

**EXPLANATORY MEMORANDUM TO**  
**THE SCOTTISH PARLIAMENTARY PENSIONS ACT 2009 (CONSEQUENTIAL**  
**MODIFICATIONS) ORDER 2009**

**2009 No. 1682 (S.9)**

1. 1.1 This explanatory memorandum has been prepared by the Scotland Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

**2. Purpose of the Instrument**

2.1 This Order makes provision consequential to the Scottish Parliamentary Pensions Act 2009 (the “2009 Act”), an Act of the Scottish Parliament. The 2009 Act sets out updated arrangements for the payment of pensions in respect of Members of the Scottish Parliament (“MSPs”) and related office-holders; the Presiding Officer and Deputy Presiding Officer of the Scottish Parliament and Scottish Ministers, including the First Minister.

2.2 The 2009 Act places arrangements for the payment of pensions in respect of MSPs and related office-holders on a more permanent statutory footing, largely replacing transitional arrangements made at the time of devolution. A main feature of the 2009 Act is the setting out of new rules for the Scottish Parliamentary Pensions Scheme (“SPPS”) which take account of developments in UK pensions, tax and equalities legislation. This Order ensures that aspects of reserved pensions legislation continues to apply to the existing pension schemes for MSPs and related office-holders further to the changes brought about by the 2009 Act.

**3. Matters of Special Interest to the Joint Committee on Statutory Instruments**

3.1 The Order is to be made in exercise of the powers conferred by sections 104, 112(1) and 113(5) of the Scotland Act 1998 (the “1998 Act”). The Order is, by virtue of section 115(1) of, and paragraphs 1, 2 and 3 of Schedule 7 to, the 1998 Act subject to the affirmative procedure. Section 104 of the 1998 Act provides for subordinate legislation to be made in the UK Parliament, which contains provisions that are necessary or expedient in consequence of an Act of the Scottish Parliament, in this case the 2009 Act.

3.2 This section 104 Order makes amendments to pensions legislation in reserved areas which are necessary and expedient in consequence of the 2009 Act. The 2009 Act sets out revised arrangements for the payment of pensions in respect of Members of the Scottish Parliament and related office-holders. The amendments in this Order ensure that provisions in reserved pensions legislation continue to apply to the Scottish Parliamentary Pensions Scheme, and where appropriate the scheme for persons who hold or have held the office of Presiding Officer or First Minister, once the 2009 Act is fully commenced from the 1 September 2009.

3.3 The 2009 Act has been made further to section 81(3) of the 1998 Act which permits the Scottish Parliament to make provisions for the payment of pensions to or in respect of Members of the Scottish Parliament and Members of the Scottish Executive. There is an express exception to the occupational and personal pensions reservation at Section F3 of Schedule 5 to the Scotland Act 1998 for pensions payable in respect of persons mentioned in section 81(3) of the 1998 Act. The amendments in this Order need to be made in the UK Parliament in consequence of the 2009 Act to apply the necessary reserved provisions on occupational pensions to the SPPS.

3.4 The amendments in the Order are to be commenced from the 1 September 2009. This is the date on which the remainder of the provisions in the 2009 Act, including the activation of the new scheme rules, are to be commenced. Some of the provisions in the 2009 Act, relating mainly to the appointment of Pension Fund trustees, were commenced at Royal Assent on 25 February 2009 in accordance with section 5 of the 2009 Act.

#### **4. Legislative Context**

4.1 The 2009 Act was the product of a Committee Bill brought forward by the Scottish Parliament further to its powers under section 81(3) of the 1998 Act. The 2009 Act replaces transitional arrangements made at the time of devolution for the payment of pensions in respect of MSPs and related office-holders. It gives the pension arrangements in respect of these persons a more permanent statutory basis and updates those arrangements to take account of changes in UK pensions, tax and equalities legislation. Schedule 2 to the 2009 Act also replaces transitional arrangements on the payment of grants to MSPs and certain office-holders on leaving office (resettlement grants, ill-health retirement grants and severance arrangements).

4.2 Prior to the 2009 Act, the pension schemes for MSPs and related office-holders were the subject of a Transitional Order made under the 1998 Act (The Scotland Act 1998 (Transitory and Transitional Provisions) (Scottish Parliamentary Pension Scheme) Order (S.I. 1999/1082)) (the “Transitional Order”). The 2009 Act continues the Scottish Parliamentary Pensions Scheme as established by the Transitional Order but introduces new rules governing the scheme. It will also continue the separate pension arrangements in the Transitional Order for existing and former First Ministers and Presiding Officers. These separate arrangements are not replicated for future holders of these offices for whom the new rules of the Scottish Parliamentary Pensions Scheme will now apply.

