

*These notes refer to the Scotland Act 1998 (c.46)
which received Royal Assent on 19th November 1998*

SCOTLAND ACT 1998

EXPLANATORY NOTES

SCHEDULES

Schedule 5

Part II: Preliminary paragraphs

SECTIONS

Section F3: Occupational and Personal Pensions

Purpose and Effect

This Section reserves occupational and personal pension schemes, including public service pension schemes.

General

This Section reserves matters relating to occupational and personal pensions including public service pensions. Most of the statutory provisions concerning occupational and personal pensions are contained in the Pension Schemes Act 1993 and Part I of the Pensions Act 1995. Section 1 of the 1993 Act provides definitions of “occupational pension scheme”, “personal pension scheme” and “public service pension scheme” which are applied with modifications here. Section 126(1) makes clear that these definitions apply but as if the reference to employed earners in the definition of personal pension schemes were to any earners.

Occupational pensions are usually payable under trusts set up by an employer, or more rarely a group of employers, in respect of their employees. The trust deed sets out the rules as to how the scheme is to operate, e.g. the rates of contributions and benefits, who is liable to pay the contributions and when and to whom benefits are payable. Some employers operate a number of separate schemes, some a single scheme for all their employees, while others may provide a scheme for only certain of their employees e.g. by restricting pension arrangements to executives or salaried staff or to employees who have worked for the company for at least 2 years. The occupational pension scheme will be administered by the trustees appointed under the trust deed in accordance with the rules as to the operation of the scheme. The scheme rules must, however, comply with legislative requirements and can be overridden when a conflict arises.

Public service pension schemes are a particular category of occupational pension schemes. They are generally established under legislation and cover a wide range of public service employees. A definition of public service schemes is set out in section 1 of the Pension Schemes Act 1993. There is no statutory obligation on an employer in the United Kingdom to establish an occupational pension scheme or to participate in a scheme established for an industry in which he operates. However, if an employer or group of employers sets up such a scheme then certain statutory requirements must be met. These fall into three main headings:

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- (a) requirements affecting the administration of schemes, and the duties of trustees and professional advisors;
- (b) financial management of schemes, including rules on investments, contributions and solvency, and the conditions under which schemes can contract out of the State Earnings Related Pension Scheme; and
- (c) the right of individual scheme members, including preservation of the pension rights of people leaving the scheme before pension age, the transfer of rights from one non-State pension scheme to another, the indexation of rights before and after pension age, requirements for the equal treatment of men and women and rules on the disclosure of information to scheme members.

In addition, most schemes seek to comply with conditions for tax approval, which determine whether the scheme can benefit from advantageous tax treatment, particularly in relation to income and corporation taxes.

Personal pension schemes are established by financial institutions, principally insurance companies. They are essentially contracts between individuals and pensions providers, though groupings of individual pensions may be administered together for convenience. Contributions, which may also include contributions from an employer, are paid into the scheme and invested. Personal pension schemes attract a range of tax concessions and their marketing is regulated under the Financial Services Act 1986.

Provision about pensions payable to any person is also reserved except in relation to former members (and office-holders) of the Scottish Parliament and Ministers. Also excepted from the reservation is legislative competence in relation to allowing or requiring any devolved public body to provide for pensions for its members or staff. In all these cases the provision made will be subject to the general requirements of the Pensions Acts.

The reservation of matters relating to occupational and personal pensions interacts with areas of Scots private law which are being devolved, for example trust law and family law. In particular, so far as family law is concerned, Scots law has, since 1985, required pension rights accrued during the marriage to be taken into account by a court making financial provision on divorce. The law relating to what financial provision is made on divorce and the question as to whether and to what extent pension rights are taken into account by the court will in general be a matter of Scots law within the legislative competence of the Scottish Parliament.

However, although the Scottish Parliament has legislative competence over Scottish trust law and family law, its competence will be subject to the reservation in respect of pensions. In particular, the obligations of the trustees or managers of occupational and personal pension schemes are a reserved matter.

Section 12A of the Family Law (Scotland) Act 1985 (as amended by section 167 of the Pensions Act 1995) allows the court to order the trustees or managers of a pension scheme to pay the whole or part of a lump sum due to or in respect of a member to his or her divorcing spouse when it becomes due. These are known as earmarking/attachment rules. Parts III and IV of, and Schedules 3 to 6 and part of Schedule 12 to, the [Welfare Reform and Pensions Act 1999 \(c.30\)](#) deal with pension sharing on divorce. They also amend the earmarking provisions in section 12A of the 1985 Act. Accordingly, although the Scottish Parliament can legislate, for example, to require pension rights accrued during the marriage to be taken into account on divorce, it could not legislate to impose obligations upon trustees or managers of occupational or personal pension schemes to earmark or make provision for pension sharing.

This effect is achieved partly by this reservation and partly by paragraph 2 of Schedule 4 to the Scotland Act, as amended by the Scotland Act 1998 (Modifications of Schedule 4) Order 2000 ([S.I. 2000/1831](#)). Paragraph 2(3), as so amended, ensures that the Scottish Parliament cannot modify the obligations of trustees or managers in relation to

occupational or personal pension schemes or of persons responsible for other pension arrangements in relation to the sharing of rights under pension arrangements on divorce. See that paragraph for more details.

