

PROJET DE LOI

ENTITLED

The Long-term Care Insurance (Guernsey) Law, 2002 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

© States of Guernsey

* No. XXIII of 2002 (Ordres en Conseil Vol. XLII(2), p. 1230); as amended by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013 (No. IV of 2014); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Long-term Care Insurance (Guernsey) (Annual Grant and Rates) Ordinance, 2007 (No. XLII of 2007, Recueil d'Ordonnances Tome XXXII, p. 625). See also the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015 (No. XXII of 2015); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

PROJET DE LOI

ENTITLED

The Long-term Care Insurance (Guernsey) Law, 2002

ARRANGEMENT OF SECTIONS

PART I SOURCE OF FUNDS

1. Long-term Care Insurance Fund.
2. States Long-term Care Insurance Annual Grant.

PART II ENTITLEMENT TO AND CATEGORIES AND RATES OF BENEFIT

3. Persons entitled to benefit.
4. Categories of benefit.
5. Rates of benefit.

PART III RIGHT TO BENEFIT

6. Right to care benefit.
7. Right to respite care benefit.
8. Right to other benefit.

PART IV ASSESSMENT OF NEEDS

9. Person in need of long-term care.
10. The Needs Assessment Panel.

PART V APPROVED CARE PROVIDERS AND ESTABLISHMENTS

11. Designation as an approved care provider and establishment.
12. Variation etc. of designations.

PART VI
DETERMINATION OF CLAIMS AND APPEALS

13. Claims etc. to be determined by Administrator.
14. Decision of Administrator.
15. Appeals to Tribunal.
16. Submissions to Ordinary Court.
17. Appeals to the Ordinary Court.
18. Submissions and appeals generally.
19. Questions first arising on appeal.
20. Review of decisions.
21. Adjudication procedure.
22. Questions as to child or family.

PART VII
CLAIMS AND PAYMENTS

23. Claims to benefit.
24. Payment of benefit.
25. Repayment of benefit.

PART VIII
FINANCE, ADMINISTRATION AND LEGAL PROCEEDINGS

26. Reports of actuary.
27. General administration.
28. General provisions as to offences and penalties.
29. Civil proceedings to recover sums due to the Fund.

PART IX
MISCELLANEOUS AND GENERAL

30. Reciprocal agreements with other countries.
31. Ordinances and regulations.
32. Service of documents.
33. Amendment to Social Insurance Law.
34. Interpretation.
35. Transitional provision.
36. Citation.
37. Commencement.

PROJET DE LOI

ENTITLED

The Long-term Care Insurance (Guernsey) Law, 2002

THE STATES, in pursuance of their Resolution of the 1st day of March, 2001^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

PART I

SOURCE OF FUNDS

Long-term Care Insurance Fund.

1. (1) There is established a fund called the Long-term Care Insurance Fund ("**the Fund**") which shall be managed, maintained and controlled by [the Committee] in accordance with and for the purposes set out in this Law.

(2) There shall be paid into the Fund –

- (a) the Long-term Care Insurance Fund Allocation in accordance with section 101A of the Social Insurance Law,
- (b) all monies provided by the States under the provisions of this Law, and

^a Resolution 1 on Article VII of Billet d'État No. III of 2001.

Consolidated text

- (c) any monies accruing to [the Committee] under the provisions of this Law.
- (3) There shall be paid out of the Fund –
- (a) all sums payable in respect of benefit under the provisions of this Law, and
 - (b) all expenses incurred by [the Committee] in carrying this Law into effect.
- (4) Accounts of the Fund shall be prepared annually in such form and manner as [the Committee] may direct.
- (5) Auditors appointed annually by the States ("**the auditors**") shall examine, certify and report to [the Committee] upon the accounts.
- (6) [The Committee] shall, as soon as may be, lay copies of the accounts together with the report of the auditors thereon before the States.
- (7) Monies forming part of the Fund may be invested by [the Committee] in investments of the descriptions authorised by the States.
- (8) The investment functions of [the Committee] under subsection (7) may be delegated by [the Committee] (in whole or in part) to professional fund or investment managers.

NOTE

In section 1, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

States Long-term Care Insurance Annual Grant.

2. There shall, in respect of each year, be paid into the Fund out of monies provided by the States, in such manner and at such times as the States [Policy & Resources Committee] shall determine, a States Long-term Care Insurance Annual Grant of an amount equal to [0 per centum] (or such other percentage as the States may by Ordinance specify) of the amount certified by the auditors as being the amount of the Long-term Care Insurance Fund Allocation in respect of that year.

NOTES

In section 2,

the words in the first pair of square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 15(a), with effect from 1st May, 2016;¹

the words and figure in the second pair of square brackets were substituted by the Long-term Care Insurance (Guernsey) (Annual Grant and Rates) Ordinance, 2007, section 1, with effect from 7th January, 2008.

