

STATES OF JERSEY



Jersey

DRAFT SOCIAL SECURITY LAW (PARENTAL ALLOWANCE AND DEATH GRANT) (JERSEY) AMENDMENT REGULATIONS 202-

**Lodged au Greffe on 1st October 2024
by the Minister for Social Security
Earliest date for debate: 12th November 2024**

STATES GREFFE

REPORT

Executive Summary

Subject to the approval of the Assembly, these amending Regulations will make changes to two separate benefits which are part of the Social Security contributory system, specifically, the parental allowance and the death grant.

The Regulations, without changing any policy intent, also restructure some other relevant parts of the law in order to conform with established legislative drafting standards.

To support the effective use of policy, law drafting and Assembly resources, these measures are brought forward in a single set of Regulations. However, the Regulations have been carefully drafted to allow Members to make separate decisions on the two separate proposals.

This proposition supports the Community and Economic Wellbeing pillars of the Island Outcome Indicators which underpin this Government's Common Strategic Policy and are also part of a broader Government policy of providing support to parents when they need it most.

Parental allowance

The parental allowance is a weekly contributory benefit which provides financial support to parents to allow them to take time off work to care for their new baby.

In bringing these Regulations to the Assembly, the Minister for Social Security is acting on the Assembly's approval of [P.52/2023](#) – lodged by Deputy Raluca Kovacs – which requests the Minister to bring forward proposals to provide additional financial support to parents who have a baby that requires neonatal care, whether as a result of being premature or developing an illness in the first days of life. That proposition states, inter alia:

“...that provision, including financial support, should be established to support parents who have preterm babies, or babies requiring neonatal care, and to request the Minister for Social Security to bring forward the proposals for this provision for approval by the Assembly prior to the end of December 2024.”

These changes to parental allowance will implement this decision by making provision for the award of extra weeks of the allowance to parents that have a baby who is born pre-term and requires urgent hospital treatment or requires urgent hospital treatment in the first 28 days of life (neonatal care).

Death grant

The death grant is a one-off contributory benefit which is paid when someone dies.

The rules in both the Employment and Social Security laws that deal with parental leave and parental benefits provide parents with these rights following a stillbirth.

Currently, the rules for the death grant do not recognise a stillbirth and the Minister for Social Security is bringing this proposal forward in order to address this disparity. If approved, the changes to the death grant will extend eligibility to include the parents of babies who are stillborn.

Parental Allowance

Summary

This part of the Regulations will amend the [Social Security \(Jersey\) Law 1974](#) in the following ways:

1. Provide up to 4 weeks of additional parental allowance to parents whose baby requires urgent hospital care within the first 28 days of the baby's life ("neonatal care").
2. Provide up to 12 weeks of additional parental allowance to parents whose baby was born prematurely and requires urgent hospital care.
3. Enable parents who are awarded extra weeks to take their parental allowance in four blocks rather than three. This will provide parents with more flexibility when deciding how to split and allocate their weeks of allowance.

Background

In 2020, following proposals lodged by the then Minister for Social Security, the Assembly agreed to the implementation to a range of Family Friendly changes to the Social Security Law. This included updating the previous Maternity Allowance and Grant to include all parents including adoptive and surrogate parents as well as extending the number of available weeks to 32. The benefits were accordingly renamed the Parental Allowance and Grant.

The 32-week entitlement is shared between parents and eligibility for the benefit is based on each parent's social security contribution record. The weekly payment value is the same as other working age contributory benefits – currently £265.93 per week.

Proposals

Aim

In developing these amendments to the Law, the Minister has aimed to ensure that they align as closely as possible with the recommendations and suggestions made by Deputy Kovacs in her original proposition.

The policy of awarding extra weeks of parental allowance not only recognises the implementation of an existing States Assembly decision [P.52/2023](#) but more broadly, it aims to support parents in respect of the disruption to the planned period of time off following the birth.

Financial and work arrangements are likely to be disrupted due to the early birth of a child or the need for the child to receive hospital care in the first few weeks of life. The additional weeks of allowance seek to enable the parent to adjust their overall leave arrangements to accommodate this unplanned event.

