
GUERNSEY STATUTORY INSTRUMENT

1978 - No. 20

The Social Insurance (Determination of Claims and Questions)(Guernsey)
Regulations, 1978

Made 4th December, 1978
Laid before the States
Coming into operation 1st January, 1979

THE STATES INSURANCE AUTHORITY, in exercise of the powers conferred upon it by section eighty-seven, section eighty-nine and section ninety of the Social Insurance (Guernsey) Law, 1978, and by the Third Schedule and Part II of the Fourth Schedule to the Law and in exercise of all other powers enabling it in that behalf, hereby orders:-

PART I

GENERAL

Interpretation

1.(1) In these regulations, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:-

"determining authority" means the Authority, the Administrator, the Tribunal, the Medical Board or a single medical practitioner acting in place of the Medical Board;

"hearing" means oral hearing;

"the Law" means the Social Insurance (Guernsey) Law, 1978;

"question" includes, except for the purposes of regulation five of these regulations, a claim under the Law;

and any other expressions have the same meanings as in the Law.

(2) Any notice or other document required or authorised to be given or sent to any person under the provisions of these regulations shall be deemed to have been given or sent if it was sent by post to that person at his ordinary or last known address.

(3) Except where the context otherwise requires, any reference in these regulations to any enactment or regulations shall be construed as a reference to that enactment or those regulations as amended, extended, repealed, replaced or revoked by or under any other enactment or by any other regulations.

(4) The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of these regulations as it applies to the interpretation of a Guernsey enactment.

Procedure at hearings and in connection with determinations; and right to representation

2.(1) Subject to the provisions of the Law and of these regulations -

(a) the procedure in connection with the consideration and determination of any claim or question to which these regulations relate shall be such as the determining authority or the person holding the inquiry, as the case may be, shall determine; so however that in the case of the Tribunal the procedure shall be such as the chairman or deputy chairman of the Tribunal shall determine;

(b) any person who by virtue of the provisions of these regulations has the right to be heard at a hearing

or an inquiry may be represented by another person, whether having professional qualifications or not, and, for the purposes of the proceedings at any such hearing, any such representative shall have all the rights and powers to which the person whom he represents is entitled under the Law and these regulations.

(2) For the purpose of arriving at its decision or discussing any question of procedure, the Tribunal shall, notwithstanding anything contained in these regulations, order all persons not being members of the Tribunal, other than the person acting as an assessor or as a clerk to the Tribunal, to withdraw from the sitting of the Tribunal.

(3) Any person having the right to be heard who appears at a hearing before the Tribunal may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing and of addressing the Tribunal.

Non-disclosure of evidence by the Tribunal.

3. Where, in connection with the consideration and determination of any claim or question there is before the Tribunal, medical advice or medical evidence relating to the claimant which has not been disclosed to him and in the opinion of the chairman of the Tribunal the disclosure to the claimant of that advice or evidence would be harmful to the claimant's health, such advice or evidence shall not be required to be disclosed to the claimant, but the Tribunal shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of the said determination.

Reference by the Authority, the Administrator or the Tribunal to medical practitioner for report

4. The Authority, the Administrator or the Tribunal, as the case may be, may refer to a medical practitioner for examination and report any question arising for his or their determination.

PART II

ADJUDICATION BY THE AUTHORITY, THE ADMINISTRATOR AND THE TRIBUNAL

Application for, and procedure on, determination of question by the Authority

5.(1) A person desiring to obtain the decision of the Authority on any of the questions mentioned in subsection (1) of section seventy-four of the Law shall deliver or send to the Authority an application for the purpose in writing in a form approved by the Authority, and shall furnish such particulars as the Authority may require for the purpose of the consideration and determination of any such question.

(2) The Authority shall take steps to bring any such application and any such particulars to the notice of any person appearing to it to be interested in the application and to obtain from such person such particulars within such time and in such form as it considers reasonably necessary for the proper determination of the question.

(3) Any person appointed by the Authority under subsection (2) of section seventy-four of the Law, to hold an inquiry into the question of any matters arising in connection therewith and to report to it thereon, may by summons require persons to attend any such inquiry to give evidence or to produce documents reasonably required for the purpose of the inquiry and may take evidence on oath and for that purpose administer oaths.

(4) The applicant and any persons notified of the application in accordance with paragraph (2) of this regulation and any other person appearing to the person appointed to hold the inquiry to be interested in the application shall have the right to be present and be heard at any such inquiry and they shall be given reasonable notice of the time and place of the inquiry.

(5) The Authority shall give notice in writing of its decision to the applicant and to any persons appearing to it to be interested therein and may publish its decision in such manner as it thinks fit.

(6) An application for a decision of the Authority shall not be made otherwise than by a person interested.

(7) In this regulation, a person interested means a person whose interest in the application or decision -

- (a) is under and for the purposes of the Law; and
- (b) relates to that person's own liability under the Law or his actual or potential rights under it;

and references to a person appearing to be interested shall be construed accordingly.

