

ORDINANCE OF THE STATES OF DELIBERATION

ENTITLED

The Social Insurance (Determination of Claims and Questions) (Guernsey) Ordinance, 1964 *

[CONSOLIDATED TEXT]

NOTE

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* Recueil d'Ordonnances Tome XIV, p. 81; as amended by the Social Insurance (Increase of Contributions and Benefits and Miscellaneous Provisions) (Guernsey) Ordinance, 1967 (Recueil d'Ordonnances Tome XV, p. 197); the Social Insurance (Amendment and Repeals) (Guernsey) Ordinance, 1971 (Recueil d'Ordonnances Tome XVII, p. 137). See also the Social Insurance (Collection of Contributions) (Transfer of Functions) Regulations, 2018 (G.S.I. No. 45 of 2018).

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(Made on the 16th December, 1964.)

The Social Insurance (Determination of Claims and Questions) (Guernsey) Ordinance, 1964

THE STATES, in exercise of the powers conferred on them by section forty-eight and section fifty-four of the Social Insurance (Guernsey) Law, 1964, and of all other powers thereunto them enabling, hereby order: –

PART I

Interpretation

Interpretation.

1. (1) In this Ordinance, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"applicant" means, for the purposes of Part III of this Ordinance, a person who has made an application under the Law for the determination of a question,

"claimant" means, for the purposes of Part IV of this Ordinance, a person who has claimed benefit under the Law or whose right to be excepted from liability to pay or credited with a contribution is in question,

"the Family Allowances Law" means the Family Allowances (Guernsey) Law, 1950,

"the Law" means the Social Insurance (Guernsey) Law, 1964,

"office of the Authority" means –

- (a) as respects the Islands of Guernsey, Herm and Jethou, the office for the time being of the Authority in Guernsey,
- (b) as respects the Island of Alderney, the States Office, Alderney,

"question" includes, for the purposes of subsection (2) of section two and Part IV of this Ordinance, a claim under the Law,

"the tribunal" means a tribunal constituted in accordance with section seven of this Ordinance,

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

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

(3) Any notice or other document required or authorised to be given or sent to any person under the provisions of this Ordinance 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.

(4) Any power given in this Ordinance to extend the period during which anything is required to be done under this Ordinance or to dispense with any of

the requirements thereof may be exercised in any case, notwithstanding that the period during which the thing is required to be done has expired.

(5) The Interpretation (Guernsey) Law, 1948, shall apply to the interpretation of this Ordinance throughout the Islands of Guernsey, Alderney, Herm and Jethou.

NOTES

In accordance with the provisions of the Social Insurance (Collection of Contributions) (Transfer of Functions) Regulations, 2018, regulation 1, with effect from 22nd October, 2018 and subject to the savings and transitional provisions in regulation 3, the functions, rights and liabilities of the Committee for Employment & Social Security and of its President and members relating to the collection of social insurance contributions arising under or by virtue of this Ordinance were transferred to and vested in, respectively, the Policy & Resources Committee and its President and members; and, in accordance with regulation 2 of the 2018 Regulations, for any reference herein to the Committee for Employment & Social Security or its President or members, however expressed, there was substituted, to the extent that the reference related to the collection of social insurance contributions, a reference to the Policy & Resources Committee or (as the case may be) its President or members.

The Social Insurance (Guernsey) Law, 1964 has since been repealed by the Social Insurance (Guernsey) Law, 1978, section 118, Fourth Schedule, Part I, with effect from 1st January, 1979, subject to the transitional provisions and savings in section 119 of, and Part II of the Fourth Schedule to, the 1978 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

PART II

Determination of claims and questions

Determination By the Authority, the Administrator and the tribunal.

2. (1) The following questions arising under or in connection with the

Law shall be determined by the Authority in accordance with the procedure prescribed in Part III of this Ordinance, that is to say, any question –

- (a) whether the contribution conditions for any benefit are satisfied, or otherwise relating to a person's contributions,
- (b) which of two or more persons satisfying the conditions for an increase of benefit, whether of the same or a different description, shall be entitled to the increase where by virtue of some provision of the Law not more than one of them is entitled to the increase,
- (c) as to the class of insured persons in which a person is to be included:

Provided that any question whether a person would by reason of the provisions of subsections (2) or (3) of section fourteen of the Law or of any regulations made thereunder have been disqualified for receiving either unemployment benefit or sickness benefit if he had otherwise had a right thereto shall not be determined by the Authority but shall be determined as a question as to the right to benefit under the provisions of subsection (2) of this section.

