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 L 5 Year Guarantee

279. Part L of Schedule 1 sets out rules which create a "guarantee" period of 5 years running from the date that a scheme pensioner is entitled to receive a pension from the scheme. They replace the rules in Part M of the 1999 pensions order and take account of tax changes under the Finance Act 2004. The effect of the 5 year "guarantee" is that where death occurs before pension has been paid for five years, a surviving spouse or civil partner (surviving partner) receives the same amount of pension that would have been payable to the scheme pensioner until that five year period ends. The amount payable is reduced by the amount of any pension payable for an eligible child or children during that period.

280. Where a scheme pensioner dies under age 75 with no surviving partner within five years of being entitled to a pension, Part L makes provision for payment of a lump sum death benefit to that person's personal representatives equivalent to the balance of five years' pension payments. For those who die in the same circumstances but aged over 75, a lump sum death benefit is not allowable under tax rules. Provision is therefore made for pension payments to continue for the balance of the 5 year guarantee period to the deceased's personal representatives. In either case, if a pension is payable for eligible children the amount payable is reduced.

Rule 68: Initial pension period

281. While scheme pensions (except those to children) are payable for life, rule 68 introduces a 5 year guarantee period for payment of pension by reference to a scheme pensioner's "initial pension period". Where a scheme pensioner dies within five years of becoming entitled to a pension, the pension will be paid for the balance of the five-year period after death.

282. Rule 68 makes provision to disregard a period of up to five years where pension payments are suspended under either of rules 41 or 44 where a scheme pensioner is re elected as an MSP or office-holder. If such a person with up to five years suspended service dies during suspension or after their pension recommences, the guarantee operates for the balance of the five year period after subtracting the payments made prior to suspension.

283. Only five years of suspended pension is disregarded in terms of this rule. The reason for that restriction relates to underlying tax restrictions in the Finance Act 2004.[1] The Act sets out a maximum period of ten years where such a guarantee can apply. Any guarantee can only apply for ten years from the date that entitlement to pension first

1 Pension Rule 2 in section 165 and paragraphs 2(3)(a) and 3(1)(c) of Schedule 28 to the Finance Act 2004 commences. For a scheme pensioner, the ten year period runs from the date of first entitlement to a pension, irrespective of the fact that pension is suspended. If subsequent service as an MSP or office-holder exceeds five years, that excess period added to the period during which pension was first paid continues to reduce the guarantee period until ten years from initial entitlement have elapsed. After that time no further guarantee can apply even if pension was paid for less than five years.

Rule 69: Guaranteed pensions for surviving partner

284. Rule 69 makes provision in relation to scheme pensioners who die during their initial pension period leaving a surviving partner.

285. The Finance Act 2004[2] requires that, under such a guarantee provision, instalments of pension continue until the end of the guarantee period and it prevents any outstanding instalments being paid as a lump sum.

286. Rule 69(a) provides that the surviving partner's pension is suspended for the remainder of the guarantee period. Rule 69(b) provides that, during that time, they are to be paid the full 'pension that would have been paid to the deceased.

287. However, where a children's pension is also payable in respect of the deceased pensioner, the amount payable to the surviving partner is reduced under rule 69(2)(b). The amount is reduced by the amount of children's pension paid during the initial pension period, except for the period covered by rule 69(2)(a). During the initial three-month period following death, the reduction only applies if the children's pension is paid to the surviving partner. Where any children's pension is paid to an eligible child or a person other than the surviving partner, the reduction does not apply, in order to ensure that the three month enhancement of pension guarantee for a surviving partner under rule 59 continues to apply.

288. As a consequence of the restrictions in the Finance Act 2004, rule 69(3) makes provision in the event that the surviving partner also dies during the 5 year guarantee period. In that event, the remaining pension payments under the guarantee period continue to be made, paid to the surviving partner's personal representatives.

Rule 70: Guaranteed lump sum where scheme pensioner dies aged under 75 with no surviving partner

289. If a pension is guaranteed under the new tax regime, then it must be paid as an instalment pension until the end of the "guarantee period" which the Finance Act 2004 refers to as "term certain". A pension paid to a person with no surviving partner cannot therefore (as was the case under the previous tax regime) be commuted following the member's death to a lump sum in respect of the remaining instalments due under a 5 year guarantee.

290. However, under the Finance Act 2004[3] a pension scheme can provide a tax-free lump sum in addition to, or instead of, a guarantee on scheme pension, provided such a payment is a defined-benefits lump-sum death benefit in terms of that legislation. Rule 70 makes provision for such a benefit where a scheme pensioner aged under 75 dies leaving no surviving partner. The rule is expressed in similar terms to the 5 year guarantee under the old tax rules. Such a lump sum is tax-free up to the deceased scheme pensioner's remaining Lifetime Allowance.

291. Rule 70(1) makes provision for payment of a guaranteed lump sum on the death of a scheme pensioner before the end of their initial pension period (see paragraph 281). The scheme pensioner must be under age 75 when they died and leave no surviving partner. Provided the trustees are satisfied that the lump sum qualifies as a defined-benefits lump-sum death benefit, a lump sum may be paid to the personal representatives of the deceased.

2 Section 165(1) and Schedule 28 paragraph 2(3)(a) to the Finance Act 2004
3 Finance Act 2004 c.12, section 167(3) and Schedule 29 paragraph 13

292. Rule 70(2) sets out the amount of the guaranteed lump sum that is payable. The amount is equal to the amount of scheme pension that would have been payable to the deceased until the end of the guaranteed period, less the amount that the Fund trustees estimate will be payable during that period to children of the deceased. Such an adjustment may be made more than once if necessary.

293. Rule 70(3) and (4) provides for additional lump sums to be paid by the trustees where the initial deductions for children's pension under rule 70(2)(b) were over-estimated. In those circumstances an additional lump sum is to be paid equal to the difference between the amount paid and the amount which the Fund trustees estimated should have been paid, taking their revised estimate for children's pension into account.

Rule 71: Guaranteed pension where scheme pensioner dies aged 75 or over with no surviving partner

294. The Finance Act 2004 under the provisions (see paragraph 272 and footnote 17) restricts payments of "defined benefits lump sum death benefit" to pension scheme members who have not reached age 75. This affects what can be paid under the 5 year guarantee for those who die leaving no surviving partner who are aged over 75 years. Rule 71 makes provision for payments in such circumstances.

295. Rule 71(1) provides for a scheme pension to be paid following the death of a scheme pensioner aged 75 or over for the remainder of their initial pension period when they do not leave a surviving partner. The instalments of pension continue to the end of the initial pension period, payable to the 'deceased's personal representatives.

296. Under rule 71(2), any instalments of pension paid under this rule will be reduced by the amount of any children's pension paid during the same period.

Transitional provisions – 5 year guarantee

297. Provision is made in Schedule 3 at paragraphs 14-15 to protect the entitlement of existing scheme members under the 1999 scheme rules. In respect of those members, paragraph 13 provides for lump sums up to the equivalent of five years pension payments to continue to be paid in the event of the death of a deceased scheme pensioner over 75 with no surviving partner. Paragraph 14 protects the entitlement of a deferred pensioner's personal representatives to receive a refund of contributions where the deceased had no surviving partner or children (a "deferred pensioner lump sum under N" of the 1999 scheme rules).