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.²

The following Ordinance has been made under section 2:

Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2008.

PART II
ENTITLEMENT TO AND CATEGORIES AND RATES OF BENEFIT

Persons entitled to benefit.

3. (1) Subject to the provisions of this Law, a person who satisfies –
- (a) the conditions in subsection (2), and
 - (b) such further or alternative conditions as the States may by Ordinance specify,

is entitled to benefit under this Law.

- (2) The conditions referred to in subsection (1)(a) are that the person concerned –
- (a) is a person in need of long-term care in accordance with the provisions of section 9,
 - (b) is ordinarily resident and present in Guernsey,
 - (c) has at any time been ordinarily resident and present in Guernsey for a continuous period of five years,
 - (d) has, immediately before the date in respect of which benefit is claimed, been ordinarily resident and present in Guernsey for a period of not less than twelve months, and

Consolidated text

- (e) in the cases of care benefit and respite care benefit, is a resident of an approved care establishment which is not wholly owned by the States.

(3) For the purposes of this Law a child who does not satisfy the conditions as to residence and presence specified in subsection (2) but who is a child of the family of a person who satisfies those conditions shall be deemed to satisfy those conditions.

(4) Regulations may provide as follows as regards ordinary residence and presence for the purposes of subsection (2) –

- (a) for disregarding specified periods of residence, presence or absence,
- (b) for deeming specified periods of non-residence or absence for specified purposes or reasons, as periods of ordinary residence or presence, and
- (c) for making special rules governing the ordinary residence or presence of children.

(5) For the purposes of this section an individual shall be treated –

- (a) as a child, if he would or could be so treated for the purposes of the Family Allowances Law, and
- (b) as a child of the family of a person, if –
 - (i) he is a child,

- (ii) that person is not a child, and
- (iii) he and that person would be treated as constituting a family for the purposes of the Family Allowances Law.

NOTE

The following Regulations have been made under section 3:

Long-term Care Regulations (Guernsey), 2003.

Categories of benefit.

4. Benefit under this Law shall be of the following categories –
- (a) care benefit,
 - (b) respite care benefit, and
 - (c) such other benefit as the States may by Ordinance specify; and an Ordinance made under this paragraph may provide that any of the provisions of this Law shall (subject to any exceptions, adaptations or modifications specified in the Ordinance) apply in relation to such other benefit.

Rates of benefit.

5. (1) The States shall by Ordinance specify the rates of benefit payable under this Law.

(2) When specifying the rate of care benefit under subsection (1), the States shall specify the amount of any contribution –

- (a) which a claimant for care benefit shall be obliged or expected to make towards or for the cost of his care, as a condition of the right to care benefit, and
- (b) which shall be taken into account for the purposes of determining the rate of care benefit.

(3) Without limiting the generality of subsection (1), an Ordinance made thereunder may provide –

- (a) that different rates of benefit shall be payable in respect of different types or standards of long-term care,
- (b) minimum and maximum rates of benefit,
- (c) that a contribution, of such amount as may be specified, shall be payable, or expected to be paid, by a claimant as a condition of the receipt of benefit, and
- (d) that the amount of any contribution shall be taken into account for the purposes of determining the rate of any benefit payable.

NOTE

The following Ordinances have been made under section 5:

Long-term Care Insurance (Guernsey) (Rates and Transitional Provisions) Ordinance, 2003;

Long-term Care Insurance (Guernsey) (Annual Grant and Rates) Ordinance, 2007;

Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2008;

Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2015;

Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2016.

PART III

RIGHT TO BENEFIT

Right to care benefit.

6. Subject to the provisions of this Law, care benefit is payable to a person –

- (a) who is entitled to benefit under the provisions of section 3,
- (b) whose need for long-term care is most appropriately met by the provision of care as a resident of an approved care establishment, and
- (c) who makes payment of any contribution specified under section 5(2) in accordance with the provisions of regulations.

Right to respite care benefit.

7. (1) Subject to the provisions of this Law, respite care benefit is payable to a person –

- (a) who is entitled to benefit under the provisions of section 3, and
- (b) whose need for long-term care is most appropriately met by the provision of care as a temporary resident of an approved care establishment.

(2) Respite care benefit is payable only for such period as the Administrator may determine in the particular circumstances of any claim.

Right to other benefit.

8. The States may by Ordinance specify the categories of person to whom any other benefit specified under section 4(c) may be payable.

PART IV
ASSESSMENT OF NEEDS

Person in need of long-term care.

