

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part L 5 Year Guarantee

Rule 68: Initial pension period

281. While scheme pensions (except those to children) are payable for life, rule 68 introduces a 5 year guarantee period for payment of pension by reference to a scheme pensioner's "initial pension period". Where a scheme pensioner dies within five years of becoming entitled to a pension, the pension will be paid for the balance of the five-year period after death.
282. Rule 68 makes provision to disregard a period of up to five years where pension payments are suspended under either of rules 41 or 44 where a scheme pensioner is re-elected as an MSP or office-holder. If such a person with up to five years suspended service dies during suspension or after their pension recommences, the guarantee operates for the balance of the five year period after subtracting the payments made prior to suspension.
283. Only five years of suspended pension is disregarded in terms of this rule. The reason for that restriction relates to underlying tax restrictions in the Finance Act 2004.¹ The Act sets out a maximum period of ten years where such a guarantee can apply. Any guarantee can only apply for ten years from the date that entitlement to pension first commences. For a scheme pensioner, the ten year period runs from the date of first entitlement to a pension, irrespective of the fact that pension is suspended. If subsequent service as an MSP or office-holder exceeds five years, that excess period added to the period during which pension was first paid continues to reduce the guarantee period until ten years from initial entitlement have elapsed. After that time no further guarantee can apply even if pension was paid for less than five years.

1 Pension Rule 2 in section 165 and paragraphs 2(3)(a) and 3(1)(c) of Schedule 28 to the Finance Act 2004