

ORDER OF THE ROYAL COURT

ENTITLED

The Severe Disability Benefit and Carer's Allowance (Appeals and References) (Guernsey) Order, 1985 *

[CONSOLIDATED TEXT]

NOTE

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* O.R.C. No. III of 1985; 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). See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122).

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SCHEDULE Modifications of Social Insurance (Appeals and References) (Guernsey) Order, 1979, in relation to references and appeals to the

Court.

(Made on 3rd December, 1985.)

The [Severe Disability Benefit and Carer's Allowance (Appeals and References) (Guernsey) Order, 1985]

THE ROYAL COURT, in exercise of the powers conferred upon it by sections 13 and 17 of the [Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984]^a, and of all other powers enabling it in that behalf, hereby orders: –

PART I

REFERENCES AND APPEALS TO THE COURT RESPECTING DECISIONS OF THE TRIBUNAL

Modification of Social Insurance (Appeals and References) (Guernsey) Order, 1979.

1. The provisions of the Social Insurance (Appeals and References) (Guernsey) Order, 1979^b, (other than Part I and Part II, paragraph 18 and the First Schedule), relating to references and appeals to the Court respecting decisions of the Tribunal shall have effect for the purposes of the Law as they have effect for the purposes of the Social Insurance Law subject to the modifications set out in the Schedule to this Order.

NOTES

The title in square brackets of this Order was substituted by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013, section 1(1), First Schedule, paragraph 8, with effect from 1st May, 2014.¹

The words in square brackets in the Preamble to this Order 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.

PART II

^a Ordres en Conseil No. II of 1984.

^b Orders of the Royal Court No. III of 1979.

REFERENCES BY THE ATTENDANCE ALLOWANCE BOARD TO THE
COURT

Statement of case to be submitted to the Court by the Chairman of the Board.

2. (1) If the Attendance Allowance Board is of opinion that a question of law has arisen in connection with a determination by the Board under section 15(1)(a) of the Law or under section 16(1)(a) or (b) of the Law which should be referred to the Court for decision under section 17(1) of the Law, the Chairman of the Board shall, within seven days of the decision of the Board so to refer such a question, prepare in writing under his hand a statement (hereinafter in this Part of this Order referred to as "**the statement of the case**") setting out the question of law so to be referred and such particulars of the case as, in his opinion, are relevant to the determination of such question by the Court, and shall transmit it to the Clerk.

(2) The Clerk shall, as soon as reasonably practicable, send the statement of the case duly signed by the Chairman of the Board to Her Majesty's Greffier, who shall acknowledge in writing to the Clerk the receipt by him of the statement of the case.

(3) The Clerk shall, as soon as reasonably practicable, send a copy of the statement of the case and of any amendment made thereto under the provisions of the next following paragraph to the person concerned.

(4) Her Majesty's Greffier shall, as soon as reasonably practicable after the receipt by him of the statement of the case, inform the Bailiff thereof and transmit the statement of the case to the Bailiff.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained in this Order relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Section 15 of the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984, whereunder was constituted the Attendance Allowance Board ("the Board"), has since been repealed by the Severe Disability Benefit and Carer's Allowance (Amendment) (Guernsey) Law, 2002, section 1, Schedule, paragraph 4, with effect from 28th April, 2003, subject to the savings in section 3(a) of the 2002 Law.

Further particulars to be furnished to the Court.

3. The Bailiff may at any time require the Chairman of the Board to furnish Her Majesty's Greffier with further particulars in writing, within such time as he may direct, with regard to any question referred to the Court and may at any time prior to the fixing of the date of the hearing (if any) for the purpose of determining such question allow the amendment of the statement of the case by the Chairman of the Board.

Extension of time for preparation of statement of the case.

4. The Bailiff may extend the time for the preparation of the statement of the case handed down in paragraph 2(1) of this Order.

Determination by the Court without a hearing.

5. If the Court is of opinion that the question of law referred to it can properly be determined on the statement of the case and any further particulars furnished under paragraph 3 of this Order, the Court may dispense with a hearing and may decide the question on the statement of the case and such further particulars.

Hearing by the Court.

6. (1) If, in the opinion of the Court, a hearing is required, the Bailiff shall decide on a date and a time for the hearing, and Her Majesty's Greffier shall as soon as reasonably practicable after that decision is made known to him, notify the Clerk of that decision.

(2) The Clerk shall, within forty-eight hours of the notification to him by Her Majesty's Greffier of the place, date and time of the hearing by the Court, notify the Chairman of the Board in writing of the place, date and time of the hearing.

(3) The person concerned or any person acting on his behalf shall not be entitled to be present or represented at a hearing by the Court except with the consent of the Court; and in the event of such consent being given, the Clerk shall give the person concerned forty-eight hours' notice of the place, date and time of the hearing.

(4) Subject to the provisions of this Order, the procedure at a hearing by the Court under this paragraph shall be such as the Court shall determine.

PART III
APPEALS FROM THE ATTENDANCE ALLOWANCE BOARD TO THE
COURT

Notice of appeal from the Board.

7. (1) Notice of appeal under section 17(2) of the Law by the claimant or [the Department] shall be in writing and shall contain a statement of the contentions of law on which the appellant relies.

(2) Notice of appeal shall be sent to Her Majesty's Greffier within three months after the date of the determination in respect of which the appeal is to be brought.

(3) Her Majesty's Greffier shall, as soon as reasonably practicable, furnish copies of the notice of appeal and of any documents attached thereto to the Chairman of the Board and to the respondent.

NOTES

In paragraph 7, the words in square brackets were 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.

The functions, rights and liabilities of the Social Security Authority ("the Authority") and of its President arising under or by virtue of this Order were transferred to and vested in, respectively, the Social Security Department and its Minister 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.