9. (1) For the purposes of this Law and subject to the provisions of any regulations made under subsection (2), "**a person in need of long-term care**" is a person who –

- (a) by reason of bodily or mental disability, or a combination of bodily and mental disability, is so disabled that he may suffer harm whilst undertaking the normal activities of daily life without substantial assistance or attention from another person, or
- (b) is not so disabled, but in respect of whom there is good reason to believe that he would suffer such harm

without such assistance or attention.

(2) Regulations may amend, augment, replace, extend or provide for any matters incidental to the definition or any part of the definition in subsection (1) of a person in need of long-term care.

The Needs Assessment Panel.

10. (1) There is established a panel called the Needs Assessment Panel ("**the Panel**"), to which the [Committee for Health & Social Care] shall from time to time appoint such number of persons (being not less than 3 nor more than 7) as the [Committee for Health & Social Care] shall see fit.

(2) It shall be the duty of the Panel to issue to the Administrator a written assessment of the long-term care needs of any person by or on behalf of whom benefit is claimed.

(3) Regulations shall prescribe procedures and other matters incidental to the operation of the Panel, including (without limiting the generality of the same) –

- (a) rules governing meetings of the Panel,
- (b) the periods within which assessments of the Panel are to be issued, and
- (c) rules governing the disclosure of personal information relating to a claimant and the withholding of information considered likely to be injurious to the claimant's health or well-being.

NOTES

In section 10, the words "Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.³

The following Regulations have been made under section 10:

Long-term Care Regulations (Guernsey), 2003.

PART V

APPROVED CARE PROVIDERS AND ESTABLISHMENTS

Designation as an approved care provider and establishment.

11. (1) The Administrator may, for the purposes of this Law, for such period and subject to such conditions as he thinks fit, designate –

- (a) any provider of long-term care services as an approved care provider, and
- (b) any establishment as an approved care establishment.

(2) Regulations may make provision as respects all necessary matters concerning designation under subsection (1), including (without limiting the generality of the foregoing) –

- (a) the specification of –
 - (i) standards of long-term care to be provided by a provider or, in respect of, an establishment, and

- (ii) criteria (other than criteria relating to standards) to be met by a provider or in respect of an establishment,

for the purposes of designation,

- (b) the form and manner of application for designation, and

- (c) the payment and amount of any application fee.

- (3) For the avoidance of any doubt –

- (a) the States and a Committee of the States may be designated as an approved care provider pursuant to subsection (1)(a), and

- (b) an establishment owned or operated by or on behalf of the States may be designated as an approved care establishment pursuant to subsection (1)(b).

NOTE

The following Regulations have been made under section 11:

Long-term Care Regulations (Guernsey), 2003.

Variation etc. of designations.

- 12.** (1) The Administrator may, if he thinks fit, vary –

- (a) the period,
- (b) the conditions, or
- (c) both the period and conditions,

of any designation made under section 11(1).

(2) The Administrator may revoke or suspend any designation made under section 11(1) –

- (a) where an approved care provider –
 - (i) fails to provide or continue to provide long-term care services of a specified standard, or
 - (ii) fails to meet or continue to meet specified criteria,
- (b) where the long term care services provided in respect of an approved care establishment fail to meet or continue to meet a specified standard or criteria,
- (c) where there is a breach of any condition subject to which designation is made,
- (d) where there is a change in the ownership of the approved care provider or approved care establishment, as the case may be, or

(e) where, in the case of an approved care provider, that provider is –

(i) guilty of a criminal offence, or

(ii) insolvent.

(3) For the purposes of subsection (2)(e)(ii), "**insolvent**", in relation to any person, means –

(a) that he has been declared by the Court to be insolvent or that a Commissioner or Committee of Creditors has been appointed by the Court to supervise or secure his estate,

(b) that his affairs have been declared in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner,

(c) that an interim vesting order has been made against him in respect of any of his real property in Guernsey,

(d) in the case of a registered company, that –

(i) a liquidator (provisional or otherwise) has been appointed to act, or

(ii) the company has passed a special resolution requiring the company to be wound up

voluntarily,

otherwise than for the sole purpose of solvent amalgamation, solvent reconstruction or solvent winding-up.

PART VI

DETERMINATION OF CLAIMS AND APPEALS

Claims etc. to be determined by Administrator.

13. (1) The Administrator shall determine –

- (a) any claim for benefit,
- (b) any question arising in connection with a claim for, or award of, benefit, and
- (c) any application for designation under section 11.

(2) When determining any claim or question in accordance with subsection (1)(a) or (b), the Administrator shall take into consideration –

- (a) any assessment of the Panel pursuant to section 10, and
- (b) any other factor he considers relevant to the circumstances of the claim or question.

(3) When determining any application in accordance with subsection (1)(c), the Administrator shall take into consideration –

- (a) the provisions of any regulations made under section 11(2), and
- (b) any other factor he considers relevant to the circumstances of the application.

