

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 3 transitional Provisions and Savings

485. Apart from enabling powers that come into effect at Royal Assent, the new scheme rules in the Act come into effect on new rules day (section 5(3) of the Act) 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 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.
486. As regards the scheme, section 1(1) of the Act 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 Act). This approach has been preferred in the Act 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

487. 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 Act and the existing scheme rules in the 1999 pensions order.
488. Most of the Act provisions come into force on new rules day (see section 5(3) of the Act). 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).
489. The interpretation of other words and phrases used in this schedule can be found in section 4 of the Act and at Part U of Schedule 1.

Paragraph 2: Pension Fund

490. 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 22 of Schedule 3 in relation to continuation of other 1999 scheme rules.

Paragraph 3: Scheme membership

491. **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 Act 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

492. **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.
493. The Act 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.
494. 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 Act), the SPCB is obliged by subparagraph (4) to inform the Fund trustees of every valid notice that it has received from existing participating members.
495. 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

496. 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).
497. **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 Act. In subsequent years, and following recommendations from the scheme actuary, the provisions of rule 32 will apply.

Paragraph 6: Reckonable service as an MSP

498. 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.
499. 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.
500. 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.
501. 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).
502. 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).
503. 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 Act (see also the provisions at paragraph 18 of Schedule 3).

Paragraph 7: Reckonable service as an office-holder

504. 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.
505. 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.
506. 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).

507. 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.
508. 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.
509. 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

510. 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.
511. **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: Special provision for participants reaching age of 75 before the new rules day

- 511(a). Paragraph 9 makes transitional provision for participating members who will reach the age of 75 before new rules day, allowing them to commute part of their prospective pension for an immediate tax-free lump sum. Generally speaking the rules in the 1999 pensions order will apply to existing scheme members in the period between Royal Assent and new rules day (this is subject to some limited exceptions, for example, in relation to the appointment of Fund trustees under Schedule 1 and specific transitional arrangements under Schedule 3). Under the rules in the 1999 pensions order it is not possible for members approaching the age of 75 to commute part of their pension in exchange for a tax-free lump sum. The position is different in the new scheme rules, rule 44 of which allows participating members approaching the age of 75 to commute part of their pension into a tax free lump sum (see paragraphs 174 to 177).
- 511(b). The transitional provision at paragraph 9 takes account of the position of participating members who reach the age of 75 in the period between Royal Assent and new rules day. Such a member will remain subject to the rules in the 1999 pensions order but paragraph 9 allows him or her to commute part of his or her pension subject to notice of this being given to the SPCB prior to the member's 75th birthday. As with the provision in rule 44 of the new scheme rules such a member will obtain a tax-free commuted sum and become a scheme pensioner, although the member's pension will be reduced to nil until he or she ceases to be an MSP or an office-holder.
- 511(c). Paragraph 9(1) describes the individuals to which this rule applies: an individual who is participating in the scheme in accordance with the 1999 scheme rules and who is aged under 75 at Royal Assent but will reach the age of 75 before new rules day. Paragraph 9(2) provides that such an individual may give notice, before reaching the age of 75, that he or she wishes to commute a specified part of his or her pension. By virtue of paragraph 9(3) such a notice is to be treated in the same manner as a notice under Part

G of the 1999 scheme rules (which details procedures for determining the amount of the lump sum payable and the consequential reduction in pension).

- 511(d). Paragraph 9(4)(a) confirms that despite articles F1 and F2 of the 1999 scheme rules (which operate to prevent a current MSP or holder of a qualifying office from receiving a pension or giving a commutation notice under Part G of the 1999 scheme rules) an individual who has given notice under paragraph 9(3) will be entitled to receive a pension from the day before his or her 75th birthday. That pension will, however, be reduced to nil until such time as he or she is no longer an MSP or office-holder, in accordance with paragraph 9(4)(b).

Paragraph 10: Payment of pensions due on new rules day etc.

512. 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 Act (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 Act.
513. Paragraph 10 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 Act. 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 11: Entitlement of partners and children after new rules day

514. Whereas paragraph 10 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 11 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.
515. 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 12: Early retirement

516. Paragraph 12 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 Act.
517. 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.

518. The provisions of paragraph 12 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.
519. 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 23(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.
520. 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.
521. 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 Act 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.
522. 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 13: Partner's and children's pensions

523. [Paragraph 13](#) 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 12.
524. Part J of Schedule 1 to the Act 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.
525. 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.
526. [Paragraph 13](#) amends the calculation of "scheme pension entitlement" in respect of individuals who qualify for and take early retirement under the provisions of paragraph 12. 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 14: 5 year guarantee

527. Part L of Schedule 1 of the Act 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.
528. **Paragraph 14** 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.
529. Under paragraph 14, 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 15: Deferred pensioner lump sums

530. **Paragraph 15** 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.
531. 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).
532. Under paragraph 15, 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 16: Short service refunds

533. 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 16 preserves the two-year period for certain individuals leaving the scheme.
534. Subparagraph 1 of paragraph 16 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 17: Transfers

535. [Paragraph 17\(1\)](#) 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.
536. 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.
537. 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) disappplies that condition for 12 months from the date that these new rules come into effect.

Paragraph 18: Added years

538. [Paragraph 18](#) 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.
539. Subparagraph 18(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).
540. 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 Act come into effect. The conditions that were understood and agreed by the MSP at the outset are continued.
541. 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 (18)(2)(c) determines that the reckonable service purchased will be treated as being accrued at the lower contribution rate of 6% of salary.
542. 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 18(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 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 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.

Paragraph 20: Guaranteed minimum pension

554. 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.
555. 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 20 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.

Paragraph 21: Presiding Officer and First Minister pension scheme

556. 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).
557. 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).
558. [Paragraph 21\(1\)](#) 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.
559. 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.

1 S.I. 1993/3016

Section 1 of the Act 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.

560. [Section 3](#) allows modification of the First Minister and Presiding Officer pension scheme by resolution of the Parliament.

Paragraph 22: General saving

561. The effect of article A3 of the 1999 pensions order is that the order shall only apply until this Act comes into force. Schedule 3 supersedes that dis-application for a number of specified rules within that order. Paragraph 22 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 23: Disapplication of scheme modifications

562. 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 schemes² to enable schemes to operate under the new tax regime prior to a formal change in their rules.
563. 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 Act makes provision in each area covered by the Regulations and paragraph 23 accordingly specifically disapplies the 2006 modification Regulations³ from new rules day.

² The Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 (S.I. 2006/364)

³ S.I. 2006/364