

Island of



Guernsey

Ordinance of the States

XXX
2016

Made 12th October, 2016

Coming into Operation 1st January, 2017

The Social Insurance (Guernsey) Law (Amendment) Ordinance, 2016

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THE STATES, in pursuance of their Resolutions of the 26th February, 2015^a and of the 18th February, 2016^b, and in exercise of the powers conferred on them by sections 112B, 115A and 116 of the Social Insurance (Guernsey) Law, 1978, as amended^c, sections 3 and 15 of the Supplementary Benefit (Guernsey) Law, 1971, as amended^d, and all other powers enabling them in that behalf, hereby order:-

Amendment of the Social Insurance (Guernsey) Law, 1978.

1. The Social Insurance (Guernsey) Law, 1978 is amended as follows.

2. In section 18 of the Law for paragraph (d), substitute the following paragraph –
 - (d) parental benefit, comprising maternity grant, adoption grant, maternal health allowance, newborn care allowance and parental allowance,".

3. In section 19 of the Law –
 - (a) in subsection (1) immediately after "maternity grant," insert "adoption grant," and

^a Article III of Billet d'État No. III of 2015.

^b Article XVIII of Billet d'État No. III (Vol. III) of 2016.

^c 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; Vol. XXXIV, p. 510.; Vol. XXXV(1), p. 161; Vol. XXXVI, pp. 123 and 343; Vol. XXXIX, p. 107; Vol. XL, p. 351; Vol. XLI, p. 267; Order in Council No. XXIII of 2002; No. XXIV of 2003; No. XI of 2004 and No. XVIII of 2007; Recueil d'Ordonnances Tome XXVI, p. 177; Ordinance No. XLII of 2009; No. XVII of 2011; No. XXXVIII of 2012; No. XXX of 2013.

^d Ordres en Conseil Vol. XXIII, p. 2 – there are amendments not relevant to this Ordinance.

- (b) in subsection (2) immediately after "maternity grant", insert ", adoption grant".

4. In section 20 of the Law –

- (a) for paragraph (d) of subsection (1), substitute the following paragraph –

"(d) parental benefit,"

- (b) in paragraph (b) of subsection (3) for the words "and maternity allowance", substitute ", maternal health allowance, newborn care allowance and parental allowance".

5. In section 23(2) of the Law for the words "and a maternity allowance", substitute ", a maternal health allowance, a newborn care allowance and a parental allowance".

6. For the cross heading "*Maternity benefit*" immediately before section 27 of the Law, substitute "*Parental benefit*".

7. In section 27 of the Law –

- (a) in subsection (1) –

- (i) immediately after the words "insured person", insert "or is under the school-leaving age",

- (ii) at the end of paragraph (a), insert "and",

- (iii) at the end of paragraph (b)(ii), for ", and" substitute a full stop, and

- (iv) paragraph (c) is repealed, and

(b) subsection (2)(b) and the proviso are repealed.

8. For section 28 of the Law substitute the following sections –

"Adoption grant.

28. (1) Subject to the provisions of this Law, an insured person shall be entitled to an adoption grant if –

- (a) they are ordinarily resident in Guernsey, and
- (b) they satisfy one of the conditions in subsection (2).

(2) The conditions are -

- (a) in the case of an employed person, that they are entitled to basic adoption leave under the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016, and
- (b) in the cases of a self-employed person and a non-employed person, that they would be entitled to basic adoption leave under the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016 –
 - (i) if treated as an employed person for the purposes of that Ordinance, and
 - (ii) disregarding for the purposes of that Ordinance any requirement placed upon an employed person to notify their employers.

(3) No more than one adoption grant shall be paid in

respect of a child.

(4) Regulations may provide that a person who is entitled to an adoption grant shall, if the other conditions for the payment of an adoption grant are satisfied, be entitled to an adoption grant in respect of each child adopted by that person.

Maternal health allowance.

28A. (1) Subject to the provisions of this Law, a woman shall be entitled to a maternal health allowance if –

- (a) she is ordinarily resident in Guernsey,
- (b) she –
 - (i) is pregnant and it has been certified in such manner as may be prescribed that it is expected that she will be confined within a period of 12 weeks, or
 - (ii) has been confined within such period as may be prescribed, and
- (c) she satisfies the relevant contribution conditions.

(2) Subject to the provisions of this section, and subject to such further exceptions and conditions as may be prescribed, the period for which a maternal health allowance is payable shall –

- (a) begin –
 - (i) no earlier than the eleventh week before the expected week of confinement, and

(ii) no later than the date of confinement,
and

(b) end no later than the expiration of the
compulsory maternity leave period.

(3) A woman who has become entitled to a maternal health allowance shall cease to be entitled thereto if she dies before the beginning of the period mentioned in subsection (2); and if such a woman dies after the beginning, but before the end, of that period the allowance shall not be payable for any week subsequent to that in which she dies.

