out the circumstances when the paragraph applies. It specifies at (1)(a) that the provisions apply to an individual who is already making contributions by instalments on new rules day under Part Q and Schedule 5 of the 1999 pensions order. At (1)(b) the paragraph is also applied to an individual who has had an application to buy added years by lump sum accepted by the SPCB but has not yet made the payment (six months is allowed for payment following acceptance of the application).

541. When the situations in subparagraph (1) apply, subparagraph (2)(a) specifies that the rules applying to the purchases are to continue to be those at Part Q and Schedule 5 of the 1999 pensions order notwithstanding the terms of article A2(3) of the 1999 pensions order. That article provides that the 1999 pensions order ceases to apply when the provisions of the Bill come into effect. The conditions that were understood and agreed by the MSP at the outset are continued.

542. Under paragraph 6(3) of Schedule 3 (see paragraphs 502-504) no part of added years covered by this paragraph are included as forming part of an individual’s “aggregate period of reckonable service” as a participating member under the 1999 scheme rules on new rules day. Subparagraphs 17(2)(b) and (c) make provision for the period purchased by added years covered by paragraph 17 to be added to the individual’s reckonable service under Part E of Schedule 1 of the
new rules after all sums are fully paid. Subparagraph (17)(2)(c) determines that the reckonable service purchased will be treated as being accrued at the lower contribution rate of 6% of salary.

543. When rule 89(3)(c)(ii) applies, the Fund trustees must reject an application to buy added years. That applies when the total of the amount of scheme member contributions to be made by an applicant to purchase added years in any tax year would exceed 20% of the salary payments to be made to the applicant in that year. Subparagraph 17(3) applies to scheme member contributions made as additional voluntary contributions (AVC’s) under paragraph 4 of Schedule 6 of the 1999 scheme rules during the tax year in which the new scheme rules come into effect. The sub-paragraph ensures that any such AVC contributions are included when calculating whether the 20% limit under rule 89(3)(c)(ii) is being breached.

**Paragraph 18: AVC scheme**

544. Under the new tax regime from April 2006, membership of a tax-registered occupational pension scheme and concurrent contributions to another such scheme or to private personal arrangements is now permitted, subject to the Lifetime Allowance. It is no longer necessary for occupational pension members to make additional pensions savings through related Additional Voluntary Contribution (AVC) schemes and, as a consequence, the statutory requirement for occupational schemes to have an AVC facility in section 111 of the Pension Schemes Act 1993 was repealed. Although paragraph 18 makes provision for the continuation of the existing AVC scheme, the modifications set out in that paragraph prevent scheme members who are not already making AVCs from joining the AVC scheme. The basic position is that existing contributions to the AVC scheme will continue but no other or new contributions can be made. The rights purchased by these continuing contributions and by historic contributions will also be governed by the 1999 scheme rules as modified.

545. The rules in respect of the AVC scheme are set out in Part R and Schedule 6 of the 1999 pensions order. No provision is made in Schedule 1 containing the new rules to replace Part R and Schedule 6. The Bill at section 1 and here at paragraph 18(1)(a) provides for a continuation of the existing scheme with new rules and new trustees responsible for administration, subject to modifications set out in paragraph 18.

546. Subparagraph (1)(a) transfers the powers and responsibilities for the management and operation of the AVC scheme from the SPCB to the Fund trustees.

547. Subparagraph (1)(b) specifies that no scheme member may become a new contributor to the AVC scheme, and revokes the provisions of the 1999 pensions order which state that a participant may become a contributor by making an application to the SPCB. The provision giving the power to the SPCB to close the scheme is also disapplied.

548. Subparagraph (1)(c) amends the provision in the 1999 pensions order which enabled a scheme participant to rejoin the AVC scheme after leaving it; the effect being that when a scheme member ceases to be a contributor to the AVC scheme that decision is final.

549. Under the 1999 pensions order, it was possible for scheme members participating in the AVC scheme to transfer a value into the scheme from certain other AVC schemes. Subparagraph
(1)(d) prohibits this by ceasing the effect of paragraph 4(4) of the Schedule when the new scheme rules come into force.

550. Subparagraph (1)(e) deals with provisions relating to scheme members leaving the AVC scheme. Subparagraph 18(1)(e)(i) amends the provisions of the 1999 pensions order to bring it into line with requirements of the Finance Act 2004 for approved destinations for transfer values.

551. Subparagraph (1)(e)(ii) brings the provisions of the 1999 pensions order into line with the new scheme rules relating to short service refunds. Under the existing rules a scheme member who has paid contributions into the AVC scheme with less than two years reckonable service can request a refund. The new scheme rules revise this period of time to three months.

552. Subparagraph (1)(f) disapplies certain provisions of the 1999 pensions order insofar as these are replaced by provisions in the Bill or refer to superseded legislation. Paragraph 10 of Schedule 6 relates to maximum pensions limits which are not continued in the Bill.

553. Subparagraph (1)(f) also disapplies paragraph 11 of Schedule 6 of the 1999 pensions order. Paragraph 11 places a duty on the SPCB to comply with the Retirement Benefits Schemes (Restriction on Discretion to Approve) (Additional Voluntary Contributions) Regulations 1993. However, these Regulations have been repealed on the coming into force of Part 4 of the Finance Act 2004. Although Schedule 6 is to continue to have effect under the provision of the Bill, the duty to comply with the Regulations is no longer required.

554. Payments made by scheme members to honour existing AVC contracts are paid to the administrator and then to third-party pension providers and are not paid into the Pension Fund. Subparagraph (2) specifies that rule 3 of the new scheme rules does not apply to benefits payable and contributions received under the AVC scheme. The AVC scheme provides for additional pension taken in the form of an annuity purchased with the accrued sum at retirement. As the AVC scheme established under the 1999 pensions order will continue to have effect, and any agreed AVC contracts continue to operate, it will be a matter for the Fund trustees to agree any changes to the existing arrangements covering the existing contractual payments from and to scheme members and the AVC providers. The AVC scheme forms part of the SPPS and can accordingly be modified by Parliamentary resolution under section 3 of the Bill.

**Paragraph 19: Guaranteed minimum pension**

555. Rule 105 sets out the guaranteed minimum pension entitlement which is payable to a member in relation to a transfer-in sum on reaching pensionable age in accordance with sections 14 to 16 of the 1993 Act. See paragraphs 437-444.

556. Such rights for the scheme will only arise by virtue of being attached to transfer-in sums in respect of pre-1997 service in other pensionable employment. Paragraph 19 makes it clear that any guaranteed minimum pension entitlement for scheme members includes the value of any such rights attaching to sums transferred into the scheme under the transfer provisions of the 1999 pensions order.

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43 S.I. 1993/3016
Paragraph 20: Presiding Officer and First Minister pension scheme

557. Part S of the 1999 pensions order established a separate pension scheme for holders of the office of First Minister or Presiding Officer. This scheme is unfunded in that payments are charged on and paid out of the Scottish Consolidated Fund, as opposed to the funded scheme (for which the Pension Fund was established by article B1 of the 1999 pensions order). The First Minister and Presiding Officer scheme is not a tax-registered scheme in terms of section 150(2) of the Finance Act 2004 and therefore, the rules for tax-registered schemes and consequent tax treatment do not apply to it (as an unregistered scheme the benefits paid under it are subject to income tax and other taxes).

558. Under the First Minister and Presiding Officer pension scheme both the First Minister and Presiding Officer are entitled to an annual pension equivalent to 50% of their office-holder salary payable from the day after ceasing to hold office, irrespective of their length of service in the post or their age. There is also provision for a pension for surviving widows, civil partners and children or any person entitled to benefits (with any pension payable based on the relevant office-holder pension entitlement).

559. Paragraph 20(1) specifies that the rules in the 1999 pensions order covering First Ministers and Presiding Officers will continue in respect of any individual who holds or has held those offices on the new rules day, i.e. those already entitled to or receiving that pension. This applies also in respect of any surviving spouses, civil partners or children relating to that individual. Corresponding transitional provision is made in paragraph 3 of Schedule 3 to exclude individuals entitled under this paragraph from also being office-holder members in the funded scheme.

560. In respect of those entitled to receive benefits, the First Minister and Presiding Officer pension scheme will continue to operate as established under the 1999 pensions order. Section 1 of the Bill transfers to the Fund trustees all functions, rights, liabilities and obligations in respect of the “Scottish Parliamentary Contributory Pension Fund” only and Schedule 1 sets out the rules of the “Scottish Parliamentary Pension Scheme” which excludes the First Minister and Presiding Officer pension scheme (see section 4). Therefore, the Fund trustees will have no duties in relation to the First Minister and Presiding Officer pension scheme. Paragraph (2) makes clear that the SPCB continues as managers of this scheme and that they determine any pension sharing benefits conferred on any individual as a result of the scheme. Paragraph (3) specifies that any reductions to benefits as a result of pension sharing orders are to be ignored when calculating the pension entitled of dependants.

561. Section 3 allows modification of the First Minister and Presiding Officer pension scheme by resolution of the Parliament.

Paragraph 21: General saving

562. The effect of article A3 of the 1999 pensions order is that the order shall only apply until this Bill comes into force. Schedule 3 supersedes that dis-application for a number of specified rules within that order. Paragraph 21 ensures that any other 1999 scheme rule contained in that order continues in force in so far as is necessary in respect of the various provisions saved by Schedule 3.
Paragraph 22: Disapplication of scheme modifications

563. Following the passing of the Finance Act 2004, the HMRC Commissioners exercised the powers given to them by paragraph 3 of Schedule 36 to make regulations modifying the rules of registered pension schemes[^44] to enable schemes to operate under the new tax regime prior to a formal change in their rules.

564. The modifications made by the Regulations continue in force for a transitional period until the end of the 2010-2011 tax year or until amendments are made to scheme rules which specifically state that the modifications no longer apply to the scheme rules (paragraph 3 of Schedule 36). The Bill makes provision in each area covered by the Regulations and paragraph 22 accordingly specifically disapplies the 2006 modification Regulations[^45] from new rules day.

[^45]: S.I. 2006/364
FINANCIAL MEMORANDUM

INTRODUCTION

565. This document relates to the Scottish Parliamentary Pensions Bill introduced in the Scottish Parliament on 22 September 2008. It has been prepared by Alasdair Morgan MSP, who is the member introducing the Bill on behalf of the committee to satisfy Rule 9.3.2 of the Parliament’s Standing Orders. It does not form part of the Bill and has not been endorsed by the Parliament.

566. From the outset, the committee was clear that its overriding aim was to provide a modern equality-proofed range of benefits both now and in the future. A Scottish Parliament pension scheme should strike an equitable and proportionate balance between the level of benefits provided to members and the actual cost to public funds of their provision.

567. While the Bill provides for the scheme to continue to provide pension benefits for members and officeholders, it replaces the 1999 pensions order, sets out new scheme rules and provides for a number of benefit and governance changes. These are set out fully earlier in this document within the Explanatory Notes. Changes are also proposed to the pension benefits available for future Presiding Officers and First Ministers and these are also explained within the Explanatory Notes.

568. The Bill also replaces the existing Grants Order and at Schedule 2 of the Bill sets out new arrangements for grants payable on leaving office for members and officeholders. These arrangements are also set out fully in the Explanatory Notes. The costings for Grants are covered within this document.

569. The Government Actuary’s Department (“GAD”) costed the proposed changes to the 1999 pensions order, based on the current membership of the scheme as at 31 March 2008.

COSTS ON THE SCOTTISH ADMINISTRATION

570. It is not anticipated that any costs will be incurred by the Scottish Administration. There may be some saving from an anticipated agreement that the SPCB will, in future, pay pensions due to First Ministers. This will marginally reduce administrative costs in relation to payroll activities.

COSTS ON THE SCOTTISH PARLIAMENT

571. The current costs of the scheme were provided by GAD in 2005 as part of the triennial valuation required to be carried out under the rules within the 1999 pensions order. As part of the valuation, GAD is required to recommend the rate of contributions payable by the SPCB. Following the 2005 valuation that rate was set at a total of 26.3% of salary, with scheme members being required to pay 6% of that figure.
572. As indicated, there have been a number of changes proposed to the scheme rules, some of which increase costs with others reducing costs. The principal changes are costed and shown in the following table. The cost estimates were provided by GAD\(^{46}\) and relate to payroll.

<table>
<thead>
<tr>
<th>Ill-health benefits</th>
<th>Anticipated saving dependent on the numbers involved of around 0.3%.</th>
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</thead>
<tbody>
<tr>
<td>Surviving partners</td>
<td>Anticipated increase in costs of between 0.8% and 1.2%.</td>
</tr>
<tr>
<td>Lump sum death benefits</td>
<td>Increased cost if re-insurance continues from 0.5% to 0.67%.</td>
</tr>
<tr>
<td>Changes to early retirement provision</td>
<td>Early retirement will in future be cost neutral on the fund. The changes made are expected to produce savings equivalent to the additional costs shown above for the changes to surviving partners and children of between 0.8% and 1.2%.</td>
</tr>
</tbody>
</table>

573. GAD was asked to consider the effect of all the changes proposed to the pension scheme in the Committee’s report, taking into account the current membership following the general election on 3 May 2007. The result of its review of the changes proposed was that “the expected cost of the SPPS under the new rules will not be materially different from the cost of the SPPS assessed under the existing rules.” The current cost based on the payroll to 31 March 2008 is £7.8m\(^{47}\) x 20.3% = £1.583m per annum.

574. Fluctuations in the cost arising as a result of the periodic actuarial valuations may be expected. Actual experience and associated cost will inevitably differ from the actuarial assumptions made. Such fluctuations would be expected whether or not the changes in the scheme provisions are made. The next actuarial valuation is currently ongoing and is expected to report to the SPCB late in 2008.

**FM/PO pensions**

575. GAD was also asked to provide a valuation of the cost to the public purse in relation to the pensions for the First Minister (FM) and Presiding Officer (PO) under the 1999 pensions order. Based upon each serving one four-year term and the FM retiring at age 55 with the PO retiring at age 65, GAD estimated the cost for their current pension arrangements at £950,000.00 every four years. These are funded directly from the Scottish Consolidated Fund and not from the Pension Fund.

\(^{46}\) Scottish Parliamentary Pension Scheme Committee, *Official Report* 11 March 2008 and email to committee clerk, 6 March 2008

\(^{47}\) Increase pending from April 2008
576. The closure of the existing pension arrangements for the FM and PO for future officeholders will produce savings to the public purse although this will be slightly offset by the increased costs falling on the SPCB as (i) the scheme sponsor of the SPPS, in relation to their eligibility for officeholders’ pensions under the scheme; and (ii) as the body responsible for paying the grants for which they are now eligible under Schedule 2 to the Bill. The costs for the new SPPS arrangement will be met from the 20.3% scheme sponsor contribution rate. On an annual basis, and based on current salaries, cost is £24,158 per annum or approximately £100,000 over four years. Based on all of the assumptions noted, this leaves a net saving to the public purse in relation to the FM/PO pension arrangements of £850,000 every four years.48

COSTS ON THE FUND

Trustees and scheme administration

Expenses associated with administering the Fund

577. Schedule 1, paragraph 7 of the 1999 pensions order states:

A. “The expenses of managing the Fund, including any fee payable to the Comptroller and Auditor General or to the Auditor General for Scotland, and the remuneration and pensions, or contributions towards the pensions, payable to or in respect of staff employed solely in connection with management of the Fund, shall be met out of the Fund.”

Existing costs arising

578. The following professional parties are currently appointed in connection with the Fund:

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<thead>
<tr>
<th>Responsibility</th>
<th>Appointed by</th>
</tr>
</thead>
<tbody>
<tr>
<td>Actuary</td>
<td>Schedule 1, 1999 Order</td>
</tr>
<tr>
<td>External auditor</td>
<td>Schedule 1, 1999 Order</td>
</tr>
<tr>
<td>Investment management</td>
<td>SPCB</td>
</tr>
<tr>
<td>Bankers</td>
<td>SPCB</td>
</tr>
<tr>
<td>Scheme administrator</td>
<td>SPCB</td>
</tr>
<tr>
<td>Legal advisers</td>
<td>SPCB</td>
</tr>
</tbody>
</table>

579. The SPCB is supported by legal advice from within the Parliament’s legal directorate and, in addition to the above, administrative and payroll support in relation to the day-to-day running of the scheme from within the Parliament’s Personnel Department.

580. In terms of the 1999 pensions order, the costs involved for these services all fall as a charge on the Pension Fund.

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48 See also the new grant costs set out in paragraph 606
Future costs

581. The Bill proposes that trustees should be appointed to manage and administer the Pension Fund, in place of the SPCB.

Professional support

582. The costs of current professional parties, as noted in paragraph 578, will continue to arise for trustees and will continue to be chargeable on the Fund.

Administrative and payroll support

583. The trustees would be responsible for arranging support services probably akin to those currently provided to the SPCB. The Bill (Schedule 2, rule 16) permits trustees to employ staff and advisers.

Legal support

584. To avoid any perception of a conflict of interest, arrangements will require to be put in place for legal advice to trustees to be provided from separate sources to that provided to the SPCB, reflecting the different interests and roles of each. Existing legal advice is a chargeable cost on the Fund. Legal advice to the trustees will be subject to tendering and negotiation with external sources.

585. The cost of legal advice to the trustees will also be dependent upon the amount of advice required. For comparative purposes, the trustees of the UK Parliament pension scheme spend around £40,000 per annum and the trustees of the National Assembly for Wales scheme spend around £25,000 per annum. Until a tendering exercise has been completed it is not possible to provide an accurate cost.

Remuneration, allowances and expenses in relation to Fund trustees

586. Rule 9 of Schedule 1 to the Bill covers expenses and remuneration of trustees. The Bill does not permit remuneration to trustees who are or have ever been scheme members. Expenses properly incurred by the Fund trustees in connection with their duties as trustees are to be reimbursed from the Pension Fund. The scheme allows for “professional” trustees who may be remunerated. Any such arrangements require to be put before Parliament at the time of their nomination. It will be a matter for the trustees to determine whether and to what extent they require professional trustees and for the Parliament to approve any such nominations and the payment of remuneration.

587. Other new costs may arise as a consequence of the changes made to the scheme by the Bill. For example, the Fund trustees may wish to purchase indemnity insurance. Another example is provision for subsequent medical examination of pensioners in receipt of ill-health pensions (Schedule 1, Part I) and a more general power for the trustees to commission their own independent medical advice when considering a variety of applications. These provisions, if used, will incur additional costs on the Fund. As a consequence of such examinations, savings to the Fund in relation to the payment of pensions could occur, for example from ill-health pensions being reduced.
Future changes to contribution rate

Contribution rate and triennial valuation

588. A scheduled triennial actuarial valuation of the fund commenced at 6 May 2008. This actuarial valuation is expected to be completed by GAD later in 2008 to allow the SPCB to set the contribution rate for the current financial year 2008/09, i.e. before any new Bill comes into force. Any deficit or surplus will be reflected in the actuary’s suggested alteration to the contribution rate.

589. The Bill, when it comes into force, continues the existing SPCB contribution rate (Schedule 3, paragraph 5) i.e. the employer contribution rate will continue to be at the rate following the 6 May 2008 valuation and will exist until a further valuation is completed. To that extent no change in “existing” costs should be incurred by the SPCB.

Accrual rate

590. The Bill provides two options for accrual of pension: either 1/40th or 1/50th (the present rate) of final salary for each year of reckonable service. The cost of each to the scheme member is set by the Bill (Schedule 1, Part D) and reflected in the member contributions of either 11% or 6% of salary. GAD advised that the increase in the accrual rate to 1/40th would be fully funded by an increase of 5% in contributions. For members transferring to 1/40th accrual the full additional cost to the Fund will be met by an increase in their contributions from 6% to 11% of salary.

Grants (Schedule 2)

591. Schedule 2 of the Bill replaces the Grants Order and makes provision for three types of awards payable to individuals ceasing to be MSPs or hold ministerial office. Payments of grants are not made from the Pension Fund and are financed by the SPCB from its annual budget provision. The Bill makes no changes to the payment arrangements, although it does alter the amount of and eligibility criteria for payments.

Resettlement grant

592. The initial amount of resettlement grant payable under the Bill is maintained at the equivalent to six months’ salary for each MSP, rising with service up to the current maximum entitlement of 12 months’ salary. The amount payable increases from the minimum by one month for each full year of continuous service as an MSP beyond six years.

593. The amount paid out in resettlement grant at the end of Session 1 under the existing Grants Order was £626,964.00

594. Under the provisions in the Bill, the total in resettlement grant at the end of Session 1 would have been £417,976.00.

595. The amount paid out in total in resettlement grant at the end of Session 2 under the existing Grants Order was £1,114,911.00

596. Under the provisions in the Bill, the total in resettlement grant at the end of Session 2 would have been £1,185,699.00.
597. Using the provisions in the Bill produces a ‘saving’ at the end of the first Session of £208,988. The cost at the end of Session 2 would have been higher by £70,788. Had the new rules been in force from 1999, there would have been an overall reduction in the amount of grant paid of £138,200.

598. Projecting forward to the end of Session 3 would involve speculating on the variables involved, such as the number of MSPs who will not return, their ages and their length of service. Experience from Sessions 1 and 2 has illustrated that this is very difficult to predict and any calculated projection would not be particularly informative given the variable data involved.

**MSP ill-health retirement grant**

599. The resettlement grant is only payable when an MSP is not returned following dissolution of the Parliament. No grant is payable if an MSP resigns their seat during a Parliamentary session unless they are forced to resign as a direct consequence of a health condition. In such circumstances the SPCB may, if satisfied, make an ill-health retirement grant. Such a grant is paid at the same rate as a resettlement grant.

600. Thus for MSPs with up to six years service, the grant is 50% of annual salary rising by $\frac{1}{12}$th annual salary for each year of continuous service beyond six up to a maximum of 12.

601. It is not possible to predict whether any such grants would be payable in future. Any such grants are paid in place of a resettlement grant which may have fallen due at the next or a subsequent dissolution. A replacement MSP is appointed and becomes entitled to grants in like manner. Grants payable are absorbed as part of the SPCB budget for the year in which they are paid.

**Officeholder resettlement grant – ministers**

602. The Bill leaves the amount of grant payable to a pensionable officeholder who steps down from office unchanged. It increases the qualifying period which must elapse from ceasing to hold office before the grant becomes payable from three weeks to 90 days. The grant becomes payable at any time during a Session when the officeholder leaves office.

603. During this Session no grants have been paid as no ministers or deputy presiding officers have, to date, left office. Predicting the number and amount of grants that fall due per year is not possible and nor can it be assumed that grants will be payable following a general election. The grant continues to be paid by the SPCB as it falls due from its annual budget provision. The Bill does not alter the amounts likely to be paid. After the 2007 election a total of £149,720.50 was paid in severance grants to former officeholders.

**Officeholder resettlement grant – First Minister and Presiding Officer**

604. A new provision is introduced in the Bill (Schedule 2, paragraph 4) for a resettlement grant to future First Ministers and Presiding Officers when they stop holding office. The grant is not payable to those holding office when the provisions commence as they remain entitled to pension arrangements under the 1999 pensions order, which are not continued for future occupants of these offices.
605. This is a new cost falling on the SPCB and, using the same assumptions set out in paragraph 575 above, the cost every four years will be £59,504.49

COSTS ON OTHER BODIES, INDIVIDUALS AND BUSINESSES
606. The only area where any costs could arise on other bodies is in relation to the ongoing provision of additional voluntary contributions (“AVC”) arrangements. These arrangements are provided by external providers at market rates. The Bill prevents any individuals from commencing new AVC arrangements through the pension scheme whilst preserving existing arrangements.

607. Scheme members under revised Finance Act 2004 rules can make their own free-standing AVC (“FSAVC”) arrangements without having to apply through occupational pension schemes.50

608. The changes made under the Bill should impose no costs on external providers.

COSTS ON LOCAL AUTHORITIES AND OTHER PUBLIC BODIES
609. It is not anticipated that the provisions should impose any direct costs on local authorities and other public bodies.

610. It is not anticipated that the provisions should impose any direct costs on other bodies, individual or businesses.

SUMMARY OF COSTS ARISING
Costs on the Scottish Administration (see paragraph 570).
611. Nil, with potential for minor administrative savings.

Scottish Consolidated Fund (see paragraph 576).
612. FM/PO pensions: Saving of £950,000 every four years using figure supplied by GAD.

Costs on the Scottish Parliament (see paragraphs 571-574).

<table>
<thead>
<tr>
<th>Area of cost</th>
<th>Cost</th>
<th>Margin of uncertainty</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scheme contributions</td>
<td>£1.583m per annum.</td>
<td>Figure supplied by GAD and is as accurate as possible subject to assumptions made.</td>
</tr>
<tr>
<td>Scheme expenses</td>
<td>Nil</td>
<td>N/A</td>
</tr>
<tr>
<td>Schedule 2 Grants Resettlement</td>
<td>Variable depending upon uptake. 2007 figure was £1.11m.</td>
<td>Difficult to project forward, unlikely to fall over the longer period, may rise depending upon length of service of members.</td>
</tr>
</tbody>
</table>

49 Increase in salary pending from 1 April 2008
50 See paragraph 544 of these notes
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

| Ill-health | Demand led payments, three in nine years to date. | Dependent on numbers applying and their circumstances. |
| Officeholder resettlement | £149,720.50 every fourth year. | This figure should be a maximum amount after an election. Other years will be dependent on numbers qualifying which depends upon ministerial reshuffles. |
| FM/PO resettlement grant | £59,504 every four years. | Will vary as salary varies. Also as posts become vacant. |

**Costs for Pension Fund** (see paragraphs 577-605).

613. Possible increase in administration costs in relation to legal support, remuneration of professional trustees and cost of medical examinations. Overall cost difficult to quantify. The actual amount will depend upon a number of factors including the cost of advice, the amount and extent of advice required. Thus the actual cost may fluctuate from the figure shown by 25% plus or minus.

614. The investment costs at present are 0.45% of the contributions as forwarded for investment which, based on annual contributions paid into the fund at the rate of 26.3% of the £7.8 salary bill, produces a charge of £9,230.00.

**Costs for scheme members** (see paragraph 590).

615. For those in receipt of an improvement in benefits payable, i.e. those who do not elect out of the increased accrual rate, there would be a 5% increase in contribution costs (£2,704.00 per annum). Cost will alter in line with salary changes.

