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SOCIAL SECURITY (DETERMINATION OF CLAIMS AND QUESTIONS) (JERSEY) ORDER 1974

Arrangement

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SOCIAL SECURITY (DETERMINATION OF CLAIMS AND QUESTIONS) (JERSEY) ORDER 1974

THE EMPLOYMENT AND SOCIAL SECURITY COMMITTEE, in pursuance of Articles 29 and 33 of the Social Security (Jersey) Law 1974, orders as follows –

Commencement [[see endnotes](#)]

PART 1

DETERMINATION OF CLAIMS AND QUESTIONS BY DETERMINING OFFICER

1 Functions of determining officers

- (1) Any question arising under or in connection with the Law, including any claim for benefit, shall be determined by a determining officer and, where required under Article 1A, redetermined by a second determining officer.
- (2) Where the determining officer has determined any claim or question adversely to the claimant, the determining officer shall notify the claimant in writing of the determination and the reasons for it and –
 - (a) in the case of a determination by the first determining officer, of the claimant's right to have the matter reconsidered by a second determining officer in accordance with Article 1A and that if the right is not exercised there is no further right of appeal;

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- (b) in the case of a redetermination, of the claimant's right to appeal to the Social Security Tribunal in accordance with Article 3.
- (3) Any notification under this Article is treated as duly sent to a person if sent to the person's usual or last known address.

1A Reconsideration by second determining officer

If the claimant is dissatisfied with any determination under Article 1(2), he or she may require the matter to be redetermined by a second determining officer at any time within 21 days of receiving notification under Article 1(2).

2 Determination to be conclusive for purposes of proceedings under the Law, etc.

- (1) Where in any proceedings –
 - (a) for an offence under the Law;
 - (b) involving any question as to the payment of contributions under the Law; or
 - (c) for the recovery of any sums due to the Social Security Fund,any question arises that is to be determined by a determining officer, that determination (including that of a second determining officer if he or she has made a determination), shall be conclusive for the purpose of those proceedings unless an appeal against that determination is pending or the time for so appealing has not expired.
- (2) If any such question has not been determined and is necessary for the determination of the proceedings, the question shall be referred to the determining officer for determination in accordance with the procedure (subject to the necessary modifications) prescribed in this Part.
- (3) Where any such appeal is pending or the time for appealing has not expired or where any question has been referred to the determining officer in accordance with paragraph (2), the court dealing with the case shall adjourn the proceedings until such time as a final determination of the question has been obtained.

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PART 2

APPEALS AND REFERENCES

3 Appeals to the Social Security Tribunal

Where a second determining officer has decided any question adversely to the claimant under Article 1A, that determining officer shall notify the claimant in writing of the decision and the reasons for the decision and of the claimant's right of appeal to the Tribunal, and the claimant may appeal to the Tribunal:

Provided that –

- (a) where one of the questions mentioned in Article 33(2) of the Law has risen in connection with the decision of the determining officer, and has been determined, and the determining officer certifies that the decision on that question is the sole ground of the determining officer's decision, no appeal shall lie without leave of the Minister; and
- (b) no appeal shall lie from a decision of the determining officer on any question mentioned in Article 33(5).

4 Registrar

- (1) The Judicial Greffier shall discharge the functions of the Registrar imposed by this Order and any other enactment.
- (2) A reference in any other enactment to the Registrar appointed under this Article shall be construed as a reference to the Judicial Greffier.

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8 Constitution of Social Security Tribunal

- (1) The Social Security Tribunal shall comprise –
 - (a) a chairman and one or more deputy chairmen, being persons holding a qualification in law; and
 - (b) up to 12 other members.

