

Island of



Guernsey

Ordinance of the States

XXXIX

2021

Made 15th December, 2021

Coming into Operation 1st January, 2022

The Guernsey Revenue Service Tribunal Ordinance 2021

The Guernsey Revenue Service Tribunal

Ordinance, 2021

THE STATES, in pursuance of their Resolution of the 18th April, 2018^a, and in exercise of the powers conferred on them by sections 75Q, 203A and 208C of the Income Tax (Guernsey) Law, 1975^b, sections 115A and 116 of the Social Insurance (Guernsey) Law, 1978^c and all other powers enabling them in that behalf, hereby order:-

PART I

TRANSFER OF JURISDICTION FROM GUERNSEY TAX TRIBUNAL TO GUERNSEY REVENUE SERVICE TRIBUNAL

Transfer of jurisdiction.

1. The jurisdiction, privileges, functions, rights and liabilities of the Guernsey Tax Tribunal and of its members and officers arising under or by virtue of a relevant enactment are transferred to and vested in, respectively, the Guernsey Revenue Service Tribunal and its members and officers.

^a Article 3 of Billet d'État No. XI of 2018.

^b Ordres en Conseil Vol. XXV, p. 124; sections 75Q and 203A were inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011. There are other amendments not material to this Ordinance.

^c Ordres en Conseil Vol. XXVI, p. 292; section 115A was inserted by Order in Council No. XVIII of 2007. There are other amendments not material to this Ordinance.

Amendment of statutory references.

2. For any reference in a relevant enactment to the Guernsey Tax Tribunal or its members or officers, however expressed, there is substituted a reference to the Guernsey Revenue Service Tribunal or (as the case may be) its members or officers.

Savings and transitional provisions.

3. Anything done before the date of commencement of this Ordinance or in the process of being done on that date by or in relation to the Guernsey Tax Tribunal or its members or officers under or by virtue of a relevant enactment shall have effect as if done or (as the case may be) may be continued by or in relation to the Guernsey Revenue Service Tribunal or (as the case may be) its members or officers.

Subordinate legislation.

4. The provisions of sections 2 and 3 also apply in relation to any subordinate legislation made or having effect as if made under a relevant enactment as they apply to a relevant enactment; and the provisions of the relevant enactment under which the subordinate legislation was made are varied insofar as is necessary to give effect to this section.

Continuation of membership, etc.

5. A person who immediately before the date of commencement of this Ordinance held any of the following positions –

- (a) President or Vice-President of the Guernsey Tax Tribunal,
- (b) member of the Guernsey Tax Tribunal,
- (c) clerk or deputy clerk to the Guernsey Tax Tribunal,

shall be deemed, on that date, to have been duly appointed, subject to the same term of office and the same terms and conditions of appointment, to the corresponding position in respect of the Guernsey Revenue Service Tribunal.

Continuation of proceedings.

6. Without prejudice to the generality of section 3 –
 - (a) any proceeding or matter before the Guernsey Tax Tribunal immediately prior to the date of commencement of this Ordinance may be continued before the Guernsey Revenue Service Tribunal, and
 - (b) any order, direction or finding made or other thing done by the Guernsey Tax Tribunal prior to that date in respect of any such proceeding or matter shall have effect after that date as if made or done by the Guernsey Revenue Service Tribunal.

Interpretation.

7. In this Part of this Ordinance -

"**Guernsey Tax Tribunal**" means the Tribunal established by the Third Schedule to the Income Tax (Guernsey) Law, 1975,

"**relevant enactment**" means any Law or Ordinance of the States of Deliberation.

PART II
AMENDMENT OF INCOME TAX LAW

Amendment of 1975 Law.

8. (1) In the provisions of the Income Tax (Guernsey) Law, 1975 referred to in subsection (2), for "the Guernsey Tax Tribunal" substitute "the Guernsey Revenue Service Tribunal".

(2) The provisions are –

(a) section 75CB(2), (3), (5), (6), (7) and (8), section 75J(3)(a)(ii), section 80A, section 82(1), section 171G, section 198, section 200(3) and (4), and section 201(4)(d) and (e), and

(b) in the Third Schedule, paragraph 1(1) and, in paragraph 6, the definition of "the Tribunal" (and the heading to that Schedule).

9. In the Third Schedule to the Income Tax (Guernsey) Law, 1975, paragraph 2(2)(b) is repealed.

PART III
AMENDMENT OF SOCIAL INSURANCE LAW

Amendment of 1978 Law.

10. The Social Insurance (Guernsey) Law, 1978 is amended in accordance with this Part.

11. For section 74 and the preceding cross heading substitute –

*“Adjudication by Administrator
and Director of Revenue Service*

Questions for determination by Administrator and Director of Revenue Service.

74. (1) Subject to the provisions of this Law, the following questions arising under this Law shall be determined as follows –

(a) questions as to whether the contribution conditions for any benefit are satisfied, by the Administrator,

(b) questions otherwise relating to a person's contributions, by the Director of the Revenue Service,

(c) questions as to –

(i) the class of insured persons in which a person is to be included, and

(ii) the liability of an insured person to pay contributions of any class,

by the Director of the Revenue Service.