**Costs on other bodies, individuals and businesses** (see paragraphs 606-608).

616. Nil

**Costs on local authorities and other public bodies** (see paragraphs 609-610).

617. Nil

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51 Amount at 1 April 2008 with increase in salary pending
REPORT BY THE AUDITOR GENERAL FOR SCOTLAND

618. I write to you in accordance with Standing Order Rule 9.3.4 in which a bill containing provision to charge expenditure on the Scottish Consolidated Fund should be accompanied by a report by me setting out my views on whether the charge is appropriate.


620. Article S3 of The Scotland Act 1998 (Transitory and Transitional Provisions) (Scottish Parliamentary Pensions Scheme) Order 1999 requires the pensions payable to or in respect of the First Minister and Presiding Officer to be charged and paid out of the Scottish Consolidated Fund.

621. The proposed bill does not introduce any new charge on the Scottish Consolidated Fund.

622. I am of the view that the charge on the Scottish Consolidated Fund is appropriate.

Robert W Black
Auditor General for Scotland
11 August 2008
These documents relate to the Scottish Parliamentary Pensions Bill (SP Bill 14) as introduced in the Scottish Parliament on 22 September

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

623. On 18 September 2008, the Presiding Officer (Alex Fergusson MSP) made the following statement:

“In my view, the provisions of the Scottish Parliamentary Pensions Bill would be within the legislative competence of the Scottish Parliament.”
Finance Committee

4th Report, 2008 (Session 3)


Published by the Scottish Parliament on 29 October 2008
Finance Committee

Remit and membership

Remit:

1. The remit of the Finance Committee is to consider and report on-

   (a) any report or other document laid before the Parliament by members of
       the Scottish Executive containing proposals for, or budgets of, public
       expenditure or proposals for the making of a tax-varying resolution, taking
       into account any report or recommendations concerning such documents
       made to them by any other committee with power to consider such
       documents or any part of them;

   (b) any report made by a committee setting out proposals concerning public
       expenditure;

   (c) Budget Bills; and

   (d) any other matter relating to or affecting the expenditure of the Scottish
       Administration or other expenditure payable out of the Scottish
       Consolidated Fund.

2. The Committee may also consider and, where it sees fit, report to the
   Parliament on the timetable for the Stages of Budget Bills and on the handling of
   financial business.

3. In these Rules, "public expenditure" means expenditure of the Scottish
   Administration, other expenditure payable out of the Scottish Consolidated Fund
   and any other expenditure met out of taxes, charges and other public revenue.

   (Standing Orders of the Scottish Parliament, Rule 6.6)

Membership:

Jackie Baillie (Deputy Convener)
Derek Brownlee
Joe Fitzpatrick
James Kelly
Alex Neil
Jeremy Purvis
Andrew Welsh (Convener)
David Whitton

Committee Clerking Team:

Clerk to the Committee
Susan Duffy

Senior Assistant Clerk
Mark Brough

Assistant Clerk
Allan Campbell

Committee Assistant
Stuart McLean
The Scottish Parliament

Finance Committee

4th Report, 2008 (Session 3)


The Committee reports to the Parliament as follows—

BACKGROUND

1. The Scottish Parliamentary Pensions Bill is a Committee Bill which was introduced on 22 September 2008 by Alasdair Morgan MSP on behalf of the Scottish Parliamentary Pension Scheme Committee (“SPPS Committee”).

2. The SPPS Committee was established to “inquire into and report with recommendations for a Committee Bill on a replacement for the Scottish Parliamentary Pension Scheme rules and the Grants to Members and Officeholders Order”. It published its report on 29 May 2008 and this was subsequently debated by the Parliament on 26 June 2008.

3. Under Rule 9.15.8 of Standing Orders, the Finance Committee must report directly to the Parliament on the Bill’s Financial Memorandum as a Committee bill is not referred to a lead committee and a report on the Bill’s general principles is not required.

THE BILL


5. There have been a number of significant legislative changes at a UK level affecting all pension schemes (e.g., the transformation of the legal environment for pension schemes through the Finance Act 2004 and Pensions Act 2004) and a number of general legislative changes affecting all pension schemes (such as...
pension sharing on divorce, payment of partner pensions to civil partners, new simplified tax regime and relaxation of some of the existing tax limits).

6. The SPCB agreed on 13 June 2007 that the pension scheme rules needed to be amended to take account of these changes. The Parliament then agreed on 27 June 2007 that the SPPS Committee should be established to develop proposals for an amended scheme which would assess the legislative changes and other options for change.

7. A number of changes have been proposed to the Scottish Parliamentary Pension Scheme (“the SPPS”) to comply with UK legislative changes. Other changes are broadly as outlined below.

**General**

8. The scheme will be managed by Trustees rather than the SPCB.

**Pension accrual rate**

9. Pension currently accrues at 1/50th of final salary for each year of reckonable service and members’ contributions are 6% of salary. The accrual rate can be altered to 1/40th of final salary and those who opt for this rate will be required to pay an increased contribution of 11% of salary. Additional service as a result of transfers into the pension scheme and from the purchase of added years will be calculated with reference to the higher accrual rate of 1/40th.

10. The Bill closes for future incumbents the special pension arrangements for the First Minister and Presiding Officer whereby a pension of 50% of officeholder salary is payable from the day after ceasing to hold office, irrespective of age or length of service. For the future, pension provisions for these offices will be the same as for all other officeholders.

**Early Retirement and ill-health pensions**

11. Currently, a member is entitled to an early retirement pension from age 50 if they have 15 years’ service. Under the Finance Act 2004, the minimum age at which someone can retire early will be increased to 55 from April 2010. Therefore, the minimum age for early retirement will be increased in the SPPS but the service qualification will be abolished. The value of early retirement pensions will be reduced by 4% for each year that the individual is retiring before reaching age 65.

12. There will be two categories of ill-health early retirement, referred to as “serious ill-health pension” and “ordinary ill-health pension”. In the case of a serious ill-health pension, a person must have a condition which is expected to be permanent and which would prevent the individual from doing any “gainful work” now and in the future. The reckonable service used to calculate this pension is increased by the amount of service that the individual would have completed by age 65.

13. However, for a member who is an “office-holder” (The Presiding Officer, a Deputy Presiding Officer, a Scottish Minister (which includes the First Minister, Deputy First Minister, the Lord Advocate and the Solicitor General) or junior
Scottish Minister), service as an office-holder will not be enhanced. Instead the ill-
health pension will be calculated on actual service but will not be actuarially reduced because it is being paid earlier than age 65. This pension would then be paid in addition to any MSP ill-health pension to which the member would be entitled.

14. In the case of an "ordinary ill-health pension", the individual must have a condition which would prevent them adequately performing the duties of an MSP now and in the future. Unlike "serious ill-health pension", the condition does not need to be one that would prevent the individual for undertaking any work. This pension is based on the member’s actual service (ie, it is not enhanced like the serious ill-health pension) but it is not actuarially reduced because it is being paid earlier than age 65.

15. The Fund trustees can require an applicant for an ill-health pension or an individual whose entitlement is being reviewed to undergo a medical examination.

**Partner’s pension**

16. Currently a pension paid to a member’s spouse or civil partner ceases on re-marriage or cohabitation with another person. This will no longer be the case and such pensions will be payable for life.

**Lump sum death-in-service**

17. The death-in-service lump sum is increased from three times to four times salary.

**Grants**

18. In addition to the relevant pension provisions, there are three grants payable to members on leaving office. They are:

- a resettlement grant payable to an MSP who, at an election, either does not stand for re-election or does stand but is not re-elected. This is not payable to an MSP who voluntarily resigns during the course of a parliamentary session. Currently the amount paid is a minimum grant of 50% of salary with increases beyond the minimum at the rate of one month per completed year of service from 6 years up to a maximum of 12 years service. However, the table used in calculating this grant has reference to a person’s age. As it was believed this was discriminatory, this has been removed and calculation will now be based on solely on length of service. The amount of the grant remains unchanged.

- An ill-health retirement grant payable to an MSP who resigns during the parliamentary session because of ill-health before reaching age 65. If an MSP stands down after an election for ill-health, a resettlement grant will be payable instead. The amount of any ill-health retirement grant is equal to that which would have been payable as a resettlement grant. In the future, qualification for this grant will be linked to the grounds for awarding an ill-health retirement pension.
• An office-holder resettlement grant. This is payable when an office-holder (Presiding Officer, a Deputy Presiding Officer, Scottish Minister (which includes the First Minister, Deputy First Minister, the Lord Advocate and the Solicitor General) or junior Scottish Minister) ceases to hold office. Currently eligibility for this grant depends on the office-holder not having held another office within three weeks of leaving office. This Bill extends the period that must elapse after holding office from three weeks to three months. For all office-holders, bar the First Minister and Presiding Officer, the grant is one-quarter of the additional annual salary that was being paid to the office-holder. As the special arrangements for the First Minister and Presiding Officer are closed to future incumbents, those future incumbents will now be entitled to an office-holder resettlement grant of a minimum of 50% of the additional annual salary that was being paid with increases beyond the minimum at the rate of one month per completed year of service in that post from 7 years up to a maximum of 12 years.

COSTS

19. The SPPS is a funded scheme and therefore, pension benefits under the Scheme are paid for from the contributions (both SPCB and member) which are paid into the pension fund. The separate scheme for the First Minister and Presiding Officer which will be closed to future incumbents, was paid directly from the Scottish Consolidated Fund. The resettlement grants are paid for by the SPCB from its annual budget.

20. In common with all other pension schemes, the SPPS is valued by an actuary every three years and as part of this valuation, the actuary recommends the rate of contributions that needs to be paid by the SPCB. In 2005, that rate of contribution was set at 20.3% (with member contributions in addition of 6%). The Government Actuary’s Department (GAD) has costed the changes to the SPPS being proposed by this Bill and concluded that “the expected cost of the SPPS under the new rules will not be materially different from the cost of the SPPS assessed under the existing rules.”

Costs on the Scottish Parliament

21. The Financial Memorandum states that the principal changes to the SPPS have been costed and are shown in the following table:

<table>
<thead>
<tr>
<th>Ill-health benefits</th>
<th>Anticipated saving dependent on the numbers involved of around 0.3%.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Surviving partners</td>
<td>Anticipated increase in costs of between 0.8% and 1.2%.</td>
</tr>
<tr>
<td>Lump sum death benefits</td>
<td>Increased cost if re-insurance continues from 0.5% to 0.67%.</td>
</tr>
</tbody>
</table>

1 Scottish Parliamentary Pension Scheme Bill, Financial Memorandum paragraph 573
2 Scottish Parliamentary Pension Scheme Bill, Financial Memorandum paragraph 572
Changes to early retirement provision | Early retirement will in future be cost neutral on the fund. The changes made are expected to produce savings equivalent to the additional costs shown above for the changes to surviving partners and children of between 0.8% and 1.2%.

22. The Financial Memorandum states that all changes are included in the overall valuation of the scheme which currently costs the SPCB £1.583 million in contributions. The next scheme valuation is due this year.

23. The SPCB has to fund the resettlement, ill-health and office-holders grants from its annual budget. In addition, the SPCB will in future have to fund the new First Minister/Presiding Officer resettlement grant. The table below shows some potential costs with margins of uncertainty

<table>
<thead>
<tr>
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<td>Ill-health</td>
<td>Demand led payments, three in nine years to date.</td>
<td>Dependent on numbers applying and their circumstances.</td>
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<td>Officeholder resettlement</td>
<td>£149,720.50 every fourth year.</td>
<td>This figure should be a maximum amount after an election. Other years will be dependent on numbers qualifying which depends upon ministerial reshuffles</td>
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<tr>
<td>FM/PO resettlement grant</td>
<td>£59,504 every four years.</td>
<td>Will vary as salary varies. Also as posts become vacant.</td>
</tr>
</tbody>
</table>

24. GAD has advised that the full additional cost of members transferring to the new accrual rate of 1/40th of salary will be met by the increase in member contribution from 6% to 11% of salary.

Costs on the Pension Fund

25. Administration costs in relation to the SPPS are chargeable against the fund. As the Bill would transfer the running of the Scheme from the SPCB to Fund Trustees, then there could be an increase in costs. To avoid the perception of a conflict of interest, the Fund Trustees will require to take separate legal advice from the SPCB. Trustees’ expenses and any remuneration will need to be paid by the Fund and there may be other new costs eg, indemnity insurance and medical costs.
examination of pensioners in receipt of ill-health pensions. The Financial Memorandum states (paragraph 613) that “overall costs [are] difficult to quantify...The actual costs may fluctuate from the figure shown by 25% plus or minus.” However, the only figures which are given are comparative costs of legal advice for the UK Parliament Pension Scheme and the National Assembly for Wales Scheme (£40,000 and £25,000 per annum respectively).

**Costs on the Scottish Consolidated Fund**

26. The First Minister/Presiding Officer pensions are currently paid from the Scottish Consolidated Fund. As this pension scheme will be closed to future incumbents, the FM estimates that the Scottish Consolidated Fund will save £950,000 every four years. However, the cost of First Minister/Presiding Officer pensions in the future will be borne by the SPPS (and therefore by the SPCB as part of its contribution to the Scheme) and the SPCB will pay any resettlement grant that is due.

**Costs on the Scottish Administration**

27. It is stated there are nil costs on the Scottish Administration with the possibility of minor administrative savings because the SCPB will pay pensions due to First Ministers in the future.

**Costs to others**

28. Members of the SPPS who do not opt out of the increased accrual rate will have to pay a 5% increase in their contributions.

**SUMMARY OF EVIDENCE**

29. The Committee received a written submission from the SPCB, which is attached as annexe A to this report, and took evidence from Alasdair Morgan at its meeting on 7 October 2008. The Official Report of the evidence session can be found on the Parliament’s website, at: http://www.scottish.parliament.uk/s3/committees/finance/or-08/fi08-2301.htm

30. In evidence, Alasdair Morgan indicated that there was an error in the Financial Memorandum. In paragraph 594, it is stated that the cost of the resettlement grant at the end of Session 1 would have been £417,976 had the new provisions proposed by the Bill been in place. In fact the cost would have been exactly the same as the actual cost at end of Session 1 (£626,964) as the new proposals contain the same minimum provision that applied to those members who retired in 2003. Therefore the sentence in paragraph 597 which states “using the provisions in the Bill produces a ‘saving’ at the end of the first Session of £208,988” is incorrect as is the sentence which says “had the new rules been in place from 1999, there would have been an overall reduction in the amount of grant paid of £138,200”. This should in fact read “there would have been an overall increase...of £70,788”.

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3 Scottish Parliamentary Pensions Bill, Financial Memorandum
4 Scottish Parliamentary Pensions Bill, Financial Memorandum
31. Alasdair Morgan also confirmed that the figure in paragraph 614 of the Financial Memorandum relating to investment costs paid to the scheme’s fund manager relates only to new income that is invested and that similar year-on-year charges are levied in addition. The total charge each year is based on the total amount that is invested and that in the previous financial year, this amounted to £115,000.

32. The Financial Memorandum states that the new rules on early retirement will produce savings and the member in charge was asked what assumptions underpinned that statement. Alasdair Morgan confirmed that the age at which early retirement could be taken had to be raised to 55 and that the calculation of ‘pension abatement’ (ie, application of an actuarial reduction to the amount of the pension) was dependent on length of service and age which was discriminatory and therefore, also had to be changed. Early retirement pensions will therefore be actuarially reduced for each year that the pension is being taken early and “that approach has no cost to the scheme. The actuary advised us that it would save us cash.”

33. The member in charge was also asked whether the statement in paragraph 613 of the Financial Memorandum that administrative costs could fluctuate by plus or minus 25 per cent included remuneration of trustees and medical examinations. It was confirmed that the cost of trustee remuneration was unknown but that “the figure will have to be put before Parliament alongside their nomination.”

34. It was also stated that while a medical report can cost approximately £150-£200, the potential cost of medical examinations is unknown as it is entirely dependent on the number of people who might apply for ill-health retirement. However, it was confirmed that the issue could be accommodated in the 25 per cent fluctuation in the Financial Memorandum.

35. Alasdair Morgan confirmed that GAD had been given an advance version of the Bill and that their advice was that overall the proposed changes could be made at no additional cost to public funds. **Given these assurances that the changes will be cost neutral, the Committee is content with the Financial Memorandum.**

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ANNEXE A – WRITTEN EVIDENCE

WRITTEN SUBMISSION FROM THE SPCB

Thank you for your letter to Paul Grice relating to the Finance Committee’s consideration of the Financial Memorandum produced to accompany the Scottish Parliamentary Pensions Bill.

Attached is a response to the questionnaire which accompanied that letter. If you have any further questions please let me know.

QUESTIONNAIRE

This questionnaire is being sent to those organisations that have an interest in, or which may be affected by, the Financial Memorandum for the Scottish Parliamentary Pensions Bill. In addition to the questions below, please add any other comments you may have which would assist the Committee’s scrutiny.

Consultation
1. Did you take part in the consultation exercise for the Bill, if applicable, and if so did you comment on the financial assumptions made?

No. However, Mike Pringle MSP and Ian Leitch, Director of Resources & Governance attended the Pensions Bill Committee on 25/3/08 and gave evidence.

2. Do you believe your comments on the financial assumptions have been accurately reflected in the Financial Memorandum?

Yes

3. Did you have sufficient time to contribute to the consultation exercise?

Yes

Costs
4. If the Bill has any financial implications for your organisation, do you believe that these have been accurately reflected in the Financial Memorandum? If not, please provide details.

Yes

5. Are you content that your organisation can meet the financial costs associated with the Bill? If not, how do you think these costs should be met?

Yes. The SPCB will include the agreed funding costs for the Members’ Pension Scheme in its budget submission, as at present.
6. Does the Financial Memorandum accurately reflect the margins of uncertainty associated with the estimates and the timescales over which such costs would be expected to arise?

Yes

Wider Issues

7. If the Bill is part of a wider policy initiative, do you believe that these associated costs are accurately reflected in the Financial Memorandum?

N/A

8. Do you believe that there may be future costs associated with the Bill, for example through subordinate legislation or more developed guidance? If so, is it possible to quantify these costs?

No

SPCB
October 2008
Present:

Jackie Baillie (Deputy Convener) Derek Brownlee
Joe FitzPatrick James Kelly
Alex Neil Jeremy Purvis
Andrew Welsh (Convener) David Whitton


Alasdair Morgan MSP;

David Cullum, Head of the Non-Executive Bills Unit, Scottish Parliament.

Decision on taking business in private: The Committee agreed to consider a draft report on the Financial Memorandum of the Scottish Parliamentary Pensions Bill in private at a future meeting.
Scottish Parliamentary Pensions Bill: Financial Memorandum

The Convener: Item 4 is evidence on the financial memorandum to the Scottish Parliamentary Pensions Bill. We agreed to adopt level 2 scrutiny for the bill, so we have a written submission from the SPCB and we are taking evidence from Alasdair Morgan, who is the member in charge of the bill on behalf of the Scottish Parliamentary Pension Scheme Committee. With Alasdair is David Cullum, head of the non-Executive bills unit. I welcome you both to the committee. I believe Mr Morgan would like to make an initial statement.

Alasdair Morgan (South of Scotland) (SNP): Thank you, convener. It is an unusual experience for me to be at this end of the Finance Committee table. As you said, as convener of the Scottish Parliamentary Pension Scheme Committee, I am the member in charge of the bill. A draft of the bill was annexed to the committee's report, which was approved by Parliament earlier this year.

The background is that the members and office-holders pension scheme is a contributory funded scheme that is governed by a Westminster transitional order that was made in 1999. It was always envisaged that we would prepare our own rules; indeed, the Scotland Act 1998 made provision for that. In addition, since 1999, significant developments have affected pensions, and it is now essential to make certain changes, particularly to ensure continued compliance with the tax regime for registered pension schemes.

We also considered developments such as the status of civil partnerships, pension sharing on divorce, equality issues, minimum pension age changes and maximum age issues. Like other committees, we conducted a consultation exercise and took evidence from interested parties and professionals, including trustees of our sister pension schemes at Westminster and in Cardiff.

Let me turn to the costs and the financial memorandum, which is the subject of your inquiries today. The principal changes that the committee considered were all costed for us by the Government Actuary’s Department—for which we are grateful—in advance of our taking decisions on them, and all the costs were based on information derived from the existing membership of the scheme. We considered all the information before taking our decisions.

Thereafter, we gave GAD an advanced version of the bill and asked it to cost the scheme relative
to the existing scheme. GAD’s advice was that, overall, the proposed changes to members’ and office-holders’ pensions by the committee could be made at no additional cost to public funds. Extra costs for certain benefits would be counterbalanced by savings as a result of other changes. As a committee, we maintained a close eye on the cost implications. For example, while members will, under the bill, be given an opportunity to accrue pension rights more quickly, they will have to fund fully the additional cost.

The second aspect of the committee’s work was to consider the existing grants scheme in relation to ill-health awards, as well as grants for those members who are not returned after elections, and similar arrangements for office-holders. Again, we considered several possible permutations before settling on the proposals in the bill. It is not possible to quantify the cost implications of the new proposals exactly—election results are among the relevant variables—but as is stated in the table at paragraph 612 of the financial memorandum, the costs are unlikely to fall over the longer period, and may rise, depending on members’ length of service.

At this point, let me indicate an unfortunate error in the memorandum at paragraph 594, which indicates that the cost in session 1 would have been lower if the proposals in the bill had been in force. In fact, the new proposals contain the same minimum provision that applied to all those who retired in 2003, so the figure in paragraph 594 should be exactly the same as the figure in paragraph 593, with consequential changes to paragraph 597. I apologise for the error.

Another proposed change is a move away from the SPCB managing the fund to the appointment of fund trustees. That might result in an increase in administrative costs, principally because of the new provision that allows for professional trustees to be remunerated, and also because of other changes to the trustees’ remit, for example allowing them to require further medical examinations of those who receive certain benefits. Against that, there may be some savings to the fund if, for example, the results of medical examinations disclose some recovery through the new flexibility that the rules provide in relation to ill-health pensions. Other savings could accrue through an enhanced ability of the trustees to seek tenders for certain services, such as audit and actuarial reports, which is not available at present.

Another potential area of administrative increase relates to legal advice to the trustees. Given that in evidence to us the SPCB acknowledged a potential conflict of interest in carrying out its twin role as both fund manager and the body that provides the employer contributions, it is arguable that the existing arrangement for legal advice would have to alter in any event.

15:15

Costs are difficult to quantify. Members will notice that paragraph 613 of the financial memorandum acknowledges that, by giving a figure that varies by plus or minus 25 per cent. The figure in paragraph 614 for the investment costs that are paid to the scheme’s fund managers relates only to new income that is invested. In addition, similar year-on-year charges are levied. The total charge each year is based on the total amount that is invested on our behalf. In the previous financial year, that amount was £115,000.

Finally, changes to the pension benefits for the First Minister and the Presiding Officer are proposed. The existing arrangements are not repeated in the bill. Based on past experience, GAD advises that that will result in a saving to the public purse of about £950,000 every four years. New employer contribution costs relating to membership of the office-holders portion of the scheme and new grant arrangements must be deducted from that figure. We estimate that the net saving to the public purse is in the order of £800,000 every four years.

Changes have to be made to the pension scheme. The bill represents a cost-neutral position and makes required legislative changes.

The Convener: Thank you. I invite questions from members.

Alex Neil: I seek clarification on two points. First, can you confirm that the total contribution of those who opt for the accrual rate of one fortieth of final salary will be 11 per cent of salary and that their contribution will not rise by 11 per cent to 16 per cent?

Alasdair Morgan: The contribution will increase by 5 per cent. The actuary told us that that figure would be required to fund the increase fully.

Alex Neil: Secondly, will the resettlement grant be a maximum of 18 months’ worth of salary for someone who has served 12 years or more?

Alasdair Morgan: No—the maximum will be 100 per cent and the minimum will be 50 per cent of salary. The figures are the same as the current minimum and maximum, but they are arrived at in a different way, so not everyone will receive the same amount. The maximum is still 100 per cent.

Alex Neil: Okay.

James Kelly: My question relates to the new rules for early retirement. The financial memorandum states that those rules, when implemented, will produce savings. On what assumptions is that assertion based?

Alasdair Morgan: Currently, early retirement is governed by a fairly complex table. The
percentage abatement of a member’s future pension depends on years of service and age. That arrangement could not be allowed to stand, because it was age discriminatory, so we had to come up with a new way of dealing with early retirement. The table also allowed for early retirement down to the age of 50, which will shortly become illegal—the age must be raised to 55.

We decided to move to the fairest way of addressing the issue—actuarial reduction for every year early that a member decides to take their pension. That approach has no cost to the scheme. The actuary advised us that it would save us cash. Under the existing scheme, someone who has 15 years of service and is aged 50 can take their pension with a 61 per cent reduction. Not many people take their pension in that way; most people who retire early do so when the scheme is favourable to them. They buy into the favourable bits of the table and avoid the unfavourable bits. Because the new scheme will be totally actuarially neutral, there will be no way for members to bet against it to win some money. In layman’s terms, that is why we think that we will save some cash under the new rules.

Jackie Baillie: I have a question about administration costs. Paragraph 613 of the financial memorandum states that costs may fluctuate by plus or minus 25 per cent from the figure shown. I think that the statement applies to legal costs, but I am not sure whether you have accounted for remuneration of trustees and the cost of medical examinations, which are part and parcel of what we would term administration costs.

Alasdair Morgan: That has been allowed for in the administration costs. However, legal costs are likely to be one of the biggest variables, given that in some years no such costs might be incurred, whereas in others there might be significant costs. In any event, the sums involved might not be very large, so the percentage upwards or downwards might be significant.

David Cullum (Scottish Parliament Directorate of Clerking and Reporting): On the other part of the question, at the moment we do not know what the costs for trustees will be. As trustees can be remunerated only if they have never been a member of the pension scheme, they will be professional people such as lawyers and bankers. We do not know what they will charge but, in any case, the figure will have to be put before Parliament alongside their nomination.

That said, given what happens at Westminster, there might be an offset in our approach. Whenever trustees meet at Westminster, they invite along their bankers, lawyers and investment analysts to provide advice at the going rate. As a result, if they are there for four hours, they charge for four hours. If the board of trustees contains legal representation, there might not be any need to bring lawyers along to meetings.

We do not really know what the ill-health costs will amount to, although we know that a medical report from a doctor, for example, costs roughly £150 to £200. That said, in the nine going on 10 years that the Parliament has been in operation, there have been only two ill-health retirements from the scheme. The changes to the scheme rules might prove to be beneficial. The scheme’s funding might also be affected by the requirement for a medical examination.

Jackie Baillie: So the matter can be accommodated in the percentage fluctuation that is set out in the financial memorandum.

Alasdair Morgan: Indeed.

