

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Section 3: Modification of pension schemes etc.

26. 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.
27. [Section 3](#) of the Act 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.
28. 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 19 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 Act at paragraph 21 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.
29. 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 Act continues certain articles within the 1999 pensions order. Paragraphs 2, 5, 9, 18, 19 and 21 make provision for specific rules to continue in force and paragraph 22 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).
30. 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.
31. 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](#)

*These notes relate to the Scottish Parliamentary Pensions Act
2009 (asp 1) which received Royal Assent on 25 February 2009*

[Act 2006 \(asp 12\)](#) which allowed modification by resolution to provisions within the Schedule to that Act.