

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 2 grants Payable on Leaving Office

461. As indicated earlier the SSRB report in November 1998, in addition to pensions and pay, covered resettlement grants, ill-health retirement grants and severance arrangements. In relation to gratuities to individuals ceasing to be Members of the Scottish Parliament, it recommended similar provisions to those at Westminster:
- a resettlement grant payable to an MSP who at the election does not stand for re-election or who stands but is not re-elected;
 - an ill-health retirement grant payable to an MSP who resigns because of ill-health before attaining age 65. The level of grant is specified as equal to the level of resettlement grant which would have been available had the Member not been re-elected rather than resigning on health grounds; and
 - a severance payment payable to relevant remunerated office-holders under age 65 who cease to hold those offices.
462. These recommendations were taken forward in the Grants Order which is replaced by the provisions in Schedule 2 (see article 2 of the Grants Order which anticipated the replacement of that Order with provisions such as those made under section 81(3) of the 1998 Act).
463. While payments of the grants are not made from the Pension Fund, there is a linkage to the ill-health retirement criteria (see rules 47 and 48 of Schedule 1). Membership of the pension scheme is not, however, a criterion for payment of one of the grants but replacement of the 1999 pensions order offered a suitable opportunity to replace the Grants Order.
464. [Schedule 2](#), introduced by section 2 (see paragraph 26), sets out the provisions in relation to grants payable to individuals after they have served as MSPs and office-holders. Specifically, provision is made for the payment of an MSP resettlement grant, MSP ill-health retirement grant and office-holder resettlement grant. The provisions replace those in the Grants Order.

Paragraph 1: MSP resettlement grant

465. [Paragraph 1](#) makes provision for an MSP resettlement grant payable to MSPs who are not returned after an election under the 1998 Act. The grant is designed to assist with the cost of adjusting to non-parliamentary life.
466. [Paragraph 1\(1\)](#) requires that a grant is payable by the SPCB to an individual who has been but is no longer an MSP. To qualify for the grant an individual must have been an MSP when the Parliament was dissolved and not be returned as an MSP at the general

election which followed that dissolution. If these circumstances are met, a grant is paid automatically. An MSP will qualify if they were an MSP immediately prior to a general election for the Scottish Parliament and either (i) does not stand for re-election, or (ii) stands for re-election and is not returned. No MSP resettlement grant is payable to an MSP who voluntarily resigns during the course of a parliamentary session, for example for business reasons.

467. The purpose of the grant is to assist the MSP with the costs of adjusting to non-parliamentary life and, therefore, a resettlement grant is only payable to the MSP. It cannot be paid to another person and paragraph 1(2) makes clear that the grant does not form part of an MSP's moveable estate and cannot be paid to an MSP's personal representatives in the event that the MSP dies before the relevant election.

Paragraph 2: MSP ill-health retirement grant

468. **Paragraph 2** makes provision for the payment of an MSP ill-health retirement grant. The SPCB must pay the grant, upon application, where the MSP resigns during a parliamentary session in direct consequence of a health condition which prevented the MSP from carrying out their duties as an MSP.
469. An ill-health retirement grant is only payable where the MSP resigns during the parliamentary session (paragraph 2(1)(a)). If an MSP stands down after an election for ill-health reasons they will be entitled to an MSP resettlement grant (paragraph 1). An MSP is not entitled to receive both a resettlement grant and an ill-health retirement grant.
470. An ill-health retirement grant is not payable automatically. Paragraph 2 provides that an application must be made in writing to the SPCB. The SPCB must be satisfied that the resignation is a direct consequence of the ill-health and that the member would not, as a result, be able to continue to perform their duties as an MSP adequately.
471. **Paragraph 2(2)** enables the SPCB to request that the member who has applied for the grant provides medical evidence from a doctor about the health condition. Additionally, paragraph 2(2) enables the SPCB to require the MSP to be examined by a doctor nominated by it. It is for the SPCB to decide who is to pay for any examination carried out by the nominated doctor and where that examination should take place. It is anticipated that, where an examination is carried out under paragraph 2(2)(b), a copy of any report prepared on the examination will be given to the applicant. The SPCB could, for example, satisfy itself as to an individual's state of health using similar considerations to those set out in Part I of the pension scheme.