Decision of Administrator.

14. (1) The Administrator shall dispose of any claim, question or application referred to in section 13, as soon as reasonably practicable following its submission to him, in one of the following manners –

- (a) he shall decide the claim, question or application in favour of or adversely to the claimant or applicant and give the claimant or applicant, as the case may be, written notice of the decision and (where the decision is adverse) of the right of appeal under section 15, or
- (b) he shall refer the claim, question or application to the Tribunal and give the claimant or applicant, as the case may be, written notice of the reference.

(2) The claimant or applicant, as the case may be, is entitled to a written statement of the reasons for a decision of the Administrator under subsection (1)(a).

Appeals to Tribunal.

15. (1) Where the Administrator decides –

- (a) a claim, question or application adversely to the

claimant or applicant, as the case may be, or

- (b) to vary, revoke or suspend a designation under Part V, to the detriment of the person concerned,

the claimant, applicant or person concerned, as the case may be, may appeal to the Tribunal.

(2) An appeal under this section shall be brought by giving notice of the appeal at the office of the Clerk to the Tribunal within 28 days of the date of the decision, or within such further time as the chairman of the Tribunal may for good cause allow.

(3) A notice of appeal under this section shall be in writing and shall contain a statement of the grounds upon which the appeal is made.

(4) On an appeal, and on a reference under section 14(1)(b), the Tribunal, subject to and in accordance with regulations, may order [the Committee] to pay the costs of any person, whether or not the decision is in his favour.

(5) For the purposes of this Part, a "**person concerned**" includes an approved care provider and the owner or operator of an approved care establishment.

NOTE

In section 15, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Submissions to Ordinary Court.

16. (1) A question of law arising in connection with the determination of an appeal under section 15 or a reference under section 14(1)(b) may, if the Tribunal thinks fit, be submitted for decision to the Ordinary Court in such manner and within such period as may be prescribed by Order of the Royal Court.

(2) The Tribunal shall, if it decides to submit a question of law to the Ordinary Court, give written notice of its intention to do so to –

- (a) the Administrator,
- (b) the claimant,
- (c) the applicant,
- (d) the person concerned, and
- (e) any other person as appears to the Tribunal to be concerned with the question.

Appeals to the Ordinary Court.

17. The Administrator or any other person aggrieved by a decision of the Tribunal on a question of law mentioned in section 16(1) which is not submitted to the Ordinary Court under that section may appeal against that decision to the Ordinary Court in such manner and within such period as may be prescribed by Order of the Royal Court.

Submissions and appeals generally.

18. (1) The decision of the Ordinary Court on a submission or appeal under section 16 or 17 is final.

(2) On a submission or appeal the Ordinary Court may order [the Committee] to pay the costs of any person, whether or not the decision is in his favour.

(3) Provisions may be made by Order of the Royal Court, for the purposes of such submissions or appeals, as to the circumstances in which any official record or certificate is to be sufficient or conclusive evidence.

NOTE

In section 18, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Questions first arising on appeal.

19. Where a question under this Law first arises in the course of an appeal to the Tribunal, the Tribunal may, if it thinks fit, determine the question notwithstanding that it has not been considered by the Administrator.

Review of decisions.

20. (1) A decision under this Law of the Administrator, Tribunal or Ordinary Court may be reviewed at any time by the Administrator or, on a reference by the Administrator, by the Tribunal, if –

- (a) the Administrator or Tribunal is satisfied and, in the case of a decision of the Ordinary Court, satisfied by fresh evidence, that the decision was given in ignorance of, or was based on a mistake as to, some material fact, or

Consolidated text

- (b) there has been any relevant change of circumstances since the decision was given.

(2) An application for a review under this section shall be made in writing to the Administrator and shall state the grounds of the application.

(3) The Administrator shall, so far as practicable, dispose of the application within 14 days of its submission to him in one of the following manners –

- (a) he shall determine the claim, question, application or other matter to which the decision to be reviewed relates in favour of or adversely to the applicant and give the applicant written notice of the determination and (where the determination is adverse) of the right of appeal under section 15,
- (b) if he is not satisfied that any of the grounds for review under subsection (1)(a) or (b) exists, he shall refuse to review the decision, or
- (c) he shall refer the claim, question, application or other matter to the Tribunal and give the applicant written notice of the reference.

(4) The applicant may demand a written statement of the reasons for a determination of the Administrator under subsection (3)(a).

(5) Sections 15 to 19 apply in relation to –

- (a) a determination or refusal of the Administrator under subsection (3)(a) or (b) as they apply in relation to a decision under section 14(1)(a),
- (b) a reference to the Tribunal under subsection (3)(c) as they apply in relation to a reference under section 14(1)(b).

Adjudication procedure.

