SCOTTISH PARLIAMENTARY PENSION SCHEME COMMITTEE

AGENDA

1st Meeting, 2007 (Session 3)

Tuesday 18 September 2007

The Committee will meet at 3.00 pm in Committee Room 3.

1. **Declaration of interests:** Members of the Committee will be invited to declare any relevant interests.

2. **Choice of Convener:** The Committee will choose a Convener.

3. **Choice of Deputy Convener:** The Committee will choose a Deputy Convener.

4. **Scottish Parliamentary Pension Scheme inquiry:** The Committee will consider its approach to the inquiry.

5. **Scottish Parliamentary Pension Scheme inquiry:** The Committee will consider an issues paper.

6. **Scottish Parliamentary Pension Scheme inquiry – witness expenses:** The Committee will be invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses in the inquiry.

7. **Decision on taking business in private:** The Committee will decide whether its consideration of a draft consultation paper at its next meeting should be taken in private.

David Cullum
Clerk to the Committee
Tel: 0131 348 5951
The following papers are relevant to this meeting:

Agenda Item 1

Declaration of interests
SPPS/S3/07/01/1

Agenda Items 2 & 3

Choice of Convener and Deputy Convener
SPPS/S3/07/01/2

Agenda Item 4

Approach to the inquiry
SPPS/S3/07/01/3

Agenda Item 5

Issues paper
SPPS/S3/07/01/4
Part A – Required Legislative Changes
SPPS/S3/07/01/4A
Part B – Discretionary Changes
SPPS/S3/07/01/4B
Part C – Additional Issues Paper
SPPS/S3/07/01/4C
Part D – Grants to Members and Office Holders
SPPS/S3/07/01/4D

Agenda Item 6

Witness expenses
SPPS/S3/07/01/5

Background Information

Note by the Clerks – Committee Bills Procedure
SPPS/S3/07/01/6
Note by the Clerks – Pensions Background Paper
SPPS/S3/07/01/7
Introduction
1. At the first meeting of the Scottish Parliamentary Pension Scheme Committee, members of the Committee will be invited to make a declaration of interests. A member must declare an interest when attending or participating at a committee meeting where that interest relates to the subject being debated.

2. In the previous Parliamentary session, it was established that Members should make an initial declaration of interests at the first meeting of each committee to the extent of that committee’s remit.

Declarable Interests
3. Section 3 of Volume 2 of the Code of Conduct explains in detail where declarations should be made and guidance is also available in Volume 3, Section 3.

4. Section 12 of the Interests of Members of the Scottish Parliament Act 2006 defines a declarable interest and defines the circumstances in which a member has a declarable interest in relation to any particular matter. A declarable interest is defined as being a declarable financial interest. A member has a declarable interest in relation to any matter if that member has, or had, a registrable financial interest relating to that matter.

5. It is the responsibility of the individual Member to judge whether a registered interest is sufficiently relevant to particular proceedings to require a declaration. Members are advised at Paragraph 3.1 of Volume 3 Section 3 that Members should ‘err on the side of caution’. Members may also seek advice from the Standards Clerks.

6. Members are not required to declare interests which they have registered on a voluntary basis (i.e. those appearing in the “Voluntary” category on the Register).

Declaration of Interests at the First Committee Meeting
7. In the previous Parliamentary session, it was established that Members should make an initial declaration of interests at the first meeting of each committee to the extent of that committee’s remit. Section 3, paragraph 3.6 of the Guidance states that:

It has been established as good practice that Members of a committee (including committee substitutes) should declare interests relevant to the remit of that committee at the first meeting of the committee or on the first occasion on which they address the committee, irrespective of the business before the committee at that meeting. The same applies to any MSPs who, although not Members of the committee (or committee substitutes) expect to attend its meetings regularly.
8. At the first meeting of the Scottish Parliamentary Pension Scheme Committee, the oldest Member, who will be in the chair, will invite Members to declare any relevant registrable interests. The declaration should be brief but sufficiently informative to enable a listener to understand the nature of the Member's interest. It is not necessary to rehearse all the details of an interest as it appears in the Member's entry in the Register of Interests if this is more than is required to explain the nature of the interest.

9. If Members have any questions about what might constitute an interest relevant to the remit of the Scottish Parliamentary Pension Scheme Committee, they should contact the Clerk to the Scottish Parliamentary Pension Scheme Committee prior to the meeting. The Standards Clerks are also happy to provide advice.

Declaration of Interests at Subsequent Committee Meetings

10. Members are also required to declare any registered interests which may be relevant to business discussed at subsequent committee meetings.

11. Where a Member has an interest relevant to the proceedings, he or she must make a declaration of interest at each meeting in which he or she participates. This is to allow the public attending any committee meeting to be aware of the Member’s interest. The declaration should be made at the start of the relevant agenda item or as soon as the Member is able to make the declaration, but before otherwise participating in those proceedings. A declaration must be made whether a committee meets in public or in private. Where a relevant matter is discussed in both private and public at any single committee meeting, the declaration should, as good practice, be made during the public session even if it has already been made in private session.

12. Members should, as good practice, also declare any business or personal relationships they might have with any advisers or witnesses to the committee.

13. Members should also note that it is now a requirement to make a declaration even if a member simply attends or votes at a meeting but does nothing else. In such cases the Parliament has determined that the Member's register entry is sufficient declaration of their interest. Where the proceedings occur after the Member has lodged a written statement with the clerks but before it is published in the Register, Members are encouraged to make an oral declaration of that interest.

Further Guidance

14. Further guidance on declaring registrable interests may be found in Volume 2, Section 3 of the Code of Conduct and Volume 3, Guidance at Section 3. The Standards Clerks are also happy to provide advice to Members.
Recommendation
15. Members are invited to make a declaration of interests at the first meeting of the Scottish Parliamentary Pension Scheme Committee.

Clerk to the Committee
August 2007
Introduction
1. This paper is designed to inform Members of the procedure for choosing a Convener and Deputy Convener at the first meeting of the Committee.

Oldest Member
2. Standing Orders oblige all committees to choose a Convener at their first meeting. Rule 12.1.6 states that the meeting is to be chaired by the Oldest Committee member until a Convener is chosen. The “Oldest Committee Member” is defined as the oldest member of the committee present at the meeting and who has indicated to the Clerk that he or she agrees to chair the meeting.

Choice of Convener
3. On the 27th of June, the Parliament agreed to motion S3M-249 which resolved that members of the Scottish National Party are eligible to be chosen as Convener of the Scottish Parliamentary Pension Scheme Committee. The Oldest Committee Member will, following the declaration of interests, invite nominations for members of that party for the convenership. There is no requirement for nominations to be submitted in advance of the meeting or to be seconded.

4. Where only one nomination is received, Members will be asked to agree to the appointment.

5. On being chosen by the Committee, the Convener will immediately take the chair and will chair the remainder of the meeting.

Choice of Deputy Convener
6. Motion S3M-249 also stated that members of the Labour Party are eligible to be chosen as Deputy Convener of the Scottish Parliamentary Pension Scheme Committee.

7. The procedure for choosing a Deputy Convener is the same as that for the Convener and will be conducted by the newly-chosen Convener.

Role of Convener and Deputy Convener
8. The duties and responsibilities of the Convener and Deputy Convener of a Parliamentary Committee are set out in Rule 12 of Standing Orders. Further detail is provided in paragraphs 2.16 to 2.25 of the Guidance for the Operation of Committees which can be found at:

http://www.scottish.parliament.uk/business/parliamentaryProcedure/g-committee/cg-c.htm
**Recommendation**

9. Members are invited to choose the Convener and Deputy Convener.

Clerk to the Committee
August 2007
SCOTTISH PARLIAMENTARY PENSION SCHEME COMMITTEE

Approach to inquiry into the replacement of the Scottish Parliamentary Pension Scheme rules

Introduction
1. The Bureau agreed on 26 June 2007 to establish a Scottish Parliamentary Pension Scheme (SPPS) Committee to inquire into and report with recommendations for a Committee Bill on a replacement for the Scottish Parliamentary Pension Scheme rules.

2. It therefore falls to the SPPS Committee to consider and take evidence on the MSPs’ and office holders’ pension scheme and report to the Parliament on its findings, setting out what changes to the pension scheme it considers necessary and what should be contained in a proposed bill.

3. The Parliament has agreed that the SPPS Committee will operate until such time as it reports its findings to Parliament. The Committee’s report will be debated by Parliament and should it agree to the findings a bill will thereafter be prepared and introduced. This Committee bill would not be referred to a lead Committee on introduction but the Finance and Subordinate Legislation Committees would carry out their usual scrutiny prior to a stage 1 debate being conducted in the chamber. After the stage 1 debate a new Committee would be established to undertake Stage 2 scrutiny and the bill would proceed in a similar way to Executive bills.