(2) If the Administrator thinks fit, the Administrator may,

before determining a question within subsection (1)(a), appoint a person to hold an inquiry into the question or any matters arising in connection therewith, and to report on the question or on those matters to the Administrator."

12. After section 74 insert the following sections and cross heading –

"Appeals against decisions of Director of Revenue Service

Appeals to Revenue Service Tribunal from decisions of Director of Revenue Service.

74A. (1) A person aggrieved by a determination by the Director of the Revenue Service of a question under section 74(1)(b) or (c) may appeal to the Guernsey Revenue Service Tribunal on giving to the Director notice in writing, stating the grounds of appeal, within a period of 30 days beginning on the date of the notice stating the determination.

(2) The Guernsey Revenue Service Tribunal may admit an appeal under subsection (1) after the expiration of the 30 day period if satisfied that owing to absence, sickness or other reasonable cause a person was prevented from giving notice of appeal within that period.

(3) The sole grounds of appeal are that –

(a) the determination was based on a miscalculation or was otherwise wrong, or

- (b) the determination was unreasonable as a matter of law, having regard to all facts and circumstances of the case.

Meetings of Revenue Service Tribunal.

74B. The Guernsey Revenue Service Tribunal shall meet from time to time for the hearing of appeals, and shall cause reasonable notice to be given to each appellant of the date, time and place for the hearing of the appeal.

Hearing of appeals.

74C. (1) During the hearing of an appeal the Director of the Revenue Service may be present at all times, to give reasons in support of the determination made by the Director and to be present when the decision of Guernsey Revenue Service Tribunal is announced.

(2) The appellant and the Director of the Revenue Service may, at the hearing of an appeal, appear as follows –

- (a) the appellant may be represented by any person, whether or not legally qualified, except that if in any particular case the Guernsey Revenue Service Tribunal is satisfied that there are good and sufficient reasons for doing so it may refuse to permit a particular person, other than one who is legally qualified or who has been admitted a member of an incorporated society of accountants, to represent the appellant,

(b) the Director of the Revenue Service may be represented by –

(i) any person who is legally qualified,

(ii) any officer of the Revenue Service, or

(iii) any other person appointed by the Director.

(3) If the Guernsey Revenue Service Tribunal is satisfied that the appellant has been prevented by absence, sickness or other reasonable cause from attending on the day fixed for hearing the appeal, it may adjourn the hearing for such time as it may think necessary.

(4) Where on the hearing of an appeal the appellant desires to put forward a ground of appeal which was not specified in the notice of appeal, the Guernsey Revenue Service Tribunal may, if in its opinion the omission of that ground from the notice was not wilful or unreasonable, allow the appellant to put forward that ground and may take it into consideration.

(5) The Guernsey Revenue Service Tribunal may, by notice sent by post or served in person, summon any person (other than the appellant) whom it thinks able to give relevant evidence, to appear before it to be examined.

(6) Any witness before the Guernsey Revenue Service Tribunal may be examined on oath or affirmation, but where the witness is –

- (a) the appellant,
- (b) any agent or servant of the appellant, or
- (c) any other person confidentially employed in the appellant's affairs,

the witness shall not be compelled to give evidence on oath or affirmation or to answer any question to which the witness objects.

(7) Any member of the Guernsey Revenue Service Tribunal may administer the oath or affirmation referred to in subsection (6).

(8) The Guernsey Revenue Service Tribunal may adjourn any appeal from time to time.

Reference of points of law to Ordinary Court.

74D. (1) A question of law arising on an appeal to the Guernsey Revenue Service Tribunal under section 74A(1) may, if the Guernsey Revenue Service Tribunal thinks fit, and with the consent of the appellant and the Director of the Revenue Service, be referred by the Guernsey Revenue Service Tribunal for decision to the Ordinary Court.

(2) The reference shall be made in such manner and within such time (if any) as may be prescribed by Order of the Royal Court; and, subject to the provisions of any Order of the Royal Court made under this subsection, the Royal Court (Guernsey Tax Tribunal) Order, 2008 –

- (a) has effect for the purposes of this subsection, and

- (b) applies (subject to the appropriate modifications) to a reference under this section as it applies to a reference under section 78A of the Income Tax (Guernsey) Law, 1975.

(3) The provisions of this section are in addition to the provisions of section 74F.

Determination of appeals.

74E. (1) In disposing of an appeal the Guernsey Revenue Service Tribunal may –

- (a) confirm, annul or vary the determination of the Director of the Revenue Service which is the subject of the appeal, or
- (b) set aside the determination and order the Director to make a fresh determination after making such further enquiry as –
 - (i) the Director thinks fit, or
 - (ii) the Guernsey Revenue Service Tribunal may direct.

(2) Subject to section 74F, the decision of the Guernsey Revenue Service Tribunal is final and conclusive.

