

SCOTTISH PARLIAMENTARY PENSIONS ACT 2009

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part K Lump Sum Death Benefits

269. Part K of Schedule 1 sets out rules which make provision for payment of lump-sum benefit payments in the event of the death of any participating member before retirement. They also make provision for a payment to the personal representatives of a deferred pensioner who dies leaving no surviving partner or eligible child. These rules replace Part L of the 1999 pensions order.

Rule 65: Death in service lump sum

270. Rule 65 provides that the Fund trustees may pay a tax-free lump sum on the death of any participating member. (“participating member” is defined in rule 109(1) as an individual who is an MSP member or an office-holder member (or both)). The sum is payable to the deceased’s nominee (see rule 66 and paragraphs 274-276) or, if there is no nominee, to the deceased’s personal representatives. For a person dying domiciled in Scotland, this will be the deceased’s executors.
271. The sum is payable provided that the Fund trustees are satisfied that it would be a “defined benefits lump sum death benefit” for the purposes of the Finance Act 2004.¹ A lump sum death benefit qualifies as a defined benefits lump sum death benefit where a participating member is under 75 years, the benefit arrangement is specified in the scheme rules and payment is made within two years of the Fund trustees being aware of the date of death. In addition, the death benefit must not be in respect of a trivial commutation, or relate to pension protection or winding up benefits.
272. Rule 65(2) sets the amount of the lump sum as the greater of four times the participating member’s annual salary at the time of death or a refund of the contributions paid by that member with compound interest added at 4% per annum (see rule 109(3)). Salary is defined in rule 109(1) and consists of the amount paid under the 1998 Act to an MSP and/or the amount being paid to the office-holder for holding a particular office, taking account of deductions where the participating member is a dual mandate MSP.

Rule 66: Nominations for death in service lump sum

273. Rule 66 allows a participating member to nominate who is to receive any lump sum death benefit payable under rule 65. Under rule 66(1), the participating member does this by giving such written notice as may be required to the Fund trustees and may nominate any person or two or more persons to receive the lump sum, specifying the proportion to be paid to each. Rule 66(2) allows a nomination once made to be withdrawn at any time by subsequent written notice.

¹ Finance Act c.12 Schedule 29 Part 2, paragraphs 13, 14, 20 and 21

274. The Fund trustees are obliged to comply with any nomination properly made unless rule 66(3) applies. Rule 66(3) makes nominations of a partner invalid if the nominee is no longer a partner at the date of death, perhaps following a divorce or other separation agreement. Under rule 66(3)(b), the Fund trustees may also determine that a nomination is invalid if in their opinion it would not be reasonably practicable to make such a payment. This could arise, for example, if the whereabouts of a nominee are unknown and perhaps remain unknown despite reasonable inquiries having been made.
275. Where the Fund trustees determine that a nomination is invalid, rule 66(4) determines that the applicable proportion of the lump sum is paid to the deceased's personal representatives for distribution as part of their estate.

Rule 67: Deferred pensioner lump sum

276. Rule 67 makes provision for payment of a lump sum refund of contributions on the death of a person under 75 who was a deferred pensioner and entitled to a scheme pension on reaching that age. The lump sum is paid where that person leaves no surviving partner or eligible child. A definition of "deferred pensioner" is provided in rule 109(1).
277. Rule 67(1) makes provision for the Fund trustees to make a payment in the above circumstances, provided that they are satisfied that the payment would be a "defined benefits lump sum death benefit" (see paragraph 295). Payment is made to the personal representatives of the deceased.
278. The amount payable is determined by rule 67(2) as being the amount of scheme member contributions paid by the deferred pensioner with compound interest added at 4% per annum (see rule 109(3)).