

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Social Insurance (Benefits) (Transitional) Regulations, 2004 *

[CONSOLIDATED TEXT]

NOTE

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* G.S.I. No. 7 of 2004; as amended by the Social Insurance (States Pension) (Amendment) (Guernsey) Ordinance, 2021 (No. ** of 2021); the Social Insurance (Benefits) (Transitional) (Amendment) Regulations, 2005 (G.S.I. No. 36 of 2005); the Social Insurance (Miscellaneous Amendments) (Incapacity Benefit) Regulations, 2017 (G.S.I. No. 70 of 2017). See also the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 (No. XIII of 2017); the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018 (Alderney Ordinance No. VIII of 2018); the Social Insurance (Collection of Contributions) (Transfer of Functions) Regulations, 2018 (G.S.I. No. 45 of 2018).

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The Social Insurance (Benefits) (Transitional) Regulations, 2004

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(Made on 4th February, 2004.)

The Social Insurance (Benefits) (Transitional) Regulations, 2004

THE GUERNSEY SOCIAL SECURITY AUTHORITY, in exercise of the powers conferred upon it by section 2 of the Social Insurance (Amendment) (Guernsey) Law, 2003^a and sections 11, 97, 116 of and Part II of the Fourth Schedule to the Social Insurance (Guernsey) Law, 1978, as amended^b, 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 –

"appointed day" means the first day of January, nineteen hundred and seventy-nine,

"the Contributory Pensions Laws" means the Contributory Pensions (Guernsey) Laws, 1935 to 1962,

a O. in C. No. XXIV of 2003.

b Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; No. V of 1990; Nos. V and XII of 1993; Ordinance No. XIV of 1993; Ordres en Conseil No. V of 1994, Nos. VI and XIII of 1995; No. I of 1998; No. VI of 1999; No. X of 2000; No. IX of 2001; No XXIV of 2003.

"existing contributor" means a person formerly defined as such in the Social Insurance (Pensions, Existing Contributors) (Transitional) (Guernsey) Regulations, 1964,

"former contributor" means a person who was an insured person under the Law of 1964,

"former transitional regulations" means the Social Insurance (Benefits) (Transitional Provisions) (Guernsey) Regulations, 1978 and any regulations repealed by those regulations,

"the Law" means the Social Insurance (Guernsey) Law, 1978,

"pre-1964 contributor" means a person who was insured, deemed to be or treated as insured, under the Contributory Pensions (Guernsey) Laws, 1935 to 1962, immediately before the fourth day of January, nineteen hundred and sixty-five, and who had not attained the age of seventy before that day,

"the relevant day" means the 31st December 2003, being the day before the coming into force of the [Social Insurance (Amendment) (Guernsey) Law, 2003],

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

(2) Any reference in these regulations to benefit to which a person is entitled shall, unless the context otherwise requires, include increases of such benefit for a child or adult dependant to which that person may be or may have been entitled.

(3) Any reference in these regulations to a person who was entitled to benefit under the Law of 1964 (including benefit by virtue of any regulations made

thereunder) shall include a person who but for any disqualification would have been entitled to such benefit and where, on or after the appointed day, a person is, by virtue of these regulations, given entitlement to benefit under the Law or the entitlement of a person to benefit under the Law of 1964 is continued, such entitlement shall be subject to any disqualification and subject to any reduction in the rate of benefit payable to which that person's entitlement to benefit under the Law of 1964 as aforesaid would have been subject if the Law of 1964 had not been repealed.

(4) 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.

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

NOTES

In accordance with the provisions of the Social Insurance (Collection of Contributions) (Transfer of Functions) Regulations, 2018, regulation 1, with effect from 22nd October, 2018 and subject to the savings and transitional provisions in regulation 3, the functions, rights and liabilities of the Committee for Employment & Social Security and of its President and members relating to the collection of social insurance contributions arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Policy & Resources Committee and its President and members; and, in accordance with regulation 2 of the 2018 Regulations, for any reference herein to the Committee for Employment & Social Security or its President or members, however expressed, there was substituted, to the extent that the reference related to the collection of social insurance contributions, a reference to the Policy & Resources Committee or (as the case may be) its President or members.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

The words in square brackets in the definition of the expression "the relevant day" in paragraph (1) shown, incorrectly, in the printed version of this regulation, as the "Social Insurance (Amendment) (Guernsey) Law, 2003" should read the "Social Insurance (Guernsey) (Amendment) Law, 2003".