Review or reference

6. The foregoing provisions of this Part of these regulations shall apply with the necessary modifications to any case in which -

- (a) a question has been raised with a view to the review under subsection (1) of section seventy-six of the Law of any decision of the Authority given in accordance with this Part of these regulations; or
- (b) a question such as is mentioned in paragraph (1) of the last foregoing regulation is referred to the Authority -
 - (i) under paragraph (a) of subsection (2) of section eighty-four of the Law; or
 - (ii) under subsection (2) of section one hundred and five of the Law.

Time and place of hearing before the Tribunal

7.(1) Reasonable notice of the time and place of any hearing before the Tribunal shall be given to the claimant, and to any other person who may appear to the chairman of the Tribunal to be interested, and, except with the consent of the claimant, the Tribunal shall not proceed with the hearing of any case unless such notice has been given.

(2) If a claimant or other person to whom notice of hearing has been duly given in accordance with these regulations should fail to appear at the

hearing, the Tribunal may proceed to determine the case notwithstanding his absence, or may give such directions with a view to the determination of the case as it may think proper having regard to all the circumstances including any explanation offered for the absence:

Provided that, if a reasonable explanation for his absence has been given by him or on his behalf, the Tribunal shall not, without his consent, determine the case in his absence, unless the hearing has first been adjourned for at least one month and reasonable notice of the time and place of the adjourned hearing has been given to him.

Hearings before the Tribunal

8.(1) The following persons shall be entitled to be present and be heard at the hearing of any case by the Tribunal:-

- (a) the claimant;
- (b) the Administrator;
- (c) The President of the Authority;

and any person appearing to the Tribunal to be interested shall have the right to be present at the hearing of the case.

(2) In such cases as the chairman of the Tribunal may determine, a medical practitioner may sit with that Tribunal as an assessor.

(3) An assessor sitting with the Tribunal as aforesaid shall not take any part in the determination or decision of that tribunal except in an advisory capacity.

Decisions of the Tribunal

9.(1) The decision of the majority of the Tribunal shall be the decision of the Tribunal.

(2) The Tribunal shall -

- (a) record in writing all its decisions (whether on an appeal or on a reference from the Administrator);
- and

- (b) include in the record of every decision a statement of the grounds of such decision and of its findings on questions of fact material thereto; and
- (c) if a decision is not unanimous, record a statement that one of the members dissented and the reason given by him for so dissenting.

(3) As soon as may be practicable after a case has been decided by the Tribunal, a copy of the record of its decision made in accordance with this regulation shall be sent to the claimant, to the Administrator and to any other person who appears to the Tribunal to be interested, and, if the decision of the Tribunal is in whole or in part adverse to the claimant, he shall be informed of the conditions governing appeals to the Ordinary Court.

PART III

DETERMINATION OF DISABLEMENT QUESTIONS

Constitution of the Medical Board

10.(1) Subject to the provisions of this regulation, the Medical Board shall consist of two members selected by or on behalf of the Authority from a panel of medical practitioners appointed by the Authority.

(2) One of the members of the Medical Board shall be appointed by or on behalf of the Authority as chairman of the Board.

(3) A medical practitioner shall not act as a member of the Medical Board for the purpose of the consideration of any case referred to the Board if he -

- (a) is or may be directly affected by that case; or
- (b) has taken any part in such case as a medical assessor or as a medical practitioner who has regularly attended the claimant or to whom any question has been referred for examination and report or as an employer or as a witness.

(4) The Medical Board shall not determine any question if-

(a) one of the members thereof is unable to be present at the consideration of any such question; or

(b) the members of the Board are unable to agree a decision on any such question.

(5) In any case in which, by reason of paragraph (3) or paragraph (4) of this regulation, the Medical Board is unable to determine any question, the members of the Board shall be replaced by two other medical practitioners appointed by or on behalf of the Authority from the panel referred to in paragraph (1) of this regulation and the questions arising in that case shall forthwith be referred again to the Board:

Provided that in a case to which sub-paragraph (b) of the said paragraph (3) relates, three other medical practitioners shall be so appointed in pursuance of this paragraph and their decision, if not unanimous, shall be that of the majority of them.

Reference to single medical practitioner instead of to Medical Board

11.(1) For the purposes of the provisions of section eighty-nine of the Law and notwithstanding anything in the foregoing provisions of these regulations, the disablement questions arising in any case may, with the consent of the claimant, be referred to a single medical practitioner appointed by the Authority instead of to the Medical Board.

(2) The provisions of the next two following regulations shall apply to the proceedings on a reference to a single medical practitioner in accordance with paragraph (1) of this regulation, as if such practitioner were the Medical Board.

(3) If a medical practitioner to whom any questions have been referred in accordance with paragraph (1) of this regulation is of the opinion that a final assessment can be made but that the period which should be taken into account by such assessment would exceed six months, he shall, instead of

himself determining such questions make a report in writing stating his opinion and the grounds for it, and thereupon the reference to the single medical practitioner shall be revoked and the disablement questions arising in the case shall be referred to the Medical Board to which a copy of such report shall be made available.

