

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part B Fund Trustees

Rule 8: Appointment of Fund trustees

53. Rule 8 provides a procedure for the appointment of Fund trustees.
54. 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.
55. 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.
56. 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.
57. 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.
58. 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.
59. 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)

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

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.