



Jersey

**SOCIAL SECURITY (DETERMINATION OF
DISABLEMENT QUESTIONS) (JERSEY)
ORDER 1974**

Official Consolidated Version

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SOCIAL SECURITY (DETERMINATION OF DISABLEMENT QUESTIONS) (JERSEY) ORDER 1974

Contents

Article

1	Interpretation	3
2	Medical boards	3
3	3
4	Notice of sitting and procedure of medical boards.....	3
5	Notice of decision of medical board.....	4
5A	Redetermination of decision of medical board.....	4
6	Constitution of Social Security Medical Appeal Tribunal	5
7	Notice of appeal	6
8	Procedure of Tribunal.....	6
8A	Appeals and references to Royal Court.....	7
9	8
10	Miscellaneous Provisions	8
11	Citation	8

ENDNOTES 9

Table of Legislation History.....	9
Table of Renumbered Provisions	9
Table of Endnote References.....	9



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SOCIAL SECURITY (DETERMINATION OF DISABLEMENT QUESTIONS) (JERSEY) ORDER 1974¹

THE EMPLOYMENT AND SOCIAL SECURITY COMMITTEE, in pursuance of Articles 34, 34AA and 51 of the [Social Security \(Jersey\) Law 1974](#), orders as follows –²

Commencement [[see endnotes](#)]

1 Interpretation

(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

(2) ⁴

2 Medical boards⁵

A person shall not act as a member of a medical board, in respect of any case referred to the board for determination, if –

- (a) the person is or may be directly affected by that case; or
- (b) the person has taken any part in such case as a medical assessor or as a medical practitioner who has regularly attended the claimant or to whom any question has been referred for examination and report or as an employer or as a witness.

3 ⁶

4 Notice of sitting and procedure of medical boards

(1) Reasonable notice of the time and place at which a medical board will sit for the consideration of any case shall be given to the claimant and if, after such notice has

been given, the claimant fails to appear at the sitting of the board, the board may determine the questions referred to it in the absence of the claimant where –

- (a) due to exceptional circumstances, there was good cause for the failure to attend; and
- (b) to do so would not be adverse to the claimant's interests.⁷

(1A) In a case of long term incapacity allowance –

- (a) paragraph (1) shall not be taken to apply so as to require the attendance of a claimant at the sitting of a medical board, where, in the opinion of the determining officer, such attendance would be precluded by the facts of the claimant's physical or mental condition; and
- (b) where the determining officer notifies the medical board of his or her opinion such as described in sub-paragraph (a), the board may proceed to determine the questions referred to it in the absence of the claimant.⁸

(1B) For the avoidance of doubt, in any case where a medical board determines any question in the absence of a claimant, notice in writing of the determination, and the reasons for it, shall be given to the claimant in accordance with Article 5.⁹

(2) No person shall be entitled to be present during the consideration of any question by a medical board other than the claimant and any other person whom the medical board may, with the consent of the claimant, allow to be present as being a person who, in its opinion, is likely to assist it in the determination of that question.

5 Notice of decision of medical board¹⁰

- (1) A medical board shall in each case record its decision in writing.
- (2) The record of the decision shall be signed by each member of the medical board.
- (3) The record of the decision shall include a statement of the medical board's findings on all questions of fact material to its decision.
- (4) Written notice of the decision of a medical board shall be given as soon as practicable to the claimant.
- (5) The notice of the decision shall contain a summary of the medical board's findings and –
 - (a) information about the claimant's right to apply, in accordance with Article 5A, for redetermination of the decision by a second medical board, and such information shall include a statement that, if the right is not exercised, there is no further right of appeal; or
 - (b) following a redetermination, information about the claimant's right to appeal, in accordance with Article 7, against the decision of a second medical board.¹¹
- (6) The record and notice shall each be in a form approved by the Minister.

5A Redetermination of decision of medical board¹²

- (1) An application for redetermination of a decision of a medical board in relation to long term incapacity allowance shall be made by the applicant in writing within 21 days of receiving notice of the decision under Article 5(5).

- (2) An application under paragraph (1) shall set out the reasons for requiring the redetermination, and, where the applicant is the Minister, notice in writing of the application shall be sent to the claimant.
- (3) Reasonable notice of the time and place at which a medical board will sit (the “initial sitting”) for the redetermination of any decision shall be given in writing to the applicant and, where the applicant is the Minister, to the claimant.
- (4) In a case where the applicant is the claimant, if, after such notice as described in paragraph (3) has been given, the claimant fails to appear at –
 - (a) the initial sitting; and
 - (b) any alternative sitting of which, during a period of 4 weeks beginning with the date of the initial sitting, further reasonable notice has been given,the application is to be treated as having been withdrawn and the claimant shall not be entitled to make any further application in respect of the same decision.

6 Constitution of Social Security Medical Appeal Tribunal¹³

- (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, under Part 4 of the [Capacity and Self-Determination \(Jersey\) Law 2016](#), of a delegate in relation to the member;
 - (c) on being received into guardianship under the [Mental Health \(Jersey\) Law 2016](#);
 - (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.¹⁴

- (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 appeal¹⁵

- (1) An appeal by a claimant against a decision of a second medical board under Article 34B of the Law shall be brought by giving notice of appeal in accordance with paragraph (4) within 14 days of receiving notice of that decision under Article 5.¹⁶
- (2) However, a notice of appeal given more than 14 days after, but within 28 days of, receiving notification of the decision of the second 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 within 14 days of the Minister receiving notification of the decision of the second medical board.¹⁷
- (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 Tribunal¹⁸

- (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 but he or she may appeal to the Royal Court on a point of law.¹⁹
- (13) Subject to this Article, the Tribunal may regulate its own procedure.

