

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 3 transitional Provisions and Savings

Paragraph 19: AVC scheme

543. 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requirement for occupational schemes to have an AVC facility in section 111 of the Pension Schemes Act 1993 was repealed.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 19 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.
544. 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 Act at section 1 and here at paragraph 19(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 19.
545. Subparagraph (1)(a) transfers the powers and responsibilities for the management and operation of the AVC scheme from the SPCB to the Fund trustees.
546. 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.
547. 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.
548. 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.
549. Subparagraph (1)(e) deals with provisions relating to scheme members leaving the AVC scheme. Subparagraph 19(1)(e)(i) amends the provisions of the 1999 pensions order to

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

bring it into line with requirements of the Finance Act 2004 for approved destinations for transfer values.

550. 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.
551. Subparagraph (1)(f) disapplies certain provisions of the 1999 pensions order insofar as these are replaced by provisions in the Act or refer to superseded legislation. Paragraph 10 of Schedule 6 relates to maximum pensions limits which are not continued in the Act.
552. 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 1993.¹ 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 Act, the duty to comply with the Regulations is no longer required.
553. 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. Sub-paragraph (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 Act.