

(Chapter No. not allocated yet)

SOCIAL SECURITY ORDINANCE

Non-authoritative Consolidated Text

This is not an authoritative 'revised edition' for the purposes of the Revised Edition of the Laws Ordinance; it has been prepared under the supervision of the Attorney General for the purpose of enabling ready access to the current law, and specifically for the purpose of being made accessible via the internet.

Whilst it is intended that this version accurately reflects the current law, users should refer to the authoritative texts in case of doubt. Enquiries may be addressed to the Attorney General at Essex House, Jamestown [Telephone (+290) 2270; Fax (+290 2454; email pa.lawofficers@legalandlands.gov.sh]¹

Visit our LAWS page to understand the St. Helena legal system and the legal status of this version of the Ordinance.

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This version contains a consolidation of the following laws-

Page SOCIAL SECURITY ORDINANCE 2 Ordinance 10 of 2010 ... in force on 1 April 2011 Amended by Ord. 3 of 2011 Amended by Ord. 10 of 2015 in force on 1 August 2015

SOCIAL SECURITY REGULATIONS

Legal Notice 3 of 2011 Amended by LN 12 of 2012 Amended by LN 37 of 2012 Amended by LN 39 of 2012 Amended by LN 30 of 2013

> Amended by LN 43 of 2013 Amended by LN 5 of 2015

> Amended by LN 23 of 2015

Amended by LN 25 of 2015

Amended by LN 3 of 2016

¹ These contact details may change during 2011 or early in 2012. In case of difficulty, email shgwebsite@sainthelena.gov.sh or telephone (+290) 2470.

2 Social Security LAWS OF ST. HELENA

SOCIAL SECURITY ORDINANCE

(Ordinances 10 of 2010, 3 of 2011 and 10 of 2015)

AN ORDINANCE TO PROVIDE FOR A BASIC ISLAND PENSION AND FOR INCOME RELATED BENEFITS AND FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Commencement

[1 April 2011]

Part I Preliminary

Citation and commencement

1. This Ordinance may be cited as the Social Security Ordinance, 2010, and shall come into force on 1 April 2011.

Interpretation

- 2. In this Ordinance, unless the context otherwise requires—
- "adjudication officer" means a person appointed as such under section 3;
- "adult" means a person over the age of 18 years, but includes a person over the age of 16 years who is no longer in full time education;
- "financial year" means any year commencing on 1 April and ending on 31 March of the following year;
- "household" means one or more persons (whether or not related), who live together in a dwelling and maintain a common living, sharing normal domestic tasks and expenditures, including the purchase, cooking and eating of food, and for purposes of determination of any benefit under this Ordinance, includes only such persons who are physically present in St Helena and who actually reside in such dwelling; and "member" in relation to a household shall be construed accordingly;
- "physically present in St Helena" in relation to any person, means being present on the island with the right to live and work in St Helena, and in determining such presence, there shall not be taken into account any period during which such person is off the island—
 - (a) for less than 90 days at any one time; or
 - (b) for purposes of undergoing overseas medical referral, authorised and arranged by the Government of St Helena;

Appointment of adjudication officers

3. The Governor shall appoint such number of adjudication officers as may be necessary or desirable for the administration of this Ordinance.

[&]quot;qualifying years" has the meaning assigned in section 5;

Part II Basic Island Pension

Entitlement to Basic Island Pension

- **4.** (1) Every individual to whom this subsection applies, shall, subject to section 7, be entitled to a benefit, to be known as a Basic Island Pension, in the amount as determined in accordance with the Regulations made under section 17.
 - (2) Subsection (1) applies to any individual who—
 - (a) is aged 65 years or older;
 - (b) is physically present in St Helena; and
 - (c) has completed at least 20 qualifying years in St Helena, as described in section 5.