(4) Regulations may provide that a woman who has become entitled to a maternal health allowance shall cease to be entitled thereto if her pregnancy is terminated otherwise than by confinement.

(5) Regulations may provide for disqualifying a woman from receiving a maternal health allowance if, during the period for which the allowance is payable, she does any work as an employed or self-employed person.

(6) Regulations may provide for the computation of a daily rate of maternal health 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.

Newborn care allowance.

28B. (1) Subject to the provisions of this Law, a person shall be entitled to a newborn care allowance if –

- (a) they are ordinarily resident in Guernsey,
- (b) they are a parent of a child to whom a claim for newborn care allowance relates,

- (c) they satisfy the relevant contribution conditions,
- (d) they are under pensionable age, and
- (e) they are the primary care-giver of the child.

(2) Subject to the provisions of this section, and subject to such further exceptions and conditions as may be prescribed, the period for which a newborn care allowance is payable shall be the continuous period of 26 weeks –

- (a) less any period during which a maternal health allowance has been paid in respect of the child, and
- (b) beginning on the expiration of the compulsory maternity leave period.

(3) For the purposes of entitlement to newborn care allowance only one person may at any one time be the primary care-giver of a child.

(4) A person who has become entitled to a newborn care allowance shall cease to be entitled thereto if he or she dies before the beginning of the period mentioned in subsection (2); and if such a person dies after the beginning, but before the end, of that period the allowance shall not be payable on the basis of that person's entitlement for any week subsequent to that in which he or she dies.

(5) Regulations may provide for the circumstances in which a person is, or is to be regarded as, the primary care-giver of a child for the purposes of this section.

(6) Regulations may provide for disqualifying a person

from receiving a newborn care allowance if, during the period for which the allowance is payable, he or she does any work as an employed or self-employed person.

(7) Regulations may provide for the computation of a daily rate of newborn care 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.

(8) Regulations may provide for the persons or class or description of persons who are, or who are to be regarded as, a parent for the purposes of this section.

Parental allowance.

28C. (1) Subject to the provisions of this Law, a person shall be entitled to a parental allowance if –

- (a) they are ordinarily resident in Guernsey,
- (b) they are the adopter of a child,
- (c) they satisfy the relevant contribution conditions,
- (d) they are under pensionable age, and
- (e) they are the primary care-giver of the child.

(2) Subject to the provisions of this section, and subject to such further exceptions and conditions as may be prescribed, the period for which a parental allowance is payable shall be a continuous period of 26 weeks beginning with the week in which –

- (a) the child is placed with the adopter for adoption, or

(b) the adopter commences any adoption leave to which they are entitled under the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016.

(3) For the purposes of entitlement to parental allowance only one person may at any one time be the primary care-giver of a child.

(4) A person who has become entitled to a parental allowance shall cease to be entitled thereto if he or she dies before the beginning of the period mentioned in subsection (2); and if such a person dies after the beginning, but before the end, of that period the allowance shall not be payable on the basis of that person's entitlement for any week subsequent to that in which he or she dies.

(5) Regulations may provide for the circumstances in which a person is, or is to be regarded as, the primary care-giver of a child for the purposes of this section.

(6) Regulations may provide for disqualifying a person from receiving a parental allowance if, during the period for which the allowance is payable, he or she does any work as an employed or self-employed person.

(7) Regulations may provide for the computation of a daily rate of parental 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.

(8) Regulations may provide for the persons or class or description of persons who are, or who are to be regarded as, an adopter for the purposes of this section."

9. In section 29 of the Law –

- (a) in the title for "maternity benefit", substitute "parental benefit",
- (b) in subsection (2) for "maternity benefit", substitute "maternity grant, maternal health allowance or newborn care allowance", and
- (c) insert the following subsection after subsection (2) –

"(3) Without prejudice to any other power to make regulations under any other provision of this Law, regulations may be made under this subsection –

- (a) prescribing modifications and exceptions to, and exemptions from, any provision of this Law relating to entitlement to parental benefit, and
- (b) providing for claims for parental benefit including (without limitation) –
 - (i) the method by which claims may be made, and
 - (ii) the maximum number of claims that may be made."

10. In section 39(1) of the Law for "maternity allowance", substitute "maternal health allowance, newborn care allowance, parental allowance".

11. In section 64(3) of the Law –

- (a) paragraph (d) is repealed,

- (b) for the full stop at the end, substitute a comma, and
- (c) immediately thereafter, insert the following paragraphs-
 - "(f) maternal health allowance,
 - (g) newborn care allowance, and
 - (h) parental allowance."

