

ORDER IN COUNCIL

XXIV
2003

ratifying a Projet de Loi

ENTITLED

The Social Insurance (Guernsey) (Amendment) Law, 2003

(Registered on the Records of the Island of Guernsey
on the 1st December, 2003.)



2003

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 1st day of December, 2003 before Geoffrey Robert Rowland, Esquire, Deputy Bailiff; present:— David Charles Lowe, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, The Reverend Peter Gerald Lane, Michael John Wilson, Michael John Tanguy, Esquires, and Susan Mowbray, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 8th day of October, 2003, approving and ratifying a Projet de Loi of the States of Guernsey entitled “The Social Insurance (Guernsey) (Amendment) Law, 2003”, THE COURT, after the reading of the said Order in Council and having heard Her Majesty’s Comptroller thereon, ORDERED:—

1. That the said Order in Council be registered on the records of this Island and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney for registration on the records of that Island.

At the Court at Buckingham Palace

The 8th day of October, 2003

PRESENT,

The Queen's Most Excellent Majesty in Council

THE FOLLOWING, report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“IN ACCORDANCE WITH YOUR MAJESTY’S General Order of Reference of the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolution of the 1st of October, 1998, 28th September, 2000, 28th September, 2002 and the 30 April, 2003 the States of Deliberation at a meeting on the 31st July, 2003, approved a Projet de Loi entitled “The Social Insurance (Guernsey) (Amendment) Law, 2003” and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the Projet de Loi is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction “The Social Insurance (Guernsey) (Amendment) Law, 2003” and to order that it shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.”

“THE COMMITTEE have considered the Projet de Loi and have agreed to report that it may be advisable for Your Majesty to approve and ratify it.”

HER MAJESTY, having taken the Report into consideration, was pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Alderney, Herm and Jethou and shall be entered on the Register of the Island of Guernsey and observed accordingly.

HER MAJESTY'S Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Social Insurance (Guernsey) (Amendment) Law, 2003

THE STATES, in pursuance of their Resolutions of the 1st October 1998^a, the 28th September 2000^b, the 28th September, 2002^c and the 30th April 2003^d, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

Amendment of Law of 1978.

1. Subject to section 2, the Law of 1978 is amended in the manner set out in the schedule to this Law.

Savings in respect of certain entitlements.

2. (1) A woman who, upon the relevant day, is entitled to a widow's pension under section 32 of the Law of 1978, shall continue to be entitled to such pension upon the coming into force of this Law -

(a) for so long as she satisfies -

(i) the requirements, conditions and other matters

^a Article XXII of Billet d' État XXII of 1998.

^b Resolution 11 in Article XVII of Billet d' État XX 2000.

^c Resolution 7 in Article X of Billet d' État XX of 2002.

^d Article I of Billet d' État V of 2003.

for or relating to entitlement to benefit under that section as they had effect upon the relevant day; and

- (ii) such further or alternative requirements, conditions or other matters as the Authority may, by regulations made under this subparagraph, prescribe; and

(b) subject to -

- (i) the provisions of the Law of 1978 as they had effect upon the relevant day; and
- (ii) such exceptions, conditions and other matters as the Authority may by regulations made under this subparagraph prescribe.

(2) A person who, upon the relevant day, is entitled to a benefit under or by virtue of section 57, 58, 59, 60, 62 or 72 of the Law of 1978, shall continue to be entitled to such benefit upon the coming into force of this Law -

(a) for so long as he satisfies -

- (i) the requirements, conditions and other matters for or relating to entitlement under one or more of those sections as they had effect upon the relevant day; and
- (ii) such further or alternative requirements,

conditions or other matters as the Authority may, by regulations made under this subparagraph, prescribe; and

(b) subject to -

(i) the provisions of the Law of 1978 as they had effect upon the relevant day; and

(ii) such exceptions, conditions and other matters as the Authority may by regulations made under this subparagraph prescribe.