Determination of qualifying years

- **5.**² (1) For purposes of section 4, a qualifying year in relation to an individual means any financial year during which such individual—
 - (a) was over the age of 15 years;
 - (b) was physically present in St Helena for a period exceeding (or two or more periods exceeding, in aggregate) six months in such year; and
 - (c) for the whole year—
 - (i) was engaged in employment (including self-employment) in St Helena and (in the case of self-employment) filed a tax return in respect of that year;
 - (ii) worked on a family farm or in a family business, regardless of whether or not he was paid for such work;
 - (iii) had a child under the age of five years or was caring for his disabled child; or
 - (iv) was in receipt of a disability pension or carer's allowance paid by the Government of St Helena, or, had the current rules for payment of such disability pension or carer's allowance applied at the time, he would have been entitled to such a pension or allowance.
- (2) For the purposes of subsection (1), a person is to be treated as physically present in St. Helena, and engaged in employment in St. Helena, at any time when he was ordinarily resident in St. Helena and was employed as a member of the crew of the *RMS St. Helena*.

Application and determination of benefit

- **6.** (1) A person who believes he is or may become entitled to a Basic Island Pension under this Part may apply in the prescribed form to the adjudication officer for payment of such benefit.
- (2) The adjudication officer shall consider such application and may for this purpose conduct an investigation and request additional information.
- (3) If the adjudication officer is satisfied that section 4(1) applies to the applicant, the adjudication officer shall provide the applicant with a written notification of award setting out the amount of the Basic Island Pension to which such applicant is entitled.
 - (4) If the adjudication officer determines that—
 - (a) an applicant is not entitled to the Basic Island Pension; or
 - (b) the applicant has failed or refuses to give written authority to the adjudication officer to obtain any information under section 11(1),

² Amended by Ord. 10 of 2015

he shall inform such applicant in writing and set out the reasons for such determination and notify such applicant of his right of appeal under section 14.

Withdrawal or adjustment of entitlement to benefit

- 7. (1) An adjudication officer may withdraw or adjust the payment of any Basic Island Pension where such officer becomes aware (whether by notice under section 11 or otherwise) that the circumstances on which such individual's entitlement to such pension, or the amount thereof, is based is incorrect or has changed.
- (2) The adjudication officer may suspend payment of any Basic Island Pension to an individual where such individual fails to provide any information requested by the adjudication officer.
- (3) Where an individual who is entitled to the Basic Island Pension ceases to be physically present on St Helena as required under section 4(2)(b), such entitlement shall cease with effect from the date that such person has been absent from St Helena for a continuous period of 90 days or more.
- (4) An individual's entitlement to the Basic Island Pension ceases with immediate effect if such individual is convicted of an offence and is sentenced to immediate imprisonment for a period exceeding 30 days.

Part III Income related benefits

Income Related Benefit

- **8.** (1) Every household on St Helena to which this subsection applies, shall be entitled to a benefit, to be known as an Income Related Benefit, in the amount as determined in accordance with the Regulations made under section 17.
 - (2) Subsection (1) applies to a household if—
 - (a) the income level of such household during the relevant period is less than the household poverty line for that period, as determined in accordance with the Regulations made under section 17; and
 - (b) the applicant applying for the benefit, or to whom the benefit is paid, on behalf of such household is not employed full time on St Helena;
 - (c) every adult member of such household is either—
 - (i) employed full time on St Helena (other than the applicant referred to in paragraph (b); or
 - (ii) aged 65 years or older; or
 - (iii) registered as unemployed; or
 - (iv) in receipt of a disability pension or carer's allowance; or
 - (v) the carer of one or more children under age 5 years or his disabled child.
 - (3) For purposes of section 8(2)(c)(v)—
 - (a) only one person may at any one time qualify as the carer of a child; and
 - (b) where more than one child of the same parents reside in the same household, only one parent may at any one time qualify as carer of such children.

Application and determination of benefit

- **9.** (1) Subject to subsection (2), an individual who is a member of a household which is or may be entitled to a benefit under section 8, may apply on behalf of such household to the adjudication officer in the prescribed form for payment of such benefit.
 - (2) Subsection (1) applies to an individual who—
 - (a) is an adult;
 - (b) is not in full time employment; and
- (c) is at the time of the application on the island and living in the household, and where, subject to subsection (6), no other member of the same household has applied for the benefit under this section in respect of the same period.
- (3) The adjudication officer shall consider such application and may for this purpose conduct an investigation and request additional information.
- (4) If the household is entitled to the benefit under section 8 and subsection (1) applies to the applicant, the adjudication officer shall, subject to subsection (5), provide the applicant with a written notification of award setting out the amount of the benefit to which such applicant is entitled for the benefit of such household.
 - (5) If the adjudication officer determines that——
 - (a) a household is not entitled to the benefit;
 - (b) subsection (1) does not apply to the applicant;
 - (c) the applicant has failed or refuses to give written authority to the adjudication officer to obtain any information under section 11(1); or
 - (d) there is sufficient reason why such benefit to which the household is entitled should rather be paid to another member of the household as provided for in subsection (6),