The Convener: Members have no further questions. Do the witnesses wish to make any final comments?

Alasdair Morgan: Although I hesitate to call a document of the size of the financial memorandum self-explanatory, I think that, in essence, it is.

The Convener: Thank you very much for your attendance and evidence.

15:22

Meeting suspended.
15:23

On resuming—

Decision on Taking Business in Private

The Convener: Our next item is to decide whether to take in private a draft report on the financial memorandum to the Scottish Parliamentary Pensions Bill at our next meeting. Are members agreed?

Members indicated agreement.
Subordinate Legislation Committee

Report on Scottish Parliamentary Pensions Bill at Stage 1

The Committee reports to the Parliament as follows—

Introduction

1. At its meeting on 7 October 2008, the Subordinate Legislation Committee (SLC) considered the delegated powers provisions in the Scottish Parliamentary Pensions Bill at Stage 1. At its meeting of 28th October 2008, the SLC considered the response from the Convener of the Scottish Parliamentary Pension Committee to certain questions raised following the consideration on 7th October. The Committee submits this report to the Parliament, under Rules 9.6.2 and 9.15.8 of Standing Orders.

Delegated Powers Provisions

2. The Committee considered the sole delegated power in the Bill which appears in section 3 in which a power is conferred on the Scottish Parliament to amend by resolution the Scottish Parliamentary Pension Scheme (“SPPS”), the schedules to the Bill and the Scotland Act (Transitory and Transitional Provisions) (Scottish Parliamentary Pension Scheme) Order 1999 (SI 1999/1082) so far as that Order is saved by the Bill.

Section 3 – Modification of pension schemes etc.

Committee remit

3. Whilst this delegated power does not confer power to make subordinate legislation, the power falls within the Committee’s remit in terms of Rule 6.11.1(d) of the Standing Orders which provides that the Committee is to consider and report on:

“whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation.”

4. Accordingly, the Committee’s remit in relation to this Bill is limited to considering whether it would be more appropriate for the power in section 3 to be expressed as a power to make subordinate legislation.
The Scotland Act 1998

5. Section 81(5) enables the provisions for Parliamentary pensions schemes and gratuity (grant) schemes to be made, either by Act of the Scottish Parliament, or (directly) by resolution of the Parliament which confers functions on the SPCB. The Scotland Act 1998 therefore explicitly envisaged two ways in which a pension scheme could be delivered. It could be done either by Act of the Scottish Parliament (“ASP”) or directly by resolution conferring functions on the SPCB without an intervening Act.

6. Where the route of an ASP is chosen, section 81(5) does not provide for any limitations on whether further provisions for, and changes to, the pensions or grants schemes rules (by changing the Schedules to the Act) are made by Parliament resolution, or by a form of subordinate legislation.

7. The Committee considers that accordingly it is competent for section 3 of the Bill to provide for modifications by resolution.

Flexibility of the power, and who exercises it

8. The Committee also considered the flexibility which the power requires to provide for. It is apparent that the detail of the pension and grant scheme rules will inevitably require amendments from time to time. It appears it would not be a good use of Parliamentary time for detailed scheme rule changes to be made by primary legislation. Amendment by resolution of the Parliament (in accordance with the requirements of the Standing Orders) appears to offer a more flexible means of making detailed changes to the pension and grant schemes.

9. In addition a resolution made by the whole Parliament, would normally allow for the process of amendment to the terms of the relevant motion in the usual way. That would offer a greater opportunity to members to pursue amendments than would be the case in relation to subordinate legislation, which must be accepted or rejected without an opportunity for amendment by the Parliament.

Scrutiny of resolutions

10. The Committee decided to seek further information in connection with the scrutiny of, input into the drafting of, and accountability for the terms of, resolutions which will amend the pension and grant schemes.

11. At its meeting on 7 October 2008, the Committee agreed to write to the Convener of the Scottish Parliamentary Pension Scheme Committee (SPPC) to ask:

(a) whether the SPPC, in relation to section 3 of the Bill, is proposing that changes be made to the Standing Orders in connection with the consideration of, or consultation on, proposed resolutions under that section;

(b) what discussions are planned with other Committees in relation to this matter, including discussion with this Committee in relation to how it may be involved in the consideration of resolutions under section 3 of the Bill; and

(c) whether there are any proposals in relation to who may lodge a motion for a resolution under section 3.
12. The Convener of the SPPC, Alasdair Morgan MSP, wrote to the Standards, Procedures and Public Appointments (SPPA) Committee on 8 October 2008 in relation to each of the points raised by the SLC, and accordingly copied that letter to the SLC. (A copy of the letter can be found at Appendix 2) In his letter, the Convener of the SPPC addressed each of the issues raised by the SLC.

13. The Committee also noted that, at its meeting on 28 October, the SPPA agreed that officials should give preliminary consideration to proposed changes to the Parliament Standing Orders, and that the SPPA would include this item in its future work programme.

14. The Committee has therefore noted that there will be ongoing discussion in relation to the scrutiny of resolutions made under section 3 of the Bill, and any required amendments to the Standing Orders, and will keep a watching brief on this issue. The Committee agrees that the SPPA should consider these issues in light of the remit of the SPPA to consider and report on the practice and procedures of the Parliament in relation to its business (Rule 6.4(1)(a) of the Standing Orders).

Conclusion

15. Following its consideration as above, the Committee has noted the matters that the Convener of the Scottish Parliamentary Pension Scheme Committee has raised with the Standards, Procedures and Public Appointments Committee, and that a response is awaited. The Committee agrees to keep a watching brief in relation to any proposed amendments to the Standing Orders in connection with the Parliament’s scrutiny of resolutions which may be made under section 3 of the Bill.
APPENDIX 1

1. The Subordinate Legislation Committee considered your Bill today and seeks further information from you in relation to—

   (a) whether the Pensions Scheme Committee, in relation to section 3 of the Bill, is proposing that changes be made to the Standing Orders in connection with the consideration of, or consultation on, proposed resolutions under that section;

   (b) what discussions are planned with other Committees in relation to this matter, including discussion with this Committee in relation to how it may be involved in the consideration of resolutions under section 3 of the Bill; and

   (c) whether there are any proposals in relation to who may lodge a motion for a resolution under section 3.
APPENDIX 2

1. Thank you for your letter of 7 October 2008. I note the points raised by the Subordinate Legislation Committee in relation to the powers at Section 3 of the bill.

2. In relation to points (a), and (c), I have written to the Standards, Procedures and Public Appointments (SPPA) Committee to seek their consideration of the revision of Standing Orders to enable the lodging, consideration and consultation on any resolution proposed under section 3 of the Bill.

3. In relation to point (b), I have asked the SPPA Committee to consider the role of the Subordinate Legislation Committee in consideration of any resolution made under section 3 of the Bill.

4. In order to assist your consideration of these matters, I have attached a copy of the letter issued to the SPPA on 8 October 2008. Please do not hesitate to contact me if you require further information.

Alasdair Morgan MSP
Dear Keith

Scottish Parliamentary Pensions Bill

1. A Scottish Parliamentary Pension Scheme Committee was established in June 2007 to—

Inquire into and report with recommendations for a Committee Bill on a replacement for the Scottish Parliamentary Pension Scheme rules and the Grants to Members and Officeholders Order

2. This process concluded on 26 June 2008 when the Parliament debated the Committee’s report and agreed to the proposal for a Committee Bill. The Scottish Parliamentary Pensions Bill was subsequently lodged on 23 September 2008 in my name, on behalf of the Scottish Parliamentary Pension Scheme Committee.

3. The Bill proposes to continue the existing funded scheme, the Scottish Parliamentary Pension Scheme, but introduces new rules to govern it and transfers managerial responsibility from the SPCB to newly-established fund trustees. It proposes to continue the separate pension scheme for First Ministers and Presiding Officers, but only in respect of current and past holders of these offices. The managerial responsibility for this scheme will remain with the SPCB. The Bill also sets out the circumstances in which the SPCB is required to pay grants to individuals after they have ceased to serve as MSPs or have stood down from certain positions as office-holders.
4. There are a number of proposed areas in the Bill that might benefit from new Parliamentary procedures. I am therefore writing to you to highlight these to enable the Standards, Procedures and Public Appointments Committee to consider whether any revision of Parliamentary practices and procedures might be desirable. I write to you in advance of completion of Parliamentary consideration of the Bill in order that the Committee is given sufficient notice of any effect on its work-programming.

5. I have set out below what I would consider to be the main areas for consideration (summarised at Annex A to this letter), as reflected in the Explanatory Notes to the Bill.

Section 3 - Modification of the pension schemes etc.

6. The detail of the scheme rules will require future amendment in order to reflect changes in pension law and any policy changes. Other pension schemes’ rules are frequently amended on this basis and an ability to amend the Parliamentary pension schemes without using primary legislation is therefore desirable. I also consider that it is important that the grants provisions can be amended without using primary legislation, to reflect the existing power in section 81 of the Scotland Act 1998, which allows Parliament to make such gratuities provisions by resolution.

7. Section 3 of the Bill provides that the Scottish Parliament may resolve to modify the pension scheme rules established by schedule 1 to the Bill, the grants scheme set out in schedule 2 to the Bill and the existing pension scheme for the First Ministers and Presiding Officers, which is set out in Part S of the 1999 pensions order. A resolution may make different provision for different purposes and may make provision that has retrospective effect.

8. The SPPA Committee may wish to consider whether Standing Orders should govern how the Parliament considers and agrees a resolution to amend the pension, grants or original FM/PO pension rules.

9. Amendments to the Scottish Parliamentary Pension Scheme rules will in most instances originate from the pension fund trustees. However, there is no certainty that all trustees or, although less likely, any of the trustees, will be MSPs. While the SPCB would no longer have managerial responsibility for this scheme, it would remain as scheme sponsor, making contributions to the scheme (see Rule 32 of Schedule 1 to the Bill). Therefore rule changes would be likely to be discussed between the trustees and the SPCB and, as scheme sponsor, the SPCB may wish to propose its own amendments to the rules. In addition, the SPCB has sole responsibility for the First Minister and Presiding Officer scheme and may wish to bring forward amendments to that scheme.

10. If the precedent set by the Interests of Members of the Scottish Parliament Act 2006 and corresponding Rule 1.8 was followed, the SPCB would lodge such resolutions, although, as indicated, their terms in most cases would originate with the pension fund trustees.
11. Given the potential effect and impact that changes to the rules might have, Standing Orders might provide for consultation with scheme members on any change to the scheme(s), prior to any resolution being brought forward. Comparable public sector pension schemes amended by secondary legislation place a consultation requirement on Scottish Ministers which is not absolute. Consultation with members is provided for by a discretion to consult with representative bodies of members as Ministers consider appropriate.

12. For the Parliamentary schemes, an absolute requirement to consult with all scheme members may be too restrictive, particularly as MSPs vote on the resolution anyway and many changes may not affect former MSPs. It may be appropriate to have a qualification that the SPCB (or person moving the motion) should have consulted with such persons or representative bodies of persons, as appear to be affected, to the extent that they consider appropriate. Standing Orders could allow for a discretion to consult other members or bodies representing other members (i.e. pensioner members or deferred pensioners who are not in the Parliament) where there are rule changes which impact on them. An element of discretion may also allow for an exception to normal consultation procedures when the change being made is in response to UK reserved legislation, with which the scheme must comply, or when the change being made is minor, such as correcting typos or addressing unintended consequences.

13. The Subordinate Legislation Committee currently has a remit to consider and report on any subordinate legislation laid before the Parliament or any Scottish Statutory Instrument not laid before the Parliament but classified as general according to its subject matter (Rule 6.11.1(a)). The resolutions provided for at section 3 of the Bill are not subordinate legislation or statutory instruments and as such would not currently fall within the remit of the SLC. The SPPA Committee, given that the effect of these resolutions is to amend primary legislation, may, however wish to consider whether Standing Orders should be revised in order that the SLC may consider a resolution to amend the pension, grants or original FM/PO pension rules. Consideration might, for example, be useful given the SLC’s expertise in matters relating to vires.

14. The SPPA Committee may wish to consider whether anything other than a simple majority would be adequate for voting on the resolution. It will be for consideration whether any such motion should be amendable although the issue might be whether allowing amendment would be compatible with any consultation requirement or would cut across the SPCB’s ability to bring forward a package of changes as a whole.

15. Section 3(4) provides for the Clerk of the Parliament to send a copy of a resolution to the Queen’s Printer for Scotland immediately after it is passed and the Committee may wish to consider reflecting this rule in Standing Orders.

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1 Sections 7(5) (local government pensions), 9(5) (teachers’ pensions) and 10(4) (NHS pensions) of the Superannuation Act 1972. For teachers and local government there is also a requirement for consultation with representatives of local authorities considered to be concerned or desirable or appropriate, to reflect their position as employers.
Schedule 1, Part B, Rules 8-12 – Fund Trustees

16. The Bill transfers management and administration of the pension schemes from the SPCB to Fund trustees to be appointed under the new rules and rule 8 of Schedule 1 to the Bill provides the procedure for appointment.

17. Rule 8 provides that the Parliament may resolve to appoint as a Fund trustee any individual nominated by the SPCB as suitable to hold that office. The SPPA Committee may wish to consider what provision is needed in Standing Orders to set out election procedures for pension fund trustees. As stated, the Bill requires that the SPCB makes the nominations for trustees (Rule 8). It also allows for the payment of remuneration, allowances and expenses to trustees, subject to certain conditions (Rule 9). It may be appropriate that any motion to appoint trustees should not be amendable, as new nominations or caveats or conditions attached to any appointment could make the process extremely difficult. This is particularly so in relation to any external appointments, where discussions covering availability and terms and conditions are likely to have been undertaken before nominations are put forward. The Committee may also wish to give consideration to limiting the time for debate on any motion to appoint trustees such as the provision made at Rule 8.11.3 or 10.7.1.

18. Given the independent role of the trustees, it is not suggested that the SPCB must have regard to the balance of political parties when nominating trustees. Parliament in considering nominations will be able to consider this point before agreeing to any resolution submitted.

19. Rule 10 provides that a Fund trustee resigns by giving notice of resignation to the Presiding Officer and the other Fund trustees. The SPPA Committee may wish to consider how this might be reflected in Standing Orders in order to enable the application of Rules 17.2A and 17.3.

20. Under Rule 11(1)(a) of schedule 1 to the Bill, the Parliament may resolve to end a Fund trustee’s tenure. It may be a consideration for the SPPA Committee whether any restriction on who might bring forward such a resolution should be made.

21. Rule 12 of Schedule 1 to the Bill sets out the changes of circumstances that lead a Fund trustee’s tenure to end. Rule 12(2)(b) states that the trustee’s tenure ends 6 months after the change of circumstance occurs, unless the Parliament resolves otherwise. Provision should therefore be considered for resolutions to extend or shorten a Fund trustee’s tenure in these circumstances. It would seem appropriate, and consistent with other provisions (particularly rule 8 of Schedule 1 to the Bill) for the SPCB to bring forward such a resolution.

22. Rule 102(2)(b) of Schedule 1 to the Bill states that trustees must within 7 months of each financial year lay a copy of the annual accounts and audit report before the Scottish Parliament. Rule 103(4) of Schedule 1 to the Bill states that trustees must lay a copy of each actuarial report before the Parliament within 3 months of obtaining it. The Committee may wish to consider whether Rule 14.1 of
Standing Orders provides adequate provision in relation to the laying of these documents.

23. I hope this correspondence is useful. Should you require further information do not hesitate to contact either myself or the Scottish Parliamentary Pension Scheme Committee clerks c/o the Non-Executive Bills Unit.

Alasdair Morgan MSP

ANNEX A

Section 3

The detail of the scheme rules will require amendment in future to reflect changes in pension law and any policy changes. Section 3 of the Bill provides that the Scottish Parliament may resolve to modify the pension scheme rules, the grants rules and the existing pension scheme for First Ministers and Presiding Officers.

The SPPA Committee is invited to consider whether Standing Orders should govern how the Parliament considers and agrees a resolution to amend the pension, grants and existing FM/PO rules. This includes: who would lodge the resolution; consultation with members of the scheme; voting procedures and the role of the Subordinate Legislation Committee.

Section 3 comes into force on Royal Assent (estimated as end February 2008).

Schedule 1, Part B, Rules 8-12 – Fund Trustees

The Bill transfers management and administration of the pension schemes from the SPCB to Fund trustees to be appointed under the new rules.

The SPPA is invited to consider what provision is needed in Standing Orders to set out election procedures for pension fund trustees. This includes: who would lodge the motion, debate timings, notice of resignation, removal of a trustee. The Committee is also invited to consider the laying of annual accounts and the annual report.

Rules 8 to 11 come into force on Royal Assent (estimated as end February 2008). Rule 12 comes into force on the first day of the month which follows the month which includes the day falling 6 months after Royal Assent.
Note: (DT) signifies a decision taken at Decision Time.


After debate, the motion was agreed to (DT).
Scottish Parliamentary Pensions Bill: Stage 1

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S3M-2594, in the name of Alasdair Morgan, on behalf of the Scottish Parliamentary Pension Scheme Committee, on the Scottish Parliamentary Pensions Bill.

14:02

Alasdair Morgan (South of Scotland) (SNP): I am pleased to open the stage 1 debate on the Scottish Parliamentary Pensions Bill. Yet again, I can hardly accuse members of being self-interested, given the attendance for the debate.

This is the latest stage in a lengthy and detailed piece of work to introduce a highly technical but necessary bill to bring the Scottish parliamentary pension scheme and grants scheme up to date. Members will recall, although it was not the most glittering parliamentary occasion, that the Parliament debated in June the Scottish Parliamentary Pension Scheme Committee’s report on its inquiry into the existing grants and pension schemes. That report recommended that a bill should be introduced to amend the schemes, and the Parliament agreed that it should reflect the committee’s findings. We are here today to debate the general principles of the bill that was introduced. I am sure that members have studied the bill, which reflects the committee’s recommendations.

The committee bill process is slightly different from the process for other bills. First, the Parliament scrutinises the committee’s report on the proposal. It has done that. The Parliament then reaches agreement on the committee’s findings before moving on to the stage 1 debate. Under the process, unlike with other bills, the committee is not required to make a further report on the general principles of the bill at stage 1.

I dare say that members have noted the level of detail in the bill. Although some of it represents a simple transfer of—albeit complex—material from the provisions of the existing pension and grants schemes, the bill also proposes a number of substantial changes to the schemes, which I will describe in some detail.

First, we looked at the role of the Scottish Parliamentary Corporate Body, which manages and administers the pension scheme. We noted that the SPCB is responsible for funding the pension scheme through contributions from its budget while, at the same time, it holds a fiduciary duty to act in the best interests of scheme members. The committee considered, and the SPCB agreed, that there is a potential conflict of interest—or at least the perception of such a conflict—in those two roles, given that one is on behalf of the SPCB’s budget and the other is on behalf of scheme members. Part B of the bill therefore establishes a system of new trustees who will manage the pension fund. Part B covers their functions, their appointment and their duties as trustees.

I am afraid to say that, in times to come, the details of those complex rules will require further amendment to reflect at the very least changes in pension law, which seem to come along frequently. It is therefore desirable to create the ability to amend the pension and grants rules without the need for primary legislation and without going through the procedure that we have gone through and which has led to today’s debate. Section 3 therefore provides for future rule amendments to be made by resolution of the Parliament. The Standards, Procedures and Public Appointments Committee has been invited to examine the detail of how that can be handled and what parliamentary rule changes will be necessary to bring it about.

The bill allows members to accrue pension benefits in future at either one fortieth or one fiftieth of salary per year of service. The additional cost of the one-fortieth accrual is to be met fully by an increase in the contribution rate of those MSPs who choose that option, which will amount to a change from 5 to 11 per cent of salary. It is worth stressing that the advice of the independent Government actuary has been followed in the setting of the amount of that additional rate.

The bill sets out new rules on early retirement and ill-health retirement. The committee considered that the table that is used to calculate early retirement benefits, which is based on both age and length of service, could be seen as discriminatory, or at the very least inequitable, in its treatment of age. The bill therefore proposes to replace the table with a simple reduction of pension for each year that a member is short of the normal retirement age when they take early retirement, using a set percentage that is actuarially neutral for the scheme, so there is no additional cost to the taxpayer.

The bill establishes a new twin-tier approach to ill-health retirement. For severe ill-health pensions—when a member’s health prevents him or her from performing the duties of any occupation, rather than only the duties of an MSP or office holder—a full enhanced pension becomes payable immediately on retirement. A lesser ill-health retirement pension will be available for those who are assessed as unable to perform their duties as an MSP but who could carry out employment of a different nature. In such
a case, pension entitlement accrued to date will be payable immediately.

In response to United Kingdom legislation, the bill stipulates that participating membership of the pension scheme will no longer be available to those who are aged 75 and over. The bill also reflects UK divorce law by allowing an ex-spouse, who is entitled to what is called a pension credit, to either join the scheme in their own right or transfer their calculated benefits from the scheme—to some other scheme, I presume. In addition, the bill allows the pension scheme to include provision for civil partners and unmarried partners upon the death of an MSP. In all three of those measures, we have taken great steps towards equality in the scheme.

The existing pension arrangements for the First Minister and Presiding Officer will be closed to any new incumbents of those offices. Instead, the bill provides that the pensions of a new First Minister and Presiding Officer should be the same as those of all other office holders, such as the Scottish ministers, under the new scheme rules.

No new contracts for additional voluntary contributions will be established, since those are commercially and easily available on the open market, but the system of buying added years contributions will continue. Again, that provision comes at no extra cost to the pension fund.

The committee had a remit to consider the grants that are payable to members on leaving office. The bill proposes to amend the current provisions on resettlement and ill-health grants by replacing the existing complex calculation tables for those grants with a simple calculation: one month’s salary for each continuous year of service as an MSP will be payable, with a minimum payment set at six months’ salary. The MSP resettlement grant will continue to be paid only to those who stand down at an election, whether voluntarily or otherwise.

For office holders, a sum of 25 per cent of the office holder part of the salary is payable. The bill also sets out new grant arrangements for the First Minister and the Presiding Officer, which will be calculated in a similar manner to that for MSP grants for resettlement or ill health.

The Finance Committee considered and reported on the financial memorandum to the bill and the Subordinate Legislation Committee considered the resolution power that is contained in section 3. To interpret their reports, both committees gave the bill a clean bill of health and I thank the members of those committees for the time that they took to consider it.

I thank my fellow committee members, the clerks and the legal advisers, who supported the committee and enabled the introduction of the bill that is before us. No one should underestimate the work that the clerks and the legal advisers had to put in, such as all the drafting work that was involved in introducing this complex bill.

I am confident that the bill as introduced meets the demands of providing an up-to-date scheme that reflects current pension and tax law and which balances equitably a range of benefits for members with the cost to public funds. It also provides a solid structure to administer and, if necessary, change the scheme in the future.

I move,

That the Parliament agrees to the general principles of the Scottish Parliamentary Pensions Bill.

The Deputy Presiding Officer: I call Gil Paterson.

14:12

Gil Paterson (West of Scotland) (SNP): Thank you, Presiding Officer. I see you looking at me intently. You are probably thinking about my age and wondering whether I should declare an interest on that basis, so perhaps I should do so.

I thank the members of the committee, and Alasdair Morgan in particular, for their work and congratulate them on their important recommendations on the bill.

My experience tells me that when we consider such measures, it is like being in a goldfish bowl. There is perhaps the perception that we are looking after ourselves. In this case, I do not subscribe to that argument. The responsibility was given to members of the Parliament and they have carried out their duties extremely well.

I will focus on a number of the recommendations that the committee made, which I believe add a degree of fairness to the bill. One such recommendation relates to rule 57 in schedule 1, which is on the rights of unmarried partners—I was an unmarried partner at one point. I endorse fully the committee’s recommendation that a provision be made for unmarried partners’ pensions in the new scheme. This Parliament has a proud tradition of fighting for equality and I believe that the part of the committee’s report on unmarried partners continues that. Unmarried partners have the responsibilities that married partners have, such as children or a mortgage. The provision will address that issue. I firmly believe that the ordinary person on the street would support that heartily.

I support and draw to the Parliament’s attention rule 46, which is on increasing the minimum retirement age from 50 to 55. By doing that, we are bringing the legislation in line with UK pension law; that will be welcomed throughout the chamber.
When we discuss pensions, we are always looking into the future. Under the current pension system rules, a surviving spouse or civil partner would lose the pension should they remarry or cohabit. I am happy to support the committee’s recommendation in paragraph 158 of its report, which states that that rule should be removed and that “spouses’ and civil partners’ pensions should continue for life.”

That provision should be removed because it is an anomaly; I am glad that it has been picked up. Most pensions and insurance policies of which I am aware continue for life and do not stop at a given time.

I turn to part O of schedule 1. As well as looking to the future, we must look to the past. Many people are or have been unable to put money into their pension fund for several reasons, such as family obligations or financial constraints—or perhaps they were a bit young and did not think too much about pensions. By introducing added years, we will allow individuals to make up for lost time at their own cost and at no cost to the taxpayer. That is why I fully endorse the intention behind part O, which is that members should be allowed to purchase extra years of service to add to their actual reckonable service.

I thank everyone who has been involved in the committee’s work. I fully endorse the bill and recommend that Parliament should support it.

14:16

Peter Peacock (Highlands and Islands) (Lab):
I support Alasdair Morgan’s motion. I have little to add to his comprehensive coverage of the issues, but I will emphasise points that he and Gil Paterson made.

As Gil Paterson said, in many ways it is unfortunate that MSPs must debate and legislate for their own pension arrangements. That is often misunderstood in public as a desire to do so. For me and many others, that is not the case. I have no particular desire to deal with such matters, but we have an obligation in law to do so, which we must address.

Some might argue that we have a choice and that we should simply not have a pension scheme. That might accord with many people’s view of our worth, but that would not be realistic or proper. Every organisation, trade and profession must plan for the people who work in it to retire. In our profession, retirement can happen unexpectedly. Often, it is not a choice but is dictated by circumstances that are largely outwith our control. For many politicians, retirement is dictated not by age or by length of service, but by other factors.

I have read out in the Parliament before a quotation from a House of Commons report on pensions that bears repeating:

“Few voters or even newspapers ever realise that the average length of service for a Member of Parliament is about 8 years. Sooner or later the guillotine falls. Either the voters feel like a change and sack them, or their local parties deselect them. Or their constituency boundaries change ... What happens to the losers then? Nobody knows.”

