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## GUERNSEY STATUTORY INSTRUMENT

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2002 - No. 3.

### **The Attendance Allowance (Duties of Appointees) Regulations, 2002**

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| Made ... ..                   | 13th March, 2002. |
| Laid before the States ... .. | 24th April 2002.  |
| Coming into operation ... ..  | 1st April, 2002.  |

**THE GUERNSEY SOCIAL SECURITY AUTHORITY**, in exercise of the powers conferred upon it by section 5(4) of the Attendance and Invalid Care Allowances (Guernsey) Law, 1984, as amended<sup>a</sup> ("the Law"), and all other powers enabling it in that behalf, hereby orders:-

#### *Interpretation.*

1. (1) In these Regulations, unless the context requires otherwise-  
"appointee", "beneficiary" and "benefit record" have the meanings set out respectively in regulation 2;

"Authority" means the Guernsey Social Security Authority;

"nursing home" has the meaning given by section 18(1) of the Nursing Homes and Residential Homes (Guernsey) Law, 1976<sup>b</sup>;

"residential home" has the meaning given by section 18(1) of the Nursing Homes and Residential Homes (Guernsey) Law, 1976; and

"benefit" includes any special payments, payments in kind and any other description of benefit under the Law.

(2) The provisions of the Interpretation (Guernsey) Law, 1948<sup>c</sup> apply to the interpretation of these Regulations as they may apply to the interpretation of a Guernsey enactment.

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<sup>a</sup> Ordres en Conseil Vol. XXVIII, p. 353; Vol. XXIX, p. 198; No. XIV of 1991; No. X of 1993; No. VI of 1999; and Ordinance No. XIV of 1993 (Tome XXVI, p. 177).

<sup>b</sup> Ordres en Conseil Vol. XXVI, p. 71.

<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

*Duties of appointees.*

**2.** (1) Where a benefit is payable by the Authority for the benefit of any person (a "beneficiary") and another person (an "appointee") -

- (a) is authorised to receive the benefit on behalf of the beneficiary;
- (b) receives payments of the benefit; or
- (c) is otherwise appointed to act in relation to the beneficiary or the benefit under regulations made under section 5(2) of the Law;

the appointee shall observe the utmost good faith and shall apply the benefit well and prudently in the best interests of the beneficiary.

(2) For the avoidance of doubt, any payment of benefit made by an appointee to –

a residential home,

a nursing home, or the Guernsey Cheshire Home,

on behalf of a beneficiary residing in the home in respect of the home's fees shall be deemed for the purposes of paragraph (1) to have been applied well and prudently in the best interests of the beneficiary.

(3) An appointee shall keep an accurate record (a "benefit record") of-

- (a) all benefit received by him for a beneficiary; and
- (b) the application of such benefit.

*Breach of duty by appointee.*

**3.** (1) An appointee who fails to comply with any duty imposed upon him by paragraph 2(1) or 2(3) is guilty of an offence and liable, on summary conviction, to a term of imprisonment not exceeding three months or to a fine not exceeding level 3 on the uniform scale, or to both.

(2) In proceedings against a person for an offence under paragraph (1) it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(3) Where in any such proceedings the defence provided for by paragraph(2) involves an allegation that the commission of the offence was due to the act or default of another person, the accused may not, without the leave of the court, rely on the defence unless, not less than 7 clear days before the day of the hearing of the proceedings, he serves notice on Her Majesty's Procureur giving such information identifying or assisting in the identification of that other person as is in his possession when he serves the notice.

*Falsifying benefit record.*

**4.** (1) A person who dishonestly, with a view to gain for himself or another or with intent to cause loss to another -

- (a) destroys, defaces, conceals or falsifies any benefit record, or
- (b) in furnishing information for any purpose produces or makes use of any benefit record, which to his knowledge is or may be misleading, false or deceptive in a material particular;

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

(2) For the purposes of this regulation a person who makes or concurs in making in a benefit record an entry which is or may be misleading, false or deceptive in a material particular, or who omits or concurs in omitting a material particular from a benefit record, is to be treated as falsifying the account or document.

*Failing to produce benefit record.*

**5.** (1) An appointee must, upon or before the expiration of the period specified in a written request made by or on behalf of the Authority, produce to the Authority the benefit record relating to the beneficiary specified in the request.

- (2) A written request made pursuant to paragraph (1) shall specify -
  - (a) the name of the beneficiary and the appointee,
  - (b) the period in respect of which the benefit record is to be produced,
  - (c) the date (being at least 21 days from the date of the request) on or before which the benefit record is to be produced, and
  - (d) an address or place to or at which the benefit record may be sent or produced.

(3) An appointee who fails to comply with the terms of a written request made pursuant to this regulation is guilty of an offence and liable, on summary conviction, to a term of imprisonment not exceeding three months or to a fine not exceeding level 3 on the uniform scale, or to both.

*Repayment by appointees of benefit .*

**6.** (1) Where, in relation to a benefit, an appointee fails to comply with any duty imposed upon him by regulation 2(1) or 2(3), the amount of benefit misapplied or not accounted for, together with interest thereon, shall, in addition to any other method of recovery, be recoverable by the Authority as a civil debt.

(2) For the purposes of paragraph (1), interest shall run at the rate for the time being prescribed under section 2 of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985<sup>d</sup> from the date of the misapplication or failure to account (or whichever is earlier) until the debt is satisfied.

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<sup>d</sup> Ordres en Conseil Vol. XXIX, p. 135 as amended by Order of the Royal Court No. 1 of 1996.

*Application of Trusts Law.*

7. The provisions of these Regulations are in addition to and not in derogation from the provisions of the Trusts (Guernsey) Law, 1989, as amended<sup>e</sup>.

*Extent*

8. These Regulations shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

*Citation*

9. These Regulations may be cited as the Attendance Allowance (Duties of Appointees) Regulations, 2002.

*Commencement*

10. These Regulations shall come into force on 1st April, 2002

Dated this 13th day of March, 2002.

O D Le Tissier

President of the Guernsey Social Security Authority,  
for and on behalf of the Authority.

**EXPLANATORY NOTE**

(This Note is not part of the Regulations, but is intended to indicate their general purport.)

These regulations detail the duties of persons appointed to receive benefit on another's behalf, prescribe penalties for failure to fulfil those duties and allow the Authority to recover misappropriated benefit as a civil debt.

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<sup>e</sup> Ordres en Conseil Vol. XXXI, p. 217 and Vol. XXXII, p. 385.