12. In section 71 of the Law for "maternity", substitute "parental".

13. In section 111 of the Law after subsection (5), insert the following subsections –

"(6) Nothing in this section shall be taken to prohibit the Administrator or any person authorised by him in that behalf from disclosing to any officer appointed under section 13(1) of the Minimum Wage (Guernsey) Law, 2009, any specified information obtained under this Law where, in the course of an inspection of premises or place liable to inspection by an inspector appointed by the Policy & Resources Committee under section 103(1), a breach of any provision of the Minimum Wage (Guernsey) Law, 2009, is suspected.

(7) For the purpose of subsection (6), "specified information" means –

- (a) the name and address of the employer suspected of breaching any provision of the Minimum Wage (Guernsey) Law, 2009,
- (b) the name, address and social insurance number of the employee in respect of whom the breach is suspected, and

- (c) the evidence upon which it is suspected that there has been a breach of any provision of the Minimum Wage (Guernsey) Law, 2009."

14 In the First Schedule to the Law –

- (a) in the cross heading immediately before paragraph 1 for "*maternity allowance*", substitute "*maternal health allowance, newborn care allowance, parental allowance*", and
- (b) in paragraph 1 for "maternity allowance", substitute "maternal health allowance, newborn care allowance, parental allowance".

15. In the Sixth Schedule to the Law immediately after the entries relating to the expression "**Claimant**" –

- (a) in the first column, insert the expression "**Compulsory maternity leave period**", and
- (b) opposite thereto in the second column, insert the following meaning –

"Construe in accordance with section 3(1) of the Maternity Leave and Adoption Leave (Guernsey) Ordinance, 2016."

Amendment of the Supplementary Benefit (Implementation) Ordinance, 1971.

16. In paragraph 11 in Part III of the First Schedule to the Supplementary Benefit (Implementation) Ordinance, 1971 –

- (a) delete "and" at the end of subparagraph (i),
- (b) for the full stop at the end, substitute a comma, and
- (c) immediately thereafter, insert the following

subparagraph –

"(k) maternity grant or adoption grant granted under the Social Insurance (Guernsey) Law, 1978."

Transitional.

17. (1) A non-qualifying woman, who was in receipt of a maternity allowance on 31st December, 2016 shall, on the commencement of this Ordinance, continue to be entitled to a maternity allowance under and subject to the provisions of the Law as they had effect on 31st December 2016 and disregarding the provisions of this Ordinance.

(2) A qualifying woman –

- (a) in respect of whom, on the commencement of this Ordinance, the compulsory maternity leave period has not expired,
- (b) who was in receipt of a maternity allowance on 31st December, 2016, and
- (c) who would, but for the commencement of this Ordinance, thereafter have continued to have been entitled to a maternity allowance,

shall, on the commencement of this Ordinance, be entitled to a maternal health allowance payable for the period beginning on the commencement of this Ordinance, and ending on the expiration of the compulsory maternity leave period.

(3) A qualifying woman –

- (a) in respect of whom the compulsory maternity leave period expired on or before 31st December, 2016,
- (b) who was in receipt of a maternity allowance on 31st December, 2016, and

- (c) who would, but for the commencement of this Ordinance, thereafter have continued to have been entitled to a maternity allowance,

shall, on the commencement of this Ordinance, be entitled to a newborn care allowance.

(4) The period for which a newborn care allowance is payable in respect of a child –

- (a) to whose mother a maternal health allowance is payable under subsection (2), shall be the continuous period of 26 weeks less any period during which a maternity allowance or a maternal health allowance has been paid in respect of the child and
- (b) to whose mother a newborn care allowance is payable under subsection (3), shall be the continuous period of 26 weeks less any period during which a maternity allowance has been paid in respect of the child.

(5) For the avoidance of doubt, entitlement to a newborn care allowance under subsection (3) may be transferred with the consent of the entitled qualifying woman to another person who is entitled under subsection (1) of section 28B of the Law; provided that the cumulative periods for which a newborn care allowance is payable in respect of the child shall not exceed the continuous period of 26 weeks less any period during which a maternity allowance has been paid.

(6) In this section –

- (a) a "**non-qualifying woman**" means a woman –
 - (i) whose date of confinement was expected to fall before the commencement of this Ordinance, and

- (ii) who gave birth to a child before the commencement of this Ordinance,
- (b) a "**qualifying woman**" means a woman –
- (i) whose date of confinement is expected to fall on or after the commencement of this Ordinance, or
 - (ii) who gave birth to a child on or after the commencement of this Ordinance in circumstances where it is certified, in such manner as may be prescribed, that the date of confinement was expected to fall before the commencement of this Ordinance.

Interpretation.

18. (1) In this Ordinance the expression "**the Law**" means the Social Insurance (Guernsey) Law, 1978, and any other expressions have the same meaning as in, and for the purposes of, the Law.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Extent.

19. This Ordinance has effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Citation.

20. This Ordinance may be cited as the Social Insurance (Guernsey) Law (Amendment) Ordinance, 2016.

Commencement.

21. This Ordinance shall come into force on the 1st January, 2017.

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