



## FALKLAND ISLANDS

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### Financial Assistance Ordinance 2023

(ORDINANCE No. 7 OF 2023)

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## FALKLAND ISLANDS

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### Financial Assistance Ordinance 2023

*(assented to: 23 June 2023)*

*(commencement: on publication)*

*(published: 30 June 2023)*

### AN ORDINANCE

To provide financial assistance for residents of the Falkland Islands who are in need of such assistance and connected purposes.

ENACTED by the Legislature of the Falkland Islands —

### PART 1 - INTRODUCTORY

#### 1. Title and commencement

This Ordinance is the Financial Assistance Ordinance 2023 and comes into force on publication in the *Gazette*.

#### 2. Interpretation

(1) In this Ordinance —

“**applicant**” means a person who applies for financial assistance;

“**assisted person**” means a person receiving an attendance allowance;

“**attendance allowance**” and “**attendance allowance policy**” have the meaning in section 15;

“**child**” means a child or young person who is either —

- (a) under the age of 18 years and in full time education; or
- (b) under the age of 16 years;

“**compulsory education age**” has the meaning in the Education (Governance and Accountability) Ordinance 2022;

“**date of application**” means the date on which an application for financial assistance is submitted to the Head of Service;

“**eligible person**” has the meaning in section 5;

“**financial assistance**” means income support, attendance allowance and financial assistance provided under section 20 (financial assistance in an emergency);

“**Head of Service**” means the person employed for the time being as Head of Social Services;

“**income support**” has the meaning in section 4(1);

“**means test**” means the requirements set out in the operational manual relating to the savings, income, outgoings and other circumstances of an eligible person or, if the person lives with one or more other persons in the same household, the savings income and other circumstances of the household;

“**medical treatment**” means medical or dental investigations, treatment or care arranged by King Edward VII Memorial Hospital;

“**normal retirement age**” means the age of 65 years or older;

“**operational manual**” has the meaning in section 4(2);

“**overseas**” means any country or territory that is not the Falkland Islands;

“**parent**” includes any person who has parental responsibility for a child under the Children Ordinance 2014;

“**personal information**” means any information about an identifiable individual including, but not limited to —

- (a) their name, address and telephone number;
- (b) their race or ethnic origin;
- (c) their age, sex, marital status or family status;
- (d) their religion;
- (e) any identifying case number, symbol or other identifier assigned to the individual;
- (f) any disability;
- (g) their health;
- (h) their education;

- (i) their criminal record; or
- (j) their finances; and

“**winter fuel allowance**” and “**winter fuel allowance policy**” have the meaning in section 12.

(2) A reference in this Ordinance, in relation to attendance allowance, to “**high rate**”, “**medium rate**”, “**low rate**” or “**variable low rate**” (as the case may be) is a reference to those terms as defined in section 16(2).

### **3. Expenditure chargeable on Consolidated Fund**

Expenditure on financial assistance is chargeable upon the Consolidated Fund.

## **PART 2 - INCOME SUPPORT**

### **4. Income support**

(1) The Head of Service must provide financial assistance to residents of the Falkland Islands who are eligible for, and entitled to, it to enable them to meet their basic needs for shelter, food, clothing and personal care whilst promoting their independence and self-reliance (“**income support**”).

(2) The scheme operates in accordance with a manual approved by the Governor (“**operational manual**”) and laid before the Legislative Assembly.

### **5. Eligibility for income support**

(1) A person is eligible for income support (“**an eligible person**”) if, on the date of application, the person meets the requirements in subsection (2).

(2) The person must —

- (a) be 16 years of age or older;
- (b) be ordinarily resident in the Falkland Islands;
- (c) have been ordinarily resident in the Falkland Islands for not less than 3 years ending on the date of application; and
- (d) have the right to work in the Falkland Islands.

### **6. Entitlement to income support**

The amount of income support to which an eligible person is entitled —

- (a) depends on whether the person meets the criteria in one or more of sections 7 (basic income support), 8 (rent and service charge support) or 9 (childcare support); and
- (b) is calculated in accordance with the means test.

## 7. Basic income support

(1) An eligible person to whom this section applies may be entitled to income support, to supplement their income.

(2) This section applies to an eligible person who is —

(a) under normal retirement age and meets one of the following criteria —

- (i) is in paid employment;
- (ii) is actively seeking paid work and not participating in the Employment Programme;
- (iii) is not capable of working whether temporarily or permanently, by reason of pregnancy, illness or disability;
- (iv) is the sole or main carer of a person who receives attendance allowance at the high or medium rate; or
- (v) is a parent, and sole or main carer, of a child who is under compulsory education age; or

(b) is over normal retirement age.