Background
4. The current rules for MSP and office holder pensions are set out in a transitional order (The Scotland Act 1998 (Transitory and Transitional Provisions) (Scottish Parliamentary Pension Scheme) Order SI 1999/1082) which by its nature was a piece of legislation that was intended to be replaced by an Act of the Scottish Parliament. In addition, changes made at UK level by the Pensions Act 2004 and the Finance Act 2004 have made it necessary for the current pension scheme for MSPs to be updated, via primary legislation, in order to comply with new statutory provisions. The transitional arrangements under the Finance Act 2004 will expire in April 2011, after which time current arrangements under the SPPS will not comply with this legislation. There is, however, a need to make some changes earlier than that date, particularly in relation to members who reach age 75 during this session.

5. Members should be aware that other areas of pension policy have developed since the SPPS rules were drafted and implemented in 1999. In addition, the benefit of eight years of practical experience of the current scheme has also highlighted issues and possible inconsistencies. It is expected that all of these areas will also form part of the Committee’s consideration of the current scheme.
Background papers
6. In order to inform members’ consideration of the scheme, an issues paper has been prepared for members’ information. This paper principally covers—

- Required legislative changes
- Discretionary legislative changes
- Additional issues identified
- the Grants Order

7. The aim of this paper is to inform the Committee’s preparation and issue of a consultation paper to interested and affected parties. Responses thereto, together with oral evidence in the New Year, should assist members in reaching views on the changes which are required to the scheme rules.

Proposed timetable
8. In order that any proposed bill that arises from the Committee’s considerations has adequate time to complete its Parliamentary process, within the constraints placed under the Finance Act 2004, it is important for this Committee to report by summer 2008. Annex A to this paper sets out in detail a proposed timetable for members’ consideration.

9. The main points in relation to the timetable, for the Committee’s agreement, are—

- Publication of consultation paper and call for evidence – Oct 2007
- Oral evidence taking – February/March 2008
- Agree final report – June 2008

Evidence taking

Written evidence
10. The Committee will wish to consider and agree a list of possible consultees to be targeted, a draft of which is printed at Annex B to this paper. It is proposed that the consultation paper and a general call for evidence are published on the Committee’s website.

Oral evidence
11. It is acknowledged that members will wish to consider the responses received to the Committee’s consultation paper and call for evidence before deciding upon what invitations for oral evidence should be extended. A final list of prospective witnesses and an evidence taking programme will therefore be drawn up for the Committee’s consideration and agreement at the end of consultation period. However, members may wish to consider the proposal that as a minimum the following witnesses are invited to give evidence—

- Representatives of each political party
- The relevant portfolio member of the SPCB
- Government Actuary Department
• Pension scheme administrators i.e. the Scottish Public Pensions Agency

Advisers
12. Members will require specialist advice in relation to both the legislative changes that are required to meet current statutory requirements and the liabilities and cost implications of any proposed changes to the scheme.

13. The Scottish Public Pensions Agency (SPPA) undertakes the day-to-day calculations relative to individuals within the Scheme, covering matters such as transfer values and accrued rights. It also supplies all routine administrative information to members such as annual benefit statements. The SPPA undertakes a similar role for all public sector pension schemes in Scotland and has been leading on reviews to those schemes to meet the legislative changes. The SPPA has detailed scheme knowledge together with experience of the effects of the legislation. It is therefore recommended that the Committee agrees to seek to appoint the SPPA as an adviser to support its considerations.

14. Given that all proposed scheme rule changes should be assessed for cost implications to the pensions fund to ensure that ongoing contributions, both from members and the employer, meet expected future liabilities, the Committee is in addition recommended to seek to appoint the Government Actuary Department (GAD) in an advisory capacity. Only GAD, who value the overall scheme every 3 years, can provide this detailed and specific information.

15. The Committee is invited to agree to seek approval for the appointment of the SPPA and GAD as advisers.

16. Should the Committee agree to this, approval for these appointments will be sought internally.

Grants Order
17. An associated order which members will wish to consider is the Statutory Instrument (The Scotland Act 1998 (Transitory and Transitional Provisions) (Grants to Members and Officeholders) Order SI 1999/1081). As mentioned above, an Issues Paper – Part D detailing issues from that Order has also been prepared, with a view to the issues arising being incorporated within the above process.

Action
18. The Committee is invited to comment on the indicative timetable for considering and reporting upon proposals for the Scottish Parliamentary Pension Scheme. (Subject to members’ agreement, the clerking team will update and issue this timetable with Committee papers on an ongoing basis for members’ information.)

19. The Committee is invited to agree to seek approval to appoint advisers from the SPPA and GAD.
20. The Committee is invited to agree that the Committee will finalise witnesses and its evidence taking programme at the conclusion of its consultation.

Clerk to the Committee
August 2007
Scottish Parliamentary Pension Scheme Committee

Draft timetable 2007/08

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<th>Proposed Meeting Date</th>
<th>Agenda Item(s)</th>
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<tr>
<td>18 September 2007</td>
<td>Consideration of background/approach papers</td>
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<tr>
<td>2 October 2007</td>
<td>Further meeting to consider and agree consultation paper</td>
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<tr>
<td>By 12 October 2007</td>
<td>Issue consultation paper and call for evidence</td>
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<td>Note: These meetings are provisional and will be cancelled if they prove unnecessary</td>
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<tr>
<td>13 November 2007</td>
<td>Possible consideration of matters arising, for example from the SSRB report at Westminster</td>
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<tr>
<td>11 December 2007</td>
<td>Preliminary discussion of consultation responses received to date/possible witnesses and evidence taking programme</td>
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11 January 2008 Consultation closes

5 February 2008
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<th>Summary of responses</th>
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<tr>
<td>Final proposed witnesses</td>
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<td>Final proposed evidence taking programme</td>
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February Recess 9-17 February 2008

19 February 2008 Evidence taking and consideration of evidence heard

26 February 2008 Evidence taking and consideration of evidence heard

11 March 2008 Evidence taking and consideration of evidence heard
<table>
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<tr>
<td>25 March 2008</td>
<td>• Summary of oral evidence</td>
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<td>• Summary of written evidence</td>
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<td>• Issues paper</td>
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<td>29 March 2008 – 13 April 2008 – Easter recess</td>
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<td>Draft report</td>
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<td>20 May 2008</td>
<td>Final report</td>
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<td><strong>By end June publish report</strong></td>
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Scottish Parliamentary Pension Scheme Committee

List of possible consultees

Biggart Baillie
Cabinet Office
Centre for Research into the Older Workforce
Commission for Equality and Human Rights (to be established in October 2007)
European Parliament
Former and current MSPs
Government Actuary's Department
Hewitt Bacon and Woodrow Ltd
HM Treasury
National Assembly for Wales
National Association of Pension Funds
Northern Ireland Assembly
Office Holders
Pensions Ombudsman
Pensions Regulator
Representatives of Political Parties
SPCB
Scottish Public Pensions Agency
The Department for Work and Pensions
The Pensions Advisory Service
The Review Body on Senior Salaries
Westminster
Background

Legislative change
1. The current Scottish Parliamentary Pension Scheme (SPPS) Rules were written in 1999 and, save for one amendment on civil partnerships, they have not changed. In that time, there have been several general legislative changes which affect occupational pension schemes¹:

- the Welfare Reform and Pensions Act 1999 which introduced pension sharing on divorce, where ex-spouses can get membership of a scheme in their own right or a transfer value from the scheme;
- the new status of civil partner introduced by the Civil Partnership Act 2004;
- amendments to pension law made by the Pensions Act 2004; and

2. All of these changes are covered in detail in this paper for the Committee’s consideration, together with other matters that impact on the SPPS rules.

Discussion
3. This paper sets out the following issues for the Committee’s consideration—

   Part A – Required Legislative Change
   Part B – Discretionary Legislative Change
   Part C – Additional issues
   Part D – The Grants Order

Clerk to the Committee
August 2007

¹ For example the Local Government Scheme has been amended 9 times since 1999 and the NHS pension scheme 12 times.
SCOTTISH PARLIAMENTARY PENSION SCHEME COMMITTEE

Issues Paper – Part A

Required Legislative Changes

Introduction
1. This part of the paper considers the changes to the SPPS rules required as a result of recent legislation.

