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

LEGISLATIVE CHANGES

9. Since 1999 there have been a number of significant legislative changes at a UK level which have affected all pension schemes. The Finance Act 2004 and the Pensions Act 2004 transformed the legal environment in which pensions schemes operate in the UK, necessitating changes to the rules in the 1999 pensions order.

10. In addition there have been a number of general legislative changes which affect occupational pension schemes, with the major ones being as follows—

- the 1999 Act which introduced pension sharing on divorce, where ex-spouses can get membership of a scheme in their own right or a transfer value from the scheme; and
- the new status of civil partner introduced by the Civil Partnership Act.

11. The Finance Act 2004 set out a new, simplified tax regime for registered pension schemes. Historically, tax-approved pension schemes have had to comply with tax rules in order to benefit from tax advantages, for example an exemption from tax on the pension fund’s investment income and from capital gains; tax relief on member and employer contributions, and tax-free lump sums on retirement (although pensions in payment are subject to income tax).

12. The Finance Act 2004 replaced the eight then existing taxation regimes with a single set of rules, introduced on 6 April 2006. While there has been a relaxation of some of the tax limits previously imposed, the general principle remains that for a scheme to benefit from the preferential tax treatment it should remain within the tax rules.[1]

13. The 1999 pensions order as currently constituted must be read subject to the general transitional arrangements made under the Finance Act 2004. These arrangements are expected to expire in April 2011 and, if not replaced, would create uncertainty about how parts of the 1999 pensions order comply with tax rules.

The Committee

14. On 17 October 2007 the Committee published a consultation document and invited comment from MSPs, former MSPs and interested outside bodies on issues to be considered when developing proposals for a replacement for the 1999 pensions order and the Grants Order. The consultation paper was also published on the Scottish Parliament website. The closing date for responses was 17 January 2008.

15. The consultation sought views on a number of areas.

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1 Finance Act 2004, sections 165-168

16. These covered **mandatory changes** required to maintain compliance with other legislative changes (pension sharing on divorce, age 75 taxation rules and minimum pension age taxation rules).

17. **Discretionary changes** mainly linked to changes in the taxation regime following the Finance Act 2004 in areas such as:-

- Contribution limits
- Maximum pension available
- Amount of tax-free lump sum on retirement
- Amount of death in service gratuity
- Children's pension provision
- Additional voluntary contributions and added years
- Trivial commutation of pension benefits
- Ill-health provisions.

18. Other **discretionary** areas of possible change included age and other equality issues around early retirement, refund of contributions, loss of surviving spouse pension on re-marriage or cohabitation and unmarried partners.

19. Further **possible changes** covered by the consultation document included scheme administration, the rate at which pension accrued, changes to the FM/PO scheme and the Grants Order.

The Committee report

20. The Committee report was published on 29 May and the proposal for a Committee bill was agreed by the Parliament after debate on 26 June 2008. The report made recommendations in all the areas mentioned in paragraphs 17-20 and had attached to it a draft Bill containing a revised set of rules to replace the scheme rules in the 1999 pensions order; provisions to continue with modification the FM/PO scheme rules in the 1999 pensions order; and rules to replace those in the Grants Order.