Actually, we know from our experience in this place that several of our former colleagues have struggled to find alternative work. While they were in Parliament, their original profession developed in various ways, which meant that they were left behind, so they found it difficult to re-enter that profession or other professions. We have a duty to ensure that provisions meet the distinct circumstances of our profession when our number is up, so to speak.

As Alasdair Morgan said, our pension provisions are rooted in the Westminster scheme. Since the Scottish Parliament was created, various changes that have been made to the provision at Westminster and in the National Assembly for Wales and to the law require us to examine and update our scheme. The Parliament has come adrift from the schemes in Westminster and in Wales, which provide the comparators for our scheme. Unless we make the changes that the bill proposes by 2011, we will be adrift of the legal requirements that we are obliged to meet.

It is worth repeating that the changes that the bill will make follow the unanimous findings of a committee of Parliament. It is also worth noting that there has been comparatively little commentary on or disagreement with the proposals in or beyond this place.

We should remember that the scheme that is available to members is contributory. The proposal that is before Parliament to offer an option of enhanced benefits by changing accrual rates must be funded entirely by members. The changes are designed in part to recognise the circumstances of parliamentarians and will be paid for fully by parliamentarians, at no cost to the public purse. Indeed, the changes overall are cost neutral to the whole scheme. Government actuaries have painstakingly checked that.

I turn to the set of proposals that Alasdair Morgan outlined in his speech, namely the committee’s desire as set out in its report, and now reflected in the bill, to separate the role of the Scottish Parliamentary Corporate Body from that of the pension fund. Alasdair Morgan spoke about the potential for conflict of interest and the need to separate the roles by way of the establishment of trustees. That sensible proposal brings the scheme into line with many other pension
schemes. The role of a pension scheme trustee is onerous and a lot of training will be required. We should enter into discussions on that new role with our eyes fully open with regard to what we are asking the trustees to do.

The proposals that have been put before the Parliament seek to find the right balance between the interests and needs of MSPs and those of the public purse. Although, at one level, they are modest improvements, on another level, they are necessary revisions to the law. I hope that members will support the general principles of the bill at decision time.

14:20

Nicol Stephen (Aberdeen South) (LD): I thank Alasdair Morgan for his excellent explanation of these detailed issues and for his work to date on the bill. I look forward to working on the committee stage of the bill. I know how disappointed Alasdair Morgan is to be debarred from so doing.

The Liberal Democrats view the matter as a parliamentary issue; our members will have a free vote at decision time. As such, I speak in the debate as an individual and not as a party representative.

As we are all acutely aware, any discussions of members’ salaries, expenses or pensions are placed under detailed scrutiny. That is particularly the case at a time when the global economic crisis places an onus on each one of us, particularly those who are in public office, to ensure that every penny is well spent. Although the very mention of MSPs’ pensions normally causes controversy, I hope that the bill will be welcomed as an attempt to tidy up some of the anomalies in the existing transitional scheme.

As we heard in the debate, particularly from Alasdair Morgan, the bill tidies up the potential conflict of interest that arises from the corporate body being responsible for funding and administering the scheme. It also deals with legislative changes since the establishment of the scheme in 1999 and introduces flexibility for scheme members. All the changes are to be welcomed: they are measured, balanced and appropriate ways in which to take forward the matter.

I urge members to support the general principles of the bill at decision time. In doing so, we will continue to take forward the Scottish Parliament’s strong tradition of dealing with such issues in an open, transparent and—above all—fair manner.

14:23

Alasdair Morgan: I thank members for their contributions to the debate.

I must disappoint Nicol Stephen, albeit slightly. Although I no longer serve on the bill committee, I anticipate appearing before it. If any amendments are lodged, I will speak on them. Indeed, given that one or two minor amendments of a technical nature require to be lodged to tidy up the bill, I look forward to moving them at committee at the appropriate stage.

I thank Gil Paterson for his speech, in which he addressed some of the changes that are proposed in the bill. As he rightly said, the provision for unmarried partners is a necessary change. Clearly, there will always be some difficulty in agreeing on the definition. There will always be controversy on what does—and what does not—constitute an unmarried partner. I hope that those members who have had time to study the definition in the bill consider it to be appropriate for the age in which we live. I also hope that the majority of those who think they are entitled to make a claim under the provision think, as I do, that the provision is fair.

Gil Paterson mentioned the partner’s pension provision, which currently sees the removal of pension from a partner who subsequently remarries. I hope that all members agree that ceasing that provision is a fair position for us to take. The current position is not only old-fashioned but mean-spirited.

Peter Peacock made some valid points. One was about the difficulties that many ex-MSPs face when they leave the Parliament by retiring early through no desire of their own—perhaps, as the member suggested, through the desire of the electorate or their party colleagues. Mr Peacock made the point that such members do not receive much sympathy outwith the chamber. The proposed early retirement provisions, which will allow members to retire after age 55 regardless of their length of service—under the existing scheme, they must have at least 15 years’ service to be eligible—are welcome, especially as they will place no extra cost on the public purse. I cannot stress that point often enough.

The initial impetus for the bill was not that we thought that we should improve the pension scheme so that it was of more benefit to us, but legislation—in the main, UK legislation. The Finance Act 2004, the Pensions Act 2004 and various other acts have changed the requirements that pension schemes must meet. If our current scheme continued past 2011, we would be acting outwith the law. Because of the way in which the Scottish Parliament and its pension scheme are set up, the necessary changes could not have been brought about without the introduction of the bill that is before us. If passed, the bill will allow changes that are necessitated by future legislation
to be made in a much simpler manner, without taking up so much parliamentary time.

Today we have before us an up-to-date, modern, accessible scheme that is fully compliant with legislation and which reflects the best practice that is available to pension schemes. The proposed changes come at no additional cost to the taxpayer; overall, there will be a large saving to the public purse, largely because of the changes that have been made to the pension arrangements for the First Minister and the Presiding Officer. Optional improvements are available to members, if members want them and are prepared to pay the cost.

I invite members to agree to the motion tonight. I almost said “in the lobbies”—I must get out of that habit. I ask members to press their buttons in support of the general principles of the bill.

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**Scottish Parliamentary Pensions Bill: Financial Resolution**

14:28

The Deputy Presiding Officer (Trish Godman): The next item of business is consideration of motion S3M-2837, in the name of John Swinney, on the financial resolution to the Scottish Parliamentary Pensions Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Scottish Parliamentary Pensions Bill, agrees to any expenditure charged on the Scottish Consolidated Fund in consequence of the Act.—[John Swinney.]

The Deputy Presiding Officer: The question on the motion will be put at decision time.
Scottish Parliamentary Pensions Bill

Marshalled List of Amendments for Stage 2

The Bill will be considered in the following order—

Section 1  Schedules 1 and 3
Section 2  Schedule 2
Sections 3 to 6  Long Title

Amendments marked * are new (including manuscript amendments) or have been altered.

Schedule 1

Alasdair Morgan

1  In schedule 1, page 4, line 16, at end insert <(or a pension credit member)>

Alasdair Morgan

2  In schedule 1, page 13, line 6, leave out from second <amount> to end of line 7 and insert <total of—

(a)  the amount of scheme pension already paid to the individual,
(b)  the amount of any retirement lump sum paid to the individual, and
(c)  the amount of any pension or lump sum payable in respect of the individual under Part L.>

Alasdair Morgan

3  In schedule 1, page 20, line 28, at end insert—

<(  ) Where an individual dies when his or her pension payments are suspended under rule 41—

(a)  the deceased individual is to be treated for the purposes of this rule as a scheme pensioner (regardless of whether also a participating member at that time), and
(b)  the suspension is to be treated as having been lifted immediately before the individual died.>

Alasdair Morgan

4  In schedule 1, page 21, line 38, at end insert—

<(  ) An individual who dies while being both—

(a)  a participating member, and
(b)  a scheme pensioner whose pension payments are suspended under rule 41, is to be treated for the purposes of this rule as a participating member.>
In schedule 1, page 42, line 5, after <individual> insert <(other than a participating member or a scheme pensioner whose pension payments are suspended under rule 41)>

Schedule 3

In schedule 3, page 49, line 19, after <order> insert—

<(  ) that order continues to have effect in so far as needed to give effect to section 1(1) of this Act, and

(  )>

In schedule 3, page 51, line 27, at end insert—

<Special provision for participants reaching age of 75 before the new rules day

8A(1) This paragraph applies to an individual who—

(a) is participating in the scheme in accordance with the 1999 scheme rules, and
(b) is aged under 75 when this paragraph comes into force but will reach the age of 75 before the new rules day.

(2) An individual to whom this paragraph applies may, before reaching the age of 75, give notice to the SPCB that he or she desires to commute into a lump sum such part of his or her pension as is specified in the notice.

(3) An individual who gives such a notice is to be treated for the purposes of Part G of the 1999 scheme rules as having given an equivalent notice under article G1(1) (and Part G is to apply accordingly).

(4) Despite article F1(a) and (b) and article F2 of the 1999 scheme rules—

(a) the fact that an individual who gives such a notice is—

(i) an MSP, or
(ii) the holder of a qualifying office (within the meaning of article C2(3) of the 1999 scheme rules),

does not prevent the individual from being entitled to receive a pension, from the day before the individual’s 75th birthday, in accordance with article F1 or F2 of the 1999 scheme rules, but

(b) the amount of pension so payable is to be nil until the individual is neither an MSP nor the holder of such an office.>

Section 5

In section 5, page 2, line 22, leave out <paragraph 4> and insert <paragraphs 1, 4 and 8A>
In section 5, page 2, line 22, leave out <that paragraph> and insert <those paragraphs>
Scottish Parliamentary Pensions Bill

Groupings of Amendments for Stage 2

This document provides procedural information which will assist in preparing for and following proceedings on the above Bill. In this case, the information provided consists solely of:

- the groupings (that is, the order in which amendments will be debated):
- the text of amendments, set out in the order in which they will be debated, is not attached on this occasion as the debating order is the same as the order in which the amendments appear on the Marshalled List.

Groupings of amendments

**Remuneration and allowances of Fund trustees**
1

**Key terms**
2, 3, 4, 5

**Status of 1999 Pensions Order**
6

**Special provision for participants reaching age of 75 before new rules day**
7, 8, 9
Present:

Bill Aitken  Keith Brown (Convener)
Nicol Stephen  David Stewart (Deputy Convener)

Declaration of interests: The oldest member present, Bill Aitken, invited Members to declare any relevant interests. Members had no relevant interests to declare.

Choice of Convener: The Committee choose Keith Brown as Convener.

Choice of Deputy Convener: The Committee choose David Stewart as Deputy Convener.

Scottish Parliamentary Pensions Bill: The Committee considered the Bill at Stage 2.

The following amendments were agreed to (without division): 1, 2, 3, 4, 5, 6, 7, 8 and 9.

Sections 1 and 2, schedule 2, sections 3, 4, 6 and the long title were agreed to without amendment.

Schedules 1 and 3 and section 5 were agreed to as amended.

The Committee completed Stage 2 consideration of the Bill.
Scottish Parliamentary Pensions Bill Committee

Wednesday 3 December 2008

[THE OLDEST COMMITTEE MEMBER opened the meeting at 10:30]

Interests

Bill Aitken (Oldest Committee Member): Good morning, ladies and gentlemen. I welcome everyone to the first meeting of the Scottish Parliamentary Pensions Bill Committee in the third session of the Scottish Parliament. It is with some chagrin that I discover that I am the oldest committee member. As such, I am required to preside over the initial part of the meeting. I ask all present to ensure that mobile phones and pagers are switched off.

Agenda item 1 is declarations of interest. Members will have received a note on the process. In accordance with section 3 of the code of conduct, I invite members to declare any interests relevant to the committee’s remit. I begin with my own declaration: on the basis that the potential benefits of being a member of the pension fund are not declarable, I have no declarations to make.

Keith Brown (Ochil) (SNP): I have no interests to declare other than what is in my entry in the register of members’ interests.

David Stewart (Highlands and Islands) (Lab): I have no further interests to declare at this point.

Nicol Stephen (Aberdeen South) (LD): I am the same: I have nothing to declare other than what is in my entry in the register of members’ interests.

Bill Aitken: Thank you.

Convener

10:31

Bill Aitken: Item 2 is the choice of committee convener. Members will have before them a note from the clerk setting out the procedure for selecting a convener. The Parliament has agreed that only members of the Scottish National Party are eligible to be committee convener. That being the case, I seek nominations for the position of convener.

David Stewart: I nominate Keith Brown.

Bill Aitken: There are no other nominations.

Keith Brown was chosen as convener.
Deputy Convener

10:32

The Convener (Keith Brown): I thank the committee for appointing me as convener.

Item 3 is the choice of deputy convener. Members will have before them a note from the clerk setting out the procedure for selecting a deputy convener, which is similar to that used to select the convener. The Parliament has agreed that only members of the Labour Party are eligible to be deputy convener. That being the case, I seek nominations for the position of deputy convener.

Bill Aitken (Glasgow) (Con): I nominate David Stewart.

The Convener: There are no other nominations. David Stewart was chosen as deputy convener.

Scottish Parliamentary Pensions Bill: Stage 2

10:33

The Convener: The next item of business is consideration of the Scottish Parliamentary Pensions Bill at stage 2. The committee has been established specifically to consider the bill at stage 2.

I will highlight some procedural points. Members should have the bill, the marshalled list of amendments and the groupings. Amendments have been grouped to facilitate debate but, as members will know, the marshalled list dictates the order in which amendments will be called and moved. All amendments will be called in turn from the marshalled list and disposed of in that order. We cannot move backwards in the marshalled list.

There will be one debate on each group of amendments. I will call the member who is to move the first amendment in each group, and he should speak to and move the amendment. I will then call other members, who should indicate their wish to speak in the normal way. After the debate on a group of amendments, I will ask whether the member who moved the first amendment in the group wants to press it to a decision. If he does not, he may seek the committee’s agreement to withdraw the amendment.

If the amendment is not withdrawn, I will put the question on the amendment and, if any member disagrees, we will proceed to a division by a show of hands. I have been asked to remind members that it is important that they keep their hands raised until the clerk has fully recorded the vote, and I also remind them that only committee members may vote. If a member does not wish to move their amendment, they should simply say “Not moved” when it is called.

The committee is required to decide whether to agree to each section of, or schedule to, the bill. Before I put the question on any section or schedule, I will allow a short general debate, which may be useful for discussing matters that have not been raised in amendments. However, members will be aware that the only permitted way of opposing agreement to a section is by lodging an amendment to leave it out.

In case there is a tied vote, I advise members that the convener has a casting vote and that the Conveners Group has taken the view that there should be no protocol. Therefore, whereas the Presiding Officer votes with the status quo, that is not the rule for conveners. The Conveners Group has taken the view that the committee convener should use his or her discretion. I hope that we will
not have to deal with that situation, but I wanted to make the point clear from the start in case it arises.

Section 1 agreed to.

Schedule 1
Scottish Parliamentary Pension Scheme

The Convener: Amendment 1, in the name of Alasdair Morgan, is in a group on its own.

Alasdair Morgan (South of Scotland) (SNP): I congratulate you and your deputy on your respective elections, convener.

The bill prevents any trustee who is a member of the pension scheme from receiving remuneration and allowances. The effect of the amendment is to extend that condition to cover pension credit members from similarly receiving remuneration or allowances. Pension credit members are entitled to stand-alone pension rights within the scheme due to pension-sharing orders made on divorce from, or the dissolution of a civil partnership with, a pension scheme member. The effect of the amendment is to ensure that anyone who is to benefit financially from the scheme does not receive financial benefit as a trustee.

I move amendment 1.

David Stewart: The proposed change is straightforward and sensible. It is not controversial in any way and keeps us in line with pension policy in general throughout the United Kingdom, so I support the amendment.

Nicol Stephen: I support it too.

Bill Aitken: I concur.

Amendment 1 agreed to.

The Convener: Amendment 2, in the name of Alasdair Morgan, is grouped with amendments 3 to 5.

Alasdair Morgan: The purpose of amendments 2 to 5 is to clarify the benefits that would be payable in the event of the death of a participating member who had previously received a pension from the fund as a scheme pensioner. Such a scenario could arise if a scheme pensioner was re-elected as an MSP or appointed to be an office-holder.

By amending the rule 109 definition of "deferred pensioner", amendment 5 makes it clear that the definition does not include a scheme pensioner who rejoins as a participating member or a person who is re-elected but opts to remain as a scheme pensioner. An individual in either category does not become a deferred pensioner. As long as an individual in either category remains an MSP or office-holder, their pension is suspended under rule 41.

A person who is re-elected but does not opt out of the scheme becomes a participating member for future service while remaining a scheme pensioner. Amendments 2 to 4 clarify the benefits that become payable in the event that such a member dies while a participating member. To calculate a surviving partner or child's entitlement to pension, it is first necessary to determine what pension would have been due to the deceased had they survived. The amount of pension that would have been payable depends on what type of scheme member the deceased was at the time of their death.

Amendment 3 inserts into rule 56 detail of how scheme pension entitlement is to be calculated if a pension has been suspended under rule 41(1). In such cases, the deceased is to be treated as if they had become a scheme pensioner again immediately before their death. The amendment makes it clear that such a person can also be a participating member. The effect is that the previous service and new accumulated service after reparticipation are treated as two separate entitlements, albeit that, once calculated, they are paid as a single amount to recipients.

Rule 59 provides a partner time to adjust financially to the loss of their partner's income. The rule provides for the enhancement of a partner's pension for three months, following the death of a participating member or pensioner, to the level of income that the member was receiving at that time. As a consequence of amendment 4, the enhancement of a partner's pension for the three-month period in respect of a participating member who was a scheme pensioner but whose pension had been suspended under rule 41(1) will be as if they had been a participating member. In such cases, under rule 59(1), the amount of a partner's pension payable will in effect be enhanced to the level of salary that the deceased had been receiving.

Amendment 2 is designed to protect the fund while placing all participating members on an equal footing. It seeks to ensure that the maximum payment from the fund, in the event of any participating member dying, is the greater of four times their salary or their scheme member's contributions with interest.

Rule 65 provides that the fund trustees may pay a tax-free lump sum on the death of any participating member to the deceased's nominee or personal representatives. That lump sum is to be four times the participating member's annual salary or their scheme member's contributions, whichever is the greater. A scheme pensioner who has received benefits from the scheme and then rejoins the scheme on their re-election as an MSP will also be entitled to that benefit. Although such a person has their existing pension suspended on
re-election, they could already have received a considerable amount in pension payments during earlier retirement as well as having commuted part of their pension on retirement to a lump sum. In addition, when the person dies and the earlier retirement was less than five years, an additional sum is paid to their personal representatives equal to the balance of the unpaid pension that would have been paid during the first five years of retirement. That is the five-year guarantee of payment of pension set out in part L of the bill.

Limited provision for those cases is already made in the current version of the bill at rule 41(2). That provision has the effect of reducing death-in-service benefit to take account of pension already paid. It does not, however, deal with retirement lump sums or the five-year guarantee. The effect of amendment 2 is to reduce the death-in-service payment further in those cases by the value of those additional benefits.

That means that the survivors of participating and reparticipating members are all treated equally by the scheme and payments that are made to members who retire and then rejoin the scheme are not enhanced beyond those that are available to other members.

I move amendment 2.

Amendment 2 agreed to.

Amendments 3 to 5 moved—[Alasdair Morgan]—and agreed to.

Schedule 1, as amended, agreed to.

Schedule 3

TRANSITIONAL PROVISIONS AND SAVINGS

The Convener: Amendment 6, in the name of Alasdair Morgan, is in a group on its own.

Alasdair Morgan: These amendments link into restrictions imposed by the Finance Act 2004, which prevent pension scheme members over the age of 75 from commuting part of their pension to a tax-free lump sum. The new scheme rules allow participating members approaching 75 who would be entitled to a pension but for the fact that they are a serving MSP or office-holder, to commute part of their pension entitlement. Once such a person reaches 75, they can no longer avail themselves of that benefit.

Participating members in the same position cannot, under the current rules, commute pension in that way. Amendment 7 allows current participating members who reach 75 after royal assent but before the new rules day to have a similar right to commute part of their pension as persons who attain 75 after that date. As with the provision in rule 44 of the new rules, such a person who opts to crystallize their benefits in that way obtains a tax-free commuted sum and becomes a scheme pensioner. However, their pension is reduced to zero until they leave office.

Amendments 8 and 9 are consequential amendments that bring the transitional provision that is set out in amendment 7 and the transitional provision at paragraph 1 of schedule 3, which provides an interpretation of words and phrases used throughout the schedule, into force immediately on royal assent.

I move amendment 7.

Amendment 7 agreed to.

Schedule 3, as amended, agreed to.

Section 2 agreed to.

Schedule 2 agreed to.

Sections 3 and 4 agreed to.

Section 5—Commencement

Amendments 8 and 9 moved—[Alasdair Morgan]—and agreed to.

Section 5, as amended, agreed to.

Section 6 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the clerks for all their work. I also thank Alasdair Morgan and the Scottish Parliamentary Pension Scheme Committee for the previous work that has been done. I thank everyone else for their participation today.

Meeting closed at 10:47.
Scottish Parliamentary Pensions Bill
[AS AMENDED AT STAGE 2]

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Schedule 2—Grants payable on leaving office
Schedule 3—Transitional provisions and savings
Scottish Parliamentary Pensions Bill

[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to set out rules to govern the Scottish Parliamentary Pension Scheme; to provide for the payment of resettlement grants to individuals when they stop being members of the Scottish Parliament or holding certain offices; and for connected purposes.

1 Scottish Parliamentary Pension Scheme

(1) The Scottish Parliamentary Pension Scheme is to continue but is to be governed from the coming into force of this section in accordance with the rules set out in schedule 1.

(2) The Scottish Parliamentary Contributory Pension Fund (and all the SPCB’s functions, rights, liabilities and obligations in relation to that Fund) are transferred to and vest in the Fund trustees appointed and holding office in accordance with those rules.

(3) Schedule 3 makes further transitional provisions and savings.

2 Grants payable on leaving office

Schedule 2 sets out circumstances in which the SPCB is to pay grants to individuals when they stop being MSPs or holding certain offices.

3 Modification of pension schemes etc.

(1) The Scottish Parliament may resolve to modify—

(a) the Scottish Parliamentary Pension Scheme,

(b) the grants scheme set out in schedule 2, or

(c) the pension scheme for First Ministers and Presiding Officers which is comprised in Part S of the 1999 pensions order.

(2) A resolution may, in particular, modify—

(a) the rules set out in schedule 1,

(b) schedules 2 or 3, or

(c) the 1999 pensions order.

(3) A resolution may—

(a) make different provision for different purposes,

(b) make provision having retrospective effect.
The Clerk of the Parliament must send a copy of a resolution to the Queen’s Printer for Scotland immediately after it is passed.

Articles 5, 7(1), 8 and 9 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Statutory Instruments) Order 1999 (S.I. 1999/1096) apply in relation to that copy resolution as if it were a Scottish statutory instrument.

4 Interpretation

In this Act—


“Scottish Parliamentary Pension Scheme” means the pension scheme constituted by the 1999 pensions order (but does not include the pension scheme for First Ministers and Presiding Officers which is comprised in Part S of that order),

“Scottish Parliamentary Contributory Pension Fund” means the fund established by article B1 of the 1999 pensions order, and

“SPCB” means the Scottish Parliamentary Corporate Body.

5 Commencement

(1) The following provisions come into force on Royal Assent—

sections 4 and 6

this section

rules 4 and 8 to 11 of schedule 1 (and section 1(1) in so far as it introduces them)

paragraphs 1, 4 and 8A of schedule 3 (and section 1(3) in so far as it introduces those paragraphs)

(2) Section 3 also comes into force on Royal Assent (but, during the period before the rest of this Act comes into force, a motion for a resolution under that section may be moved only by a member of the SPCB).

(3) The rest of this Act comes into force on the first day of the month which follows the month which includes the day falling 6 months after Royal Assent.

6 Short title

This Act is called the Scottish Parliamentary Pensions Act 2008.
This schedule sets out the rules of the Scottish Parliamentary Pension Scheme (“the scheme”).

**PART A**

**THE PENSION FUND**

*The Pension Fund*

“The Pension Fund” means the Scottish Parliamentary Contributory Pension Fund.

**Payments to and from Fund**

1. The following payments are to be made from the Pension Fund—
   - (a) all pensions and lump sums payable under the scheme, and
   - (b) all amounts payable by the Fund trustees under the scheme.

2. The Fund trustees must pay all sums they receive under the scheme into the Pension Fund.

**PART B**

**FUND TRUSTEES**

*Fund trustees*

The “Fund trustees” are the individuals appointed under and holding office in accordance with this Part.

*Functions*

The Fund trustees’ principal function is to administer the Pension Fund, and to manage and apply its assets, in accordance with the scheme.

*Number of trustees*

There are to be at least 3 but no more than 6 Fund trustees.

*Eligibility*

A person who is prevented by the Pensions Act 1995 (c.26), or by any other enactment or rule of law, from being a pension scheme trustee is barred from being a Fund trustee.
Appointment of Fund trustees

8 (1) The Scottish Parliament may resolve to appoint as a Fund trustee any individual nominated by the SPCB as suitable to hold that office.

(2) The SPCB must, when deciding who to nominate—

(a) do its best to ensure that the Fund trustees include a participating member and a scheme pensioner, and

(b) have regard to any recommendation by the incumbent Fund trustees.

(3) A Fund trustee appointment has immediate effect (unless the Scottish Parliament resolves otherwise).

(4) The Court of Session may appoint a Fund trustee only on an application under section 19(2) of the Trusts (Scotland) Act 1921 (c.58).

(5) The Fund trustees do not have power to assume new trustees.

Remuneration, allowances and expenses

9 (1) A Fund trustee may be remunerated, or receive allowances, from the Pension Fund for acting as a Fund trustee only if the following conditions are met—

Condition 1 The Fund trustee is not a scheme member (or a pension credit member).

Condition 2 The other Fund trustees (if any), before appointment, recommend to the SPCB that the Fund trustee be remunerated or entitled to allowances.

Condition 3 The SPCB’s nomination to the Scottish Parliament specifies that remuneration or allowances are to be paid.

(2) Expenses properly incurred by the Fund trustees in connection with the performance of their functions are to be paid from the Pension Fund.

Resignation

10 (1) A Fund trustee may resign by giving notice of resignation to—

(a) the Presiding Officer, and

(b) the other Fund trustees.

(2) A resignation has effect immediately on the notice of resignation being given.

(3) This rule does not apply where there is a sole trustee.

