

GUERNSEY

STATUTORY INSTRUMENT

1952 No. 18

Law not brought into force

Repealed by the Social Insurance (Guernsey) Law, 1964

NATIONAL INSURANCE

THE NATIONAL INSURANCE (GUERNSEY) (DETERMINATION OF CLAIMS AND QUESTIONS) REGULATIONS, 1952

Made 23rd January 1952.

Laid before the States

Coming into Operation 23rd January 1952.

The States Insurance Authority, in exercise of the powers conferred by sections 39 and 42 of the National Insurance (Guernsey) Law, 1951, and of all other powers enabling it in that behalf, hereby makes the following regulations:-

PART I.

General.

1. - (1) These regulations may be cited as the National Insurance (Guernsey) (Determination of Claims and Questions) Regulations, 1952, and shall come into operation on the 23rd January 1952.

(2) In these regulations, unless the context otherwise requires -

"the Law" means the National Insurance (Guernsey) Law, 1951;

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

"the Authority" has the same meaning as in the Law;

"the Court" means the Royal Court sitting as an Ordinary Court;

"tribunal" means a tribunal constituted in accordance with paragraph (b) of subsection (3) of section 39 of the Law;

"Administrator" has the same meaning as in the Law;

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

Citation, commencement and interpretation.

question;

"award" means, for the purposes of Part IV of these regulations, an award or decision of the Administrator in respect of a claim to benefit under the Law;

"claimant" means, for the purposes of Part IV of these regulations, a person who has claimed benefit under the Law;

"question" includes, for the purposes of paragraph (2) of regulation 2 and Part IV of these regulations, a claim under the Law;

"Registrar of Appeals" means such officer from among its staff as may be appointed by the Authority to perform such duties in connection with appeals and references to which Part IV of these regulations refer as the Authority may direct, subject to the provisions of that Part of these regulations, and the expression "Registrar" and "Deputy Registrar" shall be construed accordingly; and other expressions have the same meanings as in the Law.

(3) References in these regulations to any enactment or regulations shall include references to such enactment or regulations as amended by any subsequent enactment, order or regulations.

(4) 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.

(5) Any power given in these regulations to extend the period during which anything is required to be done under these regulations 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.

(6) The Interpretation (Guernsey) Law, 1948, applies to the interpretation of these regulations as it applies to the interpretation of an enactment.

PART II.

Persons to determine claims and questions.

The
Authority.

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 these regulations, 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;
- (d) as to the priority of two or more claimants satisfying the conditions for receipt of a death grant in respect of the same death;
- (e) whether any, and if so what, amount shall be paid to the States Public Assistance Authority or association of persons to whom the provisions of subsection (5) of section 21 of the Law (which subsection enables the Authority to make payments to the States Public Assistance Authority or any association of persons out of the Guernsey Insurance Fund in respect of the cost of burial or cremation of certain persons) are applicable in respect of the cost of the burial or cremation of any person

by or under the direction of the States Public Assistance Authority or association of persons, but excluding any question arising under paragraph (a) of that subsection other than a question to which sub-paragraph (a) of this paragraph applies.

(2) Subject to the foregoing provisions of this regulation and of subsection (2) of section 39 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 in the first instance be determined by the Administrator or a tribunal in accordance with the provisions of Part IV of these regulations.

The Administrator and the tribunal.

PART III.

Determination of questions by Authority.

3. - (1) Any person desiring to obtain the decision of the Authority on any question mentioned in paragraph (1) of regulation 2 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, served in like manner as a summons may be

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

served in respect of an action in the Petty Debts Court of the Magistrate, 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 paragraph (2) of this regulation.

(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.

4. - (1) Any question of law arising in connection with the determination by the Authority of any such question as is mentioned in paragraph (1) of regulation 2 may, if the Authority thinks fit, be referred for decision to the Court.

(2) In the event of the Authority determining in accordance with the preceding paragraph of this regulation to refer any question of law to the Court, it shall send notice in writing of its intention so to do to the applicant and to any other person appearing to it to be interested therein.

(3) Any person aggrieved by the decision of the Authority on any question of law which is not referred in accordance with paragraph (1) of this regulation may appeal from that decision to the Court, and the applicant and any

Appeals, .
etc., to
the Court.

other person appearing to the Authority to be interested shall, on request, be furnished with such a statement of the grounds of the decision as will enable him to determine whether any question of law has arisen upon which he may wish to appeal.

Review of
decisions
by
Authority.

