

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 3 transitional Provisions and Savings

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

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

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.