Pension Sharing on Divorce
2. The Welfare Reform and Pensions Act 1999 gave powers to courts to split pension benefits on divorce or annulment proceedings. These powers were extended in the Civil Partnerships Act 2004 in relation to the dissolution of civil partnerships.

3. The rights go much further than previous orders which dealt with pension rights for divorcing couples. They allow an ex-spouse or civil partner to have their own benefits in the scheme, independent of the member’s or office holder’s rights or their spouse or civil partner.

4. At present, the SPPS would have to comply with any pension sharing order. However, the rules can be amended to decide what rights are available to an ex-spouse or civil partner, e.g. should they be allowed into the scheme and given rights under the scheme or should they be entitled to a transfer value to go into another scheme. Any such rights that were made available would be cost neutral to the scheme, provided that the scheme rules are amended to take the appropriate power to charge the parties for the administration costs involved.

Civil Partnerships
5. The Civil Partnership Act 2004 (c.33) introduced the new status of civil partner where same sex couples form a legal civil partnership. Occupational schemes are required to make provision for civil partners to receive similar pension rights as are provided to married couples.

6. Changes have already been made to the SPPS by the Civil Partnership Act 2004 (Modification of Subordinate Legislation) Order (SSI 2005/572). These changes inserted the alternative of civil partner after each right provided to a spouse.

7. One area which was not amended in the SPPS is in relation to the cessation of surviving spouses’ and civil partners’ pensions where they remarry (Articles K1(3) and M5 of the SPPS) or cohabit (Articles K1(4) and M5 of the SPPS). This forfeiture, should it continue, should apply equally to subsequent civil partnerships. This particular issue is detailed for members’ discussion at paragraph 47 of part B (discretionary changes).

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1 See paragraph 1 of Schedule 5 to the 1999 Act and SI 2000/1053.
Pensions Act 2004

8. The Pensions Act 2004 sets out a number of requirements on the operation of pension schemes (e.g. Pensions Regulator, scheme funding requirements, internal dispute resolution, trustee knowledge requirements, procedures for electronic communication). The SPPS must continue to comply with these obligations in operating the scheme. However, no specific areas have been identified where immediate alteration to the SPPS rules is required.

9. Change will be required if the SPPS moves to a trust set up. Requirements on trustees include administration and investment responsibilities (including requirement on how scheme surpluses are dealt with) and the requirement to appoint member nominated trustees. This is covered in more detail at paragraphs 2-5 of part C (additional issues).

Finance Act 2004

10. The Finance Act 2004 sets out a new tax regime for registered pension schemes. Historically, pension schemes have had to comply with tax rules in order to benefit from tax advantages, for example an exemption from tax on the pension fund’s investment income and capital gains; tax relief on member and employer contributions; tax free lump sums on retirement (although annual pensions are subject to income tax).

11. The Finance Act 2004 relaxed some of the tax limits previously imposed. However, the general principle remains that for a scheme to benefit from the preferential tax treatment it should remain within the tax rules².

12. The SPPS is a registered scheme and as such it cannot, without the possibility of sanctions under the Finance Act 2004 make payments outwith the pension scheme rules³. The current SPPS rules were modified⁴ to provide managers or trustees of occupational pension schemes with discretion where the rules of the scheme would otherwise require that payment to be made. At present this transitional discretion lasts until 2011 at the latest. The current rules which do not comply can be dis-applied using the transitional discretion.

13. The Scheme rules which do not comply with the 2004 Act and which require to be amended when the transitional discretion no longer applies are as follows:

Age 75

14. From 5 April 2006 the Act prevents scheme members on reaching age 75 from taking a tax-free lump sum with their pension, receiving tax relief on

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² s.165-168 of the 2004 Act
³ A payment would attract an unauthorised payment charge for the recipient and the SPCB (section 208-213 of the 2004 Act) and a possible scheme sanction charge (section 239 of the 2004 Act).
⁴ Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006 (SI 2006/364)
contributions or payment of a tax free lump sum after death in service. This has consequences in a number of the existing scheme rules as follows:

- Article C1, membership right for all members of Parliament. In light of the restricted benefits that are available to those reaching age 75 a decision needs to be taken on whether membership is permitted to those age 75 and over.

- Article F1, restricts entitlement to a pension to those who are no longer members of Parliament. This may adversely affect a member who is age 71 when elected and who seeks to serve a full 4 year term. They currently do not have the option to take pension benefits before age 75 unless they leave the Parliament.

- Article G1 Commutation into lump sum.

- Article L1 Gratuity on death in service.

- Article R1 and Schedule 6. Whether Additional Voluntary Contributions (AVCs) are to be available to those aged 75 and over.

15. The approach taken for the Westminster regulations giving effect to these changes was to amend the scheme rules to allow members aged 75 before 6 April 2006 to take their lump sum benefits prior to reaching age 75 and have their pension abated (i.e. suspended) until they retire.\(^5\) On withdrawal from the scheme no further contributions or AVCs are payable. Alternatively, Westminster members at age 75 can remain members of the scheme and continue to contribute but without any tax benefits applying and without any rights to receive a lump sum on retirement. The approach adopted in Wales is not to allow those aged 75 or above to contribute to the scheme.

16. The changes also removed the right to a death in service lump sum gratuity for those over 75. In its place, for members aged 75 before 6 April 2006, Westminster has guaranteed to pay to a nominated person a sum equivalent to 4 times salary less any lump sum earlier taken. As the sum cannot under tax rules be paid as a lump sum, it is paid as a monthly pension spread equally over the period until the member would have reached age 85.\(^6\)

17. The changes to the Westminster scheme, which were part of a wider package, were assessed as being cost neutral to the scheme.

Minimum Pension Age

18. In some circumstances a member can retire from age 50 where they are no longer an MSP or office holder and have 15 years counting service. Under the 2004 Act, the normal minimum retirement age was increased to 55.

\(^5\) The Parliamentary Pensions (Amendment) Regulations 2006 (No.920)

\(^6\) tax rules allow a guaranteed period of up to 10 years for payment of pension benefits, the latest date the guaranteed period can run is age 75.
A payment of pension cannot be made before the member reaches the normal minimum retirement age. Therefore the minimum retirement age for members is 55 from 2010.

Transfers to unregistered schemes
19. Part P of the rules require to provide that transfers in and out of the SPPS can only come from a pension scheme registered with HMRC.

Lifetime Allowance and Annual Allowance
20. The previous limits on contributions and permitted maximum pensions have been removed and replaced with an Annual Allowance (amount of benefits you are allowed to accrue in a registered pension scheme each tax year before you are required to pay tax) and a Lifetime Allowance (limit on the amount of tax-relieved pension saving that you can have).

21. The Scheme rules require to reflect reporting requirements on trustees or the manager in relation to the Lifetime Allowance and the Annual Allowance. There is also possible liability for the scheme for a Lifetime Allowance charge and therefore the transitional provisions allow (and any new rules should ensure) trustees and managers can recover tax from benefits where the limits are exceeded and a charge incurred by the scheme. The Scheme rules should also require members to provide information on other pension schemes prior to payments being made and allow the managers (or any trustees) the authority to pay any lifetime allowance charge due.

Future Changes to Scheme Rules
22. There will inevitably be further legislative changes which will impact on the rules of occupational pension schemes and flexibility to amend the rules of the SPPS without primary legislation being required is desirable.

23. This flexibility could be achieved by setting out enabling powers in the bill to amend scheme rules. This could allow the scheme rules to be set out in a schedule to the bill and modified as necessary without the need for further primary legislation.

24. It will be for the Bill to set out the procedures by which the scheme can be amended in the future.

Clerk to the Committee
August 2007

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7 Registered Pension Schemes (Transfer of Sums and Assets) Regulations 2006
8 Sections 227-238, Finance Act 2004
9 £215,000 for the tax year 2006-07
10 Sections 214-226, Finance Act 2004
11 £1,500,000 for the tax year 2006-07
12 e.g. The Registered Pension Schemes (Provision of Information) Regulations 2006
13 See SI 2006/364, Regulation 8.
Introduction
1. This part of the paper covers discretionary changes which could be made to the SPPS rules as a consequence of legislative changes in the Finance Act 2004 or taking into account equalities issues.

Background
2. The Finance Act 2004 generally represents a relaxation of some of the tax limits previously imposed. It swept away many of the previous restrictions around occupational pension schemes. Some of the provisions in the SPPS rules and in other pension scheme rules were developed under these restrictions. For example:

- limits on permitted employee contributions (15% of salary\(^1\));
- limits on permitted benefits (e.g. pension from all approved arrangements cannot be greater than 2/3rds of pay);
- limits on earnings than can be pensionable (the permitted maximum stated annually by the Treasury); and
- additional voluntary contribution (AVC) schemes were introduced because it was not possible to be a member of an occupational pension scheme and also concurrently contribute to a separate pension scheme. Similarly, facilities for purchasing added years were created to allow people to make additional pensions contributions.

