

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part G Retirement Lump Sums

Rule 44: Special rule for commutation by individual approaching age of 75

172. Under the Finance Act 2004, a participating member aged 75 or over cannot commute part of their pension into the tax-free “pension commencement lump sum”.¹ Under the scheme, an individual cannot qualify for a scheme pension while they are an MSP or holder of a pensionable office. Therefore a serving MSP or office-holder approaching age 75 may lose the opportunity to commute part of their pension into a “pension commencement lump sum”. Rule 44 therefore makes special provision for serving MSPs and office-holders approaching age 75 to receive a retirement lump sum.
173. Rule 44(1) makes provision for a participating member who would be entitled to be paid a scheme pension, except for them still being an MSP or holder of a pensionable office, to apply to the Fund trustees to commute part of their pension into a tax-free lump sum. The application must be made prior to their 75th birthday so that the individual becomes entitled on the day prior to their 75th birthday. For the lump sum to be payable by the Fund trustees it must not attract an unauthorised payments charge under section 208 of the Finance Act 2004 (see rule 100). In this case, the payment must therefore meet the tests for a “pension commencement lump sum”. In particular, it must not be paid later than one year after the day on which an individual becomes entitled to it.
174. Serving MSPs and office-holders aged 75 and over are not eligible to be a participating member and accumulate more service in the pension scheme (see Part C, rules 21 and 22(1)). Rule 44(2) determines that an individual who is an MSP or holder of a pensionable office will be entitled to an annual pension from the day before their 75th birthday but no sum is payable until the individual ceases to be a MSP or holder of a pensionable office. A scheme pension cannot be paid to an individual while they are an MSP or holder of a pensionable office (see rule 37(1) and rule 41). They will receive their retirement lump sum but will not receive their reduced annual pension until they are no longer an MSP or in office.
175. The rule only applies to those persons who give a valid commutation notice under rule 44(1) prior to reaching age 75. Scheme members who do not give a commutation notice, on reaching age 75, become deferred pensioners under the scheme.

¹ Paragraph 1 of Schedule 29 to the Finance Act 2004