5. 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 these regulations:

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 con-
clusive for
purposes of
proceedings
under Law,
etc.

6. - (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; or
 - (c) for the recovery of any sums due to the Guernsey Insurance Fund;

any question arises which under paragraph (1) of regulation 2 is to be determined by the Authority (subject to an appeal on a question of law to the 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 39 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 5 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 ~~to the Court~~ under subsection (4) of the said section 5, or the time for giving such notice of appeal has not expired.

(3) If any such decision under either of the preceding paragraphs 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 or the Administrator for decision in accordance with the procedure prescribed in this Part of these regulations or under the Family Allowances Law, as the case may be.

(4) Where any such appeal as is mentioned in the preceding paragraphs of this regulation is pending, or the time for so appealing has not expired, or where any question has been referred to the Authority or 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.

7. The 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 of any decision of the Authority given in accordance with these regulations; or
- (b) a question such as is mentioned in paragraph (1) of regulation 2 is referred to the Authority under paragraph (3) of the last foregoing regulation or under regulation 21.

Procedure
on applica-
tion for
review or
on refer-
ence by
a Court.

PART IV.

Determination of claims and questions by
the Administrator and the tribunal.

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 these regulations within fourteen days of the question being submitted to him.

(2) The Administrator may, subject to the provisions of regulation 21, -

- (a) determine the question; or
- (b) refer the question to the tribunal.

(3) Where the Administrator refers a case to the tribunal in accordance with the provisions of sub-paragraph (b) of the preceding paragraph, 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:

Provided that where one of the questions mentioned in paragraph (1) of regulation 2, or in subsection (2) of section 39 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 to the Registrar within twenty-eight days after the date of that decision or within such further time as the tribunal may for good cause allow.

(3) A notice of appeal shall be in writing in the form set out in the Schedule to these regulations and shall

contain a statement of the grounds upon which the appeal is made.

(4) The Registrar shall furnish a copy of such notice of appeal and any other information attached thereto to the Administrator and within seven days thereafter the Administrator shall send to the Registrar a statement of the facts of the case and, without prejudice to any further argument which may be raised at the hearing of the appeal, a statement of the grounds on which his decision was based, and a copy of such statements shall be sent by the Registrar to the claimant.

(5) A notice of appeal may be withdrawn at any time by sending to the Registrar a notice of withdrawal in writing, and the Registrar shall thereupon send notice thereof to the Administrator.

Convening
of
tribunal.

10. - (1) Where an application for an appeal or reference has been made in accordance with this Part of these regulations, the Registrar shall, if a tribunal has been appointed by the Royal Court with authority to determine such appeal or reference, convene that tribunal for the determination of that appeal or reference; if there is no such tribunal or, if the tribunal is unwilling to determine such appeal or reference, the Registrar shall so inform one of the Law Officers of the Crown, who shall apply to the Royal Court to appoint a tribunal for the determination of that appeal or reference, and on such appointment being made the Registrar shall convene that tribunal for the determination of that appeal or reference.

(2) Different tribunals may be convened for deciding in accordance with the provisions of these regulations whether an application for appeal made after the expiration of the period prescribed by these regulations shall be entertained or whether a hearing is required and for determining the appeal or reference.

(3) No person shall sit as a member of the tribunal during the consideration of a matter -

(a) in which he appears as a representative of or accompanies the appellant; or

(b) by which he is or may be affected;

and it is hereby declared that should any person so sit, the proceedings of the tribunal on the consideration of that matter shall be null and void.

Further particulars.

11. The tribunal may at any time require the applicant or the Administrator to furnish it with further particulars in writing and within such time as it may direct with regard to any appeal or reference, and may at any stage of the proceedings allow the amendment of any application for appeal or reference, statement or particulars, and extend the time for furnishing any statement or particulars.

Decision without a hearing.

12. If the Chairman of the tribunal is of opinion that the case can properly be determined on the particulars supplied by the applicant and the Administrator without a hearing he may dispense with a hearing and the tribunal may determine the appeal or reference on the particulars so supplied.

Notice of hearing.

13. If in the opinion of the Chairman of the tribunal a hearing is required, the Chairman of the tribunal shall as soon as may be practicable fix a date and place for the hearing, and the Registrar shall send not less than seven days' notice thereof to the applicant and to the Administrator.

Procedure at hearing.

