

ORDER IN COUNCIL

ENTITLED

“The Family Allowances Law, 1947”.

II
1948

(Registered on the Records of the Island of Guernsey the
13th March, 1948.)



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1948.

ORDER IN COUNCIL.



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 13th March, 1948, before Ambrose James Sherwill, Esquire, C.B.E., M.C., Bailiff; present: Osmond Priaulx Gallienne, Esquire, Ernest de Garis, Esquire, O.B.E., Sir John Leale, Knight, James Frederick Carey, Arthur Falla, Pierre de Putron Quertier Le Pelley, Walter John Sarre, Esquires, Richard Henry Johns, Esquire, O.B.E., William Robert Freake Clark and Walter John Gavey, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of His Majesty in Council dated February 24th, 1948, ratifying a *Projet de Loi* entitled "The Family Allowances Law, 1947" The Court, after the reading of the said Order in Council and after having heard His Majesty's Procureur thereon, ordered that the said Order in Council be registered on the Records of this Island, of which Order in Council the tenor followeth:—

13th MARCH, 1948.

At the Court at Buckingham Palace

The 24th day of February, 1948.

Present,

The King's Most Excellent Majesty

LORD CHANCELLOR.

LORD PRESIDENT.

MR. TOM WILLIAMS.

MR. WHITLEY.

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 27th day of January, 1948, in the words following, viz. :—

“ YOUR MAJESTY having been pleased, by Your General Order of Reference of the 18th day of December, 1936, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth :—

‘ 1.—That in pursuance of their resolution of the 23rd day of July, 1947, the States of Deliberation on the 26th day of November, 1947, considered a Bill or “*Projet de Loi*” entitled “*The Family Allowances Law, 1947,*” when a resolution was passed approving the same with slight amendments and authorising the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto: 2.— That the said Bill or “*Projet de Loi*” is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “*Projet de Loi*” of the States of the Island of Guernsey entitled “*The Family Allowances Law, 1947,*” and to order and direct that the same shall have force of law in the said Island.’

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HIS MAJESTY having taken the said Report into consideration is pleased, by and with the advice of His Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

AND HIS MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed) be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor or Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other His Majesty’s Officers, for the time being, in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

E. C. E. Leadbitter.

“**Projet de Loi**” referred to in the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

“**The Family Allowances Law, 1947**”.

THE STATES, in pursuance of their Resolution of the 23rd day of July, 1947, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in this Island:—

Repeal.

1. The Children's Allowances Law, 1943 and 1944 or any part thereof shall be repealed on such date or dates as the States may by resolution declare.

Payment
and
Amount of
Allowances.

2. (i) The States Insurance Authority shall pay, out of monies provided by the States of Guernsey, for families, for the benefit of the family as a whole, an allowance of an amount to be determined from time to time by resolution of the States in respect of such child or children in such families as may be determined from time to time by resolution of the States. Any resolution of the States, varying a previous resolution of the States as to the amount of such allowances or as to the children in respect of which and the families for which such allowances shall be paid, shall not be effective until the lapse of three months subsequent to the date of that resolution.

(ii) The allowances shall be payable only in Guernsey.

Meaning
of
“Child”.

3. For the purposes of this Law—

(i) A “child” shall mean a person who

(a) has not attained the upper age limit below which education is compulsory by law,
or

(b) having attained that age limit is, during any period before the first day of August next following the day on which he or she attains

the age of sixteen years, undergoing full-time instruction in a school or is an apprentice.

(ii) A person having once attained the upper age limit below which education is compulsory by law shall be deemed for the purposes of this Law to have done so finally, notwithstanding any subsequent change in such age limit.

(iii) A person becoming an apprentice after an interval of not more than one month after attaining the upper age limit below which education is compulsory by law, or after ceasing to undergo full-time instruction in a school, shall be deemed to have been an apprentice throughout the interval.