(3) There shall be exercisable -

(a) in respect of any benefit, entitlement to which is saved or preserved by any provision of this section; and

(b) in such manner as is specified in any provision of the Law of 1978 as that provision had effect upon the relevant day,

all powers relating to or in respect of that benefit (including, without limiting the generality of the same, the power for the States by Ordinance to determine the weekly rate of benefit) which could have been exercised under any provision of the Law of 1978 as that provision had effect upon the relevant day.

Interpretation.

3. (1) In this Law, except where the context otherwise requires -

“**the Authority**”, “**benefit**” and “**claim**” have the same respective meanings as in the Law of 1978;

“**the Law of 1978**” means the Social Insurance (Guernsey) Law, 1978^e; and

“**the relevant day**” means the day immediately preceding the day upon which this Law comes into force.

(2) In the schedule to this Law, except where the context otherwise requires, a reference to a numbered section is a reference to the section of the Law of 1978 which is so numbered.

(3) The provisions of the Interpretation (Guernsey) Law, 1948^f shall apply to the interpretation of this Law throughout the Islands of Guernsey, Alderney, Herm and Jethou.

(4) Unless the context otherwise requires, references in this Law to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

Regulations.

4. Regulations made under this Law -

(a) may be amended or repealed by subsequent regulations;

^e Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXII, p. 59 and 192; No. XII of 1993; Ordinance No. XIV of 1993 (Tome XXVI, p. 177); No. V of 1994; No's. VI and XIII of 1995; No. I of 1998; No. VI of 1999; No. X of 2000 and No. IX of 2001.

^f Ordres en Conseil Vol. XIII, p. 355.

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient;
- (c) may be exercised -
 - (i) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases;
 - (ii) so as to make, as respects the cases in relation to which it is exercised -
 - (aa) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise);
 - (bb) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes;
 - (cc) any such provision either unconditionally or subject to any prescribed conditions;
- (d) shall be laid before a meeting of the States as soon as possible after being made and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without

prejudice to anything done under them or to the making of new regulations.

Citation.

5. This Law may be cited as the Social Insurance (Guernsey) (Amendment) Law, 2003.

Commencement.

6. This Law shall come into force on 1st January 2004, or on the day of its registration on the records of the Island of Guernsey, whichever is the later.

SCHEDULE

Amendment of the Law

Amendment to Arrangement of Sections.

1. In the Arrangement of Sections -
 - (a) for the heading “*Widow's benefit*” immediately before the reference to section 30, substitute “*Survivor's benefit*”;
 - (b) for “30. Widow's allowance.”^g substitute “30. Bereavement payment.”;
 - (c) for “31. Widowed mother's allowance”^h substitute “31. Widowed parent's allowance.”
 - (d) for “32. Widow's pension.” substitute “32. Bereavement allowance.”;

^g Widow's allowance was replaced by survivor's grant by Order in Council No. VI of 1999, but the reference in the Arrangement of Sections remained unaltered.

^h Widowed mother's allowance was replaced by widowed parent's allowance by Order in Council No. VI of 1999, but the reference in the Arrangement of Sections remained unaltered.

- (e) “34. Guardian's allowance.”ⁱ is repealed;
- (f) “35. Child's special allowance.”^j is repealed;
- (g) “50. Increase of industrial disablement benefit where constant attendance needed.”^k is repealed;
- (h) for “53. Widow's benefit in respect of industrial accidents.” substitute “53. Survivor’s benefit in respect of industrial accidents.”;
- (i) the heading “*Child dependants*” immediately before the reference to section 57, is repealed;
- (j) “57. Beneficiary's dependent children.” is repealed;
- (k) “58. Additional provisions as to increases under section fifty-seven.” is repealed;
- (l) “59. Limits of increase for dependent children.” is repealed;
- (m) “60. Increase of short-term benefits and invalidity benefit for adult dependents.” is repealed;

ⁱ Section 34 was repealed, subject to savings, by Order in Council No. IX of 2001, but the reference in the Arrangement of Sections remained unaltered.

^j Section 35 was repealed, subject to savings, by Order in Council No. IX of 2001, but the reference in the Arrangement of Sections remained unaltered.