14. - (1) The Registrar or his deputy shall be present at all sittings of the tribunal and the applicant, ~~who in the case of a woman may be accompanied by another woman,~~ and the Administrator shall be entitled to be present during the hearing;

Provided that for the purpose of discussing its decision on any matter the tribunal may order all persons, not being members of the tribunal or the Registrar or his

deputy, to withdraw from the sitting of the tribunal.

(2) The applicant shall be entitled to be heard at the hearing either personally or through a member of his family, an advocate of the Court or, with the consent of the tribunal, any other person.

(3) The Administrator shall be entitled to be heard at the hearing, either personally or through a Law Officer of the Crown or such officer of the Authority as the Administrator may appoint for the purpose.

(4) The Administrator and the applicant shall, subject to any legal objection, submit to be examined by the tribunal on oath or affirmation in relation to the matters in dispute and shall, subject as aforesaid, produce before the tribunal all books, deeds, papers, accounts, writing and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference or appeal the tribunal may require.

(5) The tribunal may adjourn the hearing from time to time as it may think fit.

(6) The tribunal may, if it thinks fit, admit any duly authenticated written statement or other material as prima facie evidence of any fact or facts in any case in which it thinks it just and proper so to do.

(7) The tribunal may, if it thinks fit, call for such documents and examine such witnesses, on oath, affirmation or otherwise, as appear to it likely to afford evidence relevant and material to the issue although not tendered by either the applicant or the Administrator.

(8) The Chairman of the tribunal or any party to an appeal or reference may cause a summons to be served on any person, in the same manner as a summons may be served upon any person in respect of an action in the Petty Debts

Court of the Magistrate, summoning that person to attend any hearing by the tribunal for the purposes of giving evidence or of producing any document, and a person so summoned shall be under a like obligation as to the giving of any evidence and the production of any document as if he were so summoned in respect of an action before the said Petty Debts Court.

(9) If, unless the Registrar has previously received notice of withdrawal under paragraph (5) of regulation 9, the applicant or the Administrator fails to appear at the hearing, the tribunal may proceed to determine the matter as to which appeal or reference is made notwithstanding the absence of both or either of them, or may give such directions with a view to the determination of the appeal or reference as it thinks just and proper.

Decisions
of the
tribunal.

15. - (1) The tribunal shall-

- (a) record in writing all their 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 their 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 their decision made in accordance with this regulation 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 Court.

General provision regarding proceedings before the tribunal.

16. Subject to the provisions of this Part of these regulations, 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 shall determine.

Review of decisions of the Administrator or the tribunal.

17. - (1) Any decision under this Part of these regulations 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 they is or are 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 paragraph (1) of regulation 2 or in subsection (2) of section 39 of the Law, and the decision of that question is revised in accordance with the provisions of regulation 5 or in accordance with the provisions of the Family Allowances Law and the regulations made thereunder, as the case may be.

(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 these regulations.

(4) Any decision given on a review under this regulation, and any refusal to review a decision under this regulation, shall be subject to appeal in like manner as an original decision, and the provisions of this Part of these regulations 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.

Review of decisions involving payment or increase of benefit.

18. - (1) Where on review a decision is revised, either under the last preceding regulation or, in relation to a decision of the Court, under an Order of the Royal Court, so as to make benefit payable, or to increase the rate of benefit, the decision given on the review shall have effect as follows:-

- (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 and attendance allowance, as from the date ten days before the date of the application for the review; or
- (c) in the case of widow's benefit, a guardian's allowance and a retirement pension, as from the date three months before the date of the application for the review;

Provided that, subject to the provisions of the next succeeding paragraph, if in any case the claimant proves -

- (i) 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 therefor) entitled to benefit; and
- (ii) 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;

he shall not be disqualified by virtue of the foregoing provisions of this paragraph for receiving any benefit to which he would have been entitled in respect of the said period.

(2) Notwithstanding anything contained in this regulation, the following provisions shall have effect:-

- (a) The proviso to the foregoing paragraph shall apply

in any case subject to the condition that no sum on account of benefit shall be paid to any person in respect of any part of the period referred to in that proviso earlier than six months before the date on which the application for the review was made.

(b) 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.

(c) If the said decision on review 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 Administrator, the tribunal or the Court, as the case may be, to be the date on which such material change of circumstances took place.

(3) For the purpose of this regulation, where a decision is reviewed at the instance of the Administrator under paragraph (1) of regulation 17, 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.

Adjustment
of benefit
by Admini-
strator,
the tribunal
or the
Court.

