
STATUTORY INSTRUMENTS

1999 No. 1082

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

PART M

FIVE YEAR GUARANTEE

Entitlement

M1.—(1) Articles M2 to M6 shall apply in respect of a deceased pensioner member whose actual period of reckonable service is only as a participating member.

(2) Article M7 shall apply in respect of a deceased pensioner whose actual period of reckonable service includes service as a participating office holder.

Guarantees for surviving spouses

M2.—(1) Where a pensioner member dies during the pensioner member's five year period and is survived by his spouse, paragraphs (2) to (5) shall apply.

(2) If for any part of the pensioner member's five year 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 (including any enhancement payable under article K4); and
- (b) any amount which (by direction of the Parliamentary corporation under article K2(3)) is payable by way of pension under article K2 for the benefit of any eligible child or children of the deceased pensioner member,

is less than the amount mentioned in paragraph (3), then for that part of that period the difference shall be payable to the surviving spouse.

(3) The said amount is the amount which, if the deceased pensioner member had lived, would have been payable to him for the part of the pensioner member's five year period in question by way of pension under article F1 (including an early retirement pension or an ill-health pension payable by virtue of article H1, J1 or J2).

(4) If the surviving spouse of the deceased pensioner member dies during the pensioner member's five year period, there shall be paid to her executors a lump sum which shall be calculated by deducting the amount mentioned in sub-paragraph (a) below from the amount mentioned in sub-paragraph (b) below—

- (a) the total of any pensions which (by direction of the Parliamentary corporation under article K2(3)) would have been payable under article K2 for the benefit of any eligible child or children of the deceased pensioner member if the annual sum payable under article K2(2) (after the death of the surviving spouse of the deceased pensioner member) in respect of each eligible child had continued during the period ending on the pensioner member's children's prospective pension end date for that child;

- (b) the amount which would have been payable to the deceased pensioner member if the annual amount of the pension to which he was entitled under article F1 (including an early retirement pension or an ill-health pension payable by virtue of article H1, J1 or J2) were to have been paid to him during the remainder of the pensioner member's five year period.
- (5) In this Part—
- “the pensioner member's five year period” means the period of five years beginning with the day on which he became entitled to receive a pension or pensions under article F1 (including an early retirement pension or an ill-health pension payable by virtue of regulation H1, J1 or J2).
 - “the pensioner member's children's prospective pension end date” means, in respect of any eligible child of a deceased pensioner member the sooner of—
 - (a) the date before that on which that child reaches the age of 17 or, in the case of a child falling within article K2(5)(b), such later date as the Parliamentary corporation may determine, being no later than the date before that on which the child reaches the age of 22; and
 - (b) the end of the pensioner member's five year period.

Guarantees where children but no spouse survive

M3.—(1) Where a pensioner member dies during the pensioner member's five year period and is survived by an eligible child or children, but no spouse, paragraph (2) shall apply.

(2) There shall be paid to the executors of the deceased pensioner member a lump sum which shall be calculated by deducting the amount mentioned in sub-paragraph (a) below from the amount mentioned in sub-paragraph (b) below—

- (a) the total of any pensions payable under article K2 (by direction of the Parliamentary corporation under article K2(3)) for the benefit of any eligible child or children of the deceased pensioner member, if the annual sum payable under article K2(2) (after the death of the pensioner member) in respect of each eligible child were to continue during the period ending on the pensioner member's children's prospective pension end date for that child;
- (b) the amount which would have been payable to the deceased pensioner member if the annual amount of the pension to which he was entitled under article F1 (including an early retirement pension or an ill-health pension payable by virtue of article H1, J1 or J2) were to have been paid to him during the remainder of the pensioner member's five year period after his death.

Guarantees where no survivors

M4.—(1) Where a pensioner member dies within the pensioner member's five year period and is not survived by his spouse nor by any eligible child or children, paragraph (2) shall apply.

(2) There shall be paid to the executors of the deceased pensioner member a lump sum calculated as if the annual amount of the pension to which he was entitled under article F1 (including an early retirement pension or an ill-health pension payable by virtue of article H1, J1 or J2) were to be paid to him during the remainder of the pensioner member's five year period after his death.

(3) This article shall not apply if a gratuity is granted under article L2.

Remarriage or cohabitation of surviving spouse

M5.—(1) If during a deceased pensioner member's five year period—

- (a) the surviving spouse of that deceased pensioner member remarries or cohabits with another person; and

- (b) the Parliamentary corporation directs that the surviving spouse's pension be paid or restored under article K1(3) or (4),

the Parliamentary corporation may direct that payments under article M2(2) shall continue until the end of the pensioner member's five year period or until such earlier date as the Parliamentary corporation thinks fit.

(2) If during a deceased pensioner member's five year period his surviving spouse remarries or cohabits with another person, the Parliamentary corporation may direct that there be paid to the executors of the deceased a lump sum calculated in accordance with article M4(2).

Early termination of child's period of full-time education or training

M6.—(1) If—

- (a) a sum has been paid to the executors of the surviving spouse of a deceased pensioner member under article M2(4) or to the executors of a deceased pensioner member under article M3(2); and
- (b) the period of full-time education or training of any eligible child of the deceased pensioner member has come to end on a date earlier than the pensioner member's children's prospective pension end date for that child used in the calculation of that sum,

the Parliamentary corporation may pay a further sum to the said executors calculated by deducting the amount mentioned in sub-paragraph (ii) below from the amount mentioned in sub-paragraph (i) below—

- (i) the total of any pensions which would have been payable for the benefit of that child if the payments had continued until his pensioner member's children's prospective pension end date;
- (ii) the total of the pensions which have been paid for his benefit.

(2) In paragraph (1) "the period of full-time education or training" in respect of an eligible child means the period during which he is continuously engaged in full-time education or in training for any trade, profession or vocation.

Deceased pensioner office holders

M7.—(1) Articles M2 to M6 shall apply in relation to a deceased pensioner office holder and his surviving spouse and any eligible child or children as they apply in relation to a deceased pensioner member and his surviving spouse and eligible child or children but where those articles apply in relation to a deceased pensioner office holder—

- (a) any reference to "pensioner member" shall be construed as a reference to "pensioner officer holder";
- (b) any reference to "the pensioner member's children's prospective pension end date" shall be construed as a reference to "the pensioner officer holder's children's prospective pension end date";
- (c) any reference to "the pensioner member's five year period" shall be construed as a reference to "the pensioner officer holder's five year period"; and
- (d) any reference to article F1 or H1 shall be construed respectively as a reference to article F3 or H2;

(2) In this Part—

"the pensioner officer holder's children's prospective pension end date" means, in respect of any eligible child of a deceased pensioner officer holder, the sooner of—

- (a) the date before that on which the child reaches the age of 17 or, in the case of a child falling within article K2(5)(b), such later date as the Parliamentary corporation may

determine, being no later than the date before that on which the child reaches the age of 22; and

(b) the end of the pensioner office holder's five year period;

"the pensioner office holder's five year period" means the period of five years beginning with the day on which he became entitled to receive a pension under article F2 (including an early retirement pension or an ill-health pension payable by virtue of article H2, J1 or J3).