

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

**THE HEALTH SERVICE BENEFIT (AMENDMENT AND MISCELLANEOUS PROVISIONS)
(GUERNSEY) LAW, 2021**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Health Service Benefit (Amendment and Miscellaneous Provisions) (Guernsey) Law, 2021", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

The Law provides (at section 1) for the transfer of monies forming part of the Guernsey Health Service Fund ("the Fund") to the general revenue, on a date to be appointed by regulations, and for the consequent closure of the Fund. At sections 2 to 5 the Law amends the Health Service Benefit (Guernsey) Law, 1990, the Social Insurance (Guernsey) Law, 1978 and the Health Service (Benefit) Ordinance, 1990, to –

- i) make changes consequent on the closure of the Fund,
- ii) repeal provisions relating to Medical Benefit, Specialist Medical Benefit, Physiotherapy Benefit and Alderney Hospital Benefit, and to make changes consequential to those repeals,
- iii) provide for the Committee for Health & Social Care to have power to make provision in relation to Pharmaceutical Benefit and medical appliances by regulation and Committee resolution,
- iv) provide for the appointment of a Health Administrator in respect of the administration of the remaining statutory benefits under the Health Service Benefit (Guernsey) Law, 1990 and subordinate legislation, and

- v) repeal provision relating to travelling allowance grant.

Section 6 of the Law creates a power for the States to make any further consequential, incidental or supplementary provision by Ordinance. Power to make similar provision specifically in relation to the closure of the Fund is comprised within the regulation-making power at section 1.

The Law also makes several repeals at section 7 and Schedule 1, and at section 8 and Schedule 2 creates power for the Committee for Health & Social Care to make regulations for the purpose of ensuring that specified categories of person – for example, those who have a prospective right to or expectation of a statutory health service benefit immediately before commencement of the Law - do not suffer a detriment as a consequence of the repeal of those benefits by the Law. Sections 9-11 are concerned with the interpretation, citation and coming into force of the Law.

PROJET DE LOI

ENTITLED

The Health Service Benefit (Amendment and Miscellaneous Provisions) (Guernsey) Law, 2021

THE STATES, in pursuance of their Resolution of the 13th June, 2019^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, Herm and Jethou.

Closure of Guernsey Health Service Fund.

1. (1) On the day appointed for the purpose by regulations made by the States Committee for Health & Social Care ("**the appointed day**"), all monies forming part of the Guernsey Health Service Fund established for the purposes of the Health Service (Pharmaceutical) (Guernsey) Law, 1972^b ("**the Fund**") at that date shall be paid into the general revenue account of the States.

(2) Immediately after the payment described in subsection (1) is made, the Fund shall be closed.

(3) The monies paid into the general revenue account of the States under subsection (1) shall be referred to within that account as the Guernsey Health

^a Article VII of Billet d'État No. X of 2019.

^b Ordres en Conseil Vol. XXIII, p. 428; Vol. XXVI, p. 472; No. XXI of 1984.

Reserve.

(4) Regulations under subsection (1) may make such consequential, incidental, supplementary, transitional or saving provision in relation to the closure of the Fund as the States Committee for Health & Social Care thinks fit, including, without limitation –

- (a) provision for the recovery as a civil debt of monies due to the Fund and remaining unpaid immediately before the appointed day,
- (b) provision relating to the preparation of final accounts of the Fund, and
- (c) provision making consequential amendments to the Health Service Benefit (Guernsey) Law, 1990^c and any other enactment.

(5) For the avoidance of doubt, and subject to any steps taken under any provision of the type described in subsection (4), no sums shall be paid into or out of the Fund after its closure.

^c Ordres en Conseil Vol. XXXII, p. 192; amended by Order in Council No. IX of 2003; No. II of 2011; No. IV of 2018; Recueil d'Ordonnances Tome XXVI, pp. 177 and 483; Ordinance Nos. XXII and XXVII of 2002; No. XXI and XXXIII of 2003; No. XLII of 2006; No. XLIII of 2007; No. XXII of 2015; Nos. IX and XLIV of 2016; and No. XVI of 2020; the Law is applied with modifications to Alderney by Recueil d'Ordonnances Tome XXV, p. 204.

Amendment to Health Service Benefit Law.

2. (1) The Health Service Benefit (Guernsey) Law, 1990 is further amended as follows.