he shall inform such applicant in writing setting out the reasons for such determination and notify the applicant of his right of appeal under section 14.

- (6) Where an applicant has submitted an application on behalf of a household under subsection (1) and the adjudication officer is of the view that the benefits to which such household is entitled should not be paid to such applicant, the adjudication officer shall inform another member of such household, who qualifies under subsection (2), to submit a separate application under subsection (1) on behalf of such household.
- (7) The applicant to whom the benefit is paid on behalf of the household shall for the purposes of sections 10(a), 11(2), 13, 14 and 15 be deemed to be the person entitled to the benefit.

Withdrawal or adjustment of entitlement to benefit

- **10.** An adjudication officer may—
- (a) withdraw or adjust the payment of any Income Related Benefit where such officer becomes aware (whether by notice under section 11 or otherwise) that the circumstances on which the applicant's entitlement to such benefit, or the amount thereof, is based is incorrect or has changed; or
- (b) withdraw the payment of any Income Related Benefit to an applicant where a separate application for the Income Related Benefit has been approved in respect of the same household as provided for in section 9(6).

Part IV Information and recovery

Duty to provide information

- 11. (1) Every person who applies for any benefit under this Ordinance, shall provide written authority to the adjudication officer to obtain any information required to determine the entitlement to such benefit or the amount thereof.
- (2) Every person who is or becomes entitled to the payment of any benefit, shall notify the adjudication officer of any change in circumstance which may affect the entitlement to such benefit or the amount thereof.

Confidentiality provisions

- **12.** No person may divulge any personal information of an applicant or any information relating to a household which was furnished in respect of an application under this Ordinance, except—
 - (a) to a person who requires it in order to perform a function in terms of this Ordinance;
 - (b) when required to do so by law or by an order of court;
 - (c) with the consent of the applicant concerned; or
 - (d) in such other circumstances as may be prescribed.

Recovery of amounts incorrectly paid

- 13. (1) Any amount overpaid to a person under this Ordinance as a result of incomplete or inaccurate information provided by such person in an application, or due to failure by such person to provide details of any change in circumstances under section 11, shall be recoverable from such person.
- (2) The amount of any payment recoverable under subsection (1) from a person may, without prejudice to any right of recovery by civil action, be recovered from any future payment of any benefits under this Ordinance to such person, but the amount so deducted from any such future payment for any period shall not exceed five percent of the gross amount of benefits payable to the person for that period, before taking into account such deduction.

Review and appeal

- **14.** (1) Any person who is aggrieved by a decision of the adjudication officer—
- (a) to refuse an application for payment of any benefit;
- (b) with respect to the rate or amount of entitlement to such benefit; or
- (c) to withdraw, adjust or suspend the payment of such benefit,
- may, within 14 days of being informed of the adjudication officer's decision, request that such decision be reviewed by the Head of the Department of the St. Helena Public Service in which such adjudication officer is employed.
- (2) A person who is aggrieved by the decision of the Head of Department under subsection (1), may, within 14 days of being informed of that decision, appeal to the Magistrates' Court against such decision.

Part V Miscellaneous

Offences and penalties

15. Any person who—

- (a) makes any false representation or provides any false information, knowing it to be false for the purpose of obtaining any benefit under this Ordinance,
- (b) fails to notify the adjudication officer of any change in circumstance which may affect the entitlement to a benefit;
- (c) fails to truthfully answer all questions put to him during an investigation or to provide additional information as requested by the adjudication officer,
- (d) accepts payment of any benefit while knowing that it is not due to him, is guilty of an offence for which the maximum penalty on conviction is imprisonment for 2 years, a fine not exceeding £5000, or both.