21. Regulations may make provision as to the following matters relating to adjudication under this Law –

- (a) the procedure to be followed in connection with the consideration of appeals, claims, questions, applications and other matters by the Tribunal, or in connection with the withdrawal thereof,
- (b) the form which a decision of the Tribunal is to take, and the consequences of any defect in form,
- (c) the form to be used for any document, the evidence to be required and the circumstances in which any official record or certificate is to be sufficient or conclusive evidence,
- (d) the time to be allowed for producing any evidence to the Tribunal,
- (e) the manner in which, and the time within which, an application for or review of a decision is to be made,

- (f) summoning persons to attend, give evidence or produce documents, and authorising the administration of oaths to witnesses,
- (g) empowering the Tribunal or Administrator to refer to the Panel or a medical practitioner for examination and report, any question arising from its or his decision.

NOTE

The following Regulations have been made under section 21:

Long-term Care Regulations (Guernsey), 2003.

Questions as to child or family.

22. (1) This Part of this Law does not apply to any question as to whether at any particular time –

- (a) a person is or was a child,
- (b) a person has or had a family including a child or children, or is or was a child of some other person's family (not, however, including the question of whether a person is to be treated for the purposes of this Law as having a family as aforesaid, or as being a child of some other person's family),
- (c) any person could have been treated under paragraph 3

of the schedule to the Family Allowances Law as, or but for certain facts would have been or could have been treated as aforesaid as, a child of any other person's family.

(2) A question referred to in subsection (1) shall be determined in like manner, subject to any prescribed modifications and adaptations, as a corresponding question arising in respect of an allowance under the Family Allowances Law, and any decision of any such question, if given for the purposes of that Law, shall have effect also for the purposes of this Law or, if given for the purposes of this Law, shall also have effect for the purposes of that Law.

PART VII
CLAIMS AND PAYMENTS

Claims to benefit.

23. (1) Subject to the provisions of this Law and any regulations made hereunder, it is a condition of a person's right to benefit that he makes a claim for benefit in the prescribed manner.

(2) Provision may be made by regulations requiring claimants to furnish to a person prescribed by such regulations any information required for the proper determination of a claim or of any question arising in connection with that claim.

NOTE

The following Regulations have been made under section 23:

Long-term Care Regulations (Guernsey), 2003.

Payment of benefit.

24. Regulations may make provision as respects matters concerning the payment of benefit, including (without limiting the generality of the foregoing) –

- (a) the frequency and manner of payment of benefit,
- (b) the information and evidence to be furnished by claimants when applying for payment,
- (c) the payment of benefit due to a child to that child's parent or guardian or any other person having care of him,
- (d) the appointment by [the Committee] of a person to receive payments of benefit for and on behalf of another person,
- (e) the prescription of duties and obligations to be imposed upon and observed by persons who are authorised to receive and deal with benefit on behalf of another person or who are otherwise appointed to act in relation thereto under regulations made under paragraph (d),
- (f) the prescription of the penalties to be incurred on summary conviction by individuals described in paragraph (d) who misuse, misappropriate or fail to account for benefit or who otherwise fail to comply with the duties and obligations imposed upon them by

regulations made under paragraph (d),

- (g) the repayment of any benefit which has been misused or misappropriated, or which has not been accounted for, by a person described in paragraph (d) and its recovery, together with interest thereon, as a debt due to [the Committee],
- (h) the payment to the estate or personal or other representative of a deceased person of any amounts due to the deceased in respect of benefit, and
- (i) the nomination by a person entitled to receive payment of benefit of a third party to whom he wishes payment to be made.

NOTES

In section 24, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

The following Regulations have been made under section 24:

Long-term Care Regulations (Guernsey), 2003.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 1, with effect from 4th January, 2010, the reference in this section to "parent" shall mean, in relation to a child and subject to the conditions in paragraph (a) and (b) of subsection (1) and the exceptions in paragraph (a) and (b) of subsection (2) of that section, a father or mother who has parental responsibility in respect of the child.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2,

with effect from 4th January, 2010, and having regard to the reference in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in subsection (1) or subsection (2) of that section are satisfied.

Repayment of benefit.

25. Regulations may make provision as respects matters concerning the repayment of benefit, including (without limiting the generality of the foregoing) –

- (a) the treatment of benefit paid to any person, being benefit which was not properly payable to that person, as having been properly paid or as having been paid on account of other benefit properly due to him under this Law, and
- (b) the recovery of benefit paid but not properly payable, by deduction from benefit or other benefits payable under the Attendance and Invalid Care Allowances Law, the Family Allowances Law or the Social Insurance Law.

PART VIII

FINANCE, ADMINISTRATION AND LEGAL PROCEEDINGS

Reports of actuary.

