

ORDER IN COUNCIL

XXIV

1990

ratifying a Projet de Loi

ENTITLED

The Health Service (Benefit) (Guernsey) Law, 1990

(Registered on the Records of the Island of Guernsey
on the 31st October, 1990.)



1990

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 4th day of December, 1990 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:—Harry Wilson Bisson, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Kenneth John Rowe and Lawrence Oscar Ozanne, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 31st day of October, 1990, approving and ratifying a *Projet de Loi* entitled “The Health Service (Benefit) (Guernsey) Law, 1990”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney for registration on the records of that Island of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 31st day of October 1990

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 23rd day of October 1990 in the words following, viz:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

“1. That, in pursuance of their Resolutions of the 15th day of December, 1988 and the 31st day of January, 1990, the States of Deliberation at a meeting held on the 30th day of May, 1990, approved a Bill or “Projet de Loi” entitled “The Health Service (Benefit) (Guernsey) Law, 1990”, and requested the Bailiff to present a most humble Petition to your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Health Service (Benefit) (Guernsey) Law, 1990”, and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou.’.

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that

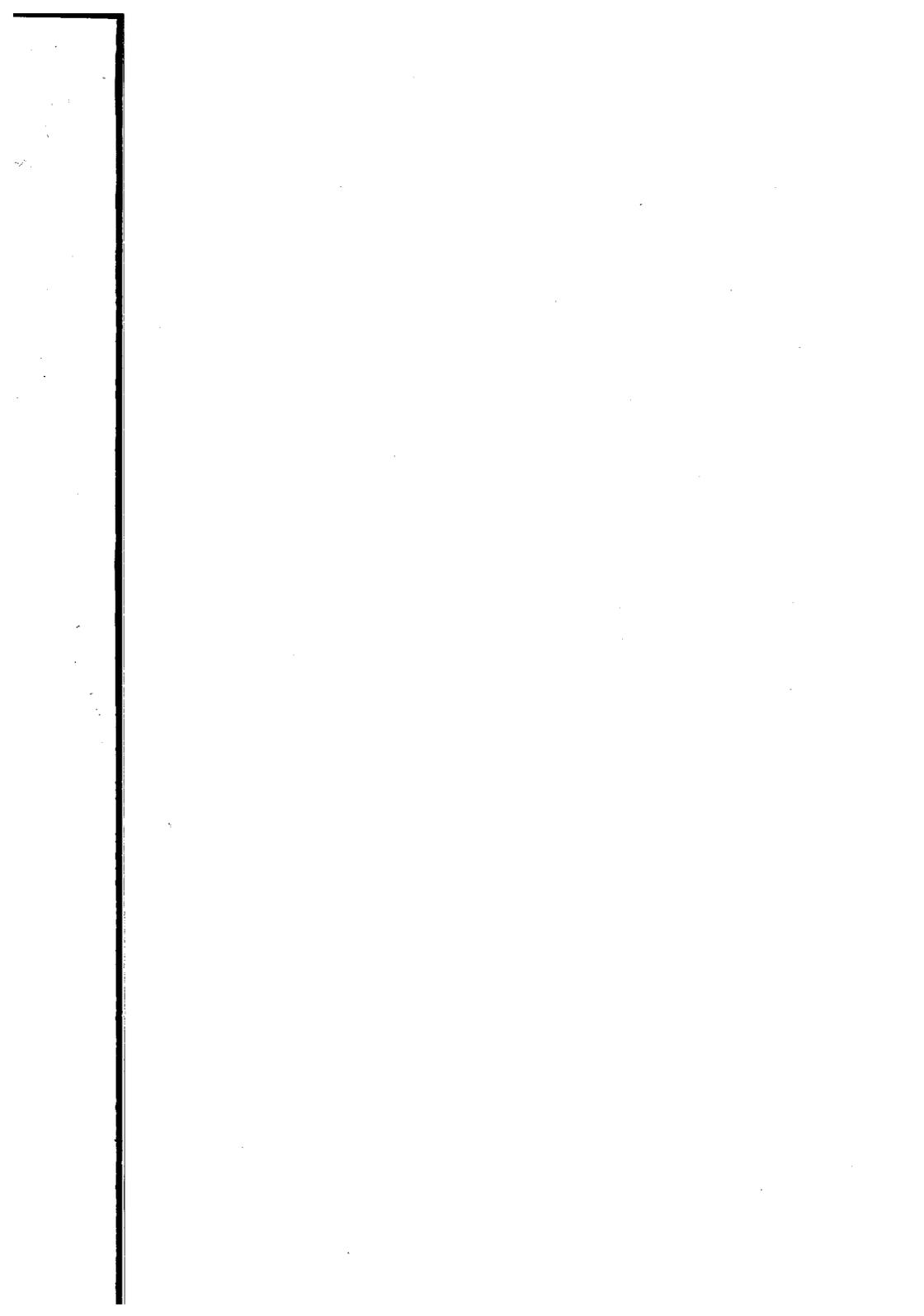
it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney



PROJET DE LOI

ENTITLED

The Health Service (Benefit) (Guernsey) Law, 1990

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PROJET DE LOI

ENTITLED

The Health Service (Benefit) (Guernsey) Law, 1990

THE STATES. in pursuance of their Resolutions of the 15th day of December, 1988 and the 31st day of January, 1990. have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

PART I

SOURCE OF FUNDS

**Guernsey
Health
Service Fund.**

1. (1) The Guernsey Health Service Fund established for the purposes of the Pharmaceutical Law ("the Fund") shall continue to be maintained under the control and management of the Authority.

(2) There shall be paid into the Fund —

- (a) the Guernsey Health Service Fund Allocation, in accordance with section 101 of the Social Insurance Law;
- (b) all monies provided by the States under section 2;
- (c) all monies accruing to the Authority under the provisions of this Law; and
- (d) all monies due to the Fund and remaining unpaid immediately before the commencement of this Law.

(3) There shall be paid out of the Fund—

- (a) all sums payable in respect of benefit under the provisions of this Law;
- (b) all expenses incurred by the Authority in carrying this Law into effect;
- (c) all monies due to be paid from the Fund and remaining unpaid immediately before the commencement of this Law; and
- (d) all monies payable by virtue of the provisions of Schedule 1 (transitional provisions and savings).

