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 R Taxes

406. Part R of Schedule 1 relates to the tax rules which apply to registered pension schemes under Part 4 of the Finance Act 2004. Under section 160 of that Act, a registered scheme is only authorised to make specified payments to or in respect of members. Other payments are “unauthorised payments” and attract charges, meaning that the Fund trustees as scheme administrator may become liable to pay tax charges in respect of such payments (see section 160(5)). The scheme administrator may also become liable to pay tax charges if an otherwise authorised payment is made when the recipient or member’s individual tax allowance exceeds the Lifetime Allowance.

407. Part R enables the Fund trustees to recover tax charges by deduction from an individual’s pension benefits. The Fund trustees may also reduce or withhold an individual’s pension benefits where payment would result in an unauthorised payment and, therefore, charges under the Finance Act 2004. While the provisions in this Part were not included in the scheme rules in the 1999 pensions order, the ability of the manger to withhold payments otherwise attracting an unauthorised payment charge was available as a result of the Registered Pension Schemes (Modification of the Rules of Existing Schemes) Regulations 2006[1]. As scheme rules having the same effect are now included in this part, S.I. 2006/364 is disapplied by virtue of paragraph 23 of Schedule 3.

Rule 96: Finance Act 2004 terms

408. Rule 96 provides a definition of the following key terms referred to under Part R:

    i. “the 2004 Act” means the Finance Act 2004 which introduced a new tax regime for registered pension schemes from 6 April 2006;

    ii. “event” is a benefit crystallisation event which happens when an individual becomes entitled to a pension benefit. That benefit, together with payment of any other pension benefits, are aggregated together to ensure they do not exceed the Lifetime Allowance limit. There are eight benefit crystallisation events listed in section 216 of the Finance Act 2004;

    iii. “lifetime allowance charge” is a tax charge on the individual where the total of their pension entitlements exceed their Lifetime Allowance limit. The Scheme administrator and member are jointly liable for the charge;

    iv. “scheme administrator” is the Fund trustees of the scheme for the purpose of identifying joint liability with an individual for any lifetime allowance charges

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1 S.I. 2006/364

under section 217 of the Finance Act 2004 (sections 270-274 of the Finance Act 2004 provide further detail on the exact liabilities that apply);

v. "unauthorised charge" is defined as two possible tax charges which apply where a payment is made out of the Pension Scheme Fund which is not one authorised to be made under section 164 of the Finance Act 2004. These are the unauthorised payment charge and the unauthorised payments surcharge (see sections 208-210 of the 2004 Finance Act 2004).

Rule 97: Payment of lifetime allowance charge by scheme administrator

409. A Lifetime Allowance charge becomes payable as a result of payments from the scheme on a benefit crystallisation which exceeds the individual's Lifetime Allowance. The individual receiving the benefit and the scheme administrator are jointly and severally liable for payment under section 217 of the Finance Act 2004.

410. Rule 97(1) makes provision for the Fund trustees to pay a lifetime allowance charge on behalf of the member. Under rule 97(2) the trustees may only make payment of the charge if instructed to do so by the individual on or before the date the charge arises. The individual must pay the amount of the charge to the Fund trustees on or before that date.

Rule 98: Payment of lifetime allowance charge from Pension Fund

411. Rule 98(1) determines that, in the absence of the appropriate instruction and payment under rule 97(2), the Fund trustees must pay the lifetime allowance charge from the Pension Fund. Where the charge arises on the Fund because of a transfer of benefits to a qualifying recognised overseas pension scheme (benefit crystallisation event 8 under section 216 of the Finance Act 2004), rule 98(2)(a) requires the Fund trustees to deduct an amount equivalent to the transfer value. For all other crystallisation events, rule 98(2)(b) requires the trustees to deduct the amount charged on the Fund from the individual's pension benefits.

412. Rule 98(3) requires that any reduction in benefits must, in the scheme actuary's opinion, reflect the amount of the charge paid under rule 97.

Rule 99: Deductions for tax arising on lump sum payments

413. Under the Finance Act 2004, a short service refund lump sum charge arises where a short service refund lump sum is paid by a registered pension scheme. Part M provides the rules for payment of short service refunds. There is a tax charge on these payments which is calculated in accordance with section 205 of the Finance Act 2004. Rule 99 makes provision for the charge to be deducted from any short service lump sum before it is paid to an individual. In effect, the deduction is equivalent to the income tax relief originally granted on the scheme member's contributions.

Rule 100: Reduction of benefits which would otherwise attract unauthorised charge

414. Rule 100 makes provision for the reduction of an individual's benefits where payment of those benefits by the Pension Fund would attract an unauthorised charge (i.e. an unauthorised payment charge or an unauthorised payment surcharge under the Finance Act 2004). Rule 100 seeks to prevent an unauthorised charge from occuring.

415. Rule 100(a) applies in the event that an unauthorised charge would arise in respect of any payment made from the Pension Fund. Rule 100(a) requires the Fund trustees to reduce the amount payable from the Pension Fund to an amount which is just below the threshold which attracts this charge.

416. Where no reduction is possible under (a), rule 100(b) requires the Fund trustees to withhold any payment to the individual in accordance with rule 101.

Rule 101: Prohibition of payments which would give rise to liability for certain taxes

417. Rule 101 places further restrictions on payments to individuals in the event that payments from the Pension Fund would give rise to a liability on the scheme for a scheme sanction charge or a de-registration charge.

418. A scheme sanction charge under section 239 of the Finance Act 2004 arises where a registered pension scheme makes an unauthorised payment. The scheme administrator is liable to pay the scheme sanction charge.

419. A de-registration charge under section 242 of the Finance Act 2004 is an income tax charge which applies if HMRC withdraws the registration of a registered pension scheme. The de-registration charge is 40% of the total of the amount of the assets held by the scheme immediately before it ceased to be a registered pension scheme. Deregistration and the charge could apply when more than 25% of a scheme's fund is paid as unauthorised payments in any 12 month period.

420. Rule 101 prevents any payment which would otherwise be paid from the Pension Fund where that payment would give rise to a scheme sanction charge or a de-registration charge.