8A Appeals and references to Royal Court²⁰

- (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, where the Tribunal has in the first instance refused leave to appeal, only with leave of the Royal Court.
- (3) If the Tribunal is unable to reach a decision as to whether or not to grant leave to appeal, the Tribunal shall refer the application in question 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.

- (5) The Tribunal may extend the period specified in paragraph (4) if the Tribunal is satisfied that, in the circumstances of the case, it would be fair and just to do so.
- (6) An application for leave to appeal under paragraph (2)(b) must 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 of the Tribunal pending the determination of the appeal.
- (8) No appeal lies from a decision of the Tribunal refusing leave for the institution or continuance of, or 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.

9 21

10 Miscellaneous Provisions

- (1) Where in connection with the determination of any case referred under Article 34A(2) of the Law, there is before a medical board medical advice or medical evidence relating to the claimant which has not been disclosed to the claimant and, in the opinion of the chairman of the medical board, the disclosure to the claimant of that advice or evidence would be harmful to the claimant's health, such advice or evidence shall not be required to be disclosed to the claimant, but the medical board shall not by reason of such non-disclosure be precluded from taking it into account for the purpose of the said determination.²²
- (2) For the purpose of arriving at its decision or discussing any question of procedure at any sitting or hearing, a medical board shall, notwithstanding anything in this Order, order all persons, not being members of, or the person acting as clerk to the board, to withdraw from such sittings or hearing.²³
- (3) Any power given by this Order to extend the period during which anything is required to be done under this Order or to dispense with any of the requirements thereof may be exercised in any case, notwithstanding that the period during which the thing is required to be done has expired.
- (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.²⁴
- (5) Any notice, notification or other document sent under this Order is treated as duly sent to a person if sent to that person's usual or last known address including any electronic address, but this paragraph does not limit the use of any other means of giving notice.²⁵

11 Citation

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

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Social Security (Determination of Disablement Questions) (Jersey) Order 1974	R&O.6085	1 January 1975
Social Security (Determination of Disablement Questions) (Amendment) (Jersey) Order 2004	R&O.85/2004	1 October 2004
States of Jersey (Amendments and Construction Provisions No. 8) (Jersey) Regulations 2005	R&O.48/2005	9 December 2005
Social Security (Consequential Amendments) (Jersey) Order 2008	R&O.18/2008	28 January 2008
Social Security, Health Insurance and Income Support (Miscellaneous Provisions) (Jersey) Order 2015	R&O.24/2015	6 March 2015
Mental Health and Capacity (Consequential Amendment and Transitional Provision) (Jersey) Regulations 2018	R&O.49/2018	1 October 2018 (R&O.51/2018)
Social Security (Miscellaneous Provisions) (No. 6) (Jersey) Order 2019	R&O.18/2019	1 May 2019

Table of Renumbered Provisions

Original	Current
1(3)	spent, omitted from this revised edition

Table of Endnote References

¹	<i>This Order has been amended by the States of Jersey (Amendments and Construction Provisions No. 8) (Jersey) Regulations 2005. The amendments replace all references to a Committee of the States of Jersey with a reference to a Minister of the States of Jersey, and remove and add defined terms appropriately, consequentially upon the move from a committee system of government to a ministerial system of government</i>
² Preamble	<i>amended by R&O.18/2019</i>
³ Article 1(1)	<i>substituted by R&O.24/2015</i>
⁴ Article 1(2)	<i>substituted by R&O.85/2004, deleted by R&O.18/2019</i>
⁵ Article 2	<i>substituted by R&O.85/2004, amended by R&O.24/2015</i>
⁶ Article 3	<i>revoked by R&O.85/2004</i>
⁷ Article 4(1)	<i>amended by R&O.18/2019</i>
⁸ Article 4(1A)	<i>inserted by R&O.18/2019</i>

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- ⁹ Article 4(1B) *inserted by R&O.18/2019*
- ¹⁰ Article 5 *substituted by R&O.85/2004*
- ¹¹ Article 5(5) *amended by R&O.24/2015, R&O.18/2019*
- ¹² Article 5A *inserted by R&O.18/2019*
- ¹³ Article 6 *substituted by R&O.24/2015*
- ¹⁴ Article 6(6) *amended by R&O.49/2018*
- ¹⁵ Article 7 *substituted by R&O.24/2015*
- ¹⁶ Article 7(1) *amended by R&O.18/2019*
- ¹⁷ Article 7(3) *amended by R&O.18/2019*
- ¹⁸ Article 8 *substituted by R&O.18/2008, R&O.24/2015*
- ¹⁹ Article 8(12) *amended by R&O.18/2019*
- ²⁰ Article 8A *inserted by R&O.18/2019*
- ²¹ Article 9 *repealed by R&O.18/2008*
- ²² Article 10(1) *amended by R&O.85/2004, R&O.18/2008, R&O.18/2019*
- ²³ Article 10(2) *amended by R&O.18/2008*
- ²⁴ Article 10(4) *substituted by R&O.18/2008*
- ²⁵ Article 10(5) *inserted by R&O.18/2019*