

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part F Pensions

Rule 41: Suspension of scheme pension

158. Rule 41 supplements rule 37 in making clear that an individual is not entitled to a scheme pension while serving as an MSP or an office-holder. The loss of pension applies even if they have previously qualified for and received a pension (save for the special circumstances of rule 44 for serving members age 75 and over). In the event that a scheme pensioner is elected as an MSP or becomes the holder of a pensionable office (see rule 22(2)), pension payments are suspended under rule 41(1).
159. When the individual again becomes eligible to receive their pension, the period of suspension ends and pension payments resume. Any additional benefits accrued during the period of suspension will be treated as a separate entitlement, although they may ultimately be aggregated for payment purposes.
- 159(a). Rule 41(2) restricts the amount of any lump sum death benefit payable should the individual die during their new period as a participating member. The amount payable under Part K is reduced by the total of: the amount of scheme pension received before the suspension; the amount of any retirement lump sum paid to the individual; and the amount of any pension or lump sum payable under Part L (5 year guarantee). It takes account of pension paid and other benefits payable in respect of scheme pensioners who then re-participate in the scheme, ensuring that participating members and scheme pensioners who re-participate in the scheme are treated equally in so far as the amount of death benefit payable to their survivors is concerned.
160. Rule 41(3) details what happens to the amount of pension payable when the original pension was an ill-health pension granted under Part I of the rules.
161. The rules for the award of an ill-health pension include the criteria that the individual stops working as an MSP or office-holder as a direct result of their illness or, in relation to deferred pensioners, stops gainful work, and that they are prevented by the illness from working (rules 47-49). As the individual had been able to resume gainful work as an MSP or office-holder the previous criteria for award of an ill-health pension no longer apply.
162. Under rule 41(3), any enhancement to the pension entitlement awarded as a consequence of the illness is removed. Rule 41(3)(a) provides that any earlier ill-health entitlement is ignored, so the right to be paid before 65 is no longer applicable when the person ceases their subsequent service as an MSP or office-holder. If this subsequent service ends when the person is 65 or older, then rule 41(3)(b)(i) the earlier ill-health enhancement to pension payments is removed and the pension is recalculated based upon actual reckonable service.

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

163. Similarly, under rule 41(3)(b)(ii) any increase to the ill-health pension attributed to added years partly paid for in instalments before service was interrupted on serious ill-health grounds will be reduced to reflect the amount of added years actually paid for. Rule 86(2)(a) provides that in serious ill-health cases the scheme pensioner gets the benefit of all the added years they have applied for even where they are not fully paid up when the MSP stops being an MSP.