(2) Subject to the foregoing provisions of this section and of subsection (2) of section forty-eight of the Law (which subsection relates to the determination of certain questions under the Law by the procedure in operation under the Family Allowances Law), any question as to the right to benefit shall be determined by the Administrator or the tribunal, as the case may be, in accordance with the provisions of Part IV of this Ordinance.

PART III

Determination of questions by the Authority

Application for, and procedure on determination of questions by the Authority.

3. (1) Any person desiring to obtain the decision of the Authority on any question mentioned in sub-section (1) of section two of this Ordinance shall deliver or send to the Authority an application for the purpose in writing in a form approved by it, 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 therein 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) The Authority may, if it thinks fit, before determining the question, appoint a person to hold an inquiry into the question or any matters arising in connection therewith and to report to it thereon, and any person so appointed may by summons require persons to attend at 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) Reasonable notice of the date and place of the holding of such inquiry shall be given to the applicant and any persons notified of the application in accordance with subsection (2) of this section.

(5) The applicant and any person appearing to the Authority or to the person appointed to hold the inquiry to be interested in the application shall be entitled to attend and be heard at the inquiry, and to be represented by any other person, and the procedure thereat shall, subject to this regulation, be such as the

person appointed to hold the inquiry shall determine.

(6) 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.

Review of decisions by the Authority.

4. The Authority may, on new facts being brought to its notice or if it is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact, review a decision given by it in accordance with this Part of this Ordinance:

Provided that any such decision shall not be reviewed while an appeal is pending against the decision of the Authority on a question of law arising in connection therewith, or before the time for appealing has expired.

Decisions to be conclusive for purposes of proceedings under Law, etc.

5. (1) Where in any proceedings –
- (a) for an offence under the Law, or
 - (b) involving any question as to the payment of contributions under the Law,
 - (c) for the recovery of any sums due to the Guernsey Insurance Fund,

any question arises which under subsection (1) of section two of this Ordinance is to be determined by the Authority (subject to an appeal on a question of law to the Ordinary Court), the decision of the Authority shall, unless such an appeal is pending or the time for so appealing has not expired, be conclusive for the purpose of those

proceedings.

- (2) In any such proceedings as aforesaid –
 - (a) where any question arises which under subsection (2) of section forty-eight of the Law is required to be determined in like manner as a corresponding question arising under the Family Allowances Law, the decision of that question by the Administrator shall, unless the question is the subject of an appeal to a tribunal in accordance with subsection (2) of section five of that Law, or the time for so appealing has not expired, be conclusive for the purpose of those proceedings, and
 - (b) where the question is the subject of an appeal, the decision of the tribunal shall be conclusive as aforesaid, unless notice of appeal to the Court has been given under subsection (4) of the said section five, or the time for giving such notice of appeal has not expired.

(3) If any such decision under either of the preceding subsections of this section has not been obtained and the decision of the question is necessary for the determination of the proceedings, the question shall be referred to the Authority for decision in accordance with the procedure (subject to the necessary modifications) prescribed in this Part of this Ordinance or to the Administrator, as the case may be.

(4) Where any such appeal as is mentioned in the preceding subsections of this section is pending, or the time for so appealing has not expired, or where any question has been referred to the Authority or to the Administrator, as the case may be, the court dealing with the case shall adjourn the proceedings until such time as a final decision upon the question has been obtained.

Procedure on application for review or on reference by a court.

6. The provisions of this Part of this Ordinance shall apply with the necessary modifications to any case in which –

- (a) a question has been raised with a view to the review of any decision of the Authority given in accordance with the provisions of this Ordinance, or
- (b) a question such as is mentioned in subsection (1) of section two of this Ordinance is referred to the Authority under subsection (3) of the last foregoing section or under section fifteen of this Ordinance.

PART IV

Determination of claims and questions by the Administrator and the tribunal

Constitution of the tribunal.

7. (1) The tribunal shall consist of –

- (a) the chairman and deputy chairman who shall be appointed by the Royal Court and one other member (hereinafter referred to as an "**ordinary member**") selected, in accordance with the provisions of the next succeeding subsection, from a panel of persons appointed by the Royal Court, or
- (b) the said chairman or said deputy chairman and two ordinary members drawn from the said panel as aforesaid.

(2) The chairman, or if he is unable so to do the deputy chairman, shall determine which persons shall be selected from the panel as ordinary members for any particular sitting of the tribunal.