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- (2) The members shall each be appointed by the States on the recommendation of the Minister made after consulting the Jersey Appointments Commission established by Article 17 of the Employment of States of Jersey Employees (Jersey) Law 2005.
- (3) A member of the Tribunal shall hold office for such period as is specified in his or her appointment and after expiry of such period is eligible for re-appointment for such period as is specified in his or her new appointment.
- (4) A member may continue in office, after the expiry of his or her term of office, for the purposes of completing any proceeding that the member has begun to hear before the expiry of the term of office.
- (5) A member of the Tribunal shall cease to hold office on resigning in writing delivered to the Minister.
- (6) Any member of the Tribunal shall cease to hold office –
 - (a) on becoming bankrupt;
 - (b) on the appointment of a curator of the member's property and affairs under the Mental Health (Jersey) Law 1969;
 - (c) on being received into guardianship under the Mental Health (Jersey) Law 1969;
 - (d) if qualified for membership under paragraph (1)(a), on ceasing to be so qualified; or
 - (e) on being removed from office by the Royal Court, if the member is guilty of misconduct or has been unable to carry out his or her duties because of ill-health or other commitments for a continuous period exceeding 6 months.
- (7) A member of the Tribunal shall not be removed from office for any other reason.
- (8) For the purposes of hearing any case referred to it under this Part the Tribunal shall consist of the chairman or a deputy chairman and 2 other members selected by the Registrar.
- (9) However, a person shall not hear any case if he or she –
 - (a) was involved in an earlier determination of the case; or
 - (b) has any personal or pecuniary interest, whether direct or indirect, in the outcome.

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9 Appeal Procedure

- (1) A person aggrieved by a decision of a second determining officer under Article 3 may appeal to the Tribunal within 14 days of receiving notification of the decision.
- (2) However, an appeal made outside the 14 day period, but within 28 days of receiving notification of the determination, may be allowed with the consent of the chairman of the Tribunal.
- (3) Every appeal shall be made in writing to the Registrar on a form approved by the Registrar for that purpose, or in such manner as the Registrar may accept as sufficient in the circumstances of the case.

10 Further particulars

- (1) The Tribunal may at any time require the applicant or the determining officer to furnish it with further particulars in writing and within such time as it may direct with regard to any appeal, and may at any stage of the proceedings allow the amendment of any application for appeal or any statement or particulars and extend the time for furnishing any statement or particulars.
- (2) If, after the expiration of the time, or where the time has been extended, expiration of the extended time, for furnishing any statement or particulars under paragraph (1), the applicant has failed to do so, the appeal shall be treated as having been abandoned.

11 Special procedure in cases of groundless appeals

- (1) Where, in the opinion of a determining officer, an application for appeal is made on grounds that are bound to fail, the determining officer may, within 14 days of receiving the application, request the Registrar to place the papers before the chairman or deputy chairman of the Tribunal.
- (2) If, on considering the papers, the chairman or deputy chairman of the Tribunal is of the opinion that the appeal is bound to fail, he or she shall send a notice to the applicant stating that –
 - (a) he or she has considered the application for appeal and is of the opinion that the appeal is bound to fail; and
 - (b) unless the applicant renews his or her application to the Tribunal within 14 days of receiving the notification, the appeal shall be treated as having been abandoned.

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12 Decision without a hearing

If the applicant and the Minister agree and the Tribunal thinks that the case can properly be determined on the particulars supplied by the parties without a hearing, it may decide the matter without a hearing on the particulars so supplied.

13 Procedure of Tribunal

- (1) The parties to the appeal shall be the applicant and the Minister and each party or any person acting on behalf of that party may make representations to the Tribunal.
- (2) The Tribunal shall sit in public unless the Tribunal considers it necessary to sit in private.
- (3) However, no person other than the Registrar shall be present while the Tribunal is considering its decision.
- (4) The Tribunal may adjourn the hearing from time to time as it thinks fit.
- (5) The Tribunal may, if it thinks fit, admit any duly authenticated written statement or other material as *prima facie* evidence of any fact or facts in any case in which it thinks it just and proper to do so.
- (6) The Tribunal may, if it thinks fit, call for such documents and examine such witnesses as appear to it likely to afford evidence relevant and material to the issue, although not tendered by either the applicant or the Minister.
- (7) If, after notice of the hearing has been duly given, the applicant or the Minister fails to appear at the hearing, the Tribunal may proceed to determine the review notwithstanding the absence of both or either of them, or may give such directions with a view to the determination of the application as the Tribunal thinks just and proper.
- (8) The Tribunal may require any party to proceedings before the Tribunal under this Order or any witness in the proceedings to give evidence on oath and, for that purpose, the chairman or deputy chairman presiding over the Tribunal shall have power to administer an oath.
- (9) Where, in connection with the determination of any claim or question, there is before the Tribunal medical advice or medical evidence relating to the applicant that has not been disclosed to the applicant and, in the opinion of the chairman or deputy chairman, the disclosure to the applicant of that advice or evidence would be harmful to the applicant's health, such advice or evidence shall not be required to be disclosed to

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the applicant, but the Tribunal shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of the review.

