

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Family Allowances (Qualifications) (Guernsey) Regulations, 1977 *

[CONSOLIDATED TEXT]

NOTE

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* G.S.I. No. 4 of 1977; as amended by the: Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 (No. XIII of 2017); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018 (Alderney Ordinance No. VIII of 2018); Family Allowances (Qualifications) (Amendment) (Guernsey) Regulations, 1983 (G.S.I. No. 1 of 1983); Family Allowances (Qualifications) (Amendment) Regulations, 1992 (G.S.I. No. 6 of 1992); Family Allowances (Qualifications) (Amendment) (Guernsey) Regulations, 2008 (G.S.I. No. 87 of 2008); Family Allowances (Guernsey) (Amendment) Regulations, 2021 (G.S.I. No. 155 of 2021). See also the: Education (Guernsey) Law, 1970 (Ordres en Conseil Vol. XXII, p. 318); Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010).

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(Made on 19th January, 1977.)

The Family Allowances (Qualifications) (Guernsey) Regulations, 1977

THE STATES INSURANCE AUTHORITY, in exercise of the powers conferred upon it by subsection (7) of section nineteen, subsection (1) of section twenty-one, and subsections (1) and (4) of section twenty-two of the Family Allowances (Guernsey) Law, 1950, as amended, and of all other powers enabling it in that behalf, hereby orders: –

PART I

Interpretation

Interpretation.

1. (1) In these regulations, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"allowance" means an allowance under the Law,

"the Law" means the Family Allowances (Guernsey) Law, 1950,

"a medical evacuation case" means a person who satisfies the Administrator that his absence from Guernsey is solely or mainly for the purpose of being treated, and that he is being treated, for a disease or disability which existed before he left Guernsey for that purpose,

"a member of the Forces", **"a mariner"** and **"an airman"** have the meanings respectively assigned to them in the Schedule hereto.

and any other expressions have the same meanings as in the Law.

(2) Except where the context otherwise requires, any reference in these regulations to any enactment or regulations shall be construed as including a reference to that enactment or those regulations as the case may be, as amended, repealed, replaced or revoked by or under any other enactment or by any other regulations.

(3) The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of these regulations as it applies to the interpretation of a Guernsey enactment.

PART II

Requirements as to Residence

[Requirements for married couple living together or for couple co-habiting as if they were married.]

2. It shall be a condition of the right to any allowance at any date for the family of –

- (a) a married couple living together, where neither of them was born in Guernsey, or
- (b) a couple co-habiting as if they were married, where neither of them was born in Guernsey,

that for at least fifty-two weeks in the aggregate out of the two years immediately preceding that date one of the married couple, or one of the couple co-habiting as aforesaid, has either been present in Guernsey or, when not so present, been a member of the Forces, a mariner, an airman or a medical evacuation case.]

NOTE

Regulation 2 was substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part III, paragraph 14(b), with effect from 2nd May, 2017 and, second (in relation to Alderney), by the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 1, Schedule 1, Part III, paragraph 14(b), with effect from 14th June, 2018.¹

Requirements for a person not being married or not living together with his spouse.

3. It shall be a condition of the right to any allowance at any date for the family of a person not being married or not living together with his spouse (and not being a person co-habiting with another person as if they were married), if he was not born in Guernsey, that for at least fifty-two weeks in the aggregate out of the two years immediately preceding that date he has either been present in Guernsey or, when not so present, been a member of the Forces, a mariner, an airman or a medical evacuation case.]

NOTE

Regulation 3 was substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part III, paragraph 14(b), with effect from 2nd May, 2017 and, second (in relation to Alderney), by the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 1, Schedule 1, Part III, paragraph 14(b), with effect from 14th June, 2018.²

Requirements for a woman not having a husband or not living together with her husband.

4. ...

NOTE

Regulation 4 was revoked by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part III, paragraph 14(b), with effect from 2nd May, 2017 and, second (in relation to Alderney), by the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 1, Schedule 1, Part III, paragraph 14(b), with effect from 14th June, 2018.³

Aggregation of periods.