PART II
SHORT-TERM BENEFITS

Continuity of entitlement to increase of benefit for adult and child dependants from 1st January 2004.

2. (1) In this part of these regulations –

"**claim**" has the same meaning as in the Law and, for the avoidance of doubt, any period of unemployment or incapacity for work separated from a preceding period of unemployment or incapacity for work by six or more days (Sundays being disregarded) shall constitute a further claim,

"**entitled**" means entitled in accordance with the provisions of the Law and regulations in force on the relevant day.

(2) Subject to regulation 3 and the further provisions of this regulation, a person entitled, at the relevant day, to an increase or increases of industrial injury benefit, sickness benefit or unemployment benefit in respect of a dependant or dependants shall continue, while that claim for benefit continues, so to be entitled in respect of any period of unemployment or incapacity for work which forms part of that claim.

(3) In the case of industrial injury benefit or sickness benefit a claim shall continue until –

(a) the claimant ceases to be incapable of work or is

disqualified for receiving benefit, or

(b) the claimant becomes entitled to [incapacity] benefit.

(4) In the case of unemployment benefit a claim shall continue until –

(a) the claimant ceases to be unemployed, or becomes incapable of work, or

(b) the claimant is disqualified for receiving unemployment benefit in accordance with the provisions of section 25 or 26 of the Law, or

(c) the claimant's entitlement to unemployment benefit has become exhausted under section 24 of the Law.

(5) Subject to regulation 3 of these regulations, a person entitled, at the relevant day, to an increase or increases of [incapacity] benefit in respect of a dependant or dependants shall continue, while that claim for benefit continues, so to be entitled in respect of any period of incapacity for work which forms part of that claim until the earliest of –

(a) his ceasing to be incapable of work or being disqualified for receiving benefit, or

(b) his becoming entitled to [a States pension], or

(c) 1st January 2005:

Provided that in relation to a person who had returned to work after a substantial

period of incapacity, and again becomes entitled to receive [incapacity] benefit, the Administrator may in exceptional circumstances and in his absolute discretion deem the claim to have continued so that an increase or increases may again be payable in accordance with this paragraph.

(6) Where a claim to industrial injury or sickness benefit ends in accordance with paragraph 3(b) the rate of [incapacity] benefit shall be increased to the rate of benefit previously payable and shall be paid in accordance with the provisions of paragraph (5).

NOTES

In regulation 2,

the word "incapacity" in square brackets, wherever occurring, was substituted by the Social Insurance (Miscellaneous Amendments) (Incapacity Benefit) Regulations, 2017, regulation 1(e), with effect from 20th September, 2017;

the words in square brackets in paragraph (5)(b) were substituted by the Social Insurance (States Pension) (Amendment) (Guernsey) Ordinance, 2021, section 2(b), with effect from 1st March, 2021.

Increase not payable for adult dependant in receipt of a short-term benefit.

3. Notwithstanding the provisions of regulation 2, no increase of benefit shall be payable for any period in respect of an adult dependant to whom, for the same period, industrial injury benefit, [incapacity] benefit, maternity allowance, sickness benefit or unemployment benefit is payable.

NOTE

In regulation 3, the word in square brackets was substituted by the Social Insurance (Miscellaneous Amendments) (Incapacity Benefit) Regulations, 2017, regulation 1(e), with effect from 20th September, 2017.

PART III
LONG-TERM BENEFITS

Modifications relating to "entry into insurance" under the Law.

4. (1) Any person who was insured under the Contributory Pensions Laws and who had, at any time between the first day of January, nineteen hundred and fifty-two and the third day of January nineteen hundred and sixty-five, paid or had credited any contribution under those Laws, shall be treated as an existing contributor within the meaning of the Law of 1964 without regard to whether or not he fell to be so treated under that Law or any Ordinance or regulation made thereunder; and whether or not he was insured under the Law of 1964, he shall in every respect be treated as if he were a former contributor who had been an existing contributor.