(3) In this section, “**Employment Programme**” means a programme of training and skills development provided by Falkland College to support individuals into employment and includes regular weekly payments in lieu of wages.

## 8. Rent and service charge support

(1) Subject to subsection (2), an eligible person may be paid income support in respect of the person’s liability to pay rent or service charge in relation to their only or main home.

(2) A person whose accommodation is provided by their employer as part of the terms and conditions of their employment is not entitled to income support under this section.

(3) In this section, “**service charge**” means the charges for the supply of water and refuse collection for which a person is liable as the occupier of domestic premises, under section 30 of the Stanley Rates Ordinance 1973.

## 9. Childcare support

(1) This section applies to an eligible person who is a parent.

(2) Subject to subsection (3), a parent may be paid income support in relation to the cost of childcare for up to 2 of their children —

- (a) who live in the parent’s household; and
- (b) who are under the age of 12 years.

(3) A parent is not entitled to income support under this section if another person receives such support in respect of the same children.

#### **10. Cessation of income support**

(1) Income support must not be provided for an eligible person while the person is —

- (a) in custody, whether on remand or serving a term of imprisonment, if the period spent in custody exceeds or is likely to exceed 30 days;
- (b) overseas, unless —
  - (i) the person is overseas for the purpose of receiving medical treatment;
  - (ii) the person is accompanying a close family member who is overseas for the purpose of receiving medical treatment; or
  - (iii) the Head of Service determines before the person departs the Falkland Islands that the person should continue to receive income support while overseas.

(2) A person who becomes entitled to financial support or assistance that is equivalent to income support in any other country or territory is not entitled to income support.

#### **11. Reassessment**

The Head of Service may at any time reassess a person's eligibility for, and entitlement to, income support and vary the amount of, or cease to provide, income support in accordance with the operational manual as it applies at the time of reassessment.

### **PART 3 - WINTER FUEL ALLOWANCE**

#### **12. Winter fuel allowance**

(1) Subject to subsection (2), the Head of Service must provide financial assistance for households that are eligible for it with the cost of heating their only or main home during the period 1 June to 30 September each year ("**winter fuel allowance**").

(2) Winter fuel allowance must be provided in accordance with the policy approved by the Governor and laid before Legislative Assembly ("**winter fuel allowance policy**").

#### **13. Eligibility for winter fuel allowance**

A household is eligible for winter fuel allowance if, on the date of application —

- (a) the household income is below the financial threshold set out in the winter fuel allowance policy;
- (b) at least one member of the household ("**M**") —

- (i) is of normal retirement age on or before 30 September in the year in which an application for winter fuel allowance is made;
  - (ii) receives a retirement pension under section 4 of the Retirement Pensions Ordinance 1996;
  - (iii) is entitled to attendance allowance at the high rate or the medium rate; or
  - (iv) is an eligible person, whether or not the person receives income support; and
- (c) M or, if M is a child, M's parent who lives in the same household, is ordinarily resident in the Falkland Islands.

## **PART 4 - ATTENDANCE ALLOWANCE**

### **14. Interpretation of Part 4**

In this Part —

“**activities of daily living**” includes (but is not limited to) eating, bathing, dressing, mobility, continence and toileting, cleaning, laundry, driving, shopping and caring for a person's own health (including taking prescription medication); and

“**long term illness or disability**” means an illness or disability (whether physical or mental) that has lasted for a period of not less than 3 months ending on the date of application.

### **15. Attendance allowance**

(1) The Head of Service must provide financial assistance for persons who are eligible for it and need assistance from others with the activities of daily living due to long-term illness or disability and who do not receive such assistance from King Edward VII Memorial Hospital or any other publicly available service (“**attendance allowance**”).

(2) Attendance allowance must be provided in accordance with a policy approved by the Governor (“**attendance allowance policy**”) and laid before the Legislative Assembly.

### **16. Rates of attendance allowance**

(1) Attendance allowance is paid at a rate that depends on a person's needs for assistance, as assessed in accordance with the attendance allowance policy.

(2) The rates are —

- (a) for persons with the greatest need for assistance (“**high rate**”);
- (b) for persons with moderate needs for assistance (“**medium rate**”);
- (c) for persons with low needs for assistance (“**low rate**”); and

- (d) for persons with the least need for assistance, such sum not exceeding the low rate as meets the cost of services required by the assisted person (“**variable low rate**”).