5. For the purposes of this Part of these regulations periods during which a person is present in Guernsey and periods during which, when not so present, he is a member of the Forces, a mariner, an airman, or a medical evacuation case shall be aggregated.

Effect of once satisfying the requirements.

6. Notwithstanding anything contained in this Part of these regulations, where a person has once been a member, otherwise than as a child, of a family for which the right to an allowance existed at any time while he or she was such a member, he or she shall thenceforth be treated as having satisfied the conditions of subsection (1) of section twenty-two of the Law for the purposes of any allowances at any date for that family or for any other family of which he or she may subsequently become a member.

PART III

Presence in or absence from Guernsey

Interpretation.

7. In this Part of these regulations, unless the context otherwise requires, "presence" and "absence" mean presence in and absence from Guernsey respectively.

Presence in or absence from Guernsey.

8. For the purposes of subsections (2) and (2A) of section twenty-two of

the Law –

- (a) the presence of a person at any date shall be treated as temporary unless –
 - (i) for at least twenty-six weeks in the aggregate out of the twelve months immediately preceding that date he has been present in Guernsey, or
 - (ii) that date has been immediately preceded by a period of absence which under the next following paragraph is treated as temporary,
- (b) the absence of a person at any date shall be treated as temporary unless –
 - (i) the absence is for a purpose other than a temporary purpose, or
 - (ii) the absence has lasted for a continuous period exceeding twenty-six weeks, or
 - (iii) that date has been immediately preceded by a period of presence which under paragraph (a) of this regulation is treated as temporary:

PROVIDED that the absence of a person while he is a member of the Forces, a mariner, an airman or a medical evacuation case shall be treated as temporary.

Presence in or absence from Guernsey of a child.

9. For the purposes of subsection (3) of section twenty-two of the Law –
- (a) the presence at any date of a child whose place of birth is not in Guernsey and who would, if his presence were treated other than as temporary, be included for the purposes of the Law in the family of any person other than a parent, shall be treated as temporary unless –
 - (i) he has been present in Guernsey for the whole period of six months immediately preceding that date, or
 - (ii) the period of that presence has been immediately preceded by a period of temporary absence,
 - (b) the absence at any date of a child shall be treated as temporary if and so long as the period of absence is not intended to exceed, and has not exceeded, twenty-six weeks or such longer period as the Administrator may, in any particular case, allow.

NOTE

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 1, with effect from 4th January, 2010, the reference in this regulation to "parent" shall mean, in relation to a child and subject to the conditions in paragraph (a) and (b) of subsection (1) and the exceptions in paragraph (a) and (b) of subsection (2) of that section, a father or mother who has parental responsibility in respect of the child.

PART IV

Absence of a child from a person, and the interruption or reduction of a person's contribution

Interpretation.

10. In this Part of these regulations, unless the context otherwise requires

—

"hospital" means any premises used for the reception and treatment of persons suffering from any illness or disease, including mental illness, or of persons suffering from physical disability or mental defectiveness and any premises used for providing treatment during convalescence or for medical rehabilitation,

"parents" shall be construed in accordance with the provisions of subsections (2), (3), (4) and (5) of section nineteen of the Law,

"providing for a child" has the meaning ascribed thereto in section twenty of the Law.

NOTE

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 1, with effect from 4th January, 2010, the reference in this regulation to "parent" shall mean, in relation to a child and subject to the conditions in paragraph (a) and (b) of subsection (1) and the exceptions in paragraph (a) and (b) of subsection (2) of that section, a father or mother who has parental responsibility in respect of the child.

Absence from a parent, and the interruption or reduction of a parent's contribution.

11. (1) Subject to the provisions of regulation 15 of these regulations, for the purposes of subsection (7) of section nineteen of the Law, any absence of a

child from a parent or any interruption or reduction of a parent's contribution to the cost of providing for a child shall be treated as temporary –

- (a) during such period as the child is undergoing treatment as an in-patient at a hospital,
- (b) during such period as the child is receiving full-time education by attendance at a recognised educational establishment,
- (c) during any other period not exceeding twelve weeks:

PROVIDED that the said period of twelve weeks shall not begin to run until after the termination of any such period falling within sub-paragraph (a) or (b) above.