Removal

11 (1) A Fund trustee is removed from office only if—

(a) the Scottish Parliament resolves to end the Fund trustee’s tenure,

(b) the Fund trustee becomes barred from being a Fund trustee (see rule 7), or

(c) the Fund trustee’s tenure ends under rule 12.
(2) A Parliamentary resolution passed on a division for the purposes of this rule has effect only if voted for by at least two-thirds of the voting MSPs.

Change of status

12 (1) This rule applies—

   (a) where a Fund trustee who was a participating member when appointed becomes a deferred pensioner or a scheme pensioner,

   (b) where a Fund trustee who was a deferred pensioner when appointed—

      (i) becomes a participating member or a scheme pensioner, or

      (ii) has his or her rights to receive scheme benefits extinguished under rule 80, and

   (c) where a Fund trustee who was a scheme pensioner when appointed becomes an MSP or the holder of a pensionable office.

(2) Where this rule applies—

   (a) the Fund trustee must give notice of change of circumstance to—

      (i) the Presiding Officer, and

      (ii) the other Fund trustees, and

   (b) the Fund trustee’s tenure ends 6 months after the change of circumstance occurs (unless the Scottish Parliament resolves otherwise).

Member-nominated trustees

13 Nothing in the scheme overrides section 241 of the Pensions Act 2004 (c.35).

Accordingly—

   (a) the SPCB must nominate as suitable to be a Fund trustee any individual who the Fund trustees recommend for the purposes of fulfilling their obligations under that section, and

   (b) rule 6 does not prevent the SPCB from so nominating an individual (or the appointment of an individual) if the appointment—

      (i) would result in more than 6 Fund trustees holding office, and

      (ii) would ensure that at least one-third of the Fund trustees are appointed in accordance with that section.

Procedure

14 The Fund trustees may regulate their own procedure (in so far as not regulated by the scheme).

Quorum

15 A meeting of the Fund trustees is quorate if—

   (a) 3 or more Fund trustees are present, or
Scotch Parliamentary Pensions Bill
Schedule 1—Scottish Parliamentary Pension Scheme
Part C—Participating members

(b) where fewer than 3 Fund trustees hold office, if both trustees are (or the sole trustee is) present.

Staff and advisers
16 The Fund trustees may—
5 (a) employ staff on such terms as they think fit,
(b) seek advice from any person.

Fund management
17 The Fund trustees must monitor the performance of any fund manager they appoint.

Indemnity insurance
18 The Fund trustees may obtain insurance designed to indemnify them against any personal liability arising in connection with the performance (or purported performance) of their functions.

Delegation
19 (1) The Fund trustees may authorise any person (including one or more of themselves) to perform, or to authorise others to perform, any of their functions to the extent authorised.
15 (2) An authorisation does not affect the Fund trustees’ responsibility for delegated functions or their ability to perform those functions themselves.

Validity of acts
20 (1) A decision, authorisation or other act of the Fund trustees is not invalidated—
20 (a) by any change to the individuals (or to the status or eligibility of individuals) holding office as Fund trustees,
(b) by any defect in the nomination or appointment of a Fund trustee, or
c) by the fact that it is done when fewer than 3 Fund trustees held office.
25 (2) The Fund trustees are free to vary or revoke any previous decision or authorisation (but such a variation or revocation may reduce the scheme benefits to which any individual is entitled only if made in accordance with any other scheme rule).

PART C

PARTICIPATING MEMBERS

MSP members
21 Every serving MSP aged under 75 is to participate in the scheme as an “MSP member” (unless the MSP opts out under rule 23).
Office-holder members

22 (1) Every individual aged under 75 holding a pensionable office is to participate in the scheme as an “office-holder member” (unless the individual opts out under rule 24).

(2) An individual holds a pensionable office by being—

(a) the Presiding Officer,
(b) a deputy Presiding Officer,
(c) one of the Scottish Ministers, or
(d) a junior Scottish Minister.

MSP opt-out

23 (1) An MSP may opt out of participating in the scheme by giving notice to the Fund trustees.

This rule does not prevent an MSP who is also a holder of a pensionable office from opting out as an office-holder member only under rule 24 (but such an MSP may not opt out as an MSP member only).

(2) Where an MSP opts out within 3 months of first being elected as an MSP—

(a) the MSP is to be treated—

(i) as having never been an MSP member, and

(ii) as having not been an office-holder member for any period since the election, and

(b) any scheme member contributions made since being elected are to be repaid to the MSP.

(3) In any other case, an MSP who opts out stops being a participating member on whatever date the Fund trustees decide is the earliest practicable date after they receive the opt-out notice.

Office-holder opt-out

24 (1) The holder of a pensionable office may opt out of participating in the scheme as an office-holder member only by giving notice to the Fund trustees.

(2) Where the holder of a pensionable office opts out within 3 months of being appointed to that office—

(a) the office-holder is to be treated as having not been an office-holder member since being appointed, and

(b) any scheme member contributions made in respect of office-holder’s salary since being appointed are to be repaid to the office-holder.

(3) In any other case, a holder of a pensionable office who opts out stops being an office-holder member on whatever date the Fund trustees decide is the earliest practicable date after they receive the opt-out notice.
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Schedule 1—Scottish Parliamentary Pension Scheme
Part D—Contributions

MSP opt-in

25 An individual who has opted out of participating in the scheme may, if subsequently elected as an MSP, opt back into the scheme as an MSP member with effect from the election date by—

(a) giving notice to the Fund trustees within 3 months of being elected, and

(b) paying to the Fund trustees by the due date the amount which they certify as the amount of scheme member contributions which would have been made from the individual’s MSP salary payments between the election date and the next day on which a scheme member contribution is to be made.

“due date” means the 28th day after the Fund trustees give their certification to the MSP (or any later day as the Fund trustees may specify).

Office-holder opt-in

26 (1) An individual who has opted out of participating in the scheme (or who has opted out of participating as an office-holder member only) may, if subsequently appointed to hold any pensionable office, opt back into the scheme as an office-holder member with effect from the appointment date by—

(a) giving notice to the Fund trustees within 3 months of being appointed, and

(b) paying to the Fund trustees by the due date the amount which they certify as the amount of scheme member contributions which would have been made from the individual’s office-holder salary payments between the appointment date and the next day on which a scheme member contribution is to be made.

“due date” means the 28th day after the Fund trustees give their certification to the office-holder (or any later day as the Fund trustees may specify).

(2) An MSP may not opt back into the scheme as an office-holder member unless that individual also opts back in as (or already is) an MSP member.

PART D
CONTRIBUTIONS

Scheme member contributions

27 The person responsible for paying a participating member’s salary must—

(a) deduct an amount (a “scheme member contribution”) from each salary payment (but see rule 30), and

(b) pay the scheme member contribution to the Fund trustees.

References in other scheme rules to scheme member contributions being made are to be read as references to amounts deducted and paid under this rule.

Amount of scheme member contribution

28 Higher rate scheme member contributions are be deducted under rule 27 (unless the participating member concerned chooses to make lower rate scheme contributions).
Procedure for changing scheme member contribution rate

29 (1) A participating member may, by giving notice to the Fund trustees, choose to make lower rate scheme member contributions instead of higher rate scheme member contributions (or vice versa).

(2) Such a notice may be given only within 3 months of—
   (a) being elected (or re-elected) as an MSP, or
   (b) where the participating member is not an MSP, being appointed (or re-appointed) as the holder of a pensionable office.

(3) The notified change has effect from the day of the election or appointment and—
   (a) the Fund trustees must pay the participating member an amount equal to any excess of scheme member contributions made in respect of that period, or (as the case may be)
   (b) the participating member must pay any shortfall in scheme member contributions made in respect of that period to the Fund trustees.

(4) If a participating member fails to repay a shortfall, the Fund trustees may recover the shortfall by directing the person responsible for paying the participating member’s salary to adjust subsequent scheme member contributions accordingly.

Relief from liability to make scheme member contributions

30 (1) An MSP member is to stop making scheme member contributions from MSP salary when he or she obtains sufficient reckonable service as an MSP to entitle him or her to the maximum annual MSP pension permitted by rule 38(2).

(2) Such an MSP member is to begin making scheme member contributions again only if his or her MSP salary increases.

(3) Those contributions are to be made—
   (a) only in respect of the amount by which the MSP salary is increased, and
   (b) at the rate which applied when the MSP member stopped making scheme member contributions in respect of his or her full MSP salary.

(4) Scheme member contributions are not to be made from the office-holder salary of an office-holder member whose reckonable service as an office-holder already entitles him or her to the maximum office-holder pension entitlement permitted by rule 39(4).

(5) Such an office-holder member is to begin making scheme member contributions again only if his or her office-holder salary increases.

(6) Those contributions are to be made—
   (a) only in respect of the amount by which the office-holder salary is increased, and
   (b) at the rate which applied when the office-holder member stopped making scheme member contributions in respect of his or her full office-holder salary.

(7) If—
   (a) the Fund trustees have accepted an individual’s application to buy added years, but
   (b) the individual has not yet paid for those added years in full,
the individual’s reckonable service as an MSP or office-holder is to be treated for the purposes of this rule as including the period by which his or her reckonable service will be increased on payment of the last instalment or lump sum.

**Contributions when salary not drawn**

5 31 The person responsible for paying the salary of a participating member who chooses not to draw that salary (or any part of it) must—

(a) deduct amount A from the funds available to pay the salary (or that part of it), and

(b) pay that amount to the Fund trustees.

“amount A” is an amount equal to the scheme member contributions which would have been deducted had that salary (or that part of it) been paid.

**Contributions from SPCB**

32 (1) The SPCB must pay a sum into the Pension Fund in respect of each financial year.

(2) The SPCB must, when determining the amount of each annual sum, have regard to—

(a) the scheme actuary’s recommended rate for future contributions (see rule 103(3)(c)), and

(b) any advice from the Fund trustees on the rate of future contributions.

**PART E**

**RECKONABLE SERVICE**

**Reckonable service as an MSP**

33 (1) A period for which an MSP member makes scheme member contributions from salary payments in respect of MSP salary is a period of reckonable service as an MSP.

(2) An individual’s “reckonable service as an MSP” means the total of—

(a) the period described in rule 33(1) or (if more than one) the total of such periods, and

(b) any amount by which that period is increased under Part N (transfers) or Part O (added years).

**Reckonable service as an office-holder**

34 (1) A period for which an office-holder member makes scheme member contributions from salary payments in respect of office-holder salary is a period of reckonable service as an office-holder.

(2) An individual’s “reckonable service as an office-holder” means the total of—

(a) the period described in rule 34(1) or (if more than one) the total of such periods, and

(b) any amount by which that period is increased under Part N (transfers) or Part O (added years).
Total reckonable service

35 An individual’s “total reckonable service” is the total of any periods in which the individual obtains—

(a) reckonable service as an MSP only under rule 33(1),

(b) reckonable service as an office-holder only under rule 34(1), and

(c) reckonable service as both an MSP and office-holder under both those rules.

Measuring reckonable service

36 A period of reckonable service is measured in years and fractions of a year (unless the contrary intention appears).

PART F
PENSIONS

Scheme pension

37 (1) A pension (a “scheme pension”) is to be paid to every individual who—

(a) has reckonable service as an MSP or office-holder,

(b) is aged 65 or over, and

(c) is neither an MSP nor the holder of a pensionable office.

(2) Unless the scheme otherwise provides, the annual scheme pension payable to such an individual is an amount equal to the total of—

(a) the annual MSP pension payable in accordance with rule 38, and

(b) the annual office-holder pension payable in accordance with rule 39.

Amount of MSP pension

38 (1) The annual MSP pension payable to an individual is an amount equal to—

\[ \text{MSP’s final salary} \times \left( \frac{A}{50} + \frac{B}{40} \right) \]

where—

“A” is the individual’s reckonable service as an MSP during which lower rate scheme member contributions were made, and

“B” is the individual’s reckonable service as an MSP during which higher rate scheme member contributions were made.

(2) Where an individual’s annual MSP pension (including any enhancement made by virtue of other scheme rules) exceeds the individual’s annual MSP pension cap, the annual MSP pension payable to the individual is to be reduced to the individual’s annual MSP pension cap.

An individual’s “annual MSP pension cap” is two-thirds of the individual’s final salary as an MSP (ignoring any reduction in final salary by virtue of section 82(2) of the Scotland Act 1998 (c.46)).
Amount of office-holder pension

39 (1) The annual office-holder pension payable to an individual is an amount equal to the total of the individual’s office-holder pension entitlements.

(2) An individual obtains an office-holder pension entitlement in respect of each period for which he or she holds a pensionable office.

(3) The amount of an office-holder pension entitlement for such a period is calculated as follows—

\[
\text{office-holder’s final salary in respect of period } \times \left( \frac{A}{50} + \frac{B}{40} \right)
\]

where—

“\( A \)” is the individual’s reckonable service as an office-holder accrued when holding the office concerned in respect of which the individual made lower rate scheme member contributions, and

“\( B \)” is the individual’s reckonable service as an office-holder accrued when holding the office concerned during which the individual made higher rate scheme member contributions.

(4) Where an individual’s annual office-holder pension (including any enhancement made by virtue of other scheme rules) exceeds the individual’s annual office-holder pension cap, the annual office-holder pension payable to the individual is to be reduced to the individual’s annual office-holder pension cap.

An individual’s “annual office-holder pension cap” is—

(a) two-thirds of the final salary amount used to calculate the individual’s office-holder pension entitlement, or

(b) where an individual has more than one such entitlement, two-thirds of the highest such final salary amount.

Duration of scheme pension

40 (1) A scheme pension is payable from the day on which the individual concerned is first entitled to receive it.

(2) Pension payments need not begin unless the individual entitled to the scheme pension has—

(a) notified the Fund trustees that he or she wishes pension payments to begin, and

(b) given the Fund trustees such information as they may reasonably require—

(i) about the individual’s entitlement to any other pension,

(ii) to calculate their liability for a lifetime allowance charge or any other tax,

(iii) to make the payments.

This rule does not affect the date from which a scheme pension is payable.

(3) Pension payments are to continue for the rest of the individual’s life (see rule 41 for exception).
(4) Pension payments are to be made monthly in arrears (or in other instalments of no longer than one year as the Fund trustees may determine).

Suspension of scheme pension

41 (1) Where a scheme pensioner becomes an MSP or the holder of a pensionable office, pension payments are to be suspended until the individual concerned stops being an MSP or the holder of that office.

(2) The amount of any lump sum payable under Part K in respect of an individual who dies when such a suspension has effect is to be reduced by an amount equal to the total of—

(a) the amount of scheme pension already paid to the individual,

(b) the amount of any retirement lump sum paid to the individual, and

(c) the amount of any pension or lump sum payable in respect of the individual under Part L.

(3) When such a suspension ends in relation to an individual who was entitled to an ill-health pension before the suspension began—

(a) the individual is to be treated from then on as if he or she had not been entitled to an ill-health pension, and

(b) a corresponding reduction is to be made—

(i) to the individual’s pension payments, and

(ii) to any added years obtained by virtue of rule 86(2)(a)).

PART G

RETIREMENT LUMP SUMS

Right to commute pension into a lump sum

42 (1) An individual may commute a portion of the individual’s scheme pension into a lump sum (a “retirement lump sum”) by giving notice (a “commutation notice”) to the Fund trustees.

(2) A commutation notice is valid only if it—

(a) is given before the earlier of—

(i) the day on which a scheme pension is first paid to the individual, and

(ii) the individual’s 75th birthday,

(b) specifies the proportion of the individual’s scheme pension that the individual wants to commute into a retirement lump sum, and

(c) provides the Fund trustees with such other information as they may reasonably require to—

(i) determine the amount payable, and

(ii) satisfy themselves that, if paid, the retirement lump sum would be a “pension commencement lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).
Payment of retirement lump sum and corresponding reduction in pension

43 (1) An individual who gives a valid commutation notice is to be paid a retirement lump sum of an amount equal to the lower of—
   (a) the amount which the Fund trustees determine to be equivalent to the proportion of the individual’s scheme pension specified in the commutation notice, or
   (b) the permitted maximum (construed in accordance with paragraph 2 of Schedule 29 to the Finance Act 2004 (c.12)).

(2) The annual scheme pension payable to an individual who is to be paid a retirement lump sum is to be reduced by an amount which the Fund trustees determine to be appropriate in consequence of the individual’s entitlement to the retirement lump sum.

(3) A determination of the Fund trustees’ for the purposes of this rule must be—
   (a) certified by the scheme actuary, or
   (b) made in accordance with guidance and tables prepared by the scheme actuary.

Special rule for commutation by individual approaching the age of 75

44 (1) This rule applies to an individual who—
   (a) gives a valid commutation notice before reaching the age of 75, and
   (b) would not (but for this rule) be entitled to be paid a scheme pension at that time by reason only of being a serving MSP or the holder of a pensionable office.

(2) Despite rule 37(1)(c)—
   (a) an individual to whom this rule applies is to be entitled to be paid a scheme pension from the day before the member’s 75th birthday, but
   (b) the amount of scheme pension so payable is to be nil until the individual is neither an MSP nor the holder of a pensionable office.

Commuting trivial amounts

45 (1) The Fund trustees may pay a lump sum (a “one-off lump sum”) to an individual if the following conditions are met—
   
   **Condition 1** The individual applies to the Fund trustees for payment of a one-off lump sum instead of a scheme pension.
   
   **Condition 2** The Fund trustees are satisfied that, if paid, the one-off lump sum would be a “trivial commutation lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

(2) The amount of one-off lump sum to which an individual is entitled on any day is an amount equal to the value of the individual’s uncrystallised rights under the scheme on that day (as determined by the Fund trustees in accordance with section 212 of the Finance Act 2004 (c.12)).

(3) A determination of the Fund trustees must be—
   (a) certified by the scheme actuary, or
   (b) made in accordance with guidance and tables prepared by the scheme actuary.
(4) Payment of a one-off lump sum extinguishes the rights of all persons to receive scheme benefits in respect of the recipient.

**PART H**

**EARLY RETIREMENT**

5 Early retirement

46 (1) An individual is eligible to take early retirement if the individual is—

(a) 55 or over but is not yet 65, and

(b) neither an MSP nor the holder of a pensionable office.

(2) An eligible individual may take early retirement by giving notice (an “early retirement notice”) to the Fund trustees.

(3) Despite rule 37(1), an individual who takes early retirement is entitled to be paid his or her scheme pension from—

(a) the date on which the early retirement notice is given, or

(b) such later date as the individual may specify in the early retirement notice.

(4) The annual scheme pension payable to an individual is to be reduced by the appropriate percentage.

“appropriate percentage” is calculated as follows—

\[(65 \text{ less individual’s age at retirement (in years)}) \times 4\]

(5) The reduction in scheme pension is to continue to have effect after the individual reaches the age of 65.

**PART I**

**ILL-HEALTH**

Serious ill-health pension

47 An individual is entitled to a serious ill-health pension if the Fund trustees are satisfied that the following conditions are met—

**Condition 1** The individual resigns as or otherwise stops being an MSP or, as the case may be, the holder of a pensionable office as a direct consequence of a health condition.

**Condition 2** At that time, the individual would be entitled to a scheme pension but for the fact that the individual is not yet 65 years old.

**Condition 3** The individual applies to the Fund trustees for a serious ill-health pension.

**Condition 4** The health condition prevents the individual from doing any gainful work.

**Condition 5** The health condition is expected to be permanent and to continue to prevent the individual from doing gainful work.
**Ordinary ill-health pension**

An individual is entitled to an ordinary ill-health pension if the Fund trustees are satisfied that the following conditions are met—

**Condition 1**
The individual resigns as or otherwise stops being an MSP or, as the case may be, the holder of a pensionable office as a direct consequence of a health condition.

**Condition 2**
At that time, the individual would be entitled to a scheme pension but for the fact that the individual is not yet 65 years old.

**Condition 3**
The individual applies to the Fund trustees for an ordinary ill-health pension.

**Condition 4**
The health condition—

(a) prevents the individual from adequately performing the duties of an MSP or, as the case may be, the holder of a pensionable office, but

(b) does not prevent the individual from doing other gainful work.

**Condition 5**
The health condition is expected to be permanent and to continue to prevent the individual from adequately performing the duties mentioned in condition 4(a).

**Condition 6**
The application is accompanied by evidence that a doctor is satisfied that conditions 4(a) and 5 are met.

**Deferred pensioner’s ill-health pension**

A deferred pensioner is entitled to a deferred pensioner’s ill-health pension if the Fund trustees are satisfied that the following conditions are met—

**Condition 1**
The deferred pensioner applies to the Fund trustees for a deferred pensioner’s ill-health pension.

**Condition 2**
The deferred pensioner is under 65.

**Condition 3**
The deferred pensioner has stopped doing gainful work as a direct consequence of a health condition.

**Condition 4**
At the time of stopping work the deferred pensioner would be entitled to a scheme pension but for the fact that the deferred pensioner is not yet 65 years old.

**Condition 5**
The health condition prevents the deferred pensioner from doing gainful work.

**Condition 6**
The health condition is expected to be permanent and to continue to prevent the deferred pensioner from doing gainful work.

**Condition 7**
The application is accompanied by evidence that a doctor is satisfied that conditions 4 and 5 are met.
Amount of serious ill-health pension

50 (1) Part F (Pensions) applies with the following modifications to an individual who is entitled to a serious ill-health pension and who has reckonable service as an MSP—

(a) the individual is to be treated as having been aged 65 on the relevant day,

(b) the individual’s reckonable service as an MSP is to be increased by a period equal to the period of reckonable service as an MSP that the individual would obtain if the individual were to be an MSP member from the relevant day until the individual’s 65th birthday,

(c) if the individual was a dual mandate MSP on the relevant day (or would have been had he or she been an MSP on that day), that increased period of reckonable service as an MSP is to be reduced by the same proportion as the MSP’s salary was (or would have been) reduced on that day,

(d) the individual is to be treated as having made scheme member contributions during that increased period of reckonable service as an MSP at the rate which applied to the individual on the relevant day, and

(e) the individual’s reckonable service as an office-holder (if any) is not increased.

(2) Part F (Pensions) applies with the following modifications to an individual who is entitled to a serious ill-health pension and who has reckonable service as an office-holder only—

(a) the individual is to be treated as having been aged 65 on the relevant day, and

(b) the amount of annual office-holder pension payable to the individual is to be increased by an amount equal to—

\[ \frac{A \times B}{C} \]

where—

“\(A\)” is the annual salary payable to an MSP by virtue of section 81(1) of the Scotland Act on the relevant day,

“\(B\)” is the period of reckonable service as an office-holder that the individual would have obtained if the individual had continued to hold a pensionable office from the relevant day until the individual’s 65th birthday, and

“\(C\)” is—

(i) if higher rate scheme member contributions were being made on the relevant day, 40,

(ii) if lower rate scheme member contributions were being made on the relevant day, 50.

(3) In this rule, “relevant day” means the day on which the individual resigned as or otherwise stopped being, an MSP or, as the case may be, the holder of a pensionable office.
Amount of ordinary ill-health pension

51 Rule 37 applies to an individual who is entitled to an ordinary ill-health pension as if the individual reached the age of 65 on the day on which the individual resigned as or otherwise stopped being an MSP or, as the case may be, the holder of a pensionable office.

Amount of deferred pensioner’s ill-health pension

52 Rule 37 applies to an individual who is entitled to a deferred pensioner’s ill-health pension as if the individual reached the age of 65 on the day on which the application for the pension was made.

Review of ill-health pension entitlements

53 (1) The Fund trustees may review an individual’s entitlement to an ill-health pension at any time before the individual reaches the age of 65 (and may carry out such a review at regular intervals determined by them).

(2) The Fund trustees may require an individual whose entitlement is being reviewed to provide evidence from a doctor on the individual’s state of health.

(3) The Fund trustees may, if satisfied following a review that the individual’s state of health no longer prevents the individual from doing gainful work, determine that the individual—

(a) is no longer to be entitled to an ill-health pension, or

(b) is to be entitled to an ordinary ill-health pension instead of a serious ill-health pension (where they remain satisfied that the individual’s state of health still prevents the individual from adequately performing the duties of an MSP or a holder of a pensionable office).

(4) The Fund trustees may determine that an individual who refuses to be examined in accordance with rule 54, or who otherwise fails to co-operate with a review, is no longer to be entitled to an ill-health pension.

(5) If the Fund trustees make a determination under this rule—

(a) pension payments are to stop or, as the case may be, be reduced from the date of the determination, and

(b) the scheme is to operate in relation to the individual from then onwards as if the individual had not been entitled to an ill-health pension or, as the case may be, to a serious ill-health pension.

Medical examinations

54 (1) The Fund trustees may require—

(a) an applicant for an ill-health pension, or

(b) an individual whose entitlement to an ill-health pension is being reviewed,

to be examined by a doctor nominated by them.

(2) The cost of any doctor’s examination is to be borne by the Fund trustees or the examinee (as the Fund trustees may determine).
IIl-health lump sums: life expectancy of less than one year

55 (1) An individual is entitled to be paid a lump sum (an “ill-health lump sum”) instead of a scheme pension if the following conditions are met—

*Condition 1* The individual applies to the Fund trustees for an ill-health lump-sum.

*Condition 2* The individual is neither an MSP nor the holder of a pensionable office.

*Condition 3* The individual has reckonable service as an MSP or as an office-holder.

*Condition 4* The Fund trustees are otherwise satisfied that, if paid, the ill-health lump sum will be a “serious ill-health lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

(2) An ill-health lump sum is to be equal to 5 times the annual scheme pension—

(a) in the case of an applicant aged 65 or over, which would otherwise be payable to the individual,

(b) in the case of an applicant aged under 65, which would be payable if the individual became entitled to a serious ill-health pension from the day on which the ill-health lump sum is payable.

(3) Payment of an ill-health lump sum extinguishes all the recipient’s rights to receive scheme benefits.

**PART J**

SURVIVING PARTNERS AND CHILDREN

**CHAPTER 1**

SCHEME PENSION ENTITLEMENT

56 (1) References in this Part to a deceased individual’s “scheme pension entitlement” are to be construed in accordance with this rule.

(2) The “scheme pension entitlement” of an individual who died while being a participating member—

(a) where if the individual died when aged 65 or over, is the annual amount of scheme pension which would have been payable to the deceased if he or she had not been an MSP or the holder of a pensionable office on the day on which he or she died,

(b) where if the individual died when aged under 65, is the annual amount of scheme pension which would have been payable to the deceased if he or she had become entitled to (and had been paid) a serious ill-health pension on the day on which he or she died.
(3) The “scheme pension entitlement” of an individual who died while being a deferred pensioner—
   (a) where if the individual died when aged 65 or over, is the annual amount of scheme pension which would have been payable to the deceased if he or she had not been an MSP or the holder of a pensionable office on the day on which he or she died,
   (b) where if the individual died when aged under 65, is the annual amount of scheme pension which would have been payable to the deceased if he or she had been aged 65 on the day on which he or she died.