### **17. Eligibility for and entitlement to attendance allowance**

(1) A person is eligible for attendance allowance if the person is ordinarily resident in the Falkland Islands and either —

- (a) the person has a long-term illness or disability that is likely to last for not less than 6 months or more from the date of application; or
- (b) a medical practitioner has advised that the person has a serious illness and may have less than 6 months to live.

(2) The Head of Service must determine the appropriate rate of attendance allowance payable (if any) and assess a person who is eligible under subsection (1)(a) by reference to the extent to which the person —

- (a) if not a child, needs assistance from others with the activities of daily living; or
- (b) if a child, needs significantly more assistance with the activities of daily living than a child of the same age who does not have a long-term illness or disability.

(3) A person who is eligible for attendance allowance by virtue of subsection (1)(b) is entitled to the high rate of attendance allowance.

(4) When making a determination under subsection (2), the Head of Service must seek the advice of a medical practitioner.

### **18. Cessation of attendance allowance**

(1) A person who becomes entitled to financial support or assistance that is equivalent to attendance allowance in any other country or territory is not entitled to attendance allowance.

(2) An assisted person is only entitled to receive attendance allowance while overseas if —

- (a) the period overseas does not exceed 13 weeks in total in any 12 month period;
- (b) the person is overseas for medical treatment; or
- (c) the Head of Service determines before the person departs the Falkland Islands that they should continue to receive attendance support.

### **19. Reassessment**

(1) The Head of Service may reassess an assisted person’s eligibility for, and entitlement to, attendance allowance at any time and may vary the rate of payment in accordance with the attendance allowance policy as it applies at the time of reassessment or cease payment.

(2) The Head of Service must reassess an assisted person’s eligibility for and entitlement to attendance allowance if the assisted person —

- (a) is admitted to King Edward VII Memorial Hospital for 3 months or more;
- (b) is provided with residential care for 3 months or more;
- (c) is receiving medical treatment overseas and has been receiving such treatment for 12 months or more; or
- (d) was awarded the high rate of attendance allowance and has been in receipt of attendance allowance for 12 months or more.

## **PART 5 - FINANCIAL ASSISTANCE IN EMERGENCY**

### **20. Financial assistance in emergency**

- (1) The Head of Service may provide financial assistance to any person (“P”) if satisfied that P—
  - (a) is in immediate and urgent need of financial assistance; and
  - (b) has exhausted all other sources of financial support.
- (2) Financial assistance under this section —
  - (a) may be a grant or a loan;
  - (b) may be paid to P or to a third person for goods or services provided for the benefit of P or another member of P’s household;
  - (c) must not be provided to enable P to settle their debts.
- (3) The Head of Service may review, vary or cease to pay financial assistance under this section at any time.

## **PART 6 - ADMINISTRATION OF FINANCIAL ASSISTANCE**

### **21. Functions of Head of Service in relation to financial assistance**

- (1) The Head of Service must administer financial assistance in a fair, effective and efficient manner.
- (2) The Head of Service must —
  - (a) provide and publish for use by applicants such forms as may be necessary or expedient;
  - (b) receive, consider and determine applications for financial assistance;
  - (c) assess the eligibility and entitlement of applicants;

- (d) decide whether to pay, vary or cease payment of, financial assistance;
- (e) reconsider or review any decision to pay, vary or cease payment of, financial assistance when it is appropriate to do so;
- (f) take all such steps as may reasonably be required to recover repayments due in respect of financial assistance;
- (g) publish guidance for persons in the Falkland Islands about eligibility for, and entitlement to, financial assistance; and
- (h) perform any other function of the Head of Service under this Ordinance.

## **22. Annual review of allowances**

- (1) At least once in each financial year, the Governor must review in relation to the financial assistance paid under this Ordinance —
  - (a) the basis for entitlement to each allowance; and
  - (b) the rates payable.
- (2) Any changes to the matters reviewed under subsection (1) must be published by notice in the *Gazette*.

## **23. Applications for financial assistance**

- (1) An application for financial assistance must include such information as the Head of Service may reasonably require in order to determine the applicant's eligibility and entitlement.
- (2) An application for income support must be submitted in accordance with the operational manual.
- (3) The Head of Service must not, save in exceptional circumstances —
  - (a) accept more than one application for income support at a time from members of the same household; or
  - (b) consider an application for income support or financial assistance under section 20 if a person living in the same household as the applicant receives income support.
- (4) An application for attendance allowance must be submitted in accordance with the attendance allowance policy.
- (5) An application for winter fuel allowance must be submitted in accordance with the winter fuel allowance policy.
- (6) An applicant must —
  - (a) ensure that their application is true and complete as far as is reasonably practicable;

(b) cooperate with the assessment of their eligibility and entitlement, and any subsequent reassessment; and

(c) consent to their personal information being shared in accordance with this Ordinance.

