

*Status: Point in time view as at 01/09/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Scottish Parliamentary Pensions Act 2009, SCHEDULE 3. (See end of Document for details)*

## SCHEDULE 3

*(introduced by section 1(3))*

### TRANSITIONAL PROVISIONS AND SAVINGS

#### *Introductory*

- 1 (1) In this schedule—
- “new rules day” means the first day of the month which follows the month which includes the day falling 6 months after the Bill for this Act receives Royal Assent,
  - “new scheme rules” means the rules set out in schedule 1 which govern the scheme from the new rules day,
  - “1999 scheme rules” means the provisions of the 1999 pensions order which governed the scheme before the new rules day.
- (2) Other words and expressions used in this schedule have the same meaning as they have in the new scheme rules (unless the contrary intention appears).

#### *Continuation of scheme and transfer of Pension Fund*

- 2 Despite article A3 of the 1999 pensions order—
- (a) that order continues to have effect in so far as needed to give effect to section 1(1) of this Act, and
  - (b) article B1 of the 1999 scheme rules continue to have effect in so far as it establishes the Pension Fund.

#### *Scheme participation*

- 3 An individual is not entitled to participate in the scheme as an office-holder member if, on the new rules day, the individual is or has been—
- (a) the Presiding Officer, or
  - (b) the First Minister.

#### *Scheme member contributions*

- 4 (1) An “existing participating member” is an individual who—
- (a) participates in the scheme in accordance with the 1999 scheme rules when this paragraph comes into force, and
  - (b) would become a participating member in accordance with the new scheme rules if still participating in the scheme on the new rules day.
- (2) Despite new scheme rule 28, an existing participating member is to continue to make lower rate scheme member contributions after the new rules day if he or she notifies the SPCB that he or she wishes to do so.
- (3) Such a notice is valid only if received at least 14 days before the new rules day.
- (4) The SPCB must inform the Fund trustees of every valid notice given to it under this paragraph.

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- (5) This paragraph does not prevent the existing participating member from subsequently changing the amount of scheme member contributions in accordance with new scheme rule 29.

*Contributions from SPCB*

- 5 The determination under article D3(2) of the 1999 scheme rules which has effect immediately before the new rules day is to have effect after that day as if made under new scheme rule 32(2).

*Reckonable service as an MSP*

- 6 (1) This paragraph applies to an individual who—
- (a) was a “participating member” under the 1999 scheme rules, but
  - (b) is not, immediately before the new rules day, a “pensioner member” under the 1999 scheme rules.
- (2) After the new rules day—
- (a) the “aggregate period of reckonable service as a participating member” which an individual to whom this paragraph applies has obtained under the 1999 scheme rules is to be treated as a period of reckonable service as an MSP for the purposes of the new scheme rules, and
  - (b) the individual concerned is to be treated as having made lower rate scheme member contributions during that period.
- (3) Where an individual to whom this paragraph applies—
- (a) is purchasing added years by periodical contributions in accordance with Schedule 5 to the 1999 pensions order immediately before the new rules day, or
  - (b) has had an application to purchase added years accepted by the SPCB in accordance with Schedule 5 to the 1999 pensions order but has not yet made the lump sum payment,
- no part of the added years concerned are to be treated as forming part of the individual's “aggregate period of reckonable service as a participating member” for the purposes of this paragraph.

*Reckonable service as an office-holder*

- 7 (1) This paragraph applies to an individual who—
- (a) was a “participating office holder” under the 1999 scheme rules, but
  - (b) is not, immediately before the new rules day, a “pensioner member” under the 1999 scheme rules.
- (2) After the new rules day—
- (a) the “aggregate period of reckonable service as a participating office holder” which an individual to whom this paragraph applies has obtained under the 1999 scheme rules is to be treated as a period of reckonable service as an office-holder under the new scheme rules, and
  - (b) the individual concerned is, for the purposes of new scheme rule 39, to be treated as having obtained a single office-holder pension entitlement in

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respect of that “aggregate period of reckonable service as a participating office holder” to be calculated as follows—

aggregate period of reckonable service as a participating office-holder  $\times$   $\frac{\text{highest office-holder salary}}{\text{highest office-holder salary}}$

where “highest office-holder salary” means—

- i the highest office-holder salary paid to the individual during any period of 12 months (whether continuous or not and whether before or spanning the new rules day) for which the individual participates in the scheme (as a “participating office holder” under the 1999 scheme rules or as an “office-holder member” under the new scheme rules) in respect of a pensionable office to which he or she was appointed before the new rules day, or
- ii where the individual so participates for fewer than 12 months, the amount determined by doing the following calculation—

$$A \times \frac{365}{B}$$

where—

“A” is the office-holder salary paid to the individual during the period in which he or she so participates, and

“B” is the number of days for which the individual so participates.

#### *Total reckonable service*

- 8 The total reckonable service of an individual who participated in the scheme before the new rules day (see new scheme rule 35) includes the “actual period of reckonable service as a participant” which the individual obtained under the 1999 scheme rules.

