



Administrative Instruction – Instruction administrative

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Date: 10 September 2013

DEPENDENCY STATUS AND BENEFITS

The Registrar, pursuant to section 3.2 of Presidential Directive ICC/PRES/D/G/2003/001 and for the purpose of implementing Staff Regulation 3.3 and Staff Rule 103.17, hereby promulgates the following:

Section 1

Scope

1.1 The present Instruction shall be applicable to all staff members of the Court, holding a fixed-term appointment.

Section 2

General Provisions

2.1 Staff members may be paid a dependency benefit with regard to their primary dependant(s) and/or with regard to one secondary dependant, in conformity with the United Nations common system standards and subject to the conditions specified in the Staff Rules and this Instruction.

Dependency status

2.2 Dependency status shall be recognised in accordance with the provisions of Staff Rule 103.17 which defines dependency for the purposes of Staff Regulations and Staff Rules, and in accordance with the provisions of this Instruction. It may be recognised in respect of:

- (a) A dependent spouse as defined in Section 3;
- (b) A dependent child or children, and a child or children with a disability as defined in Section 4; and

- (c) A secondary dependant, as defined in Section 5.

Dependency benefits

2.3 Dependency benefits may take the form of dependency allowances and/or, in the case of staff members in the Professional and higher categories, payment at the dependency rate of salary and post adjustment.

Entitlements to dependency benefits

2.4 Staff members shall be entitled to receive dependency benefits for those dependants whose dependency status has been recognised, provided the conditions of this Instruction are met.

Submission of claims

2.5 Claims for dependency benefits shall be made in writing and shall be supported by satisfactory documentary evidence.

Obligation to report changes

2.6 Staff members shall provide written notification of any changes in their marital status or the status of their dependants, including the marital status of their dependants, by immediately advising the Human Resources Section to that effect.

Section 3

Dependent Spouse

3.1 "Spouse" is a partner either by marriage recognized as valid under the law of the country of nationality of a staff member or by legally recognized domestic partnership contracted by a staff member under the law of the country of his or her nationality.

3.2 "Dependent spouse" is a spouse whose occupational earnings, if any, do not exceed the lowest entry level of the General Service gross salary scales in force on 1 January of the year concerned for the duty station in the country of the spouse's place of work. However, in the case of staff members in the Professional and higher categories, the spouse's earnings threshold shall not at any duty station be less than the equivalent of the lowest entry level at the base of the salary system, in conformity with the United Nations common system standards, i.e. G-2 step 1 for New York.

3.3 In cases where domestic law in a staff member's home country legally recognizes more than one spouse, only one spouse shall be recognized for the purpose of dependency benefits.

3.4 A staff member who is legally separated from his or her spouse may claim dependency benefit upon submission of satisfactory evidence of financial support to the spouse.

3.5 Pension income, such as retirement and disability benefits, and income resulting solely from investments shall not be included in the computation of the annual gross occupational earnings under Section 3.2.

Dependent spouse benefit for staff in the Professional and higher categories

3.6 Staff members in the Professional and higher categories shall be paid salary and post adjustment at the dependency rate with respect to a dependent spouse.

Dependent spouse benefit for staff in the General Service category

3.7 Staff members in the General Service categories shall receive a dependency allowance with respect to a dependent spouse when local conditions and/or the practices of comparator employers call for the establishment of such an allowance. The amount of the allowance, if any, shall be provided in the local salary scale applicable at the duty station.

Adjusted dependency benefit with respect to spouse

3.8 In case where the spouse's annual gross occupational earnings are over the thresholds established under section 3.2, an adjusted dependency benefit with respect to a spouse may be paid to:

- (a) Staff members in the Professional and higher categories who have no dependent children; and
- (b) Staff members in the General Service category, with or without dependent children.

3.9 The adjusted dependency benefit shall equal the amount by which the sum of the earnings threshold plus the appropriate dependency benefit exceeds the spouse's annual gross occupational earnings.

Section 4

Dependent Children

4.1 "Dependent child" refers to a staff member's natural or legally adopted child or, a staff member's stepchild if residing with the staff member, for whom the staff member provides main and continuing support. The dependent child shall be less than eighteen (18) years of age or, if the child is in full-time attendance at an educational institution, under twenty-one (21) years of age.

4.2 In accordance with Staff Rule 103.17 (iv), a natural, a legally adopted child, or a stepchild, if the latter is residing with the staff member, shall be recognized as a dependent child when the following conditions are met:

- (a) The child is under eighteen (18) years of age, or, if in full-time attendance at school, university or a similar educational institution, under twenty-one (21) years of age; and

- (b) The staff member establishes that he or she provides main and continuing support to the child, which is at least equal to the amount of the dependency allowance he or she would receive. This shall normally be done by the staff member submitting a certification to that effect. Such certification must be satisfactory documentary evidence, if a child:
 - (i) Does not reside with the staff member;
 - (ii) Is married; or
 - (iii) Is recognised as a dependant under the special conditions defined in Section 4.3 below.

