

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part J Surviving Partners and Children

Rule 56: Meaning of scheme pension entitlement

233. In order to calculate a surviving partner or child's entitlement to pension, it is first necessary to determine what pension would have been due to the deceased had they survived. The amount of pension that would have been payable depends upon what type of scheme member the deceased was at the time of their death. Rule 56 refers to this as "scheme pension entitlement" and sets out how this is calculated for each type of scheme member.
234. Rule 56(2) sets out how scheme pension entitlement is calculated for persons who die while a participating member. Rule 56(2)(a) determines that, for a participating member who died aged 65, or over this is based on the prospective annual scheme pension that would have been payable had the deceased retired on the day of their death (i.e. was no longer an MSP or office-holder on that day). For an MSP this would be the pension payable under rule 38 and for an office-holder the pension payable under rule 39. Rule 56(2)(b) determines that for a participating member who died under age 65, the prospective annual scheme pension is the annual pension that would have been payable had the deceased become entitled to a serious ill-health pension on the day of their death. For an MSP this would be the pension calculated under rule 50(1) and for an office-holder the pension calculated under rule 50(2).
235. Rule 56(3) determines the scheme pension entitlement for an individual who died while being a deferred pensioner. Under (a) the scheme pension entitlement for a deferred pensioner over 65 is the annual pension that had already been accrued up to the date of death including any reckonable service between ages 65 and 75. For those under 65, (b) determines the scheme pension entitlement is the annual pension that has already been accrued up to the date of death and would have been payable if the person was 65 on that date. For an MSP this would be the pension calculated under rule 38 and for an office-holder the pension calculated under rule 39.
236. Rule 56(4) sets out scheme pension entitlement for those in receipt of a scheme pension and makes clear that any reduction in the pension payable as a result of payment of a retirement lump sum is to be ignored for the purposes of survivor benefits. Under (a) for a scheme pensioner who died and took a retirement lump sum under rule 43(2), scheme pension entitlement is the annual pension that would have been payable at the date of death had it not been reduced under commutation rule 43(2). For a scheme pensioner who died and did not take a retirement lump sum, scheme pension entitlement is the annual pension in payment on the date of their death.

237. Rule 56(7) covers former participating members whose pension rights had been extinguished by taking an ill-health lump sum under rule 55(3) before they died (see paragraph 233). Scheme pension entitlement is the pension that would have been payable if the deceased had received a serious ill-health pension. For an MSP this would be the pension calculated under rule 50(1) and for an office-holder the pension calculated under rule 50(2).

237(a) Rule 56(5) deals with the treatment of scheme pensioners whose pension has been suspended under rule 41 on their becoming an MSP or the holder of a pensionable office. Under rule 56(5A) these scheme members are to be treated as if they were scheme pensioners immediately before their death for the purposes of calculating scheme pension entitlement. The suspension of pension under rule 41 is treated as having been lifted immediately before death. Any additional scheme pension entitlement as a participating member is calculated separately.

238. In the case of an individual aged 75 or over who died whilst their pension was reduced to nil (under rule 44(2)), rule 56(7) determines that the prospective pension is calculated as if the deceased was a deferred pensioner on their date of death (see paragraph 237). Therefore, the scheme pension entitlement used to calculate the survivor benefits ignores the lump sum commutation taken by such an individual.

Chapter 2 Partners' pensions

239. Chapter 2 of Part J sets out the rules covering partner pensions and trivial lump sum payments.