(4) Accounts of the Fund shall be prepared annually in such form and manner as the Authority may direct.

(5) Auditors appointed annually by the States (“the auditors”) shall examine, certify and report to the Authority upon the accounts.

(6) The Authority shall, as soon as may be, lay copies of the accounts together with the report of the auditors thereon before the States.

(7) Monies forming part of the Fund may be invested by the Authority in investments of the descriptions authorised by the States.

(8) The investment functions of the Authority under subsection (7) may be delegated by the Authority (in whole or in part) to professional fund or investment managers.

2. There shall, in respect of each year, be paid into the Fund out of monies provided by the States, in such manner and at such times as the States Advisory and Finance Committee shall determine, a States **States Health Service Annual grant.**

Health Service Annual Grant of an amount equal to 57 per centum (or such other percentage as the States may by Ordinance specify) of the amount certified by the auditors as being the amount of the Guernsey Health Service Fund Allocation in respect of that year.

PART II

PERSONS ENTITLED TO BENEFIT UNDER THIS LAW

Persons
entitled to
benefit.

3. (1) Subject to the provisions of this Law, a person who is resident in Guernsey and who has at any time been resident and present in Guernsey for an aggregate of not less than 26 weeks (or such other aggregate not exceeding 26 weeks as the States may by Ordinance specify) is entitled to benefit under this Law.

(2) In calculating the aggregate of a person's residence and presence in Guernsey for the purposes of subsection (1), any period of residence and presence of less than 4 weeks shall not be counted.

(3) For the purposes of this Law a child who does not satisfy the conditions as to residence and presence specified in subsection (1) but who is a child of the family of a person who satisfies those conditions shall be deemed to satisfy those conditions.

(4) For the purposes of this section regulations may prescribe conditions for providing—

(a) that a person who is resident in Guernsey but who is temporarily absent therefrom shall be deemed to be present in Guernsey;

- (b) that a child who does not satisfy the conditions as to residence and presence specified in subsection (1) and who is not a child of the family of a person who satisfies those conditions shall be deemed to satisfy those conditions.

(5) For the purposes of this section an individual shall be treated—

- (a) as a child, if he would be so treated for the purposes of the Family Allowances Law;
- (b) as a child of the family of a person, if—
- (i) he is a child;
 - (ii) that person is not a child; and
 - (iii) he and that person would be treated as constituting a family for the purposes of the Family Allowances Law.

PART III

BENEFIT AND HEALTH BENEFIT CARD

4. Benefit under this Law shall be of the following categories—

Categories of benefit.

- (a) medical benefit;
- (b) pharmaceutical benefit;
- (c) medical appliances;
- (d) such other benefit as the States may by Ordinance specify; and an Ordinance under this paragraph may provide that any of the provisions of this Law shall (subject to any exceptions, adaptations or modifications specified in the Ordinance) apply in relation to such other benefit.

Health
Benefit Card.

5. (1) A person who satisfies the conditions as to residence and presence specified in section 3(1) may apply to the Authority, in such manner as may be prescribed, for the issue of a health benefit card.

(2) A health benefit card shall contain such information as may be prescribed and shall be in such form and shall remain in force for such period as the Authority may determine.

(3) Regulations may provide for different forms of health benefit cards to be used by different classes of persons or for the receipt of different categories of benefit.

(4) The classes of persons referred to in subsection (3) shall be such classes as the States may by Ordinance specify.

PART IV

MEDICAL BENEFIT

Right to
medical
benefit.

6. (1) Subject to the provisions of this Law, medical benefit, being a grant of the amount specified in subsection (2), is payable to a person who satisfies the conditions as to residence and presence specified in section 3(1) and who has a consultation for a medical purpose.

(2) The amount of the grant is—

- (a) £8, where the consultation was with a medical practitioner;
- (b) £4, where the consultation was with a nurse.

(3) The States may by Ordinance amend the amounts specified in subsection (2).

(4) In subsection (1) the expression "consultation for a medical purpose" means a consultation with or treatment by an approved medical practitioner or approved nurse for a medical purpose carried out in Guernsey but does not include a consultation or treatment—

- (a) for a prescribed purpose;
- (b) at a location specified by Ordinance of the States.

(5) The States may by Ordinance extend the meaning given by subsection (4) to the expression "consultation for a medical purpose" so as to include consultations with or treatment by any class or designation of person specified in the Ordinance; and an Ordinance under this subsection may provide that any of the provisions of this Law shall (subject to any exceptions, adaptations or modifications specified in the Ordinance) apply in relation to such consultations or treatment.

7. (1) Subject to the provisions of this Law, and **Claims for medical benefit.** except where regulations otherwise provide, it is a condition of a person's right to medical benefit that he makes a claim therefor in the prescribed manner.

(2) Regulations may make provision for--

- (a) disqualifying a person from the receipt of medical benefit if he fails to make his claim therefor within the prescribed time (but such regulations shall make provision for extending, subject to any prescribed conditions, the time within which the claim may be made where good cause is shown for the delay);

- (b) requiring claimants to furnish to the Administrator any information required for the determination of the claim or of any question arising in connection therewith.

Payment of
medical
benefit.

8. Regulations may make provision—

- (a) as to the time and manner of payment of medical benefit;
- (b) as to the information and evidence to be furnished by persons entitled to receive payment to enable payment to be made;
- (c) for extinguishing the right to any amount payable in respect of medical benefit where payment thereof is not obtained within twelve months from the day upon which the amount becomes receivable in accordance with regulations;
- (d) for payments of medical benefit due to a child to be paid to his parent or guardian or any other person having care of him;
- (e) for enabling the Authority, in such circumstances as may be prescribed, to appoint a person to receive payments of medical benefit for another person;
- (f) for enabling the Authority to pay to the estate or personal or other representative of a deceased person any amounts due to the deceased in respect of medical benefit;
- (g) for enabling a person entitled to receive payments of medical benefit to nominate a person to whom he wishes the Authority to make payment.

9. Regulations may make provision for—

Repayment
of medical
benefit.

- (a) treating medical benefit paid to any person, being benefit which, it is subsequently decided, was not due to him, as having been properly paid or as having been paid on account of other medical benefit properly due to him;
- (b) the repayment of such benefit and the recovery thereof, by deduction from other medical benefit or otherwise.