4.3 In addition to this Order, it is proposed that two sets of regulations will be made by UK Ministers further to the 2009 Act. The Department for Work and Pensions (DWP) is currently consulting on drafts of these regulations. The draft Occupational Pension Schemes (Scottish Parliamentary Pensions Act 2009) Regulations make a number of consequential changes to secondary legislation regulating occupational pensions. The draft Occupational Pension Schemes (Public Service Pension Schemes) Regulations (to be made jointly with HMT) will prescribe the Scottish Parliamentary Pensions Scheme and the existing First Minister and Presiding Officer Pension Scheme as public service pension schemes for the purposes of the Pensions Schemes Act 1993.

## **5. Territorial Extent and Application**

5.1 This instrument applies to England and Wales and Scotland.

## **6. European Convention on Human Rights**

6.1 The Parliamentary Under Secretary of State at the Scotland Office has made the following statement regarding human rights:

In my view the provisions of the Scottish Parliamentary Pensions Act 2009 (Consequential Modifications) Order 2009 are compatible with the Convention rights.

## **7. Policy Background**

7.1 Two main factors led to the 2009 Act. Firstly, the existing arrangements for pensions payable in respect of Members of the Scottish Parliament and related office-holders were made on a transitional basis, and section 81(3) of the 1998 Act envisages that the Scottish Parliament would legislate to replace those transitional arrangements. Secondly, a number of changes to UK legislation in the reserved areas of the regulation of occupational pensions, tax and equalities necessitated amendment of the provisions in the Transitional Order. Although section 81 of the 1998 Act permits the Scottish Parliament to make provision in relation to the pensions of MSPs and related office-holders by resolution, an Act of the Scottish Parliament was needed in this case to bring about the necessary changes to the Transitional Order.

7.2 The 2009 Act continues the SPPS subject to new rules set out in Schedule 1 to that Act. These new scheme rules contain provisions for both MSP and office-holder members. The separate, unfunded scheme for First Ministers and Presiding Officers set out in Part S of the Transitional Order is continued but closed to new members.

7.3 The two amendments in the section 104 Order are of a technical nature. They are required to ensure that certain reserved regulatory controls continue to apply to the SPPS, and where appropriate the existing First Minister and Presiding Officer Pension Scheme, once the 2009 Act is fully in place.

7.4 The first amendment is to section 11(7) of the Pensions Act 1995 and is designed to ensure that the Pensions Regulator continues, in limited circumstances, to have the power to adapt, amend or repeal the legislation which contains the rules of the SPPS and the First Minister and Presiding Officer Pension Scheme. The second amendment is to section 249A(3) of the Pensions Act 2004. Section 249A requires the trustees or managers of occupational pension schemes to establish and operate internal controls. Section 249A(3) sets out various types of scheme which are exempt from that obligation. This includes schemes which are established under an enactment and are guaranteed by a public authority. Further to the 2009 Act the SPPS will not be covered by this exemption as it will not be a scheme guaranteed by a public authority. Therefore an amendment, adding the SPPS, into the list of exempt schemes at section 249A(3) is required. The First Minister and Presiding Officer Pension Scheme does not require an equivalent amendment as it is a pay-as-you-go scheme and as such is already exempt under section 249A(3)(b).

## **8. Consultation Outcome**

8.1 There has been no consultation specific to the amendments in this Order. However, the policy underpinning the 2009 Act was the subject of a consultation process led by the Scottish Parliamentary Pensions Scheme Committee between 17 October 2007 and 17 January 2008. Further to its inquiries on the issue, the Committee published its report on 29 May 2008.

## **9. Guidance**

9.1 As the two amendments in this Order are relatively minor, guidance specific to this Order has not been prepared. It is intended that the trustees of the Scottish Parliamentary Contributory Pension Fund, once appointed, will issue guidance to the members of the Scottish Parliamentary Pensions Scheme on the new scheme rules effective from the 1 September 2009.

## **10. Impact**

10.1 There is no impact on business, charities or voluntary bodies.

10.2 An Impact Assessment has not been prepared for this instrument as no impact on the private or voluntary sector is foreseen.

10.3 With regard to the cost implications for the public sector of the 2009 Act generally, the Government Actuary's Department has costed the revised SPPS against the existing scheme. The result of its review was that the expected cost of the SPPS under the new rules would not be materially different from the cost of the SPPS under the existing rules. The closure of the existing First Minister and Presiding Officer Pension Scheme for future office-holders is expected to result in a net saving in relation to the pension arrangements for these office-holders of £850,000 every four years. Further details of the financial implications of the 2009 Act are set out in the Financial Memorandum appended to the Explanatory Notes to the Scottish Parliamentary Pensions Bill (<http://www.scottish.parliament.uk/s3/bills/14-SPPensions/b14s3-introd-en.pdf>).

## **11. Regulating Small Business**

11.1 The legislation does not apply to small business.

## **12. Monitoring and Review**

12.1 As the two amendments in this Order are of a minor and technical nature, it is not intended that monitoring and review arrangements specific to this Order be established.

### **13. Contact**

13.1 Jennifer Manton at the Scotland Office  
(jennifer.manton@scotlandoffice.gsi.gov.uk), Tel: 020 7270 6749, can answer any queries regarding the instrument.