



Jersey

## **SOCIAL SECURITY, HEALTH INSURANCE AND INCOME SUPPORT (MISCELLANEOUS PROVISIONS) (JERSEY) ORDER 2015**

### **Arrangement**

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## **SOCIAL SECURITY, HEALTH INSURANCE AND INCOME SUPPORT (MISCELLANEOUS PROVISIONS) (JERSEY) ORDER 2015**

*Made*

*Coming into force*

**THE MINISTER FOR SOCIAL SECURITY**, in pursuance of Articles 29, 33, 34, 34AA and 51 of the Social Security (Jersey) Law 1974, Article 28 of the Health Insurance (Jersey) Law 1967 and Articles 9 and 18 of the Income Support (Jersey) Law 2007, orders as follows –

### **1 Social Security (Determination of Disablement Questions) (Jersey) Order 1974 amended**

- (1) The Social Security (Determination of Disablement Questions) (Jersey) Order 1974 is amended as follows.
- (2) For Article 1(1) there shall be substituted the following paragraph –
  - “(1) In this Order –
    - ‘Law’ means the Social Security (Jersey) Law 1974;
    - ‘Registrar’ means the Registrar appointed under Article 4 of the Social Security (Determination of Claims and Questions) (Jersey) Order 1974;
    - ‘Tribunal’ means the Social Security Medical Appeals Tribunal.”
- (3) In Article 2 the words “constituted in accordance with Article 34 of the Law” shall be deleted.
- (4) In Article 5(5) after the word “findings” there shall be inserted the words “and information about the claimant’s right to appeal against the decision in accordance with Article 7”.
- (5) For Articles 6, 7 and 8 there shall be substituted the following Articles –

### **“6 Constitution of Social Security Medical Appeal Tribunal**

- (1) There shall be constituted a Social Security Medical Appeal Tribunal, which shall comprise the following categories of members –

- 
- (a) a chairman and one or more deputy chairmen, being persons holding a qualification in law; and
    - (b) a panel of up to 8 members who are medical practitioners.
  - (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) on ceasing to be qualified for membership in the category for which the member was appointed; 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 appeal or reference to it under Article 34B or 34C of the Law the Tribunal shall consist of one person from the category of members mentioned in paragraph (1)(a) and two persons from the category of members mentioned in paragraph (1)(b), 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;
    - (b) is a doctor who has regularly attended the appellant or a member of the appellant's household; or
    - (c) has any personal or pecuniary interest, whether direct or indirect, in the outcome.

**7 Notice of appeal**

- (1) An appeal by a claimant against a decision of a medical board under Article 34B of the Law shall be brought by giving notice of appeal to the Registrar within 14 days of receiving notice of that decision under Article 5.
- (2) However, a notice of appeal given more than 14 days after, but within 28 days of, receiving notification of the decision of the medical board, may be allowed with the consent of the chairman or a deputy chairman of the Tribunal.
- (3) A reference by the Minister to the Tribunal under Article 34C of the Law shall be brought by giving notice of the reference to the Registrar.
- (4) Every notice of appeal or reference given under this Article 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.

**8 Procedure of Tribunal**

- (1) The parties to the hearing 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 matter 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 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 hearing any matter under this Article, the Tribunal may confirm, reverse or vary the decision of the medical board 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.
- (13) Subject to this Article, the Tribunal may regulate its own procedure.”.

## **2 Social Security (Determination of Claims and Questions) (Jersey) Order 1974 amended**

- (1) The Social Security (Determination of Claims and Questions) (Jersey) Order 1974 is amended as follows.
- (2) For Article 14 of the Social Security (Determination of Claims and Questions) (Jersey) Order 1974 there shall be substituted the following Article –

### **“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.
  - (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.”.
- (3) In Article 17(1)(b) after the words “long term incapacity allowance” there shall be inserted the words “(other than a decision relating to the determination of any question for which provision is made by Articles 34A to 34D of the Law)”.
  - (4) In Article 19 –
    - (a) the existing text shall be numbered paragraph (1);
    - (b) after paragraph (1) (as numbered by sub-paragraph (a)) there shall be added the following paragraph –
      - “(2) In this Article ‘Tribunal’ includes the Social Security Medical Appeals Tribunal.”.

### **3 Health Insurance (Determination of Claims and Questions) (Jersey) Order 2008 amended**

For Article 6 of the Health Insurance (Determination of Claims and Questions) (Jersey) Order 2008 there shall be substituted the following Article –

#### **“6 Appeals and references to Royal Court**

- (1) A person aggrieved by a decision of the Social Security 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.
- (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.”.

#### **4 Income Support (General Provisions) (Jersey) Order 2008 amended**

For Article 18 of the Income Support (General Provisions) (Jersey) Order 2008 there shall be substituted the following Article –

##### **“18 Appeals to Royal Court**

- (1) A person aggrieved by a decision of the Medical Appeal Tribunal or the Social Security Tribunal under this Part 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.
- (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."

**5 Citation and commencement**

This Order may be cited as the Social Security, Health Insurance and Income Support (Miscellaneous Provisions) (Jersey) Order 2015 and shall come into force the day after it is made.

*Signed*.....

*Date*.....

*Minister for Social Security*

