



Jersey

SOCIAL SECURITY (CONSEQUENTIAL AMENDMENTS) (JERSEY) ORDER 2008

Arrangement

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Made 21st January 2008

Coming into force 28th January 2008

THE MINISTER FOR SOCIAL SECURITY, in pursuance of Articles 10, 11, 26, 28, 29, 33 and 51 of the Social Security (Jersey) Law 1974¹, orders as follows –

1 Amendment to Social Security (Claims and Payments) (Jersey) Order 1974

In the Social Security (Claims and Payments) (Jersey) Order 1974² –

- (a) in Article 1(1), in the definition “determining authority” for the word “of” there shall be substituted the word “or”;
- (b) for Article 16 there shall be substituted the following Article –

“16 Persons unable to act

- (1) In the case of any person to whom benefit is payable or who is alleged to be entitled to benefit or by whom or on whose behalf a claim for benefit has been made, if that person is unable to act and –
 - (a) has not been received into guardianship in pursuance of a guardianship application under Article 14 of the Mental Health (Jersey) Law 1969;
 - (b) does not have a curator appointed under Article 43 of that Law to manage and administer his or her property and affairs; and
 - (c) does not have a *tuteur*,the Minister may, on receipt of a written application, appoint a person to act on the person’s behalf.
- (2) However, such appointment shall terminate –
 - (a) if the person is received into guardianship, or has a curator or *tuteur* appointed;

- (b) at the request of the person seeking appointment;
- (c) if revoked by the Minister; or
- (d) if the claimant becomes able to act.”.

2 Amendment to Social Security (Death Grant) (Jersey) Order 1974

For Article 2(c) of the Social Security (Death Grant) (Jersey) Order 1974³ there shall be substituted the following paragraph –

- “(c) was the husband, wife or child (to whom Article 26(1) of the Law applies) of, and resident with, a person who, had he or she then died, would have satisfied the conditions in paragraph (a) or (b); or”.

3 Amendments to the Social Security (Determination of Claims and Questions) (Jersey) Order 1974

In the Social Security (Determination of Claims and Questions) (Jersey) Order 1974⁴ –

- (a) for Articles 1 and 2 there shall be substituted the following Articles –

“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;
 - (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.”;

- (b) in Article 3, for the words “Where the determining officer has decided any question adversely to the claimant, the determining officer” there shall be substituted the words “Where a second determining officer has decided any question adversely to the claimant under Article 1A, that determining officer”;

- (c) for Articles 5 to 14 there shall be substituted the following Articles –

“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.

- (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.

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.

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 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 appeal to the Royal Court on a point of law.
- (2) The Tribunal or a determining officer may refer any point of law to the Royal Court for the Court to give a ruling on the point.”;
- (d) in Article 15(1) for the words “of the Tribunal” there shall be substituted the words “or the Tribunal”;
- (e) in Article 20 –
 - (i) the definition “Family Allowances Law” shall be deleted;
 - (ii) for the definition “Tribunal” there shall be substituted the following definition –
 - “ ‘Tribunal’ means the Social Security Tribunal constituted under Article 8;”;
- (f) the Schedule shall be deleted.

4 Amendment to Social Security (Determination of Disablement Questions) (Jersey) Order 1974

In the Social Security (Determination of Disablement Questions) (Jersey) Order 1974⁵ –

- (a) for Articles 8 and 9 there shall be substituted the following Article –

“8 Appeals to Tribunal

The procedure for appeals to a Tribunal shall be in accordance with the procedure set out in Article 16 of the Income Support (General Provisions) (Jersey) Order 2008 for the Medical Appeal Tribunal constituted under Article 15 of that Order, as if the appeal was in respect of any matter determined in accordance with that Order.”;

- (b) in Article 10 –
 - (i) in paragraph (1) the words “or a medical appeal Tribunal”, “or the medical appeal Tribunal, as the case may be” and “or the medical appeal Tribunal” shall be deleted;
 - (ii) in paragraph (2) the words “or a medical appeal Tribunal, as the case may be,” and “or the Tribunal” shall be deleted;
 - (iii) for paragraph (4) there shall be substituted the following paragraph –
 - “(4) The claimant and any person admitted to the proceedings as being likely to assist a medical board have the right to be heard at the proceedings of the board.”.

5 Amendment to Social Security (Contributions) (Jersey) Order 1975

For Article 13(a) to (d) of the Social Security (Contributions) (Jersey) Order 1975⁶ there shall be substituted the following paragraphs –

- “(a) any sum received by way of income support or a special payment under the Income Support (Jersey) Law 2007;
- (b) any sum received by way of a Christmas bonus under the Christmas Bonus (Jersey) Law 1991;”.

6 Citation and commencement

This Order may be cited as the Social Security (Consequential Amendments) (Jersey) Order 2008 and shall come into force on 28th January 2008.

SENATOR P.F. ROUTIER

Minister for Social Security

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- ¹ *chapter 26.900*
 - ² *chapter 26.900.06*
 - ³ *chapter 26.900.26*
 - ⁴ *chapter 26.900.28*
 - ⁵ *chapter 26.900.30*
 - ⁶ *chapter 26.900.24*