

Circular Letter:- S.6/96.

May, 1996.

DISPENSING WITH PROBATE IN CERTAIN CASES

A Chara,

I am directed by the Minister for the Environment to refer to article 55(1)(d) of the Local Government (Superannuation) Act, 1956 (Consolidation) Scheme, 1987 and to article 59(1)(d) of the Local Government (Superannuation Revision) (Consolidation) Scheme, 1986 regarding the amount which may be paid in respect of a deceased Scheme member without probate or other proof of title.

I am to inform you that the Minister for Finance has consented to increase the limit from €6000 to €9000 with effect from 1st day of December 1995.

This limit is also to apply to gratuities payable in respect of non-pensionable persons under the Local Government (Superannuation) (Gratuities) Regulations, 1984.

It should be noted that the provisions outlined above only apply in situations where a sum not exceeding the limit is payable, i.e. they do not allow for the payment without probate or other proof of title of an amount up to the limit where the total sum payable is greater than the limit.

Mise le meas,

Declan Naughton,
Higher Executive Officer,
Superannuation Section,
Ext. 408.

To each local authority and body to which the Local Government Superannuation Code applies.

Death Gratuity

Q1. What is a death gratuity?

It is a gratuity payable in respect of an officer or employee who dies while in pensionable employment.

Q2. Who is a death gratuity payable to?

It is normally payable to the legal personal representative of the officer or employee but may be paid, at the discretion of the local authority, to the spouse in his or her own right. This latter provision was introduced to avoid hardship caused by delays in obtaining probate or other proof of title. It is a discretionary provision, however, and there may be compelling reasons why a local authority would want to await probate or other proof of title.

Q3. What is probate or other proof of title?

Probate is the will of the deceased accepted and approved by the courts and only arises where an executor is specified. If no will is made or if one is made but an executor is not specified or has died letters of administration may be obtained as proof of title.

Q4. If a local authority decide not to exercise their discretionary powers in the payment of a death gratuity to a spouse and decide therefore to await probate etc. can they pay a sum on account to the person or persons they feel are beneficially entitled to the deceased's estate?

No. However, if the total amount of the death gratuity is less than a specified amount (at present £15,000) they may dispense with probate or letters of administration and pay the gratuity, without further liability or claim, to the person or persons they feel are beneficially entitled to it.

Q5. How is a death gratuity calculated?

For 1956 Scheme officers and employees a minimum of one year's service is required. For those with at least one and less than five years' service the gratuity amounts to one-twelfth of pensionable remuneration (annualised for employees) for each whole year of service. For 1956 Scheme officers with five or more years' service the gratuity amounts to the greater of pensionable remuneration or the lump sum that would have been granted had the person retired on the date he/she died. For 1956 Scheme employees with five or more years' service the gratuity amounts to his/her annualised pensionable remuneration.

For Revision Scheme officers there is no minimum service requirement and the gratuity amounts to the greater of the person's pensionable remuneration or the lump sum that would have been granted had he/she retired on ill-health grounds (with the inclusion of ill-health added years where appropriate) on the date he/she died.

For Revision Scheme employees there is no minimum service requirement and the gratuity amounts to the greater of (a) the person's pensionable remuneration (annualised, i.e multiplied by 52) or (b) the lump sum that would have been granted had he/she retired on ill-health grounds (with the inclusion of ill-health added years where appropriate) on the date he/she died or (c) a minimum amount indexed in line with certain pay increases (the minimum amount at any time is 97.43% of the second point of the Craftman's pay scale).

Q6. What is a balancing death gratuity?

It is a gratuity payable in respect of an officer or employee who dies shortly after retirement on pension. It arises if he/she has not already received by way of lump sum (if appropriate) and pension the equivalent of his/her pensionable remuneration (annualised for employees) at the time of his/her

retirement. For Revision Scheme employees it is the equivalent of either annualised pensionable remuneration, the lump sum that would have been granted had he/she retired on ill-health grounds (with the inclusion of ill-health added years where appropriate) on the date he/she died or the a minimum indexed amount as referred to at Q5, whichever is the greater, that is taken. In such circumstances the balance up to the amount of his/her pensionable remuneration (or whichever is the greater of the three options for Revision Scheme employees) may be paid to the legal personal representative. It should be noted that the amount of the lump sum to be taken into account in determining death gratuity is the gross amount awarded, i.e. before any deductions were made in respect of outstanding scheme contributions due.

Q7. What are the statutory or other references?

Articles 18, 19, 39, 40, 53(1)(c), 74, 75, 98, 99 and 112(1)(c) of 455 of 1998. Circular letter S.10/98.