Submission of written observations.

8. (1) The Chairman of the Board and the respondent may submit to Her Majesty's Greffier at any time within four weeks from the date of the notice of appeal observations in writing on the notice of appeal.

(2) Her Majesty's Greffier shall, as soon as reasonably practicable, furnish copies of any written observations submitted to him under sub-paragraph (1) of this paragraph to the Chairman of the Board, the appellant and the respondent (not being the person who submitted those observations), who may submit to Her Majesty's Greffier comments in writing on those observations.

(3) Any written comments submitted to Her Majesty's Greffier under sub-paragraph (2) of this paragraph shall be furnished by him to the Chairman of the Board, the appellant and respondent (not being the person who submitted those comments).

Determination by the Court without a hearing.

9. If the Court is of opinion that the appeal can properly be disposed of on the notice of appeal and written observations and comments submitted under paragraph 8 of this Order, the Court may dispense with a hearing and may determine the question of law in respect of which the appeal is brought on the notice of appeal and such observations and comments.

Hearing by the Court.

10. (1) If, in the opinion of the Court, a hearing is required, the Bailiff shall decide on a date and a time for the hearing, and Her Majesty's Greffier shall as soon as reasonably practicable, notify the Chairman of the Board in writing of the place, date and time of the hearing.

(2) The appellant and respondent or any person acting on behalf of either of them shall not be entitled to be present or represented at a hearing by the Court except with the consent of the Court; and in the event of such consent being given, Her Majesty's Greffier shall give the appellant and the respondent

forty-eight hours' notice of the place, date and time of the hearing.

(3) Subject to the provisions of this Order, the procedure at a hearing of the Court under this paragraph shall be such as the Court shall determine.

Decision of the Court.

11. (1) The decision of the Court on an appeal shall be recorded in writing and sent to the Chairman of the Board, the appellant and respondent by Her Majesty's Greffier as soon as may be reasonably practicable after the decision is made.

(2) Where the Court holds that a determination of the Board was erroneous in law, the Board shall review its determination for the purpose of confirming it or revising it.

PART IV
MISCELLANEOUS

Non-disclosure of medical advice or evidence.

12. Where there is before the Court in any proceedings under Part II or Part III of this Order medical advice or evidence relating to a disabled person (whether the claimant or not) which has not been disclosed to the claimant and in the opinion of the Court the disclosure to the claimant of that advice or evidence would be harmful to his health, that advice or evidence shall not be disclosed to him, but the Court shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of its determination in those proceedings.

Interpretation of Parts II, III and IV of this Order, etc.

13. The provisions of paragraphs 16 and 17 of the Social Insurance (Appeals and References) (Guernsey) Order, 1979, as modified in accordance with paragraph 1 of this Order, shall have effect for the purposes of the interpretation of Parts II and III and this Part of this Order and the Schedule to this Order.

Service of documents on the Board.

14. Any document required to be furnished to the Chairman of the

Attendance Allowance Board may be given or sent by post to the office of [the Department].

NOTE

In paragraph 14, the words in square brackets were 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.

Interpretation.

15. (1) In this Order the expression "**the Law**" means the [Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984], and any other expressions have the same meanings as in the Law.

(2) Except where the context otherwise requires, any references in this Order to any enactment or order shall be construed as including a reference to that enactment or order as amended, extended, re-pealed, replaced or revoked by or under any other enactment or by any other order.

(3) The Interpretation (Guernsey) Law, 1948^c, shall apply to the interpretation of this Order as it applies to the interpretation of a Guernsey enactment.

NOTE

In paragraph 15, the words in square brackets 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.

[Citation.]

16. This Order may be cited as the Severe Disability Benefit and Carer's Allowance (Appeals and References) (Guernsey) Order, 1985.]

NOTE

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

Paragraph 16 was substituted by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013, section 2, Second Schedule, paragraph 9, with effect from 1st May, 2014.²

Commencement.

17. This Order shall come into force on the 6th day of January, 1986.

SCHEDULE Paragraphs 1 and 13
 MODIFICATIONS OF SOCIAL INSURANCE (APPEALS AND REFERENCES)
 (GUERNSEY) ORDER, 1979, IN RELATION TO REFERENCES AND
 APPEALS TO THE COURT

Paragraph of this Order (1)	Modification (2)
7(1)	<p>(a) For the reference to section 79(2) of the Social Insurance Law substitute a reference to section 12(2) of the Law.</p> <p>(b) For the reference to section 81 of the Social Insurance Law substitute a reference to section 81 of the Social Insurance Law as having effect by virtue of section 13 of the Law.</p> <p>(c) For the reference to section 82(1) of the Social Insurance Law substitute a reference to section 82(1) of the Social Insurance Law as having effect by virtue of section 13 of the Law.</p>
11(1)	For the reference to section 82(3) of the Social Insurance Law substitute a reference to section 82(3) of the Social Insurance Law as having effect by virtue of section 13 of the Law.
17	(a) For the reference to the Social Insurance (Guernsey) Law, 1978, in the definition of the expression "the Law" substitute a reference to the [Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984].

- (b) In the definition of the expression "person concerned" –
 - (i) sub-paragraphs (i) and (iv) are deleted, and
 - (ii) for the reference to the Social Insurance Law, wherever it occurs in sub-paragraphs (ii) and (iii), substitute a reference to the Social Insurance Law as having effect by virtue of section 13 of the Law.
 - (c) The definition of the expression "the President" is deleted.
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NOTE

In the Schedule, the words in square brackets 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.

¹ Prior to this substitution, the Order was titled the Attendance and Invalid Care Allowances (Appeals and References) (Guernsey) Order, 1985.

² Prior to this substitution, the Order was cited as the Attendance and Invalid Care Allowances (Appeals and References) (Guernsey) Order, 1985.