3. The 2004 Act changes are twofold. In some areas, as discussed at Part A, they impose compulsory rules with which a registered pension scheme (i.e. one which enjoys the tax advantages) must comply. Secondly, the 2004 Act in some areas is more permissive than previous rules, that is allowing a registered pension scheme to provide its members with additional benefits up to a limit. This paper looks at some of these flexibility issues.

Retention of Revenue Limits
4. Maximum payments from the SPPS are currently limited by the “permitted maximum”. The “permitted maximum”, is the old Revenue limit. The limits apply in (i) Article F5 and Schedule 2 (pension); (ii) Article G1(5) (lump sum on retirement); and (iii) Article L1(6) (lump sum on death) of the pension rules.

5. Similarly contributions to the scheme, towards added years and for AVCs are limited by the “permitted maximum”.

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\(^1\) The 15% covers contributions to both the scheme and any AVCs or the purchase of added years.
6. There are transitional arrangements\(^2\) allowing the existing limits to be maintained until 2011. The revised scheme rules will accordingly require to specify any limits that are to apply in the future. The following paragraphs discuss each area where the limits are currently applied.

**Maximum Pension available**

7. The 2004 Act removes the need to limit service counting for pension and it also removes the former Revenue limit of 2/3 final remuneration as a maximum pension. There is now no maximum amount of pension payable from a registered scheme. In the event that the value of the pension benefits payable exceed the lifetime allowance then there would be a tax liability for the recipient.

8. Removing the current limit of 2/3 final remuneration would allow extra benefits to be accrued by and payable to long serving members. There could however be some potential cost implications for the scheme in the future. Whether or not the 2/3 limit is retained, provision should be made to collect the tax due by ensuring that where the lifetime allowance is exceeded enough benefits must be commuted to meet the tax liability (though it could be agreed that the scheme should fund the tax liability).

9. The maximum pension payable at Westminster has been retained at 2/3 of final salary and pension benefits paid from that scheme may also be subject to reduction by the value of any “retained benefits”\(^3\). The National Assembly for Wales retained the 2/3 maximum but removed the restriction on “retained benefits”. As the SPPS is a young scheme it is thought likely that, unlike Westminster, retained benefits have no current funding implications.\(^4\) Looking to the future, any savings that might have accrued to the scheme through such a reduction would not be realised.

**General Tax Free Lump Sum on Retirement**

10. In terms of lump sums, the 2004 Act\(^5\) now allows up to 25% of the value of all accrued benefits taken on retirement to be taken as a lump sum. The commutation rules in part G and Schedule 3 of the SPPS rules currently allow a commutation to a maximum of 1½ times final salary.

11. It would be possible to alter the lump sum available up to the maximum of 25% which could increase the sum available to members by up to 75% in certain instances, given current commutation rates. This could increase members’ available benefits, particularly if they converted taxable pension into a tax free lump sum. It would however reduce their income over the longer term. The cost to the scheme would be broadly neutral.

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\(^2\) Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations (SI 2006/364)

\(^3\) Retained benefits are other pension benefits members hold generally from previous employment but also include any AVCs purchased.

\(^4\) Information on retained benefits is not held by the scheme and is currently only available when a member retires.

\(^5\) section 166 and Schedule 36 Finance Act 2004
Death in Service Gratuity
12. Under the scheme rules where a member of the scheme dies while still in service a gratuity is payable of an amount equal to three times salary or, if greater, a refund of the contributions they had paid. The overall maximum is limited to three times the permitted maximum as set by the previous revenue rules until 2011.

13. Under the Finance Act 2004 the maximum permitted tax free lump sum is £1.5 million. The Westminster scheme has increased their benefit payable to four times salary. Any increase to the amount payable under this provision will incur a cost to the scheme.

Children’s Pension
14. Pensions are payable to the children of MSPs, former MSPs with deferred benefits and retired MSPs who die. A child is defined at article K2 of the scheme rules as being:

- Under 17 years
- Under 22 and since age 17 been continuously engaged in full time education or training for a trade, profession or vocation
- Physically or mentally incapacitated and became so when within either of the above.

(No children’s pensions are currently being paid under the scheme.)

15. Under the 2004 Act a child’s pension must stop at age 23 unless they are dependant because of physical or mental impairment. The wording of Article K2 could be improved to clearly reflect the policy of children’s pensions only being paid indefinitely beyond age 22/23 to those children who are dependent because of physical or mental impairment.

16. The definition of a child in K2 as a person in full time education etc under age 22, could be increased to cover any such child under age 23 which would take account of the position of a child starting university at age 18 to complete the normal 4 year Scottish degree course.

17. The scheme could be amended to provide benefits for adult children who are over 23 but where dependent on the participant at the participant’s death because of physical or mental impairment. Any associated costs to the scheme would be minimal.

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6 For 07-08 the maximum is £112,800 (a figure exceeded only by the First Minister’s salary)
7 The cost of this is a premium to insurers which would rise proportionate to the increase in benefits payable.
8 section 167 for the “pension death benefit” rules and Schedule 28 for the definition of dependant entitled to a pension death benefit
Employee Contributions

18. Under the Finance Act 2004, subject to individual pension scheme rules, all taxpayers may now contribute up to 100% of their earnings into pension arrangements. This is subject only to an Annual Limit of £225,000.

19. The existing scheme rules set a limit on the overall contributions a member may make to pension, AVC and purchase of added years of 15% salary (Schedules 5 and 6). This figure includes the 6% contributions level set for all scheme members.

20. It would be possible to alter either or both of these levels. Alteration of the maximum level which members may contribute towards their pension arrangements should have no impact on the funding level for the scheme. The cost of the benefits purchased by way of added years is actuarially calculated. Revisions have been made to the Westminster scheme to permit members to contribute up to 10% additional contributions.

21. The basic contribution figure of 6% payable by members of the scheme was set based upon the benefits available. Should there be any alteration to the value of the scheme benefits arising from this inquiry the employees contribution figure payable could be altered to reflect the changes.

AVC and Added Years

22. At present members have two options within the scheme should they wish to enhance their benefits. They can purchase added years of service or contribute additional voluntary contributions (AVCs).

23. The Pensions Act 2004\(^9\) removed the obligation\(^10\) for occupational schemes to allow AVCs. The existing scheme rules covering AVCs are extensive\(^11\) and under the new provisions unnecessary. In effect all that the Parliament is undertaking is a premium collection facility on behalf of the third party supplier of the pension ultimately purchased by the AVCs. Members can make similar arrangements on the open market. Historically there may have been benefit which accrued through utilising a scheme facility arising from reduced administration charges. This is thought to have been eroded through increased competition among providers.

24. It is for consideration whether the current facility under the scheme to make additional voluntary contributions should continue to be provided. There are no costs on the scheme arising from either retention or removal.

25. There is additionally a question as to whether the facility to purchase added years of service within the scheme should continue to be available. Under scheme rules the limit on contributions is restricted to 15% salary including the 6% contributions to the scheme. The new tax rules limit

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\(^9\) Section 267
\(^10\) in section 111 of the Pensions Schemes Act 1993
\(^11\) At schedule 6
contributions to 100% salary (less any scheme contributions). Both Westminster and Wales have generally limited the amount of contributions payable to purchase added years to 10% salary in recognition that their availability carries some potential costs to the scheme (see also paragraph 45).

Benefits for any Retained AVC facility
26. Under the scheme rules all monies paid as AVCs must be used to purchase member’s pensions or death benefits. There is no option to take any of the AVC pension as a lump sum. The 2004 Act\(^\text{12}\) now allows up to 25% of AVC benefits to be taken as a lump sum, rather than requiring all to be taken as an annuity.

Flexible Retirement
27. It is now possible for a pension scheme member to continue in post and begin to receive pension benefits. Consideration should be given as to whether this is appropriate for Members of the Scottish Parliament. If this was permitted it would have cost implications for the scheme of approximately 4% members pay. The Scottish Teachers Pension Scheme provides this facility in circumstances only where the number of hours worked is reduced.

Trivial Commutation
28. One of the lump sums which is permitted in the 2004 Act is a trivial commutation lump sum and the limit has been increased to a maximum in the region of £750 pension that may be commuted\(^\text{13}\). In addition, the refund of contribution provisions in the SPPS could be harmonised with the 2004 Act provisions on refunds of contributions. There are likely to be very few pensions accruing within the limit and no cost implications for the scheme although there may be a small administrative saving.