In practice

The number of additional weeks will be allocated based on the timing of the birth and will use medical (maternity unit) guidance to define when is considered "pre-term" e.g. if a baby is born in or before the 37th week of pregnancy, parents are entitled up to an additional 12 weeks of parental allowance. If the baby is born at or after 38 weeks and requires neonatal care i.e. an urgent hospital stay of more than 7 days (not necessarily consecutive), in the first 28 days of its life, the parents can receive up to 4 additional weeks of parental allowance.

This support will be available to a parent who satisfies the general eligibility conditions for parental allowance and the extended period will be initiated by a confirmation from an appropriate hospital representative and applied by an Officer in Customer and Local Services. One extra week of allowance will be provided if the baby requires 7 days of urgent hospital care in the first 28 days of life. Additional weeks will be provided up to a maximum of 4 weeks for a baby born at or after

38 weeks and up to 12 weeks for a premature baby, with one extra week available for each additional 1 to 7 days of urgent hospital care.

In addition – changes are proposed to enable parents that are eligible for the extra weeks to decide to take it in four blocks, rather than three. This will provide parents with more flexibility to balance their childcare and work responsibilities.

Redundant reference

These Regulations also remove a redundant reference to parental allowance which appears in Article 15(2) (short term incapacity allowance) of the Law. The opportunity has also been taken to update this Article in line with established legislative drafting standards – the change makes no material difference to the legislation.

Financial and staffing implications

The volume of these claims will be relatively small. The administration of these changes will not require any additional staffing, they will be implemented using existing Customer and Local Services departmental resources.

It is difficult to estimate the numbers of parents who might be eligible for the extra weeks of allowance, however data gathered this year from the Maternity Unit at the Jersey General Hospital supports the estimates that Deputy Kovacs used in her original proposition.

In line with the estimate made in Deputy Kovacs' proposition an additional spend of £300,000 from the Social Security Fund has been provided for. However, as the Deputy explained in her report, it is likely that the actual spend will be lower.

Death Grant

Summary

This part of the Draft Social Security Law (Parental Allowance and Death Grant) (Jersey) Amendment Regulations 202- (the “amending” Regulations), would, if adopted amend the [Social Security \(Jersey\) Law 1974](#) to include parents who have suffered a stillbirth to receive a death grant if they meet the contribution conditions.

Background

The parents of a stillborn child receive the same parental rights as other parents in respect of parental employment rights and parental allowance payments. However, the Social Security (Jersey) Law 1974 continues to differentiate between the death of a child and a stillbirth for the payment of a Death Grant, a benefit designed to help families with the cost of a funeral or cremation.

Proposals

This policy change extends the payment of a death grant to a parent of a stillborn child.

The Regulations also address a minor anomaly in the treatment of civil partners to ensure that they have the same rights of married couples in respect of eligibility for a death grant.

Financial and staffing implications

There are no staffing implications for this change to death grant rules.

According to the Birth and Breastfeeding profile annual report, Jersey's stillbirth rate for 2021 to 2023 was 3.5 per 1,000 births, lower than the UK. Therefore, there is an average of 2 to 3 stillbirths per year in Jersey. The current value of a Death Grant is £1,063.72 provided as a single payment. Therefore, the annual cost to the Social Security Fund is expected to be less than £5,000 per year.

Conclusion

Review

As with any new change to benefits, Government will closely monitor the implementation over the coming years in case further policy changes are required in either area.

Implementation timeline

If the Assembly approves these changes to the Social Security Law, the Regulations will be enacted via Ministerial Order prior to the end of 2024.

Children's Rights Impact Assessment

A Children's Rights Impact Assessment (CRIA) has been prepared in relation to this proposition and is available to read on the States Assembly website.

EXPLANATORY NOTE

The Social Security Law (Parental Allowance and Death Grant) (Jersey) Amendment Regulations 202- (the “Regulations”), if passed, will amend Article 22 (entitlement to parental allowance) and Article 26 (death grant) of the Social Security (Jersey) Law 1974 (the “Law”). The amendment of Article 22 of the Law will extend the standard 32-week period for the payment of the parental allowance in certain cases. In the case of a baby requiring urgent medical care in hospital that begins in the first 28 days of life, the period for which the parental allowance is payable is extended to a maximum period of 12 weeks if the baby is born prematurely, and to a maximum period of 4 weeks otherwise.

