

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part C Participating Members

87. Part C of Schedule 1 sets out rules covering who is entitled to participate in the pension scheme as an MSP and office-holder at any given time, together with rules on how an MSP or office-holder may opt-out of or opt-in to the scheme. These rules replace the rules contained at Part C of the 1999 pensions order.
88. The term “participating member” is defined in rule 109 to include the participating MSP members and office-holder members. It should be noted that there are other categories containing individuals who remain as members of the scheme in a different capacity. These are deferred pensioners and scheme pensioners, also defined in rule 109, who are members of the scheme but not “participating members”.

Rule 21: MSP members

89. Rule 21 provides that every serving MSP under age 75 is automatically a participating member of the pension scheme as an “MSP member”, unless the MSP opts out (see rule 23 for the MSP opt-out).
90. On reaching age 75, individuals no longer qualify for tax relief in relation to pension scheme membership available under the Finance Act 2004. At that age serving MSPs are excluded from participating membership and cease to make contributions. Their pension rights are frozen in that they do not accrue further reckonable service and their pension becomes payable only when they cease to be an MSP (see Part F). Other rights in relation to commutation for a lump sum and death benefits are covered at Parts G and K.
91. Under rule 30, an MSP member stops making scheme member contributions from their salary when they obtain sufficient reckonable service as an MSP to entitle them to the maximum annual MSP pension. The figure takes into account the salary of an MSP, office-holder or the aggregate of both. A serving MSP excused from making contributions from their salary as they have reached the limit of their annual MSP pension cap remains a “participating member” in terms of this rule.

Rule 22: Office-holder members

92. Rule 22 makes provision for the membership of the pension scheme of pensionable office-holders. On reaching age 75, serving office-holders can no longer be “participating members” and cease to make contributions. Their pension rights are frozen in that they do not accrue further reckonable service and their pension becomes payable only when they cease to be either an MSP or hold a pensionable office (see Part F). Other rights in relation to commutation for a lump sum and death benefits are covered at Parts G and K.

93. Rule 22(1) provides that every individual aged under 75 holding a pensionable office is a participating member of the pension scheme as an “office-holder member”, unless the individual opts out (see rule 24 for the office-holder opt-out).
94. The pensionable offices, which are defined in rule 22(2), are that of Presiding Officer, deputy Presiding Officer, one of the Scottish Ministers (this includes the First Minister, Ministers appointed under section 47 of the 1998 Act, the Lord Advocate and the Solicitor General for Scotland) or junior Scottish Ministers (appointed under section 49 of the 1998 Act). Section 44 of the 1998 Act makes provision for the composition of the Scottish Executive and for the members of the Scottish Executive to be referred to collectively as the “Scottish Ministers”.
95. Altered pension arrangements are made for First Ministers and Presiding Officers. The previous separate pension entitlement granted to them under Part S of the 1999 pensions order is not repeated in the Act for future holders of such offices. However, existing and former First Ministers and Presiding Officers continue to qualify under the separate arrangements (see paragraph 21 of Schedule 3). Therefore, corresponding transitional provision is made in paragraph 3 of Schedule 3 to exclude such individuals from also being office-holder members in the funded scheme. See paragraph 492.

Rule 23: MSP opt-out

96. Rule 23 permits any participating member to opt-out of the scheme as a participant by notification in writing (see rule 108) to the Fund trustees.
97. This rule further provides that an MSP who is an office-holder member may opt-out of the pension scheme as an office-holder member while remaining in it as an MSP member but not vice versa. This is because the office-holder pension is an addition to the MSP pension and not a separate pension in itself.
98. Members may opt out of the scheme at any time but where they opt out within three months of first being elected as an MSP, rule 23(2) provides refund provisions. Such members will be treated as never having been scheme members either as MSPs or office-holders and any contributions paid by the member will be refunded.
99. Where an MSP chooses to opt out within three months of an election and has previously accrued pension rights under the scheme, no refund of contributions can be made. The new period of scheme membership to the date of their opting out will be added to their earlier period. Such members are excluded by the terms of the Finance Act 2004 from receiving a refund of contributions and rule 23(2) therefore refers to “first being elected”.
100. Rule 23(3) applies to members who opt out of participating membership more than three months after being elected or re-elected. Upon receiving notice of the MSP opt-out, the Fund trustees will determine a date for the termination of the MSP membership to the scheme. That date is to be as soon as is practically possible, which is likely to be the end of the period covered by the payment of the last contribution deducted from the MSPs salary.

Rule 24: Office-holder opt-out

101. Rule 24 makes provisions for office-holder members to opt-out of the pension scheme as office-holder members by giving notice in writing (see rule 108) to the Fund trustees.
102. If an office-holder member opts out within three months of being appointed to a relevant office, rule 24(2) provides that the office-holder will be treated as never having been an office-holder member since their appointment. Any contributions paid by the office-holder since being appointed will be refunded.
103. Rule 24(3) applies to qualifying office-holders who opt out of office-holder membership after more than three months of being appointed. Upon receiving notice of

the office-holder opt-out, the Fund trustees will determine a date for the termination of the office-holder membership to the scheme. That date is to be as soon as is practically possible, which is likely to be the end of the period covered by the payment of the last contribution deducted from the office-holder's salary.

Rule 25: MSP opt-in

104. If an individual who has opted out of the scheme is subsequently elected as an MSP, rule 25 sets out provisions which enable that individual to apply to rejoin as an MSP member of the scheme. Opt-in must be made by giving the Fund trustees written notification (see rule 108) within three months of election. Opt-in becomes effective from the election date.
105. A member opting in to the scheme has to pay to the Fund trustees the amount of contributions which would have been payable between the election date and the next day on which a scheme member contribution is due to be deducted from the MSP salary. Any outstanding sums must be paid by the "due date", which is by the 28th day after the trustees have given the member details of the amount of scheme contributions payable, unless the Fund trustees determine that a longer period applies.

Rule 26: Office-holder opt-in

106. Rule 26 provides that an opted-out office-holder may apply to rejoin the scheme as an office-holder member. If they are an MSP, they must also be an MSP member. Opt-in must be made by giving the Fund trustees written notification (see rule 108) within three months of their appointment to a qualifying office. The opt-in becomes effective from the appointment date.
107. The office-holder opting in to the scheme has to pay to the Fund trustees the amount of contributions which would have been payable between the date they took up office and the next deduction taken directly from their salary. Any outstanding sums must be paid by the "due date" which is by the 28th day after the trustees have given the member details of the amount of scheme contributions payable, unless the Fund trustees determine that a longer period applies.
108. Rule 26(2) provides that an MSP who had also been an office-holder member and had opted out of the scheme as an office-holder member may not rejoin the scheme as an office-holder member unless they are or become an MSP member.