

# SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Schedule 3 transitional Provisions and Savings*

#### *Paragraph 9: Special provision for participants reaching age of 75 before the new rules day*

- 511(a). Paragraph 9 makes transitional provision for participating members who will reach the age of 75 before new rules day, allowing them to commute part of their prospective pension for an immediate tax-free lump sum. Generally speaking the rules in the 1999 pensions order will apply to existing scheme members in the period between Royal Assent and new rules day (this is subject to some limited exceptions, for example, in relation to the appointment of Fund trustees under Schedule 1 and specific transitional arrangements under Schedule 3). Under the rules in the 1999 pensions order it is not possible for members approaching the age of 75 to commute part of their pension in exchange for a tax-free lump sum. The position is different in the new scheme rules, rule 44 of which allows participating members approaching the age of 75 to commute part of their pension into a tax free lump sum (see paragraphs 174 to 177).
- 511(b). The transitional provision at paragraph 9 takes account of the position of participating members who reach the age of 75 in the period between Royal Assent and new rules day. Such a member will remain subject to the rules in the 1999 pensions order but paragraph 9 allows him or her to commute part of his or her pension subject to notice of this being given to the SPCB prior to the member's 75th birthday. As with the provision in rule 44 of the new scheme rules such a member will obtain a tax-free commuted sum and become a scheme pensioner, although the member's pension will be reduced to nil until he or she ceases to be an MSP or an office-holder.
- 511(c). Paragraph 9(1) describes the individuals to which this rule applies: an individual who is participating in the scheme in accordance with the 1999 scheme rules and who is aged under 75 at Royal Assent but will reach the age of 75 before new rules day. Paragraph 9(2) provides that such an individual may give notice, before reaching the age of 75, that he or she wishes to commute a specified part of his or her pension. By virtue of paragraph 9(3) such a notice is to be treated in the same manner as a notice under Part G of the 1999 scheme rules (which details procedures for determining the amount of the lump sum payable and the consequential reduction in pension).
- 511(d). Paragraph 9(4)(a) confirms that despite articles F1 and F2 of the 1999 scheme rules (which operate to prevent a current MSP or holder of a qualifying office from receiving a pension or giving a commutation notice under Part G of the 1999 scheme rules) an individual who has given notice under paragraph 9(3) will be entitled to receive a pension from the day before his or her 75th birthday. That pension will, however, be reduced to nil until such time as he or she is no longer an MSP or office-holder, in accordance with paragraph 9(4)(b).