(4) The “scheme pension entitlement” of an individual who died while being a scheme pensioner—
   (a) where the deceased received a retirement lump sum, is the annual amount of scheme pension which would have been payable to the deceased immediately before he or she died had the pension not been reduced under rule 43(2),
   (b) where the deceased did not receive a retirement lump sum, is the annual amount of scheme pension being paid to the deceased immediately before he or she died.

(5) The “scheme pension entitlement” of a deceased individual whose entitlement to scheme benefits was extinguished by rule 55(3) before he or she died is the annual amount of scheme pension which would have been payable to the deceased if—
   (a) the ill-health lump sum had not been paid to the deceased,
   (b) the deceased had stopped being a participating member on the day on which the ill-health lump sum was paid,
   (c) the deceased had become entitled to a scheme pension on that day, and
   (d) where that day was before the deceased’s 65th birthday—
      (i) the deceased had been entitled to a serious ill-health pension from that day (see rule 47), and
      (ii) the deceased’s scheme pension had been enhanced and paid accordingly (see rule 50).

(5A) Where an individual dies when his or her pension payments are suspended under rule 41—
   (a) the deceased individual is to be treated for the purposes of this rule as a scheme pensioner (regardless of whether also a participating member at that time), and
   (b) the suspension is to be treated as having been lifted immediately before the individual died.

(6) A deceased individual who was a scheme pensioner when he or she died only because of rule 44(2) is to be treated for the purposes of this rule as having been a deferred pensioner at that time.
Chapter 2

Partner’s pension etc.

Partner

57 (1) “Partner”, in relation to any deceased individual, means—

(a) the individual’s spouse or civil partner, or

(b) where no such person survives the deceased, any individual falling within this rule.

(2) An individual falls within rule 57(1)(b) if—

(a) the deceased nominated the individual as his or her partner by giving notice to the Fund trustees at least 6 months before death, and

(b) the Fund trustees are satisfied—

(i) that the individual and the deceased lived together as if they were husband and wife or, as the case may be, civil partners for the period of 2 years which immediately preceded the deceased’s death,

(ii) that neither the individual nor the deceased lived with any other person in such a relationship (or with a spouse or civil partner) during that period,

(iii) that, during that period—

(A) the individual was financially dependant on the deceased, or

(B) the individual’s financial relationship with the deceased was one of mutual dependence, and

(iv) that the individual and the deceased were not, immediately before the deceased died, prevented by law from either marrying or becoming civil partners.

Partner’s pension

58 (1) A pension (a “partner’s pension”) is to be paid to a surviving partner of any scheme member who dies.

(2) The annual partner’s pension so payable is 5/8ths of the deceased’s scheme pension entitlement.

Enhancement of initial partner’s pension

59 (1) This rule applies where amount A is less than amount B for any part of the 3 month period following the death of a participating member or a scheme pensioner.

(2) Amount A is the total of—

(a) the amount of partner’s pension to be paid to the surviving partner for the 3 month period (or the relevant part of it), and

(b) the amount of children’s pension to be paid to the surviving partner for the 3 month period (or the relevant part of it) on condition that the partner applies it for the benefit of an eligible child.
(3) Amount B is—

(a) where the deceased was a participating member, the amount of the salary payments which would have been paid for the 3 month period (or the relevant part of it) if the deceased had lived and had continued to be paid the same salary, or

(b) where the deceased was a scheme pensioner, the amount of scheme pension which would have been payable for the 3 month period (or the relevant part of it) if the deceased had lived.

(4) Where this rule applies, the partner’s pension is to be increased by the difference between amount A and amount B.

(5) An individual who dies while being both—

(a) a participating member, and

(b) a scheme pensioner whose pension payments are suspended under rule 41,

is to be treated for the purposes of this rule as a participating member.

Duration of partner’s pension

60 (1) A partner’s pension is payable from the day after the day on which the deceased partner died.

(2) Pension payments need not begin unless the individual entitled to them has given the Fund trustees—

(a) notice of that entitlement, and

(b) such information as they may reasonably require—

(i) about the surviving partner’s entitlement to any other pension,

(ii) to calculate their liability for a lifetime allowance charge or any other tax,

(iii) to make the payments.

This rule does not affect the date from which a partner’s pension is payable.

(3) Pension payments are to continue for the rest of the surviving partner’s life.

(4) Pension payments are to be made monthly in arrears (or in such other instalments of no longer than one year as the Fund trustees may determine).

Partner’s trivial lump sum

61 (1) The Fund trustees may pay a lump sum (a “partner’s trivial lump sum”) to an individual who is entitled to a partner’s pension if the following conditions are met—

**Condition 1** The individual applies to the Fund trustees for payment of a partner’s trivial lump sum instead of a partner’s pension.

**Condition 2** No payment relating to the deceased has been made to the individual by way of—

(a) a partner’s pension, or

(b) a death in service lump sum.
Condition 3 The individual is not entitled to receive pension payments under rule 69.

Condition 4 The Fund trustees are satisfied that, if paid, the partner’s trivial lump sum would be a “trivial commutation lump sum death benefit” for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (c.12).

(2) The amount of a partner’s trivial lump sum is to be an amount equal to the value of the individual’s scheme benefits (as determined by the Fund trustees).

(3) Such a determination must be—

(a) certified by the scheme actuary, or

(b) made in accordance with guidance or tables prepared by the scheme actuary.

(4) Payment of a partner’s trivial lump sum extinguishes all the individual’s rights to receive scheme benefits in respect of the deceased.

CHAPTER 3

CHILDREN’S PENSIONS

Children’s pensions

62 (1) A pension (a “children’s pension”) is to be paid in respect of any period during which there are eligible children of any scheme member who dies.

(2) The annual children’s pension so payable is—

(a) when a partner’s pension is also payable, amount A,

(b) when no partner’s pension is payable, amount B.

(3) Amount A is—

(a) where there is one eligible child, 1/4 of the deceased’s scheme pension entitlement,

(b) where there are two or more eligible children, 3/8ths of deceased’s scheme pension entitlement.

(4) Amount B is—

(a) where there is one eligible child entitled to receive the pension, 5/16ths of the deceased’s scheme pension entitlement,

(b) where there are two or more eligible children entitled to receive the pension, 5/8ths of deceased’s scheme pension entitlement.

Eligible children

63 (1) A “child”, in relation to a deceased individual, includes—

(a) an adopted child, and

(b) a stepchild who, when the deceased died, was—

(i) financially dependant on the deceased, or
dependant on the deceased because of physical or mental impairment.

(2) A deceased’s child is an “eligible child” for any period starting on or after the date of the deceased’s death during which any of the following conditions are met—

Condition 1 The child is born and aged 17 or under.

Condition 2 The child—

(a) is aged over 17 but under 23,
(b) was, when the deceased died—
   (i) financially dependant on the deceased, or
   (ii) aged 17 or under, and
(c) would, in the opinion of the Fund trustees, be financially dependant on the deceased had the deceased survived.

Condition 3 The child—

(a) was dependant on the deceased because of physical or mental impairment when he or she died, and
(b) would, in the opinion of the Fund trustees, still be so dependant had the deceased survived.

Payment of children’s pension

64 (1) A children’s pension is payable—

(a) from the start of the first period in respect of which rule 62(1) requires it to be paid, and
(b) during the rest of that period (and any subsequent period in respect of which that rule requires it to be paid).

(2) It is for the Fund trustees to decide to who a children’s pension (or any part of it) is to be paid.

(3) Where a children’s pension (or any part of it) is paid to a person other than the eligible children in respect of whom it is paid (the “intended beneficiaries”), the recipient must—

(a) apply such proportion of the amount paid as the Fund trustees may direct for the benefit of each intended beneficiary, or
(b) where no direction is made, apply the amount paid (without discretion) for the benefit of the intended beneficiaries.

(4) If the recipient does not so apply a pensions payment (or any part of it), the Fund trustees may—

(a) recover the misappropriated amount from the recipient, and
(b) take such action as they think fit in order to ensure that any recovered amount is applied for the benefit of the intended beneficiary.

For example, the Fund trustees may deduct an amount equal to the misappropriated amount from any future amount to be paid to the recipient under the scheme.
(5) The Fund trustees may withhold payment of a children’s pension (or any part of it) if they are not satisfied that arrangements are in place to ensure that it will be applied for the benefit of the intended beneficiary.

Any withheld amounts are to be paid as soon as the Fund trustees are satisfied that such arrangements are in place.

(6) Pension payments need not begin unless the Fund trustees have received—

(a) notice of an eligible child’s entitlement, and

(b) such information as they may reasonably require—

(i) about the eligible child’s entitlement to any other pension,

(ii) to calculate their liability for a lifetime allowance charge or any other tax,

(iii) to make the payments.

This rule does not affect the date from which a children’s pension is payable.

(7) Pension payments are to be made monthly in arrears (or in other instalments of no longer than one year as the Fund trustees may determine).

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PART K

LUMP SUM DEATH BENEFITS

Death in service lump sum

65 (1) The Fund trustees may pay a lump sum (a “death in service lump sum”) on the death of a participating member—

(a) to the deceased’s nominee, or

(b) where there is no such nominee, to the deceased’s personal representatives.

But they may do so only if satisfied that, if paid, the death in service lump sum would be a “defined benefits lump sum death benefit” for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (c.12).

(2) A death in service lump sum is to be the greater of—

(a) 4 times the participating member’s annual salary at the time of death, or

(b) the scheme member contributions, with interest, paid before death.

Nominations for death in service lump sum

66 (1) A participating member may nominate any person as his or her nominee by giving notice to the Fund trustees in such form as they may require.

Such a nomination may—

(a) nominate 2 or more persons, and

(b) where it does so, may specify the proportion of any death in service lump sum which is to be paid to each nominee.

(2) A participating member may withdraw a nomination at any time by giving notice to the Fund trustees in such form as they may require.

(3) A nomination in force when the participating member dies is invalid in so far as—
(a) it nominates an individual who was the participating member’s partner when the nomination was made but was not his or her partner when he or she died, or

(b) the Fund trustees consider that it would not be reasonably practicable to pay a death in service lump sum to a nominee.

(4) The proportion of any death in service lump sum which would, but for rule 66(3), have been paid to invalidated nominees is to be paid to the deceased’s personal representatives.

Deferred pensioner lump sum

67 (1) A lump sum (a “deferred pensioner lump sum”) is to be paid to the personal representatives of a deferred pensioner who dies while aged under 75 leaving no—

(a) surviving partner, or

(b) surviving child who, at the time of death, is an eligible child or is unborn.

But such a payment may be made only if the Fund trustees are satisfied that, if paid, the deferred pensioner lump sum would be a “defined benefits lump sum death benefit” for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (c.12).

(2) A deferred pensioner lump sum is to be equal to the amount of scheme member contributions, with interest, made by a deferred pensioner.

PART L

5 YEAR GUARANTEE

Initial pension period

68 A scheme pensioner’s “initial pension period” is the period of 5 years beginning on the day on which he or she is first entitled to receive a scheme pension (not counting any intervening period of less than 5 years in which pension payments are suspended under rule 41 or reduced under rule 44).

Guaranteed pension for surviving partner

69 (1) Where a scheme pensioner dies during his or her initial pension period and leaves a surviving partner—

(a) the surviving partner’s entitlement to be paid a partner’s pension is suspended for the remainder of the initial pension period, and

(b) the deceased’s scheme pension is to continue to be paid for the remainder of his or her initial pension period (but is to be paid to the surviving partner instead of to the deceased).

(2) Where a children’s pension is payable in respect of the deceased, the pension payable under this rule is to be reduced—

(a) for the 3 months following death, by the amount of children’s pension payable to the surviving partner during that period, and

(b) for the remainder of the initial pension period, by the total amount of children’s pension payable during that period.
(3) Where the surviving partner dies during the deceased’s initial pension period, the pension payable under this rule is to be paid to the surviving partner’s personal representatives.

Guaranteed lump sum where scheme pensioner dies aged under 75 with no surviving partner

70 (1) A lump sum (a “guaranteed lump sum”) is to be paid to the personal representatives of any scheme pensioner who—
   (a) dies before the end of his or her initial pension period,
   (b) was aged under 75 when he or she died, and
   (c) does not leave a surviving partner.

(2) A guaranteed lump sum is to be equal to—
   (a) the amount of scheme pension which would have been paid to the deceased from time of death until the end of his or her initial pension period, less
   (b) the amount of children’s pension (if any) which the Fund trustees consider likely to be payable from that time until the end of that period.

(3) An additional lump sum is to be paid to the deceased’s personal representatives if the Fund trustees consider that the amount of any guaranteed lump sum (or any previous additional lump sum) should have been more than the amount paid (because they have revised their estimate of the amount of children’s pension which they consider likely to be payable).

(4) An additional lump sum is to be equal to the difference between the amount of the guaranteed lump sum (together with any previous additional lump sum) and the amount which the Fund trustees consider should have been paid.

(5) A guaranteed lump sum or additional lump sum may be paid under this rule only if the Fund trustees are satisfied that, if paid, the lump sum would be a “defined benefits lump sum death benefit” for the purposes of Part 2 of Schedule 29 to the Finance Act 2004 (c.12).

Guaranteed pension where scheme pensioner dies aged 75 or over with no surviving partner

71 (1) Where a scheme pensioner—
   (a) dies before the end of his or her initial pension period,
   (b) was aged 75 or over when he or she died, and
   (c) does not leave a surviving partner,
the deceased’s scheme pension is to continue to be paid for the remainder of his or her initial pension period (and is to be paid to the deceased’s personal representatives).

(2) A pension payable under this rule is to be reduced by the amount of any children’s pension payable during the same period.
PART M

SHORT SERVICE REFUNDS

Payment of short service refunds

72 (1) A sum (a “short service refund”) is to be paid to an individual if the following conditions are met—

- **Condition 1** The individual is no longer a participating member.
- **Condition 2** The individual is not a scheme pensioner.
- **Condition 3** The individual has fewer than 3 months total reckonable service.
- **Condition 4** The individual has applied to the Fund trustees for payment of a short service refund.
- **Condition 5** The Fund trustees are satisfied that, if paid, the full amount of the short service refund will be a “short service refund lump sum” for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12).

(2) A short service refund is to be equal to—

- (a) the amount of scheme member contributions paid by the individual, less
- (b) the amount of any contributions equivalent premium paid in respect of the individual (see section 55(2) of the Pension Schemes Act 1993 (c.48)).

Extinction of scheme benefits

73 Payment of a short service refund extinguishes the rights of all persons to receive scheme benefits in respect of the recipient.

PART N

TRANSFERS

CHAPTER 1

TRANSFERS OUT

Statement of entitlement

74 (1) An individual’s “transferable sum” is the amount of cash equivalent set out in a statement of entitlement which the Fund trustees provide to the individual under section 93A of the Pension Schemes Act 1993 (c.48) (but see rules 76 to 78 which provide for enhancement and reduction of transferable sums).

(2) That section applies for the purposes of the scheme in relation to an individual who—

- (a) is aged 64 or over, and
- (b) stopped being a participating member no longer than 6 months ago,

in the same way as it applies in relation to an individual aged under 64.
Transfers to other pension schemes

An individual’s transferable sum must be transferred from the Pension Fund if the following conditions are met—

**Condition 1**
The individual—
(a) has been but is no longer a participating member, and
(b) is not a scheme pensioner.

**Condition 2**
The individual has total reckonable service of at least 3 months.

**Condition 3**
The Fund trustees have given the individual a statement of entitlement in pursuance of section 93A of the Pension Schemes Act 1993 (c.48).

**Condition 4**
The individual gives the Fund trustees notice (a “transfer-out notice”)—
(a) specifying the way in which the transferable sum is to be transferred, and
(b) setting out any other information which the Fund trustees may reasonably require in relation to the transfer.

**Condition 5**
The transfer-out notice is given before the later of—
(a) the day falling 6 months after the individual stopped being a participating member, and
(b) the individual’s 64th birthday.

**Condition 6**
The transfer-out notice is given within 3 months of the guarantee date relating to the statement of entitlement (see section 93A(2) of the Pension Schemes Act 1993 (c.48)).

**Condition 7**
The way in which the transferable sum is to be transferred is permitted by section 95(2) of the Pension Schemes Act 1993 (c.48).

**Condition 8**
The transfer—
(a) would be a recognised transfer for the purposes of section 169 of the Finance Act 2004 (c.12), and
(b) is not prohibited by any other enactment.

Enhancement of transferable sum

(1) A transferable sum of less than amount A is to be increased to amount A.

(2) Amount A, in relation to an individual, means the total of—
(a) the individual’s scheme member contributions,
(b) any transfer-in sums paid into the Pension Fund in relation to the individual, and
(c) any instalments or lump sums paid by the individual to buy added years.
Reduction of transferable sum

77 Where section 96(2) of the Pension Schemes Act 1993 (c.48) applies in relation to a transfer under rule 75, the Fund trustees may reduce the transferable sum by an amount equal to the proportion of that sum which represents the individual’s accrued rights—
(a) to a guaranteed minimum pension, or
(b) attributable to service in contracted-out employment (within the meaning of section 8 of the Pension Schemes Act 1993 (c.48)).

Transfer payment

78 (1) Where rule 75 requires a transfer to be made, the transferable sum is to be paid from the Pension Fund in the way specified in the transfer-out notice by no later than—
(a) the individual’s 65th birthday, or
(b) if later, the day falling 6 months after the transfer notice was given.

(2) If payment is made later than 6 months after the guarantee date relating to the statement of entitlement by reference to which the transferable sum was determined, the transferable sum is to be increased by—
(a) the amount, if any, by which it falls short of what the transferable sum would have been if the guarantee date had been the date of payment, or
(b) if greater, the amount of interest on the transferable sum calculated on a daily basis over the period from the guarantee date to the date of payment (calculated at an annual rate of 1% above the Bank of England base rate).

Time limits

79 The Fund trustees may extend any time limit set out in this Chapter in relation to a particular transfer if they think it reasonable to do so.

Extinction of scheme benefits

80 A transfer under rule 75 extinguishes the rights of all persons to receive scheme benefits in respect of the individual (other than any accrued rights in respect of which the transferable sum was reduced under rule 77).

CHAPTER 2

TRANSFERS IN

Transfer in

81 A sum (a “transfer-in sum”) may be paid from another pension scheme into the Pension Fund in relation to a participating member if the following conditions are met—

Condition 1 The participating member gives the Fund trustees notice (a “transfer-in notice”) specifying—
(a) the amount of the transfer-in sum, and
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(b) the pension scheme which is to make the payment.

Condition 2 The transfer-in notice is given before the participating member’s 64th birthday.

Condition 3 The participating member has at least 3 months total reckonable service.

Condition 4 The pension scheme which is to make the payment is—
(a) registered for the purposes of Part 4 of the Finance Act 2004 (c.12) (see section 150 of that Act), or
(b) a qualifying recognised overseas pension scheme for the purposes of that Part (see section 169 of that Act).

Condition 5 The transfer-in sum is the amount, if any, which requires to be applied in relation to any entitlement to a guaranteed minimum pension arising in respect of the transfer-in sum.

Condition 6 The transfer is not prohibited by rule 83.

Condition 7 Any condition imposed by the Fund trustees in relation to the transfer is met to their satisfaction.

Effect of transfer in

82 (1) The reckonable service of any participating member in respect of whom a transfer-in sum is paid into the Pension Fund is to be increased as follows—

(a) where the participating member is an MSP member, the participating member’s reckonable service as an MSP is to be increased by an amount determined by the Fund trustees,
(b) where the participating member is an office-holder member but not an MSP—
(i) the participating member’s reckonable service as an office-holder is to be increased by an amount determined by the Fund trustees, and
(ii) that increase is, for the purposes of rule 39(3), to be attributed to the period in office being served when the transfer-in sum is paid.

(2) The increased period of reckonable service is, for the purposes of rule 38(1) or, as the case may be, 39(3), to be treated as a period during which higher rate scheme member contributions were made.

(3) The Fund trustees must determine the amount by which a participating member’s reckonable service is to be so increased—
(a) as at the date on which the transfer-in sum is paid into the Fund, and
(b) in accordance with guidance and tables prepared by the scheme actuary.

Limitation on transfers in

83 (1) A transfer-in sum is not to be paid if the Fund trustees consider that the corresponding increase in reckonable service, when taken with the participating member’s anticipated reckonable service, would (but for rule 38(2) or 39(4)) entitle the participating member to—
(a) an annual MSP pension of more than the individual’s annual MSP pension cap, or
(b) an annual office-holder pension of more than the individual’s annual office-holder
pension cap.

(2) An applicant’s “anticipated reckonable service” is the reckonable service as an MSP or, as the case may be, office-holder which the participating member would obtain if he or she—

(a) continued as an MSP member (and continued making scheme member contributions at the same rate) until the next ordinary general election day, or (as the case may be)

(b) continued to hold the same office and to be an office-holder member (and continued making scheme member contributions at the same rate) until the next ordinary general election day (or such other day as the Fund trustees may determine).

PART O

ADDED YEARS

Added years

84 (1) A participating member may increase his or her reckonable service by buying added years in accordance with this Part.

(2) Added years can be bought as years and as fractions of years.

(3) An individual who is an MSP member may apply to buy added years in respect of reckonable service as an MSP only.

(4) An individual who is an office-holder member but not an MSP may apply to buy added years in respect of reckonable service as an office-holder only.

Buying added years by instalments

85 (1) The Fund trustees may accept a participating member’s application to buy added years by monthly instalments payable if the following conditions are met—

Condition 1 The application states the number of added years which the applicant wishes to buy.

Condition 2 The application states whether the applicant wishes to pay instalments for a period ending on—

(a) his or her 65th birthday, or

(b) the next ordinary general election day.

Condition 3 The applicant has satisfied the Fund trustees that he or she is in good health.

Condition 4 The applicant has given the Fund trustees any information that they reasonably require in relation to the application.

Condition 5 Rule 89 does not require the Fund trustees to reject the application.

(2) An accepted application is irrevocable.
(3) The person responsible for paying the participating member’s salary must—
   (a) deduct instalments from each salary payment made from the first day of the month
       following acceptance until the end of the period for which instalments are
       payable, and
   (b) pay them to the Fund trustees.

(4) The amount of the instalments is to be determined—
   (a) by the scheme actuary, or
   (b) by the Fund trustees in accordance with guidance or tables prepared by the
       scheme actuary.

(5) On payment of the last instalment, the participating member’s reckonable service as an
    MSP or, as the case may be, as an office-holder is increased by the number of added years
    bought.

(6) The increased period of reckonable service is, for the purposes of rule 38(1) or, as the
    case may be, 39(3), to be treated as a period during which higher rate scheme member
    contributions were made.

(7) Where added years are bought by an office-holder member who is not an MSP, the
    increase in reckonable service is, for the purposes of rule 39(3), to be attributed to the
    period in office being served when the added years are bought.

Interruption of service

86 (1) This rule applies—
   (a) where an MSP member buying added years by monthly instalments stops being an
       MSP before paying the last instalment, and
   (b) where an office-holder member (who is not an MSP) buying added years by
       monthly instalments stops holding his or her current office (or becomes an MSP)
       before paying the last instalment.

(2) Where this rule applies no more instalments are payable and the individual’s reckonable
    service as an MSP or, as the case may be, office-holder is increased—
    (a) where the individual died or left the scheme in circumstances entitling him or her
        to a serious ill-health pension, by the number of added years by which it would
        have increased if all the instalments had been paid, or
    (b) where the individual leaves the scheme in any other circumstance, by a number of
        added years calculated as follows—

\[
A \times \frac{B}{C}
\]

where—

“A” is the number of added years the individual applied to buy,
“B” is the period (in days) in respect of which instalments have been paid, and
“C” is the period (in days) for which instalments would have been paid
had the individual remained in the scheme continuously.
Resumption of service as MSP member

87 (1) This rule applies where—  
(a) an MSP member’s application to buy added years by monthly instalments is accepted by the Fund trustees but the individual concerned stops being an MSP member before paying the last instalment,  
(b) the individual subsequently rejoins the scheme as an MSP member before the end of the period for which instalments were originally payable, and  
(c) the individual, within 3 months of so rejoining, notifies the Fund trustees of his or her intention to resume paying instalments.  

(2) Where this rule applies—  
(a) instalments (of the same amount as before) are payable from the day on which the individual rejoined the scheme until the end of the period for which instalments were originally payable,  
(b) the individual’s reckonable service as an MSP is reduced by the amount by which it was previously increased under rule 86(2), and  
(c) when the last instalment is paid (or, if earlier, when the individual next leaves the scheme), the individual’s reckonable service as an MSP is increased by a number of added years calculated as follows—  
\[ A \times \frac{B}{C} \]  
where—  
“\( A \)” is the number of added years the individual applied to buy,  
“\( B \)” is the total of the periods (in days) before and after the break in service in respect of which instalments have been paid, and  
“\( C \)” is the period (in days) for which instalments would have been paid had the individual remained in the scheme continuously.  

Buying added years by lump sum

88 (1) The Fund trustees may accept a participating member’s application to buy added years by lump sum if the following conditions are met.  

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<td>The application states the number of added years which the applicant wishes to buy.</td>
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<td>2</td>
<td>The applicant has satisfied the Fund trustees that he or she is in good health.</td>
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<td>3</td>
<td>The applicant has given the Fund trustees any information that they reasonably require in relation to the application.</td>
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<tr>
<td>4</td>
<td>Rule 89 does not require the Fund trustees to reject the application.</td>
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</table>

(2) The lump sum is payable by the participating member during the period of 6 months following acceptance (and the right to buy added years in pursuance of an accepted application is extinguished at the end of that period).
(3) The amount of the lump sum is to be determined by the Fund trustees by reference to the MSP’s or, as the case may be, the office-holder’s salary on the day he or she applied to buy added years.

(4) Such a determination must be—

(a) certified by the scheme actuary, or

(b) made in accordance with guidance or tables prepared by the scheme actuary.

(5) On payment of the lump sum, the participating member’s reckonable service as an MSP or, as the case may be, as an office-holder is increased by the number of added years bought.

(6) The increased period of reckonable service is, for the purposes of rule 38(1) or, as the case may be, 39(3), to be treated as a period during which higher rate scheme member contributions were made.

(7) Where added years are bought by an office-holder member who is not an MSP, the increase in reckonable service is, for the purposes of rule 39(3), to be attributed to the period in office being served when the added years are bought.