(2) Notwithstanding the provisions of sub-paragraph (c) of paragraph (1) of this regulation, any absence from a parent and any interruption or reduction of a parent's contribution falling within that sub-paragraph shall cease to be treated as temporary if provision has been made for the child, other than by a person within the meaning of sub-paragraph (2) of paragraph (1) of the Schedule to the Law, for a period of four weeks during which no such person other than that parent has been providing in his own home for the child or contributing to the cost of providing for the child elsewhere at the rate of 38p a week or more.

NOTE

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 1, with effect from 4th January, 2010, the references in this regulation to "parent" shall mean, in relation to a child and subject to the conditions in paragraph (a) and (b) of subsection (1) and the exceptions in paragraph (a) and (b) of subsection (2) of that section, a father or mother who has parental

responsibility in respect of the child.

Absence of a child from a person, other than a parent and interruption or reduction of such a person's contribution.

12. Subject to the provisions of regulation 13 of these regulations, any absence (other than at a recognised educational establishment) of a child from a person other than a parent and any interruption or reduction of the contribution of a person other than a parent to the cost of providing for a child shall, for the purposes of subsection (7) of section nineteen of the Law, be treated as temporary for the first four weeks thereof and no longer.

NOTE

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 1, with effect from 4th January, 2010, the references in this regulation to "parent" shall mean, in relation to a child and subject to the conditions in paragraph (a) and (b) of subsection (1) and the exceptions in paragraph (a) and (b) of subsection (2) of that section, a father or mother who has parental responsibility in respect of the child.

Further provisions relating to absence and to interruption or reduction of contributions.

13. Notwithstanding anything contained in regulations 11 and 12 of these regulations no absence (other than at a recognised educational establishment) of a child from any person and no interruption or reduction of the contribution made by any person to the cost of providing for a child shall be treated as temporary for the purposes of subsection (7) of section nineteen of the Law if –

- (1) the child is committed to the care of a fit person (other than the [Committee for Health & Social Care]) by virtue of any order made under the Children and Young Persons (Guernsey) Law, 1967, so however that this paragraph shall not apply to any absence from, or to

any interruption or reduction of the contribution made by, such fit person,

- (2) the Administrator is satisfied either –
- (a) that the absence, interruption or reduction is or is intended to be other than temporary, or
 - (b)
 - (i) that, if the absence, interruption, or reduction were treated as other than temporary, the child would fall to be treated as included in the family of some other person and that by reason of such inclusion there would come into existence a right to an allowance or increase of allowance under the Law for such a family, and
 - (ii) that it is more fitting that the child should be treated as included-in such family than that the absence, interruption or reduction should be treated as temporary.

NOTES

In regulation 13, the words in square brackets in paragraph (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.⁴

The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 5 and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.⁵

PART V

Full-time education by attendance at a recognised educational establishment

Circumstances in which a person is to be treated as receiving full-time education.

14. [(1)] A person shall be treated for the purposes of the Law as receiving full-time education by attendance at a recognised educational establishment if he is receiving full-time education by attendance at any recognised educational establishment:

PROVIDED that –

[1.] in determining whether a person's education shall be treated as full-time –

(a) any attendance at such an establishment after five o'clock in the afternoon, shall be disregarded,

[(b) any attendance which is less than full-time may, nevertheless, be deemed to be full-time if in the opinion of the Administrator, this would be reasonable in all the circumstances.]

