

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part F Pensions

139. Part F of Schedule 1 sets out rules covering when the normal pension entitlement of MSPs and office-holders on retiral commences together with rules on how the amount payable is calculated, the maximum pensions payable and the duration of pensions. These rules replace the rules contained at Part F and Schedule 2 of the 1999 pensions order.

Rule 37: Scheme pension

140. Rule 37 sets out the qualifications that must be met for an individual to become entitled to a pension under the scheme. Under rule 37(1) a scheme pension is payable to an individual who has reckonable service (see Part E) as an MSP or office-holder and has reached the age of 65. The age 65 requirement is subject to other scheme rules covering where the individual has taken an early retirement pension (see Part H) or is in receipt of an ill-health pension (see Part I). Rule 37(1) also prohibits entitlement to pensions where an individual is serving as an MSP or office-holder. This is subject to rule 44 which applies to serving MSPs and office-holders age 75 and above. See also rule 40(2) in relation to commencement of pension payments.
141. Rule 37(2) provides that the annual pension payable from the scheme is the total of the MSP pension accrued under rule 38 and the amount of office-holder pension accrued under rule 39. The actual amount of pension payable can vary should other rules apply. This could be due to the individual commuting part of their pension for a lump sum payment (see Part G) or because an individual's entitlement to a guaranteed minimum pension¹ is greater than their scheme entitlement (see rule 105).
142. Rules 37, 38 and 39 recognise that the actual amount of pension payable may vary from a calculation based on actual service alone. This is achieved in the rules by (i) a variation of the definition of reckonable service (see Part E) which covers an increase as a consequence of a purchase of added years under Part O, or transfers in under Part N; or (ii) by other rules (see rule 37(2)). Other rules which can vary entitlement from actual service are those providing for the reduction in scheme benefits under section 31 of the 1999 Act where a pension sharing order has been made (see rule 92) and those allowing for the retention of some of a transfer out value to preserve a guaranteed minimum pension entitlement which a receiving scheme is not willing to accept (see rule 77).

¹ Such entitlement would only possibly arise in this scheme in respect of any transferred in service, as such GMP rights are only for periods of employment prior to April 1997 where there was also membership of a SERPS contracted out scheme

Rule 38: Amount of MSP pension

143. Under the new rules members will from new rules day (see paragraphs 36 and 488) automatically begin to accrue pension at 1/40th of final salary for each year of reckonable service and will be required to pay higher contributions. Members can however elect to continue to accrue pension at 1/50th of final salary and pay contributions at the existing rate.
144. Rule 38(1) provides the formula used to calculate the annual MSP pension payable. Rule 109 provides definitions used in the rule of “final salary”, “lower rate scheme member contributions” and “higher rate scheme member contributions”.
145. **Final salary** is defined in rule 109 as the amount of MSP salary paid to the individual during their last 12 months as an “MSP member” (see rule 21). If they were an MSP member for less than 12 months, rule 109(1)(6) applies with the final salary being the actual amount received during the period which is increased to a pro-rata annual figure using the formula.
146. For MSPs who leave the scheme and return later as MSP scheme members, periods of service are aggregated before final salary is applied (see rule 33). For members who cease to be MSPs or office-holders prior to becoming entitled to their pension, their final salary is calculated as above, and up-rated from the date of leaving to the date of retirement.² Up-rating or revaluation is required by Chapter II of Part IV (sections 83-86) and Schedule 3 to the 1993 Act. The relevant percentage increases for schemes to apply are set by means of annual Occupational Pensions (Revaluation) Orders.³
147. **Lower rate scheme member contributions** are defined as being scheme member contributions of 6% of salary with **higher rate scheme member contributions** being scheme members contributions of 11% of salary. The difference in contribution amount is the actuarially-provided figure⁴ to fully meet the increased cost of pension entitlement under the scheme accruing at 1/40th per year when higher rate contributions are paid as opposed to 1/50th per year when lower rate contributions are paid.
148. Using the formula, A is the period of reckonable service during which lower rate scheme contributions were paid divided by 50; B is the period of reckonable service during which higher rate scheme contributions were paid divided by 40. A/50 and B/40 are added together and multiplied by the MSP final salary to produce the amount of annual pension payable. This figure is subject to a maximum set out in rule 38(2). Paragraph 6(2) of Schedule 3 ensures that contributions under the old rules are treated as having been made at the lower rate.
149. Rule 38(2) sets a maximum MSP pension payable under the scheme by reference to an individual’s “annual MSP pension cap”. The annual MSP pension cap is set at two-thirds of an individual’s final MSP salary, ignoring any reduction that is made under section 82(2) of the 1998 Act as a consequence of a member also being a member of the Westminster or European Parliaments (dual mandate members).
150. Where the annual MSP pension cap is exceeded, the annual MSP pension payable is reduced to the level of the annual MSP pension cap (in relation to the effect on future contributions payable by the member when the cap is reached, see also rule 30).
151. The annual MSP pension cap replaces the previous maximum pension rules which were set out at article F5 and Schedule 2 to the 1999 pensions order. Other than the two-thirds salary cap which is retained, the previous limits were linked to former Inland Revenue restrictions which were repealed in the Finance Act 2004. The new Revenue limits are the annual and lifetime allowances⁵ which set the maximum value of

