

Ordinance of the States

XXXV
2004

Made	27th October, 2004
Coming into operation	7th January, 2005

The Supplementary Benefit (Implementation) (Amendment) Ordinance, 2004

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THE STATES, in pursuance of their Resolution of the 29th day of September, 2004^a and in exercise of the powers conferred upon them by sections 3(2) and 15 of the Supplementary Benefit (Guernsey) Law, 1971^b, as amended, and all other powers enabling them, hereby order:-

Amendment of Ordinance

1. In the Supplementary Benefit (Implementation) Ordinance, 1971, as amended^c, for the First Schedule substitute -

"Section one

FIRST SCHEDULE

PART I

GENERAL PROVISIONS RELATING TO CALCULATION OF SUPPLEMENTARY BENEFIT

Amount of supplementary benefit and calculation of requirements and resources.

1. Subject to the following provisions of this Part of this Schedule, the amount of supplementary benefit to which a person is entitled shall be the

^a Article XV of Billet d'État No. XIV of 2004.

^b Ordres en Conseil Vol. XXIII, p. 26; Vol. XXXI, p. 278; No. XIV of 1993; No. VI of 1999; No. and Recueil d'Ordonnances, Tome XXIV, p. 468 and Tome XXVI, p. 177.

^c Recueil d'Ordonnances Tome XVII, pp. 139 and 179; Tome XVIII, p. 119; Tome XXI, p. 452; Tome XXIII, p. 314; Ordinance No. XV of 1989; No. XX of 1994; No. XXII of 1995; No. XXXII of 1998; Nos. XIII and XXII of 1999; Nos. IV and XVII of 2000; Nos. XVII and XLVI of 2001; No. XXIV of 2002; and Nos. VIII and XXIV of 2003.

amount by which his resources fall short of his requirements, and for the purpose of ascertaining that amount -

(a) the weekly requirements of any person shall be taken to be the aggregate of such of the amounts specified in Part II of this Schedule as are applicable to his case, provided that the weekly requirements of a person -

(i) who resides in a dwelling in which he has an interest and whose capital resources (after allowing for any disregard under paragraph 10(1)) exceed £20,000; or

(ii) who resides in a residential home, a nursing home or the Guernsey Cheshire Home and whose capital resources (after allowing for any disregard under paragraph 10(2)) exceed £40,000,

shall be nil; and

(b) the resources of any person shall be calculated in accordance with Part III of this Schedule.

Aggregation of requirements and resources.

2. (1) Where a husband and wife are members of the same household their requirements and resources shall be aggregated and similarly as regards two persons cohabiting as man and wife.

(2) Where a person has to provide for the requirements of another person (not falling within subparagraph(1)) who is a member of the same household, his requirements shall be taken to include the requirements of that other person, and in that case their resources shall be aggregated.

Limitation on amount of supplementary benefit payable.

3. (1) The sum of a supplementary benefit payable in any week to or in respect of a person and of any other income, if any, received by or in respect of that person in that week shall not exceed the limit of weekly income set out in sub-paragraph (2) and, where the sum of the said supplementary benefit and the said income (if any) in any week exceeds the said limit of weekly income, the Administrator shall reduce the amount of the supplementary benefit which would otherwise be payable, by an amount equal to that by which the said limit of weekly income is exceeded.

(2) For the purposes of subparagraph (1) the limit of the weekly income -

(a) of a person whose requirements are in accordance with paragraphs 5 or 8 shall be the amount specified in the first column of Table 1;

(b) of a person who is residing in a residential home shall be -

(i) where that person is entitled to benefit, or would be so entitled if he made a claim under, the Long-term Care Insurance (Guernsey) Law, 2002, the amount of the requirements specified in paragraph 7(1); or

(ii) where that person is not entitled to benefit, for reason other than failure to make a claim, under the Long-term Care Insurance (Guernsey) Law, 2002, the sum of the amounts specified in the second and fourth columns of Table 1;

(c) of a person who is residing in a hospital, a nursing home or the Guernsey Cheshire Home as a patient shall be -

(i) where that person is entitled to benefit, or would be so entitled if he made a claim, under the Long-term Care Insurance (Guernsey) Law, 2002, the amount of the requirements specified in paragraph 7(1); or

(ii) where that person is not entitled to benefit, for reason other than failure to make a claim, under the Long-term Care Insurance (Guernsey) Law, 2002, the sum of the amounts specified in the third and fourth columns of Table 1.

