

# SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part N Transfers** [Chapter 1](#)

#### *Transfers Out*

#### **Rule 74: Statement of entitlement**

308. Rule 74(2) provides for additional transfer rights to those set out in the 1993 Act. The 1993 Act only requires transfers and statements of entitlement for individuals up to one year prior to the normal retirement age. SPPS transfers can be made after the scheme's normal retirement age of 65 (a member can contribute to the SPPS up to age 75). Rule 74(2) allows this rule to apply to those aged 64 or over, provided they stopped being a participating member of the scheme no longer than six months ago. Therefore, transfers out are possible for serving MSPs and office-holders over 64 where they have opted out of the scheme under rules 23 or 24.

#### **Rule 75: Transfers to other pension schemes**

309. Rule 75 sets out the conditions to be met in order for a transferable sum to be transferred from the Pension Fund. A transfer must be made if these conditions are met. An individual must not be a participating member or scheme pensioner and must have a total reckonable service of at least three months (conditions 1 and 2). An individual with less than three months' service is entitled to a refund of contributions rather than a transfer sum. Under Chapter 4 of Part IV of the 1993 Act, the right to a transfer value is required where there is more than two years' service. More limited rights apply where there is between three months and two years' service under Chapter 5 of Part IV. As the new scheme rules provide transfer rights to all with more than three months' service, the requirements of Chapter 5 are exceeded.
310. Under condition 3, the Fund trustees must have provided the individual with a "statement of entitlement". This will precede the fulfilment of condition 4 which requires an individual to give the Fund trustees a "transfer-out notice" specifying how the transferable sum is to be transferred, i.e. the destination and any other information that the Fund trustees may reasonably require.
311. The "statement of entitlement" uses a guarantee date, which is the date at which the value of the cash equivalent transferring sum is calculated. An individual must provide notice of transfer-out within three months of the guarantee date (condition 6), as well as within six months of stopping being a participating member or becoming 64, whichever is the later (condition 5).

312. The way in which the transfer is to be made must be permitted by section 95(2) of the 1993 Act (condition 7). This means that the trustees or managers of the receiving scheme must be willing and able to accept the transfer and their scheme must meet prescribed requirements.<sup>1</sup> In addition, the transfer should be a “recognised transfer” as per sections 164 and 169 of the Finance Act 2004 (i.e. another registered scheme or a qualifying overseas scheme under the tax legislation) and not prohibited by any other enactment (condition 8).

#### **Rule 76: Enhancement of transferable sum**

313. Rule 76 provides for the minimum amount of a transferable sum to be no less than the total of an individual’s contributions, any transfer-in sums and monies used to purchase added years. This rule is provided as a protection should any calculation of a transferring sum lead to a sum smaller than the total of these contributions paid into the Pension Fund by any individual.
314. [Schedule 3](#) paragraph 17(1) makes transitional arrangements in relation to any contributions or payments made and any transfers received under the 1999 scheme rules. Any such monies are to be included within the calculation.

#### **Rule 77: Reduction of transferable sum**

315. Rule 77 is a requirement to cover guaranteed minimum pension (GMP) rules (see section 8 of the 1993 Act).<sup>2</sup> Rule 77 provides that accrued rights to a guaranteed minimum pension or accrued rights attributable to service in contracted-out employment can be deducted by Fund trustees from any sums transferred out of the SPPS and retained in the scheme. This power would be used should section 96(2) of the 1993 Act apply to require rights to be retained in the SPPS, broadly where a receiving scheme is not willing or able to accept benefits attributable to a GMP or contracted-out employment.

#### **Rule 78: Transfer payment**

316. Rule 78 sets out the time limit for the payment of a transferable sum as being no later than the individual’s 65<sup>th</sup> birthday or, if later, the day falling six months after the transfer notice was given.
317. Rule 78(2) governs a transfer payment that is made more than six months after the guarantee date. The guarantee date is the date used to calculate the amount of the transferable sum to be paid. Should the payment be delayed by more than six months, the transfer sum is to be increased to either (a) the amount the transfer sum would have been if the guarantee date was the transfer date, or (b) the original transfer sum plus the amount of daily interest.

#### **Rule 79: Time limits**

318. Whilst the rules provide time limits for the payment of a transferable sum from the scheme, there may be exceptional circumstances where it would not be acceptable to prevent a transfer payment being made outside these time limits. Rule 79 allows the Fund trustees some discretion to extend time limits should they think it reasonable to do so.

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<sup>1</sup> See Regulation 12 of the [Occupational Pension Schemes \(Transfer Values\) Regulations 1996 \(S.I. 1996/1847\)](#)

<sup>2</sup> Between 1978 and 2002 part of an earner’s National Insurance Contributions (NICs) went toward State Earnings Relation Pension Scheme (SERPS) unless they were a member of a contracted-out occupational pension scheme. Between April 1978 and April 1997 members of contracted-out pension schemes were guaranteed not to have a smaller pension than they would have received under SERPS.

**Rule 80: Extinction of scheme benefits**

319. Rule 80 specifies the effect that a transfer has on an ex-' scheme member's rights in the scheme. These are extinguished once a transfer payment has been made. An exception to this applies where rule 77 required the Fund trustees to retain part of a transfer value to cover GMP rights or rights attributed to contracted-out employment.