- (10) On the appeal of any case under this Article, the Tribunal may confirm, reverse or vary the decision of the second determining officer and shall give its decision in public.
- (11) The decision of the majority of the members of the Tribunal shall be the decision of the Tribunal and there shall be a written record of the decision signed by the chairman or deputy chairman as the case may be which –
 - (a) includes the names of the Tribunal members;
 - (b) includes the reasons for the decision; and
 - (c) records any dissent and the reasons for such dissent,and the Registrar shall send a copy of such written record to the parties as soon as practicable after the review has taken place.
- (12) Where the Tribunal has made a decision adverse to the applicant, the applicant shall be advised that the decision on the facts is final but that he or she may appeal to the Royal Court on a point of law.
- (13) Subject to this Article, the Tribunal may regulate its own procedure.

14 Appeals and references to Royal Court

- (1) A person aggrieved by a decision of the Tribunal may, on a point of law only, appeal to the Royal Court.
- (2) An appeal under paragraph (1) may be made –
 - (a) in the first instance, only with leave of the Tribunal; or
 - (b) in the second instance, only with leave of the Royal Court where the Tribunal has in the first instance refused leave to appeal.
- (3) The Tribunal shall, if it is unable to reach a decision as to whether or not to grant leave to appeal, refer the application for leave to appeal, to the Royal Court.
- (4) Subject to paragraph (5), an application for leave to appeal under paragraph (2)(a) must be made before the end of the period of 4 weeks beginning with the date of the Tribunal's decision or order.
- (5) The Tribunal may vary the period specified in paragraph (4) if, in the circumstances of the case, the Tribunal is satisfied it would be fair and just to do so.

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- (6) An application for leave to appeal under paragraph (2)(b) shall be made within such period as may be specified by Rules of Court (within the meaning of Article 13 of the Royal Court (Jersey) Law 1948).
- (7) An application for leave to appeal under paragraph (2) may include an application to stay a decision or order of the Tribunal pending the appeal.
- (8) No appeal shall lie from a decision of the Tribunal refusing leave for the institution or continuance of, or for the making of an application in, proceedings by a person who is the subject of an order under Article 1 of the Civil Proceedings (Vexatious Litigants) (Jersey) Law 2001.
- (9) The Tribunal or a determining officer may refer any point of law to the Royal Court for the Royal Court to give a ruling on the point.

PART 3

REVIEW OF DECISIONS

15 Review of decisions of determining officer and the Tribunal

- (1) Any decision of the determining officer or the Tribunal may be reviewed at any time by the determining officer or, on a reference from the determining officer, by the Tribunal, if –
 - (a) the determining officer or the Tribunal is satisfied that the decision was given in ignorance of, or was based on a mistake as to, some material fact;
 - (b) there has been any relevant change of circumstances since the decision was given; or
 - (c) the decision was based on the decision of any question to which Article 33(5) of the Law applies, and the decision of that question is revised.
- (2) A question may be raised with a view to such a review as aforesaid by means of an application in writing to the determining officer, stating the grounds of the application.
- (3) On receipt of any such application, the determining officer shall proceed to deal with or refer any question arising thereon in accordance with the provisions of this Order.
- (4) Any decision given on a review under this Article, and any refusal to review a decision under this Article, shall be subject to appeal in like manner as an original decision, and the provisions of this Order shall,

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subject to the necessary modifications, apply in relation to any decision given on such a review as they apply to the original decision of a question.

16 Review of decisions of the Royal Court

If, in any case in which a decision has been given by the Royal Court with respect to a matter which has formed the subject of an appeal to the Court under Article 14, it appears to the Minister that the decision might properly be reconsidered in view of further information which has been brought to the Minister's notice since the date on which the decision was given as to the circumstances existing at the time by reference to which it was given, the Minister may cause the decision to be referred to the Royal Court for reconsideration, and the Court may revise the decision.