(3) There shall be disregarded for the purposes of this paragraph -

(a) any form of income mentioned in paragraphs 11, 13 or 14;

(b) any amount by which any weekly earnings mentioned in paragraph 15 exceed a multiple of five pence; and

(c) any allowance payable under the Family Allowances (Guernsey) Law, 1950.

(4) The provisions of paragraph (3) shall apply in like manner to the aggregation of the income of persons who are members of the same household.

PART II

CALCULATION OF REQUIREMENTS

Application of paragraphs 5 and 6.

4. (1) Subject to sub-paragraph (2), the amounts specified in paragraphs 5 and 6 are not applicable to persons falling within any of paragraphs 7, 8 or 9.

(2) Where one only of the persons falling within paragraph 2(1) falls within paragraph 7 or 9, sub-paragraph (1) shall not exclude the application of the amounts specified in paragraphs 5 and 6 to the other.

Normal requirements.

5. (1) The requirements of persons who are continuously in need of a supplementary benefit for a period of less than 6 months shall be, in respect of the description of persons set out in the first column of Table 2, the amount specified in the second column of Table 2.

(2) The requirements of persons to whom a supplementary benefit has been payable for a continuous period of 6 months or more shall be, in respect of the description of persons set out in the first column of Table 3, the amount specified in the second column of Table 3.

(3) For the purposes of reckoning any continuous period of 6 months for the purposes of subparagraph (2), any period in the aggregate not exceeding 28 days, during which a supplementary benefit has not been payable, shall be disregarded.

(4) Where a claimant's resources are such that -

- (a) no supplementary benefit is payable to him; but
- (b) if he had been in receipt of a supplementary benefit for a continuous period of 6 months, a supplementary benefit would now be payable to him at the long-term rate under subparagraph (2),

the Administrator may, if he considers it just in the circumstances of the particular case, deem the claimant to be a person to whom a supplementary benefit has been payable for a continuous period of 6 months.

Rent.

6. (1) The amounts applicable under paragraph 5 shall be increased as follows -

- (a) where the person applying for or in receipt of a supplementary benefit or a person whose requirements are aggregated with his under paragraph 2(1) is a householder, by -
 - (i) the amount of the net rent payable; or
 - (ii) such lesser amount as may be thought reasonable by the Administrator having regard to the circumstances of that person and the nature and standard of the accommodation concerned (and for the avoidance of doubt, and without limitation, the Administrator may consult the Rent Officer (within the meaning of the Rent Control (Guernsey) Law, 1976) in relation to the level of rent charged for the accommodation); and

- (b) in any other case (unless there appears to the Administrator to be special circumstances or the person is aged less than eighteen years) a reasonable share as determined by the Administrator of the rent payable by the householder of whose household the applicant is a member, but not less than £2.50 nor more than £15.00.
- (2) In this paragraph the expression “**rent**” means -
- (a) the weekly rent, or a proportion thereof, appropriate to a week, excluding arrears thereof; and
 - (b) the weekly proportion of outgoings borne by the householder including, in particular, rates and taxes, a reasonable allowance as determined by the Administrator towards any necessary expenditure on repairs or insurance, and such portion as is for the time being attributable to interest in respect of a charge on the dwelling in which the householder resides, or on any interest therein;

and the expression “**net rent**” means the rent less any proceeds of sub-letting any part of the premises in respect of which the said rent is paid or the outgoings incurred.

Persons in hospital, nursing home or residential home.

7. (1) The requirements of a person who is residing in a residential home, a nursing home or the Guernsey Cheshire Home and who is entitled to benefit, or would be so entitled if he made a claim, under the Long-term Care Insurance (Guernsey) Law, 2002 shall be the sum of -

- (a) a personal allowance of the amount specified in the fourth column of Table 1; and
- (b) such co-payment by way of contribution as the States may, from time to time, by Ordinance specify under section 5 of that Law.

(2) The requirements of a person who is residing in a residential home, a hospital or a nursing home as a patient, or the Guernsey Cheshire Home and who is not entitled to benefit, for reason other than failure to make a claim, under the Long-term Care Insurance (Guernsey) Law, 2002 shall be such amount, if any, as may seem reasonable in the circumstances.