29. Any decision made here could also be followed in relation to spouse/partner pensions which become payable following upon a member’s death in service (see paragraph 49).

Ill Health Provision
30. The pension rules in the 2004 Act lay down the requirements for a pension to be paid early on the basis of ill health. The current SPPS rules provide for an enhanced pension to be payable before normal retirement age if the member is unable to adequately perform their duties as a member because of their illness.

31. The Finance Act 2004 requires the criteria for ill health retirement to be altered such that the member is, and “will continue to be incapable” of carrying out their occupation. The Scheme could provide that the member or office holder may take ill-health benefits only when incapable of carrying out any occupation, rather than when incapable of performing adequately the duties of MSP/office holder. Given that some medical conditions may

\(^{12}\) section 166 and Schedule 36 Finance Act 2004
\(^{13}\) Finance Act 2004 sch 29 paras 7-9
improve with treatment, a further change reflecting the intent of the Finance Act could require the member to be assessed as continuing to be incapable into the future.

32. Wales have included provisions to allow any provision of ill health pensions to be subject to periodic review. Reviews involve medical evidence to confirm continuing incapability.

33. The scheme could also have a lesser benefit available for those who are unable to adequately perform their duties as a member because of their illness. This could apply in circumstances where they could undertake other employment either less demanding or of a different nature to that of an MSP.

34. The Scheme could also provide for serious ill-health lump sums, payable where the member is not expected to live for more than a year.

Options available at retirement
35. The 2004 Act potentially allows some additional options on retirement, e.g. different levels of pension increase or transfer of benefits to spouse/dependent. It is suggested that given the extent and range of other issues requiring consideration this aspect be left for the new trustees or administrators to take forward.

Annual Increases to Pensions in Payment
36. At present pensions payable are increased annually by a figure equivalent to the RPI\(^{14}\). The scheme could impose a more stringent level on increases setting a maximum figure of 2.5% where RPI is higher. Any such change would produce a small saving to the scheme estimated at around 1% of payroll per year over the long term.

AGE EQUALITY

Calculation of Early Retirement Pensions
37. Under Article H1 of the scheme rules, a former MSP, aged between 50-65, with 15 years of service (for this purpose including non concurrent MP or MEP service) can apply for an immediate pension where the SPCB is satisfied that they do not intend to stand for re-election. The amount of that pension is abated in accordance with the table in Schedule 4 of the SPPS Order.

38. The calculations in Schedule 4 could be argued to be discriminatory.\(^{15}\) The legal climate on age discrimination in employment has recently changed significantly.\(^{16}\) The High Court in England and Wales\(^{17}\) took the view that a similar type of pension rule for employees was \textit{prima facie} discriminatory on

\(^{15}\) See also paragraph 7 of Part D (resettlement grants)
\(^{16}\) the European Age Discrimination Directive and the implementing \textit{Employment Equality (Age) Regulations 2006}
\(^{17}\) Unison v Secretary of State 2006 EWHC 2373 (Admin)
the grounds of age. There are a number of significant legal differences for the SPPS, for example members are not employees. Irrespective of the legal climate there may be a case for considering the equity of why, for example under Schedule 4, a 63 year old with 17 years service should get a higher pension than a 61 year old with 18 years service.

39. The Westminster scheme has decided to phase out the equivalent of the age and service calculation under Schedule 4. Since 4 November 2004 new members to the PCPF have not been given the right and existing members can only count service until the next general election. Future member benefits are reduced from the date of change using actuarially neutral early retirement factors (favouring neither the member nor the scheme) with retained benefits frozen.

**Elective Early Retirement**

40. Under the current scheme rules only members who satisfy limited qualifying conditions can elect to receive their pension benefits prior to the normal retirement age of 65. One of the conditions requires 15 years service as well as the member being over 50 years. However, many members will not qualify. Most members are likely to retire at an election. Those not quite 65 are unable to retire and receive their pension early. They either have to work a further session or resign mid-session on their 65th birthday.

41. Consideration could be given to providing an option to members who stand down or are not re-elected to receive their pensions, subject to reductions, between ages 55 and 65.

42. This could be restricted further, if required, to members whose 65th birthdays fall during the following Parliamentary session, i.e. those who are between 61 and 65 at a general election and would therefore be older than 65 before the end of their expected 4 year term.

43. The value of any pensions benefits paid early would require to be actuarially reduced to avoid any impact on scheme funding.

**OTHER EQUALITY SCHEME ISSUES**

44. There are other age equalities issues which are classified as discretionary, on the basis that the SPPS is not caught by the European Age Discrimination Directive and the Employment Equality (Age) Regulations 2006 (i.e. because these regulations apply to employees rather than those holding elective office).

**Purchase of Added Years**

45. Article Q1 of and Schedule 5 to the scheme rules place an age limit of 65 on the purchase of added years. This is not necessarily discriminatory, given that the normal retirement age is 65. However, this is not a universal date as it is expected that retirement for most serving MSPs will be triggered at the end of a 4 year session and therefore members may still be contributing to pensionable service after age 65. In making a decision on this, members
may wish to ensure consistency with any changes proposed in relations to AVCs.

Refund of Contributions
46. Article N1(3) of the scheme rules provides a restriction on the refund of contributions where a man is 65 or a woman is 60. While it is unlikely that a refund of contributions will be taken and or whether it is in fact favourable treatment (and therefore discrimination), it is for consideration whether members wish to equalise this entitlement.

Loss of Surviving Spouse Pension on Remarriage or Co-habitation
47. Article K1 provides that a surviving spouse or civil partner loses their pension on remarriage or cohabitation. The principle behind this seems to be that the surviving spouse can rely on a future spouse for income. Members may wish to consider whether this assumption is continued. If it is, then there needs to be similar provision for surviving spouses or civil partners entering into civil partnerships.

48. Linked to this is the provision also in K1 (at sub-paragraph (6)) giving the Parliamentary Corporation discretion to refuse payment in full or part of a surviving spouse or civil partner’s pension. This applies if there are no children of the marriage and the marriage took place within 6 months of the member’s death and at the date of marriage the death was to be foreseen. Members may wish to consider if this discretion should continue to apply. Depending on any change made there are likely to be cost implications on the fund.

Commutation of Pension for Lump Sum following Death in Service
49. It is now possible to include an option when a member dies in service for the spouse/civil partner pensions to commute part of the pension payable for a lump sum. Any such sum would be payable in addition to the death in service lump sum due. It is for consideration whether the scheme should protect the spouse/civil partner from giving up a lifetime income support. The decision here may be linked to the earlier issue (paragraph 28) of commuting trivial pension sums due to members, where the limit is around £750 pension.

50. Any such change would be cost neutral for the scheme provided the value is actuarially calculated, although there may be some small administrative savings.

Clerk to the Committee
August 2007

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18 pensions for surviving spouses and civil partners,
19 this point was not automatically made by the amendments made by SSI 2005/572, which automatically amended the SPPS rules
Introduction
1. In addition to the mandatory and discretionary legislative matters highlighted, the Committee may wish to consider the following issues.

Scheme administration
2. Under Part B of the SPPS regulations, the Scottish Parliamentary Corporate Body (SPCB) is responsible for the management and administration of the scheme. Other UK Parliamentary/Assembly schemes have a separate board of pension trustees dedicated to the management of their members’ pension schemes, which avoids the perception of any conflict of interest and allows trustees dedicated time to consider pensions matters. As the SPCB operates both in the “employer” role providing “employer” contributions and as administrator of the fund, should changes to the scheme be proposed, the SPCB would have to consider the differing financial implications for each side.

3. Trustees at Westminster are appointed or removed by Order of the House of Commons. In Wales the trustee board is elected by the plenary on nominations put forward by the Assembly Commission. Both trustee boards also have secretariats, where independent lawyers and financial advisers are appointed specifically to provide advice on the pension scheme.

4. The Westminster board includes at least one and can have up to two pensioner trustees. The Welsh board currently has pensioner membership due to a continuity provision in the relevant legislation governing membership, rather than specific regulations providing for the appointment of pensioners.

5. Should the Scottish Parliament choose to appoint its own trustee board, there could be cost implications for the pensions fund associated with trustees obtaining independent professional advice.

Accrual Rate
6. Westminster and the National Assembly for Wales have two options available to members in relation to accrual rates. MPs and AMs have a choice of their pension accruing at either 1/50th or 1/40th of their final salary, with contribution rates of 6% and 10% respectively. The SPPS currently has an accrual rate of 1/50th of final salary with a 6% contribution rate.

