

# SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### Part T Miscellaneous

433. Part T of Schedule 1 sets out miscellaneous provisions covering resolution of disputes, entitlement to a guaranteed minimum pension for a transfer-in sum, restriction on assignments, surrenders and commutations of pension benefits, small payments for deceased individuals without confirmation or other proof of title and formal communications. These provisions replace the rules contained in Part T of the 1999 pensions order as well as making new provision in other areas.

#### Rule 104: Dispute resolution procedure

434. Section 50 of the 1995 Act as amended by section 273 of the Pensions Act 2004 sets out requirements relating to the resolution of disputes. It provides that trustees of an occupational pension scheme must ensure that dispute resolution arrangements are made and implemented. The section sets out the types of dispute to which the dispute resolution arrangements apply. The section further provides for the procedure of the dispute resolution arrangements and provides for civil penalties to apply to trustees who fail to take reasonable steps to make or implement dispute resolution arrangements.
435. The Fund trustees are therefore required to put in place the necessary arrangements for the resolution of disputes.

#### Rule 105: Guaranteed minimum pension

436. Rule 105 makes provision for guaranteed minimum pensions (GMP).
437. GMP is related to the State Earnings Related Pension Scheme (SERPS). SERPS was an additional state pension scheme which was related to earnings, running from 6 April 1978 to 5 April 2002. A person who was in employment may have paid National Insurance Contributions (NICs) into SERPS. However, if they were also a member of a contracted-out occupational pension scheme, they did not pay this part of their NICs and therefore did not earn a pension under SERPS.
438. Between April 1978 and April 1997, members of contracted-out pension schemes were guaranteed not to have a smaller pension from their contracted-out occupational scheme than they would have received under SERPS. If an occupational pension entitlement is less than a GMP entitlement, the occupational pension is increased to match a minimum pension entitlement from the relevant GMP service.
439. As GMP only applied until 1997, no GMP will have directly accrued under the scheme which commenced for the Parliament in 1999. An obligation to pay a GMP entitlement under the scheme will only arise in relation to “transfer-in sums” (see Chapter 2 of Part N for transfers-in).

440. Rule 105(1) makes provision for payment of GMP to any entitled person in accordance with sections 14 to 16 of the Pension Schemes Act 1993. It provides that the pension is paid for the rest of the individual's life at a rate equivalent to a weekly rate of not less than the guaranteed minimum. The entitlement is from "pensionable age" as defined in section 181 of the 1993 Act, for GMP purposes 60 for women and 65 for men.
441. Rule 105(2) and (3) cover where GMP entitlement potentially arises earlier than the scheme's normal retirement age. The right to GMP entitlement from "pensionable age" is read with section 13(4) of the 1993 Act which allows for postponement where employment continues. Rule 105(2) therefore provides that payment of a person's GMP is postponed where the individual is an MSP or still an office-holder on the day it becomes payable.
442. Rule 105(3) allows a postponement described in rule 105(2) to last either until the individual is no longer an MSP or office-holder, or for up to five years from pensionable age where the person is still in office, whichever is the earlier. The postponement may be for a longer period with the consent of the individual.
443. Transitional provision is made at paragraph 20 of Schedule 3 in relation to transfer-in sums received under article P6 of the 1999 scheme rules (see paragraphs 555-556).

#### **Rule 106: Restriction on assignability etc.**

444. Rule 106 makes provision in relation to the inalienability of pension benefits.
445. Section 91 of the 1995 Act provides generally for the inalienability of occupational pensions, except to the extent permitted by law. Any pension rights and benefits due under the pension scheme shall not be assignable or chargeable with debts or other liabilities. There are some exceptions to inalienability set out at section 91(5). These exceptions are not mandatory on pension schemes. Rule 106 disapplies the exceptions at paragraphs (a) assignment, (b) surrender and (c) commutation. Assignment, surrender and commutations are therefore not permitted in respect of scheme benefits, other than where the scheme rules specifically permit.

#### **Rule 107: Payments due in respect of deceased individuals**

446. Rule 107 provides for the ability to pay small amounts of a deceased individual's scheme entitlement without confirmation or other proof of the title. This applies where the sum due does not exceed the amount specified in an order made in accordance with section 6 of the [Administration of Estates \(Small Payments\) Act 1965 \(c.32\)](#). The current limit is £5,000 in terms of the Administration of Estates (Small Payments) (Increase of Limit) Order 1984.<sup>1</sup> The 1965 Act does not automatically apply to enactments made under the 1998 Act. Rule 107 is necessary to apply the 1965 Act.
447. Under rule 107(1), the scheme entitlement is the sum of any outstanding amounts due to the deceased at the time of death and any amounts payable to the deceased's personal representatives.
448. Rule 107(2) provides that the Fund trustees are able to make such small payments under this rule without the requirement for confirmation or other proof of title. Payment may be made to the deceased individual's representative or to any person appearing to the Fund trustees to be beneficially entitled to the estate.
449. Rule 107(3) places liability on the recipient of the payment to account for the amount paid. The Fund trustees are not liable to account for the payment. This is significant in the event that a payment made under this rule is subject to challenge by any other claimant.

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<sup>1</sup> S.I. 1984/539

**Rule 108: Formal communications**

450. Rule 108 sets out the requirements for formal communications used in relation to the Act. Provision is made in relation to the form and delivery of communications. This includes provision for the use of electronic media.
451. A formal communication is defined in rule 108(1) as any notice, application, request or certification made or given for any purpose under the Act.
452. Rule 108(2) requires that any formal communication described in rule 108(1) must be in writing.
453. Rule 108(3) makes provision for the delivery of formal communications. Rule 108(3)(a) provides that a communication is considered to be made or given if it is delivered or sent by post to the relevant address. The rule lists the relevant addresses. Communications for the Fund trustees or any MSP should be sent to the Parliament. For holders of a qualifying office who are not MSPs, the address is the office-holder's principal office. In any other case, the relevant address is the usual or last known abode of the person to whom the communication is being sent.
454. Rule 108(3)(b) provides that communications sent in any other way than as described in rule 108(3)(a) are to be considered as made or given if the sender reasonably thinks that the communication will be delivered on the same or next day. This includes electronic communications.
455. Rule 108(4) makes provision for formal communications sent by electronic means. Under this provision, electronic communications are to be treated as being in writing provided that the communication is legible and capable of being used for future reference.
456. Rule 108(5) makes further provision in relation to rule 108(3)(b). It creates a presumption that the formal communication referred to in that rule is considered as having been delivered on the day after it is sent, unless it can be proved otherwise. Where the next day would fall on a weekend or bank holiday in Scotland, the communication is considered as having been delivered on the next weekday which is not a bank holiday. Scottish bank holidays are defined at paragraph 2 of Schedule 1 of the [Banking and Financial Dealings Act 1971 \(c.80\)](#).