^k Section 50 was repealed, subject to savings, by Order in Council No. IX of 2001, but the reference in the Arrangement of Sections remained unaltered.

- (n) “62. Increase of old age pension for female with care of children.” is repealed;
- (o) “72. Provisions as to maintenance.” is repealed; and
- (p) “75. Questions relating to increase of industrial disablement benefit under section fifty” is repealed.

Amendment of section 4.

2. In section 4(1)(c) the words “and under section nine of this Law by employed persons in certain cases” are repealed.

Amendment of section 8.

3. In sections 8(4) and (5) for “minimum” substitute “voluntary”¹.

Amendment of section 18.

4. (1) For section 18(e) substitute -

“(e) survivor’s benefit, comprising bereavement payment, widowed parent's allowance and bereavement allowance;”

(2) Sections 18(g) and (h) are repealed.

Amendment of section 20.

5. (1) In section 20(1)(e) for “widow’s” substitute “survivor’s”.

¹ Sections 8(4) and (5) were substituted by Orders in Council Nos. VI of 1995 and IX of 2001.

(2) Section 20(1)(g) is repealed.

(3) In section 20(5)(a) for “widow’s benefit, old age pension or child’s special allowance” substitute “survivor’s benefit and old age pension”.

(4) In the proviso to section 20(5)^m for “widow’s” substitute “survivor’s”.

Amendment to section 21.

6. (1) In section 21(1) for “such period” substitute “a period of incapacity for work”.

(2) For section 21(2)ⁿ substitute -

“(2) Regulations may prescribe exceptions from the entitlement created by subsection (1) for such period and subject to such conditions as may be prescribed by any such regulations.”.

(3) In section 21(3) for “one-sixth of the appropriate weekly rate” substitute “calculated in such manner (including, without limiting the generality of the same, a manner in which any day of the week is disregarded for the purposes of calculation) and subject to such exceptions and conditions as regulations may prescribe”.

Amendment to section 22.

7. (1) In section 22(1) -

^m The proviso was inserted by Order in Council No. XII of 1993.

ⁿ Section 21(2) was substituted by Order in Council No. VI 1999.

- (a) for “interruption of employment” substitute “incapacity for work”; and
- (b) for “one hundred and fifty six days” substitute “an aggregate period of 26 weeks”.

(2) In section 22(2) for “one-sixth of the appropriate weekly rate” substitute “calculated in such manner (including, without limiting the generality of the same, a manner in which any day of the week is disregarded for the purposes of calculation) and subject to such exceptions and conditions as regulations may prescribe”.

Amendment to section 23.

8. Section 23(1)(d) is repealed.

Amendment of section 24.

9. In sections 24(1) and (2) for the words “one hundred and eighty days” wherever they appear substitute “an aggregate period of 30 weeks”.

Amendment of section 28.

10. For section 28(6)⁰ substitute -

“(6) Regulations may provide for the computation of a daily rate of maternity allowance in such manner (including, without limiting the generality of the same, a manner in which any day of the week is disregarded for the purposes of calculation) and subject to such exceptions and conditions as regulations may prescribe.”.

⁰ Section 28 was substituted by Order in Council No. VI 1999.

Amendment to heading “Widow's benefit”.

11. For the heading “Widow's benefit” immediately preceding section 30 substitute “Survivor's benefit”.

Amendment to section 30.

12. For section 30^P substitute -

“Bereavement Payment.

30. Subject to the provisions of this Law, and subject to such further or alternative exceptions and conditions as regulations may provide, a person shall be entitled to a bereavement payment if his deceased spouse satisfied the relevant contribution conditions:

Provided that he shall not be so entitled if, at the date of death of his deceased spouse, the Administrator is satisfied that he was cohabiting with another person as husband and wife.”.

Amendment of section 31.

13. In section 31(3)(b)^Q for “Authority” substitute “Administrator”.

Amendment of section 32.

14. For section 32 substitute -

“Bereavement Allowance.