7. In Wales 56 out of 60 members are currently in the 1/40th scheme. At Westminster, after the 2005 General Election, 585 out of 641 MPs were on the 1/40th accrual rate.

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1 The UK government remains concerned that the level of increased employee contributions is insufficient to meet the increased cost of the 1/40th scheme and the SSRB has been asked to consider funding implications in their current review.

2 Paragraph 80 of the Government Memorandum to the Senior Salaries Review Body on Ministers’ and MPs’ pay, pensions and allowances and Lords members’ allowances.
8. Should the SPPS change the current accrual rate, there would be a cost implication for the scheme.

Earnings Cap
9. Although the Finance Act 2004 lifted the upper restrictions on earnings taken into account for pension purposes, Westminster and Wales have both agreed to retain an earnings cap, which is set out by the Finance Act each year. The SPPS uses the same figure for its earnings cap, currently set at £108,600 per annum. No member’s pensionable salary used for scheme contributions exceeds this limit.

10. The earnings cap includes an MSP salary and any additional pensionable salary from an office holder position. If a member’s combined salary exceeds the earnings cap, contributions to and benefits from the SPPS would be limited.

11. Should the earnings cap be lifted, it could potentially affect a very small number of members of the scheme in future. There would be a cost implication for the member concerned and the pension fund through their contributions payable on the excess income.

Office Holders
12. The SPPS makes provision for office holders to be members of the scheme, both in their capacity as an MSP and as an office holder. Office holders who are currently in receipt of an additional salary are:

- Members of the Scottish Executive (except the First Minister);
- Junior Scottish Ministers; and
- Deputy Presiding Officers.

13. The pension rights of office holders are in addition to and separate from the pensions rights simultaneously accruing in the MSP scheme. The office holders’ pension rights accrue in relation to the additional salary allocated to the relevant post for as long as a person holds office.

14. Contributions are made at the same rate (6%) on the office holders’ salary as are paid on the MSP salary and scheme benefits are the same as apply to MSPs with one exception.

15. The scheme rules at Article K3 make provision for the enhancement of the pension payable to a surviving spouse/civil partner or to any children if the member of the pension scheme dies while a MSP. This enhancement increases the spouse/civil partner/children’s pension by the number of years between their age at the date of death and age 65\(^3\). This enhancement only applies to the pension payable in respect of service as an MSP based on their salary. No enhancement applies in respect of the additional pension paid to a

\(^3\) For example, a 50 year old member dying with 10 years service will leave a widow(er)/civil partner/children’s pension calculated on 25 years service, rather than 10.
surviving spouse, civil partner or child of an office holder based on their additional office holder’s salary.

**Lord Advocate and the Solicitor General for Scotland**

16. The scheme makes provision for the Lord Advocate and the Solicitor General for Scotland to be members of the scheme whether or not they are MSPs. Pension rights accrue for as long as they hold office.

17. Like office holders they pay contributions at 6% of their salary. Their total salary is the same whether or not they are MSPs. For those who are not MSPs, the office holder’s portion is enhanced to also include the equivalent amount payable to an MSP.

18. The scheme benefits applying to the Lord Advocate and the Solicitor General are the same as for all other current members with three exceptions.

19. The provision in the scheme rules at Article K3 for the enhancement of reckonable service for calculating a surviving spouse/civil partner/children’s pension when a member of the pension scheme dies while holding office only applies to MSPs and is based on MSP salary.

20. If the Lord Advocate or Solicitor General were to die in office prior to attaining 65, their surviving spouse/civil partner/children’s pensions would be less than that in respect of a MSP dying at the same age and with the same length of service. Their pensions would be based solely on their officeholder proportion of their total salaries. Additionally, no enhancement in terms of Article K3 would apply.

21. The second exception is that, unless the Lord Advocate and Solicitor General were or had been MSPs, they would not benefit from the enhancement of the pension payable to a surviving spouse/civil partner for the three month period following their death. This applies to MSPs or former MSPs under Article K4.

22. The third exception is that neither the Lord Advocate nor the Solicitor General is permitted under the scheme rules to purchase added years of service. (The purchase of added years for other scheme members is subject to an actuarial valuation requiring the payment made to correspond to the value of the benefits purchased and is fully funded by the employee.)

**First Minister and Presiding Officer**

23. Special pension arrangements are made for both the First Minister (FM) and the Presiding Officer (PO). No contributions are paid by either post holder in respect of their additional office holder salaries. Any person who has held either office is immediately entitled to a pension of 50% of their final salary.

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4 Rule C2 (1) (c) (ii)
5 Rules Part S
FM/PO portion of their salary\(^6\) on ceasing office. That pension is a direct call on the Consolidated Fund and is not paid from the scheme fund.

24. Both can remain members of the MSP scheme and make 6% salary contributions like all other MSP members. They remain entitled to an MSP’s pension at the same rates and on the same conditions as others.

25. The FM and PO pensions are suspended for any period that a ministerial office is subsequently held\(^7\). Should a former First Minister subsequently become an office holder they are not eligible for membership of the scheme in respect of their additional salary\(^8\). There is no equivalent restriction on a former Presiding Officer and they may contribute to the scheme fund in respect of their Ministerial salary.

26. The pension entitlement is based on the Westminster scheme where the Prime Minister, the Speaker of the House of Commons and the Lord Chancellor are each entitled to 50% pensions on demitting office. The Welsh Assembly has taken a different approach and treats its First Minister and Presiding Officer as if they were office-holders, providing enhanced pensions based on their length of service and office holder’s salary and requiring contributions to be made.

27. No minimum qualifying period is set before entitlement to First Minister and Presiding Officer pensions accrues and they are not linked to length of service in post. Either or both could be incorporated into the scheme with, say, a 1 year qualifying period before any entitlement arises, with entitlement accruing at a set rate per year. If, for example, entitlement was at 1/8th final salary per annum a First Minister or Presiding Officer would in future require to serve 4 years (equivalent to a full session) before reaching their current 50% pension entitlement. It is also for consideration, given these are non contributory and not paid from the general scheme fund, whether the rules for these pensions should be constituted in a separate scheme.

Clerk to the Committee
August 2007

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\(^6\) Pension is payable on the office holder portion only (office holder salaries currently £76,907 for the First Minister and £39,897 for the Presiding Officer)

\(^7\) Rules Part S1 (2)(a)

\(^8\) Rule C2 (1) (a)
SCOTTISH PARLIAMENTARY PENSION SCHEME COMMITTEE

Issues Paper – Part D

Grants to Members and Office Holders

Background
1. The Senior Salaries Review Body (SSRB) reported on pay, allowances, pensions and severance arrangements for members of the Scottish Parliament, the National Assembly for Wales and the Northern Ireland Assembly in November 1998. In relation to gratuities to persons ceasing to be members of the Scottish Parliament it recommended similar provisions to those available at Westminster:

- A resettlement grant payable to a member who at the election does not stand for re-election or who stands but is not re-elected.
- An ill-health retirement grant payable to a member who resigns because of ill-health before attaining age 65. The level of grant is equal to the level of resettlement grant which would have been available had the member not been re-elected rather than resigning on health grounds.
- A severance payment payable to relevant remunerated office holders under age 65 who cease to hold those offices.

2. These recommendations were accepted and taken forward in the current Grants Order separately from the current Pension Scheme Order. As with the Pensions Scheme Order, the Grants Order is a transitional order under the Scotland Act 1998 made at Westminster.

3. It is noted that SSRB is currently reviewing parliamentary pay and allowances at Westminster and its report is due in the summer. It is anticipated that its findings will be published in late autumn when Westminster returns.

Resettlement Grant
4. A resettlement grant is payable to a member who at the Scottish Parliament election does not stand for re-election or who stands but is not re-elected. The purpose of the grant is to assist with the costs of adjusting to non-parliamentary life and to that extent could be considered analogous to a redundancy payment on termination of employment.

5. The amount of grant is a percentage of the yearly salary the member received immediately prior to the relevant dissolution after which the member is not re-elected. The grant is based on a percentage of that salary increasing with age after 50 and length of service in excess of 10 years. This varies between 50% up to a maximum of 100%.

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6. In calculating the relevant amount, any period of service taken into account in any previous grant payments under this provision is disregarded.

7. There are equalities issues for the Committee to consider in relation to the Grants Order. At the moment any member leaving under the age of 50 or over the age of 70 receives 50% of salary regardless of length of service. However for those aged 50 to 64 the percentage of salary payable increases according to age and length of service, but then decreases for members leaving at age 65 to 70. The increases in salary only begin after a minimum of 10 years service, so there have been no variations to date. A copy of the table setting out the amounts is annexed.

