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

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part G Retirement Lump Sums

164. Part G of Schedule 1 sets out the rules for commuting part of a pension into a tax-free lump sum. Part G also makes provision for payment of a one-off trivial commutation lump sum.[1] These rules replace the rules contained at Part G and Schedule 3 of the 1999 pensions order.

Rule 42: Right to commute pension into a lump sum

165. Under the Finance Act 2004 a person who is a member of a tax-registered scheme may exchange (commute) part of their pension entitlement for a tax-free lump sum called a "pension commencement lump sum".[2] The maximum portion of pension that may be commuted under the Finance Act 2004 is 25%, otherwise the payment would be an unauthorised payment in terms of section 160 of that Act (see part R, paragraphs 407-421).

166. Under rule 42(1), an individual who qualifies for a scheme pension (under Part F - Pensions, Part H - Early Retirement and Part I - Ill-health) may commute part of their pension into a tax-free lump sum by giving notice to the Fund trustees.

167. Rule 42(2) determines that the notice must be in writing and details the portion of the pension to be commuted at rule 42(2)(b). Rule 42(2)(a) requires the notice to be given before the earlier of the day on which the pension is first paid or the individual's 75th birthday. Under the rules for payment of a "pension commencement lump sum" a scheme participant aged 75 or over cannot commute part of their pension for a pension commencement lump sum and any such payment would be an unauthorised payment. Rule 44 makes special provision for members approaching age 75.

168. Rule 42(2)(c) requires that the individual must also provide information to allow the Fund trustees to determine the amount payable and to confirm that the retirement lump sum would be a pension commencement lump sum. One of the requirements for a "pension commencement lump sum" is that all or part of the scheme member's Lifetime Allowance is available.

Rule 43: Payment of retirement lump sum and corresponding reduction in pension

169. When a retirement lump sum is taken the pension payable is reduced. Rule 43 provides detail on the calculation of the amount of lump sum payable and the corresponding reduction to pension.

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1 Paragraph 7 of Schedule 29 to the Finance Act 2004
2 Paragraph 1 of Schedule 29 to the Finance Act 2004

170. Rule 43(1) allows the Fund trustees to determine the amount of lump sum payable up to the maximum amount of lump sum (permitted maximum) allowable under the Finance Act 2004.[3] The permitted maximum is an amount equivalent to 25% of the pension. Rule 43(1)(a) allows the Fund trustees to commute an amount equivalent to a lower percentage if the individual indicates in the commutation notice that this is what they wish to commute. It is for the Fund trustees to determine the actual amount of lump sum that is equivalent to the pension being commuted. Rule 43(3) requires them to have that amount either certified by the scheme actuary or made in accordance with guidance and tables prepared by the scheme actuary.

171. Under rule 43(2), the amount of pension payable is reduced by the value of any retirement lump sum being paid.

Rule 44: Special rule for commutation by individual approaching age of 75

172. Under the Finance Act 2004, a participating member aged 75 or over cannot commute part of their pension into the tax-free "pension commencement lump sum".[4] Under the scheme, an individual cannot qualify for a scheme pension while they are an MSP or holder of a pensionable office. Therefore a serving MSP or office-holder approaching age 75 may lose the opportunity to commute part of their pension into a "pension commencement lump sum". Rule 44 therefore makes special provision for serving MSPs and office-holders approaching age 75 to receive a retirement lump sum.

173. Rule 44(1) makes provision for a participating member who would be entitled to be paid a scheme pension, except for them still being an MSP or holder of a pensionable office, to apply to the Fund trustees to commute part of their pension into a tax-free lump sum. The application must be made prior to their 75th birthday so that the individual becomes entitled on the day prior to their 75th birthday. For the lump sum to be payable by the Fund trustees it must not attract an unauthorised payments charge under section 208 of the Finance Act 2004 (see rule 100). In this case, the payment must therefore meet the tests for a "pension commencement lump sum". In particular, it must not be paid later than one year after the day on which an individual becomes entitled to it.

174. Serving MSPs and office-holders aged 75 and over are not eligible to be a participating member and accumulate more service in the pension scheme (see Part C, rules 21 and 22(1)). Rule 44(2) determines that an individual who is an MSP or holder of a pensionable office will be entitled to an annual pension from the day before their 75th birthday but no sum is payable until the individual ceases to be a MSP or holder of a pensionable office. A scheme pension cannot be paid to an individual while they are an MSP or holder of a pensionable office (see rule 37(1) and rule 41). They will receive their retirement lump sum but will not receive their reduced annual pension until they are no longer an MSP or in office.

175. The rule only applies to those persons who give a valid commutation notice under rule 44(1) prior to reaching age 75. Scheme members who do not give a commutation notice, on reaching age 75, become deferred pensioners under the scheme.

Rule 45: Commuting trivial amounts

176. Rule 45 makes provision for a small pension to be commuted and paid as a one-off tax-free lump sum. The Finance Act 2004 allows a trivial commutation to be paid where the level of pension does not exceed 1% of the Lifetime Allowance. For the current year 2008/09 this equates to a pension of £825 per annum. Payment of such a sum can be paid only when the individual is between ages 60 and 75.

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3 Paragraph 2 of Schedule 29 to the Finance Act 2004
4 Paragraph 1 of Schedule 29 to the Finance Act 2004

177. Rule 45(1) makes provision for the Fund trustees to pay on application a one-off lump sum instead of a pension provided it would qualify to be a trivial commutation lump sum as defined in the Finance Act 2004.

178. Rule 45(2) and (3) set out how the value of the lump sum is to be calculated. Pension benefits not in payment are described in the Finance Act 2004 as “uncrystallised benefits”. Under rule 45(2), the Fund trustees determine the value of the individual’s uncrystallised benefits which are being commuted. This is done in accordance with section 212 of the Finance Act 2004 (which sets out a basic formula relating to the value of the pension benefit). Under Rule 45(3), the scheme actuary must either certify the valuation or provide guidance and tables under which the valuation is made.

179. Rule 45(4) makes clear that the payment of a one-off lump sum extinguishes all pension rights, including those of others such as surviving partners and eligible children.