(2) For the purpose of establishing the entitlement of any person to widow's benefit, or [a States pension], sub-paragraph (1) of paragraph 4 of the First Schedule to the Law shall have effect in relation to any case where the relevant person within the meaning of that paragraph is a former contributor who was an existing contributor within the meaning of the Law of 1964 as if the reference to entry into insurance were a reference –

- (a) to the first day of January, nineteen hundred and fifty-two, if on that day he had attained the age of sixteen, or
- (b) to the date on which he attained that age, if he attained that age after the first of January, nineteen hundred and fifty-two.

NOTE

In regulation 4, the words in square brackets in paragraph (2) were

substituted by the Social Insurance (States Pension) (Amendment) (Guernsey) Ordinance, 2021, section 2(b), with effect from 1st March, 2021.

[States pensions] and survivor's benefit for women married at the relevant day.

5. (1) Where a woman not having attained pensionable age is upon the relevant day a married woman, she may elect that for the purpose of calculating her husband's right to a survivor's benefit or her right to [a States pension] by virtue of her own contributions paid by or credited to her, there shall be treated as so paid or credited from the commencement of the relevant period to that date –

- (a) for each contribution year falling wholly or partly before the relevant day, or
- (b) for each contribution year up to and including the relevant day falling wholly or partly within the period of the marriage,

a number of reckonable contributions equal to 62% of the yearly average, not exceeding 52, ascertained as at the relevant day or, if earlier, as at the date of her husband's attaining pensionable age, of the reckonable contributions paid by or credited to her husband instead of the number of such contributions paid by or credited to her for that year.

(2) Where at the relevant day the husband would, had he then died, have satisfied, as respects the number of reckonable contributions required to have been paid since entry into insurance, the contribution conditions for [a States pension], the wife shall, for the purpose of her right to a survivor's benefit or [a States pension] by virtue of her own insurance, be deemed to have satisfied those contribution conditions in that respect.

NOTES

In regulation 5, the words, first, "States pensions" and, second, "a States pension" in square brackets, wherever occurring, were substituted by the Social Insurance (States Pension) (Amendment) (Guernsey) Ordinance, 2021, section 2, respectively paragraph (a) and paragraph (b), with effect from 1st March, 2021.

In accordance with the provisions of, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 2, Schedule 2, with effect from 2nd May, 2017 and, second (in relation to Alderney), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 2, Schedule 2, with effect from 14th June, 2018, section 1(2) and section 2 of, respectively, the Same-Sex Marriage (Guernsey) Law, 2016 and the Same-Sex Marriage (Alderney) Law, 2017 do not apply in respect of this regulation.

[States pensions] and survivor's benefit for women whose marriages have or are deemed to have ended before 1st January 2004.

6. (1) Subject to paragraph (4), a woman who not having attained pensionable age is upon the relevant day a woman who had been a married woman before 1st January 2004, but whose marriage had come to an end, whether or not by reason of her husband's death, before 1st January 2004, may elect that for the purpose of calculating her husband's right to a survivor's benefit should she remarry after the relevant day or her right to [a States pension] by virtue of her own contributions paid by or credited to her, there shall be treated as so paid or credited from the commencement of the relevant period to the relevant day –

- (a) for each contribution year falling wholly or partly before the termination of her marriage, or
- (b) for each contribution year falling wholly or partly within the period of the marriage,

a number of reckonable contributions, not exceeding 52, equal to the yearly average ascertained as at the date of the termination of the marriage or, if earlier, as at the date

of her husband's attaining pensionable age, of the reckonable contributions paid by or credited to her husband instead of the number of such contributions paid by or credited to her for that year.

(2) Where at the date of the termination of a marriage a man had, or would, had he then died, have satisfied, as respects the number of reckonable contributions required to have been paid since entry into insurance, the contribution conditions for a survivor's benefit or [a States pension], his wife shall, for the purpose of her right to a survivor's benefit or to [a States pension] by virtue of her own insurance, be deemed to have satisfied those contribution conditions in that respect.

(3) The foregoing provisions of this regulation shall not apply in the case of a woman whose marriage has been terminated before 1st January 2004 if, being under pensionable age on the date of that termination, she has remarried after that termination and before that date.