PART V

PHARMACEUTICAL BENEFIT

10. (1) In this Law “pharmaceutical benefit” means, in relation to any person, the drugs and medicines requisite for his treatment.

Right to
pharma-
ceutical
benefit.

(2) A person who satisfies the conditions as to residence and presence specified in section 3(1) and who is being treated in Guernsey by an approved medical practitioner or approved dentist is (subject to the provisions of this Law) entitled to be supplied with pharmaceutical benefit upon the presentation of an order in that behalf in the prescribed form (a “medical prescription”) issued by the medical practitioner or dentist.

(3) A person entitled under subsection (2) to be supplied with pharmaceutical benefit is entitled thereto free of charge, except for any prescription and other charges payable under the provisions of this Law.

(4) Pharmaceutical benefit shall not be supplied for the purposes of this Law except upon the presentation of a medical prescription issued on or after the day on which this section comes into force.

(5) The States may by Ordinance—

- (a) extend the application of subsection (2) so as to enable any class or designation of persons specified in the Ordinance to issue, for the purposes of this Law, medical prescriptions for the supply of pharmaceutical benefit; and an Ordinance under this paragraph may provide that any of the provisions of this Law shall (subject to any exceptions, adaptations or modifications specified in the Ordinance) apply in relation to such class or designation of persons and to prescriptions issued by them;
- (b) empower the Authority to restrict, by regulation, the description, nature and quantity of pharmaceutical benefit which medical prescriptions issued by any class or designation of persons specified in the Ordinance may order to be supplied.

Medical prescriptions.

11. Regulations may make provision in relation to medical prescriptions and in particular, but without prejudice to the generality of the foregoing, may provide for—

- (a) the manner in which medical prescriptions shall be completed and issued by approved medical practitioners and approved dentists;
- (b) prohibiting the issue of medical prescriptions which order the supply of pharmaceutical benefit for the treatment of more than one person;
- (c) authorising the supply of pharmaceutical benefit upon the presentation of a copy of a medical prescription to an authorised supplier;

- (d) regulating the quantity of pharmaceutical benefit which a medical prescription may order to be supplied, so as to prevent the quantity of pharmaceutical benefit supplied to any person on any one occasion exceeding the quantity requisite for his treatment during such period as may be prescribed;
- (e) prohibiting the issue by an approved medical practitioner or approved dentist of medical prescriptions which order the supply of pharmaceutical benefit for his own treatment.

12. (1) Subject to the provisions of this Law, pharmaceutical benefit shall not be supplied for the purposes of this Law except by a person authorised in that behalf by the Authority under subsection (2) (an "authorised supplier").

Authorised suppliers of pharmaceutical benefit.

(2) A person shall be authorised by the Authority to supply pharmaceutical benefit if—

- (a) he is an approved medical practitioner, approved dentist or approved pharmacist, or is a pharmacist who falls within paragraph (b) of the definition of "pharmacist" in section 47(1); and
- (b) he furnishes to the Authority an undertaking in the prescribed form to supply pharmaceutical benefit in accordance with prescribed terms and conditions.

(3) Regulations may make provision in relation to the authorisation of persons under subsection (2) and in relation to authorised suppliers, including (without prejudice to the generality of the foregoing) provision in relation to—

- (a) the form and manner in which persons shall apply for authorisation;
- (b) the terms and conditions subject to which pharmaceutical benefit is, pursuant to the undertaking referred to in subsection (2)(b), to be supplied;
- (c) the preparation and maintenance of a list (to be known as the "Pharmaceutical List") of all persons who are authorised suppliers;
- (d) the preparation by the Authority of a scheme for securing that places of business of authorised suppliers who are pharmacists are open on the days and at the hours specified in the scheme;
- (e) the circumstances in which persons shall cease to be authorised suppliers; and
- (f) the restriction of the description, nature and quantity of pharmaceutical benefit which may, for the purposes of this Law, be supplied by any class or designation of authorised supplier specified in the regulations.

Supply of
pharmaceutical
benefit.

13. (1) Pharmaceutical benefit shall not be supplied for the purposes of this Law by an authorised supplier who is—

- (a) a medical practitioner or dentist, unless the medical prescription authorising the supply of the pharmaceutical benefit was issued by the medical practitioner or dentist himself or by another approved medical practitioner or approved dentist who is his assistant or with whom he is carrying on practice in partnership;

(b) a pharmacist employed by a medical practice, unless the medical prescription authorising the supply of the pharmaceutical benefit was issued by an approved medical practitioner of the practice.

(2) Pharmaceutical benefit shall not be prepared or supplied except by, or under the direct supervision of, an approved medical practitioner, approved dentist or approved pharmacist or other person of a class or designation specified by Ordinance of the States.

(3) Regulations may make provision—

(a) permitting an authorised supplier to supply pharmaceutical benefit otherwise than upon the presentation of a medical prescription;

(b) permitting an approved medical practitioner or approved dentist who is not an authorised supplier to supply pharmaceutical benefit (whether upon the presentation of a medical prescription or otherwise) at the cost, in whole or in part, of the Fund.

(4) The States may by Ordinance specify terms and conditions subject to which pharmaceutical benefit is to be supplied to persons entitled thereto.

(5) An Ordinance under subsection (4) may, without prejudice to the generality of that subsection, make provision as to—

(a) the payment of charges (“prescription charges”) in respect of the supply of pharmaceutical benefit;

(b) the exception of prescribed classes of person from the obligation to pay such charges;

- (c) the payment of different rates of prescription charge—
 - (i) for the supply of different categories of pharmaceutical benefit;
 - (ii) by different classes of person.

**Payment of
authorised
suppliers.**

14. (1) Regulations shall make provision as to—

- (a) the payment of authorised suppliers for pharmaceutical benefit supplied by them under and in accordance with the provisions of this Law, and for that purpose regulations may provide for different rates of payment to be made to different classes or designations of authorised suppliers;
- (b) the manner in which payment shall be calculated; and
- (c) the terms and conditions subject to which payment shall be made.

(2) Regulations under subsection (1) may make provision for requiring an authorised supplier—

- (a) to furnish to the Authority, or to such person as the Authority may direct, any information required by the Authority for the purpose of enabling it—
 - (i) to determine the amount payable under the regulations to authorised suppliers for pharmaceutical benefit supplied by them;
 - (ii) to ascertain that pharmaceutical benefit is being prepared and supplied in accordance with the provisions of this Law; and

- (b) to permit any person authorised in writing by the Authority in that behalf to carry out any inspection and examination for such purpose as aforesaid at any place of business at or from which the authorised supplier supplies pharmaceutical benefit.

