

# SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### **Part N Transfers** Chapter 1

#### *Transfers Out*

#### **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.<sup>1</sup> 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).

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<sup>1</sup> See Regulation 12 of the [Occupational Pension Schemes \(Transfer Values\) Regulations 1996 \(S.I. 1996/1847\)](#)