Limitations on buying added years

89 (1) The Fund trustees must reject an application to buy added years if the corresponding increase in reckonable service, when taken with the applicant’s anticipated reckonable service, would (but for rule 38(2) or 39(4)) entitle the applicant to—

(a) an annual MSP pension of more than the individual’s annual MSP pension cap, or

(b) an annual office-holder pension of more than the individual’s annual office-holder pension cap.

(2) An applicant’s “anticipated reckonable service” is the reckonable service as an MSP or, as the case may be, office-holder which the applicant would obtain if he or she—

(a) continued as an MSP member (and continued making scheme member contributions at the same rate) until—

(i) where applying to buy by monthly instalments, the end of the period for which instalments are payable, or

(ii) where applying to buy by lump sum, the next ordinary general election day, or

(b) continued to hold the same office and to be an office-holder member (and continued making scheme member contributions at the same rate) until—

(i) where applying to buy by monthly instalments, the end of the period for which instalments are payable, or

(ii) where applying to buy by lump sum, the next ordinary general election day (or such other day as the Fund trustees may determine).

(3) The Fund trustees must reject an application to buy added years if they consider—

(a) that an annual allowance charge may arise under section 227 of the Finance Act 2004 (c.12) in respect of the applicant in any tax year in which an instalment or lump sum would be payable if the application were accepted,
(b) that a lifetime allowance charge may arise under section 214 of the Finance Act 2004 (c.12) in respect of the applicant (or may so arise if the application were accepted), or

(c) that the total of—

(i) the amount which the applicant would pay for added years in any tax year, and

(ii) the amount of scheme member contributions to be made by the applicant in that year,

would exceed 20% of the salary payments to be made to the applicant in that year.

Multiple applications

The Fund trustees may accept more than one application by a participating member to buy added years by instalment or lump sum (and may, in particular, accept two or more applications to buy added years by instalments payable in overlapping periods).

PART P

PENSION SHARING

Pension credit members

A “pension credit member” is an individual on whom rights are conferred by the Fund trustees in accordance with paragraph 1(2) of Schedule 5 to the Welfare Reform and Pensions Act 1999 (c.30).

It is for the Fund trustees to determine the benefits to which a pension credit member is to be entitled.

But those benefits may consist only of—

(a) a right to be paid a pension from the age of 65,
(b) a right to commute a portion of that pension into a lump sum,
(c) a right to take early retirement when aged between 60 and 65 and accordingly to be paid a reduced pension,
(d) a right to be paid a lump sum instead of a pension where the member has not yet received a pension and is not expected to live for longer than one year because of a health condition,
(e) a right to be paid a lump sum instead of a pension where that lump sum would be a trivial commutation lump sum for the purposes of Part 1 of Schedule 29 to the Finance Act 2004 (c.12),
(f) where a pension credit member dies within 5 years of first receiving a pension, a right to have the pension paid to a surviving partner, dependant children or personal representatives for the remainder of the 5 year period,
(g) where a pension credit member dies before first receiving a pension, a right to have a lump sum paid to a surviving partner, dependant children or personal representatives of an amount equal to 25% of the cash equivalent of the benefits attributable to the corresponding pension credit (within the meaning of Chapter 4 of Part 4 to the Pension Schemes Act 1993 (c.48)).
Scottish Parliamentary Pensions Bill
Schedule 1—Scottish Parliamentary Pension Scheme
Part Q—Dual mandate MSPs

(3) An individual’s benefits as a pension credit member are to be provided separately from any other benefits to which the individual may be entitled under the scheme.

(4) A rule which extinguishes an individual’s right to receive scheme benefits on being paid a lump sum does not extinguish any separate rights which the individual may have to receive benefits as a pension credit member (or as a surviving partner, dependant child or personal representative of such a member).

Pension debit members

92 (1) A “pension debit member” is an individual whose scheme benefits have been reduced under section 31 of the Welfare Reform and Pensions Act 1999 (c.30).

(2) When calculating a deceased individual’s “scheme pension entitlement” for the purposes of Chapter 3 of Part J (see rule 56), any reduction of the deceased’s scheme benefits by way of a pension debit is to be ignored.

(3) A pension debit member may not replace scheme benefits by buying added years which the member would not have been able to buy had those benefits not been reduced.

(4) This rule applies for the purposes of calculating the amount of any death in service lump sum or deferred pensioner lump sum payable in respect of a pension debit member.

The proportion of scheme member contributions attributable to the period before the pension debit member’s scheme benefits became subject to the pension debit is to be reduced by the percentage by which those benefits were reduced.

Part 4 of the Welfare Reform and Pensions Act 1999 (c.30) sets out—
(a) when a pension debit member’s scheme benefits become subject to a pension debit (see sections 28 and 29 of that Act), and
(b) the percentage by which those benefits are to be reduced (see section 31 of that Act).

Death of ex-partner before discharge of pension credit liability

93 (1) This rule applies where an individual entitled to a pension credit (see section 29(1)(b) of the Welfare Reform and Pensions Act 1999 (c.30)) dies before the Fund trustees have discharged their liability in respect of that credit.

(2) Where this rule applies, the Fund trustees may pay a lump sum to the individual’s personal representatives of any amount they think fit (up to a maximum of 25% of the pension credit).

PART Q
DUAL MANDATE MSPS

Dual mandate MSPs

94 A “dual mandate MSP” is a serving MSP whose salary is reduced under section 82 of the Scotland Act 1998 (c.46).
Pension reduction for dual mandate MSPs

The following adjustments are to be made when doing the calculation set out in rule 38(1) in respect of any individual who was a dual mandate MSP during any period in which the individual was an MSP member—

(a) any reduction in final salary by virtue of section 82(2) of the Scotland Act 1998 (c.46) is to be ignored,

(b) when determining A, any period of reckonable service as an MSP in respect of which the individual—

(i) made lower rate scheme member contributions, and

(ii) was a dual mandate MSP,

is to be reduced by the same proportion as the MSP’s salary was reduced during that period by virtue of section 82(2) of the Scotland Act 1998 (c.46), and

(c) when determining B, any period of reckonable service as an MSP in respect of which the individual—

(i) made higher rate scheme member contributions, and

(ii) was a dual mandate MSP,

is to be reduced by the same proportion as the MSP’s salary was reduced during that period by virtue of section 82(2) of the Scotland Act 1998 (c.46).

PART R
TAXES

2004 Act terms

In this Part—

“the 2004 Act” means the Finance Act 2004 (c.12),

“event” means a benefit crystallisation event listed in the table in section 216 of the 2004 Act,

“lifetime allowance charge” has the meaning given by section 214 of the 2004 Act,

“scheme administrator” means the scheme administrator of the scheme for the purposes of section 217 of the 2004 Act (see sections 270 to 274 of the 2004 Act), and

“unauthorised charge” means an unauthorised payments charge (see section 208 of the 2004 Act) or an unauthorised payments surcharge (see section 210 of the 2004 Act).

Payment of lifetime allowance charge by scheme administrator

The scheme administrator may pay a lifetime allowance charge for which the administrator is liable under section 217 of the 2004 Act.

But such a payment may be made only if the individual with whom the scheme administrator is jointly and severally liable—
(a) requests the scheme administrator to make the payment on or before the date of
the event in respect of which the lifetime allowance charge arises, and
(b) pays the amount concerned to the scheme administrator on or before that date.

Payment of lifetime allowance charge from Pension Fund

5 98 (1) If rule 97(2) prevents the scheme administrator from paying a lifetime allowance charge
for which the administrator is liable under section 217 of the 2004 Act, the charge is to
be paid from the Pension Fund.

(2) Following such a payment, a reduction is to be made—
   (a) where liability arose in respect of event 8, to the amount or value of the
       transferred sums or assets, or
   (b) where liability arose in respect of any other event, to the amount or value of the
       benefits payable from the Fund to or in respect of the individual with whom the
       scheme administrator was jointly and severally liable.

(3) A reduction under rule 98(2) must, in the scheme actuary’s opinion, fully reflect the
    corresponding amount paid under rule 97.

Deductions for tax arising on lump sum payments

99 Any tax due under section 205 of the 2004 Act in respect of a short service lump sum
(see rule 72) is to be deducted from that sum before it is paid.

Reduction of benefits which would otherwise attract unauthorised charge

100 Where an unauthorised charge would (but for this rule) arise in respect of any payment
from the Pension Fund, that payment must be—
   (a) reduced to an amount just below the amount which would otherwise cause that
       charge to arise, or
   (b) where no such reduction is possible, withheld in accordance with rule 101.

Prohibition on payments which would give rise to liability for certain taxes

101 Nothing in the scheme authorises any payment from the Pension Fund if making that
payment would give rise to liability for a scheme sanction charge (see section 239 of the
2004 Act) or a de-registration charge (see section 242 of the 2004 Act).

Any payment which would, but for this rule, be made under the scheme is not to be
made.

PART S
ACCOUNTS, AUDIT AND ACTUARIAL REPORTS

Accounts and audit

102 (1) The Fund trustees must keep proper accounts (and must, in particular, prepare annual
statements of account for each financial year).
(2) The Fund trustees must, within 7 months of the end of each financial year—
   (a) arrange for the audit of the annual accounts for that year, and
   (b) lay a copy of the annual accounts and audit report before the Scottish Parliament.

**Actuarial reports**

103 (1) The “scheme actuary” is the person appointed by the Fund trustees in accordance with section 47(1)(b) of the Pensions Act 1995 (c.26).

(2) The Fund trustees may obtain an actuarial report on the scheme at any time they think fit (and must do so at intervals of no more than 3 years).

(3) An actuarial report is to include—
   (a) a report on the general financial position of the Pension Fund,
   (b) an actuarial valuation of the Pension Fund’s assets and liabilities, and
   (c) the scheme actuary’s recommended rate for future contributions under rule 32 (expressed as a percentage of participating member salary payments).

(4) The Fund trustees must lay a copy of each actuarial report before the Scottish Parliament within 3 months of obtaining it.

**PART T**

**MISCELLANEOUS**

**Dispute resolution procedure**

104 Section 50 of the Pensions Act 1995 (c.26) requires the Fund trustees to make and implement arrangements for the resolution of disputes.

**Guaranteed minimum pension**

105 (1) Any individual who is entitled to a guaranteed minimum pension under the scheme in respect of any transfer-in sum is, on attaining pensionable age, to be paid a pension for the rest of the individual’s life at a weekly rate of not less that his or her guaranteed minimum (if any) under sections 14 to 16 of the Pension Schemes Act 1993 (c.48).

   “pensionable age” is to be construed in accordance with paragraph (a) of the definition of that term in section 181 of the Pension Schemes Act 1993 (c.48).

(2) The commencement of payment of a pension payable under this rule is to be postponed if the individual concerned is an MSP or the holder of a pensionable office on the day on which it becomes payable.

(3) Such a postponement is to last—
   (a) until the earlier of—
       (i) the day on which the individual is neither an MSP nor the holder of a pensionable office, or
       (ii) the day falling 5 years after the first day of the postponement, or
   (b) for such longer period as the individual may consent to.
Restriction on assignability etc.

106 Despite paragraphs (a) to (c) of section 91(5) of the Pensions Act 1995 (c.26), assignations, surrenders and commutations of the type described in those paragraphs are not permitted in relation to scheme benefits (except insofar as permitted explicitly by any scheme rule).

Payments due in respect of deceased individuals

107 (1) This rule applies where a deceased’s scheme entitlement is no more than the amount for the time being applicable in relation to the enactments mentioned in section 6 of the Administration of Estates (Small Payments) Act 1965 (c.32).

A deceased’s “scheme entitlement” is the total of—

(a) any amounts due to the deceased under the scheme at the time of death, and
(b) any amounts payable to the deceased’s personal representatives under the scheme (ignoring any amounts due by way of interest accruing after death).

(2) Where this rule applies, the Fund trustees need not require confirmation or other proof of title before paying amounts due to—

(a) the deceased’s personal representatives, or
(b) any person appearing to the Fund trustees to be beneficially entitled to the deceased’s estate.

(3) The recipient of any amount so paid is to be liable to account for that amount (and the Fund trustees are to be relieved from any such liability).

Formal communications

108 (1) A “formal communication” means any—

(a) notice,
(b) application,
(c) request, or
(d) certification,

made or given under or for the purposes of this Act.

(2) A formal communication must be in writing.

(3) A formal communication is made or given to a person if it is—

(a) delivered, or sent by post, to—

(i) where the formal communication is being delivered to the Fund trustees or an MSP, the Scottish Parliament,

(ii) where the formal communication is being sent to the holder of a pensionable office (who is not an MSP), the office-holder’s principal office, or

(iii) in any other case, the usual or last known abode of the person to whom the formal communication is delivered or sent, or
[b) sent in some other way (including by electronic means) which the sender reasonably considers likely to cause it to be delivered on the same or next day.]

(4) A formal communication which is sent by electronic means is to be treated as being in writing if it is received in a form which is legible and capable of being used for subsequent reference.

(5) A formal communication sent in the way described in rule 108(3)(b) is, unless the contrary is proved, to be treated as having been delivered on the day after it is sent (or, if that day falls on a weekend or a bank holiday, on the next weekday which is not a bank holiday).

“bank holiday” means a day which is a bank holiday in Scotland by virtue of the Banking and Financial Dealings Act 1971 (c.80).

PART U

KEY TERMS

Interpretation

109 (1) In the scheme—

“deferred pensioner” means an individual (other than a participating member or a scheme pensioner whose pension payments are suspended under rule 41) who is not entitled to receive a scheme pension by virtue only of being—

(a) aged under 65, or

(b) an MSP, or the holder of a pensionable office, who is aged 65 or over,

“doctor” means a fully registered person within the meaning of the Medical Act 1983 (c.54),

“elected” means returned as an MSP by virtue of the Scotland Act 1998 (c.46) (and includes being appointed as an MSP by virtue of section 10 of that Act),

“final salary”, in relation to an MSP or the holder of a pensionable office, means—

(a) the MSP salary or, as the case may be, office-holder salary paid to the individual during the last 12 months (whether continuous or not) during which the individual was an MSP member or, as the case may be, office-holder member, or

(b) if the individual made scheme member contributions from MSP salary or, as the case may be, office-holder salary for fewer than 12 months, the amount determined by doing the following calculation—

\[
\frac{A \times \frac{365}{B}}{}
\]

where—

“A” is the MSP salary or, as the case may be, office-holder salary paid to the individual during the period for which the individual was an MSP member or, as the case may be, office-holder member, and

“B” is the number of days for which the individual was an MSP member or, as the case may be, office-holder member,
“financial year” means a year ending with 31 March,
“guaranteed minimum pension” has the meaning given by section 8 of the Pension Schemes Act 1993 (c.48),
“higher rate scheme member contribution” is a scheme member contribution of 11% of salary,
“ill-health pension” means—
(a) a serious ill-health pension,
(b) an ordinary ill-health pension, or
(c) a deferred pensioner’s ill-health pension,
“lower rate scheme member contribution” is a scheme member contribution of 6% of salary,
“MSP” means a member of the Scottish Parliament (but also includes an individual to whom an MSP salary is payable after dissolution by virtue of section 83(4) of the Scotland Act 1998 (c.46)),
“ordinary general election day” means a day on which an ordinary general election is scheduled to be held under section 2(2) of the Scotland Act 1998 (c.46),
“participating member” means an individual who is an MSP member or an office-holder member (or both an MSP member and an office-holder member),
“rule” means a rule set out in the scheme,
“salary” means—
(a) in relation to an MSP, the salary payable by virtue of section 81(1) of the Scotland Act 1998 (c.46) (including any salary payable because of section 83(4) of that Act), and
(b) in relation to an office-holder, the salary payable for holding office,
and “MSP salary” and “office-holder salary” are to be construed accordingly,
“salary payment” means—
(a) in relation to a participating member who is an MSP member only, a payment in respect of the member’s MSP salary,
(b) in relation to a participating member who is an office-holder member only, a payment in respect of the member’s office-holder salary,
(c) in relation to a participating member who is both an MSP member and an office-holder member, a payment in respect of the member’s MSP salary or office-holder salary (or both salaries),
“scheme member” means an individual who is—
(a) a participating member,
(b) a deferred pensioner, or
(c) a scheme pensioner,
“scheme pensioner” means an individual—
(a) entitled to receive a scheme pension, or
(b) who would be so entitled but for rule 41(1),

“SPCB” means the Scottish Parliamentary Corporate Body,

“work” includes work—

(a) under a contract of employment, service or apprenticeship,

(b) as the holder of an office, or

(c) as a self-employed person.

(2) References in the scheme to the amount of an individual’s scheme pension are references to the amount of scheme pension payable to the individual under rule 37(2) and, unless the contrary intention appears, are to be read as including any reduction or enhancement to that amount attributable to—

(a) rules 43(2), 44(2), 46(4), 50 or 95, or

(b) section 31 of the Welfare Reform and Pensions Act 1999 (c.30) or any other enactment,

and references to the annual amount of an individual’s scheme pension are to be construed accordingly.

(3) References in the scheme to an amount of scheme member contributions “with interest” are references an amount equal to—

(a) the amount of those contributions, and

(b) compound interest of 4% each year accruing from the date each contribution was paid (calculated with annual rests).

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110 The words and expressions listed in the left column of the following table are defined or otherwise explained for the purposes of the scheme by the rules indicated in the right column.

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SCHEDULE 2
(introduced by section 2)
GRANTS PAYABLE ON LEAVING OFFICE

MSP resettlement grant

1 (1) The SPCB must pay a grant (an “MSP resettlement grant”) to each individual who—
(a) is an MSP immediately before a dissolution of the Scottish Parliament, but
(b) is not returned as an MSP at the next general election held under Part 1 of the Scotland Act 1998 (c.46).

(2) An MSP resettlement grant is not payable to the personal representatives of an individual who dies before the election concerned.

MSP ill-health retirement grant

2 (1) The SPCB must pay a grant (an “MSP ill-health retirement grant”) to an ex-MSP who applies for such a grant if—
(a) the applicant resigned as an MSP at any time other than immediately before a dissolution of the Scottish Parliament, and
(b) the SPCB is satisfied that the resignation was a direct consequence of a health condition which prevented the applicant from performing adequately his or her duties as an MSP.

(2) The SPCB may, for the purposes of so satisfying itself, require—
(a) an applicant to provide evidence from a doctor of the applicant’s state of health,
(b) an examination of the applicant by a doctor nominated by the SPCB (with examination costs borne as the SPCB may determine).

Amount of MSP grants

3 (1) The amount of an MSP resettlement grant or MSP ill-health retirement grant is to be equal to the appropriate percentage of the annual MSP salary payable in accordance with section 81(1) of the Scotland Act 1998 (c.46) when the individual stopped being an MSP.

“appropriate percentage” means the higher of—
(a) 50%, and
(b) \( \frac{A}{12} \times 100 \)

where “A” is the number of complete continuous years for which the individual has been an MSP (up to a maximum of 12).

(2) When determining “A”, any period during which the individual to whom the grant is payable was a dual mandate MSP is to be reduced by the same proportion as the individual’s MSP salary was reduced during that period by virtue of section 82(2) of the Scotland Act 1998 (c.46)).
(3) Sub-paragraph (2) does not apply in relation to any period—

(a) during which an individual who is an MSP on the day on which this paragraph comes into force is an MSP, and

(b) which occurs before the first general election held under Part 1 of the Scotland Act 1998 (c.46) after that day.

Office-holder resettlement grant

4 (1) The SPCB must pay a grant (an “office-holder resettlement grant”) to an individual who—

(a) stops being the holder of a pensionable office, and

(b) is not appointed as the holder of a pensionable office during the following 90 days.

(2) The amount of an office-holder resettlement grant is to be equal to the appropriate percentage of the annual office-holder salary payable to the individual when the individual left office.

“appropriate percentage” means—

(a) in the case of the Presiding Officer or First Minister, the higher of—

(i) 50%, and

(ii) $X\%$, “$X$” being equal to—

$$\frac{A}{12} \times 100$$

where “$A$” is the number of complete continuous years for which the individual has been Presiding Officer or First Minister (up to a maximum of 12),

(b) in any other case, 25%.

(3) An office-holder resettlement grant is not payable—

(a) to the personal representatives of an individual who—

(i) stops holding a pensionable office because he or she dies, or

(ii) dies during the period of 90 days after the individual stops holding a pensionable office, or

(b) to any individual who, on the day this paragraph comes into force, is or has been—

(i) the Presiding Officer, or

(ii) the First Minister.

Key terms

The following terms have the same meaning in this schedule as they have in the Scottish Parliamentary Pension Scheme (see schedule 1)—

“doctor”

“dual mandate MSP”
“holder of a pensionable office”
“MSP”
“MSP salary”
“office-holder salary”
“SPCB”

SCHEDULE 3
(introduced by section 1(3))

TRANSITIONAL PROVISIONS AND SAVINGS

Introductory

1 (1) In this schedule—

“new rules day” means the first day of the month which follows the month which includes the day falling 6 months after the Bill for this Act receives Royal Assent,
“new scheme rules” means the rules set out in schedule 1 which govern the scheme from the new rules day,
“1999 scheme rules” means the provisions of the 1999 pensions order which governed the scheme before the new rules day.

(2) Other words and expressions used in this schedule have the same meaning as they have in the new scheme rules (unless the contrary intention appears).

Continuation of scheme and transfer of Pension Fund

2 Despite article A3 of the 1999 pensions order—

(a) that order continues to have effect in so far as needed to give effect to section 1(1) of this Act, and

(b) article B1 of the 1999 scheme rules continue to have effect in so far as it establishes the Pension Fund.

Scheme participation

3 An individual is not entitled to participate in the scheme as an office-holder member if, on the new rules day, the individual is or has been—

(a) the Presiding Officer, or

(b) the First Minister.

Scheme member contributions

4 (1) An “existing participating member” is an individual who—

(a) participates in the scheme in accordance with the 1999 scheme rules when this paragraph comes into force, and

(b) would become a participating member in accordance with the new scheme rules if still participating in the scheme on the new rules day.
Despite new scheme rule 28, an existing participating member is to continue to make lower rate scheme member contributions after the new rules day if he or she notifies the SPCB that he or she wishes to do so.

Such a notice is valid only if received at least 14 days before the new rules day.

The SPCB must inform the Fund trustees of every valid notice given to it under this paragraph.

This paragraph does not prevent the existing participating member from subsequently changing the amount of scheme member contributions in accordance with new scheme rule 29.

The determination under article D3(2) of the 1999 scheme rules which has effect immediately before the new rules day is to have effect after that day as if made under new scheme rule 32(2).

This paragraph applies to an individual who—

(a) was a “participating member” under the 1999 scheme rules, but

(b) is not, immediately before the new rules day, a “pensioner member” under the 1999 scheme rules.

After the new rules day—

(a) the “aggregate period of reckonable service as a participating member” which an individual to whom this paragraph applies has obtained under the 1999 scheme rules is to be treated as a period of reckonable service as an MSP for the purposes of the new scheme rules, and

(b) the individual concerned is to be treated as having made lower rate scheme member contributions during that period.

Where an individual to whom this paragraph applies—

(a) is purchasing added years by periodical contributions in accordance with Schedule 5 to the 1999 pensions order immediately before the new rules day, or

(b) has had an application to purchase added years accepted by the SPCB in accordance with Schedule 5 to the 1999 pensions order but has not yet made the lump sum payment,

no part of the added years concerned are to be treated as forming part of the individual’s “aggregate period of reckonable service as a participating member” for the purposes of this paragraph.

This paragraph applies to an individual who—

(a) was a “participating office holder” under the 1999 scheme rules, but

(b) is not, immediately before the new rules day, a “pensioner member” under the 1999 scheme rules.
(2) After the new rules day—

(a) the “aggregate period of reckonable service as a participating office holder” which an individual to whom this paragraph applies has obtained under the 1999 scheme rules is to be treated as a period of reckonable service as an office-holder under the new scheme rules, and

(b) the individual concerned is, for the purposes of new scheme rule 39, to be treated as having obtained a single office-holder pension entitlement in respect of that “aggregate period of reckonable service as a participating office holder” to be calculated as follows—

\[
\text{aggregate period of reckonable service as a participating office-holder} \times \frac{\text{highest office-holder salary}}{50}
\]

where “highest office-holder salary” means—

(i) the highest office-holder salary paid to the individual during any period of 12 months (whether continuous or not and whether before or spanning the new rules day) for which the individual participates in the scheme (as a “participating office holder” under the 1999 scheme rules or as an “office-holder member” under the new scheme rules) in respect of a pensionable office to which he or she was appointed before the new rules day, or

(ii) where the individual so participates for fewer than 12 months, the amount determined by doing the following calculation—

\[
A \times \frac{365}{B}
\]

where—

“A” is the office-holder salary paid to the individual during the period in which he or she so participates, and

“B” is the number of days for which the individual so participates.

Total reckonable service

The total reckonable service of an individual who participated in the scheme before the new rules day (see new scheme rule 35) includes the “actual period of reckonable service as a participant” which the individual obtained under the 1999 scheme rules.

Special provision for participants reaching age of 75 before the new rules day

8A(1) This paragraph applies to an individual who—

(a) is participating in the scheme in accordance with the 1999 scheme rules, and

(b) is aged under 75 when this paragraph comes into force but will reach the age of 75 before the new rules day.

(2) An individual to whom this paragraph applies may, before reaching the age of 75, give notice to the SPCB that he or she desires to commute into a lump sum such part of his or her pension as is specified in the notice.

(3) An individual who gives such a notice is to be treated for the purposes of Part G of the 1999 scheme rules as having given an equivalent notice under article G1(1) (and Part G is to apply accordingly).
(4) Despite article F1(a) and (b) and article F2 of the 1999 scheme rules—
(a) the fact that an individual who gives such a notice is—
   (i) an MSP, or
   (ii) the holder of a qualifying office (within the meaning of article C2(3) of the 1999 scheme rules),

   does not prevent the individual from being entitled to receive a pension, from the day before the individual’s 75th birthday, in accordance with article F1 or F2 of the 1999 scheme rules, but

   (b) the amount of pension so payable is to be nil until the individual is neither an MSP nor the holder of such an office.

Payment of pensions due on new rules day etc.

9 Despite article A3 of the 1999 pensions order, the 1999 scheme rules are to continue to have effect (instead of the new scheme rules) in relation to any individual who, immediately before the new rules day, is entitled to receive a pension in accordance with the 1999 scheme rules.

But the SPCB’s functions, rights, liabilities and obligations under the 1999 scheme rules which relate to such individuals are transferred to and vest in the Fund trustees.