Persons paying for board and lodging.

8. The requirements of a person who is paying an inclusive charge for board and lodging shall be such amount as may be appropriate, not being less than the amount which would be applicable under paragraph 5.

Persons in legal custody.

9. The requirements of a person in prison or otherwise detained in legal custody shall be nil except for any amount applicable by virtue of paragraph 2.

PART III

CALCULATION OF RESOURCES

Disregard of capital value of dwelling.

10. (1) In taking into account the value to any person of an interest in the dwelling in which he resides, any sum which might be obtained by him

by selling that interest or borrowing money upon the security thereof shall be disregarded.

(2) In taking into account the value to any person entitled to benefit, or who would be so entitled if he made a claim, under the Long-term Care Insurance (Guernsey) Law, 2002, of any interest in a dwelling -

(a) which he occupied as his principal private residence immediately before becoming a resident of any residential home, nursing home or the Guernsey Cheshire Home; and

(b) in which he no longer resides,

any sum which might be obtained by him by selling that interest or borrowing money upon the security thereof shall be disregarded.

Resources wholly disregarded.

11. There shall be wholly disregarded -

(a) any sums payable to any person as holder of the Victoria Cross or of the George Cross;

(b) any grant by the Education Department in respect of a person who would be treated as a child for the purposes of the Family Allowances (Guernsey) Law, 1950;

(c) the cash value of any free board or free lodging or both which a person may enjoy, not being board or lodging or both which that person is enjoying under and in pursuance of a contract of service;

- (d) any attendance allowance granted under the Attendance and Invalid Care Allowances (Guernsey) Law, 1984;
- (e) any payment made by a third party to a residential home, a nursing home or the Guernsey Cheshire Home on behalf of a person residing in the home in respect of the home's fees to the extent that such payment would otherwise cause that person's income to exceed the limit for the time being prescribed by paragraph 3(2);
- (f) any fostering allowance, other than the contractual element, paid by the Health and Social Services Department.

12. Capital resources which consist of -

- (a) business premises or stock in trade, or both, which are wholly or partly used as the means of livelihood, other than by way of unearned income; or
- (b) an interest in an asset which cannot reasonably be converted into a sum of money by selling that interest or borrowing money upon the security thereof,

may be disregarded for such period as the Administrator in his discretion so directs.

13. If the value of the capital resources taken into account would not exceed £5,000 pounds they shall be wholly disregarded together with any income therefrom.

Calculation of income from capital resources.

14. The capital resources taken into account, together with any income derived therefrom, shall be treated as equivalent to a weekly income, so far as their value exceeds £5,000, of 15 pence for each complete £25.

Earnings.

15. (1) The weekly earnings of any person shall be taken to be his net weekly earnings reduced by £20 and any amount by which those weekly earnings exceed a multiple of five pence shall be disregarded.

(2) Subject to the provisions of sub-paragraph (4), for the purposes of this Schedule, a person's net weekly earnings shall be the net remuneration or profit, calculated on a weekly basis, derived by him from any occupation and, in particular, in so far as the earnings consist of salary or wages, there shall be deducted -

- (a) any sum the deduction of which from salary or wages is authorised by any enactment for the time being in force;
- (b) any expenses reasonably incurred by him in connection with his employment.

(3) For the purposes of this Schedule, there shall be included in a person's net weekly earnings -

- (a) the cash value of any board or lodging or both which he is enjoying under and in pursuance of a contract of service;
- (b) any invalid care allowance payable in accordance with the Attendance and Invalid Care Allowances (Guernsey) Law, 1984;

- (c) the contractual element of any fostering allowance paid by the Health and Social Services Department.

(4) Where a person's earnings for any week are not immediately ascertainable, sub-paragraph (2) shall not apply and his net weekly earnings for that week shall be calculated or estimated in such manner and on such basis as the Administrator considers appropriate, having regard to all the circumstances of the case.

Disregard of £20 a week on certain payments.

