

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part O Added Years

329. Part O of Schedule 1 sets out rules covering how participating members can enhance their pension benefits by buying extra years of service to add to their actual length of reckonable service. The cost of purchasing added years is determined by an actuarial calculation and in practice will be fixed as a percentage of salary. The amount of an instalment required to buy a fixed amount of additional reckonable service depends on the member's age. Purchase may be made by lump sum or by way of monthly instalments. "Members pay the full cost of any added years that they purchase.
330. These rules replace the rules contained in Part Q and Schedule 5 of the 1999 pensions order.

Rule 84: Added years

331. Rule 84 allows a participating member to increase the length of their pensionable reckonable service by buying added years. It also specifies that added years may be bought as complete years or as fractions of a year calculated in days.
332. Rules 84(3) and 84(4) recognise that a participating member may be an MSP only, an MSP who is also an office-holder or an office-holder who is not an MSP (the Lord Advocate and the Solicitor General are office-holders but may not necessarily be MSPs). Rule 84(3) specifies that an MSP member (who may also be an office-holder) can only buy added years based on their service and salary as an MSP. Rule 84(4) specifies that an office-holder may buy added years but only if that person is not an MSP and in this case the added years would be added to their office-holder reckonable service and be based on their office-holder salary.

Rule 85: Buying added years by instalments

333. Rule 85 sets out the rules for buying and paying by instalments.
334. In most cases, payment by instalment is likely to be by deductions from the participating member's salary by the SPCB who will pay that deduction to the trustees. The trustees, however, have power to require another method for making the contributions (to cover, for example, payments by an office-holder who is not in receipt of a salary from the SPCB). In the case of arrears of payment, it will be for the trustees to determine how the arrears should be paid.
335. Rule 85(1) sets out five conditions that must be met before the Fund trustees can accept an application. The person making the application must be a participating member and make an application to the Fund trustees.

336. The participating member must state how many years or fractions of years are being sought. The participating member need not state the amount to be paid as this will be calculated by the scheme actuary or by the Fund trustees using information and tables provided by the actuary as set out in rule 85(4).
337. There is no upper age limit by which the participating member must make an application to buy added years. Normal retirement age is 65 years, so the cost calculations and the periodic calculations are normally determined with reference to that age as outlined in condition 2. For participating members who choose to work and remain as an MSP or office-holder past age 65 years and who decide to purchase added years, the only option is to make periodical payments until the next general election.
338. Condition 3 requires the participating member to satisfy the Fund trustees that they are in good health. In practice this may mean that the participating member states that they know of no current health condition that would be likely to present an impediment in continuing to carry out their duties. Condition 4 of the rule specifies that the participating member must also produce any other information or evidence that the trustees may reasonably require in relation to the application. This may include further evidence in relation to the application conditions, for example medical evidence.
339. Condition 5 specifies that the Fund trustees cannot accept an application if it breaches the limitations in rule 89. The limitations are set out in detail at rule 89 and are based on HMRC requirements and include prevention of an increase taking the individual above the annual MSP or office-holder pension cap and an annual limitation of 20% of salary. (see paragraphs 358-366).
340. Once an application has been accepted, rule 85(2) states that the participating member cannot cancel or retract the application. Rule 85(3) states that the person responsible for paying the participating member's salary has to deduct an amount determined under this rule from each salary payment. The instalments are to be paid to the Fund trustees. Instalments are paid from the first day of the month after the application has been accepted. The last instalment is paid at the end of the period that has been calculated and notified to the participating member.
341. As set out in rule 85(5), once all instalments have been paid, the participating member's period of reckonable service will be increased by the number of added years that they have bought. Rule 85(5) also clarifies that, if the participating member has bought added years in their capacity as an MSP, it is the number of years in that post that is increased. If the participating member has bought added years in their capacity as an office-holder, it is the number of years in that capacity that is increased.
342. Rule 85(6) requires the purchase of added years to be calculated with reference to the higher rate (1/40^{ths}) accrual rate.
343. Rule 85(7) specifies that for a participating member who is an office-holder but not an MSP, the extra years bought are added to reckonable service in the office held while the purchase is being made (rule 39(3) allows for separate calculations for different offices held). See also rule 86(1)(b) in relation to the position when an office-holder stops holding the position before completing all payment instalments.

Rule 86: Interruption of service

344. There are a number of ways in which a participant's service can be interrupted. Rule 86 makes provision for this and sets out the effect it has on the purchase of added years. Rule 86(1) covers two situations where added years are being purchased by instalments. The first is where an MSP stops being an MSP. The second is where an office-holder who is not also an MSP stops holding office or where an office-holder who is not also an MSP becomes an MSP.
345. Rule 86(2) specifies that, when any of the situations in rule 86(1) occurs, no further instalments are payable. Rule 86 also sets out the calculation of the amount of added

years to be added to reckonable service. Under rule 86(2)(a), if the person dies or is entitled to a serious ill-health pension (under Part I), the scheme member is awarded all of the extra years that he or she had been buying. The outstanding balance of the years is treated as if fully purchased and credited in full as reckonable service.

346. Rule 86(2)(b) covers what happens in other cases when service is interrupted (e.g. leaving on ceasing to be an MSP, early retirement or ill-health retirement which is at the reduced benefit level, and including the case where an office-holder is not an MSP but becomes an MSP). The rule provides a calculation for a proportionate amount of the added years to be included in the scheme member's pension. This calculation is expressed as the number of added years that the scheme member applied to purchase by periodic contributions multiplied by the period (to the nearest day) during which the contributions have been paid. The resultant figure is divided by the total period over which the contributions would have been payable. The amount of reckonable service added is the proportion of the amount originally applied for.