4. For the purposes of this Law—

(i) Each of the following shall be treated as constituting a family, that is to say—

Meaning
of
"Family".

(a) A man and his wife living together, any child or children being issue of theirs, his or hers, and any child or children being maintained by them ;

(b) A man not having a wife or not living together with his wife, any child or children being issue of his, and any child or children being maintained by him ; and

(c) A woman not having a husband or not living together with her husband, any child or children being issue of hers, and any child or children being maintained by her.

(ii) The expression "issue" means issue of the first generation.

(iii) In order that a child shall be included in a family as being issue of the man or his wife or one of them, of the man or the woman (according as the family falls within sub-paragraph (a) (b) or (c) above) it is necessary that the child be living with them, with him or with her, as the case may be, or, if not, that the cost of providing for the child be contributed to by them taken together, by him or by her, as the case may be, at the rate of 5/od. a week or more.

(iv) The provisions of the Schedule to this Law shall have effect as to the circumstances in which a man and his wife living together, or such a man or woman as is mentioned in sub-paragraph (b) or (c) of paragraph (i) of this Article, are to be treated as maintaining a child and for determining as between parents and persons maintaining children, or as between one parent of a child and the other, in what family a child is to be treated as included.

Persons to whom allowances are to be paid.

5. (i) The allowance for any family shall, subject to paragraph (ii) hereof, belong, in the case of a family of a man and his wife living together, to the wife. In all other cases it shall belong to the claimant. Allowances paid in respect of the family of a man and wife living together shall be receivable either by the man or the wife.

(ii) If the Administrator be satisfied in the case of a man and his wife living together that the recipient of the allowances is not a proper person to receive them, he may order that the allowances shall be paid to and belong to the other.

Determination of Question as to right to Allowances.

6. (i) All claims for allowances shall be made to the Administrator and questions as to the right to allowances shall be decided by him and allowances awarded by him accordingly. A person dissatisfied by a decision of the Administrator (whether as made or as revised under the next succeeding paragraph) may within twenty-eight days of the date of such decision appeal to the States Insurance Authority, whose decision shall be final.

(ii) The Administrator shall be entitled on receipt of further information as to any claim to revise any decision made by him, except in cases in respect of which an appeal shall have been made to the States Insurance Authority, in which cases he may do so only if the appellant consents.

(iii) In any case in which a decision has been made by the States Insurance Authority, if it appear to the Administrator that the decision should be

re-considered in view either of further information which has been brought to his notice or of any apparent inconsistency between that decision and any other decision made either by the Royal Court or the States Insurance Authority, he may refer the decision to the States Insurance Authority, who may revise it.

(iv) In regard to any decision made by the States Insurance Authority, either the Administrator or the claimant of an allowance shall if a point of law or of mixed law and fact be involved have the right to appeal on such point to the Royal Court sitting as an Ordinary Court.

7. (i) Allowances shall begin to accrue on the date of entitlement if claimed within three months from that date. If not claimed within three months from the date of entitlement then the allowances shall begin to accrue at the beginning of the period of three months immediately preceding the date on which the claim is made. In cases, however, of awards made as the result of revised decisions the date of the claim shall be deemed to be the date on which the Administrator first received information which led to such revision.

Period for which allowances are to accrue.

(ii) The allowance in respect of any child shall cease when any of the requirements of this Law or of the relevant regulations for the existence of a right to that allowance ceases to be satisfied in respect of that child or of the family in which that child is included.

(iii) An allowance awarded in respect of any person as being a child included in the family of a man and his wife shall be awarded not only for their family but also, with effect after the death of either of them whilst they are living together, for any family for the time being of the survivor, or of the survivor and a spouse of his or hers.

(iv) When it appears to the Administrator that an allowance awarded is about to cease or has ceased under this Article he shall take all necessary steps for stopping payments on account thereof on its ceasing

or as soon as may be practicable thereafter, and the stopping of payments on account of an allowance under this paragraph shall be treated for all the purposes of the last preceding Article as a decision of the Administrator that the allowance has ceased.