(7) A person who receives financial assistance must inform the Head of Service as soon as is reasonably practicable of any change in their personal circumstances or in the circumstances of any other person included in their application.

(8) An application made on behalf of a child must be submitted by a parent of the child or, if there is no such person, by a person who is responsible for caring for the child.

#### **24. Notification of assessments and determinations**

The Head of Service must give written notice to the applicant or, if the applicant is a child, the person who submitted the application on the child's behalf, about any assessment or determination under this Ordinance, including reasons for the decision.

#### **25. Applicant's breach of duty**

The Head of Service may cease payment of financial assistance to any person who is in material breach of section 23(6) or (7) and may require the person to repay all or any part of the financial assistance paid to them or for their benefit or the benefit of a member of their household.

#### **26. Personal information**

(1) A person who is or was the Head of Service, or who carries or carried out duties under the authority of the Head of Service for and in connection with the administration of this Ordinance, must not directly or indirectly give any other person personal information or make a record of or use any personal information acquired under this Ordinance about an applicant or recipient except—

(a) in the course of carrying out the person's duties for or in connection with the administration of this Ordinance; and

(b) with the authority of the applicant or recipient, or in accordance with the law (including a court order).

(2) The Commissioner of Taxes or any other public officer acting under the Commissioner's direction may provide information relating to the financial circumstances of an applicant for or recipient of financial assistance or any member of an applicant's or recipient's household to the Head of Service for the purpose of assisting the Head of Service to perform the Head of Service's functions under this Ordinance.

(3) A person who provides information in accordance with subsection (2) is not guilty of an offence under section 202 of the Taxes Ordinance 1997.

(4) The Head of Service must ensure that, as far as is reasonably practicable, personal information about applicants and recipients is —

(a) collected only for the purpose of this Ordinance;

- (b) accurate and relevant;
- (c) held securely; and
- (d) retained for no longer than is reasonably necessary.

(5) In this section, “**recipient**” means a person who receives financial assistance under this Ordinance.

## **PART 7 - TRANSITIONAL PROVISION AND CONSEQUENTIAL AMENDMENTS**

### **27. Transitional provision**

(1) Subsections (3) and (4) apply to financial assistance provided before the commencement of this Ordinance and that continues to be provided on the same basis after that date (“**continuing financial assistance**”).

(2) Continuing financial assistance that was described as “income support”, “rent support”, “service charge support”, “childcare support”, “winter fuel allowance” or “attendance allowance” is treated after the commencement of this Ordinance as the equivalent financial assistance given under this Ordinance.

(3) Continuing financial assistance may be reassessed, varied or ended in accordance with this Ordinance.

(4) An application for financial assistance made and not determined before the commencement of this Ordinance must be treated as if it is an application for financial assistance under this Ordinance.

### **28. Consequential amendments**

The Schedule has effect to amend the legislation listed in the first column to the extent specified in the second column.

**SCHEDULE – CONSEQUENTIAL AMENDMENTS**

*section 28*

<b>Legislation</b>	<b>Amendment</b>
Taxes Ordinance 1997	In section 57(1), omit paragraph (t).
Legal Aid Regulations 2020	<p>In regulation 3(1) replace the definition of “<b>welfare allowances</b>” with —</p> <p style="padding-left: 40px;">“<b>welfare allowances</b>” means —</p> <p style="padding-left: 40px;">(a) family allowance received under the Family Allowances Ordinance 1960;</p> <p style="padding-left: 40px;">(b) payments received for participation in the employment programme; and</p> <p style="padding-left: 40px;">(c) income support, attendance allowance or other financial assistance received under the Financial Assistance Ordinance 2023 that is not a loan made under section 20 of the Ordinance.”.</p>

Passed by the Legislature of the Falkland Islands on 31 May 2023.

CHERIE YVONNE CLIFFORD,  
*Clerk of the Legislative Assembly.*

This printed impression has been carefully compared by me with the Bill which has passed the Legislative Assembly and is found by me to be a true and correctly printed copy of the said Bill.

CHERIE YVONNE CLIFFORD,  
*Clerk of the Legislative Assembly.*