32. (1) Subject to the provisions of this Law, and such further or alternative exceptions and conditions as regulations may provide, upon the death of his spouse, a qualifying surviving spouse shall be entitled to a bereavement allowance for the relevant period commencing upon the

^P Section 30 was substituted by Order in Council No. VI 1999.

^Q Section 31 was substituted by Order in Council No. VI 1999.

relevant day: Provided that -

- (a) he remains a qualifying surviving spouse for the duration of the relevant period; and
- (b) his deceased spouse satisfied the relevant contribution conditions.

(2) Regulations may provide that a qualifying surviving spouse shall not be entitled to a bereavement allowance where his deceased spouse was over pensionable age at the date of their marriage and died within one year of that date, unless he satisfies such further conditions as may be prescribed.

(3) For the purposes of this section -

- (a) subject to any regulations made under this section, a “**qualifying surviving spouse**” means a person who -
 - (i) is over 45 years of age at the time of the death referred to in subsection (1);
 - (ii) is under pensionable age;
 - (iii) is not entitled to a widowed parent's allowance;
 - (iv) is not married; and

- (v) the Administrator is satisfied is not cohabiting with another person as husband and wife;
- (b) the “**relevant day**” means -
- (i) where the death referred to in subsection (1) occurred on a Monday, the day of that death; or
 - (ii) where the death referred to in subsection (1) occurred on a day other than a Monday, the first Monday after that death; and
- (c) the “**relevant period**” means -
- (i) the period of 52 weeks; or
 - (ii) such further or alternative period, in relation to such class or description of qualifying surviving spouses -
 - (aa) who are widows; and
 - (bb) who were married before 1st January 2004,
- as regulations may prescribe.”.

Amendment to section 33.

15. For Section 33 substitute -

“Old age pension.

33. (1) Subject to the provisions of this Law, a person shall be entitled to an old age pension if -

- (a) he is over pensionable age; and
- (b) he satisfies one of the conditions set out in subsection (2).

(2) The conditions referred to in subsection (1)(b) are that the person -

- (a) satisfies the relevant contribution conditions;
- (b) was married and the spouse to whom he was married at the time when he attained pensionable age, or who he married after reaching pensionable age -
 - (i) has died; and
 - (ii) at the time of death satisfied the relevant contribution conditions; or
- (c) is a married woman born before 1st January 1949 who married, before 1st January 2004, a husband who -

- (i) is over pensionable age; and
- (ii) satisfies the relevant contribution conditions.

(3) Subject to the provisions of this Law, an old age pension shall commence on the day on which a person becomes entitled thereto and shall be payable for life.

(4) No person shall be entitled for the same period to more than one old age pension, but if he would be so entitled but for this provision he may, on such occasion and in such manner as may be prescribed, choose that to which he shall be entitled.”.

Amendment to section 39.

16. (1) In section 39(1) for “widow’s” substitute “survivor’s”.
- (2) In section 39(2) the words “paragraph (b) of” are repealed.
- (3) The proviso in section 39(3) is repealed and for the colon substitute a full stop.
- (4) Section 39(4) is repealed.

Amendment to section 48.

17. (1) In section 48(2) for “one-sixth of the weekly rate” substitute “calculated in such manner (including, without limiting the generality of the same, a manner in which any day of the week is disregarded for the purposes of calculation) and subject to such exceptions and conditions as regulations may prescribe”.

(2) For section 48(3) substitute -

“(3) Subject to the provisions of subsection (5), regulations may prescribe exceptions from the entitlement created by subsection (1) for such period and subject to such conditions as may be prescribed by any such regulations.”.

Amendment to section 49.

18. In section 49(3) for “one hundred and fifty-six days (Sundays being disregarded)” substitute “26 weeks”.

Amendment to section 53.

19. For section 53 substitute -

“Survivor's benefit in respect of industrial accidents.

53. Subject to the provisions of this Law, the spouse of an insured person who dies as the result of the relevant injury and who, at the date of his death, had not satisfied the relevant contribution conditions for survivor's benefit or an old age pension shall be entitled to survivor's benefit or, if he is over pensionable age at the date of his death, to an old age pension under and in accordance with the provisions of Part II of this Law at the rate for the time being applicable in the case of a person who has satisfied the relevant contribution conditions for survivor's benefit or an old age pension, as the case may be.”.