Time for
obtaining
Payment.

8. Where payment of any allowance has not been received within three months from the date on which such payment became capable of being received all right to such payment shall lapse.

Adjustment
of Over-
Payments.

9. (i) If it be found that a sum has been paid on account of an allowance being a sum which was not properly payable, the Administrator may require it to be repaid,—

(a) if it was paid to a person as in his or her own right, by that person, or

(b) if it was paid to a person on behalf of another, either by that person or by that other person :

PROVIDED that the Administrator shall not require repayment by a person who is shown to his satisfaction to have acted in good faith in all respects as to the obtaining of the sum in question.

(ii) In the case of a sum paid on account of an allowance for the family of a man and his wife living together which the wife could under the preceding paragraph be required to repay, the husband may be required to repay it.

(iii) If it be found that a sum properly payable on account of an allowance has been paid to a person not being a person by whom it was properly receivable, the Administrator may require it to be repaid by the person to whom it was paid :

PROVIDED that the Administrator shall not require repayment by a person who is shown to his satisfaction to have acted in good faith in all respects as to the obtaining of the sum in question.

(iv) In the case of the death of a person who could be required to repay a sum under this

Article, the Administrator may require it to be repaid by his or her personal representative.

(v) Any sum which a person is required under this Article to repay may be recovered summarily by the Administrator as a civil debt or may, without prejudice to any other remedy, be recovered by means of deduction from any other sum receivable on account of any allowance by the person to whom the sum was paid, unless it was paid to that person on behalf of another, and in that case it may, without prejudice to any other remedy, be recovered by means of deduction from any other sum receivable on account of any allowance by that other person.

(vi) If, after an allowance in respect of a child has been awarded for one family, facts are brought to the Administrator's notice from which it appears that the child was in fact not included in that family, but was included in another family, during a period for which sums have been paid on account of the allowance awarded, and a subsequent award is made of an allowance in respect of the child for that other family so as to accrue during that period or any part thereof, sums on account of the allowance awarded for that other family shall be payable only—

(a) for the period after such date as may be certified by the Administrator as being the earliest reasonably practicable for taking the necessary action in view of the said facts for stopping payments on account of the allowance for the first-mentioned family; and

(b) for any period before that date in respect of which payment of sums on account of the allowance for the first-mentioned family has not been made, or in respect of which payment has been so made but of sums which have been repaid or recovered under this Article.

10. If any person—

Penalties.

(a) with intent to obtain any sum on account of an allowance either in that person's own right

or on behalf of another, furnish any information which he or she knows to be false in a material particular, or recklessly furnish any information which is false in a material particular, or withhold any material information ;
or

- (b) obtain or receive any sum on account of an allowance either in that person's own right or on behalf of another, knowing that it was not properly payable or not properly receivable by him or her ;

that person shall be liable on summary conviction to imprisonment for a term not exceeding three months with or without hard labour or to a fine not exceeding fifty pounds or to both such imprisonment and such fine.

Exclusion of
Children
removed
from
control of
Parents.

11. If the recipient of any allowance under this Law do, or attempt to do, or suffer any act or thing or if any event happens whereby if the said allowance were payable to him or her absolutely he or she would be deprived of the right to receive the same or any part thereof, such allowance shall forthwith cease to be payable to such recipient, and shall thenceforth be paid to such person as the Administrator shall direct.

Allowances
to be
inalienable.

12. A child shall not be treated as included in any family as respects any period during which he or she is

- (a) detained by virtue of the provisions of the "Loi ayant rapport à l'Asile des Enfants", registered on the Records of this Island on the 24th day of November, 1928, in any institution and is not boarded out in a private house under the provisions of Article V of the said Law ;
- (b) detained by virtue of the provision of the "Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes", registered on the Records of this Island on the 10th day of February, 1917, in any approved reformatory or industrial school and is not absent from the school on licence ; .or

- (c) detained by virtue of an order made under the provisions of Articles 26, 33, 34 or 35 of the said "Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes".