PART VI

MEDICAL APPLIANCES

15. (1) In this Law “medical appliance” means, in relation to any person, an appliance prescribed by regulations of the Authority which is requisite for the treatment, management or control of a disease from which that person is suffering. Right to
medical
appliances.

(2) A person who satisfies the conditions as to residence and presence specified in section 3(1) and who is being treated in Guernsey by an approved medical practitioner or approved dentist is (subject to the provisions of this Law) entitled to be supplied with medical appliances—

- (a) upon the presentation of an order in that behalf in the prescribed form (an “appliance prescription”) issued by the medical practitioner or dentist; or
- (b) in the case of medical appliances of a class or description which, pursuant to regulations under this paragraph, may be supplied for the purposes of this Law otherwise than upon the presentation of an appliance prescription, whether or not he presents an appliance prescription in respect thereof.

(3) A person entitled under subsection (2) to be supplied with medical appliances is entitled thereto free of charge, except for such charges as may be payable under the provisions of this Law.

(4) Medical appliances (other than those mentioned in subsection (2)(b)) shall not be supplied for the purposes of this Law except upon the presentation of an appliance prescription issued on or after the day on which this section comes into force.

(5) The States may by Ordinance—

(a) extend the application of subsection (2) so as to enable any class or designation of persons specified in the Ordinance to issue, for the purposes of this Law, appliance prescriptions for the supply of medical appliances; and an Ordinance under this paragraph may provide that any of the provisions of this Law shall (subject to any exceptions, adaptations or modifications specified in the Ordinance) apply in relation to such class or designation of persons and to appliance prescriptions issued by them;

(b) empower the Authority to restrict, by regulation, the description and quantity of medical appliances which appliance prescriptions issued by any class or designation of persons specified in the Ordinance may order to be supplied.

(6) Regulations may provide that a medical appliance of a class or description prescribed by the regulations may be supplied only for the treatment, management or control of a disease prescribed in relation to that class or description of appliance.

16. Regulations may make provision in relation to appliance prescriptions and in particular, but without prejudice to the generality of the foregoing, may provide for—

Appliance prescriptions.

- (a) the manner in which appliance prescriptions shall be completed and issued by approved medical practitioners and approved dentists;
- (b) prohibiting the issue of appliance prescriptions which order the supply of medical appliances for the treatment of more than one person;
- (c) authorising the supply of medical appliances upon the presentation of a copy of an appliance prescription to an authorised appliance supplier;
- (d) regulating the quantity of medical appliances which an appliance prescription may order to be supplied, so as to prevent the quantity of medical appliances supplied to any person on any one occasion exceeding the quantity requisite for the treatment, management or control of the disease from which he is suffering during such period as may be prescribed;
- (e) prohibiting the issue by an approved medical practitioner or approved dentist of appliance prescriptions which order the supply of medical appliances for his own treatment.

17. (1) Subject to the provisions of this Law, medical appliances shall not be supplied for the purposes of this Law except by a person authorised in that behalf by the Authority under subsection (2) (an "authorised appliance supplier").

Authorised appliance suppliers.

(2) A person shall be authorised by the Authority to supply medical appliances—

- (a) if he is an authorised supplier within the meaning of section 12(1) or if the Authority is satisfied that he will supply only such medical appliances as are mentioned in section 15(2)(b); and
- (b) if he furnishes to the Authority an undertaking in the prescribed form to supply medical appliances in accordance with prescribed terms and conditions.

(3) Regulations may make provision in relation to the authorisation of persons under subsection (2) and in relation to authorised appliance suppliers, including (without prejudice to the generality of the foregoing) provision in relation to—

- (a) the form and manner in which persons shall apply for authorisation;
- (b) the terms and conditions subject to which medical appliances are, pursuant to the undertaking referred to in subsection (2)(b), to be supplied;
- (c) the preparation and maintenance of a list (to be known as the “Medical Appliance List”) of all persons who are authorised appliance suppliers;
- (d) the circumstances in which persons shall cease to be authorised appliance suppliers; and
- (e) the restriction of the description and quantity of medical appliances which may, for the purposes of this Law, be supplied by any class or designation of authorised appliance supplier specified in the regulations.

18. (1) Medical appliances (other than those mentioned in section 15(2)(b)) shall not be supplied for the purposes of this Law by an authorised appliance supplier who is—

Supply of
medical
appliances.

- (a) a medical practitioner or dentist, unless the appliance prescription authorising the supply of the medical appliances was issued by the medical practitioner or dentist himself or by another approved medical practitioner or approved dentist who is his assistant or with whom he is carrying on practice in partnership;
- (b) a pharmacist employed by a medical practice, unless the appliance prescription authorising the supply of the medical appliances was issued by an approved medical practitioner of the practice.

(2) Medical appliances mentioned in section 15(2)(b) shall not be supplied for the purposes of this Law by an authorised appliance supplier who is—

- (a) a medical practitioner or dentist, except to his patients or to patients of the medical practice in which he is a partner or by which he is employed;
- (b) a pharmacist employed by a medical practice, except to patients of that practice.

(3) Regulations may make provision —

- (a) permitting an authorised appliance supplier to supply medical appliances otherwise than upon the presentation of an appliance prescription;
- (b) permitting an approved medical practitioner or approved dentist who is not an authorised

appliance supplier to supply medical appliances (whether upon the presentation of an appliance prescription or otherwise) at the cost, in whole or in part, of the Fund.

(4) The States may by Ordinance specify terms and conditions subject to which medical appliances are to be supplied to persons entitled thereto.

(5) The Authority may by regulation make provision as to—

- (a) the payment of charges in respect of the supply of medical appliances;
- (b) the exception of prescribed classes of person from the obligation to pay such charges;
- (c) the payment of different rates of charge—
 - (i) for the supply of different classes or descriptions of medical appliance;
 - (ii) by different classes of person.

**Payment of
authorised
appliance
suppliers.**

19. (1) Regulations may make provision as to—

- (a) the payment of authorised appliance suppliers for medical appliances supplied by them under and in accordance with the provisions of this Law, and for that purpose regulations may provide for different rates of payment to be made to different classes or designations of authorised appliance suppliers;
- (b) the manner in which payment shall be calculated; and
- (c) the terms and conditions subject to which payment shall be made.