The amendment of Article 26 of the Law will provide that a death grant is payable in respect of a stillborn child.

Regulation 1 provides that the Regulations amend the Law.

Regulation 2 amends Article 1 of the Law to include a definition to replace recurring references to the Employment (Jersey) Law 2003 (the “Employment Law”), and to introduce definitions for recurring references in the Law to death grant, parental allowance and parental grant.

Regulation 3 inserts Article 11A into the Law, which is a new interpretation provision for Part 3 (benefit) of the Law. This Article replaces Article 23 (interpretation of Articles 21 and 22) of the Law. Article 11A of the Law introduces, for the definition of the word “birth”, a definition for “stillborn child” which is derived from the definition in Article 49(1) of the Marriage and Civil Status (Jersey) Law 2001.

Regulation 4 amends Article 15 of the Law for the purpose of removing an incorrect and discriminatory reference to a parental allowance. The opportunity is taken to clarify entitlement to short term incapacity allowance if a person has been entitled to that benefit for 364 days and to restructure the Article to bring it into line with modern, and gender neutral, drafting style. The original policy intent is otherwise unaffected by this amendment.

Regulation 5 relocates the definition “overseas adoption” from Article 23 of the Law to Article 21 (entitlement to parental grant) of the Law because the expression is only used in Article 21 (see explanation of *Regulation 8*).

Regulation 6 amends Article 22 of the Law for the purpose of clarifying the provisions relating to entitlement to the parental allowance. Amended Article 22 re-enacts existing Article 22(1) and (2) of the Law in a simpler form. The original policy intent is unaffected by this amendment.

Regulation 7 splits the remaining provisions of existing Article 22 of the Law into the following separate Articles –

New Article 22A of the Law re-enacts existing Article 22(4) and (5) of the Law relating to the standard 32-week period for which the parental allowance is payable to a parent. The original policy intent is unaffected by this amendment.

New Article 22B of the Law is an entirely new provision that extends the 32-week period for the payment of the parental allowance. A parent is entitled to the payment of the parental allowance for a further period of up to 4 weeks if their child is born in, or after, week 38 and requires urgent medical care in hospital at any time in the first 28 days after birth. If the child is born in, or before week 37, a parent is entitled to the payment of the parental allowance for a further period of up to 12 weeks if the child requires urgent medical care in hospital care at any time in the first 28 days after birth. For the parental allowance to be payable in these circumstances, the child must have been hospitalised for a minimum period of at least 7 days in total. The 7 days may be accrued consecutively, or in aggregate. The parental allowance is payable in respect of a child who remains in hospital beyond their first 28 days of life, but in that case the child must already have

received at least 7 days of urgent medical care in the first 28 days and for any days falling after day 28 the child must receive medical care in hospital on consecutive days.

New Article 22C of the Law re-enacts existing Article 22(3), and (6) to (9) of the Law relating to whom the parental allowance is payable and over what period. The existing 3 separate periods for which the parental allowance is payable is extended to 4 separate periods if the parental allowance is payable for an extended period under new Article 22B.

New Article 22D of the Law re-enacts the Order making power under existing Article 22(10). The original policy intent is unaffected by this amendment.

Regulation 8 deletes Article 23 of the Law in view of its replacement by new Article 11A of the Law.

Regulation 9 amends Article 26 of the Law. The amendments replace the provisions of the previous Article 26, and additionally provides that a death grant is payable in respect of a stillborn child of a person who satisfies the relevant contribution conditions. The new Article also provides for a definition of “stillborn child”.

Regulation 10 is a consequential amendment arising from the introduction of the definition “parental allowance” in Article 1 of the Law as amended by *Regulation 2*.

Regulation 11 makes consequential amendments arising from the introduction of the short-hand references to the Employment Law in Article 1 of the Law as amended by *Regulation 2*.

Regulation 12 provides for the title by which these Regulations may be cited and for their coming into force on a day to be specified under an Order to be made by the Minister.

