

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Social Insurance (Duties of Appointees) Regulations, 2002 *

[CONSOLIDATED TEXT]

NOTE

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* G.S.I. No. 2 of 2002; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Long-term Care Regulations (Guernsey), 2003 (G.S.I. No. 8 of 2003); the Social Insurance (Benefits) Regulations, 2003 (G.S.I. No. 37 of 2003); the Social Insurance (Collection of Contributions) (Transfer of Functions) Regulations, 2018 (G.S.I. No. 45 of 2018).

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The Social Insurance (Duties of Appointees) Regulations, 2002

ARRANGEMENT OF REGULATIONS

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Explanatory Note.

(Made on 13th March, 2002.)

The Social Insurance (Duties of Appointees) Regulations, 2002

THE GUERNSEY SOCIAL SECURITY AUTHORITY, in exercise of the powers conferred upon it by section 64(7) of the Social Insurance (Guernsey) Law, 1978, as amended^a ("**the Law**"), and all other powers enabling it in that behalf, hereby orders: –

Interpretation.

1. (1) In these Regulations, unless the context requires otherwise –

"**appointee**", "**beneficiary**" and "**benefit record**" have the meanings set out respectively in regulation 2,

"**[Committee]**" means the Guernsey [Committee for Employment & Social Security],

"**nursing home**" has the meaning given by section 18(1) of the Nursing Homes and Residential Homes (Guernsey) Law, 1976^b,

"**residential home**" has the meaning given by section 18(1) of the Nursing Homes and Residential Homes (Guernsey) Law, 1976, and

^a Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; No. V of 1990; Nos. V and XII of 1993; Ordinance No. XIV of 1993; Ordres en Conseil No. V of 1994, Nos. VI and XIII of 1995; No. I of 1998; No. VI of 1999; No. X of 2000; No. IX of 2001.

^b Ordres en Conseil Vol. XXVI, p. 71.

"benefit" includes any special payments, payments in kind and any other description of benefit under the Law.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^c apply to the interpretation of these Regulations as they may apply to the interpretation of a Guernsey enactment.

NOTES

In regulation 1, the words in the first and second pairs of square brackets in the definition of the expression "Committee" in paragraph (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 4, and section 2(1), Schedule 1, paragraph 13 and section 4, with effect from 1st May, 2016.¹

The functions, rights and liabilities of the Social Security Department and of its Minister or Deputy Minister arising under or by virtue of these Regulations were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 13 and section 4, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.²

In accordance with the provisions of the Long-term Care Regulations (Guernsey), 2003, regulation 8(3), with effect from 7th April, 2003, the provisions of these Regulations shall apply mutatis mutandis to any person appointed under regulation 8 of the 2003 Regulations as if he were an appointee for the purposes of these Regulations.

In accordance with the provisions of the Social Insurance (Benefits) Regulations, 2003, regulation 23(1), with effect from 5th January 2004 and subject to the proviso therein, on the death of a person who has made a claim for benefit or who is alleged to have been entitled to benefit, or in respect of whose death a death grant is alleged to be payable, the Committee for Employment & Social Security may appoint such person as it may think fit to proceed with or to make a claim for the benefit, and the provisions of these Regulations shall apply subject to the necessary modifications to any such claim.

In accordance with the provisions of the Social Insurance (Collection of

^c Ordres en Conseil Vol. XIII, p. 355.

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 these Regulations 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 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.

Duties of appointees.

2. (1) Where a benefit is payable by the [Committee] for the benefit of any person (a "**beneficiary**") and another person (an "**appointee**") –

- (a) is authorised to receive the benefit on behalf of the beneficiary,
- (b) receives payments of the benefit, or
- (c) is otherwise appointed to act in relation to the beneficiary or the benefit under regulations made under section 64(4) of the Law,

the appointee shall observe the utmost good faith and shall apply the benefit well and prudently in the best interests of the beneficiary.

(2) For the avoidance of doubt, any payment of benefit made by an appointee to –

a residential home,

a nursing home, or the Guernsey Cheshire Home,

on behalf of a beneficiary residing in the home in respect of the home's fees shall be deemed for the purposes of paragraph (1) to have been applied well and prudently in the best interests of the beneficiary.

(3) An appointee shall keep an accurate record (a "**benefit record**") of –

(a) all benefit received by him for a beneficiary, and

(b) the application of such benefit.