² By an amount set by the Secretary of State under the powers contained in paragraph 2(1) of Schedule 3 to the Pension Schemes Act 1993

³ The Order applying from 1 January 2008 is the [Occupational Pensions \(Revaluation\) Order 2007 SI 2007/3369](#)

⁴ Scottish Parliamentary Pension Scheme Committee, 1st Report 2008 (Session 3), paragraph 94 (SP Paper 103)

⁵ Finance Act 2004 sections 227-238

benefits that an individual is allowed to accrue tax-free from contributions to registered pension schemes. Where the lifetime allowance is exceeded a tax liability accrues and is recoverable from the member (see Part R). Under existing salaries and contribution limits the annual allowance will not be exceeded by contributions to this scheme alone. If a member's aggregate contributions including contributions to other schemes exceed the limit, the individual will be liable for the tax charge under section 277 of the Finance Act 2004 (see also rule 89(3) for limitations on purchasing added years in this regard).

Rule 39: Amount of office-holder pension

152. Rule 39 makes similar provisions for office-holders to those made in rule 38 for MSPs. The rule sets out the formula which applies to calculate the amount of an office-holder pension that is payable as well as setting a maximum pension payable. The provisions have the identical effect to rule 38 for MSP pension in relation to the calculation of pension entitlement where the member has lower and higher scheme member contribution rates.
153. Rule 39 differs from rule 38 to account separately for separate periods of office-holder service. This recognises the varying nature and salaries attributable to different qualifying office-holder posts an individual may hold in their career, where a final office-holder salary may be much less or much more than a salary for an office held earlier in a person's career. Rule 39(2) makes clear that each period of service as an office-holder entitles the individual to a separate pension entitlement. Under rule 39(3), the value of office-holder benefits accrued are calculated individually before being aggregated for payment purposes.
154. Rule 39(4) applies an office-holder pension cap similar to the MSP pension cap of two-thirds of the final salary of the office-holder (rule 39(4)(a)). However, where there has been more than one office held such an approach would apply multiple caps. Rule 39(4) (b) applies the cap as two-thirds of the highest office-holder salary.

Rule 40: Duration of scheme pension

155. Rule 40(1) makes pension payable from the first day that the individual is entitled to receive it. Under rule 40(3), pension is paid for the remainder of their life (subject to exceptions under rule 41). The entitlement date applies whether or not the individual complies with rule 40(2). Under rule 40(2), before the individual entitled to a pension is able to receive any payments they should first (a) notify the Fund trustees that payments should begin, and (b) give the trustees such information as they require.
156. The required information under rule 40(2)(b) covers other entitlements to pensions the individual has and other information required to calculate any tax liability.
157. Rule 40(4) requires pensions to be paid monthly in arrears but also provides the Fund trustees with discretion to pay by other instalments subject to a minimum of at least one instalment per year.

Rule 41: Suspension of scheme pension

158. Rule 41 supplements rule 37 in making clear that an individual is not entitled to a scheme pension while serving as an MSP or an office-holder. The loss of pension applies even if they have previously qualified for and received a pension (save for the special circumstances of rule 44 for serving members age 75 and over). In the event that a scheme pensioner is elected as an MSP or becomes the holder of a pensionable office (see rule 22(2)), pension payments are suspended under rule 41(1).
159. When the individual again becomes eligible to receive their pension, the period of suspension ends and pension payments resume. Any additional benefits accrued during the period of suspension will be treated as a separate entitlement, although they may ultimately be aggregated for payment purposes.

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

- 159(a). Rule 41(2) restricts the amount of any lump sum death benefit payable should the individual die during their new period as a participating member. The amount payable under Part K is reduced by the total of: the amount of scheme pension received before the suspension; the amount of any retirement lump sum paid to the individual; and the amount of any pension or lump sum payable under Part L (5 year guarantee). It takes account of pension paid and other benefits payable in respect of scheme pensioners who then re-participate in the scheme, ensuring that participating members and scheme pensioners who re-participate in the scheme are treated equally in so far as the amount of death benefit payable to their survivors is concerned.
160. Rule 41(3) details what happens to the amount of pension payable when the original pension was an ill-health pension granted under Part I of the rules.
161. The rules for the award of an ill-health pension include the criteria that the individual stops working as an MSP or office-holder as a direct result of their illness or, in relation to deferred pensioners, stops gainful work, and that they are prevented by the illness from working (rules 47-49). As the individual had been able to resume gainful work as an MSP or office-holder the previous criteria for award of an ill-health pension no longer apply.
162. Under rule 41(3), any enhancement to the pension entitlement awarded as a consequence of the illness is removed. Rule 41(3)(a) provides that any earlier ill-health entitlement is ignored, so the right to be paid before 65 is no longer applicable when the person ceases their subsequent service as an MSP or office-holder. If this subsequent service ends when the person is 65 or older, then rule 41(3)(b)(i) the earlier ill-health enhancement to pension payments is removed and the pension is recalculated based upon actual reckonable service.
163. Similarly, under rule 41(3)(b)(ii) any increase to the ill-health pension attributed to added years partly paid for in instalments before service was interrupted on serious ill-health grounds will be reduced to reflect the amount of added years actually paid for. Rule 86(2)(a) provides that in serious ill-health cases the scheme pensioner gets the benefit of all the added years they have applied for even where they are not fully paid up when the MSP stops being an MSP.