

GUERNSEY STATUTORY INSTRUMENT

2023 No. 76

**The Social Insurance (Access to Work for Disabled
Persons) Regulations, 2023**

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**The Social Insurance (Access to Work for Disabled
Persons) Regulations, 2023**

<i>Made</i>	<i>4th October, 2023</i>
<i>Coming into operation</i>	<i>4th October, 2023</i>
<i>Laid before the States</i>	<i>, 2023</i>

THE COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY, in exercise of the powers conferred upon it by sections 39A and 116 of the Social Insurance (Guernsey) Law, 1978^a, and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Purpose and administration.

1. (1) The purpose of these Regulations is to facilitate access to work for eligible persons by means of -

- (a) arrangements made under section 39A(1) or (1A) of the Law, and
- (b) grants made under section 39A(3) of the Law.

^a Ordres en Conseil Vol. XXVI, p. 292; this enactment has been amended.

(2) A reference in these Regulations to the "**Access to Work Scheme**" or the "**Scheme**" is a reference to these arrangements and grants.

(3) The Access to Work Scheme is subject to exceptions, conditions, limitations, restrictions and requirements specified in these Regulations.

(4) The Administrator will administer the Access to Work Scheme and make all arrangements and grants under the Scheme on behalf of the Committee.

(5) For the avoidance of doubt, any function of the Administrator under these Regulations may be exercised by a person authorised in that behalf by the Administrator.

Eligible persons.

2. (1) A person is eligible for benefit under the Access to Work Scheme only if -

(a) the person is an insured person,

(b) the person -

(i) is gainfully employed in Guernsey in employment under a contract of service or has an offer of such employment,

(ii) is gainfully employed in Guernsey as a self-employed person, or

(iii) has a realistic prospect of gainful employment in Guernsey as a self-employed person,

(c) the person has a disability, and

(d) the disabled person would, but for the provision of benefit under the Access to Work Scheme, be put at a substantial disadvantage in relation to entering, returning to or retaining the employment, in comparison with persons who are not disabled.

(2) The Administrator must not grant a benefit to a person under the Scheme unless the Administrator is satisfied that the person is an eligible person.

Extent and limits of benefits.

3. (1) The Administrator may grant a benefit to an eligible person ("A") only where the benefit is necessary and proportionate -

(a) to enable A to carry out the tasks necessary for the employment, or

(b) to remove, or enable A to avoid, any substantial disadvantage to A in relation to entering, returning to or retaining the employment.

(2) Where a person is under a duty under section 32(1) of the Discrimination Ordinance to make reasonable adjustments for A as described in section 32(2) of that Ordinance in respect of the employment, a benefit must not be granted to A in respect of the steps that that person could reasonably be expected to take in accordance with that duty.

(3) Where regulation 2(1)(b)(ii) or (iii) applies to A, a benefit must not be granted to A in respect of any steps that the Administrator believes could be taken by the business (in which A is or would be self-employed) without being a disproportionate burden for that business.

(4) A benefit must not be granted to A for the purpose of removing, or enabling A to avoid, a substantial disadvantage to A (in relation to entering, returning to or retaining the employment) arising from a physical feature.

(5) A benefit must not be granted in the form of a service provided to or for A, other than -

- (a) a service comprising the setting up of, or initial training for the use of, any auxiliary aid or alteration or adaptation to the same, or
- (b) a specified occupational health service.

(6) A benefit must not be granted to A in respect of recurring costs, including but not limited to the following -

- (a) a recurring fee or charge for any subscription (for example for software),
- (b) a fee or charge for maintenance, or insurance, that is or would be incurred at regular or predictable intervals.

(7) A benefit must not be granted to A in respect of any travel cost, for example a taxi fare.

(8) The exclusions and limits specified in paragraphs (2) to (7) are in addition to the limit specified in paragraph (1).

(9) In this regulation -

"avoiding a substantial disadvantage" is to be construed in accordance with section 32(10) of the Discrimination Ordinance,

"physical feature" has the meaning given by section 32(8) of the Discrimination Ordinance,

"specified occupational health service" has the meaning given by section 39A(6) of the Law, and

"substantial disadvantage" means substantial disadvantage in comparison with persons who are not disabled, within the meaning of section 32 of the Discrimination Ordinance.