26. (1) An actuary appointed by [the Committee] shall review the operation of this Law –

- (a) not later than the expiration of the period of three years beginning on the 1st day of January in the year in which this section comes into force, and

(b) thereafter, at intervals not exceeding five years,

and, on each such review, make a report to [the Committee] on the financial condition of the Fund, and on the adequacy or otherwise of the Long-term Care Insurance Fund Allocation payable into the Fund under section 101A of the Social Insurance Law and the States Long-term Care Insurance Annual Grant payable into the Fund under section 2 to support payments to be made out of the Fund under the provisions of this Law.

(2) [The Committee] shall, as soon as may be, lay before the States a copy of every report made to it under this section.

NOTE

In section 26, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

General administration.

27. (1) [The Committee] shall administer this Law.

(2) The functions conferred on [the Committee] by or under this Law, other than any power to make regulations, may be exercised by [the President] or any other member of [the Committee], or by the Administrator if authorised in that behalf by [the Committee].

(3) The functions conferred on the Administrator by or under this Law, other than any function which he is authorised to exercise under subsection (2), may be exercised by any person authorised by him in that behalf.

NOTE

In section 27, the words "T/the Committee" and "the President" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.⁴

General provisions as to offences and penalties.

28. (1) A person who, for the purpose of obtaining any benefit or payment under any provision of this Law, whether for himself or some other person, or for the purpose of evading payment of any charge payable under any such provision, or for any other purpose connected with this Law –

- (a) knowingly makes a false statement or false representation, or
- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

is guilty of an offence and liable on summary conviction to a fine not exceeding twice level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both.

(2) Where a person commits an offence under subsection (1) for the purpose of evading payment of any charge, then, whether or not he is convicted of the offence, the charge shall be recoverable from him as a civil debt by the person to whom payment was due.

(3) A person who contravenes or attempts to contravene any regulation under this Law is guilty of an offence and liable on summary conviction to such penalty as may be prescribed: provided that the penalty in respect of such an offence shall not exceed a fine of level 4 on the uniform scale or, in the case of a person's second or subsequent conviction of such an offence, level 5 on the uniform scale.

(4) Regulations may provide that the proviso to subsection (3) shall not apply to a contravention or attempted contravention of any of those regulations.

(5) Where an offence under this Law committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and punishable accordingly.

(6) Nothing in this section shall prevent [the Committee] from recovering by civil proceedings any sums due to the Fund.

NOTE

In section 28, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Civil proceedings to recover sums due to the Fund.

29. (1) Any sum due to the Fund shall be (without prejudice to any other remedy) recoverable by [the Committee] as a civil debt.

(2) Proceedings for the recovery as civil debts of sums due to the Fund shall be brought within a period of six years immediately following the day on which the cause of action accrued.

NOTE

In section 29, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

PART IX

MISCELLANEOUS AND GENERAL

Reciprocal agreements with other countries.

30. (1) For the purpose of giving effect to any agreement with the government of any country outside Guernsey providing for reciprocity in matters relating to payments for purposes similar to the purposes of this Law the States may, by Ordinance, provide for the modification or adaptation of the provisions of this Law in its application to cases affected by the agreement, or that such provisions may be deemed to be modified only to such extent as is necessary to give effect to the operation of the agreement in relation to any specific case or class of cases: provided that an Ordinance shall not provide for payment of benefit outside the islands of Guernsey, Alderney, Herm or Jethou.

(2) The modifications of this Law which may be made by virtue of subsection (1) shall include (without limiting the generality of the same) provision –

(a) for securing that acts, omissions and events having any

effect for the purposes of the law of the country in respect of which the agreement is made shall have a corresponding effect for the purposes of this Law,

- (b) for determining, in cases where rights accrue both under this Law and under the law of the said country, which of those rights shall be available to the person concerned,
- (c) for making any provisions as to administration and enforcement contained in this Law or in any regulations applicable also for the purposes of the law of the said country, and
- (d) for making any necessary financial adjustments by payments into or out of the Fund.

Ordinances and regulations.

31. (1) Except in so far as this Law otherwise provides, any power conferred thereby to make an Ordinance or regulations may be exercised –

- (a) in relation to regulations, by [the Committee],
- (b) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions or in relation to any specified cases or classes of cases, and
- (c) so as to make, as respects the cases in relation to which it is exercised –

- (i) the full provision to which the power extends or any less provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provisions for different cases or classes of cases, or different provision as respects the same case or class of case for different purposes of this Law,
- (iii) any such provision either unconditionally or subject to any specified condition.

(2) Without prejudice to any specific provision of this Law, an Ordinance or regulation under this Law may contain such consequential, incidental, supplemental or transitional provision as appears to the States or [the Committee], as the case may be, to be expedient.