Notice of sitting and procedure of Medical Board

12.(1) Reasonable notice of the time and place at which the Medical Board will sit for the consideration of any case shall be given to the claimant and if, after such notice has been given, the claimant should fail to appear at the sitting of the Board, the Board shall not proceed to determine the questions referred to it without his consent.

(2) No person shall be entitled to be present and be heard during the consideration of any question by the Medical Board other than the claimant and any other person whom the Board may, with the consent of the claimant, allow to be present as being a person who, in the Board's opinion, is likely to assist it in the determination of that question.

Notice of decision of Medical Board

13.(1) The Medical Board shall in each case record its decision in writing in such form as may from time to time be approved by the Authority and shall include in such record (which shall be signed by all the members of the Board) -

- (a) a statement of its findings on all questions of fact material to such decision; and
- (b) in a case in which the decision of the Medical Board consisting of three persons was not unanimous, a statement that one of the members dissented and of the reasons given by him for dissenting.

(2) As soon as may be practicable, the claimant shall be sent written notice of the decision of the Medical Board, and such notice shall be in such form as may from time to time be approved by the Authority and shall contain a summary of the said findings of the Board, including, where the decision was not unanimous, a statement that one of the members dissented and of the reasons given by him for dissenting.

PART IV

MISCELLANEOUS

Review of decisions involving payment or increase of benefit

14.(1) Where on a review a decision relating to benefit is revised so as to make benefit payable, or to increase the rate of benefit, the decision given on the review shall, subject to the following provisions of this regulation, have effect -

- (a) in the case of unemployment benefit and maternity allowance, as from the date of the application for the review;
- (b) in the case of sickness benefit, invalidity benefit or industrial injury benefit as from the date twenty-one days before the date of the application for the review;
- (c) in the case of widow's benefit, a child's special allowance, a guardian's allowance, an old age pension or industrial disablement benefit as from the date three months before the date of the application for the review.

(2) Where in any case to which paragraph (1) of this regulation applies a claimant proves -

- (a) that on a date earlier than the date on which the application for the review was made, he was (apart from satisfying the condition of making a claim for it) entitled to benefit; and
- (b) that throughout the period between the earlier date and the date on which the application for review was made, there was good cause for delay in making the application;

subject to paragraph (3) and paragraph (5) of this regulation, he shall not be disqualified by virtue of paragraph (1) for receiving any benefit to which he would have been entitled in respect of that period.

(3) In any case in which the review to which the foregoing provisions of this regulation relate was based on a material change of circumstances subsequent to the date from which the original decision took effect, it shall not have effect for any period before the date declared by the determining authority to be the date on which that change took place.

(4) For the purposes of this regulation, where a decision is reviewed at the instance of the Administrator under subsection (1) of section eighty-five of the Law, the date on which it was first decided by the Administrator that the decision should be reviewed shall be deemed to be the date of the application for the review.

(5) In any case to which paragraph (1) of this regulation applies, the decision on review shall not in any event have effect for any period before the date on which the original decision took effect or would have taken effect if an award had been made.

Adjustment of benefit on review or appeal

15. Where by a decision on review or appeal a person entitled to benefit is awarded some other such benefit in lieu thereof, the decision on the review or appeal shall direct that any payments already made on account

of the benefit originally awarded in respect of any period covered by the decision on review or appeal shall be treated as having been made on account of the benefit awarded by that decision.

Period to be taken into account by assessments revised on grounds of unforeseen aggravation

16. On a review of any assessment under subsection (2) of section eighty-eight of the Law the period to be taken into account by any revised assessment may include any period not exceeding three months before the date of the application for the review if the Medical Board are satisfied that throughout that period there has been unforeseen aggravation of the results of the relevant injury since the making of the assessment under review.

Repeals

17. The Social Insurance (Determination of Claims and Questions) (Guernsey) Regulations, 1964, and the Social Insurance (Determination of Claims and Questions) (Amendment) (Guernsey) Regulations, 1971, are hereby repealed.

Citation

18. These regulations may be cited as the Social Insurance (Determination of Claims and Questions) (Guernsey) Regulations, 1978.

Commencement

19. These regulations shall come into force on the first day of January, nineteen hundred and seventy-nine.

Dated this fourth day of December, nineteen hundred and seventy-eight.

E.H. BODMAN

President of the States Insurance Authority,
for and on behalf of the Authority.

EXPLANATORY NOTE

(This Note does not form part of the Regulations, but is intended to indicate their general purport).

These regulations relate to the determination of claims and questions under the Social Insurance (Guernsey) Law, 1978.

They provide for: general procedural matters (Part I); adjudication by the Authority, the Administrator and the Tribunal (Part II); the determination of disablement questions relating to industrial injuries (Part III); and miscellaneous provisions consequential to appeals and reviews, including the adjustment of benefit (Part IV).