Case for opinion of Ordinary Court.

74F. (1) Upon the determination of an appeal by the Guernsey Revenue Service Tribunal –

(a) the appellant, or

(b) the Director of the Revenue Service,

if dissatisfied with the determination as being erroneous in point of law, may require the Guernsey Revenue Service Tribunal to state and sign a case for submission to the Ordinary Court.

(2) Such a requirement shall be made by delivering, at any time within 21 days after the determination of the appeal, a notice in writing to the President of the Guernsey Revenue Service Tribunal.

(3) The case shall set out the facts and the decision of the Guernsey Revenue Service Tribunal.

(4) The case when stated and signed shall be delivered by the President to the party who required it.

(5) The party to whom the case is delivered shall, within 21 days after that party received it –

(a) transmit the case to Her Majesty's Greffier, and

- (b) send to the other party a copy of the case, together with notice in writing that the case has been so transmitted.

(6) The Ordinary Court shall hear and determine any question of law arising on the case, and may –

- (a) reverse, affirm, or amend the determination of the Guernsey Revenue Service Tribunal,
- (b) remit the matter to the Guernsey Revenue Service Tribunal, with the opinion of the Ordinary Court thereon, or
- (c) make such other order as the Ordinary Court may think fit.

(7) The Ordinary Court may cause the case to be sent back for amplification or clarification and thereupon the case shall be amplified or clarified accordingly and returned to the Ordinary Court and subsection (6) shall thereupon apply.

(8) Where the amount of any contribution is to be altered in consequence of the judgment of the Ordinary Court, the Director of the Revenue Service shall alter the determination under section 74(1)(b) or (c) and payment, or charge, shall be made accordingly.

(9) The Royal Court may by Order make provision in respect of –

- (a) the preparation by the Guernsey Revenue Service Tribunal of, and the form and manner of, cases for submission to the Ordinary Court under this section, and
- (b) generally, the hearing of such cases by the Ordinary Court and of appeals therefrom to the Court of Appeal, including provision as to the form, manner, conduct and procedure of such hearings;

and, subject to the provisions of any Order of the Royal Court made under this subsection, the Royal Court (Guernsey Tax Tribunal) Order, 2008 –

- (i) has effect for the purposes of this subsection, and
- (ii) applies (subject to the appropriate modifications) in respect of a submission of case under this section as it applies in respect of a submission of case under section 80 of the Income Tax (Guernsey) Law, 1975.

Appeals from Ordinary Court to Court of Appeal.

74G. (1) An appeal from a decision of the Ordinary Court made under section 74D or 74F lies, with leave of the Ordinary Court or Court of Appeal, to the Court of Appeal on a question of law.

(2) Section 21 of the Court of Appeal (Guernsey) Law, 1961 ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (1) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law."

13. Section 76 is repealed.

14. Section 77 is repealed.

15. (1) In the provisions referred to in subsection (2), for "the Tribunal" substitute "the Social Insurance Tribunal".

(2) The provisions are –

- (a) the cross heading immediately preceding section 78,
- (b) section 79(2)(c) and (3), section 80(1), (2) and (4) (and the heading of that section), section 81(1), (3), (4) and (6) (and the heading of that section), section 82(1), (2) and (3) (and the heading of that section), section 83(1), section 84(4) and section 85(1) and (1)(a),
- (c) in the Third Schedule, paragraphs 1, 3, 6 and 7, and
- (d) in the Sixth Schedule, the definition of "the Tribunal".

16. After section 78(1)(a) insert the following paragraph –

"(aa) any question referred to in section 74(1)(a) as to whether the contribution conditions for any benefit are satisfied,".

17. In section 78(2) after "the Committee" insert "or the Director of the Revenue Service".

18. In sections 81(3), 83(2), 84(1)(a) and (2)(a) and 85(1)(c)(i) for "the Committee" substitute "the Director of the Revenue Service".

19. In section 85(1)(c), in the text following subparagraph (ii), for the words "under section seventy-six or" substitute "by the Director of the Revenue Service or, as the case may be, under".

20. In section 105(1) and (2), for the words "the Committee" wherever appearing substitute "the Administrator or, as the case may be, the Director of the Revenue Service".

21. For section 105(3) substitute the following subsection –

"(3) Subsection (1) does not apply –

- (a) if an appeal under section 74A, 74F, 74G or 81 is pending against the decision of the Administrator or, as the case may be, the Director of the Revenue Service, or if the time for appealing has not expired, or
- (b) if a question has been raised with a view to a

review of the Administrator's decision under
section 85;

and the court dealing with the case shall adjourn the proceedings until such
time as a final decision on the question has been obtained."

PART IV
GENERAL

Citation.

22. This Ordinance may be cited as the Guernsey Revenue Service Tribunal
Ordinance, 2021.

Commencement.

23. This Ordinance shall come into force on the 1st January, 2022.

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Her Majesty's Greffier, Royal Court House, Guernsey

£5.00