#### *Special provision for participants reaching age of 75 before the new rules day*

- 9 (1) This paragraph applies to an individual who—
- (a) is participating in the scheme in accordance with the 1999 scheme rules, and
  - (b) is aged under 75 when this paragraph comes into force but will reach the age of 75 before the new rules day.
- (2) An individual to whom this paragraph applies may, before reaching the age of 75, give notice to the SPCB that he or she desires to commute into a lump sum such part of his or her pension as is specified in the notice.
- (3) An individual who gives such a notice is to be treated for the purposes of Part G of the 1999 scheme rules as having given an equivalent notice under article G1(1) (and Part G is to apply accordingly).
- (4) Despite article F1(a) and (b) and article F2 of the 1999 scheme rules—
- (a) the fact that an individual who gives such a notice is—
    - (i) an MSP, or

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(ii) the holder of a qualifying office (within the meaning of article C2(3) of the 1999 scheme rules),

does not prevent the individual from being entitled to receive a pension, from the day before the individual's 75th birthday, in accordance with article F1 or F2 of the 1999 scheme rules, but

(b) the amount of pension so payable is to be nil until the individual is neither an MSP nor the holder of such an office.

*Payment of pensions due on new rules day etc.*

10 Despite article A3 of the 1999 pensions order, the 1999 scheme rules are to continue to have effect (instead of the new scheme rules) in relation to any individual who, immediately before the new rules day, is entitled to receive a pension in accordance with the 1999 scheme rules. But the SPCB's functions, rights, liabilities and obligations under the 1999 scheme rules which relate to such individuals are transferred to and vest in the Fund trustees.

*Entitlement of partners and children after new rules day*

11 Despite the preceding paragraph, the new scheme rules are to govern an individual's entitlement to receive scheme benefits by virtue of being the partner or child of an individual who—

- (a) is entitled to receive a pension on the new rules day, or
- (b) died before the new rules day.

This paragraph does not affect payments due or withheld in respect of any period before the new rules day.

*Early retirement*

- 12 (1) An individual falls within this paragraph if the individual—
- (a) participated in the scheme before the new rules day,
  - (b) accumulates at least 15 years relevant service before the cut-off date, being service which is the total of—
    - (i) any period of service as an MSP during which the individual participated in the scheme (under the 1999 scheme rules or the new scheme rules), and
    - (ii) any period of service as a member of the European Parliament or the House of Commons that is not concurrent with any such period of service as an MSP, and
  - (c) where the individual is under 55, has a “protected pension age” of under 55 in relation to the scheme for the purposes of paragraph 22(8) of Schedule 36 to the Finance Act 2004 (c. 12).
- (2) Rule 46 applies to an individual falling within this paragraph with the following modifications—
- (a) in rule 46(1)(a), for “55” substitute “50”,
  - (b) the proportion of the amount of annual scheme pension attributable to reckonable service accumulated before the cut-off date is to be reduced under rule 46(4) by no more than the appropriate percentage specified in the table set out in schedule 4 to the 1999 pensions order.

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- (3) In this paragraph “cut-off date” means the date of the first general election held under Part 1 of the Scotland Act 1998 (c. 46) after the new rules day.

*Partner's and children's pensions*

- 13 (1) An individual falls within this paragraph if the individual—
- (a) participated in the scheme before the new rules day,
  - (b) accumulates at least 15 years relevant service before the date of the first general election held under Part 1 of the Scotland Act 1998 (c. 46) after the new rules day, being service which is the total of—
    - (i) any period of service as an MSP during which the individual participated in the scheme (under the 1999 scheme rules or the new scheme rules), and
    - (ii) any period of service as a member of the European Parliament or the House of Commons that is not concurrent with any such period of service as an MSP, and
  - (c) takes early retirement after the new rules day.
- (2) The reduction made under new scheme rule 46(4) to the scheme pension of an individual falling within this paragraph is to be ignored when calculating the individual's “scheme pension entitlement” for the purposes of new scheme rule 56.

*5 year guarantee*

- 14 (1) The Fund trustees may, instead of continuing to pay a deceased scheme pensioner's scheme pension under new scheme rule 71, pay to the deceased's personal representatives an amount equal to the lump sum which would have been payable under article M4 of the 1999 scheme rules if those had continued in force.
- (2) But such a lump sum may be paid only if—
- (a) the deceased participated in the scheme before the new rules day, and
  - (b) the payment would, by virtue of paragraph 36 of Schedule 36 to the Finance Act 2004 (c. 12), be permitted by the lump sum death benefit rule (see section 168 of that Act).

*Deferred pensioner lump sums*

- 15 (1) This paragraph applies where a deferred pensioner lump sum is payable under new scheme rule 67(1) in respect of a deceased individual who participated in the scheme under the 1999 scheme rules.
- (2) Where this paragraph applies, any sums deducted from the deceased's salary in accordance with Part D of the 1999 scheme rules are to be treated for the purposes of new scheme rule 67(2) as being scheme member contributions made by the deceased.