13. (i) The Royal Court may from time to time by Ordinance make Regulations generally carrying this Law into effect and, in particular, subject to the provisions of the Law—

Power to
make
Regulations.

- (a) For prescribing the manner in which payment of allowances shall be made ;
- (b) for prescribing the manner in which the Administrator shall be supplied by claimants with certificates of births, marriages, deaths and of copies of final decrees of dissolution of marriages, or shall be furnished with such information by His Majesty's Greffier as may be necessary or shall be permitted to search the registers of births, marriages, deaths and the records of final decrees of dissolution of marriages maintained by His Majesty's Greffier ;
- (c) for prescribing the manner and time in which claims to allowances shall be made ;
- (d) for prescribing the circumstances in which a person is to be treated as undergoing full-time instruction in a school or full-time training ;
- (e) for prescribing the cases in which payment may be made of any sum on account of an allowance during any period between the making of any claim or the referring of any question and the final determination of the claim or question ;
- (f) for enabling a person to be appointed to exercise, on behalf of a claimant, or of another person to or by whom an allowance belongs or is receivable, who may be or become unable for the time being to act, any right or power which that claimant or other person may be entitled to exercise under this Law and any amendment or modification thereof from time

to time in force, and for authorising a person so appointed to receive any sum on account of an allowance on behalf of that claimant or other person ;

- (g) for imposing upon persons to whom allowances belong or to whom or on whose behalf sums on account of allowances are receivable, the duty to furnish to the Administrator information of facts affecting the right thereto ;
- (h) for prescribing the circumstances in which absence (other than absence at school) or presence shall be treated as temporary ;
- (i) for making provision, in connection with the death of persons having made claims for allowances or to whom allowances belonged or by whom or on whose behalf sums on account of allowances were receivable, for enabling such claims to be proceeded with, for extending the period limited by Article 8 of this Law for obtaining payment of such sums, for authorising payment or distribution of such sums to or amongst persons claiming as personal representatives, legatees, next of kin or creditors of such persons (or, in cases of illegitimacy of deceased persons, to or amongst others), and for dispensing with strict proof of the title of persons so claiming ;
- (j) for regulating the procedure to be followed in the case of any appeal under Article 6 of this Law, whether from the decision of the Administrator to the States Insurance Authority or from the decision of that Authority to the Royal Court ;
- (k) for prescribing any modifications or adaptations of the provisions of this Law to be made under and by virtue of the provisions of Article 18 thereof in pursuance of an arrangement made under and by virtue of paragraph (i) of that Article.

(ii) If any person contravene or fail to comply with any requirements of the Regulations made under this Law he shall be liable on conviction to a fine not exceeding Ten Pounds.

14. Any expenses incurred in the administration of this Law shall be paid out of monies provided by the States of Guernsey. Adminis-
trative
Expenses.

15. For the purposes of this Law— Interpre-
tation.

(i) A man and his wife shall be deemed to be living together unless they are permanently living in separation either by agreement or under an order of a court, or unless one of them has deserted the other and separation which is incident to the desertion is continuing.

(ii) A child being legitimate issue of a deceased spouse of any person by an earlier marriage of the deceased spouse to another shall be treated as issue of that person, and a child being illegitimate issue of a deceased spouse of any person shall be treated as issue of that person so far as regards any period during which the child is living with that person:

PROVIDED that the provisions of this paragraph shall not have effect in a case in which the marriage between the person in question and his or her deceased spouse ceased otherwise than by the deceased spouse's death.

(iii) Children born illegitimate who become legitimated following the subsequent marriage of the parents shall be deemed to be issue of the marriage.

(iv) An illegitimate child shall not be treated as being issue of the child's father.