Entitlement of partners and children after new rules day

10 Despite the preceding paragraph, the new scheme rules are to govern an individual’s entitlement to receive scheme benefits by virtue of being the partner or child of an individual who—

   (a) is entitled to receive a pension on the new rules day, or
   (b) died before the new rules day.

This paragraph does not affect payments due or withheld in respect of any period before the new rules day.

Early retirement

11 (1) An individual falls within this paragraph if the individual—

   (a) participated in the scheme before the new rules day,
   (b) accumulates at least 15 years relevant service before the cut-off date, being service which is the total of—

      (i) any period of service as an MSP during which the individual participated in the scheme (under the 1999 scheme rules or the new scheme rules), and
      (ii) any period of service as a member of the European Parliament or the House of Commons that is not concurrent with any such period of service as an MSP, and

      (c) where the individual is under 55, has a “protected pension age” of under 55 in relation to the scheme for the purposes of paragraph 22(8) of Schedule 36 to the Finance Act 2004 (c.12).
(2) Rule 46 applies to an individual falling within this paragraph with the following modifications—

(a) in rule 46(1)(a), for “55” substitute “50”,

(b) the proportion of the amount of annual scheme pension attributable to reckonable service accumulated before the cut-off date is to be reduced under rule 46(4) by no more than the appropriate percentage specified in the table set out in schedule 4 to the 1999 pensions order.

(3) In this paragraph “cut-off date” means the date of the first general election held under Part 1 of the Scotland Act 1998 (c.46) after the new rules day.

10 Partner’s and children’s pensions

12 (1) An individual falls within this paragraph if the individual—

(a) participated in the scheme before the new rules day,

(b) accumulates at least 15 years relevant service before the date of the first general election held under Part 1 of the Scotland Act 1998 (c.46) after the new rules day, being service which is the total of—

(i) any period of service as an MSP during which the individual participated in the scheme (under the 1999 scheme rules or the new scheme rules), and

(ii) any period of service as a member of the European Parliament or the House of Commons that is not concurrent with any such period of service as an MSP, and

(c) takes early retirement after the new rules day.

(2) The reduction made under new scheme rule 46(4) to the scheme pension of an individual falling within this paragraph is to be ignored when calculating the individual’s “scheme pension entitlement” for the purposes of new scheme rule 56.

25 5 year guarantee

13 (1) The Fund trustees may, instead of continuing to pay a deceased scheme pensioner’s scheme pension under new scheme rule 71, pay to the deceased’s personal representatives an amount equal to the lump sum which would have been payable under article M4 of the 1999 scheme rules if those had continued in force.

(2) But such a lump sum may be paid only if—

(a) the deceased participated in the scheme before the new rules day, and

(b) the payment would, by virtue of paragraph 36 of Schedule 36 to the Finance Act 2004 (c.12), be permitted by the lump sum death benefit rule (see section 168 of that Act).

35 Deferred pensioner lump sums

14 (1) This paragraph applies where a deferred pensioner lump sum is payable under new scheme rule 67(1) in respect of a deceased individual who participated in the scheme under the 1999 scheme rules.
(2) Where this paragraph applies, any sums deducted from the deceased’s salary in accordance with Part D of the 1999 scheme rules are to be treated for the purposes of new scheme rule 67(2) as being scheme member contributions made by the deceased.

**Short service refunds**

15 (1) Condition 3 of new scheme rule 72(1) does not apply in relation to an individual who participated in the scheme before the new rules day (but such an individual is entitled to a short service refund only if he or she has fewer than 2 years total reckonable service).

(2) Any sums deducted from the salary of such an individual in accordance with Part D of the 1999 scheme rules are to be treated for the purposes of new scheme rule 72(2) as being scheme member contributions made by the individual.

**Transfers**

16 (1) When applying rule 76 in relation to an individual who participated in the scheme before the new rules day, amount A is to include—

(a) any contributions made in respect of the individual under article D1 of the 1999 scheme rules,

(b) any sums received in respect of the individual under article P6 of the 1999 scheme rules, and

(c) any payments made by the individual under Schedule 5 to the 1999 scheme rules.

(2) Condition 2 in new scheme rule 81 does not apply during the 12 months following the new rules day in relation to an individual who is a participating member on the new rules day.

**Added years**

17 (1) This paragraph applies where an individual—

(a) is purchasing added years by periodical contributions in accordance with Schedule 5 to the 1999 scheme rules immediately before the new rules day, or

(b) has had an application to purchase added years accepted by the SPCB in accordance with Schedule 5 to the 1999 scheme rules but has not yet made the lump sum payment.

(2) Where this paragraph applies—

(a) Part Q of (and Schedule 5 to) the 1999 scheme rules are, despite article A3 of the 1999 pensions order, to continue to have effect in relation to those purchases,

(b) the individual’s reckonable service as an MSP is to be increased by any added years in respect of which the periodical contributions (including any paid before the new rules day) or lump sum has been paid, and

(c) that increased period of reckonable service is, for the purposes of new scheme rule 38(1), to be treated as a period during which lower rate scheme member contributions were made.

(3) The reference in new scheme rule 89(3)(c)(ii) to scheme member contributions is, in relation to any tax year including or after the new rules day, to include any contributions made during that year under paragraph 4 of Schedule 6 to the 1999 scheme rules.
### AVC Scheme

18 (1) Despite article A3 of the 1999 pensions order, the scheme for making additional voluntary contributions set out in Part R of (and Schedule 6 to) the 1999 scheme rules is to continue to have effect with the following modifications—

(a) all the SPCB’s functions, rights, liabilities and obligations in relation to the AVC scheme are transferred to and vest in the Fund trustees,

(b) no individual may become a contributor to the AVC scheme after the new rules day (and sub-paragraphs (1) and (3) of paragraph 3 of Schedule 6 is accordingly to cease to have effect),

(c) in paragraph 3(2) of Schedule 6, the words from “but” to “participant” are to cease to have effect,

(d) no transfers may be made to the AVC scheme after the new rules day (and paragraph 4 (4) of Schedule 6 is accordingly to cease to have effect),

(e) in paragraph 9 of Schedule 6—

(i) in sub-paragraph (1)(a), for the words from “an” to “1993” substitute “another pension scheme subject to that transfer being a recognised transfer for the purposes of section 169 of the Finance Act 2004 (c.12)”, and

(ii) in sub-paragraph (1)(c), for “2 years” substitute “3 months”,

(f) paragraphs 10 and 11 of Schedule 6 are to cease to have effect.

(2) New scheme rule 3 does not apply in relation to benefits payable and AVC contributions received under the AVC scheme.

### Guaranteed minimum pension

19 The reference in new scheme rule 105(1) to a “transfer-in sum” includes reference to any sum received under article P6 of the 1999 scheme rules.

### Presiding Officer and First Minister pension scheme

20 (1) Despite article A3 of the 1999 pensions order, Part S of the 1999 order is to continue to have effect in relation to—

(a) any individual who is, or who has been, the First Minister or the Presiding Officer on or before the new rules day, and

(b) the rights of any person to receive benefits under Part S of the 1999 order in respect of such an individual.

(2) The SPCB is to continue as the manager of the scheme established by Part S of the 1999 order and, in particular, is to determine the extent of any benefits conferred on an individual in respect of that scheme in accordance with paragraph 2(2) of Schedule 5 to the Welfare Reform and Pensions Act 1999 (c.30).

(3) When calculating an individual’s entitlement to benefits under article S2 of the 1999 scheme rules, any reduction of the deceased’s pension by way of a pension debit arising under the Welfare Reform and Pensions Act 1999 (c.30) is to be ignored.
General saving

21 Despite article A3 of the 1999 pensions order, the 1999 scheme rules are to continue to have effect in so far as they are needed to give effect to any provisions saved by this schedule.

5 Disapplication of scheme modifications

22 The modifications set out in regulations made under paragraph 3 of Schedule 36 to the Finance Act 2004 (c.12) no longer apply in relation to the scheme.
Scottish Parliamentary Pensions Bill
[AS AMENDED AT STAGE 2]

An Act of the Scottish Parliament to set out rules to govern the Scottish Parliamentary Pension Scheme; to provide for the payment of resettlement grants to individuals when they stop being members of the Scottish Parliament or holding certain offices; and for connected purposes.

Introduced by: Alasdair Morgan (on behalf of the Scottish Parliamentary Pension Scheme Committee)
On: 22 September 2008
Bill type: Committee Bill

After debate, the motion was agreed to (DT).

Accordingly the Parliament resolved—That the Parliament agrees that the Scottish Parliamentary Pensions Bill be passed.
Scottish Parliament

Thursday 22 January 2009

[The Presiding Officer opened the meeting at 09:15]

Scottish Parliamentary Pensions Bill: Stage 3

The Presiding Officer (Alex Fergusson):
Good morning. The first item of business is a debate on motion S3M-3029, in the name of Alasdair Morgan, on the Scottish Parliamentary Pensions Bill.

09:15
Alasdair Morgan (South of Scotland) (SNP): I am very glad to open this stage 3 debate on the Scottish Parliamentary Pensions Bill, which I hope will be the final debate on the bill.

After members agreed that it was necessary to reform the 10-year old transitional arrangements under the Scotland Act 1998 and to replace both the Scottish parliamentary pensions scheme and the Scotland Act 1998 (Transitory and Transitional Provisions) (Grants to Members and Officeholders) Order 1999 to reflect various changes in United Kingdom tax and pensions law, an ad hoc committee—the Scottish Parliamentary Pension Scheme Committee—was established just before the summer recess in 2007 to report on the matter. I was honoured to be appointed as the committee convener. The committee took oral evidence from experts in the various disciplines in the pensions field. Committee members are grateful to all those who gave us the benefit of their experience on those matters.

As members know, chamber debates on the bill have been fairly brief. That reflects neither the importance of the bill nor the complexity of the matters that it addresses. Indeed, the very complexity of the subject means that it is inevitable that either a very short or a very long debate has to be held. In my view, the best use of parliamentary time is achieved if parliamentarians deal with the many complexities that are involved in any pension legislation at committee. Indeed, from the outset, members of the Scottish Parliamentary Pension Scheme Committee were clear not only that we were involved in a difficult and technical area, but that we would be subject to close scrutiny. That was only right, given the current economic climate.

Again, from the outset, we made it clear that we had a duty to provide for members and office-holders a modern, equality-proofed range of benefits. We knew that we had to meet the challenge of producing a scheme that was attractive to members and to strike a proportionate balance between the scheme benefits and the actual cost to members and—just as important—the public purse of doing that. I think that we succeeded in doing so.

The bill makes important changes to members' pension arrangements to bring them into line with current taxation and pension provisions. It also sets out arrangements for those provisions to be kept up to date as required in the future, makes changes to equality proof the scheme and incorporates requirements that relate to partners and divorce legislation.

The new scheme removes a potential tension with the Scottish Parliamentary Corporate Body by moving the administration of the fund to a board of trustees who will become responsible for its administration. It provides scheme members with greater choice on how they accrue benefits and increases the options that are available to them on retirement. It also makes special provision for serving members who are approaching the age of 75 to access certain benefits and for death benefits for scheme pensioners who are aged 75 and over.

Furthermore, the scheme permits early retirement from the age of 55 for all members—a provision that is subject to a standard percentage reduction for each year of early retirement—and removes the necessity of a member having to have 15 years' service and other archaic conditions that apply to dependants' pensions.

Under the new rules, the scheme will continue to make provision for scheme members who suffer from ill-health while acknowledging that, with advances in health care, members may recover, at least in part, and therefore be able to undertake once again some kind of gainful work.

Most important, the scheme does all those things without increasing the cost to the public purse. The new scheme was costed by the scheme actuary—clearly an expert in his field—who confirmed that there were no increases in cost to the employer from the proposed changes. If scheme members want to accrue benefits more quickly or to purchase additional benefits, they may do so, but they meet the full cost themselves.

Since we last debated the bill in the chamber, a second ad hoc committee—the Scottish Parliamentary Pensions Bill Committee—has been set up to consider any amendments at stage 2. Those amendments that were lodged were largely technical in nature. Albeit that the committee's public proceedings were commendably brief, I thank committee members for their work in getting up to speed on the contents of the bill.
Even if we agree to pass the bill today, we are still far from the end of the work that will be required to bring the new scheme rules successfully into force. If the bill receives royal assent next month, as I hope it will, the new scheme rules will come into force fully from 1 September. Some rules will commence earlier than that to allow the necessary preparations to be made; perhaps the most important of those rules relate to the election and appointment of trustees to administer and manage the fund and its assets.

The role of the trustees is important: they will undertake a vital job on behalf of all scheme members. I hope that we can proceed to identify and elect suitable candidates as soon as possible. In that regard, I thank the Standards, Procedures and Public Appointments Committee for its ongoing work to produce the necessary changes to our standing orders that will allow that to happen.

Other work is under way to rewrite the scheme booklet, provide scheme members with notification of the changes, and give each member the opportunity to state whether they want to remain at the current rate of pension accrual or move to the higher rate. Once the trustees are appointed, they will have to grapple with some staffing and contractual issues, ensure that all the arrangements are in place for the new scheme, and check that all necessary approvals have been obtained and the necessary expert advisers have been appointed. All that needs to be done by 1 September.

We have come a long way in working to produce a modern and attractive pension scheme that is fit for the 21st century and which complies with the relevant legislation from tax to equalities.

I move,

That the Parliament agrees that the Scottish Parliamentary Pensions Bill be passed.

09:21

Keith Brown (Ochil) (SNP): Like most members in the chamber, I should declare an interest, both as a current member of the scheme—and potential member of the new scheme—and as a taxpayer. I, too, highlight the point that Alasdair Morgan made about this necessary change being made at nil cost to the public purse, or at least as best the estimates can determine. As Alasdair Morgan also said, the debate is the culmination of a detailed piece of work to introduce a highly technical but necessary bill to bring the pension and grant schemes up to date.

Members of the Scottish Parliament are not alone in looking at pension provision and seeking to find cost-efficient and effective ways in which to plan for retirement, whenever that may come. In November 2008, the Pensions Act 2008 introduced measures that included a duty on employers to automatically enrol all eligible workers who were not already members of a good-quality workplace pension scheme into such a scheme and to provide a minimum contribution. The 2008 act also allows for the establishment of a new scheme—currently it is known as the personal accounts scheme—which is a simple, low-cost pension savings vehicle that is aimed at those who do not have access to a workplace pension scheme.

Everyone needs to plan for their retirement. With that in mind, I turn to the work that was undertaken on the Scottish Parliamentary Pensions Bill. I thank Alasdair Morgan and the members of the Scottish Parliamentary Pension Scheme Committee for the work that went into producing the bill as introduced. Pensions have become shrouded in jargon and regulatory complexity. As the convener of the Scottish Parliamentary Pensions Bill Committee, which scrutinised the bill at stage 2, I can say that our task was made more straightforward than it could have been by the input and obvious determination of the members of the scheme committee to make the provisions of the bill practicable, workable and relatively understandable. As Alasdair Morgan hinted, a lot of the work was done prior to the public proceedings of our committee.

Before the stage 2 proceedings, the committee held an informal meeting with the bill team to give members an insight into the policy development behind the bill. Also, to aid our scrutiny, we sought explanation of and clarification on the various provisions in the bill. A couple of weeks later, with committee members having had the opportunity to chew over the information, formal consideration took place.

The only amendments at stage 2 were those that were lodged by the member in charge—in the main, they were technical and tidying-up amendments. For example, it was important to make it clear that pension credit members of the scheme are prevented from becoming remunerated trustees of the scheme. Any member who benefits financially from the scheme should not receive financial benefit as a trustee. Deeming the amendments to be eminently sensible, the committee was content to accept them.

I appreciate the point that Alasdair Morgan made in saying that, even if the bill is passed today, our work to ensure that all the new arrangements are put in place is not an at end. Like him, I thank the Standards, Procedures and Public Appointments Committee for its ongoing work to produce the necessary changes to standing orders. In addition, I thank the clerks to our committee.
I am pleased to have had the opportunity to contribute to the process and to today’s debate. I ask members to support the motion to pass the bill at decision time.

09:24

David Stewart (Highlands and Islands) (Lab):

As a member of the Scottish Parliamentary Pensions Bill Committee, I thank the other committee members—Bill Aitken, Nicol Stephen and the convener, Keith Brown—for their contributions. Again, like other members, I thank the bill team for all its work and help in giving us briefings throughout a complex process. Sarah Robertson was the committee clerk and, as we have heard, Alasdair Morgan was the member in charge of the bill.

Some may ask why we should have a new pension scheme, but our scheme needed a radical spring clean, not least because of UK legislative changes such as the Finance Act 2004 and the Civil Partnership Act 2004. Some may also ask why we should improve pension conditions for MSPs when thousands of Scots are losing their jobs and final salary scheme pensions. However, the improvement from fiftieths to fortieths in the accrual rate for our pension scheme will be fully funded, as we heard, by increasing member contributions from 6 to 11 per cent. As we know, that figure was not a back-of-the-envelope job that was plucked from the sky; it was established by an independent Government actuary. We have heard previously that actuaries have been defined as those who found actuary too exciting, but the actuarial profession is important.

We can argue that there are five key principles behind the Scottish Parliamentary Pensions Bill: it must be modern, equality proofed, attractive to members and cost neutral, and it must involve a pooling of risks. Clearly, the cost to the taxpayer is a key factor. In that regard, I flag up, as other members have done, that the reduction in the pension provision for new incumbents in the roles of Presiding Officer and First Minister will bring substantial savings for the taxpayer. Independent advice and evidence suggested that those savings could be more than £900,000 over a four-year period. I found the consultation on the bill to be comprehensive and enlightening, and it was important that it involved members, ex-members and experts from across the country.

I flag up two key developments in the bill: unmarried partners will be recognised in the scheme, and there will be no loss of pension for surviving spouses who remarry or cohabit. In other words, the spouse pension will continue for life. That is a good example of a modern, caring and equitable scheme. Of course, it is similar to other schemes, such as those at Westminster or the National Assembly for Wales; those bodies were a number of years ahead of us in revising their schemes.

There are other important factors in the bill. I echo the point about trustees. It was important that we sorted out that issue. Of course, the bill will set up a new system for trustees that could well involve existing members and ex-members and which will prevent a potential conflict of interest as far as the SPCB is concerned.

Mandatory changes had to be incorporated in the bill, such as the minimum pension age of 55. That was done under the Finance Act 2004 and the Pensions Act 2004, and it will be effective from next year. It is important to flag up, too, the important new changes to pension sharing on divorce. The Welfare Reform and Pensions Act 1999 gave courts powers to split pension benefits on divorce, and the Civil Partnership Act 2004 extended that provision to civil partners. Finally, transfers into the Parliament pension scheme must be from a registered pension scheme. That is a straightforward provision, although it also now allows office-holders who are not MSPs to transfer in a sum from another registered pension scheme.

The bill provides an essential uprating of our current pension scheme and it is equitable to members, their partners and, more important, taxpayers by being cost neutral in its improvement of pension conditions for MSPs. The overall package represents a saving to taxpayers. I endorse the bill, which will be supported by Labour members.

09:29

Bill Aitken (Glasgow) (Con):

It may be regarded as surprising that it has taken so long for the initial parliamentary pension arrangements under the Scotland Act 1998 to be revisited, but it is entirely appropriate that it should have been done. Like other members, I offer my thanks not only to the officials involved but to the members who initially dealt with this somewhat complex matter, who ultimately made the bill team’s duties fairly easy.

It is important to stress that implementing those pension changes was not only desirable, but likely to be a legal necessity. The Pensions Act 2004 changed a great deal, and this bill, which I expect to be passed today, recognises the changes that took place as a result of the 2004 act. Perhaps I have raised an eyebrow occasionally at some aspects of equalities legislation, but in this case, where the pension fund will provide appropriate protection and security for surviving spouses and civil law partners, it is entirely appropriate that existing legislation should be amended.
It is worth stressing the cost neutrality of the proposals that are before members. Indeed, as David Stewart said, there will be an appreciable saving under certain headings, which should let the taxpayer see that consideration has been given to the public purse. It is unlikely that many of the beneficiaries under the fund in the years ahead will accumulate the necessary 40 years for the maximum pension—that is the nature of pension funds of this type. However, Presiding Officer, you may wish to defy my reasoning on that matter and assume the full pension. In all seriousness, I doubt whether anyone else would go in that direction.

The important point is that, under the bill’s proposals, members will be able to opt for a higher pension. They will have to fund it themselves, though, and their contributions will reflect that. It is also important to stress that there must be a degree of detachment in the operation of the fund—as the one who chairs the SPCB, Presiding Officer, I am sure that you would agree with that—so the setting up of the trustees is a positive step in that direction.

The ill-health provisions in the bill are not so much imaginative as a necessary recognition of the difficulties that can arise from time to time in the course of anyone’s career. The added years provision will allow members, at their expense, to ensure a wider and greater pension benefit. Again, that provision should be applauded.

Looking at the matter in a detached way when one is a beneficiary is always difficult, but the bill that is before members allows the public to recognise that, while the benefits have been increased, members have approached the matter in a detached and realistic manner and that the saving to the public purse is measurable, as are the potential benefits for beneficiaries. I have great pleasure in indicating that the Conservative party will support the motion at decision time.

09:32

Nicol Stephen (Aberdeen South) (LD): I, too, thank Alasdair Morgan in particular for the great deal of work that he put into the bill and the Scottish Parliamentary Pension Scheme Committee. I also thank my fellow committee members who undertook stage 2 consideration of the bill, and the officials and advisers involved in the bill team. Clearly, a substantial amount of work was required to produce the bill and give the associated advice for a very technical and complex area.

Since the establishment of the Scottish Parliament in 1999, significant legislative changes have made a bill of this kind necessary. However, the opportunity was also taken to look at how the existing pension scheme had been working and to assess whether any improvements or flexibilities might be introduced. Members have referred to important pieces of relevant legislation, such as the Finance Act 2004, the Pensions Act 2004 and the Welfare Reform and Pensions Act 1999, which introduced pension sharing on divorce so that ex-spouses can get membership of a pension scheme in their own right or get a transfer value from the scheme. That also applies to the new status of civil partner that was introduced by the Civil Partnership Act 2004.

The Finance Act 2004, which was introduced on 6 April 2006, replaced with a single set of rules eight existing taxation regimes affecting the rights of pensioners. The bill that is before us is necessary because the transition arrangements in the Finance Act 2004 run out in April 2011. If the bill had not been introduced, there would have been uncertainty about how parts of the Scotland Act 1998 (Transitory and Transitional Provisions) (Scottish Parliamentary Pension Scheme) Order 1999 comply with the tax rules.

It was therefore right and appropriate that the Parliament acted. As far back as 17 October 2007, the Scottish Parliamentary Pension Scheme Committee published its consultation document and invited comments from all interested parties. The consultation sought views on a number of issues. Some views covered the mandatory changes brought about by the Finance Act 2004, which I have referred to, and others covered the sort of discretionary changes that other members have referred to—such as contribution limits, the maximum pension available, the amount of the tax-free lump sum on retirement and the amount of death-in-service gratuity.

The changes that will improve the scheme and make it more flexible are made at no additional cost to the taxpayer. However, some improvements, if individual MSPs want to opt in to them, will cost the MSPs quite a substantial sum. It is worth flagging that up to MSPs want to opt in to MSPs, because they will have to take important decisions before the scheme is introduced in September.

The report of the Scottish Parliamentary Pension Scheme Committee was published on 29 May 2008, and the proposal for a committee bill was agreed by Parliament after the debate on 26 June 2008. The report, which had the draft bill attached, is a substantial document. There are 57 pages of technical information, and a full set of explanatory notes running to 92 pages, together with a five-page supplementary set of explanatory notes.

All in all, this is a substantial, important and necessary piece of legislation. There is cross-party support in Parliament, so the bill is likely to receive widespread or unanimous support this evening at decision time. On an issue of this nature, that is
appropriate. Because of the complex and detailed work that has been done, it is a good piece of legislation that deserves such a level of support.

09:37

**Alasdair Morgan:** The progress of the bill has shown how flexible and powerful are the Parliament's committee procedures for bills. I thank my fellow committee members for their diligence and consideration; I think that they even enjoyed parts of it. For example, in an evidence session with the scheme actuary, David McLetchie declared:

“This is a lot more entertaining than I thought it was going to be.”—[Official Report, Scottish Parliamentary Pension Scheme Committee, 11 March 2008; c 68.]

At last night's Burns supper, Mr McLetchie gave the toast to the lassies, so it is perhaps appropriate that he made that comment when we were discussing the idea that women were more expensive than men. I hasten to add that that is because of women’s general longevity and consequent cost to a pension scheme.

I thank again the Scottish Parliamentary Pensions Bill Committee for its scrutiny of the bill at stage 2, and the Finance Committee and Subordinate Legislation Committee for their work.

This has been a sensible use of parliamentary time in meeting the requirements of UK legislation. The one important provision that I would like to highlight again is the provision for the appointment of trustees. As David Stewart said, trustees will—as time passes—represent the full spectrum of members of the scheme. They will be tasked with a range of duties and will be equipped to take decisions to ensure the health of the scheme and to ensure best value for money.

Members may be interested to note that measures relating to the scheme will come before Westminster later this year. I expect that amending regulations will be made by the Department for Work and Pensions and that an order under section 104 of the Scotland Act 1998—and I know that all members will be familiar with that section—will be made by the Scotland Office. Those measures are primarily designed to ensure that the reserved occupational pensions regulatory regime, as currently applied to the scheme, will continue once the bill is commenced. They also seek to ensure consistency with how the equivalent Westminster pension scheme is regulated.

The proposed Westminster instruments will amend the regulatory framework that is applied to public service pension schemes. They are needed because of structural changes brought about by the bill. Many of the existing legal requirements and exemptions that are applied to public service pension schemes refer to schemes constituted by Westminster legislation. Following the bill, the rules of our scheme will be contained in an act of the Scottish Parliament, rather than, as for the existing scheme, in a Westminster instrument. The amending instruments will ensure that relevant regulatory requirements and exemptions continue to apply to our scheme.

I believe that the Westminster instruments can be made and can be in place to coincide with the rules of the new scheme coming into force. I know that members have been worried about that, so I hope that I have been able to put their minds at rest.

It is worth saying again that, all in all, the changes that the bill will bring about will produce significant savings to the public purse.

I thank the clerks and the hard-working bill team, and I commend the bill to Parliament.

**The Presiding Officer:** Thank you—and I thank all members for keeping their speeches brief, which has given us a few extra minutes for the next debate, which is heavily subscribed.