

# **SCOTTISH PARLIAMENTARY PENSIONS ACT 2009**

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## **EXPLANATORY NOTES**

### **COMMENTARY ON SECTIONS**

#### **Part I Ill-Health**

191. Part I of Schedule 1 sets out the rules which apply when a scheme member resigns or stops being an MSP or, when not an MSP, a holder of pensionable office, as a result of a health condition. These rules replace the rules contained in Part J of and paragraph 3 of Schedule 2 to the 1999 pensions order.
192. A distinction is made in the rules between “serious” and “ordinary” ill-health with an enhancement to accrued pension provision being payable to those with a serious health condition. For those with an ordinary health condition, provision is made for accrued pension to commence immediately. Provision is also made for deferred pensioners who suffer ill-health, to have accrued pension paid immediately. Rules also provide for periodic review of the health of individuals in receipt of ill-health pensions.
193. New provision is made for lump sum payments in lieu of pension to be made to scheme members who are diagnosed with less than 12 months to live. The rules also make changes to the existing provisions to ensure compliance with the conditions set down in the Finance Act 2004; in particular the requirements in paragraph 1 of Schedule 28 relating to the permanence of, and the effect on the ability to work caused by, a health impairment.

#### **Rule 47: Serious ill-health pension**

194. Rule 47 provides six conditions which must be met before the Fund trustees can be satisfied that an individual becomes entitled to a serious ill-health pension from the scheme. The amount of pension payable is set out in rule 50 (paragraphs 209-218).
195. Condition 1 is met where the individual has resigned or has otherwise stopped being an MSP or the holder of a pensionable office. The reason for the resignation or otherwise stopping work must be as a direct result of a health condition. In most instances, the health condition will lead directly to resignation but the condition may also be met where an individual does not stand for re-election or is not re-appointed to a pensionable office as a direct result of the health condition.
196. Condition 2 requires that the individual must be a scheme member and thus be entitled to a scheme pension but for not having reached age 65. Condition 3 requires that an application for a serious ill-health pension must be made.
197. Conditions 4 and 5 relate to the health condition. That condition must be expected to be permanent and to prevent the individual from doing any gainful work now and in the future. “Work” is defined in rule 109(1) of Schedule 1 and includes work under a contract of employment, service or apprenticeship, as the holder of an office or as a

self-employed person. “Gainful” takes its normal meaning and so unpaid work would not, for example, be gainful work.

198. Condition 6 requires that the application be accompanied by evidence from a doctor that the doctor is satisfied that conditions 4 and 5 are met (“doctor” is defined in rule 109(1)).

**Rule 48: Ordinary ill-health pension**

199. Rule 48 lists six conditions which must be met before the Fund trustees can be satisfied that an individual becomes entitled to an ordinary ill-health pension. The amount of pension payable is set out in rule 51 (paragraph 219).
200. Conditions 1, 2 and 3 are the same as those for serious ill-health pensions (see paragraphs 197-198).
201. Conditions 4 and 5 relate to the health condition that the individual is suffering from. That condition must be expected to be permanent and the Fund trustees need to be satisfied that it will prevent the individual from adequately performing the duties of an MSP or office-holder now and in the future. The health condition is likely to be less serious than for a serious ill-health pension in rule 47 in that it is not a condition that prevents the individual from doing other gainful work. Condition 4(b) envisages that the other gainful work will be less demanding or of a different nature, although this will be a matter for the Fund trustees to be satisfied about in the individual case.
202. Condition 6 requires that the application is accompanied by evidence that a doctor is satisfied that the health conditions in conditions 4(a) (relative to the duties of an MSP or office-holder) and 5 are met.

**Rule 49: Deferred pensioner’s ill-health pension**

203. Rule 49 lists seven conditions which must be met before the Fund trustees can be satisfied that a deferred pensioner becomes entitled to an ill-health pension. The amount of pension payable is set out in rule 52. A deferred pensioner is defined in rule 109(1) and is a former participating member under the age of 65.
204. Conditions 1, 2 and 4 are similar to conditions 2 and 3 for serious ill-health pensions (see paragraph 198).
205. Condition 3 is similar to condition 1 in rules 47 and 48 for ordinary and serious ill-health pension and requires that the deferred pensioner has stopped doing gainful work as a direct consequence of their health condition.
206. Conditions 5, 6 and 7 are the same as conditions 4, 5 and 6 for serious ill-health pension (see paragraphs 199-200).

