

**EXPLANATORY MEMORANDUM TO
THE OCCUPATIONAL PENSION SCHEMES (PUBLIC SERVICE PENSION
SCHEMES) REGULATIONS 2009**

2009 No. 1907

and

**THE OCCUPATIONAL PENSION SCHEMES (SCOTTISH
PARLIAMENTARY PENSIONS ACT 2009) REGULATIONS 2009**

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1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The regulations will ensure that the pension schemes for members of the Scottish Parliament and related office-holders continue to be treated as public service pension schemes, and make a number of consequential amendments to secondary legislation further to changes to these schemes brought about by the Scottish Parliamentary Pensions Act 2009 (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 regulations prescribe the Scottish Parliamentary Pension Scheme and the First Minister and Presiding Officer Pension Scheme as public service pension schemes for the purposes of the Pension Schemes Act 1993 and ensure that the reserved occupational pensions regulatory regime continues to apply appropriately to the pension arrangements for members of the Scottish Parliament and related office-holders once the 2009 Act is fully commenced at 1 September 2009.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None
4. **Legislative Context**
 - 4.1 These regulations are made in consequence of the Scottish Parliamentary Pensions Act 2009. The 2009 Act places arrangements for the payment of pensions in respect of members of the Scottish Parliament and related office-holders on a more permanent statutory footing, largely replacing transitional arrangements made at devolution. The Act continues the Scottish Parliamentary Pension Scheme as established by the transitional arrangements but introduces new rules governing the scheme. It will also continue the

separate pension arrangements in the transitional arrangements 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 Pension Scheme will apply.

4.2 Section 1 of the Pension Schemes Act 1993 includes a power to treat “*any occupational pension scheme prescribed by regulations made by the Secretary of State and the Treasury jointly as being a scheme which ought in their opinion to be treated as a public service pension scheme for the purposes of this Act*”. The use of this power will ensure that the Scottish Parliamentary Pension Scheme and the First Minister and Presiding Officer Pension Scheme continue to be treated as public service pension schemes following the coming into force of the 2009 Act.

4.3 The Occupational Pension Schemes (Public Service Pension Schemes) Regulations are being made jointly with the Treasury.

5. Territorial Extent and Application

5.1 The Occupational Pension Schemes (Public Service Pension Schemes) Regulations apply to the whole of the United Kingdom.

5.2 The Occupational Pension Schemes (Scottish Parliamentary Pensions Act 2009) Regulations apply to Great Britain

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- ***What is being done and why***

7.1 Further to the 2009 Act, the Scottish Parliamentary Pension Scheme and some of the particulars of the First Minister and Presiding Officer Pension Scheme will be set out in an Act of the Scottish Parliament. The reference to “enactment” in section 1 of the Pension Schemes Act 1993 does not include Acts of the Scottish Parliament so there is doubt that the definition of a public service pension scheme in section 1 of the 1993 Act would still apply to the Scottish Parliamentary Pension Scheme and the First Minister and Presiding Officer Pension Scheme. These regulations will ensure that the Scottish Parliamentary Pension Scheme and the First Minister and Presiding Officer Pension Scheme continue to be treated as public service pension schemes following the coming into force of the Scottish Parliamentary Pensions Act 2009.

7.2 The statutory obligations applying to occupational pension schemes were considered to determine whether each obligation would be relevant or appropriate for Scottish Parliamentary Pension Scheme and First Minister and

Presiding Officer Pension Scheme (as revised by the 2009 Act), and whether action is appropriate to secure an exemption. A number of statutory requirements that should not apply to Scottish Parliamentary Pension Scheme were identified, and these regulations provide for exemptions from those requirements. The application of these exemptions is broadly consistent with those already applied to the analogous Westminster pension schemes.

7.3 In addition, the regulations make a minor consequential amendment to ensure that, in certain circumstances, the trustees of the Scottish Parliamentary Pension Scheme are required to disclose information to members and other enquirers about the short title of the legislation setting up the scheme or determining the rate or amount of benefits under the scheme. Such a requirement would not otherwise be imposed upon the trustees as the definition of “enactment” as used in the Occupational Pension Schemes (Disclosure of Information) Regulations 1996 does not extend to Acts of the Scottish Parliament

- ***Consolidation***

7.4 Informal consolidation of the instrument will be included in due course in the Department’s “The Law relating to Social Security” (the Blue Volumes) which are available at no cost to the public on the internet at <http://www.dwp.gov.uk/advisers/docs/lawvols/bluevol>.

8. Consultation outcome

8.1 Due to the technical and consequential nature of these regulations the draft was put out to a limited consultation aimed at those with an interest in the Scottish Parliamentary Pensions Act. The consultation ran from 6 May to 1 July 2009.

8.2 We received four formal responses three of which stated that they had no comments to make on the draft regulations and one gave the opinion that the regulations as drafted would carry out their intended purpose. Therefore, no substantive changes were made to the draft.

8.3 The Government’s consultation on these regulations and response is available at: <http://www.dwp.gov.uk/consultations/2009/>.

9. Guidance

9.1 No additional guidance is necessary specifically for these consequential amendments. More generally it is intended that the newly appointed Fund trustees of the Scottish Parliamentary Contributory Pension Fund will issue guidance to the members of the Scottish Parliamentary Pension Scheme on the new scheme rules effective from 1 September 2009.

10. Impact

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

10.2 There will be no impact on the public sector.

10.3 A full impact assessment has not been prepared for this instrument as these consequential amending regulations do not introduce any additional impact to that of the primary legislation, the financial memorandum for which is available at <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 & review

12.1 No monitoring or review is planned specifically for these regulations, as they are of a technical nature and largely continue the application of the existing regulatory regime to both pension schemes further to the 2009 Act.

13. Contact

Andy Sly at the Department for Work & Pensions, Tel: 020 7962 8178 or email: andy.sly@dwp.gsi.gov.uk, can answer any queries regarding the instrument.