(10) For the avoidance of doubt, in paragraph (7), the provision of auxiliary aids such as equipment (for example, a steering wheel adaptation for a car provided by the employer) or software that may facilitate travel is not to be regarded as a travel cost.

Annual limit.

4. The aggregate value of all benefits granted to any one eligible person in any consecutive period of 12 months determined by the Administrator in respect of the person must not exceed £5, 000.

Administrator may make exceptions.

5. The Administrator may grant a benefit in any particular case despite any exception, condition, limitation or restriction under regulation 3(6) or 4 if the Administrator considers that there are exceptional circumstances that merit the grant of the benefit in that case.

Information use and requirements.

6. (1) For the purposes of the Scheme, and in particular to ensure compliance with regulations 2, 3 and 4, the Administrator may -

- (a) access or use any information or documents disclosed to, or kept by or on behalf of, the Administrator or the Committee, in connection with the operation of the Law,
- (b) require any person applying for or receiving a benefit under the Scheme to provide any additional information or documents, and
- (c) require the person's employer to provide any information or documents.

(2) Nothing in paragraph (1) limits the Administrator's ability to access, use or require any information or documents otherwise than under that paragraph.

Relationship with the Discrimination Ordinance.

7. For the avoidance of doubt, nothing in these Regulations limits or affects -

- (a) the duty of any person to make reasonable adjustments for the eligible person under section 32 of the Discrimination Ordinance, or
- (b) any other duty of any person under that Ordinance.

Meaning of "access to work" and "the employment".

8. (1) Subject to paragraph (2), in these Regulations -

- (a) "**access to work**" has the meaning given by section 39A(6) of the Law, and
- (b) a reference to "**the employment**" in relation to an eligible person is a reference to the employment referred to in regulation 2(1)(b)(i), (ii) or (iii) in relation to the person.

(2) The Administrator may treat an unpaid internship or unpaid placement as gainful employment for the purposes of these Regulations if the Administrator considers it appropriate in any particular case.

Interpretation.

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

"**access to work**": see regulation 8,

"**Access to Work Scheme**" or "**Scheme**": see regulation 1(2),

"**benefit**" means an arrangement or grant made under the Scheme, and "**grant a benefit**" means making an arrangement or grant under the Scheme,

"**the Discrimination Ordinance**" means the Prevention of Discrimination (Guernsey) Ordinance, 2022^b,

"**eligible person**" means a person eligible for benefit under regulation 2(1),

"**employer**" includes a prospective employer,

"**employment**" includes self-employment, and "**the employment**" has the meaning given by regulation 8,

"**Guernsey**" includes Herm and Jethou,

"**information or documents**", for the avoidance of doubt, includes health data within the meaning given by section 111(1) of the Data Protection (Bailiwick of Guernsey) Law, 2017^c, and

"**the Law**" means the Social Insurance (Guernsey) Law, 1978.

(2) A reference in these Regulations to a person who has a disability is a reference to a person who has a disability within the meaning of section 1 of the Discrimination Ordinance.

^b Ordinance No. XVIII of 2022; this enactment has been amended.

^c Order in Council No. VI of 2018; this enactment has been amended.

Extent.

10. These Regulations have effect in the Islands of Guernsey, Herm and Jethou.

Citation.

11. These Regulations may be cited as the Social Insurance (Access to Work for Disabled Persons) Regulations, 2023.

Commencement.

12. These Regulations shall come into force on 4th October, 2023.

Dated this 4th day of October 2023



Deputy Peter Roffey

President of the Committee for Employment & Social Security

For and on behalf of the Committee

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe exceptions, conditions, limitations, restrictions and other matters considered appropriate by the Committee concerning arrangements to be made under section 39A(1) and (1A), and grants to be made under section 39A(3), of the Social Insurance (Guernsey) Law, 1978 in relation to access to work for persons with disabilities.

These Regulations come into force on 4th October, 2023.