**Ill-Health Retirement Grant**

8. An ill-health retirement grant may be paid to a member who resigns their seat on grounds of ill-health during a session and before the age of 65. It is equal to the level of resettlement grant which would have been payable to the person ceasing to be a Member of the Scottish Parliament. Similar equality issues arise to those set out above for the resettlement grant.

9. The SPCB has to be satisfied before paying the grant that the applicant does not intend to seek re-election, that ceasing to be a member is consequential on the ill-health and that ill-health would prevent the member performing his or her duties as a member. To determine eligibility, written medical evidence is required and the applicant may also be required to undergo a medical examination by a nominated practitioner.

**Severance Grant to Office Holders**

10. A severance grant is payable to an office holder who ceases to hold office before reaching the age of 65. The grant is not payable where the person becomes an office holder again within three weeks, or six weeks when the person ceases to hold office on dissolution of the Parliament. The relevant office holders who qualify for payments are members of the Scottish Executive (except the First Minister) including the Lord Advocate and Solicitor General, plus the Deputy Presiding Officers and Junior Scottish Ministers. A severance payment helps to bridge the gap while they re-establish interests, or take up new employment, when they leave office.

11. The amount of grant is equal to one quarter of the annual office holder salary that was being paid to that person in office immediately before they ceased to hold it. This currently amounts to the following:

- Cabinet Secretary £9,974.25
- Minister £6,247.25
- Deputy Presiding Officer £6,247.25
- Lord Advocate (non-MSP) £26,303.50

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2 See paper SPPS/S3/07/01/4B at paragraphs 39-41
3 On taking up office the Scottish Ministerial Code (Section 9 Ministers' Private Interests) places restrictions on Ministers holding other public appointments, their private financial interests, and partnerships and directorships.
Replacement Options
12. The current Grants Order is a Westminster Order made under transitional provisions in the Scotland Act 1998. Any replacement is made by virtue of Section 81(5) of the Scotland Act 1998. That allows provision for gratuities to be made by an Act of the Scottish Parliament (ASP) or by resolution of the Parliament conferring functions on the SPCB.

13. It is desirable that any replacement be by way of an ASP in order to facilitate the ongoing provision of grants directly from the Consolidated Fund. It is for consideration whether the Order should be replaced as part of the proposed Pensions Bill or via a separate Bill.

Clerk to the Committee
August 2007
(Paragraph 7 refers)

Percentages of Yearly Salary

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Background
1. Under Rule 12.4.3 of standing orders, the Committee may arrange for payment of expenses incurred by any witness invited to give evidence at a Committee meeting or to produce any documents as may be determined. Reimbursement is entirely at the discretion of the Committee.

2. The witness expenses scheme was established by the Parliament on 6 July 2000 (motion S1M-1086) and sets out the categories of claim that may be considered.

Action
3. The Committee is invited to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any witness expenses which arise during the Committee's inquiry. However, in the event of the Convener rejecting a claim, it will be referred back to the Committee for consideration.
SCOTTISH PARLIAMENTARY PENSION SCHEME COMMITTEE

Committee Bills Procedure under Standing Orders

Forming a Committee
1. Any committee may make a proposal for a Bill to the Parliament under Rule 9.15.2. Rule 9.15.4, allows any MSP to submit a draft proposal for a Committee Bill to the Parliamentary Bureau. In this instance the request has come from the MSP members on the Corporate Body. This is the mechanism used where the MSP concerned is not a member of a committee within whose remit the Bill would fall. A draft proposal is not printed in the Business Bulletin, but is referred by the Bureau to an appropriate committee. If, as is the case here, it is determined that no existing committee is appropriate the Bureau can appoint a committee specifically to look at the proposal. The committee is required to consider a draft proposal referred to it in this way. In doing so, the committee may (but need not) conduct an inquiry on the merits of the draft proposal before reaching a decision.

Committee Proposal for a Bill
2. If a committee makes a proposal, whether in response to a draft proposal referred to it or on its own initiative, it does so in the form of a report to the Parliament. A report containing a proposal for a Committee Bill should set out clearly, and in reasonable detail, why a Bill is considered to be necessary and what it would contain (Rule 9.15.5). In particular, the report must make clear that the committee is proposing a Committee Bill under Rule 9.15. The report may, but need not, include a draft Bill (Rule 9.15.5). Because there is no Stage 1 report on a Committee Bill (see below), it is important that a committee developing a proposal for such a Bill takes similar evidence to the evidence it would expect to take at Stage 1 of a Bill, and otherwise consults adequately on the proposal, before finalising its report.

3. Committees are assisted by the Non-Executive Bills Unit (NEBU) at an early stage during any inquiry on a Committee Bill proposal. NEBU's role at this stage is primarily to help the committee to ensure that the proposal both expresses the policy of the committee and provides a suitable basis for the drafting of a Bill. To do this, a proposal must be sufficiently detailed to allow the Parliament to make a properly informed decision as to whether to support it, but not so detailed as to restrict the ability of the draftsman subsequently called upon to implement the committee's policy in legislative terms. In this case staff from NEBU will form the clerking team supporting the Committee.

4. Once the committee report containing the proposal has been published, the Convener should lodge a motion such as the following:

5. The Bureau must allocate time in a Business Motion for consideration of the proposal on the basis of the committee's report (Rule 9.15.6).

Bill Drafting
6. If the Parliament agrees to the proposal, the committee convener may instruct the drafting of a Bill to give effect to the proposal (or, if a draft Bill already exists, introduce it) - but not until the fifth sitting day after the debate and not if the Executive has indicated by that time that it will introduce an Executive Bill to give effect to the proposal (Rule 9.15.7). Such an indication should be made in writing to the convener (and copied to the committee clerk - who will arrange for it to be notified in the Business Bulletin). It need not specify any timescale for introduction of the Executive's Bill.

7. A Committee Bill may be introduced only if it is broadly consistent with the terms of the proposal that was agreed to by the Parliament. If, in the course of finalising the Bill, the Committee decides not to include in the Bill a substantial element of the proposal, or to include in the Bill substantial provisions that were not mentioned in the proposal, it would need to obtain the Parliament's agreement to a further report containing a revised proposal. If the proposal is agreed to, NEBU will develop drafting instructions in consultation with the committee, arrange for a Bill to be drafted, and provide support to the member in charge of the Bill during its passage.

8. A Committee Bill is normally introduced by the convener of the committee which made the proposal and the convener becomes the "member in charge" of the Bill (Rule 9.2.3). The accompanying documents required are a Financial Memorandum and Presiding Officer's statement on legislative competence. NEBU will also prepare Explanatory Notes on behalf of the committee, to assist in explaining the provisions of the Bill.

Stages of a Committee Bill
9. A Committee Bill is not referred at Stage 1 to a lead committee for a report on its general principles, but is referred to the Finance Committee (unless it is that committee's Bill) for a report on the Financial Memorandum. Unless it is a Subordinate Legislation Committee Bill it is referred to that committee if it contains provisions that trigger such a referral under Rule 9.6.2. Once those committees, if the Bill is referred to them, have reported to the Parliament (Rule 9.15.8), the Stage 1 debate takes place in the normal way. After Stage 1, a Committee Bill proceeds in a similar manner to an Executive Bill.

10. At Stage 2 the Bill is referred to a lead committee in the same way as other Public Bills. Rule 9.13A.2(c) prevents any member of the committee who developed the proposal for the Bill from being a member of the Stage 2 committee. Stage 3 of the Bill is identical to that for other Bills.

Clerk to the Committee
August 2007
SCOTTISH PARLIAMENTARY PENSION SCHEME COMMITTEE

Background to the Scottish Parliamentary Pension Scheme (SPPS)

Establishment of the SPPS
1. In 1998 the Senior Salaries Review Board (SSRB) was asked, amongst other things, to make recommendations on appropriate pension arrangements for MSPs and Office Holders.

2. In considering this matter the SSRB’s priority was to arrive at arrangements which would conform with current good practice and take account of the uncertainties of parliamentary life. The SSRB concluded that the Parliamentary Contributory Pension Scheme (PCPS), the occupational pension scheme for Westminster MPs and Office Holders, should be taken as the model scheme.

3. The SSRB’s main recommendation was that the pension scheme should be analogous to that of the PCPS. Based on this recommendation the SPPS rules for MSPs and Office Holders, was established by a Westminster transitional order under the Scotland Act from 6 May 1999 ("the Transitional Order").

