SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part N Transfers

303. Part N of Schedule 1 sets out the rules governing transfers into and out of the Pension Fund. These rules replace the rules contained at Part P of the 1999 pensions order.

304. Transfers into and out of pension schemes are governed by UK pension and tax legislation. Part N is therefore drafted to be compatible with and complementary to this legislation. Chapters 4 and 5 of Part IV of the Pension Schemes Act 1993 (c48) provide rights for members of schemes to transfer the cash equivalent of their rights under a scheme. Some of these rights result in direct legislative obligations on the Fund trustees, which are not repeated in Part N. Part N should therefore be read in conjunction with Part IV of the Pension Schemes Act 1993 and accompanying secondary legislation.

305. Sections 164 and 169 of the Finance Act 2004 only allow a registered pension scheme to make recognised transfer payments only to another registered scheme or to a qualifying recognised overseas pension scheme, which is taken into account in the rules.

306. Rule 74 sets out the definition of a “transferable sum” from the scheme as being that set out in a “statement of entitlement” which the Fund trustees are required to provide under section 93A of the Pension Schemes Act 1993. Under that section, the trustees or managers of a scheme must, on the application of any member, provide the member with a written statement, which is referred to as a “statement of entitlement”. This sets out the amount of the cash equivalent at the guarantee date (see paragraph 312) of any benefits which have accrued to or in respect of the member under the applicable rules.

307. The Fund trustees will calculate the amount of the cash equivalent transfer value in accordance with the 1993 Act and, more specifically, the relevant regulations made under it.[1]

Chapter 1

Transfers Out

Rule 74: Statement of entitlement

308. Rule 74(2) provides for additional transfer rights to those set out in the 1993 Act. The 1993 Act only requires transfers and statements of entitlement for individuals up to one year prior to the normal retirement age. SPPS transfers can be made after the scheme’s normal retirement age of 65 (a member can contribute to the SPPS up to age 75). Rule 74(2) allows this rule to apply to those aged 64 or over, provided they stopped being a participating member of the scheme no longer than six months ago. Therefore, transfers

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1 The Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847) out are possible for serving MSPs and office-holders over 64 where they have opted out of the scheme under rules 23 or 24.

Rule 75: Transfers to other pension schemes

309. Rule 75 sets out the conditions to be met in order for a transferable sum to be transferred from the Pension Fund. A transfer must be made if these conditions are met. An individual must not be a participating member or scheme pensioner and must have a total reckonable service of at least three months (conditions 1 and 2). An individual with less than three months' service is entitled to a refund of contributions rather than a transfer sum. Under Chapter 4 of Part IV of the 1993 Act, the right to a transfer value is required where there is more than two years' service. More limited rights apply where there is between three months and two years' service under Chapter 5 of Part IV. As the new scheme rules provide transfer rights to all with more than three months' service, the requirements of Chapter 5 are exceeded.

310. Under condition 3, the Fund trustees must have provided the individual with a "statement of entitlement". This will precede the fulfilment of condition 4 which requires an individual to give the Fund trustees a "transfer-out notice" specifying how the transferable sum is to be transferred, i.e. the destination and any other information that the Fund trustees may reasonably require.

311. The "statement of entitlement" uses a guarantee date, which is the date at which the value of the cash equivalent transferring sum is calculated. An individual must provide notice of transfer-out within three months of the guarantee date (condition 6), as well as within six months of stopping being a participating member or becoming 64, whichever is the later (condition 5).

312. The way in which the transfer is to be made must be permitted by section 95(2) of the 1993 Act (condition 7). This means that the trustees or managers of the receiving scheme must be willing and able to accept the transfer and their scheme must meet prescribed requirements.[2] In addition, the transfer should be a "recognised transfer" as per sections 164 and 169 of the Finance Act 2004 (i.e. another registered scheme or a qualifying overseas scheme under the tax legislation) and not prohibited by any other enactment (condition 8).

Rule 76: Enhancement of transferable sum

313. Rule 76 provides for the minimum amount of a transferable sum to be no less that the total of an individual's contributions, any transfer-in sums and monies used to purchase added years. This rule is provided as a protection should any calculation of a transferring sum lead to a sum smaller than the total of these contributions paid into the Pension Fund by any individual.

314. Schedule 3 paragraph 17(1) makes transitional arrangements in relation to any contributions or payments made and any transfers received under the 1999 scheme rules. Any such monies are to be included within the calculation.

Rule 77: Reduction of transferable sum

315. Rule 77 is a requirement to cover guaranteed minimum pension (GMP) rules (see section 8 of the 1993 Act).[3] Rule 77 provides that accrued rights to a guaranteed minimum pension or accrued rights attributable to service in contracted-out employment can be deducted by Fund trustees from any sums transferred out of the SPPS and retained in the scheme. This power would be used should section 96(2) of the

2 See Regulation 12 of the Occupational Pension Schemes (Transfer Values) Regulations 1996 (S.I. 1996/1847)

3 Between 1978 and 2002 part of an earner's National Insurance Contributions (NICs) went toward State Earnings Relation Pension Scheme (SERPS) unless they were a member of a contracted-out occupational pension scheme. Between April 1978 and April 1997 members of contracted-out pension schemes were guaranteed not to have a smaller pension than they would have received under SERPS.

