

GUERNSEY STATUTORY INSTRUMENT

ENTITLED

The Severe Disability Benefit (Duties of Appointees) Regulations, 2002 *

[CONSOLIDATED TEXT]

NOTE

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* G.S.I. No. 3 of 2002; as amended by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013 (No. IV of 2014); 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).

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Explanatory Note.

(Made on 13th March, 2002.)

The [Severe Disability Benefit (Duties of Appointees) Regulations, 2002]

THE GUERNSEY SOCIAL SECURITY AUTHORITY, in exercise of the powers conferred upon it by section 5(4) of the [Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984], 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. XXVIII, p. 353; Vol. XXIX, p. 198; No. XIV of 1991; No. X of 1993; No. VI of 1999; and Ordinance No. XIV of 1993 (Tome XXVI, p. 177).

^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

The title in square brackets of these Regulations was substituted by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013, section 1(1), First Schedule, paragraph 11, with effect from 1st May, 2014.¹

The words in square brackets in the Preamble to these Regulations were substituted by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013, section 1(2), First Schedule, paragraph 1, with effect from 1st May, 2014.

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, Schedule 1, paragraph 13 and section 4, with effect from 1st May, 2016.²

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.³

Duties of appointees.

2. (1) Where a benefit is payable by the [Committee] for the benefit

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

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 5(2) 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 word in square brackets was 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 paragraph 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 Procurer 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 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.

NOTE

In regulation 5, the word "Committee" in square brackets, wherever occurring, was 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 word in square brackets was 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, as amended^e.

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.

[9. These Regulations may be cited as the Severe Disability Benefit (Duties of Appointees) Regulations, 2002.]

^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.

NOTE

Regulation 9 was substituted by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013, section 2, Second Schedule, paragraph 12, with effect from 1st May, 2014.⁴

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 Prior to this substitution, the Regulations were titled the Attendance Allowance (Duties of Appointees) Regulations, 2002.

² 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 and section 5, with effect from 6th May, 2004.

³ 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.

⁴ Prior to this substitution, the Regulations were cited as the Attendance Allowance (Duties of Appointees) Regulations, 2002.

^{**} 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.