*Short service refunds*

- 16 (1) Condition 3 of new scheme rule 72(1) does not apply in relation to an individual who participated in the scheme before the new rules day (but such an individual is entitled to a short service refund only if he or she has fewer than 2 years total reckonable service).

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- (2) Any sums deducted from the salary of such an individual in accordance with Part D of the 1999 scheme rules are to be treated for the purposes of new scheme rule 72(2) as being scheme member contributions made by the individual.

*Transfers*

- 17 (1) When applying rule 76 in relation to an individual who participated in the scheme before the new rules day, amount A is to include—
- (a) any contributions made in respect of the individual under article D1 of the 1999 scheme rules,
  - (b) any sums received in respect of the individual under article P6 of the 1999 scheme rules, and
  - (c) any payments made by the individual under Schedule 5 to the 1999 scheme rules.
- (2) Condition 2 in new scheme rule 81 does not apply during the 12 months following the new rules day in relation to an individual who is a participating member on the new rules day.

*Added years*

- 18 (1) This paragraph applies where an individual—
- (a) is purchasing added years by periodical contributions in accordance with Schedule 5 to the 1999 scheme rules immediately before the new rules day, or
  - (b) has had an application to purchase added years accepted by the SPCB in accordance with Schedule 5 to the 1999 scheme rules but has not yet made the lump sum payment.
- (2) Where this paragraph applies—
- (a) Part Q of (and Schedule 5 to) the 1999 scheme rules are, despite article A3 of the 1999 pensions order, to continue to have effect in relation to those purchases,
  - (b) the individual's reckonable service as an MSP is to be increased by any added years in respect of which the periodical contributions (including any paid before the new rules day) or lump sum has been paid, and
  - (c) that increased period of reckonable service is, for the purposes of new scheme rule 38(1), to be treated as a period during which lower rate scheme member contributions were made.
- (3) The reference in new scheme rule 89(3)(c)(ii) to scheme member contributions is, in relation to any tax year including or after the new rules day, to include any contributions made during that year under paragraph 4 of Schedule 6 to the 1999 scheme rules.

*AVC Scheme*

- 19 (1) Despite article A3 of the 1999 pensions order, the scheme for making additional voluntary contributions set out in Part R of (and Schedule 6 to) the 1999 scheme rules is to continue to have effect with the following modifications—
- (a) all the SPCB's functions, rights, liabilities and obligations in relation to the AVC scheme are transferred to and vest in the Fund trustees,

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- (b) no individual may become a contributor to the AVC scheme after the new rules day (and sub-paragraphs (1) and (3) of paragraph 3 of Schedule 6 is accordingly to cease to have effect),
  - (c) in paragraph 3(2) of Schedule 6, the words from “but” to “participant” are to cease to have effect,
  - (d) no transfers may be made to the AVC scheme after the new rules day (and paragraph 4 (4) of Schedule 6 is accordingly to cease to have effect),
  - (e) in paragraph 9 of Schedule 6—
    - (i) in sub-paragraph (1)(a), for the words from “an” to “1993” substitute “another pension scheme subject to that transfer being a recognised transfer for the purposes of section 169 of the Finance Act 2004 (c. 12)”, and
    - (ii) in sub-paragraph (1)(c), for “2 years” substitute “3 months”,
  - (f) paragraphs 10 and 11 of Schedule 6 are to cease to have effect.
- (2) New scheme rule 3 does not apply in relation to benefits payable and AVC contributions received under the AVC scheme.

#### *Guaranteed minimum pension*

- 20 The reference in new scheme rule 105(1) to a “transfer-in sum” includes reference to any sum received under article P6 of the 1999 scheme rules.

#### *Presiding Officer and First Minister pension scheme*

- 21 (1) Despite article A3 of the 1999 pensions order, Part S of the 1999 order is to continue to have effect in relation to—
- (a) any individual who is, or who has been, the First Minister or the Presiding Officer on or before the new rules day, and
  - (b) the rights of any person to receive benefits under Part S of the 1999 order in respect of such an individual.
- (2) The SPCB is to continue as the manager of the scheme established by Part S of the 1999 order and, in particular, is to determine the extent of any benefits conferred on an individual in respect of that scheme in accordance with paragraph 2(2) of Schedule 5 to the Welfare Reform and Pensions Act 1999 (c. 30).
- (3) When calculating an individual's entitlement to benefits under article S2 of the 1999 scheme rules, any reduction of the deceased's pension by way of a pension debit arising under the Welfare Reform and Pensions Act 1999 (c. 30) is to be ignored.

#### *General saving*

- 22 Despite article A3 of the 1999 pensions order, the 1999 scheme rules are to continue to have effect in so far as they are needed to give effect to any provisions saved by this schedule.

#### *Disapplication of scheme modifications*

- 23 The modifications set out in regulations made under paragraph 3 of Schedule 36 to the Finance Act 2004 (c. 12) no longer apply in relation to the scheme

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