

FAMILY ALLOWANCES ORDINANCE 2023

GUIDANCE ISSUED UNDER SECTIONS 6 (3) AND 18

Valid from 1 July 2023

1. Introduction

This guidance is issued under sections 6(3) and 18 of the Family Allowances Ordinance 2023. Family allowances are administered by the Falkland Islands Government Treasury Department. A family allowance is payable to a parent. In the legislation and in this guidance, all references to ‘parent’ include anyone who has parental responsibility for the child (within the meaning of the Children Ordinance 2014) as well as birth parents.

2. Eligibility for family allowance

(a) The child

- is eligible up to the end of the academic year in which they turn 16 years of age; and
- must be ordinarily resident in the Falklands Islands, and must have been ordinarily resident in the Falkland Islands for at least six months.

(b) The parent must

- have Falkland Islands status; or
- have a permanent residence permit; or
- have been ordinarily resident in the Falkland Islands for not less than three years; or
- be applying in respect of a child who has Falkland Islands status, or in respect of a child who has been ordinarily resident in the Falkland Islands for not less than three years.
- In addition, the parent must be ordinarily resident in the Falkland Islands

3. Application for family allowance

- The eligible parent must submit a completed form to the administrator supported by documents necessary to prove eligibility.
- An application will not be approved if the parent is entitled to a payment from another country that is similar to family allowance; or if the parent is exempted from the liability to pay income tax in the Falkland Islands

4. Payment of family allowance

- Where the parents are living together, payment is to either of them.
- Where parents are not living together, the administrator exercises discretion under section 6(2) of the Ordinance; Section 6(2) provides that the administrator of Family

Allowances may in their discretion decide the parent to whom the allowance should be paid.

- In the majority of cases only one parent will apply, and the need to exercise this discretion does not arise. Discretion is exercised where more than one parent wishes to claim Family Allowances.
- The administrator may issue guidance under section 6(3) regarding how the administrator intends to exercise their discretion.

An allowance is payable retrospectively for the six month period that an eligible child has been resident in the Falkland Islands. Note that where a child is newly eligible as a result of policy changes introduced on 1 July 2023, retrospective payment cannot be made for any period before that date.

5. Factors to be taken into account in exercising discretion under section 6(2)

As a general principle, the administrator's primary consideration in making decisions is the welfare of the child. The secondary consideration is the welfare of either parent. This may in particular be relevant where there is any evidence of domestic abuse. A third and subsidiary consideration is to achieve a fair balance between the financial and other interests of the two parents.

The Ordinance specifies two factors which the administrator should consider. The first is **which parent the child lives with most of the time**. If there are no other relevant factors to consider, the award of Family Allowances will be made to that parent.

The other factor specified in the Ordinance is any **court order** that has been made regarding residence in respect of the child. Unless there are other relevant factors to consider, the award of Family Allowances will be made to the parent with whom the child will live for the greater proportion of their time, as set out in the court order.

If the agreement is for a child to spend **equal time with each parent**, then the award of Family Allowances may be divided equally between the parents, either with their shared agreement, or by decision of the administrator if there is no such agreement.

In addition, the administrator may take account of **any other information which they consider, in their discretion, to be relevant**.

Relevant information may include any evidence of domestic abuse. An allegation of domestic abuse should be supported by credible evidence, such as court judgments or written information from a relevant professional, such as social services, health professionals or the police. Evidence may be supplied by an applicant, or the administrator may request information from these agencies with the appropriate consent.

6. Where only one parent is eligible to receive Family Allowances

Section 5(2) of the Family Allowances Ordinance 2023 sets out who is eligible to be paid Family Allowances in respect of an eligible child. The recipient must meet the conditions summarised in section 2(b) above.

If only one of the parents is eligible to receive Family Allowances, then the administrator will make payment to that parent. The administrator has no discretion to do otherwise within the Ordinance.

In some cases, a parent who is not currently eligible may become eligible after a period of time eg. once they have been ordinarily resident for three years. At that stage they may apply for Family Allowances to be paid to them, and the administrator will exercise their discretion within the Ordinance and this guidance to make a new determination.

7. Ceasing of payments and determination of disputes

Payment of allowance ceases when a person does not or no longer meets the eligibility criteria. Payments automatically cease at the end of the academic year in which the child turns 16 years of age.

Disputes regarding payment or non-payment of allowances are dealt with in accordance with the Falkland Islands Government complaints procedure.

A parent must notify the administrator of any change in their circumstances or in the child's circumstances that would affect entitlement to family allowance.

Overpayments of family allowance may be required to be repaid.

8. False statements

It is a criminal offence to knowingly or recklessly make false statements in an application, and such cases may lead to prosecution.