Payment of benefits from Consolidated Fund

16.³ The benefits provided for in this Ordinance shall be charged on the Consolidated Fund.

Regulations

- 17. The Governor in Council may make Regulations for the further and better execution of this Ordinance, and without prejudice to the generality of this power, such regulations may provide for—
 - (a) the calculation of rates of the benefits under this Ordinance;
 - (b) the dates or intervals that benefits are to be paid;
 - (c) any forms to be used and procedures to be followed under this Ordinance;
 - (d) special transitional benefits to ensure that a person's benefits under this Ordinance are not less than such benefit payable to him before commencement of this Ordinance:
 - (e) defining the expressions 'family farm', 'family business', 'disabled child', 'disability pension', 'carer's allowance', and 'registered as unemployed'.

³ Section 16 amended by Ord. 3 of 2011

8 Social Security LAWS OF ST. HELENA

SOCIAL SECURITY REGULATIONS – SECTION 17

(Legal Notices 3 of 2011, 12 of 2012, 37 of 2012, 39 of 2012, 30 of 2013, 43 of 2013, 5 of 2015, 23 of 2015, 25 of 2015 and 3 of 2016)

Part I Preliminary

Citation and commencement

1. These Regulations may be cited as the Social Security Regulations, 2011, and shall come into force on 1 April 2011.

Interpretation

- **2.**⁴ (1) In these Regulations, unless the context otherwise requires, any word or phrase to which a meaning has been assigned for purposes of the Ordinance bears the meaning so assigned, and—
- "child" means a person who is not an adult;
- "disabled person" means any person in respect of whom a disability pension is paid;
- "old age pension" means any pension, whether paid by the Government of St Helena or any other government or any employer or private pension provision, which is paid by virtue of old age.
 - (2) The following expressions are defined for purposes of the Ordinance:
- "carer's allowance" means an allowance paid by the Government of St Helena to any person who cares for a person who has a physical or mental impairment or a long-term health condition;
- "disability pension" means any allowance paid by the Government of St Helena to any person who has a physical or mental impairment or a long-term health condition to provide for the additional needs brought on by such impairment or condition.

Part II Basic island pension

Application for basic island pension

3. An individual who wishes to apply for a basic island pension under section 6 of the Ordinance shall submit an application, in the form set out in Form A in Schedule 1, to the adjudication officer.

Determination of benefit

- **4.** $(1)^5$ The rate of the basic island pension for purposes of determining the entitlement to any benefit under Part II of the Ordinance shall be £61.60 per week.
- (2) The amount of an individual's entitlement to the basic island pension under section 4 of the Ordinance shall be, where the total number of the qualifying years recorded by such individual equals or exceeds—

⁴ Regulation 2 amended by L.N. 23 of 2015 and L.N. 25 of 2015

⁵ Regulation 4(1) amended by L.N. 12 of 2012, L.N. 37 of 2012, L.N. 30 of 2012, L.N. 30 of 2013, L.N. 43 of 2013, L.N. 5 of 2015 and L.N. 3 of 2016

- (a) 30 years, 100 per cent of the basic island pension amount as fixed under paragraph (1);
- (b) 25 years but is less than 30 years, 75 per cent of such amount;
- (c) 20 years but is less than 25 years, 50 per cent of such amount, reduced by so much of the total amount of any other old age pensions payable to such individual as exceeds £20.
- (3) Where an individual, who is entitled to a basic island pension, is at any time, for a continuous period of more than 42 days, either hospitalised on St Helena or admitted to, and remains in, residential care where all living costs are met by the care provider, payment to such individual under paragraph (2) will after such 42 day period be reduced to £10 per week for the duration that such individual so remains hospitalised or in residential care, and the balance of his entitlement under paragraph (2) will be payable to the hospital or such care provider.

Part III Income related benefit

Application for income related benefit

- **5.** (1) An applicant who wishes to apply on behalf of a household for an income related benefit under section 9 of the Ordinance, shall submit an application, in the form set out in Form B in Schedule 1, to the adjudication officer.
- (2) All income and assets for every adult and child member of the household must be declared (and where possible verified) for the purpose of the application.