1993 Act apply to require rights to be retained in the SPPS, broadly where a receiving scheme is not willing or able to accept benefits attributable to a GMP or contracted-out employment.

Rule 78: Transfer payment

316. Rule 78 sets out the time limit for the payment of a transferable sum as being no later than the individual's 65th birthday or, if later, the day falling six months after the transfer notice was given.

317. Rule 78(2) governs a transfer payment that is made more than six months after the guarantee date. The guarantee date is the date used to calculate the amount of the transferable sum to be paid. Should the payment be delayed by more than six months, the transfer sum is to be increased to either (a) the amount the transfer sum would have been if the guarantee date was the transfer date, or (b) the original transfer sum plus the amount of daily interest.

Rule 79: Time limits

318. Whilst the rules provide time limits for the payment of a transferable sum from the scheme, there may be exceptional circumstances where it would not be acceptable to prevent a transfer payment being made outside these time limits. Rule 79 allows the Fund trustees some discretion to extend time limits should they think it reasonable to do so.

Rule 80: Extinction of scheme benefits

319. Rule 80 specifies the effect that a transfer has on an ex-'scheme member's rights in the scheme. These are extinguished once a transfer payment has been made. An exception to this applies where rule 77 required the Fund trustees to retain part of a transfer value to cover GMP rights or rights attributed to contracted-out employment.

Chapter 2

Transfers-in

Rule 81: Transfer-in

320. Rule 81 sets out the conditions that must be met in order for the Fund trustees to accept a transfer sum from another pension scheme. A participating member must provide a "transfer-in notice" setting out the amount of the transfer-in sum and the pension scheme which is making the payment (condition 1). Section 95 of the 1993 Act requires other schemes to give transfer values up to one year prior to normal retirement age, which will be a maximum of 64 for most schemes. The new scheme rules restrict transfers-in to a corresponding age limit so that this notice must be provided before the individual's 64th birthday (condition 2).

321. The participating member must have at least three months of total reckonable service (condition 3), as prior to this period they do not yet have vested rights in the scheme and may be entitled to a short service refund (Part M). The Finance Act 2004,[4] refunds in excess of a member's contributions under the pension scheme would be an unauthorised payment. The three month minimum in the scheme rules prevents a transfer in and then a refund, which would be an unauthorised payment.

322. Condition 4 requires payment to be made from a pension scheme which is either registered or a qualifying recognised overseas pension scheme for the purposes of Part 4 of the Finance Act 2004. The transfer-in amount should be sufficient to cover any entitlement to a guaranteed minimum pension that arose from the transfer-in (condition

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4 Paragraph 5(2) of Schedule 29 to the Finance Act 2004

5), (see paragraph 316). Condition 6 is a linkage to the restriction imposed by rule 83 (see paragraph 328).

323. Condition 7 provides the Fund trustees with power to impose further conditions on transfers-in should they require. For example, there may be further requirements from the amendments to the 1993 Act or to the Occupational Pension Schemes (Transfer Values) Regulations 1996[5] or to other legislation which places obligations on trustees before accepting transfer values. Equally there may be factual information which the Fund trustees require before they accept the transfer.

324. As a transitional arrangement, Schedule 3 paragraph 17(2) disapplies condition 2 (where notice of transfer-in must be given before the scheme member's 64th birthday) for 12 months from the new rules day for current participating members.

Rule 82: Effect of transfer-in

325. Rule 82 sets out how the transfer-in sum is used to provide benefits in the SPPS. Reckonable service in the SPPS is increased by any sum transferred in. Where the participating member is an MSP member, only their reckonable service as an MSP (see rule 33) is increased, even if they are also an office-holder. The increase is an amount to be determined by the Fund trustees. If the participating member is an office-holder but not an MSP, reckonable service as an office-holder (see rule 34) is similarly increased by an amount decided by the Fund trustees and will apply to the office-holder post held at the time at which transfer in is made.

326. Any increased level of service is calculated as being a period when the higher rate scheme member contributions were made, with the result that they will count towards the higher accrual rate of 1/40th of salary for the purposes of final calculation of pension. Fund trustees must determine by how much an individual's reckonable service will be increased as at the date of transfer-in, in accordance with guidance and tables provided by the scheme actuary for this purpose.

Rule 83: Limitation on transfers-in

327. Rule 83 provides that a transfer-in will not be accepted if, when taken with an individual's anticipated reckonable service, it would increase the annual MSP or office-holder reckonable service to such a level that the annual MSP pension cap (rule 38(2)) or annual office-holder pension cap (rule 39(4)) would be exceeded.

328. Rule 83(2) provides that anticipated service should be calculated as being the service the MSP or office-holder would obtain if he or she remained in post until the next ordinary general election day. Therefore, the Fund trustees would add the member's prior service and the amount of time prior to the next election before deciding if this, added to the proposed increase from the transfer, would exceed the relevant pension cap.

5 S.I. 1996/1847