(2) Regulations under subsection (1) may make provision for requiring an authorised appliance supplier—

- (a) to furnish to the Authority, or to such person as the Authority may direct, any information required by the Authority for the purpose of enabling it—
 - (i) to determine the amount payable under the regulations to authorised appliance suppliers for medical appliances supplied by them;
 - (ii) to ascertain that medical appliances are being supplied in accordance with the provisions of this Law; and
- (b) to permit any person authorised in writing by the Authority in that behalf to carry out any inspection and examination for such purpose as aforesaid at any place of business at or from which the authorised appliance supplier supplies medical appliances.

PART VII

FINANCE, ADMINISTRATION AND LEGAL PROCEEDINGS

20. (1) The Government Actuary of Great Britain or (if he is unwilling to act) actuaries nominated by him or (if he is unwilling to nominate) actuaries appointed by the States shall review the operation of this Law—

Reports of Actuary.

- (a) within a period of three years beginning on the 1st January in the year in which this section comes into force; and
- (b) thereafter, at intervals not exceeding five years;

and shall, on each such review, report to the Authority on the financial condition of the Fund, and on the adequacy or otherwise of the Guernsey Health Service Fund Allocation payable into the Fund under section 101 of the Social Insurance Law and the States Health Service Annual Grant payable into the Fund under section 2 to support payments to be made out of the Fund under the provisions of this Law.

(2) The Authority shall, as soon as may be, lay before the States a copy of every report made to it under this section.

**General
administra-
tion.**

21. (1) The Authority shall administer this Law.

(2) The functions conferred on the Authority by or under this Law, other than any power to make regulations, may be exercised by the President or any other member of the Authority, or by the Administrator if authorised in that behalf by the Authority.

(3) The functions conferred on the Administrator by or under this Law, other than any function which he is authorised to exercise under subsection (2), may be exercised by any person authorised by him in that behalf.

**General
provisions as
to offences
and
penalties.**

22. (1) A person who, for the purpose of obtaining any benefit or payment under any provision of this Law, whether for himself or some other person, or for the purpose of evading payment of any charge payable under any such provision, or for any other purpose connected with this Law—

(a) knowingly makes a false statement or false representation; or

- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both.

(2) Where a person commits an offence under subsection (1) for the purpose of evading payment of any charge, then, whether or not he is convicted of the offence, the charge is recoverable from him as a civil debt by the person to whom payment was due.

(3) A person who contravenes or attempts to contravene any regulation under this Law is guilty of an offence and liable on summary conviction to such penalty as may be prescribed: provided that the penalty in respect of such an offence shall not exceed a fine of level 4 on the uniform scale or, in the case of a person's second or subsequent conviction of such an offence, level 5 on the uniform scale.

(4) Regulations may provide that the proviso to subsection (3) shall not apply to a contravention or attempted contravention of any of those regulations.

(5) Where an offence under this Law committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and punishable accordingly.

(6) Nothing in this section prevents the Authority from recovering by civil proceedings any sums due to the Fund.

Civil proceedings to recover sums due to the Fund.

23. (1) Any sum due to the Fund is (without prejudice to any other remedy) recoverable by the Authority as a civil debt.

(2) Proceedings for the recovery as civil debts of sums due to the Fund shall be brought within a period of six years immediately following the day on which the cause of action accrued.

PART VIII

DETERMINATION OF CLAIMS AND QUESTIONS

Claims to be determined by Administrator.

24. The Administrator shall determine—

- (a) any claim for benefit under this Law;
- (b) any question arising in connection with a claim for or award of benefit.

Decision of Administrator.

25. (1) The Administrator shall, so far as practicable, dispose of any claim or question mentioned in section 24 within 14 days of its submission to him in one of the following manners—

- (a) he shall decide the claim or question in favour of or adversely to the claimant and give the claimant written notice of the decision and (where the decision is adverse) of the right of appeal under section 26; or
- (b) he shall refer the claim or question to the Tribunal and give the claimant written notice of the reference.

(2) The claimant may demand a written statement of the reasons for a decision of the Administrator under subsection (1)(a).

26. (1) Where the Administrator decides a claim or question adversely to the claimant, the claimant may appeal to the Tribunal. Appeals to Tribunal.

(2) An appeal under this section shall be brought by giving notice of appeal at the office of the Clerk to the Tribunal within 28 days of the date of the decision, or within such further time as the chairman of the Tribunal may for good cause allow.

(3) A notice of appeal under this section shall be in writing and shall contain a statement of the grounds upon which the appeal is made.

(4) On an appeal, and on a reference under section 25(1)(b), the Tribunal, subject to and in accordance with regulations, may order the Authority to pay the costs of any person, whether or not the decision is in his favour.

27. (1) A question of law arising in connection with the determination of an appeal under section 26 or a reference under section 25(1)(b) may, if the Tribunal thinks fit, be submitted for decision to the Ordinary Court in such manner and within such period as may be prescribed by Order of the Royal Court. Submissions to Ordinary Court.

(2) The Tribunal shall, if it decides to submit a question of law to the Ordinary Court, give written notice of its intention to do so to the Administrator, to the claimant and to such other persons as appear to the Tribunal to be concerned with the question.

**Appeals to
Ordinary
Court.**

28. The Administrator or any other person aggrieved by a decision of the Tribunal on a question of law mentioned in section 27(1) which is not submitted to the Ordinary Court under that section may appeal against that decision to the Ordinary Court in such manner and within such period as may be prescribed by Order of the Royal Court.

**Submissions
and appeals
(general).**

29. (1) The decision of the Ordinary Court on a submission or appeal under section 27 or 28 is final.

(2) On a submission or appeal the Ordinary Court may order the Authority to pay the costs of any person, whether or not the decision is in his favour.

(3) Provision may be made by Order of the Royal Court, for the purposes of such submissions or appeals, as to the circumstances in which any official record or certificate is to be sufficient or conclusive evidence.

**Questions
first arising
on appeal.**

30. Where a question under this Law first arises in the course of an appeal to the Tribunal, the Tribunal may, if it thinks fit, determine the question notwithstanding that it has not been considered by the Administrator.

