

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part O Added Years

Rule 85: Buying added years by instalments

333. Rule 85 sets out the rules for buying and paying by instalments.
334. In most cases, payment by instalment is likely to be by deductions from the participating member's salary by the SPCB who will pay that deduction to the trustees. The trustees, however, have power to require another method for making the contributions (to cover, for example, payments by an office-holder who is not in receipt of a salary from the SPCB). In the case of arrears of payment, it will be for the trustees to determine how the arrears should be paid.
335. Rule 85(1) sets out five conditions that must be met before the Fund trustees can accept an application. The person making the application must be a participating member and make an application to the Fund trustees.
336. The participating member must state how many years or fractions of years are being sought. The participating member need not state the amount to be paid as this will be calculated by the scheme actuary or by the Fund trustees using information and tables provided by the actuary as set out in rule 85(4).
337. There is no upper age limit by which the participating member must make an application to buy added years. Normal retirement age is 65 years, so the cost calculations and the periodic calculations are normally determined with reference to that age as outlined in condition 2. For participating members who choose to work and remain as an MSP or office-holder past age 65 years and who decide to purchase added years, the only option is to make periodical payments until the next general election.
338. Condition 3 requires the participating member to satisfy the Fund trustees that they are in good health. In practice this may mean that the participating member states that they know of no current health condition that would be likely to present an impediment in continuing to carry out their duties. Condition 4 of the rule specifies that the participating member must also produce any other information or evidence that the trustees may reasonably require in relation to the application. This may include further evidence in relation to the application conditions, for example medical evidence.
339. Condition 5 specifies that the Fund trustees cannot accept an application if it breaches the limitations in rule 89. The limitations are set out in detail at rule 89 and are based on HMRC requirements and include prevention of an increase taking the individual above the annual MSP or office-holder pension cap and an annual limitation of 20% of salary. (see paragraphs 358-366).

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

340. Once an application has been accepted, rule 85(2) states that the participating member cannot cancel or retract the application. Rule 85(3) states that the person responsible for paying the participating member's salary has to deduct an amount determined under this rule from each salary payment. The instalments are to be paid to the Fund trustees. Instalments are paid from the first day of the month after the application has been accepted. The last instalment is paid at the end of the period that has been calculated and notified to the participating member.
341. As set out in rule 85(5), once all instalments have been paid, the participating member's period of reckonable service will be increased by the number of added years that they have bought. Rule 85(5) also clarifies that, if the participating member has bought added years in their capacity as an MSP, it is the number of years in that post that is increased. If the participating member has bought added years in their capacity as an office-holder, it is the number of years in that capacity that is increased.
342. Rule 85(6) requires the purchase of added years to be calculated with reference to the higher rate (1/40^{ths}) accrual rate.
343. Rule 85(7) specifies that for a participating member who is an office-holder but not an MSP, the extra years bought are added to reckonable service in the office held while the purchase is being made (rule 39(3) allows for separate calculations for different offices held). See also rule 86(1)(b) in relation to the position when an office-holder stops holding the position before completing all payment instalments.