NOTE

In regulation 2, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Breach of duty by appointee.

3. (1) An appointee who fails to comply with any duty imposed upon him by regulation 2(1) or 2(3) is guilty of an offence and liable, on summary conviction, to a term of imprisonment not exceeding three months or to a fine not exceeding level 3 on the uniform scale, or to both.

(2) In proceedings against a person for an offence under paragraph (1) it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(3) Where in any such proceedings the defence provided for by

paragraph (2) involves an allegation that the commission of the offence was due to the act or default of another person, the accused may not, without the leave of the court, rely on the defence unless, not less than 7 clear days before the day of the hearing of the proceedings, he serves notice on Her Majesty's Procureur giving such information identifying or assisting in the identification of that other person as is in his possession when he serves the notice.

Falsifying benefit record.

4. (1) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another –

- (a) destroys, defaces, conceals or falsifies any benefit record, or
- (b) in furnishing information for any purpose produces or makes use of any benefit record, which to his knowledge is or may be misleading, false or deceptive in a material particular,

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

(2) For the purposes of this regulation a person who makes or concurs in making in a benefit record an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from a benefit record, is to be treated as falsifying the account or document.

Failing to produce benefit record.

5. (1) An appointee must, upon or before the expiration of the period specified in a written request made by or on behalf of the [Committee], produce to the

[Committee] the benefit record relating to the beneficiary specified in the request.

(2) A written request made pursuant to paragraph (1) shall specify

—

- (a) the name of the beneficiary and the appointee,
- (b) the period in respect of which the benefit record is to be produced,
- (c) the date (being at least 21 days from the date of the request) on or before which the benefit record is to be produced, and
- (d) an address or place to or at which the benefit record may be sent or produced.

(3) An appointee who fails to comply with the terms of a written request made pursuant to this regulation shall be guilty of an offence and liable, on summary conviction, to a term of imprisonment not exceeding three months or to a fine not exceeding level 3 on the uniform scale, or to both.

NOTE

In regulation 5, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Repayment by appointees of benefit.

6. (1) Where, in relation to a benefit, an appointee fails to comply with any duty imposed upon him by regulation 2(1) or 2(3), the amount of benefit misapplied or not accounted for, together with interest thereon, shall, in addition to

any other method of recovery, be recoverable by the [Committee] as a civil debt.

(2) For the purposes of paragraph (1), interest shall run at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985^d from the date of the misapplication or failure to account (or whichever is earlier) until the debt is satisfied.

NOTE

In regulation 6, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Application of Trusts Law.

7. The provisions of these Regulations are in addition to and not in derogation from the provisions of the Trusts (Guernsey) Law, 1989^e, as amended.

NOTE

The Trusts (Guernsey) Law, 1989 has since been repealed by the Trusts (Guernsey) Law, 2007, section 83(1)(a), with effect from 17th March, 2008, subject to the transitional provisions and savings in, respectively, subsections (2)-(4) of section 83 and section 84 of the 2007 Law.

Extent.

8. These Regulations shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

Citation.

^d Ordres en Conseil Vol. XXIX, p. 135 as amended by Order of the Royal Court No. 1 of 1996.

^e Ordres en Conseil Vol. XXXI, p. 217 and Vol. XXXII, p. 385.

9. These Regulations may be cited as the Social Insurance (Duties of Appointees) Regulations, 2002.

Commencement.

10. These Regulations shall come into force on 1st April, 2002.

EXPLANATORY NOTE

*(This Note is not part of the Regulations, but is intended to indicate their general purport)^{**}*

These regulations detail the duties of persons appointed to receive benefit on another's behalf, prescribe penalties for failure to fulfil those duties and allow the Authority to recover misappropriated benefit as a civil debt.

¹ The words "Committee for Employment & Social Security" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 26, with effect from 6th May, 2004.

² The functions, rights and liabilities of the Social Security Department and its Minister arising under or by virtue of these Regulations were previously transferred to and vested in them, respectively, from the Social Security Authority and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 26 and section 5, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

^{**} The text of this Explanatory Note is as it was when the Statutory Instrument was first made – that is to say that the Explanatory Note has not been updated to take account of any changes made by subsequent amending Statutory Instruments with their own Explanatory Notes, which latter should thus be, if necessary, consulted in the original.