
STATUTORY INSTRUMENTS

1999 No. 1082

**The Scotland Act 1998 (Transitory and Transitional Provisions)
(Scottish Parliamentary Pension Scheme) Order 1999**

PART K

SURVIVING SPOUSES AND CHILDREN

Pensions for surviving spouses

K1.—(1) Subject to the following provisions of this article, the surviving spouse of a person who was at the time of his death a participant, a pensioner or a deferred pensioner shall be entitled to receive a pension under this article.

(2) The annual amount of a pension payable under this article shall be five-eighths of the basic or prospective pension or pensions of the deceased.

(3) Subject to paragraphs (4) and (5), a pension payable under this article shall continue for the surviving spouse's life or until her remarriage; but in the case of remarriage the Parliamentary corporation may, if it thinks fit, at any time direct that the pension shall be restored if satisfied that the subsequent marriage has been terminated or that there are exceptional reasons for the payment of the pension notwithstanding the subsistence of that marriage.

(4) Subject to paragraph (5), no pension shall be payable under this article to a surviving spouse who, at the deceased's death, was cohabiting with another person; and if a surviving spouse entitled to such a pension cohabits with another person, the pension shall cease to be payable:

Provided that the Parliamentary corporation may, if it thinks fit, direct that the pension shall be paid or restored, as the case may be, if satisfied that the cohabitation has been terminated or that there are exceptional reasons for the payment of the pension notwithstanding that the cohabitation continues.

(5) For any period as specified in section 17(5) of the Pension Schemes Act 1993 (period for which Category B retirement pension etc is or would be payable) the surviving spouse of a person shall, notwithstanding paragraphs (3) and (4), be entitled to a pension under this article.

(6) Where a person dies in circumstances in which, apart from this paragraph, a surviving spouse's pension calculated in accordance with paragraph (2) would be payable to someone married to him within the period of six months ending with his death and it appears to the Parliamentary corporation that his death within six months was to be foreseen by him at the date of the marriage, then if—

(a) there are no children of that marriage; and

(b) the couple were married after the termination of the person's service in contracted-out employment in respect of which the surviving spouse's pension is payable,

the Parliamentary corporation may direct that all or any part of the surviving spouse's pension, as it thinks fit, shall not be payable.

Pensions for children

K2.—(1) Subject to the provisions of this article, if a participant, pensioner or deferred pensioner dies leaving one or more eligible children, a children’s pension shall be payable for their benefit.

(2) The annual amount of a children’s pension shall be—

- (a) a sum equal to one quarter of the basic or prospective pension or pensions of the deceased if there is one eligible child or, if there is more than one, a sum equal to three-sixteenths of the basic or prospective pension or pensions of the deceased for each eligible child not exceeding two; or
- (b) where the deceased left a surviving spouse who has since died, a sum equal to five-sixteenths of the basic or prospective pension or pensions of the deceased for each eligible child not exceeding two.

(3) A children’s pension shall be paid to or distributed between such person or persons as the Parliamentary corporation may from time to time direct, and shall be applied by that person or those persons, without distinction, for the benefit of the eligible child or children of the deceased or such of them as the Parliamentary corporation may from time to time direct.

(4) For the purposes of this article, the eligible child of a deceased person is—

- (a) a child of the deceased’s marriage or his adopted child; or
- (b) a child who was wholly or mainly dependent on the deceased at the time of his death.

(5) For the purposes of this article, a person counts as a child only if—

- (a) he is aged under 17;
- (b) he is aged under 22 and since he became 17 he has been engaged continuously in full-time education or in training for a trade, profession or vocation; or
- (c) he is physically or mentally incapacitated and became so whilst a child within sub-paragraph (a) or (b).

(6) If the Parliamentary corporation wishes, it may treat education or training as continuous despite a break.

Death in service of participating member

K3.—(1) Where a participating member has died, paragraph (2) and article K4 (so far as applicable) shall apply if his surviving spouse is entitled to receive a pension under article K1 or if a children’s pension is payable under article K2 for the benefit of any eligible child or children of his.

(2) If the deceased died before attaining the age of 65, the annual amount of any pension payable to his surviving spouse under article K1, or for the benefit of any eligible child or children of his under article K2, shall be calculated as if he had immediately before his death ceased because of ill-health to be a member of the Parliament and had by virtue of article J1 been entitled to receive a pension under article F1 as from the time when he so ceased.