(v) Subject to the provisions of Article 12 a child shall not be deemed to have ceased to live with a person by reason of any temporary absence, and in particular by reason of absence at any school and a person who has been contributing at any rate to the cost of providing for a child, or has been maintaining a child, shall not be treated as having ceased so to

contribute or to maintain the child by reason of any temporary interruption or reduction of contribution to the cost of providing for the child.

(vi) References in this Law to parents, parent, father, mother or to an illegitimate child shall be construed in accordance with the provisions of this Article.

Meaning of
"providing
for" a
child.

16. (i) In this Law the expression "providing for" a child means making available for the child food, clothing, lodging, education and all other things reasonably required for the child's benefit having regard to all the circumstances.

(ii) For the purposes of this Law—

(a) The making available in kind of anything used for providing for a child shall be treated as a contribution to the cost of providing for such child of an amount equal to the value thereof ;

(b) money paid or a thing made available in kind shall be treated as contributed by any person so far, and so far only, as it is paid or made available at that person's own expense or out of property belonging to that person beneficially.

Limitation
of extent
of
application
of Law.

17. (i) It shall be a condition of the right to any allowance for the family of a man and his wife living together that either—

(a) the man is a British subject whose place of birth is in Guernsey, or, if not,

(b) such requirements as to nationality, residence, place of birth or other matters as may be prescribed are satisfied as respects the man, or his wife, or either or both of them, according as may be provided by regulations ;

and the like condition shall apply in the case of the family of such a man as is mentioned in subparagraph (b) of paragraph (i) of Article 4 of this

Law subject to the limitation that requirements may be prescribed as respects the man only, and in the case of the family of such a woman as is mentioned in sub-paragraph (c) of that sub-paragraph with the substitution for the reference to the man in sub-paragraph (a) of this paragraph of a reference to the woman and subject to the limitation that requirements may be prescribed as respects the woman only.

(ii) To obtain an allowance—

(a) it shall be necessary in the case of a man and his wife living together that each or one of them is in Guernsey ;

(b) the like condition shall apply in the case of the family of such a man as is mentioned in sub-paragraph (b) of paragraph (i) of Article 4 of this Law as respects the man, and in the case of the family of such a woman as is mentioned in sub-paragraph (c) of that paragraph as respects the woman ;

(c) it shall be a further condition that in order for a child to be treated as a member of any family that the child is in Guernsey.

(iii) Temporary presence in or temporary absence from Guernsey shall be disregarded.

18. (i) Where any scheme of family allowances appearing to the States Insurance Authority to be one substantially corresponding to the scheme established by this Law is in force by virtue of legislative enactment in Great Britain or in any other country being a part of His Majesty's dominions that Authority may, with the consent of the States, make reciprocal arrangements with the authority administering the scheme of that other country as respects the conditions mentioned in the last preceding Article on the one hand and any conditions limiting the extent of the scheme of that other country on the other hand.

(ii) Any such arrangements may include provision for the modification or adaptation of the respective schemes in relation to or in connection

Provisions
as to
reciprocal
arrangements
with other
parts of
His Majesty's
Dominions.

with persons affected by the arrangements, and regulations made under this Law may provide for such modification or adaptation of the provisions of this Law as may appear requisite for giving effect to the arrangements or in consequence thereof and for any necessary financial adjustments.

(iii) For the purposes of this Article, the expression "His Majesty's dominions" includes British Protectorates and Protected States and any territory in respect of which a mandate has been accepted by His Majesty and is being exercised by the Government of any part of His Majesty's dominions.

Commence-
ment.

19. This Law or any part thereof shall come into force on such date or dates as the States may by resolution declare.

Definitions.

20. In this Law the following expressions shall have the meanings hereby respectively assigned to them:—

The expression "the Administrator" shall mean such person as is from time to time appointed by the States Appointments Board to administer the payment of allowances under this Law, or, in his absence from duty, the person for the time being responsible for fulfilling his duties.