(2) Part I (Source of Funds) is repealed.

(3) In section 4, delete paragraph (a).

(4) Section 5 (Health Benefit Card) is repealed.

(5) Part IV (Medical Benefit) is repealed.

(6) After section 10(1), insert -

"(1A) In this Part, any reference to the Committee for Health & Social Care making provision by regulations (however expressed) includes a reference to that Committee making such provision by resolution of the Committee, and references to regulations in this Part shall be construed accordingly.

(1B) The Committee for Health & Social Care must ensure the publication on the States of Guernsey website of resolutions of the type mentioned in subsection (1A).".

(7) In section 10(5) and section 15(5), for "The States may by Ordinance" substitute "The Committee for Health & Social Care may by regulation".

(8) In section 10(5)(a) and section 15(5)(a) –

- (a) for "persons specified in the Ordinance" substitute "persons specified in the regulations ",
- (b) for "an Ordinance under this paragraph" substitute "regulations under this paragraph", and
- (c) for "modifications specified in the Ordinance" substitute "modifications specified in the regulations".

(9) In section 10(5)(b) and section 15(5)(b), for "empower the Committee for Health & Social Care to restrict, by regulation," substitute "restrict", and for "in the Ordinance" substitute "in the regulations".

(10) In section 13(2), for "Ordinance of the States" substitute "regulations of the Committee for Health & Social Care", and in sections 13(3)(b) and 18(3)(b), delete "at the cost, in whole or in part, of the Fund".

(11) In section 13(4), for "The States may by Ordinance" substitute "The Committee for Health & Social Care may by regulation", and in section 13(5) for "An Ordinance" substitute "Regulations".

(12) After section 15(1), insert -

"(1A) In this Part, any reference to the Committee for Health & Social Care making provision by regulations (however expressed) includes a reference to that Committee making such provision by resolution of the Committee, and references to regulations in this Part shall be construed accordingly.

(1B) The Committee for Health & Social Care must ensure the publication on the States of Guernsey website of resolutions of the type mentioned in subsection (1A).".

(13) In section 18(4), for "The States may by Ordinance" substitute "The Committee for Health & Social Care may by regulation".

(14) Section 20 (reports of actuary), section 22(6) and section 23 (civil proceedings to recover sums due to the Fund) are repealed.

(15) Wherever it appears, for "Administrator" substitute "Health Administrator".

(16) In section 34 –

(a) in subsection (1)(a), delete "medical benefit",

(b) in subsection (1)(b), delete "6(4)",

(c) in subsection (2)(e)(i), for "into the Fund" substitute "into the general revenue", and

(d) in subsection (2)(e)(iii), delete "6(4)," and "to medical benefit in respect of consultations with or treatment by them or".

(17) In Part X, immediately before section 35 (Ordinances and regulations), insert –

"The Health Administrator.

34A. There shall be appointed by the Committee a person to be the Health Administrator, who shall carry out such functions as are assigned to him or her under this Law and any other enactment, and by the Committee."

(18) In section 39(1) -

(a) delete the definitions of "Administrator", "the auditors", "the Fund", "health benefit card" and "medical benefit",

(b) for the definition of "**the Committee for Health & Social Care**" substitute –

""**the Committee for Health & Social Care**" means the States Committee for Health & Social Care,"

(c) at the appropriate places, insert –

""**the general revenue**" means the general revenue account of the States,"

""**Health Administrator**" means the person appointed by the Committee to the office of Health Administrator under section 34A," and

(d) at the end of the definition of "regulations" delete "," and insert "; and in respect of Part V and Part VI, see sections 10(1A) and 15(1A),".

Social Insurance Law: amendments relating to the Guernsey Insurance Fund and the Guernsey Health Service Allocation.

3. (1) The Social Insurance (Guernsey) Law, 1978^d is further amended as follows.

(2) Wherever it appears (including, without limitation and for the avoidance of doubt, in the arrangement of sections, section headings and the Sixth Schedule), for "Guernsey Health Service Fund Allocation" substitute "Guernsey Health Service Allocation".

(3) Section 17 (the States' grant) is repealed.

(4) In section 100(2), delete ", the States' grant".

(5) In section 101, for "the Guernsey Health Service Fund maintained under the control and management of the Committee under section one of the Health Service (Pharmaceutical) (Amendment) (Guernsey) Law, 1978," substitute "the general revenue account of the States,".