**Review of
decisions.**

31. (1) A decision under this Law of the Administrator, Tribunal or Ordinary Court may be reviewed at any time by the Administrator or, on a reference from the Administrator, by the Tribunal, if—

- (a) the Administrator or Tribunal is satisfied and, in the case of a decision of the Ordinary Court, satisfied by fresh evidence, that the decision was given in ignorance of, or was based on a mistake as to, some material fact; or

(b) there has been any relevant change of circumstances since the decision was given.

(2) An application for a review under this section shall be made in writing to the Administrator and shall state the grounds of the application.

(3) The Administrator shall, so far as practicable, dispose of the application within 14 days of its submission to him in one of the following manners—

(a) he shall determine the claim or question to which the decision to be reviewed relates in favour of or adversely to the applicant and give the applicant written notice of the determination and (where the determination is adverse) of the right of appeal under section 26;

(b) if he is not satisfied that any of the grounds for review under subsection 1(a) or (b) exists, he shall refuse to review the decision; or

(c) he shall refer the claim or question to the Tribunal and give the applicant written notice of the reference.

(4) The applicant may demand a written statement of the reasons for a determination of the Administrator under subsection (3)(a).

(5) Sections 26 to 30 apply in relation to—

(a) a determination or refusal of the Administrator under subsection (3)(a) or (b) as they apply in relation to a decision under section 25(1)(a);

(b) a reference to the Tribunal under subsection (3)(c) as they apply in relation to a reference under section 25(1)(b).

Adjudication
procedure.

32. Regulations may make provision as to the following matters relating to adjudication under this Law—

- (a) the procedure to be followed in connection with the consideration of appeals, claims and questions by the Tribunal, or in connection with the withdrawal thereof;
- (b) the form which a decision of the Tribunal is to take, and the consequences of any defect in form;
- (c) the form to be used for any document, the evidence to be required and the circumstances in which any official record or certificate is to be sufficient or conclusive evidence;
- (d) the time to be allowed for producing any evidence to the Tribunal;
- (e) the manner in which, and the time within which, an application for a review of a decision is to be made;
- (f) summoning persons to attend, give evidence or produce documents, and authorising the administration of oaths to witnesses;
- (g) empowering the Tribunal or Administrator to refer to a medical practitioner, for examination and report, any question arising from its or his decision.

Questions as
to child or
family.

33. (1) This Part of this Law does not apply to any question as to whether at any particular time—

- (a) a person is or was a child;
- (b) a person has or had a family including a child or children, or is or was a child of

some other person's family (not, however, including the question of whether a person is to be treated for the purposes of this Law as having a family as aforesaid, or as being a child of some other person's family);

- (c) any person could have been treated under paragraph 3 of the Schedule to the Family Allowances Law as, or but for certain facts would have been or could have been treated as aforesaid as, a child of any other person's family.

(2) A question referred to in subsection (1) shall be determined in like manner, subject to any prescribed modifications and adaptations, as a corresponding question arising in respect of an allowance under the Family Allowances Law, and any decision of any such question, if given for the purposes of that Law, shall have effect also for the purposes of this Law or, if given for the purposes of this Law, shall have effect also for the purposes of that Law.

PART IX

HEALTH SERVICE ADVISORY COMMITTEE

34. (1) There shall be constituted by Ordinance of the States a Committee to be known as the "Health Service Advisory Committee" which shall exercise the functions conferred upon it by Ordinance in relation to—

- (a) medical benefit, pharmaceutical benefit and medical appliances; and

(b) persons who are approved for the purposes of sections 6(4), 10(2) or 15(2) or who are authorised to supply pharmaceutical benefit or medical appliances.

(2) An Ordinance under subsection (1) may (without prejudice to the generality of that subsection) make provision as to the following matters—

- (a) the composition, membership, powers and procedures of the Health Service Advisory Committee (“the Committee”);
- (b) the cases which may be referred by the Authority to the Committee for its consideration;
- (c) the consideration by the Committee of cases referred to it and the conduct by the Committee of hearings and enquiries into such cases;
- (d) the obtaining of information for the purposes of the consideration of such cases;
- (e) the making of findings and recommendations by the Committee in consequence of the consideration of such cases, including findings and recommendations that, in cases specified in the Ordinance, persons mentioned in subsection (1)—
 - (i) shall make payments into the Fund;
 - (ii) shall, for the purposes of this Law, cease to be authorised to supply pharmaceutical benefit or medical appliances; or
 - (iii) shall cease to be approved for the purposes of section 6(4), 10(2) or 15(2) (with the consequence that their patients

shall not, for the purposes of this Law, be entitled to medical benefit in respect of consultations with or treatment by them or to pharmaceutical benefit or medical appliances upon the presentation of prescriptions issued by them);

- (f) the form, content, implementation and enforcement of such findings and recommendations;
- (g) appeals to the Authority against such findings and recommendations, and the referral by the Authority of such appeals (and other cases specified in the Ordinance) to referees;
- (h) the appointment, powers and procedures of such referees, and the form, content, implementation and enforcement of their decisions.

PART X—MISCELLANEOUS AND GENERAL

35. (1) Except in so far as this Law otherwise provides, any power conferred thereby to make an Ordinance or regulations may be exercised—

Ordinances
and
regulations.

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases; and
- (b) so as to make, as respects the cases in relation to which it is exercised—
 - (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise);
 - (ii) the same provision for all cases, or different provisions for different cases

or classes of cases (including different provision for different Boards of the Bailiwick), or different provision as respects the same case or class of case for different purposes of this Law;

(iii) any such provision either unconditionally or subject to any specified condition.

(2) Without prejudice to any specific provision of this Law, an Ordinance or regulation under this Law may contain such consequential, incidental, supplemental or transitional provision as appears to the States or the Authority (as the case may be) to be expedient.

(3) An Ordinance or regulation under any provision of this Law may be amended or revoked by a subsequent Ordinance or regulation (as the case may be) thereunder.

(4) Regulations shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Reciprocal
agreements
with other
countries.

36. For the purpose of giving effect to any agreement with the government of any part of Her Majesty's dominions or the government of any foreign country providing for reciprocity in matters relating to the provision of benefit, the States may by Ordinance modify or adapt this Law in its application to cases affected by the agreement.

Service of
documents.