Re-issue Note

This proposition has been re-issued to make a correction on page 13 in the inserted Article 22D(a) and (b). The references to “Article 22C(5)(a)” should both read “Article 22C(4)(a)”.



Jersey

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES make these Regulations under Article 50 of the [Social Security \(Jersey\) Law 1974](#) –

1 Amendment of the [Social Security \(Jersey\) Law 1974](#)

These Regulations amend the [Social Security \(Jersey\) Law 1974](#).

2 Article 1 (interpretation amended)

In Article 1(1) –

- (a) after the definition “contract of service” there is inserted –
“ “death grant” means the benefit payable under Article 26;”;
- (b) after the definition “employed person” there is inserted –
“ “Employment Law” means the [Employment \(Jersey\) Law 2003](#);”;
- (c) after the definition “Order” there is inserted –
“ “parental allowance” means the benefit to which a person is entitled under Article 22;
“parental grant” means the benefit to which a person is entitled under Article 21;”.

3 Article 11A inserted

Before Article 12 (description of benefits) there is inserted –

“11A Interpretation of Part 3

- (1) In this Part –
“adoption” means the adoption of a child under the [Adoption \(Jersey\) Law 1961](#);
“birth” means the birth of a living or stillborn child;

“birth mother” means a woman who gives birth to a child, but does not include a host mother;

“host mother” means a woman who gives birth to a child who is, or is to be, placed with a surrogate parent;

“parent” means a person, other than a host mother, who –

- (a) is, or is to be –
 - (i) named on the birth certificate or adoption certificate of a child, or
 - (ii) a surrogate parent; and
- (b) has, or expects to have, responsibility for the upbringing of the child;

“post-natal period” means the continuous period of 6 weeks beginning with the day on which birth occurs.

- (2) In the definition “birth”, “stillborn child” has the meaning given to “stillborn child” in the definition “stillbirth” in Article 49(1) of the [Marriage and Civil Status \(Jersey\) Law 2001](#) (the “2001 Law”).
- (3) In the definitions “host mother” and “parent”, “surrogate parent” has the meaning given in Article 55A of the Employment Law.
- (4) In the definition “parent” –
 - (a) for the purposes of sub-paragraph (a) of the definition –
 - (i) “adoption certificate” means a certified copy, issued under Article 60(2) of the 2001 Law, of an adoption registration under that Law,
 - (ii) “birth certificate” means a short birth certificate issued under Article 60(1) of the 2001 Law relating to a birth registration under that Law;
 - (b) for the purposes of sub-paragraph (b) of the definition, a person is treated as being a parent if they satisfy sub-paragraph (a) of the definition and would have satisfied sub-paragraph (b) of the definition but for the fact that the child was stillborn (within the meaning of Article 49(1) of the 2001 Law) or has died.”.

4 Article 15 (short term incapacity allowance) amended

For the text of Article 15 there is substituted –

- “(1) A person is entitled to short term incapacity allowance in respect of any day of incapacity for work during a period of incapacity for work if they –
 - (a) are under pensionable age on any day for which this benefit is claimed;
 - (b) are not entitled to a reduced old age pension under Article 25(1A); and
 - (c) satisfy the relevant contribution conditions.
- (2) Paragraph (3) applies if a person has been entitled to short term incapacity allowance for 364 days, in respect of a period of incapacity for work calculated in accordance with Article 18.
- (3) A person is not entitled to short term incapacity allowance for a period of incapacity for work –
 - (a) that continues after the expiry of 364 days; or

- (b) that commences after the expiry of 364 days unless that period of incapacity commences at least 13 weeks after the end of day 364.
- (4) A person is not entitled to short term incapacity allowance in respect of a disease or injury for which they are entitled to long term incapacity allowance.
- (5) If a person under pensionable age, who is not entitled to a reduced old age pension under Article 25(1A), is not entitled to short term incapacity allowance by virtue of paragraphs (2) and (3), that person is entitled to –
 - (a) long term incapacity allowance if they satisfy the requirements of Article 16; or
 - (b) an incapacity pension if they satisfy the requirements of Article 17.”.

5 Article 21 (entitlement to parental grant) amended

In Article 21 after paragraph (5) there is inserted –

- “(5A) In this Article “overseas adoption” has the meaning given in Article 55A of the Employment Law.”.