**Rule 50: Amount of serious ill-health pension**

207. Rule 50 sets out how the amount of serious ill-health pension payable is calculated. Separate calculations are made depending upon whether the individual is an MSP (rule 50(1)) or an office-holder only (rule 50(2)).
208. An uplift in benefits is payable under this rule, applied to the portion of salary attributable to that of an MSP. For MSPs who also have reckonable service as an office-holder, that service is not enhanced but the accrued pension becomes payable immediately (without reduction) along with the enhanced MSP portion of pension.
209. Part F of Schedule 1 (Pensions) provides for the calculation of the MSP pension and office-holder pensions together, making the annual scheme pension payable at the normal scheme retirement age of 65. (See rules 37 – 41 and paragraphs 141-165). Part F is applied to an individual entitled to a serious ill-health pension, subject to the modifications in rule 50(1).

210. Rule 50(1)(a) requires that the individual applying for a serious ill-health pension is treated as if they were age 65 on the “relevant day”. Rule 50(3) defines “relevant day” as being the day on which the individual resigned or otherwise stopped being an MSP or office-holder.
211. Rule 50(1)(b) increases the reckonable service as an MSP of an individual who is entitled to a serious ill-health pension. The increase is on the basis that the MSP would have remained an MSP until their 65th birthday and is equal to the period between the relevant date and the date of the MSP’s 65th birthday. For example, for an MSP who falls ill aged 50, the increase in reckonable service would be 15 years (to age 65).
212. Rule 50(1)(c) applies if the individual is a dual mandate MSP in the relevant period (see rule 94 and paragraph 400). In such circumstances the individual’s salary will have been reduced under section 82(2) of the 1998 Act. To ensure that the pension payable is related to that reduction in salary, the increase in the period of reckonable service under rule 50(1)(b) is reduced by the same proportion. For example, if the salary reduction is two-thirds, a dual mandate MSP who falls ill aged 50 will have the increase in reckonable service calculated under rule 50(1)(b) of 15 years (to age 65) reduced by two-thirds to 5 years. The reduced reckonable service is applied to the basic MSP salary.
213. Rule 50(1)(d) provides that the rate of scheme member contributions for the increased period of reckonable service under rule 50(1)(b) is that which applies on the relevant day. For example, if on the relevant day the individual is making higher rate scheme member contributions that rate will be used to calculate the increased reckonable service under rule 50(1)(b) is applied.
214. Rule 50(1)(e) makes clear that the enhancement of reckonable service under rule 50(1)(b) does not apply to reckonable service as an office-holder. The amount of serious ill-health pension payable in respect of office-holder service, if any, will be based upon the amount of reckonable service accrued to the relevant day. That pension will be payable immediately, without any reduction for early payment, in addition to the MSP ill-health pension.
215. Rule 50(2) makes provision in relation to those who only have reckonable service as an office-holder (the current Lord Advocate and Solicitor General for Scotland are not MSPs). Rule 50(2)(a) makes similar provision for them to that made for MSPs under rule 50(1)(a) (paragraph 212).
216. Rule 50(2)(b) provides a formula to calculate the increase to the amount of pension payable. The period of enhancement of reckonable service applying to those who only have reckonable service as an office-holder is calculated in identical manner to that for an MSP (see paragraph 213), but the salary that is applied is restricted to the annual salary payable to an MSP on the relevant day. To take the earlier example, if an office-holder only falls ill aged 50, the increase in reckonable service would be 15 years (to age 65), with the salary used in the calculations being the salary payable to an MSP on the relevant day. As in the case of an MSP, the rate of accrual is linked to the scheme member contributions at the relevant day (see paragraph 215).

### **Rule 51: Amount of ordinary ill-health pension**

217. Rule 51 provides for the amount of ordinary ill-health pension payable. The individual applying for an ordinary ill-health pension is treated as if they were age 65 on the date they resigned or otherwise stopped being an MSP or, where they were not an MSP, the holder of a pensionable office. The amount of pension is then calculated under rule 37 (see paragraphs 141-143) and is based on the actual accrued reckonable service. In effect, the amount of pension payable is not reduced although the individual has not reached age 65.