(3) An Ordinance or regulation under any provision of this Law may be amended or revoked by a subsequent Ordinance or regulation (as the case may be) thereunder.

(4) Regulations shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

NOTE

In section 31, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Service of documents.

32. A notice or document which, under this Law, is to be given to or served on –

- (a) the Administrator or [the Committee], may be given or served by leaving it at, or by sending it by post addressed to the Administrator or [the Committee], as the case may be, at [the Committee]'s office,
- (b) any person, may be given or served by delivering it to him, or by leaving it at, or by sending it by post addressed to him at, his usual or last known place of work or residence.

NOTE

In section 32, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Amendment to Social Insurance Law.

33. Immediately after section 101 of the Social Insurance Law, there is inserted the following –

"Guernsey Long-term Care Insurance Fund Allocation.

101A. There shall be paid out of the Guernsey Insurance Fund and into the Long-term Care Insurance Fund established under section 1 of the Long-term Care Insurance (Guernsey) Law, 2002, in respect of each contribution year and at such times as the Authority shall determine the sum of the following amounts (to be called the "Long-term Care Insurance Fund Allocation"), that is to say, such percentage as the States shall by Ordinance from time to time determine of –

- (a) the aggregate amount of Class 1 primary contributions paid or payable in respect of that year,
- (b) the aggregate amount of Class 2 contributions paid or payable in respect of that year, and
- (c) the aggregate amount of Class 3 contributions paid or payable in that year,

and different percentages may be determined in relation to the aggregate contributions paid or payable in respect of that year in respect of such different classes of persons as may be prescribed by the Ordinance."⁵

Interpretation.

34. (1) In this Law, unless the context otherwise requires –

"**accounts**" means accounts of the Fund prepared under section 1(4),

"**Administrator**" means the Administrator to [the Committee] appointed under section 94 of the Social Insurance Law,

"approved care establishment" means an establishment designated under and in accordance with section 11,

"approved care provider" means a provider of long-term care services designated under and in accordance with section 11,

"the Attendance and Invalid Care Allowances Law" means the [Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984]^b,

"the auditors" has the meaning given by section 1(5),

"[the Committee]" means the Guernsey [Committee for Employment & Social Security] constituted under section 92 of the Social Insurance Law,

"the [Committee for Health & Social Care]" means the States [Committee for Health & Social Care],

"benefit" means any of the categories of benefit specified in section 4 and includes the provision of services at the cost of the Fund,

"care benefit" means the benefit payable under section 6,

"a claimant" means a person by or on behalf of whom benefit is claimed and includes any person in receipt of benefit,

"the Clerk to the Tribunal" means the person appointed to that

^b Ordres en Conseil Vol. XXVIII, p. 353; Vol. XXIX, p. 198; No. XIV of 1991; No. X of 1993; No. VI of 1999; Recueil d'Ordonnances Tome XXVI, p. 177.

office by [the Committee],

"contravention" includes failure to comply, and cognate expressions shall be construed accordingly,

"the Family Allowances Law" means the Family Allowances (Guernsey) Law, 1950^c,

"the Fund" has the meaning given by section 1(1),

"Guernsey" means any of the Islands of Guernsey, Alderney, Herm and Jethou,

"the Health Service Law" has the meaning given by section 10,

"Invalid Care Allowances Law" means the [Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984]^d,

"the Long-term Care Insurance Fund Allocation" has the meaning given by section 101A of the Social Insurance Law,

"medical practitioner" means a recognised medical practitioner within the meaning of the Doctors, Dentists and Pharmacists Ordinance,

^c Ordres en Conseil Vol. XIV, p. 332; Vol. XVI, p. 280; Vol. XX, p. 63; Vol. XXI, p.34; Vol. XXIII, pp. 3 and 238; No. VI of 1999: Recueil d'Ordonnances Tome XXI, p. 460; Tome XXII, p. 452; No. XXIV of 1999.

^d Ordres en Conseil Vol. XXVIII, p. 353; Vol. XXIX, p. 198 and Order in Council No. XIV of 1991.

1987^e,

"the Needs Assessment Panel" means the Panel,

"Ordinary Court" means the Royal Court sitting as an Ordinary Court,

"a person in need of long-term care" has the meaning given by section 9,

"the Panel" means the panel constituted under section 10,

"registered company" means a body corporate the memorandum and articles of association of which are registered in accordance with the provisions of the Companies (Guernsey) Law, 1994^f,

"regulations" means regulations of [the Committee] under this Law,

"respite care benefit" means the benefit payable under section 7,

"the Social Insurance Law" means the Social Insurance (Guernsey) Law, 1978^g,

^e Recueil d'Ordonnances Tome XXIV, pp. 79, 238 and 262.

^f Order in Council No. XXXIII of 1994; No. XIV of 1996 and No. I of 2001.