Parliamentary Consideration

<i>Stage</i>	<i>Date</i>	<i>Column</i>
CC	31-Mar-98	1068
LC	23-Jul-98	1146
LC	23-Jul-98	1147
LC	23-Jul-98	1148
LR	2-Nov-98	11

Details of Provisions

First reservation

This provides that the regulation of occupational pension schemes and personal pension schemes, including the obligations of trustees and managers of pension schemes, is a reserved matter.

“Occupational pension scheme”, “personal pension scheme” and “public service pension scheme” are defined in section 126(1) as having the meanings given by section 1 of the Pension Schemes Act 1993 but as if the reference to employed earners in the definition of personal pension schemes were to any earners.

Second reservation

This reserves provision about pensions payable to, or in respect of, any persons. This covers matters such as the payment of pensions, the manner of provision and contribution in respect of pensions. This is subject to an exception which permits the Scottish Parliament to make provision about pensions payable to or in respect of:

- (a) the persons referred to in section 81(3) of the Act. That section provides that the Parliament may make provision (whether by an ASP or a resolution) for the payment of pensions to ex- members and office-holders of the Parliament or of the Scottish Executive. The reservation should not prevent the Parliament making such provision; and
- (b) in a Scottish public authority with mixed functions or no reserved functions (as defined in Part III of Schedule 5), persons who are or have been a member of the public body, the holder of a public office or a member of the staff of the body, holder or office. This would permit the Parliament, for example, when legislating to establish a new Scottish public authority, to require it to provide pensions for its members and staff. It also enables any ministerial functions in relation to the pensions of existing Scottish public authorities to transfer to the Scottish Ministers.

Third reservation

This reserves the subject-matter of the Pensions (Increase) Act 1971, which provides for index-linking of a wide range of public service pensions.

Fourth reservation

This reserves schemes for payment of pensions which are listed in Schedule 2 to the Pensions (Increase) Act 1971. This includes pension schemes for local authorities, police, fire, teachers and the NHS. Many of the functions in relation to these schemes have, however, been executively devolved to the Scottish Ministers. Two exceptions are made from the reservation of these schemes which tie in with the exceptions mentioned under the Second Reservation above. These are for pensions schemes for MSPs and members of the Scottish Executive provided by the Parliament under section 81 and the pension schemes for employees of Scottish Enterprise and Highlands and Islands

Enterprise, which are the only Scottish non-departmental public bodies whose pensions are listed in the 1971 Act.

Fifth reservation

This reservation covers, as regards classes of persons to whom public service pension schemes apply, statutory provision for compensation for loss of office or employment, for loss or diminution of emoluments, or employment being affected by constitutional changes in an overseas territory, and also covers as regards these classes of persons statutory provision for death or injury benefit. The reservation will accordingly cover the statutory compensation schemes which exist for public employees such as local government employees, teachers and NHS employees who lose their employment or suffer diminution of emoluments as a result, for instance, of redundancy or reorganisation.

Interpretation

Pensions are defined as including gratuities and allowances.

Executive Devolution

The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 1999 (S.I. 1999/1750) provides for widespread executive devolution in the area of public service pensions, reflecting the former responsibility of the Secretary of State for Scotland for such pensions. The powers of the Secretary of State under the Superannuation Act 1972 to make regulations establishing and maintaining pension schemes for local government employees, teachers and NHS employees have been transferred to the Scottish Ministers, who thus have policy responsibility for the content of these schemes. In the case of teachers and NHS employees the consent of the Treasury to the making of the regulations is still required as before. The powers of the Secretary of State under the Fire Services Act 1947 and the Police Pensions Act 1976 to make subordinate legislation governing pensions of fire-fighters and police officers have similarly been transferred to the Scottish Ministers. The power of the Secretary of State under section 24 of the Superannuation Act 1972 to make regulations providing for compensation for local government employees, teachers, NHS employees, fire-fighters and police officers have also been transferred to the Scottish Ministers, who thus have policy responsibility for such compensation. The function under section 4 of the Small Landholders (Scotland) Act 1911 has also been transferred, as it is used in practice to provide for pensions. The function of paying remuneration to members of a Pensions Appeal Tribunal (para 2 of the Schedule to the Pensions Appeal Tribunals Act 1943) is also executively devolved.

Apart from these powers to make subordinate legislation, all executive powers of the Secretary of State under primary or subordinate legislation in respect of pensions or compensation for local government employees, teachers, NHS employees, fire-fighters or police officers and functions exercisable in respect of the Firemen's Pension Scheme and the Police Pensions Appeal Tribunals have been transferred to the Scottish Ministers.

S.I. 1999/1750 also transferred non-statutory functions in relation to the provision of premises and support staff for the purposes of carrying out the functions of the Pensions Appeal Tribunal and of funding of payments made by a Pensions Appeal Tribunal under rules 26 to 28 of the Pensions Appeal Tribunals (Scotland) Rules 1981.