17 Review of decision involving payment or increase of benefit

- (1) Where, on review, a decision is revised so as to make benefit payable or to increase the rate of benefit, the decision given on the review shall have effect as follows –
 - (a) in the case of maternity allowance, as from the date of application for the review;
 - (b) in the case of short term incapacity allowance or long term incapacity allowance (other than a decision relating to the determination of any question for which provision is made by Articles 34A to 34D of the Law), as from the date 10 days before the date of the application for the review; or
 - (c) in the case of survivor's benefit or an incapacity pension or old age pension, as from the date 3 months before the date of the application for the review:

Provided that, subject to the provisions of paragraph (2), if in any case the claimant proves –

- (i) that on a date earlier than the date on which the application for the review was made, the claimant was (apart from satisfying the condition of making a claim therefor) entitled to benefit, and
- (ii) that throughout the period between the earlier date and the date on which the application for review was made, there was good cause for delay in making the application,

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the claimant shall not be disqualified by virtue of the foregoing provisions of this paragraph for receiving any benefit to which the claimant would have been entitled in respect of the said period.

- (2) Notwithstanding anything contained in this Article, the following provisions shall have effect –
 - (a) the proviso to paragraph (1) shall apply in any case subject to the condition that no sum on account of benefit shall be paid to any person in respect of any part of the period referred to in that proviso earlier than 6 months before the date on which the application for the review was made;
 - (b) the decision on review shall not in any event have effect for any period before the date on which the original decision took effect or would have taken effect if an award had been made;
 - (c) if the said decision on review was based on a material change of circumstances subsequent to the date from which the original decision took effect, it shall not have effect for any period before the date declared by the determining officer or the Tribunal, as the case may be, to be the date on which such material change of circumstances took place.
- (3) For the purposes of this Article, where a decision is reviewed at the instance of the determining officer under Article 15(1), the date on which it was first decided by the determining officer that the decision should be reviewed shall be deemed to be the date of the application for the review.

PART 4

PROVISIONS RELATING TO BENEFIT FOLLOWING DECISIONS ON REVIEW OR APPEAL

18 Adjustment of benefit

- (1) Where, by a decision on review or appeal, a person entitled to benefit is awarded some other benefit in lieu thereof, the decision on the review or appeal shall direct that any payments already made on account of the benefit originally awarded in respect of any period covered by the decision on review or appeal shall be treated as having been made on account of the benefit awarded by that decision.
- (2) Where, by virtue of an award, an increase of benefit has been paid for any period to one person in respect of another as being the wife or

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husband, or an adult dependant, of the first-mentioned person, and by reason of a subsequent decision either –

- (a) the said other person is himself or herself entitled to benefit for that period; or
- (b) a third person is entitled to benefit for that period in respect of the said other person in priority to the first-mentioned person,

then, notwithstanding that under any Order relating to overlapping benefits made under Article 28 of the Law such increase of benefit is not payable, the subsequent decision shall direct that it shall be treated as having been properly paid for that period and that any arrears of benefit for that period payable by reason of the subsequent decision shall be reduced to the extent to which the increase of benefit is so directed to be treated as having been properly paid.

19 Revision etc. of decisions involving non-payment or reduction of benefit

(1) Where, on review or appeal, a decision is revised or is reversed or varied so as to make benefit not payable or to reduce benefit, the decision given on the review or appeal shall require repayment to the Social Security Fund of any benefit paid in pursuance of the original decision to the extent to which it –

- (a) would not have been payable if the decision on the review or appeal had been given in the first instance; and
- (b) is not directed to be treated as paid on account of the benefit awarded by the decision on review or appeal:

Provided that, subject as aforesaid, repayment shall not be required in any case where the person concerned is shown to the satisfaction of the determining officer or the Tribunal, as the case may be, to have acted in good faith in all respects as to the obtaining and receipt of the benefit.

(2) In this Article 'Tribunal' includes the Social Security Medical Appeals Tribunal.

PART 5

GENERAL

20 Interpretation

(1) In this Order, unless the context otherwise requires –

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“applicant” means a person who has made an application under the Law for the determination of any such question as is mentioned in Article 1;

“claimant” means a person who has claimed benefit under the Law;

“determining officer” means an officer appointed by the Minister in pursuance of Article 33 of the Law;

“Law” means the Social Security (Jersey) Law 1974;

“question” includes a claim under the Law, but excludes any such question as is referred to in Article 33(2) of the Law;

“Registrar” shall be construed in accordance with Article 4;

“Royal Court” means the Inferior Number of the Royal Court;

“Tribunal” has the same meaning as in Article 33(9) of the Law.

- (2) Any notice or other document required or authorized to be given to any person under the provisions of this Order shall be deemed to have been given or sent if it was sent by post to that person at the person's ordinary or last known address.

21 Citation

This Order may be cited as the Social Security (Determination of Claims and Questions) (Jersey) Order 1974.