

# SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part N Transfers** Chapter 2

#### *Transfers-in*

#### **Rule 81: Transfer-in**

320. Rule 81 sets out the conditions that must be met in order for the Fund trustees to accept a transfer sum from another pension scheme. A participating member must provide a “transfer-in notice” setting out the amount of the transfer-in sum and the pension scheme which is making the payment (condition 1). Section 95 of the 1993 Act requires other schemes to give transfer values up to one year prior to normal retirement age, which will be a maximum of 64 for most schemes. The new scheme rules restrict transfers-in to a corresponding age limit so that this notice must be provided before the individual’s 64<sup>th</sup> birthday (condition 2).
321. The participating member must have at least three months of total reckonable service (condition 3), as prior to this period they do not yet have vested rights in the scheme and may be entitled to a short service refund (Part M). The Finance Act 2004,<sup>1</sup> refunds in excess of a member’s contributions under the pension scheme would be an unauthorised payment. The three month minimum in the scheme rules prevents a transfer in and then a refund, which would be an unauthorised payment.
322. Condition 4 requires payment to be made from a pension scheme which is either registered or a qualifying recognised overseas pension scheme for the purposes of Part 4 of the Finance Act 2004. The transfer-in amount should be sufficient to cover any entitlement to a guaranteed minimum pension that arose from the transfer-in (condition 5), (see paragraph 316). Condition 6 is a linkage to the restriction imposed by rule 83 (see paragraph 328).
323. Condition 7 provides the Fund trustees with power to impose further conditions on transfers-in should they require. For example, there may be further requirements from the amendments to the 1993 Act or to the Occupational Pension Schemes (Transfer Values) Regulations 1996<sup>2</sup> or to other legislation which places obligations on trustees before accepting transfer values. Equally there may be factual information which the Fund trustees require before they accept the transfer.
324. As a transitional arrangement, Schedule 3 paragraph 17(2) disapplies condition 2 (where notice of transfer-in must be given before the scheme member’s 64<sup>th</sup> birthday) for 12 months from the new rules day for current participating members.

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<sup>1</sup> Paragraph 5(2) of Schedule 29 to the Finance Act 2004

<sup>2</sup> S.I. 1996/1847

**Rule 82: Effect of transfer-in**

325. Rule 82 sets out how the transfer-in sum is used to provide benefits in the SPPS. Reckonable service in the SPPS is increased by any sum transferred in. Where the participating member is an MSP member, only their reckonable service as an MSP (see rule 33) is increased, even if they are also an office-holder. The increase is an amount to be determined by the Fund trustees. If the participating member is an office-holder but not an MSP, reckonable service as an office-holder (see rule 34) is similarly increased by an amount decided by the Fund trustees and will apply to the office-holder post held at the time at which transfer in is made.
326. Any increased level of service is calculated as being a period when the higher rate scheme member contributions were made, with the result that they will count towards the higher accrual rate of 1/40<sup>th</sup> of salary for the purposes of final calculation of pension. Fund trustees must determine by how much an individual's reckonable service will be increased as at the date of transfer-in, in accordance with guidance and tables provided by the scheme actuary for this purpose.

**Rule 83: Limitation on transfers-in**

327. Rule 83 provides that a transfer-in will not be accepted if, when taken with an individual's anticipated reckonable service, it would increase the annual MSP or office-holder reckonable service to such a level that the annual MSP pension cap (rule 38(2)) or annual office-holder pension cap (rule 39(4)) would be exceeded.
328. Rule 83(2) provides that anticipated service should be calculated as being the service the MSP or office-holder would obtain if he or she remained in post until the next ordinary general election day. Therefore, the Fund trustees would add the member's prior service and the amount of time prior to the next election before deciding if this, added to the proposed increase from the transfer, would exceed the relevant pension cap.