Administration of the Scheme
4. The Scottish Parliamentary Corporate Body (SPCB), which is made up of the Presiding Officer (chair) and 4 other MSPs elected by the Parliament, is responsible for the administration of the scheme. In effect it is responsible for ensuring that the pension scheme is run properly and that members’ benefits are protected.

Funding Arrangements
5. The SPPS is a final salary occupational pension scheme. MSPs and Office Holders pay contributions at the rate of 6% of their annual salary. Currently an annual contribution of 20.3% of their salary is also paid into the Scottish Parliamentary Contributory Pension Fund (SPCPF) from the Scottish Consolidated Fund (SCF). The Government Actuary is required by the Transitional Order to report on the financial position of the SPCPF every three years, and the SPCB is required to follow the recommendations on the level of contributions to be met from the SCF. The Government Actuary recommends a level of contribution intended to keep the SPCPF in balance over the funding period.

6. Unlike most other statutory public service schemes, the SPPS is a funded scheme. Pension benefits payable under the scheme are not therefore paid from Voted funds, but are paid out of the SPCPF.

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7. The one exception is that the cost of pension provision for the First Minister (FM) and the Presiding Officer (PO) is met directly from the SCF. The FM and PO are entitled to a pension equal to half of their office holder salary in payment immediately on ceasing to hold office.

Investment Arrangements
8. Baillie Gifford, the investment fund manager for the SPCPF, manages the assets in accordance with the strategy set out in the scheme’s Statement of Investment Principles (copy attached at Annex A). As at 31 March 2007, the asset value of the fund was £18.4m.

Scheme Benefits
9. The scheme is a registered pension scheme under the Finance Act 2004. This means that members’ contributions and the investment income of the SPCPF obtain tax relief. Certain benefits are paid tax-free. It provides benefits based on years of service and final salary, with the accrual rate being 1/50th for each year of service. The main features of the scheme are summarised below:

- Scheme includes MSPs and Office Holders;
- Membership is automatic with right to opt out;
- Retirement pension of 1/50 of final salary for each year of service;
- Option to commute part of a pension into a lump sum;
- Lump sum of 3 times salary on death in service;
- Spouse’s/civil partner’s and children’s benefits;
- Normal retirement age is 65;
- Provision made for ill-health and early retirement;
- Pensions increased in line with RPI;
- Option to enhance pension benefits through added years or additional voluntary contributions (AVCs);
- Option to transfer benefits in and out of scheme.

Requirement to Change the Scheme Rules
10. A number of changes now need to be made to the scheme rules to comply with primary legislation with the main drivers being the Finance Act 2004 and the Pensions Act 2004. Some of the main issues arising are:

- New taxation rules for members aged 75 and over;
- Increase in the minimum pension age to 55;
- Changes to HM Revenue and Customs rules on payment of pensions, lump sums, pension contributions, AVCs and added years;
- Express provision for civil partnerships;
- Express provision for pension sharing on divorce or dissolution of a civil partnership.

11. Transitional provisions under the Finance Act 2004 enable the SPPS to be operated under the existing rules until April 2011. There is a need however to act faster in order to address the new taxation rules for members
aged over 75 as well as equalities issues in terms of the minimum retirement age.

12. As mentioned in paragraph 3 above the SPPS was set up analogous to that of the PCPS. However, the SPPS is now out of sync with the PCPS in a number of areas due to rule changes made to the PCPS to comply with the various legislative changes affecting occupational pension schemes. The National Assembly for Wales has also made similar changes to its members’ pension scheme rules.

**Mechanism for Changing the Scheme Rules**

13. The scheme rules are contained in the Transitional Order. Under section 81(5) of the Scotland Act 1998 replacement of the Order is either by resolution of the Scottish Parliament or by an Act of the Scottish Parliament. The only power to amend lies through an order being made at Westminster.

14. However, replacing the scheme by resolution is not possible given some of the changes required and the legal status of the scheme. Primary legislation is required to replace and update the current scheme rules. Power could be taken in that legislation to allow future rule changes to be made by resolution of the Parliament.

**Changes Required**

15. A number of changes will be required to be made to the scheme rules. These necessary and possible changes are covered in more detail in the issues paper as follows:

- Compulsory changes (due to legislation);
- Discretionary changes (optional under the legislation);
- Areas identified in the light of practice both here and with comparable schemes.

16. In addition, any revised rules will be drafted in accordance with modern drafting practice which will aid clarity and understanding.

Clerk to the Committee
August 2007
Annex A

Paragraph 8 refers

STATEMENT OF INVESTMENT PRINCIPLES FOR THE SCOTTISH PARLIAMENTARY PENSION SCHEME

Introduction
1. Section 35 of the Pensions Act 1995 requires that the trustees of pension funds prepare and maintain a "Statement of Investment Principles". Whilst the Scottish Parliamentary Pension Scheme is statutorily exempt from this requirement, the Corporate Body has decided to produce this document in order to comply with best practice in other funded schemes. This document will be made available on request to members of the Scottish Parliamentary Pension Scheme (SPPS).

2. Annual Reports by the Corporate Body on the SPPS will include a review of the investment performance and policy for the year in question. The annual accounts will also be published.

3. The investment powers of the Scheme are set out in The Scotland Act 1998 (Transitory and Transitional Provisions)(Scottish Parliamentary Pension Scheme) Order 1999, Statutory Instrument No. 1082. The Corporate Body has a fiduciary duty to invest the assets of the fund for the benefit of fund members.

4. The Corporate Body is responsible for ensuring that the assets are likely to be sufficient to meet the Scheme's liabilities. The Scheme's actuary (in this case, the Government Actuary's Department) advises them on the adequacy of the Fund's assets by carrying out a full actuarial review (a valuation) every three years.

Investment Policy
5. As the SPPS is a new scheme, it is expected that contribution income will exceed benefit outgo for many years. Accordingly, it should not be necessary to sell assets in order to pay benefits in the medium term, and this enables the investment strategy to be predominantly based on equity investments, in order to increase the probability of achieving a higher investment return on the fund's assets over the long term. With this approach, the preferred investment vehicle is one with high equity content, but which would allow the investment manager some flexibility to switch between different asset classes if this is justified in order to enhance investment terms.

6. The initial size of the scheme's assets is not sufficient to allow a widely diversified portfolio of investments, were the assets to be invested directly in bonds, stocks and shares. Therefore, until the size of the fund has become sufficiently large, the Corporate Body believes that the most effective way of investing with suitable diversification and at a reasonable cost is to use one single pooled fund run by an independent investment management company. The fund initially selected is the Baillie Gifford Managed Fund.
7. The SPPS will have its own bank accounts, quite separate from the other bank accounts of the Corporate Body, in order to process financial transactions relating to the pension scheme. Cash may be held on deposit in these bank accounts, if awaiting investment with the investment manager, or awaiting payment of benefits to beneficiaries or for expenses or other services. All cash deposits must be with a recognised bank, or banks, authorised to conduct banking business within the United Kingdom. (The investment manager may also hold cash on deposit from time to time to help implement the investment strategy.)

Performance Objectives and expected return
8. The Baillie Gifford Fund aims to achieve above average returns over the long term. The Corporate Body will review the performance of the Fund from time to time against the stated objectives. In addition, the Corporate Body will consider the performance of the Fund against a suitable peer group of similar vehicles, for example by using surveys of managed funds measuring comparative performance over rolling three-year periods.

Risk
9. The Corporate Body recognises that an investment policy incorporating a relatively high proportion of equities might lead to a greater risk of short-term volatility of investment returns. This risk could be reduced by increasing the proportion of fixed interest holdings within the Scheme but this would reduce the expected total return in the longer term. Because the Scheme is not mature, such reduction of volatility would be inappropriate.

Other matters
10. The Corporate Body will receive regular written reports as required from the Fund Manager and advisers. These reports will summarise the recent performance of the Fund's investments, and advise on future market expectations and investment prospects.

Statement of policy on ethical investments
11. As the SPPS does not invest directly in stocks and shares of individual companies, but in a pooled investment vehicle together with many other pension funds, the Corporate Body cannot direct the investment strategy of the managed fund. Nevertheless, it will monitor the policy on corporate governance adopted by the investment manager, and will consider ethical investment policy issues when comparing two providers who are otherwise of equal preference.
Control
12. The Corporate Body is responsible for ensuring that appropriate systems of control are in place to safeguard the fund's assets and to prevent and detect fraud and other irregularities. Suitable systems have been set in place in consultation with the Fund Manager, the Fund's Bankers, and the Head of Finance of the Parliament. Recommendations made by the Auditor General for Scotland (the Fund's external auditor) arising from reviews of systems and procedures to the extent they consider necessary for the effective performance of their audit are also taken into account.