(3) In the event of an equality of votes the chairman or the deputy chairman, as the case may be, shall have the casting vote.

(4) A person shall not sit upon the tribunal as chairman, deputy chairman or as an ordinary member during the consideration of a case –

(a) in which he appears as the representative of the claimant, or

(b) by which he is, or may be, directly affected, or

(c) in which he has taken any part as an official of an association or as an employer or as a witness.

(5) In any case in which the claimant is a woman at least one of the ordinary members of the tribunal, if practicable, shall be a woman.

Submission of questions to the Administrator.

8. (1) Any question as to the right to benefit shall be submitted forthwith to the Administrator, who shall take the question into consideration, and, so far as practicable, dispose of the question in accordance with the provisions of this Ordinance within fourteen days of the questions being submitted to him.

(2) The Administrator may, subject to the provisions of section fifteen of this Ordinance –

- (a) decide the question in favour of the claimant, or
- (b) decide the question adversely to the claimant, or
- (c) refer the question to the tribunal.

(3) Where the Administrator refers a case to the tribunal in accordance with the provisions of paragraph (c) of subsection (2) of this section, notice in writing of such reference shall be given to the claimant.

Appeals to the tribunal.

9. (1) Where the Administrator has decided any question adversely to the claimant, the claimant may appeal to the tribunal, and he shall be notified in writing of the decision and the reasons therefor and of his right of appeal to the tribunal:

Provided that where one of the questions mentioned in subsection (1) of section two of this Ordinance, or in subsection (2) of section forty-eight of the Law, has arisen in connection with the decision of the Administrator, and has been determined, and the Administrator certifies that the decision on that question is the sole ground of his decision, no appeal shall lie without leave of the chairman of the tribunal.

(2) An appeal against a decision of the Administrator shall be brought by giving notice of appeal at the office of the Authority within twenty-eight days after the date of that decision or within such further time as the chairman of the tribunal may for good cause allow.

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

Time and place of hearing before the tribunal.

10. (1) Reasonable notice of the time and place of the 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 the provisions of this Ordinance should fail to appear at such hearing and has not given a reasonable explanation for his absence, the tribunal may proceed to determine the case notwithstanding the absence of the claimant or that other person, or may give such direction with a view to the determination of the case as it may think proper.

Hearings before the tribunal.

11. (1) The following persons shall be entitled to 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) Any person having the right to be heard who appears at a hearing by the tribunal may call witnesses and shall be given an opportunity of putting questions directly to any witnesses called at the hearing.

(3) Any person who by virtue of the provisions of this Ordinance

has the right to be heard at the hearing of a case by the tribunal may be represented by some other 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 this Ordinance.

(4) For the purpose of arriving at its decision, or discussing any question of procedure, the tribunal shall, notwithstanding anything in this section, order all persons not being members of the tribunal, other than the person appointed by the Authority as Clerk to the tribunal, to withdraw from the sitting of the tribunal.

Decisions of the tribunal.

12. (1) 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.

(2) The decision of the majority of the tribunal shall be the decision of the tribunal, but, if a decision is not unanimous, a statement that one of the members dissented and the reason given by him for so dissenting shall be recorded by the tribunal.

(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 section shall be sent to the claimant and to the Administrator and to any other person who appears to the tribunal to be interested, and, if the decision of the tribunal is adverse to the claimant, he shall be informed of the conditions governing appeals to the

Ordinary Court.

General provision regarding proceedings before the tribunal.

13. Subject to the provisions of this Part of this Ordinance, the procedure in connection with the consideration and determination of any appeal or reference to the tribunal shall be such as the chairman of the tribunal or the deputy chairman thereof, as the case may be, shall determine.

Review of decisions of the Administrator or the tribunal.

14. (1) Any decision under this Part of this Ordinance of the Administrator or the tribunal may be reviewed at any time by the Administrator, or on a reference from the Administrator, by the tribunal, if –

- (a) he or it is satisfied 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, or
- (c) the decision was based on the decision of any question mentioned in subsection (1) of section two of this Ordinance, and the decision of that question is revised in accordance with the provisions of section four of this Ordinance.

(2) A question may be raised with a view to such a review by means of an application in writing to the Administrator, stating the grounds of the application.

(3) On receipt of any such application, the Administrator shall

proceed to deal with or refer any question arising thereon in accordance with the provisions of this Part of this Ordinance.

(4) Any decision given on a review under this section, and any refusal to review a decision under this section, shall be subject to appeal in like manner as an original decision, and the provisions of this Part of this Ordinance shall, subject to the necessary modifications, apply in relation to any decision given on a review as they apply to the original decision of a question.

