

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part H Early Retirement

180. Part H of the Schedule sets out who is eligible for early retirement and the reduction in the annual scheme pension that applies when retiring early. The rule replaces the rules contained at Part H and Schedule 4 of the 1999 pensions order.

Rule 46: Early retirement

181. Under the Finance Act 2004, the minimum pension age under which a member of a tax-registered occupational pension scheme can retire early and access their benefits is increased to 55 from 6 April 2010 (see references to “normal minimum pension age” in sections 165 and 279 of that Act).
182. Rule 46(1) makes an individual who is age 55 and over and who has not yet reached the scheme normal retirement age of 65 eligible to take early retirement. Under rule 46(1)(b) they must no longer be an MSP or the holder of a pensionable office. The requirement under the 1999 pensions order for 15 years of actual qualifying service before becoming eligible to take early retirement is not repeated in new scheme rules. Any individual with accrued pension rights is eligible provided they meet the criteria in rule 46(1).
183. Rule 46(3) disapplies the normal retirement from age 65 restriction in rule 37(1), allowing a scheme pension to be paid from the date that the early retirement notice is given under rule 46(2) or such later date as is sought and specified in the early retirement notice.
184. Rule 46(4) determines the annual scheme pension (see rule 37(1) and paragraphs 141-143 of these notes) payable to a person making an application for early retirement. It determines that the annual pension is reduced by an appropriate percentage on early retirement. The appropriate percentage is 4% for each year that the individual is retiring before reaching age 65. For example the reduction for a person retiring early at age 60 would be 20% (5 x 4%).
185. Save for the transitional provisions (see paragraphs 517-523), this calculation replaces the existing rules for calculating a pension payable on early retirement under the 1999 pensions order.
186. The application by a scheme of certain types of early retirement calculation could result in discriminatory treatment of a member or members on the grounds of age. The rules in Part H were framed in light of the equality principles in the Employment Equality (Age) Regulations 2006¹ and on the assumption that they would apply to the scheme.

¹ S.I. 2006/1031

These Regulations implement into domestic law Directive [2007/78/EC](#) establishing a general framework for equal treatment in employment and occupation.

187. The Employment Equality (Age) Regulations 2006 exempt from discrimination certain rules and practices in or relating to pension schemes. In particular, paragraph 8 of Schedule 2 exempts from discrimination the actuarial calculation of any age-related benefit commencing before the lowest age at which any member can retire without a reduction. In evidence to the Committee, GAD advised that a flat 4% per annum reduction was the lowest level of reduction which would be actuarially neutral for the scheme.² This 4% figure has therefore been used in rule 46(4) so that a calculation made under rule 46(4) will be an actuarial calculation in terms of paragraph 8 of Schedule 2 to the Employment Equality (Age) Regulations.
188. Once the reduction has been applied and pension commenced, rule 46(5) makes clear that the reduction continues for the whole duration of the pension payments.

Transitional provisions applying to early retirement

189. [Paragraph 12](#) of Schedule 3 (see paragraphs 517-523) contains transitional provisions preserving some rights to a pension entitlement determined under the calculation rules in the 1999 pensions order.
190. The provisions apply to individuals who were participants on 6 April 2006 under the old scheme rules. Those individuals have a limited right to retire from age 50 where they have at least 15 years relevant service before the “cut-off date” of the first general election after the new rules come into effect.

² Scottish Parliamentary Pension Scheme Committee, 1st Report 2008 (Session 3), paragraph 124 (SP Paper 103)