The expression "apprentice" shall mean a person undergoing full-time training for any trade, business, profession or employment and not in receipt of earnings which provide him, wholly or substantially, with a livelihood.

The expression "Guernsey" shall include the islands of Herm and Jethou.

The expression "date of entitlement" shall mean, in relation to an allowance awarded in respect of any person as being a child included in any family, the date on which all the requirements of this Law and of any relevant regulation for the existence of a right to an allowance in respect of that person for that family became satisfied, or if when the award was made those requirements had become satisfied more

than once, the date on which they last became satisfied.

PROVIDED that the date of entitlement shall in no case be a date earlier than the date of the coming into force of paragraph (i) of Article 2 of this Law.

The expression "month" shall mean a period of thirty days.

SCHEDULE.

1. (i) A person shall be treated for the purposes of this Law as maintaining a child—
- Circumstances in which a person is to be treated as maintaining a child.
- (a) if that person be the only person who contributes to the cost of providing for the child, or if that person contribute to the said cost an amount greater than any other one person contributes thereto ;
- (b) if two or more persons of whom that person is one each of them contribute to the said cost an equal amount that is greater than any other one person contributes thereto, and it be agreed between the said two or more persons, or in default of agreement the Administrator in his discretion decide, that, as between them, that person is to be preferred, and not otherwise :

PROVIDED that a person who under the preceding provisions would be treated as maintaining a child shall not be so treated if his or her contribution to the cost of providing for the child is at a rate less than five shillings a week, unless the child be living with that person.

(ii) For the purposes of this Article, a man and his wife living together shall be treated as one person and amounts contributed by them respectively shall be aggregated accordingly, and references to a person

shall be construed as references to such persons as are mentioned in sub-paragraphs (a) and (b) and (c) respectively of paragraph (i) of Article 4 of this Law, that is to say, a man and his wife living together, such a man as is mentioned in the said sub-paragraph (b) and such a woman as is mentioned in the said sub-paragraph (c).

Determina-
tion of the
family in
which a
child who is
capable of
being treated
as included
in more than
one family is
in fact to be
included.

2. (i) Where a child could otherwise be treated under Article 4 of this Law as included at the same time both in one family as being issue of his or her parents or either of them, and in another family as being maintained by a person other than his or her parents or either of them, the child shall be treated as then included in that family only in which he or she can be treated as included as being issue of the parents or parent.

(ii) Where a child could otherwise be treated under Article 4 of this Law as included at the same time in one family on the ground of the child's being issue of his or her father, and in another family on the ground of the child's being issue of his or her mother, the child shall be treated as then included in one of those families to the exclusion of the other as may be agreed between the father and the mother, or in default of agreement as the Administrator may in his discretion decide.

PETER J. MAUGER,

H.M. Greffier.

INDEX.

Article	1.	Repeal.
"	2.	Payment and Amount of Allowances.
"	3.	Meaning of "Child".
"	4.	Meaning of "Family".
"	5.	Persons to whom allowances are to be paid.
"	6.	Determination of Question as to right to Allowances.
"	7.	Period for which allowances are to accrue.
	8.	Time for obtaining Payment.
"	9.	Adjustment of Over-Payments.
"	10.	Penalties.
"	11.	Allowances to be inalienable.
"	12.	Exclusion of Children removed from control of Parents.
"	13.	Power to make Regulations.
"	14.	Administrative Expenses.
"	15.	Interpretation.
"	16.	Meaning of "providing for" a child.
"	17.	Limitation of Extent of application of Law.
"	18.	Provisions as to reciprocal arrangements with other parts of His Majesty's Dominions.
"	19.	Commencement.
"	20.	Definitions.

SCHEDULE.

Article	1.	Circumstances in which a person is to be treated as maintaining a child.
"	2.	Determination of the Family in which a child who is capable of being treated as included in more than one family is in fact to be included.