16. There shall be disregarded £20 a week of the income consisting of any one or more of the following, that is to say -

- (a) any payments in respect of (and including any payment in respect of a dependant's allowance attached to any of the following payments or pensions) -
 - (i) wounds pensions granted to members of the naval, military or air forces of the Crown;
 - (ii) retired pay of disabled commissioned officers granted on account of medical unfitness attributable to or aggravated by naval, military or air force service;
 - (iii) disablement or disability pensions granted to members, other than commissioned officers, of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air force service;

- (iv) disablement pensions granted to persons who have been employed in the nursing services of any of the naval, military or air forces of the Crown on account of medical unfitness attributable to or aggravated by naval, military or air force service;
- (b) any industrial disablement benefit granted under the Social Insurance (Guernsey) Law, 1964.

Disregard of £10 a week of other income.

17. (1) There shall be disregarded, subject to sub-paragraph (2), £10 a week of the income taken into account except so far as it consists of any earnings or of any of the following, that is to say -

- (a) any weekly benefit, other than industrial disablement benefit, payable under the Social Insurance (Guernsey) Law, 1964;
- (b) any weekly benefit payable under the social insurance legislation of any country, other than Guernsey;
- (c) any maintenance payable to a woman in respect of either herself or a child by her husband or a former husband;
- (d) any payment by a man in respect of a child of whom he is the putative father and any payment by that man to the mother of that child;
- (e) any allowance payable under the Family Allowances (Guernsey) Law, 1950.

(2) Where any amount is disregarded under paragraph 16 then, if that amount equals £20 a week no further amount shall be disregarded under this paragraph and, if it is less than £20 a week, the amount disregarded under this paragraph shall not, together with that amount, exceed £20 a week.

Resources deliberately abandoned.

18. If a person has -

- (a) deprived himself of any resources; or
- (b) neglected to claim, waived or abandoned any right or benefit to which he is or may be entitled,

for the purpose of securing a supplementary benefit or increasing the amount thereof, those resources and that right or benefit may be taken into account as if they were still his or he were in receipt of any sum of money due under or pursuant to or representing that right or benefit.

Attribution of assets.

19. (1) Subject to the following provisions of this paragraph, a person shall be deemed for the purpose of this Schedule to own an asset if he is absolutely entitled in possession to the whole beneficial interest therein and not otherwise.

(2) Where two or more persons are beneficially entitled in possession to any asset they shall be treated for the purposes of this Schedule as if each of them were entitled in possession to the whole beneficial interest in an equal share in the asset unless it appears that their respective beneficial interests are not equal; and in that case they shall be treated as respectively entitled in possession to the whole beneficial interest in such shares as appear to be just.

Interpretation.

20. For the purposes of this Schedule, a reference to a numbered Table is a reference to the relevant Table set out in the appendix to this Schedule.

APPENDIX

Table 1

(Paragraph 3)

Limitation of weekly benefit payable as from the week commencing 7

January 2005

<i>Community</i>	<i>Residential Home</i>	<i>Nursing Home, etc</i>	<i>Personal Allowance</i>
£275.00	£380.00	£547.00	£21.00

Table 2

(Paragraph 5 (1))

Short-term Weekly Requirements from week commencing 07 January 2005

<i>Description</i>	<i>Amount</i>
Husband and wife or other persons falling within paragraph 2(1) (“ Couple ”)	£145.40
Person not falling within paragraph 2(1) who is directly responsible for household necessities and rent (if any) (“ Single householder ”)	£100.35
Person who is not a householder (“ Non-householder ”)	£76.90
Member of a household:	
Aged 16 years or over;	£65.30
Aged 12 years but less than 16;	£40.40
Aged 5 but less than 12;	£29.30
Aged less than 5 years	£21.65

Table 3

(Paragraph 5(2))

Long-term Weekly Requirements from week commencing 07 January 2005

<i>Description</i>	<i>Amount</i>
Husband and wife or other persons falling within paragraph 2(1) (“ Couple ”)	£179.90
Person not falling within paragraph 2(1) who is directly responsible for household necessities and rent (if any) (“ Single householder ”)	£124.15
Person who is not a householder (“ Non-householder ”)	£96.35
Member of a household:-	
Aged 16 years or over;	£81.65
Aged 12 years but less than 16;	£50.50
Aged 5 but less than 12;	£36.60
Aged less than 5 years	£27.05"

Extent.

2. This Ordinance shall have effect in the islands of Guernsey, Herm and Jethou.

Citation.

3. This Ordinance may be cited as the Supplementary Benefit (Implementation) (Amendment) Ordinance, 2004.

Commencement.

4. This Ordinance shall come into force on 7 January 2005.