Paragraph 3: Amount of MSP grants

472. **Paragraph 3** sets out the calculations which determine the amount of the MSP resettlement and the MSP ill-health retirement grants. Both grants are calculated in the same way.
473. **Paragraph 3(1)** provides that, subject to a minimum of 50%, the amount of grant payable is the percentage of the annual salary paid when the MSP ceased being an MSP, which is equal to one month's salary for each complete continuous year of service as an MSP. The maximum period of service counted is 12 years.
474. **Paragraph 3(2)** reduces the period of service taken into account in the calculation of the grant payment to MSPs who were also in receipt of a salary as a member of the House of Commons or the European Parliament ("dual mandate MSP") at any time during that period. The effect of paragraph 3(2) is to reduce the relevant period of service by the same proportion that their MSP salary was reduced during that period. The current proportion is a reduction of salary by two-thirds,¹ so, for example, if an MSP had been

¹ Scottish Parliament. *Official Report*, 21 March 2002, Col 10598 <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-02/sor0321-01.htm>

a dual mandate Member for three years, the period counted for calculation of a grant would be reduced by two years.

475. Under the Grants Order, periods of service of dual mandate MSPs are not treated differently to other MSPs. Paragraph 3(3) is a transitional provision which ensures that periods of service already accrued by those MSPs currently serving in the Parliament and accrued until the first general election after that paragraph comes into force, will not be reduced in accordance with paragraph 3(2).

Paragraph 4: Office-holder resettlement grant

476. Paragraph 4 provides for an office-holder resettlement grant. An office-holder's resettlement grant is payable to office-holders when they stop being an office-holder. The grant is similar to the MSP resettlement grant and is designed to help bridge the gap while the office-holder adjusts to a lower income or re-establishes commercial or voluntary interests which may have had to be relinquished to avoid any conflict of interest whilst in office.
477. Paragraph 4(1) requires that the SPCB pays the grant, and that it must be paid when an office-holder ceases to hold pensionable office and has not held another pensionable office within 90 days of leaving office. The office-holder does not have to apply for the grant.
478. The pensionable offices (defined in rule 22(2) of Schedule 1) are that of Presiding Officer, deputy Presiding Officer, one of the Scottish Ministers (this includes the First Minister, Deputy First Minister, the Lord Advocate and the Solicitor General) or a junior Scottish Minister.
479. Paragraph 4(2) sets out how the office-holder grant is calculated. The amount of grant to be paid to holders of the offices of Presiding Officer and First Minister is calculated in a different manner to those of all other office-holders.
480. Paragraph 4(2)(a) determines the amount of grant payable to the First Minister and Presiding Officer. It is calculated in a similar manner to the MSP resettlement and ill-health retirement grant. The amount of grant payable is based on the additional annual salary for holding that post and the length of service as an office-holder. The grant equates to one month of salary for each complete year of service, subject to a minimum amount of 50% and a maximum amount of 100%. The formula at paragraph 4(2)(a) calculates the amount of grant.
481. Other office-holders receive a lump sum equal to 25% of the office-holder salary. The MSP salary is not included in the calculation which is based on the salary for the specified post.²
482. Paragraph 4(3)(a) prevents the payment of the grant to the office-holder's personal representatives in the event of death in service while holding that office. It also prevents payment of the grant to the office-holder's personal representatives if the office-holder dies within 90 days of leaving that office.
483. Paragraph 4(3)(b) prevents payment of the office-holder resettlement grant to the individuals who hold the posts of Presiding Officer and First Minister when these provisions come into force or to any former holders of these posts. Individuals who qualify for the Presiding Officer and First Minister pension (as set out in the 1999 pensions order) will not be entitled to the payment of this grant.

Treatment of grants for tax purposes

484. As the schedule is provision for the payments of grants in accordance with section 81(3) of the 1998 Act, section 291 of the [Income Tax \(Earnings and Pensions\) Act 2003 \(c.1\)](#)

² See definition of salary in rule 109 of Schedule 1

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

("the 2003 Act") applies. In relation to MSP and office-holder resettlement grants, this means they are not treated as earnings for tax purposes. They are classed as termination payments and, under Chapter 3 of Part 6 of the 2003 Act, the first £30,000 is exempt from income tax. In the event that a grant is made in excess of £30,000, any amount over and above the first £30,000 is taxed as earned income. In relation to ill-health retirement grants, section 406 of the 2003 Act prevents these grants from being treated as earnings, with the payment being wholly exempt from income tax. There is no tax threshold.