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

COMMENTARY ON SECTIONS

Part F Pensions

Rule 38: Amount of MSP pension

143. Under the new rules members will from new rules day (see paragraphs 36 and 488) automatically begin to accrue pension at 1/40th of final salary for each year of reckonable service and will be required to pay higher contributions. Members can however elect to continue to accrue pension at 1/50th of final salary and pay contributions at the existing rate.

144. Rule 38(1) provides the formula used to calculate the annual MSP pension payable. Rule 109 provides definitions used in the rule of "final salary", "lower rate scheme member contributions" and "higher rate scheme member contributions".

145. **Final salary** is defined in rule 109 as the amount of MSP salary paid to the individual during their last 12 months as an "MSP member" (see rule 21). If they were an MSP member for less than 12 months, rule 109(1)(6) applies with the final salary being the actual amount received during the period which is increased to a pro-rata annual figure using the formula.

146. For MSPs who leave the scheme and return later as MSP scheme members, periods of service are aggregated before final salary is applied (see rule 33). For members who cease to be MSPs or office-holders prior to becoming entitled to their pension, their final salary is calculated as above, and up-rated from the date of leaving to the date of retiral.[1] Up-rating or revaluation is required by Chapter II of Part IV (sections 83-86) and Schedule 3 to the 1993 Act. The relevant percentage increases for schemes to apply are set by means of annual Occupational Pensions (Revaluation) Orders.[2]

147. **Lower rate scheme member contributions** are defined as being scheme member contributions of 6% of salary with **higher rate scheme member contributions** being scheme members contributions of 11% of salary. The difference in contribution amount is the actuarially-provided figure[3] to fully meet the increased cost of pension entitlement under the scheme accruing at 1/40th per year when higher rate contributions are paid as opposed to 1/50th per year when lower rate contributions are paid.

148. Using the formula, A is the period of reckonable service during which lower rate scheme contributions were paid divided by 50; B is the period of reckonable service during which higher rate scheme contributions were paid divided by 40. A/50 and B/40 are

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1 By an amount set by the Secretary of State under the powers contained in paragraph 2(1) of Schedule 3 to the Pension Schemes Act 1993

2 The Order applying from 1 January 2008 is the Occupational Pensions (Revaluation) Order 2007 SI 2007/3369

3 Scottish Parliamentary Pension Scheme Committee, 1st Report 2008 (Session 3), paragraph 94 (SP Paper 103) added together and multiplied by the MSP final salary to produce the amount of annual pension payable. This figure is subject to a maximum set out in rule 38(2). Paragraph 6(2) of Schedule 3 ensures that contributions under the old rules are treated as having been made at the lower rate.

149. Rule 38(2) sets a maximum MSP pension payable under the scheme by reference to an individual's "annual MSP pension cap". The annual MSP pension cap is set at two-thirds of an individual's final MSP salary, ignoring any reduction that is made under section 82(2) of the 1998 Act as a consequence of a member also being a member of the Westminster or European Parliaments (dual mandate members).

150. Where the annual MSP pension cap is exceeded, the annual MSP pension payable is reduced to the level of the annual MSP pension cap (in relation to the effect on future contributions payable by the member when the cap is reached, see also rule 30).

151. The annual MSP pension cap replaces the previous maximum pension rules which were set out at article F5 and Schedule 2 to the 1999 pensions order. Other than the two-thirds salary cap which is retained, the previous limits were linked to former Inland Revenue restrictions which were repealed in the Finance Act 2004. The new Revenue limits are the annual and lifetime allowances[4] which set the maximum value of benefits that an individual is allowed to accrue tax-free from contributions to registered pension schemes. Where the lifetime allowance is exceeded a tax liability accrues and is recoverable from the member (see Part R). Under existing salaries and contribution limits the annual allowance will not be exceeded by contributions to this scheme alone. If a member's aggregate contributions including contributions to other schemes exceed the limit, the individual will be liable for the tax charge under section 277 of the Finance Act 2004 (see also rule 89(3) for limitations on purchasing added years in this regard).

4 Finance Act 2004 sections 227-238