Determination of benefit

- 6. (1) The amount of a household's entitlement to the income related benefit under section 8 shall be calculated as the amount (if any) by which the household poverty line determined under regulation 7(3) exceeds the household income level as determined under regulation 8.
- (2) Where an individual who is a member of the household is at any time either hospitalised on St Helena or admitted to and remains in residential care where all living costs are met by the care provider, for a continuous period of more than 42 days, the benefit shall—
 - (a) in the case where such individual is the applicant, be withdrawn; or
 - (b) in any other case, be recalculated and such person shall, for purposes of calculating the amounts under regulations 7 and 8, be deemed not be a member of such household for the duration that such person so remains hospitalised or in residential care after such 42 day period.

Household poverty line

- **7.** (1) The poverty line in respect of every household shall be determined with reference to—
 - (a) the number of adults in the household;
 - (b) the number of children in the household; and
 - (c) ...

⁶ Regulation 7 amended by L.N. 12 of 2012, L.N. 37 of 2012, L.N. 30 of 2012, L.N. 30 of 2013, L.N. 43 of 2013, L.N. 5 of 2015, L.N. 23 of 2015 and L.N. 3 of 2016

- (d) the value of the rent or the loan repayment payable in respect of the dwelling where the household resides.
- (2) The minimum income level for purposes of determining the poverty line under paragraph (3), shall be £59.60 per week.
- (3) The poverty line of a household shall be calculated as the total of the following amounts:
 - (a) in respect of the applicant, 100 per cent of the minimum income level referred to in paragraph (2);
 - (b) for each additional adult in the household, £34.70 per additional adult;
 - (c) for each of the first three children in the household, 40 per cent of such minimum income level per child;
 - (d) for each additional child, 30 per cent of such minimum income level per additional child;
 - (e) ...
 - *(f)* ...
 - (g) where the dwelling where the household resides constitutes Government Landlord Housing, the full amount of the rental amounts for the relevant week;
 - (h) where the dwelling where the household resides is rented but does not constitute Government Landlord Housing, so much of such rental amounts for the relevant week as does not exceed £33.36;
 - (i) where a loan has been incurred for purposes of purchasing the dwelling where the household resides, the total amount of the interest on the loan which is payable during such week.

Household income level

8. The income level of a household shall be calculated as the total of the following amounts as reflected in the second column:

Income	Taken into account in the calculation
Earnings (full or part time, casual or regular and irrespective of employer)	The first £10 for each person with earnings shall be ignored and the rest taken into account in full.
Self employment earnings	The last six months earnings as required to be declared for tax purposes taken as an average weekly sum and the first £10 ignored and the rest taken into account in full
Pension, any type of pension benefit, including basic island pension, United Kingdom state pension, St Helena Government pension, other employer pension or any personal pension	Taken into account in full.
Any disability pension paid by the Government of St Helena	Totally ignored.
Education grants (including Year 11, 12 and 13 student allowances and Youth Training Allowances)	The first £5 of each child's grant ignored and the rest taken into account in full.
Any other income, however received, including <u>regular</u> payments from children, children paying for services including	Taken into account in full.

⁷ Regulation 8 amended by L.N. 23 of 2015

electricity, telephone or other services.	
Any one off payment from whatever source	Totally ignored.

Assets	
All assets including bank accounts, stocks and shares, cash, held either on St Helena or abroad.	Ignore the first £3,000 then assume an income of £1 per £1,000 per week.
Property on St Helena or abroad, other than the dwelling in which the household resides.	Taken as the current market value of the property and treated as part of the total asset above.

Part IV Payment of benefit

Payment of benefits

- 9. (1) The benefits under these Regulations shall be paid weekly and are payable to an applicant with effect from the first week following the later of—
 - (a) the date on which the application is received by the adjudication officer under regulation 3 or 5; or
 - (b) the date on which such applicant qualifies for such benefit under section 4 or 9 of the Ordinance, as the case may be.
- (2) The benefits shall be payable in St Helena either in cash or by payment into a bank account.
- (3) Any change in the entitlement to the benefits or the amount thereof shall take effect—
 - (a) in the case of an increase in the amount of such benefit, from the date of such change;
 - (b) in any other case, from the week following the date of such change.

