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

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[1] 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.

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.

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1 Finance Act 2004 c.12, section 167(3) and Schedule 29 paragraph 13