Reference to Authority, etc., of special questions.

15. (1) If on consideration of any question the Administrator is of opinion that there arises any such question as is mentioned in subsection (1) of section two of this Ordinance or in subsection (2) of section forty-eight of the Law, he shall –

- (a) refer the latter question for determination in accordance with the said subsection (1) or the said subsection (2), as the case may be, and
- (b) deal with any other questions as if the question so referred had not arisen:

Provided that the Administrator may –

- (i) postpone the reference of or dealing with any question until after other questions have been determined,
- (ii) in cases where the determination of any question disposes of a claim or any part thereof, make an award, or decide that an award cannot

be made, as to the claim or that part thereof without referring or dealing with, or before the determination of, any other question.

(2) The foregoing provisions of this section shall apply to the tribunal as they apply to the Administrator, except that the tribunal, instead of it referring a question for determination in accordance with paragraph (a) of the last foregoing subsection, shall direct it to be so referred by the Administrator.

PART V

Evidence to be produced by widow claiming widow's pension by reason of infirmity

Special provisions as to certain claims by widows.

16. (1) The following provisions of this section shall apply in the case of a widow who claims a widow's pension by virtue of regulation two of the Social Insurance (Widow's Benefit and Retirement Pensions) (Guernsey) Regulations, 1964, that is to say –

- (a) the widow shall from time to time as required by the Authority furnish evidence by means of a certificate (in such form as the Authority may approve) that by reason of an infirmity she is incapable of self-support, and shall at any time, if so directed by the Authority, submit herself to medical examination by a medical board appointed by it consisting of two or more medical practitioners, and
- (b) for the purpose of the determination by the Administrator or the tribunal of any question as to the nature of an infirmity, or whether an infirmity is the

same infirmity as that by reason of which the widow was previously incapable of self-support, a certificate given by any such medical board shall be conclusive evidence.

[(2) The provisions of the preceding subsection shall apply in the case of a widow who claims a pension by virtue of paragraph (2) of regulation six or of sub-paragraph (b) of paragraph (2) of regulation nine of the Social Insurance (Pensions, Existing Beneficiaries and Other Persons) (Transitional) (Guernsey) Regulations, 1970.]

NOTES

In section 16, subsection (2) was substituted by the Social Insurance (Amendment and Repeals) (Guernsey) Ordinance, 1971, section 1, with effect from 7th June, 1971.¹

The Social Insurance (Widow's Benefit and Retirement Pensions) (Guernsey) Regulations, 1964 have since been revoked by the Social Insurance (Widow's Benefit and Old Age Pensions) (Guernsey) Regulations, 1971, regulation 22, with effect from 7th June, 1971. The Social Insurance (Widow's Benefit and Old Age Pensions) (Guernsey) Regulations, 1971 have since been revoked by the Social Insurance (Widow's Benefit and Old Age Pension) (Guernsey) Regulations, 1978, regulation 9, with effect from 1st January, 1979. The Social Insurance (Widow's Benefit and Old Age Pensions) (Guernsey) Regulations, 1978 have since been revoked by the Social Insurance (Benefits) Regulations, 2003, regulation 51, with effect from 5th January, 2004.

The Social Insurance (Pensions, Existing Beneficiaries and Other Persons) (Transitional) (Guernsey) Regulations, 1970 have since been revoked by the Social Insurance (Pensions, Existing Beneficiaries and Other Persons) (Transitional) (Guernsey) Regulations, 1971, regulation 20, with effect from 6th December, 1971. The Social Insurance (Pensions, Existing Beneficiaries and Other Persons) (Transitional) (Guernsey) Regulations, 1971 have in practice been superseded by the Social Insurance (Benefits) (Transitional Provisions) Regulations, 1978, which latter have since been revoked by the Social Insurance (Benefits) (Transitional) Regulations, 2004, regulation 11, with effect from 1st January, 2004.

PART VI

Citation, etc.

Citation, extent and commencement.

17. (1) This Ordinance may be cited as the Social Insurance (Determination of Claims and Questions) (Guernsey) Ordinance, 1964.

(2) This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

(3) This Ordinance shall come into force on the fourth day of January, nineteen hundred and sixty-five.

¹ Subsection (2) was previously amended by the Social Insurance (Increase of Contributions and Benefits and Miscellaneous Provisions) (Guernsey) Ordinance, 1967, section 8, with effect from 3rd April, 1967.