Part V Transitional benefits

Special transitional benefits

- **10.** (1) For purposes of these regulations—
- "effective date" means the date on which the Ordinance comes into force:
- "existing benefit", in relation to any person, means any income related benefit correctly awarded to such person immediately before the effective date under the policy rules pertaining to social grants;
- "new benefit", in relation to any person, means any benefit—
 - (a) to which such person is entitled under Part II; or
 - (b) to which any household of which such person is a member is entitled under Part III.
 - (2) Where—
 - (a) an existing benefit was awarded to any member or members of a household immediately before the effective date; and
 - (b) the total amount of new benefits (if any) payable in respect of all members of such household is less than the total amount of such existing benefits,

such household shall be entitled to transitional payments equal to the difference between the total amount of such new benefits and the total amount of existing benefits which would have been so payable in respect of all such members:

Provided that where there is any change in circumstances which would have resulted in a reduction in the existing benefits referred to in paragraph (a), had the policy rules pertaining to such benefit continued to apply after the effective date, the amount of transitional payments shall be calculated with reference to the reduced amount of such existing benefits.

- (3) The transitional payment shall be made to the applicant in relation to the household as referred to in section 9 of the Ordinance and section 9(7) shall apply in respect of the transitional payment as it applies in respect of the Income Related Benefit.
- (4) Where a member of a household to whom an existing benefit was awarded before the effective date, as referred to in paragraph (2)(a), ceases to be physically present on St Helena, the entitlement of the household to the transitional payment calculated with reference to such existing benefit shall cease, regardless of whether or not such member returns to St Helena at any time thereafter.

SCHEDULE 1⁸

		(Regulation 3)	
	APPLICATION	ON FOR BASIC ISLAND PE	ENSION
	(Section 6 of	f the Social Security Ordinance	, 2010)
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 $^{^{88}}$ Forms in Schedule substituted by L.N. 23 of 2015 and amended by L.N. 25 of 2015

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(INCLUDE SOURCE AND			
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BANK DETAILS			
(ADDRESS AND AMOUNT)			
ASSETS			
(PROPERTIES, SHARES, LAND			
AND TRUST FUNDS)			
OTHER INCOME			
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FULL NAME			
DATE OF BIRTH			
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STUDENT ALLOWANCE			
PENSIONS			
(INCLUDE SOURCE AND			
WEEKLY AMOUNTS)			
BANK DETAILS			
(ADDRESS AND AMOUNT)			
ASSETS CHARES LAND			
(PROPERTIES, SHARES, LAND AND TRUST FUNDS)			

OTHER INCOME				
L L L L L L L L L L L L L L L L L L L				
HOUSEHOLD.				
PAYMENT:				
PLEASE PAY MY INCOME RELATED BENEFIT INTO MY BANK ACCOUNT NO.				
I WOULD LIKE TO BE PAID BY CASH				
APPLICATION:				
I OF HEREBY				
APPLY FOR INCOME RELATED BENEFIT.				
DECLARATION:				
(PLEASE READ THIS DECLARATION CAREFULLY BEFORE YOU SIGN AND DATE IT)				
• I HEREBY CERTIFY THE FOREGOING INFORMATION GIVEN BY ME TO BE FULL AND CORRECT.				
• I AGREE TO REPORT ALL CHANGES OF CIRCUMSTANCES AS AND WHEN THEY HAPPEN.				
 I UNDERSTAND THAT FAILING TO REPORT A CHANGE OF CIRCUMSTANCES COULD RESULT IN AN 				
OVER PAYMENT WHICH IMAY HAVE TO PAY BACK.				
I UNDERSTAND THAT IT IS A CRIMINAL OFFENCE TO GIVE INCOMPLETE OR INACCURATE				
INFORMATION FOR THE PURPOSE OF OBTAINING AN INCOME RELATED BENEFIT AND I SHALL				
BE LIABLE TO PROSECUTION.				
SIGNATURE:				
DATE:				
DATE:				
SIGNED:				
Adjudication Officer				
DATE:				