**Rule 52: Amount of deferred pensioner's ill-health pension**

218. Rule 52 provides for the amount of deferred pensioner's ill-health pension payable. The individual applying for a deferred pensioner's ill-health pension is treated as if they were age 65 on the date the application for the pension was made. The amount of pension is then calculated under rule 37 (see paragraphs 141-143) and is based on accrued reckonable service. The final salary of the deferred pensioner is the final salary paid to them while in post, increased in accordance with an Order made under paragraph 2(1) of Schedule 3 to the Pension Schemes Act 1993. In effect, pension accrued to the date of entitlement is paid immediately, without any reduction because the individual has not reached age 65.

**Rule 53: Review of ill-health pension entitlements**

219. Rule 53 makes provision for review by the Fund trustees of an individual's entitlement to an ill-health pension. Rule 53(1) enables a review to be carried out at any time and at such intervals as the Fund trustees determine until the individual reaches age 65.
220. Under rule 53(2), the Fund trustees can require a pensioner to provide evidence from a doctor on their state of health.
221. Rule 53(3) sets out the powers of the Fund trustees if, following a review, they are satisfied that the individual is no longer prevented from doing gainful work by reason of his or her state of health. If so satisfied, the Fund trustees can either determine that the individual is no longer entitled to an ill-health pension (rule 53(3)(a)) or, where the individual is entitled to a serious ill-health pension, that they should be entitled to an ordinary ill-health pension (rule 53(3)(b)). In the latter case, the Fund trustees would have to remain satisfied that the individual would not be able to perform the duties of an MSP or holder of a pensionable office.
222. Rule 53(4) provides that the Fund trustees may determine that, if a person refuses to undergo a medical examination under rule 54 (see paragraph 226) or fails to cooperate with a review, they are no longer entitled to an ill-health pension.
223. Rule 53(5)(a) provides that, where the Fund trustees have made a determination under rule 53 that the individual is no longer entitled to an ill-health pension, the pension payments are to stop. It also provides that, where the Fund trustees have determined that the individual is entitled to an ordinary ill-health pension, the pension payments are to be reduced. Under Rule 53(5)(b), when an ill-health pension is stopped or reduced the individual is treated as if they had never been entitled to an ill-health pension. The effect of rule 53(5)(b) is that when the individual next becomes entitled to receive a scheme pension no account is taken of the previous ill-health entitlement. This is similar to the provision in rule 41(3) (see paragraphs 162-165).

**Rule 54: Medical examinations**

224. Rule 54 allows the Fund trustees to require an applicant for an ill-health pension or an individual whose entitlement is being reviewed (under rule 53) to be examined by a doctor. The Fund trustees will bear the cost of any such examination (payment for which will be made from the Pension Fund under rule 3(1)(b)) unless they determine that the costs should be borne by the examinee.

**Rule 55: Ill-health lump sums: life expectancy of less than one year**

225. In terms of paragraph 4 of Schedule 29 to the Finance Act 2004, a serious ill-health lump sum benefit may be made from registered pension schemes instead of a pension, provided certain conditions are met. Rule 55 provides for such a payment and lists the conditions applicable.
226. Rule 55(1) lists the conditions which must be met before the individual becomes entitled to be paid an ill-health lump sum. The individual must make an application (condition

*These notes relate to the Scottish Parliamentary Pensions Act 2009 (asp 1) which received Royal Assent on 25 February 2009*

- 1), no longer be an MSP or holder of a pensionable office (condition 2) and have reckonable service in the pension scheme (condition 3).
227. Condition 4 requires that the conditions in paragraph 4 of Schedule 29 to the Finance Act 2004 are met. Those conditions require: that the Fund trustees receive medical evidence that the member is expected to live for less than one year; that all or part of the member's Lifetime Allowance is available (see paragraph 4); it is paid in respect of an uncrystallised arrangement (see paragraph 180); payment extinguishes all of the member's entitlement to benefits from the scheme (see paragraph 233); and (see paragraph 272) the member is under 75 years of age.
228. Rule 55(2) sets out the amount payable as an ill-health lump sum which is five times the annual scheme pension, and sets out how that pension is calculated for these purposes.
229. Under rule 55(2)(a), for those over age 65 it is the amount of scheme pension that would otherwise be payable to the individual. That amount would be calculated as set out in Part F of Schedule 1 (rules 37 and 38, see paragraphs 141-152).
230. For persons under age 65, rule 55(2)(b) provides that the amount of annual scheme pension is calculated as if the individual were entitled to a serious ill-health pension (see paragraphs 196-200).
231. Rule 55(3) provides that payment of the ill-health lump sum extinguishes all of the recipient's rights to receive scheme benefits.