6 Article 22 (entitlement to parental allowance) amended

For the text of Article 22 there is substituted –

- “A parent or host mother of a child is entitled to the payment of a parental allowance if they satisfy –
 - (a) the relevant contribution conditions; and
 - (b) prescribed requirements, if any.”.

7 Articles 22A to 22D inserted

After Article 22 there is inserted –

“22A Period for which parental allowance is payable to a parent

- (1) The period for which the parental allowance is payable to a parent is 32 weeks regardless of –
 - (a) the adoption of more than 1 child; or
 - (b) the birth of more than 1 child as a result of the same pregnancy.
- (2) The 32-week period –
 - (a) applies regardless of whether more than 1 parent is entitled to the allowance;
 - (b) is in addition, and without prejudice, to the entitlement of a host mother under Article 22C in respect of the post-natal period.
- (3) The 32-week period must begin no earlier than the date that is 11 weeks prior to the expected adoption date or date of birth, and must end no later than –
 - (a) the day that is 2 years after the adoption date; or
 - (b) in the case of a child born in respect of a parent, the day that is the child’s second birthday.

- (4) In this Article “adoption date” has the meaning given in Article 55A of the Employment Law.

22B Additional period for which parental allowance is payable – child requiring urgent medical care

- (1) This Article applies if a child requires urgent medical care in hospital within the first 28 days of life beginning with the day of their birth.
- (2) In addition to the period of 32 weeks for which the parental allowance is payable under Article 22A, the parental allowance is payable for a further number of weeks, calculated in accordance with the tables in this Article.
- (3) In the case of a child born in or after the 38th week of pregnancy –

Total days of urgent medical care	An additional week of parental allowance is payable in respect of –	Number of additional weeks payable up to a maximum of 4 weeks
No less than 7 days	a period of 7 days in total of urgent medical care	1 week
More than 7 days	every further period of 7 days in total of urgent medical care	Up to 3 weeks
More than 7 days	a period of less than 7 days in total of urgent medical care, provided there has been at least 1 previous period of 7 days in total of urgent medical care	1 week, provided that when added to the number of any other additional weeks payable, as specified above in this column, the total does not exceed 4 weeks

- (4) In the case of a child born in or before the 37th week of pregnancy –

Total days of urgent medical care	An additional week of parental allowance is payable in respect of –	Number of additional weeks payable up to a maximum of 12 weeks
No less than 7 days	a period of 7 days in total of urgent medical care	1 week
More than 7 days	every further period of 7 days in total of urgent medical care	Up to 11 weeks
More than 7 days	a period of less than 7 days in total of urgent medical care, provided there has been at least 1 previous period of 7 days in total of urgent medical care	1 week, provided that when added to the number of any other additional weeks payable, as specified above in this column, the total does not exceed 12 weeks

- (5) For the purposes of the calculations in the tables, any days of urgent medical care required by the child in hospital beyond the first 28 days of life are included, but only if –
- (a) before the end of the first 28 days of life, the child has required urgent medical care in hospital for a period of no less than 7 days in total; and

(b) at the end of the first 28 days of life, the child requires urgent medical care in hospital on consecutive days.

(6) In this Article –

(a) the 37th or 38th week of pregnancy is calculated from the beginning of the mother’s last menstrual period;

(b) “total”, in relation only to days, means the total number of days accrued consecutively or in aggregate.

22C Payment of parental allowance

(1) If 1 parent entitled to the parental allowance is the birth mother, the allowance must be paid for the post-natal period.

(2) In the case of a host mother entitled to the parental allowance, the allowance must be paid for the post-natal period only, and for no other period, irrespective of any other payment of the parental allowance to another person for any period.

(3) If a parent entitled to the parental allowance is also exercising a right to paid parental leave under Article 55E of the Employment Law, the parental allowance must be paid for each week of paid parental leave taken by that parent.

(4) If 2 parents are entitled to the parental allowance, they –

(a) must nominate, in the manner that may be prescribed, the parent to whom the parental allowance is to be paid; and

(b) may specify, in the manner that may be prescribed, the period of weeks for which the allowance is to be paid to a nominated parent.