19. - (1) Where by a decision on review or appeal a person entitled to benefit is awarded some other 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.

(2) Where, by virtue of an award, an increase of benefit has been paid for any period to one person in respect

of another as being the child of the family, or the wife or husband, or an adult dependant, of the first mentioned person, and by reason of a subsequent decision either -

- (a) the said other person is himself entitled to benefit for that period; or
- (b) a third person is entitled to benefit for that period in respect of the said other person in priority to the first mentioned person;

then, notwithstanding that under regulations relating to overlapping benefits made under section 30 of the Law such increase of benefit is not payable, the subsequent decision shall direct that it shall be treated as having been properly paid for that period, and that any arrears of benefit for that period payable by reason of the subsequent decision shall be reduced to the extent to which the increase of benefit is so directed to be treated as having been properly paid.

20. - (1) Where on review or appeal a decision is revised or is reversed or varied, so as to make benefit not payable or to reduce benefit, the decision given on the review or appeal shall require repayment to the Guernsey Insurance Fund of any benefit paid in pursuance of the original decision to the extent to which it -

- (a) would not have been payable if the decision on the review or appeal had been given in the first instance; and
- (b) is not directed to be treated as paid on account of the benefit awarded by the decision on review or appeal;

Provided that, subject as aforesaid, repayment shall not be required in any case where the person concerned is shown to the satisfaction of the Administrator, the tribunal or the Court, as the case may be, to have acted in good faith in all respects as to the obtaining and receipt of the benefit.

Revision,
etc., of
decisions
involving
non-pay-
ment or
reduction
of benefit.

Reference
to
Authority
etc., of
special
questions.

21. - (1) If on consideration of any question the Administrator is of opinion that there arises any such question as is mentioned in paragraph (1) of regulation 2 or in subsection (2) of section 39 of the Law, he shall -

- (a) refer the latter question for determination in accordance with the said paragraph or the said subsection, 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 regulation shall apply to the tribunal and the Court as they apply to the Administrator, except that the tribunal or the Court, instead of themselves or itself referring a question for determination in accordance with sub-paragraph (a) of the last foregoing paragraph, shall direct it to be so referred by the Administrator.

Costs of
proceedings.

22. The costs of any appeal or reference to the tribunal shall be in the discretion of the tribunal, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may settle the amount of costs to be so paid or any part thereof.

Authentica-
tion of
copies of

23. - (1) A copy of a decision of the Administrator shall be authenticated by the signature of an officer of the

Administrat- Authority, and a copy purporting to be signed by such officer
or's and shall, unless the contrary is proved, be deemed to be so
tribunal's signed.
decisions.

(2) A copy of the decision of the tribunal on any appeal or reference to it shall be authenticated by the signature of the Chairman or Deputy Chairman of the tribunal, and a copy purporting to be so signed shall, unless the contrary is proved, be deemed to be so signed.

Dated this 23rd day of January, 1952.

(Signed) Wilfred J. Bobet.

President,
States Insurance Authority,
on behalf of that Authority.

EXPLANATORY NOTE

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

These Regulations specify in Part II which questions arising under or in connection with the National Insurance (Guernsey) Law, 1951, shall be determined by the Authority and which questions shall be determined by the Administrator and the tribunal (hereafter in this Note referred to as "the statutory authorities"). The questions to be decided by the Authority relate mainly to contributions and the classification of insured persons, and the questions to be decided by the statutory authorities relate to right to benefit. Parts III and IV of the regulations prescribe the manner in which questions shall be determined by the Authority and by the statutory authorities respectively.

THE SCHEDULE.

NATIONAL INSURANCE (GUERNSEY) LAW, 1951.

NOTICE OF APPEAL.

To the Registrar of Appeals,
States Insurance Department,
St. Peter Port,
Guernsey.

I, _____ of _____
being dissatisfied by the award or decision of the
Administrator given on the _____ day
of _____, 19____, under the National Insurance
(Guernsey) Law, 1951, hereby apply for the question to be
determined by the tribunal on appeal. The grounds upon
which the appeal is made are set forth in the Particulars
hereto attached.

In support of this notice the following documents are
sent herewith:-

(Insert list of all documents sent with application).

Dated this _____ day of _____

Signature.

APPLICANT'S PARTICULARS.

N.B.- The particulars furnished on this form and all other
information which may be sent to the tribunal by or
on behalf of a claimant in connection with his or her
appeal will be disclosed to the Administrator. A copy
of the Administrator's award or decision must be
furnished.