37. A notice or document which, under this Law, is to be given to or served on—

- (a) the Authority, may be given or served by leaving it at, or by sending it by post addressed to the Authority at, the Authority's office;
- (b) any person, may be given or served by delivering it to him, or by leaving it at, or or by sending it by post addressed to him at, his usual or last known place of work or residence.

38. (1) Subject to subsections (3) and (4), in this Law the expressions 'drug' and 'medicine' mean— Meaning of
"drug" and
"medicine".

- (a) any substance intended for use by being administered or applied to a human being for a medicinal purpose, other than—
 - (i) a substance included in Schedule 3A to the National Health Service (General Medical and Pharmaceutical Services) Regulations 1974^(a) (drugs and other substances not to be prescribed under the National Health Service Pharmaceutical Services);
 - (ii) a substance included in Schedule 3B to those Regulations (drugs to be prescribed under certain circumstances under the National Health Service Pharmaceutical Services), unless prescribed in accordance with the conditions set out in the said Schedule 3B in respect of that substance;
 - (iii) a substance included in Part XV of the Drug Tariff ("Borderline Substances"), unless prescribed for the treatment or

(a) United Kingdom Statutory Instrument 1974/160.

prevention of the disease set out in the said Part XV in respect of that substance;

(iv) a prescribed substance, unless intended to be used for the prevention or treatment of a disease prescribed in relation to that substance;

(b) a chemical reagent, diagnostic preparation, or process included in Part IX R of the Drug Tariff ("Approved list of Chemical reagents") or prescribed by regulations of the Authority.

(2) In subsection (1), "medicinal purpose" means (subject to provision to the contrary made by regulation) any of the following purposes—

- (i) treating or preventing disease;
- (ii) diagnosing disease or ascertaining the existence, degree or extent of a physiological condition;
- (iii) otherwise preventing or interfering with the normal operation of a physiological function, whether permanently or temporarily, and whether by way of terminating, reducing, postponing, increasing or accelerating the operation of that function or in any other way.

(3) Regulations may provide that, for the purposes of this Law, the definition in subsection (1) of the expressions "drug" and "medicine" shall include any prescribed substance, notwithstanding that the substance would otherwise be excluded from the definition by virtue of subsection (1)(a)(i), (ii) or (iii); and the regulations may provide that any sub-

stance so prescribed shall not be included in the definition unless it is intended to be used for the prevention or treatment of a disease prescribed in relation to that substance.

(4) The Authority may, if satisfied that any substance excluded from the definition in subsection (1) of the expressions “drug” and “medicine” is required in any particular case for the prevention or treatment of a disease, direct that the substance shall, in relation to that case, be deemed to be included in the definition.

(5) Without prejudice to the power of the Authority to make regulations under this section, the States may amend the provisions of this section by Ordinance.

39. (1) In this Law, unless the context otherwise requires— **Interpretation.**

“Administrator” means the Administrator to the Authority appointed under section 94 of the Social Insurance Law;

“appliance” includes any apparatus, equipment or utensil;

“appliance prescription” has the meaning given by section 15(2)(a);

“approved dentist” means a dentist whose name is included in either of the lists of dentists maintained by the States Board of Health pursuant to paragraph 1(1) of the Resolution of the States of 31st January, 1990(b);

(b) Resolution XI of 31st January, 1990.

“approved medical practitioner” means a medical practitioner whose name is included in either of the lists of medical practitioners maintained by the States Board of Health pursuant to paragraph 1(1) of the said Resolution;

“approved nurse” means a nurse—

(a) whose name is included in the list of nurses maintained by the States Board of Health pursuant to paragraph 4 of the said Resolution; and

(b) who is employed by an approved medical practitioner or by a medical practice of which an approved medical practitioner is a member;

“approved pharmacist” means a pharmacist falling within paragraph (a) of the definition of “pharmacist” in this section whose name is included in the list of approved pharmacists maintained by the States Board of Health pursuant to paragraph 3 of the said Resolution;

“the auditors” has the meaning given by section 1(5);

“authorised appliance supplier” means a person authorised to supply medical appliances by the Authority under section 17(2);

“authorised supplier” means a person authorised to supply pharmaceutical benefit by the Authority under section 12(2);

“the Authority” means the States Insurance Authority constituted under section 92 of the Social Insurance Law;

“benefit” means any of the categories of benefit specified in section 4;

- “the Clerk to the Tribunal” means the person appointed to that office by the Authority;
- “the Committee” has the meaning given by section 34(2)(a);
- “contravention” includes failure to comply, and cognate expressions shall be construed accordingly;
- “dentist” means a recognised dentist within the meaning of the Doctors, Dentists and Pharmacists Ordinance, 1987(c);
- “disease” includes any injury, ailment or adverse condition of body or mind;
- “drug” has the meaning given by section 38;
- “Drug Tariff” means the Drug Tariff published under the authority of Her Majesty’s Secretary of State for Health pursuant to the National Health Service (General Medical and Pharmaceutical Services) Regulations 1974;
- “the Family Allowances Law” means the Family Allowances (Guernsey) Law, 1950(d);
- “the Fund” has the meaning given by section 1(1);
- “Guernsey” means any of the Islands of Guernsey, Herm and Jethou and includes the islets, rocks and territorial waters adjacent thereto;
- “health benefit card” means a health benefit card issued by the Authority under section 5;
- “item of pharmaceutical benefit” means each quantity of drugs or medicines ordered on a medical prescription;
- “medical appliance” has the meaning given by section 15(1);

(c) Ordinance No. XVII of 1987.

(d) Ordres en Conseil Vol. XIV, p. 332.

- “medical benefit” has the meaning given by section 6(1);
- “medical practitioner” means a recognised medical practitioner within the meaning of the Doctors, Dentists and Pharmacists Ordinance, 1987;
- “medical prescription” has the meaning given by section 10(2);
- “medicine” has the meaning given by section 38;
- “nurse” includes midwife;
- “Ordinary Court” means the Royal Court sitting as an Ordinary Court;
- “pharmaceutical benefit” has the meaning given by section 10(1);
- “the Pharmaceutical Law” means the Health Service (Pharmaceutical) (Guernsey) Law, 1972(e);
- “Pharmaceutical List” has the meaning given by section 12(3)(c);
- “pharmacist” means—
- (a) an individual who is a recognised pharmacist within the meaning of the Doctors, Dentists and Pharmacists Ordinance, 1987; or
 - (b) an individual or body corporate entitled under the Poisons and Pharmacy Ordinance, 1970(f) to carry on a business which consists of or includes the preparation and sale of poisons or medicines within the meaning of that Ordinance;

(e) Ordres en Conseil Vol. XXIII, p. 428; Vol. XXVI, p. 472; No. XXI of 1984.