(5) Periods specified under paragraph (4)(b) need not be continuous, but –

(a) no more than 3 separate periods or, if Article 22B applies, no more than 4 separate periods may be specified for each nominated parent; and

(b) each specified period must be of no less than 2 weeks.

22D Order in respect of parental allowance

Further provision may be made by Order in respect of the parental allowance and, in particular, about –

(a) the determination of a dispute between parents regarding the nomination to be made under Article 22C(4)(a);

(b) entitlement to, and payment of, the parental allowance in a case where no nomination is made under Article 22C(4)(a);

(c) the determination of an issue or dispute regarding –

(i) entitlement to the parental allowance,

(ii) the period for which it is payable, or

(iii) the parent to whom it is payable;

(d) cases in which relevant contribution conditions may be disapplied;

(e) requirements that must be satisfied for the purpose of making a valid claim for the parental allowance;

- (f) cases in which an individual may be disqualified from receiving the parental allowance;
- (g) cases in which the period for which the parental allowance is payable may be varied, and variations of that period;
- (h) entitlement to, and payment of, the parental allowance in a case where a parent has died;
- (i) the time and manner of payment of the parental allowance.”.

8 Article 23 (interpretation of Articles 21 and 22) deleted

Article 23 is deleted.

9 Article 26 (death grant) amended

For the text of Article 26 there is substituted –

- “(1) A death grant is payable in respect of a person (the “deceased”) if –
 - (a) the deceased satisfies the relevant contribution conditions; or
 - (b) a person described in paragraph (2), (3) or (4) satisfies the relevant contribution conditions.
- (2) A person who is –
 - (a) the deceased’s spouse or civil partner (whether or not the person predeceases the deceased); or
 - (b) a person of whom the deceased, immediately before death, had been a child or a child of the family.
- (3) If the deceased was a child –
 - (a) a person –
 - (i) of whom the deceased had been a child or a child of the family, and
 - (ii) is now themselves deceased; or
 - (b) a man who was the father of the deceased, and died before the deceased was born.
- (4) If the deceased was a stillborn child, a person of whom the deceased, had they been born alive, would have been a child or a child of the family.
- (5) The Minister may by Order provide for a death grant to be payable if the relevant contribution conditions were satisfied by a prescribed person not falling within paragraphs (1) to (4).
- (6) A death grant is not payable in respect of a death occurring outside Jersey, unless the Minister makes provision by Order.
- (7) In this Article –
 - “child of the family” has the meaning given in Article 1(1) of the [Children \(Jersey\) Law 2002](#);
 - “stillborn child” has the meaning given to “stillborn child” in the definition “stillbirth” in Article 49(1) of the [Marriage and Civil Status \(Jersey\) Law 2001](#).”.

10 Article 26F (pay in lieu of notice: deductions of certain amounts) amended

In Article 26F(1)(c) “, as referred to in Article 22” is deleted.

11 References to the [Employment \(Jersey\) Law 2003](#) amended

- (1) For paragraph (1)(a) of Article 26A (qualifying for insolvency benefit) there is substituted –
 - “(a) the person was in employment as an employee of an employer (within the meanings given in Article 1A of the Employment Law);”.
- (2) In Article 26C (components of insolvency benefit) –
 - (a) in paragraphs (1), (6) and (7) for “[Employment \(Jersey\) Law 2003](#)” there is substituted “Employment Law”;
 - (b) in paragraph (2)(a) and (b) for “[Employment \(Jersey\) Law 2003](#)” there is substituted “Employment Law”.
- (3) In Article 26F(3) (pay in lieu of notice: deductions of certain amounts) for “[Employment \(Jersey\) Law 2003](#)” there is substituted “Employment Law”.
- (4) In paragraph A1(3) (class 1 minimum earnings threshold) of Schedule 1A (class 1 minimum earnings threshold, factors and contribution rates) for “[Employment \(Jersey\) Law 2003](#)” there is substituted “Employment Law”.

12 Citation and commencement

These Regulations may be cited as the Social Security Law (Parental Allowance and Death Grant) (Jersey) Amendment Regulations 202- and come into force on a day to be specified by the Minister by Order.