Rule 87: Resumption of service as MSP member

347. While some interruptions to service are final, rule 87 makes provision in relation to interruption of service which is of a temporary nature and where the scheme member subsequently rejoins the scheme as a participating MSP member.
348. When service is interrupted but later restarts, an MSP member may resume paying towards the purchase of added years in certain circumstances. In other circumstances, an MSP member may, within three months of rejoining the scheme, apply to restart paying instalments at the previously determined rate.
349. Rule 87(2) sets out the effect that restarting has on reckonable service and the amount and duration of instalments. Under rule 87(2)(a), instalments resume at the previous amount and continue until the end of the original period. By virtue of rule 87(2)(b), the reckonable service added in respect of the original payments is removed and recalculated when the final instalment is paid or, if earlier, when the individual next leaves the scheme.

Rule 88: Buying added years by lump sum

350. A participating member may also - or alternatively - buy added years at any time by applying to the Fund trustees and making a lump sum payment. Rule 88 sets out the rules for buying and paying by a lump sum.
351. Rule 88(1) sets out four conditions which must be met before the Fund trustees can accept an application. These conditions are the same as conditions 1, 3, 4 and 5 of rule 85(1) (see paragraphs 336-340). The one exception is that for lump sum applications the age restrictions on condition 2 of rule 85(1) do not apply in recognition that purchase will be by a single payment.
352. Rule 88(2) requires that a participating member has to pay the relevant lump sum within six months of the date of acceptance by the Fund trustees of the application. If, after an application has been agreed by Fund trustees, the payment is not received on time, the application to buy the added years becomes invalid.
353. The amount to be paid, as described in rule 88(3) and (4), is calculated by the Fund trustees and must be certified by the scheme actuary or made in accordance with any guidance or tables produced by the scheme actuary.
354. When the lump sum has been paid, as set out in rule 88(5), the participating member's period of service will be increased by the number of added years just bought. Rule 88(5) goes on to clarify that if the participating member has bought added years in their capacity as an MSP, then it is the number of years in that post that is increased. If the participating member has bought added years in their capacity as an office-holder, then it is the number of years in that post that is increased.

355. Rule 88(6) requires the purchase of added years to be calculated with reference to the higher (1/40th) accrual rate.
356. Rule 88(7) specifies that, for a participating member who is an office-holder but not an MSP, the extra years bought are added to reckonable service in that office held when purchase is being made. (Rule 39(3) allows for separate calculations for different offices held.)

Rule 89: Limitations on buying added years

357. The amount of pension benefits that can be accrued as a participating member are restricted to the amount of the MSP “annual MSP pension cap” (see rule 38(2)) or “annual office-holder pension cap” (see rule 39(4)) as appropriate. Rule 89 places limitations on the buying of added years to prevent reckonable service increased under this Part from exceeding the scheme maximums.
358. Rule 89 also places similar restrictions in situations where an Annual or Lifetime Allowance would arise because the relevant limits would be exceeded by the proposed purchase of added years. Finally, the rule also places an upper restriction of 20% of salary payments on the amount of contribution any participating member may make in a single tax year.
359. Under rule 89(1)(a), the Fund trustees must reject an application to buy added years if the MSPs length of service enhanced by the proposed added years would take the MSPs entitlements over the limit of the annual MSP pension cap. Similarly, under rule 89(1)(b), an application must be rejected if an office-holder’s length of service enhanced by the proposed added years would take the office-holder’s entitlements over the limit of the annual office-holder pension cap.
360. The pension caps are specified in rules 38(2) and 39(4) (see paragraphs 150-155) as two-thirds of the final salary. The amount of the pensionable service required to exceed the cap will depend on whether pension is being accrued at the lower or higher contribution rate (1/50th or 1/40th) per annum (or a combination of both). Where the amount of pensionable service exceeds the cap, the pension is restricted to the two-thirds limit.
361. Rule 89(2) specifies how “anticipated reckonable service” is calculated. Reckonable service is dealt with under Part E.
362. Rule 89(2)(a) defines “anticipated reckonable service” as the service an MSP would obtain if they continued in post, making scheme member contributions at their existing rate. Under (2)(a)(i), the continuation in post is taken to be until the final instalment payment for the added years is made. Under rule 89(2)(a)(ii), when purchasing added years by a lump sum, the continuation in post is taken to be until the date of the next ordinary general election.
363. Rule 89(2)(b) makes identical rules to rule 89(2)(a) in relation to office-holder members, except that the Fund trustees are given an additional discretion to determine the end date when payment is by a lump sum. That date could be earlier or later than the next ordinary general election depending upon the circumstances at the time.
364. Rule 89(3) requires the Fund trustees to reject an application if specified limits would be breached. The first two limits at rule 89(3)(a) and (b) relate to the Annual or Lifetime Allowance. The third limit at rule 89(3)(c) restricts the total amount of scheme member contributions in a tax year to a maximum of 20% of salary payments. That limit includes scheme member contributions and amounts paid for added years.
365. In making a decision under rule 89, the Fund trustees may seek advice from appropriate professional sources such as the scheme actuary using powers at rule 16.

Rule 90: Multiple applications

- 366. Rule 90 entitles a participating member to make more than one application to the Fund trustees to buy added years. The Fund trustees can accept subsequent applications made by a participating member provided the application meets all the criteria set out in this Part.
- 367. The rule applies to applications to make payments by instalments or by lump sum. Subsequent applications need not specify the same payment method as a previous application.
- 368. In the event that a participating member is already paying for added years over a period of time by instalments and makes a subsequent successful application to buy more years paid for over a period of time by instalments, the periods of time when the payments are being made may overlap.