^d Ordres en Conseil Vol. XXVI, p. 292; amended by Ordres en Conseil Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol XXXI, p. 278; Vol. XXXII, p. 59; Vol. XXXIV, p. 510; Vol. XXXV(1), p. 161; Vol. XXXVI, pp. 123 and 343; Vol. XXXVIII, p. 59; Vol. XXXIX, p. 107; Order in Council No. X of 2000; No. IX of 2001; No. XXIII of 2002; No. XXIV of 2003; No. XI of 2004; No. XVIII of 2007; No. V of 2012; No. IV of 2014; No. III of 2016; No. IV of 2018; and No. XIII of 2019; Recueil d'Ordonnances Tome XXV, p. 148; Tome XXVI, p. 177; Ordinance No. XXXIII of 2003; No. XLIV of 2007; Nos. VII and XLII of 2009; No. XVII of 2011; No. XXXVIII of 2012; No. XXX of 2013; Nos. IX and XXX of 2016; Nos. XIII and XXIII of 2017; Nos. XXVII; XXXVI of 2019; and Alderney Ordinance No. VIII of 2018.

(6) In the Sixth Schedule, delete the definition of "The States' grant".

Social Insurance Law: amendments relating to travelling allowance grant.

4. (1) The Social Insurance (Guernsey) Law, 1978 is further amended as follows.

(2) Section 18(i) is repealed.

(3) In section 19(1), delete "travelling allowance grant,".

(4) Section 36 (travelling allowance grant) is repealed.

(5) In section 47(2)(c), delete "who is not entitled to a travelling allowance grant".

(6) In section 64(4)(da), delete ", travelling allowance grant".

Amendments to Health Service (Benefit) Ordinance.

5. (1) The Health Service (Benefit) Ordinance, 1990^e is further amended as follows.

^e Recueil d'Ordonnances Tome XXV, p. 191; amended by Order in Council No. IV of 2014; No. III of 2016; and No. IV of 2018; Recueil d'Ordonnances Tome XXV, p. 310; Tome XXVII, pp. 114, 247 and 378; Tome XXVIII, p. 262; Ordinance Nos. XXXIII of 2003; No. II of 2004; No. VII of 2005; Nos. VI and XXXIX of 2012; No. XXXIV and XXXVI of 2013; No. XLVI of 2014; No. XLVI of 2015; Nos. IX and XXXVIII of 2016; Nos. XXV and XXXIII of 2017; No. XXXVII of 2018; No. XXX of 2019; and No. XVI of 2020.

(2) Section 1 (exclusions from the expression "consultation for a medical purpose") is repealed.

(3) Except in section 3(4)(a), wherever it appears, for "Administrator" substitute "Health Administrator".

(4) For section 3(4)(a), substitute –

"(a) whenever so directed by the Health Administrator, furnish any information and evidence which the Administrator to the Committee for Employment & Social Security appointed or deemed to have been appointed under section 94 of the Social Insurance (Guernsey) Law, 1978 is empowered to demand under any Ordinance made under the Income Support Law, and".

(5) In section 5(2)(a), delete "to the Fund".

(6) In –

(a) section 5(2)(d)(iv),

(b) section 5(2)(e)(ii),

(c) section 5(5) (wherever it appears), and

(d) section 6(9),

for "the Fund" substitute "the general revenue".

Power to make consequential provisions by Ordinance.

6. (1) The States may by Ordinance make such consequential, incidental and supplemental provision as they think fit in connection with the commencement of any provision of this Law.

(2) Without limiting subsection (1), an Ordinance under that subsection may make any amendment to an enactment consequential upon the coming into force of any provision of this Law that the States think fit.

Repeals.

7. (1) The enactments listed in Schedule 1 (repeals) are repealed.

(2) The States may amend the list at Schedule 1 by Ordinance.

Transitional and saving provisions.

8. (1) Schedule 2 (transitional provisions and savings) has effect.

(2) The States may amend Schedule 2 by Ordinance.

Interpretation.

9. In this Law, "**enactment**" excludes an Act of Parliament that applies in or extends to the Bailiwick.

Citation.

10. This Law may be cited as the Health Service Benefit (Amendment and Miscellaneous Provisions) (Guernsey) Law, 2021.

Commencement.

11. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

SCHEDULE 1

Section 7

REPEALS

Health Service (Medical Benefit) Regulations, 1990^f
Health Service (Specialist Medical Benefit) Ordinance, 1995^g
Health Service (Medical Benefit) (Amendment) Regulations, 1995^h
Health Service (Alderney Hospital Benefit) Regulations, 1997ⁱ
Health Service (Alderney Hospital Benefit) Ordinance, 1997^j
Health Service (Physiotherapy Benefit) Ordinance, 1997^k
Health Service (Benefit) (Annual Grant) Ordinance, 2002^l
Health Service (Alderney Hospital Benefit) (Amendment) Ordinance, 2002^m
Health Service (Specialist Medical Benefit) (Amendment) Ordinance, 2002ⁿ
Health Service (Physiotherapy Benefit) (Amendment) Ordinance, 2002^o
Health Service (Benefit) (Rates of Medical Benefit) Ordinance, 2004^p

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- ^f G.S.I. No. 42 of 1990.
^g Recueil d'Ordonnances Tome XXVI, p. 484.
^h G.S.I. No. 8 of 1995.
ⁱ G.S.I. No. 10 of 1997.
^j Recueil d'Ordonnances Tome XXVII, p. 200.
^k Recueil d'Ordonnances Tome XXVIII, p. 1.
^l Ordinance No. XXVII of 2002.
^m Ordinance No. XXVIII of 2002.
ⁿ Ordinance No. XXIX of 2002.
^o Ordinance No. XXXIII of 2002.

Health Service (Alderney Hospital Benefit) (Amendment) Ordinance, 2008^q

Health Service (Alderney Hospital Benefit) (Amendment) Regulations, 2008^r

Health Service (Specialist Medical Benefit) (Amendment) Ordinance, 2013^s

Health Service (Specialist Medical Benefit) (Amendment) Ordinance, 2014^t

Health Service (Benefit) (Annual Grant) (Amendment) Ordinance, 2016^u

^p Ordinance No. XLI of 2004.

^q Ordinance No. VIII of 2008.

^r G.S.I. No. 12 of 2008.

^s Ordinance No. XLII of 2013.

^t Ordinance No. LVII of 2014.

^u Ordinance No. XLIV of 2016.

SCHEDULE 2

Section 8

TRANSITIONAL PROVISIONS AND SAVINGS

1. In this Schedule –
 - (a) the Health Service Benefit (Guernsey) Law, 1990 and legislation made thereunder, including that Law and such legislation as extended to Alderney (subject to such amendments, modifications, exceptions and adaptations as are enacted from time to time), are together referred to as the "**Health Service Benefit laws**", and
 - (b) medical benefit, specialist medical benefit, Alderney hospital benefit and physiotherapy benefit within the meaning of the Health Service Benefit laws are each referred to as a "**Repealed Healthcare Benefit**".
2. Regulations of the Committee for Health & Social Care (in this Schedule, "**the Committee**") may provide that, in relation to -
 - (a) persons who cease, by virtue of the amendments and repeals made by this Law, to be entitled to one or more Repealed Healthcare Benefits,
 - (b) persons to or in respect of whom a Repealed Healthcare Benefit was, or but for a disqualification or forfeiture would have been, due immediately before the commencement of this Schedule,

- (c) persons who had a prospective right to or expectation of a Repealed Healthcare Benefit immediately before such commencement, and
- (d) any other category of persons who would suffer a detriment as a consequence of the coming into force of this Law or any part thereof,

the provisions of the Health Service Benefit laws as amended by this Law shall have effect subject to such modifications as may be prescribed for the purpose only of ensuring that such persons do not suffer a detriment on the coming into force of this Law or any part thereof.

3. Notwithstanding any repeal or amendment effected by this Law, regulations of the Committee may provide for provisions of the Health Service Benefit laws repealed by this Law temporarily to remain in force for the purpose of facilitating the introduction or operation of health care benefits and services on a non-statutory basis and the transition to such benefits and services from the corresponding benefits under the Health Service Benefit laws.

4. A question of whether a person became or ceased to be entitled to a Repealed Healthcare Benefit at a time before the commencement of this Schedule, and any other question as to a Repealed Healthcare Benefit in respect of a time before such commencement, is to be determined in accordance with the provisions of law in force at that time in respect of those matters.