[2.] a person shall not cease to be treated as receiving full-time education during any period if he would have continued to attend that establishment but for the occurrence of any of the following events –

(a) holidays of that person which are recognised by the

authority responsible for that establishment,

- (b) the temporary closure of that establishment by the authority responsible for it,
- (c) absence of that person from that establishment where such absence has been authorised by the authority responsible for the establishment and the absence is by reason of the contact of that person with infectious disease,
- (d) illness of that person, so however that any period of illness after that person has attained the upper limit of the compulsory school age shall not be treated as a period of full-time education unless that person attends that establishment some time between attaining the upper limit of the compulsory school age and the first day of August next following the day on which he attains the age of nineteen years,
- (e) absence from that establishment on not more than two occasions in any calendar year owing to illness (other than illness of that person) occurring at, or any absence from that establishment owing to death at, the home of that person, so however that any such absence after the first two weeks shall not be treated as a period of full-time education,
- (f) the temporary suspension of the ordinary means of transport of that person to that establishment where alternative means of reaching that establishment are not

reasonably available,

- (g) absence from such an establishment owing to the removal of that person from one such establishment to another, so however that any such absence after the first four weeks shall not be treated as a period of full-time education.

[(2)] [[Where a child –

- (a) has attained the upper limit of compulsory school age within the meaning of the Education (Guernsey) Law, 1970 before the beginning of a particular school year or attains that age at any time during that school year, and
- (b) ceases to receive full-time education at a recognised educational establishment in the period from 1st June until 31st August in the same or any following school year,

the child shall be deemed to be receiving full-time education until the Monday next following the 31st August in the same calendar year as the child ceases such education:]

PROVIDED always that where the attendance has terminated otherwise than at the normal conclusion of a recognised course or at any time other than [that] specified, the ending of his receiving full-time education shall immediately be effective.]

NOTES

In regulation 14,

first, the opening paragraph was renumbered as "paragraph (1)", second, in the proviso to paragraph (1) as so renumbered, the numbers in square brackets were substituted, third, paragraph (3) (which paragraph, see infra, was originally inserted by the Family Allowances (Qualifications) (Amendment) Regulations, 1992, regulation 1, with effect from 1st May, 1992) was renumbered as "paragraph (2)" and, fourth, the words in square brackets within paragraph (2) as so renumbered were substituted by the Family Allowances (Guernsey) (Amendment) Regulations, 2021, respectively regulation 2(2)(a), regulation 2(2)(b), regulation 2(2)(c) and regulation 2(2)(d), with effect from 3rd January, 2021;⁶

sub-paragraph (b) of paragraph 1. of the proviso was substituted by the Family Allowances (Qualifications) (Amendment) (Guernsey) Regulations, 1983, regulation 1, with effect from 10th January, 1983;

paragraph (2) (paragraph (3) when originally inserted) was inserted by the Family Allowances (Qualifications) (Amendment) Regulations, 1992, regulation 1, with effect from 1st May, 1992;

the word in square brackets within the proviso to paragraph (2) was substituted by the Family Allowances (Qualifications) (Amendment) (Guernsey) Regulations, 2008, regulation 1(2), with effect from 17th December, 2008.

In accordance with the provisions of subsection (5) of section 16 of the Education (Guernsey) Law, 1970, with effect from 28th October, 1970, the references in this regulation to "compulsory school age" shall be construed in accordance with the provisions of that section.

[Allowance only paid in respect of a child aged under 18.

14A. For the avoidance of doubt, despite any provisions of regulation 14 as to when a person is treated for the purposes of the Law as receiving full-time education at a recognised educational establishment, as referred to in section 2 of the Law, allowance is only paid in respect of a child aged under 18 in accordance with section 1 of the Law.]

NOTE

Regulation 14A was inserted by the Family Allowances (Guernsey) (Amendment) Regulations, 2021, regulation 2(), with effect from 3rd January, 2021.

PART VI

Repeals, citation and commencement

Repeals.

15. The Family Allowances (Guernsey) (Qualifications) Regulations, 1950, the Family Allowances (Guernsey) (Qualifications) (Amendment) Regulations, 1957, the Family Allowances (Guernsey) (Qualifications) (Amendment) Regulations, 1962 and regulation four of the Family Allowances, Social Insurance and Non-Contributory Pensions (Decimalisation of the Currency) (Guernsey) Regulations, 1971 are hereby repealed.