(4) For the purposes of this regulation, a woman –

- (a) not having attained pensionable age,
- (b) who is on the relevant day a married woman, and
- (c) in respect of whose marriage a final decree of divorce or nullity of marriage is granted before 1st January 2005,

shall be treated as if she were a woman of a type described in paragraph (1) and, for the calculation of the average of her former husband's contributions, her marriage shall be deemed to have ended on 31st January 2003.

NOTES

In regulation 6, the words, first, "States pensions" and, second, "a States pension" in square brackets, wherever occurring, were substituted by the Social Insurance (States Pension) (Amendment) (Guernsey) Ordinance, 2021, section 2, respectively paragraph (a) and paragraph (b), with effect from 1st March, 2021.

In accordance with the provisions of, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 2, Schedule 2, with effect from 2nd May, 2017 and, second (in relation to Alderney), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 2, Schedule 2, with effect from 14th June, 2018, section 1(2) and section 2 of, respectively, the Same-Sex Marriage (Guernsey) Law, 2016 and the Same-Sex Marriage (Alderney) Law, 2017 do not apply in respect of this regulation.

Women over pensionable age whose husbands are under 65 at the relevant day.

7. (1) Where a woman who has attained pensionable age is married at the relevant day to a man who has not attained that age, she may elect that for the purpose of calculating her husband's right to a survivor's benefit or her right to [a States pension] by virtue of her own contributions paid by or credited to her, there shall be treated as so paid or credited from the commencement of the relevant period to that date –

- (a) for each contribution year falling wholly or partly before the year in which she attained pensionable age, or
- (b) for each contribution year up to and including the year before that in which she attained pensionable age falling wholly or partly within the period of the marriage,

a number of reckonable contributions equal to 62% of the yearly average (not exceeding 52), ascertained as at the relevant day, of the reckonable contributions paid

by or credited to her husband instead of the number of such contributions paid by or credited to her for that year.

(2) Where a woman has made an election under paragraph (1), if her husband would, had he died at the relevant day, have satisfied, as respects the number of reckonable contributions required to have been paid since entry into insurance, the contribution conditions for a survivor's benefit or [a States pension], she shall, for the purpose of her right to [a States pension] by virtue of her own insurance, be deemed to have satisfied those contribution conditions in that respect.

NOTES

In regulation 7, the words "a States pension" in square brackets, wherever occurring, were substituted by the Social Insurance (States Pension) (Amendment) (Guernsey) Ordinance, 2021, section 2(b), with effect from 1st March, 2021.

In accordance with the provisions of, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 2, Schedule 2, with effect from 2nd May, 2017 and, second (in relation to Alderney), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 2, Schedule 2, with effect from 14th June, 2018, section 1(2) and section 2 of, respectively, the Same-Sex Marriage (Guernsey) Law, 2016 and the Same-Sex Marriage (Alderney) Law, 2017 do not apply in respect of this regulation.

[States pensions] for widows married before 2004.

8. (1) A woman who was married and under pensionable age at the appointed day and who is widowed before pensionable age by the death of the husband to whom she was married at the appointed day may, if she has not remarried before attaining pensionable age, elect to have her entitlement to [a States pension] calculated in accordance with the provisions of the next following paragraph of this regulation.

(2) For each year in the period commencing with either –

- (a) the year in which she attained age 20, or
- (b) the year of her marriage,

and ending with the year of her husband's death, there may be substituted, for the number of reckonable contributions paid by or credited to her, a number of reckonable contributions equal to the yearly average (not exceeding 52) of the number of reckonable contributions paid by or credited to her late husband, calculated over the relevant period applicable in his case.

(3) Where at the date of his death a man had, satisfied, as respects the number of reckonable contributions required to have been paid since entry into insurance, the contribution conditions for [a States pension], his wife shall, for the purpose of her right to [a States pension] by virtue of this regulation, be deemed to have satisfied those contribution conditions in that respect.

NOTES

In regulation 8, the words, first, "States pensions" and, second, "a States pension" in square brackets, wherever occurring, were substituted by the Social Insurance (States Pension) (Amendment) (Guernsey) Ordinance, 2021, section 2, respectively paragraph (a) and paragraph (b), with effect from 1st March, 2021.