(f) Recueil d'Ordonnances Tome XVI, p. 236.

- “prescribed” means prescribed by regulations of the Authority under this Law;
- “prescription charge” has the meaning given by section 13(5)(a);
- “regulations” means regulations of the Authority under this Law;
- “the Social Insurance Law” means the Social Insurance (Guernsey) Law, 1978(g);
- “the States” means the States of Guernsey;
- “the States Health Service Annual Grant” has the meaning given by section 2;
- “substance” means any natural or artificial substance, whether in solid, liquid, gaseous or vaporous form;
- “supplementary benefit” means supplementary benefit under the Supplementary Benefit Law;
- “the Supplementary Benefit Law” means the Supplementary Benefit (Guernsey) Law, 1971(h);
- “treatment”, as regards pharmaceutical benefit, means medical treatment or dental treatment, and cognate expressions shall be construed accordingly;
- “the Tribunal” means the Tribunal constituted under section 80 of the Social Insurance Law.

(2) The States may by Ordinance amend the definitions in subsection (1) of approved dentist, approved medical practitioner, approved nurse and approved pharmacist.

(g) Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; No. IV of 1985; Nos. III and XXXI of 1986.

(h) Ordres en Conseil Vol. XXIII, p. 26.

(3) References in this Law to an enactment or statutory instrument (including an enactment or statutory instrument of the United Kingdom) or to the Drug Tariff are, except where the context excludes, references thereto as amended, repealed, replaced, extended or applied from time to time.

(4) Except where the context excludes, references in this Law (howsoever expressed) to the provisions of this Law include references to the provisions of Ordinances and regulations made or having effect as if made under this Law.

Saving for other enactments.

40. Nothing in this Law affects any restriction or prohibition imposed by or under any other enactment.

Transitional provisions.

41. Schedule 1 (transitional provisions and savings) shall have effect.

Repeals.

42. The Health Service (Pharmaceutical) (Guernsey) Law, 1972⁽ⁱ⁾, the Health Service (Pharmaceutical) (Amendment) (Guernsey) Law, 1978^(j), and the Health Service (Pharmaceutical) (Amendment) (Guernsey) Law, 1984^(k) are repealed.

Citation.

43. This Law may be cited as the Health Service (Benefit) (Guernsey) Law, 1990.

Commencement.

44. (1) This Law shall come into force on the day appointed by Ordinance of the States, and different days may be appointed for different provisions or different purposes.

⁽ⁱ⁾ Ordres en Conseil Vol. XXIII, p. 428.

^(j) Ordres en Conseil Vol. XXVI, p. 472.

^(k) No. XXI of 1984.

(2) Any power conferred by a provision of this Law to make an Ordinance or regulation may be exercised at any time after the registration of this Law and before the commencement of that provision; but the Ordinance or regulation shall not come into force until that provision comes into force.

TRANSITIONAL PROVISIONS AND SAVINGS

1. Subject to the provisions of this Schedule, on and after the commencement of this Schedule no person is entitled to pharmaceutical benefit under the Pharmaceutical Law.

2. Regulations may provide that, in relation to—

- (a) persons who cease by virtue of paragraph 1 to be entitled to pharmaceutical benefit under the Pharmaceutical Law;
- (b) persons to or in respect of whom pharmaceutical benefit under that Law was, or but for a disqualification or forfeiture would have been, due immediately before the commencement of this Schedule; and
- (c) persons who had a prospective right to or expectation of pharmaceutical benefit under that Law immediately before such commencement,

the provisions of this Law shall have effect subject to such modifications as may be prescribed with a view to securing continuity between this Law and the Pharmaceutical Law.

3. Notwithstanding any repeal effected by this Law, regulations may provide—

- (a) for continuing in force, with or without prescribed modifications, such provisions of the Pharmaceutical Law as the Authority considers appropriate for the purpose of preserving rights to pharmaceutical benefit under that Law in those cases (if any) in

which in the Authority's opinion adequate alternative rights to pharmaceutical benefit under this Law are not conferred under paragraph 2 of this Schedule;

- (b) for temporarily retaining the effect of those provisions for transitional purposes.

4. Without prejudice to the powers conferred by any other provision of this Law, regulations may make such provision as the Authority thinks expedient for facilitating the operation or introduction of pharmaceutical benefit under this Law and the transition to such benefit from the corresponding benefit under the Pharmaceutical Law so far as it continues in force after the commencement of this Schedule.

5. (1) An Ordinance, order, regulation, scheme, appointment or other thing made or done under an enactment repealed by this Law which could have been made or done under a provision of this Law shall have effect as if made or done under that provision.

(2) Anything begun under an enactment repealed by this Law which could be done under a provision of this Law may be continued under that provision as if begun thereunder.

(3) References in this Law to things done, suffered or occurring in the past shall, so far as the context requires for the purpose of continuity of operation between enactments repealed by this Law and this Law, be construed as including references to things done, suffered or occurring before the commencement of this Schedule.

(4) References (express or implied) in a document to an enactment the effect of which is reproduced by this Law shall, if and so far as the context permits, be construed as references to this Law.

(5) For the removal of doubt it is hereby declared that this paragraph applies to any claim for, or award of, benefit before the commencement of this Schedule and to anything done or occurring in or for the purposes of adjudication proceedings before such commencement.

6. A question of whether a person became or ceased to be entitled to benefit at a time before the commencement of this Schedule, and any other question as to benefit in respect of a time before such commencement, is to be determined in accordance with the provisions of law in force at that time in respect of those matters

7. A medical practitioner or dentist—

(a) who, immediately before the date of the commencement of section 10, was entitled to issue medical prescriptions ordering the supply of pharmaceutical benefit for the purposes of section 5 of the Pharmaceutical Law;

(b) but who, immediately after that date, was not an approved medical practitioner or approved dentist,

shall be deemed to be an approved medical practitioner or, as the case may be, an approved dentist for the purposes of sections 10(2) and 12(2)(a) of this Law.

K. H. TOUGH,

Her Majesty's Greffier.