Citation.

16. These regulations may be cited as the Family Allowances (Qualifications) (Guernsey) Regulations, 1977.

Commencement.

17. These regulations shall come into operation on the nineteenth day of January, nineteen hundred and seventy seven.

SCHEDULE

Regulation 1

Meaning of "a member of the Forces", "a mariner" and "an airman"

1. For the purpose of these regulations the expression "**a member of the Forces**" means any person who, being a member of the armed Forces of the Crown raised in the United Kingdom or Guernsey or a member of any nursing or other auxiliary service similarly raised and forming part of or attached to those Forces, is in receipt of service pay in respect of naval, military or air force service, and who immediately prior to becoming a member of the armed Forces or of such nursing or auxiliary service, as the case may be, was ordinarily resident in Guernsey.

2. For the purposes of these regulations the expression "**a mariner**" means any person who is or has been employed under a contract of service either as master or member of the crew of any vessel, or in any other capacity on board any ship or vessel where –

(a) the employment in that other capacity is for the purpose of the ship or vessel or her crew or of any passengers or cargo or mails carried therein, and

(b) the contract was entered into in Guernsey or being entered into elsewhere the person set out from Guernsey for the purpose of entering into such contract:

PROVIDED that –

(i) a person shall not cease to be treated as a mariner by reason only of his having terminated one contract and entered into another without setting out from Guernsey for the purpose of

entering into that other contract but only in so far as the period between the termination of one contract and entering into that other contract does not exceed four weeks,

- (ii) a person shall continue to be treated as a mariner during any period after the termination of any contract and his return to Guernsey but only in so far as he proceeds to Guernsey as soon as reasonably practicable after the termination of such contract.

3. For the purposes of these regulations the expression "**an airman**" means any person who is or has been employed under a contract of service either as commander, pilot, navigator or member of the crew of any aircraft, or in any other capacity on board any aircraft where –

- (a) the employment in that capacity is for the purpose of the aircraft or its crew or of any passengers or cargo or mails carried therein, and
- (b) the contract was entered into in Guernsey or being entered, into elsewhere the person set out from Guernsey for the purpose of entering into such contract:

PROVIDED that –

- (i) a person shall not cease to be treated as an airman by reason only of his having terminated one contract and entered into another without setting out from Guernsey for the purpose of

entering into that other contract but only in so far as the period between the termination of one contract and entering into that other contract does not exceed four weeks,

- (ii) a person shall continue to be treated as an airman during any period after the termination of any contract and his return to Guernsey but only in so far as he returns to Guernsey as soon as reasonably practicable after the termination of such contract.

¹ The corresponding entry in the Arrangement of Regulations was substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part III, paragraph 14(a), with effect from 2nd May, 2017 and, second (in relation to Alderney), by the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 1, Schedule 1, Part III, paragraph 14(a), with effect from 14th June, 2018.

² The corresponding entry in the Arrangement of Regulations was substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and

Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part III, paragraph 14(a), with effect from 2nd May, 2017 and, second (in relation to Alderney), by the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 1, Schedule 1, Part III, paragraph 14(a), with effect from 14th June, 2018.

³ The corresponding entry in the Arrangement of Regulations was revoked by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part III, paragraph 14(a), with effect from 2nd May, 2017 and, second (in relation to Alderney), by the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 1, Schedule 1, Part III, paragraph 14(a), with effect from 14th June, 2018.

⁴ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 8 and section 5, with effect from 6th May, 2004.

⁵ The functions, rights and liabilities of the Health and Social Services Department and its Minister arising under or by virtue of these Regulations were previously transferred to and vested in them, respectively, from the Children Board and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 8 and section 5, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

⁶ Prior to their substitution, the words in square brackets in the renumbered paragraph (2) were amended, in part, by the Family Allowances (Qualifications) (Amendment) (Guernsey) Regulations, 2008, regulation 1(1), with effect from 17th December, 2008.