In accordance with the provisions of, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 2, Schedule 2, with effect from 2nd May, 2017 and, second (in relation to Alderney), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 2, Schedule 2, with effect from 14th June, 2018, section 1(2) and section 2 of, respectively, the Same-Sex Marriage (Guernsey) Law, 2016 and the Same-Sex Marriage (Alderney) Law, 2017 do not apply in respect of this regulation.

[Condition for continuing entitlement and [States pensions] for women in receipt

of widow's pension at 31st December 2003.

9. (1) It shall be a condition of continued entitlement to a widow's pension under the provisions of section 2(1) of the Social Insurance (Guernsey) (Amendment) Law, 2003 that payment in respect of such entitlement shall have been continuous since 1st January, 2004.

(2) Where a woman entitled to a widow's pension in accordance with section 2(1) of the [Social Insurance (Amendment) (Guernsey) Law, 2003] would not, apart from the operation of this regulation, be entitled at pensionable age to [a States pension] at least equal to that of the widow's pension previously payable, she shall be entitled to be credited with such number of Class 3 contributions as will cause the rate of [States pension] at least to equal that of the former benefit.]

NOTES

Regulation 9 was substituted by the Social Insurance (Benefits) (Transitional) (Amendment) Regulations, 2005, regulation 1, with effect from 1st January, 2004.

In regulation 9, the words, first, "States pensions" and "States pension" and, second, "a States pension" in square brackets, wherever occurring, were substituted by the Social Insurance (States Pension) (Amendment) (Guernsey) Ordinance, 2021, section 2, respectively paragraph (a) and paragraph (b), with effect from 1st March, 2021.

In accordance with the provisions of, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 2, Schedule 2, with effect from 2nd May, 2017 and, second (in relation to Alderney), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 2, Schedule 2, with effect from 14th June, 2018, section 1(2) and section 2 of, respectively, the Same-Sex Marriage (Guernsey) Law, 2016 and the Same-Sex Marriage (Alderney) Law, 2017 do not apply in respect of this regulation.

The words in square brackets in subsection (2) shown, incorrectly, in the printed version of this regulation, as the "Social Insurance (Amendment) (Guernsey) Law, 2003" should read the "Social Insurance (Guernsey) (Amendment) Law, 2003".

Continuity of entitlements conferred by former transitional regulations.

10. Any entitlement to benefit conferred by or through the agency of any provision of the former transitional regulations shall continue after the relevant day as if they had not been repealed.

Repeal.

11. The Social Insurance (Benefits) (Transitional Provisions) (Guernsey) Regulations, 1978^d are repealed.

Citation.

12. These regulations may be cited as the Social Insurance (Benefits) (Transitional) Regulations, 2004.

Commencement.

13. These regulations shall be deemed to have come into force on 1st January 2004.

^d S.I. 1978 No. 30.

EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport)***

These regulations provide, following the introduction of the Authority's proposals for gender equality in social insurance –

- (a) for the limited continuation of the payment of increases for dependants for industrial injury, invalidity, sickness and unemployment benefits,
- (b) the technical mechanism for the enhancement of the contribution records of women who were married, widowed or divorced at the end of 2003, for the purposes of their eventual entitlement to old age pension, or their husband's entitlement to a survivor's benefit in the event of their death,
- (c) for the continuation of certain important provisions conferring entitlement to benefits from contributions paid prior to the first Social Insurance Law.

The original regulations having been annulled by resolution of the States on 29th January 2004, they are reissued with an amendment to Regulation 6 which reflects the will of the States. This amendment extends by twelve months the time available in which women whose marriages had ended before 1st January 2004 could improve their potential entitlement to an old age pension by obtaining a divorce before the commencement of the Authority's reforms.

** The text of this Explanatory Note is as it was when the Statutory Instrument was first made – that is to say that the Explanatory Note has not been updated to take account of any changes made by subsequent amending enactments or subsequent amending Statutory Instruments with their own Explanatory Notes, which latter should thus be, if necessary, consulted in the original. The "Authority" referred to in this Explanatory Note has since been replaced by the Committee for Employment & Social Security; invalidity benefit has since been replaced with incapacity benefit; and the old age pension has been replaced with the States pension.