4.3 Other children, who do not fall under Section 4.1 but fulfil the age, school attendance and support requirements specified in Section 4.2 above, may be recognised as dependent children under Staff Rule 103.17 when all the following conditions are met:

- (a) Legal adoption is not possible because there is no statutory provision for adoption or any prescribed court procedure for formal recognition of customary or *de facto* adoption in the staff member's country of nationality;
- (b) The child resides with the staff member;
- (c) The staff member can be regarded as having established a parental relationship with the child;
- (d) The child is not a brother or sister to the staff member; and
- (e) The number of children for which dependency benefits are claimed under the present subsection does not exceed three.

4.4 The residency requirement shall be deemed fulfilled when a dependent child attends a boarding school or another educational institution under similar arrangement, away from the duty station of the staff member.

4.5 When a staff member is married to, or has a child or children, with, another staff member of the Court or a staff member of another organization of the United Nations common system, or similar system, only one may claim dependency benefits for dependent children emanating from that relationship.

4.6 When a staff member is divorced or legally separated from another staff member, the determination of who will receive the dependency benefit for the child(ren) will be based on which of the staff members has legal custody of the child(ren). When such staff members have joint custody, either of the two parents may claim the benefit(s).

4.7 Staff members shall declare any governmental or similar dependency allowance that they or their spouses receive in respect of a dependent child. The dependency benefit paid by the Court shall be adjusted accordingly.

Dependent child benefit for staff in the Professional and higher categories

4.8 For staff members in the Professional and higher categories, the following conditions shall also apply:

- (a) If a staff member receives the dependency rate of the net base salary with respect to a spouse, he or she will receive a dependency allowance for each dependent child;
- (b) If the staff member has no dependent spouse, he or she will receive the dependency rate of the net base salary with respect to the first child. The staff member will then receive the dependency allowance in respect of each additional dependent child;
- (c) If the staff member is married to another staff member of the Court or to a staff member of an organization of the United Nations common system, or similar system, only one spouse may receive the dependency benefit. The spouse earning the higher net salary will receive the dependency benefit.

Dependent child benefit for staff in the General Service category

4.9 Staff members in the General Service category shall receive a dependency allowance in an amount and under terms based on local conditions and/or the practices of comparator employers, taking into account the floor formula established by the United Nations General Assembly. The amount and conditions of the allowance, which may limit payment to a maximum number of six children, shall be provided in the local salary scale applicable at the duty station. The amount may be higher for a single parent.

Dependency benefit with respect to a child or children with a disability

4.10 A child who is certified by the Medical Officer of the Court as physically or mentally incapacitated for substantial gainful employment, either permanently or for a period expected to be of long duration, shall be recognized as a dependent child, regardless of the conditions of school attendance otherwise required under Section 4.2(a) and may continue to be recognized as a dependant after reaching age eighteen (18) or twenty-one (21), provided it is established in accordance with Section 4.2(b) that the staff member provides main and continuing support for the child.

4.11 Staff members in the Professional and higher categories shall receive for a dependent child with a disability:

- (a) Double the amount of the regular dependency allowance if they are entitled to receive dependency allowance with respect to that child; or
- (b) An additional payment in the amount of the regular dependency allowance, if they are paid salary and post adjustment at the dependency rate on account of that child.

4.12 Staff members in the General Services category shall receive for a dependent child with a disability a dependency allowance equal to double the amount of the regular child allowance.

4.13 At duty stations where a higher rate of dependency allowance is paid to General Service staff members in respect of the first dependent child, and the first dependent child is disabled, staff members shall receive for that child:

- (a) The higher amount of dependency allowance payable for the first dependent child; and
- (b) An amount equivalent to the child allowance payable in respect of children other than the first dependent child.

Governmental or similar dependency allowance for children with a disability

4.14 Staff members shall declare any governmental or similar dependency allowance that they or their spouses receive in respect of a dependent child with a disability. The dependency benefit paid by the Court shall be adjusted accordingly.

Section 5

Secondary Dependant

5.1 "Secondary dependant" refers to the father, mother, brother or sister of a staff member, for whom the staff member provides one half or more of their financial support, and in any case at least twice the amount of the dependency allowance. Pension income, such as retirement and disability benefits, and income resulting solely from investments shall not be included in the computation of the overall financial support of a staff member's secondary dependant. If the secondary dependant is the staff member's brother or sister, he or she must fulfil the same age and school attendance requirements established for a dependent child, unless the brother or sister is recognized as having a disability in accordance with Section 4.10.

5.2 Staff members may only receive an allowance for one secondary dependant. A staff member in the General Service category shall not be paid a secondary dependant's allowance if he or she receives an allowance for a dependent spouse. A staff member in the Professional and higher categories shall be paid a secondary dependant's allowance only if there is no recognised primary dependant.

Section 6

Review

6.1 The Court shall undertake a periodical review for each calendar year of the entitlements to dependency benefits. Staff members must duly cooperate with such review with a view to ensuring that the information is accurate and that satisfactory documentary evidence is available within the timeframes established for the review.

Section 7

Final Provision

7.1 This Administrative Instruction shall enter into force on 26 August 2013.

7.2 This Administrative Instruction supersedes any earlier administrative issuances, guidelines and practices followed before the issuance of the present Instruction, in particular ICC/AI/2008/003 on *Dependent Child Status and Dependent Child Benefit* in respect of dependency status and benefits.



Herman von Hebel
Registrar