Amendment to section 54.

20. For section 54(1)(b) substitute -

“(b) the spouse of an insured person who dies as the

result of any such prescribed disease or injury and who, at the date of his death, had not satisfied the relevant contribution conditions for survivor's benefit or an old age pension shall be entitled -

- (i) to survivor's benefit; or
- (ii) if he is over pensionable age at the date of his death, to an old age pension,

under and in accordance with the provisions of Part II of this Law at the rate for the time being applicable in the case of a person who has satisfied the relevant contribution conditions for survivor's benefit or an old age pension, as the case may be.”.

Amendment to section 56.

21. In section 56(5)(a) for “widow’s” substitute “survivor’s”.

Repeal of heading “Child dependants”.

22. The heading “*Child dependants*” immediately before section 57 is repealed.

Repeal of sections 57 to 60.

23. Sections 57 to 60 are repealed.

Amendment to section 61.

24. For section 61 substitute -

“Increase of old age pension for wife.

61. (1) Subject to the provisions of this Law, the weekly rate of an old age pension, when payable to a man born before 1st January 1949, shall be increased by such amount as the States shall from time to time by Ordinance determine for any period during which the beneficiary is -

- (a) residing with his wife; or
- (b) contributing to the maintenance of his wife at a weekly rate not less than that amount:

Provided that in either case he married his wife before 1 January 2004.

(2) Regulations may prescribe exceptions from the entitlement created by subsection (1) for such period and subject to such conditions as may be prescribed by any such regulations.”.

Repeal of section 62.

25. Section 62 is repealed.

Amendment to section 63.

26. For section 63(3) substitute -

“(3) Nothing in the foregoing provisions of this section relating to the making of claims shall affect any right of a person to an old age pension by virtue of the insurance of his spouse in respect of whose death he was, immediately before attaining pensionable age, entitled to survivor’s benefit.”.

Amendment to section 71.

27. In section 71(4) for “wife or widow” substitute “spouse or surviving spouse”.

Repeal of section 72.

28. Section 72 is repealed.

Amendment to section 73.

29. In section 73(a) for “widow’s” substitute “survivor’s”.

Amendment to section 74.

30. Section 74(1)(b) is repealed.

Repeal of section 75.

31. Section 75 is repealed.

Amendment to section 76.

32. (1) In the heading to section 76 -

(a) for “sections” substitute “section”; and

(b) delete “and seventy-five”.

(2) In section 76(1) delete “or subsection (1) of section seventy-five”.

Amendment to section 81.

33. For section 81(3) substitute –

“(3) Where in connection with the decision of the Administrator there has arisen a question for determination by the Authority under section seventy-four of this Law and the question has been determined and the Administrator certifies that the decision on that question is the sole ground of his decision, no appeal shall lie under this section without leave of the chairman of the Tribunal.”.

Amendment to sections 83 and 84.

34. In sections 83 and 84 the words “or section seventy-five” wherever appearing in those sections are repealed.

Amendment to section 85.

35. (1) In section 85(1)(c) “or seventy-five” and “subsection (2) of section seventy-five,” are repealed.

Amendment to section 86.

36. In section 86(2) for “final” substitute “deemed to be that of the Administrator for the purposes of section 81 of the Law”.

Amendment to First Schedule of the Law.

37. In the First Schedule to the Law -

- (a) for the heading “*Widow's benefit, old age pension and child's special allowance*” immediately preceding paragraph 4 substitute “*Survivor's benefit and old age pension*”;
- (b) in paragraph 4(1) for “widow's benefit, an old age pension or a child's special allowance” substitute “survivor's benefit or an old age pension”.

Amendment to Sixth Schedule.

38. In the second column of the Sixth Schedule, in the meaning of the expression ““Industrial injuries benefits””, for the word “widow’s” substitute “survivor’s”.