^g Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXII, p. 59; Orders in Council Nos. V and XII of 1993; Ordinance No. XIV of 1993; Orders in Council No. V of 1994, Nos. VI and XIII of 1995; No. I of 1998; No. VI of 1999; No. X of 2000 and No. IX of 2001.

"the States" means the States of Guernsey,

"the States Long-term Care Insurance Annual Grant" has the meaning given by section 2, and

"the Tribunal" means the tribunal constituted under section 80 of the Social Insurance Law.

(2) The provisions of the Interpretation (Guernsey) Law, 1948 shall apply to the interpretation of this Law throughout the Islands of Guernsey, Alderney, Herm and Jethou.

(3) Unless the context otherwise requires, references in this Law to an enactment are references thereto as amended, re-enacted (with or without modification), extended or applied.

(4) Except where the context excludes, references in this Law (howsoever expressed) to the provisions of this Law include references to the provisions of Ordinances and regulations made or having effect as if made under this Law.

(5) Unless the context otherwise requires –

(a) a reference in this Law to a numbered or lettered Part, section, subsection or paragraph is a reference to the Part, section, subsection or paragraph of this Law which is so numbered or lettered, and

(b) a reference in a provision of this Law to a numbered or lettered subsection or paragraph is a reference to

the subsection or paragraph of that provision which is so numbered or lettered.

NOTES

In section 34,

the words in, first, the first and, second, the second pairs of square brackets in the definition of the expression "the Committee" and, third, the words "the Committee" in square brackets wherever else occurring in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 4, section 2, Schedule 1, paragraph 13 and section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;⁶

the words in square brackets in the definitions of the expressions "the Attendance and Invalid Care Allowances Law" and "Invalid Care Allowances Law" in subsection (1) were substituted by the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 2013, section 1(2), First Schedule, paragraph 1, with effect from 1st May, 2014 (the 2013 Law re-titles the Attendance and Invalid Care Allowances Law, 1984 as the "Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984" and thus both expressions now shown, incorrectly, as "the Attendance and Invalid Care Allowances Law" and the "Invalid Care Allowances Law" should be read as, respectively, the "Severe Disability Benefit and Carer's Allowance Law" and the "Carer's Allowance Law");

the words "Committee for Health & Social Care" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 5, with effect from 1st May, 2016.⁷

The functions, rights and liabilities of the Social Security Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 13, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.⁸

The functions, rights and liabilities of the Health and Social Services Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Health & Social Care and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance,

2016, section 1, Schedule 1, paragraph 5, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.⁹

In accordance with the provisions of the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, section 27(2), with effect from 3rd December, 2015, the reference in this section to a "recognised medical practitioner" is to be construed as a reference to a registered practitioner within the meaning of section 26(1) of the 2015 Ordinance.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

Transitional provision.

35. (1) The States may by Ordinance may make such transitional provision as may be necessary or desirable for any purpose associated with the bringing into force of the provisions of this Law or of any Ordinance or regulations thereunder.

(2) Without limiting the generality of subsection (1), an Ordinance may make provision –

- (a) for the payment to a person of benefit at the commencement of this Law,
- (b) relating to the entitlement to benefit of any person at the commencement of this Law, or
- (c) concerning the designation of a provider of long-term

care or an establishment under section 11.

NOTE

The following Ordinance has been made under section 35:

Long-term Care Insurance (Guernsey) (Rates and Transitional Provisions) Ordinance, 2003.

Citation.

36. This Law may be cited as the Long-term Care Insurance (Guernsey) Law, 2002.

Commencement.

37. This Law shall come into force on the day appointed by Ordinance of the States, and different days may be appointed for different provisions or different purposes.

NOTE

The Law was brought into force on 7th April, 2003 by the Long-term Care Insurance (Guernsey) Law, 2002 (Commencement) Ordinance, 2002, section 1(2), save for Part I, Part VIII, Part IX and section 5, brought into force on 1st January, 2003 by section 1(1) of the same Ordinance.

¹ These words were previously substituted by the Machinery of Government

(Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(b), Schedule 2, paragraph 1(b), with effect from 6th May, 2004.

² The functions, rights and liabilities of the Treasury and Resources Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(b), Schedule 2, paragraph 1(b), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

³ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

⁴ The words "the President" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 26, with effect from 6th May, 2004.

⁵ For subsequent amendments, see the consolidated text of the Social Insurance (Guernsey) Law, 1978.

⁶ The words "Committee for Employment & Social Security" were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 26, with effect from 6th May, 2004.

⁷ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 4, with effect from 6th May, 2004.

⁸ The functions, rights and liabilities of the Social Security Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Social Security Authority and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 26, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

⁹ The functions, rights and liabilities of the Health and Social Services Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Board of Health and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 4, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.