Enhancement of initial surviving spouses' pensions

K4.—(1) In this article “the three month period”, in relation to a person who has died, means the period of three months beginning with the day following the date of his death.

(2) Where the surviving spouse of a person who—

- (a) has been a participating member; and
- (b) was at the time of his death a pensioner member,

is entitled to receive a pension under article K1, paragraphs (3) and (4) shall apply.

(3) If, for any part of the three month period, the aggregate of the following amounts, namely:—

- (a) the amount payable to the surviving spouse by way of pension under article K1 apart from this paragraph; and
- (b) any amount which (by direction of the Parliamentary corporation under article K2(3)) is payable to the surviving spouse by way of pension under article K2 for the benefit of any eligible child or children of the deceased,

is less than the amount mentioned in paragraph (4), then for that part of that period the amount payable to the surviving spouse by way of pension under article K1 shall be increased by the difference.

(4) The said amount is the amount which, if the deceased had lived, would have been payable to him for the part of the three month period in question by way of pension under one or both of articles F1 and F2.

(5) Where a participating member has died, paragraphs (6) and (7) (so far as applicable) shall apply if his surviving spouse is entitled to receive a pension under article K1 or if a children's pension under article K2 is payable for the benefit of any eligible child or children of his.

(6) If, for any part of the three month period, the aggregate of the following amounts, namely:—

- (a) the amount payable to the deceased's surviving spouse by way of pension under article K1 apart from this paragraph; and
- (b) any amount which (by direction of the Parliamentary corporation under article K2(3)) is payable to the surviving spouse by way of pension under article K2 for the benefit of any eligible child or children of the deceased,

is less than the amount mentioned in paragraph (7), then for that part of that period the amount payable to the surviving spouse by way of pension under article K1 shall be increased by the difference.

(7) The said amount is the amount which would have been payable to the deceased for the part of the three month period in question if—

- (a) the deceased had lived and had at the material time become entitled to a pension under article F1; and
- (b) the annual amount of that pension had been a sum equal to a member's salary at the rate in force at the material time.

(8) In paragraph (7) "the material time" means the date of the deceased's death.

(9) The preceding provisions of this article are without prejudice to paragraphs (3), (4) and (6) of article K1 (duration of surviving spouse's pension and restrictions on payment).

Meaning of "basic or prospective pension or pensions"

K5.—(1) In this Order "basic or prospective pension or pensions" means—

- (a) in relation to a participant who has died, the annual amount of the pension or pensions specified in whichever of the following paragraphs apply to him:—
 - (i) where the deceased was or had been a participating member, the annual amount of the pension calculated in respect of him in accordance with article F3 or, if he died while a participating member before attaining the age of 65, the annual amount of the pension calculated in respect of him by virtue of article K3;
 - (ii) where the deceased was or had been a participating office holder, the annual amount of the pension, calculated in accordance with article F3, which he would have been entitled to receive under article F2, if immediately before his death he had fulfilled the conditions specified in sub-paragraphs (a) to (c) of article F1(1);

- (b) in relation to a pensioner who has died, the annual amount of the pension or pensions which he received or was entitled to receive calculated in accordance with Part F, including an ill- health pension calculated in accordance with Part J: Provided that where the annual amount of which he was in receipt resulted from one or more reductions or abatements made under article G1 (commutation) or H1 or H2 (early retirement), no such reduction or abatement shall be made in calculating the annual amount of that pension or pensions for the purposes of this article;
- (c) in relation to a deferred pensioner who has died, the annual amount of the pension or pensions specified in whichever of the following sub-paragraphs apply to him:–
 - (i) where the deceased was a former participating member, the annual amount of the pension, calculated in accordance with article F3, which he would have been entitled to receive under article F1 if he had ceased to be a member of the Parliament immediately before his death and he had then fulfilled the conditions specified in sub-paragraphs (a) to (c) of article F1(1);
 - (ii) where the deceased was a participating office holder, the annual amount of the pension, calculated in accordance with article F3, which he would have been entitled to receive under article F2 if immediately before his death he had fulfilled the conditions specified in sub-paragraphs (a) to (c) of article F1(1).