



Jersey

## LONG-TERM CARE (GENERAL PROVISIONS) (JERSEY) ORDER 2014

### Arrangement

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Jersey

## **LONG-TERM CARE (GENERAL PROVISIONS) (JERSEY) ORDER 2014**

*Made*

*Coming into force*

**THE MINISTER FOR SOCIAL SECURITY**, in pursuance of Articles 5, 6, 7, 8 and 16 of the Long-Term Care (Jersey) Law 2012, orders as follows –

### **PART 1**

#### **INTERPRETATION**

##### **1 Interpretation**

In this Order –

“adult” means a person aged 18 years or over;

“approved registered person” shall be construed in accordance with Article 12;

“benefit” means a benefit under the Law;

“Benefits Order” means the Long-Term Care (Benefits) (Jersey) Order 2014;

“claim” means an application for a benefit;

“claimant” means a person who makes or has made a claim;

“claimant’s agent” has the meaning in Article 8(8);

“Health Care Law 1995” means the Health Care (Registration) (Jersey) Law 1995;

“Law” means the Long-Term Care (Jersey) Law 2012;

“Medical Practitioners Law 1960” means the Medical Practitioners (Registration) (Jersey) Law 1960;

“partner” has the same meaning as in the Benefits Order.

## **PART 2**

### **CLAIMS AND BENEFITS**

#### **2 Manner in which a claim is to be made**

- (1) Every claim must be made to the Minister on a form approved by the Minister, or in such other manner as the Minister may accept as sufficient in the circumstances of the case.
- (2) Subject to paragraph (3), a claim is treated as having been made on the day on which it is received by the Minister at an office approved by the Minister for the receiving of claims.
- (3) A claim may be treated as having been made on a date that is not more than 6 months before the date it is received by the Minister if, in the opinion of a determining officer, there are sufficient reasons to justify why the claim was not made at an earlier date and, in such circumstances, the claim will be treated as having been made at that earlier date.
- (4) If a claim is defective at the date when it is received or has been made in a manner otherwise than as required by paragraph (1), the Minister may refer the claim to the claimant or, as the case may be, supply him or her with the form, and if the form is received properly completed within 14 days from that date on which the claim is so referred, or the form is so supplied, to the claimant, the Minister shall treat the claim as if it had been duly made in the first instance.
- (5) A claimant may amend a claim at any time before the claim is determined by notice in writing to the Minister, and the Minister may treat the claim as if it had been made as so amended in the first instance.

#### **3 Information and evidence in support of a claim**

A claimant or partner of a claimant must furnish such certificates and other documents and information as a determining officer may require and within such reasonable time as the determining officer may require for the purpose of –

- (a) establishing whether the claimant is entitled to a benefit and if so, the amount of such benefit;
- (b) any other matter in connection with a claim which requires to be determined for the purpose of this Order or the Benefits Order,

and, if reasonably so required, must for that purpose attend at such office or place as a determining officer may direct.

#### **4 Assessments of long-term care needs and approved care packages**

- (1) A claimant is not entitled to a benefit unless –
  - (a) an approved registered person assesses that the claimant needs a level of standard care specified in column 2 of the table in Article 8 the Benefits Order; and

- 
- (b) except where those needs are met by an approved care package, those needs are met in an approved care home.
  - (2) A claimant is not entitled to a benefit comprising payments for or towards the costs of an approved care package unless –
    - (a) an approved registered person has assessed that the care package is suitable for the long-term care needs of the particular claimant having regard to the level of standard care specified in column 2 of the table in Article 8 of the Benefits Order that the claimant has been assessed as needing; and
    - (b) any person, body or organization who –
      - (i) is responsible for providing any long-term care as part of the approved care package, and
      - (ii) receives remuneration for providing such services,is a party to an agreement with the Minister for Health and Social Services making provision with regard to such approval or, if there is no such agreement, arrangements have been agreed between the person, body or organization and the Minister with a view to such an agreement being made in the future.
  - (3) A determining officer may, at any time following a determination under Article 5 that a claimant is entitled to benefits, require an approved registered person to assess any of the following –
    - (a) if there is a change in a claimant’s needs having regard to the level of standard care specified in column 2 of the table in Article 8 of the Benefits Order;
    - (b) if a change is required in the arrangements comprised in an approved care package for meeting the long-term care needs of a claimant; or
    - (c) if a claimant’s long term care needs can no longer be met by an approved care package.
  - (4) A determining officer shall notify the claimant in writing –
    - (a) of the approved registered person’s assessment for the purposes of paragraph (1)(a), (2)(a) or (3) as the case may be, including the reasons for the assessment and, where applicable, the arrangements, or change in arrangements, comprised in the approved care package that is assessed as being suitable for the claimant;
    - (b) of the right to a reassessment of the matters which the assessment addresses and the time within which such right must be exercised; and
    - (c) that if the right to a reassessment is not exercised, there is no further right of appeal.
  - (5) If the claimant is dissatisfied with the assessment for the purposes of paragraph (1)(a), (2)(a) or (3) as the case may be, he or she may require a reassessment of the matters addressed by the assessment provided that he or she makes an application to a determining officer for a reassessment no later than 21 days after receipt of the initial assessment.

- (6) An application under paragraph (5) must set out the reasons for requiring a reassessment.
- (7) A reassessment following an application under paragraph (5) shall be made by an approved registered person other than the approved registered person who made the initial assessment.
- (8) A determining officer shall notify the claimant in writing of –
  - (a) the reassessment and the reasons for it; and
  - (b) the claimant's right to appeal to the Medical Appeal Tribunal for a review of the reassessment and the time within which such a right must be exercised.

## **5 Determination of claims**

- (1) A determining officer shall determine –
  - (a) whether a claimant is entitled to a benefit and, if so, the amount of such a benefit;
  - (b) whether any change to a benefit is required; and
  - (c) any question or matter arising from a claim other than a matter which falls to be assessed or otherwise determined by an approved registered person under Article 4.
- (2) A determining officer who has made a determination under paragraph (1) shall notify, in writing, the claimant and, where applicable, the claimant's partner –
  - (a) of the determination and the reasons for it;
  - (b) if a benefit has been granted, the amount of benefit and method of payment;
  - (c) of the right to a redetermination and the time within which it must be exercised; and
  - (d) that if the right to a redetermination is not exercised, there is no further right of appeal.
- (3) If a claimant or the claimant's partner is dissatisfied with a determination made under paragraph (1), he or she may require that the matter is redetermined provided that he or she makes an application to a determining officer no later than 21 days after receipt of the initial determination.
- (4) An application under paragraph (3) must set out the reasons for requiring a redetermination.
- (5) A redetermination following an application under paragraph (3) shall be made by a determining officer other than the determining officer whose determination is to be redetermined.
- (6) A determining officer who has redetermined any matter under paragraph (5) shall notify in writing the claimant and, where applicable, the claimant's partner –
  - (a) of the redetermination and the reasons for it;

- (b) if a benefit has been granted or adjusted, the amount of benefit and method of payment; and
  - (c) of the claimant's right to appeal to the Social Security Tribunal for a review of the redetermination and the time within which such right must be exercised.
- (7) Subject to any decision by the Social Security Tribunal or the Royal Court, where, following a determination or redetermination under this Article –
- (a) a determination is made that a claimant is entitled to a benefit, a determining officer shall arrange for payment of that benefit to the claimant; or
  - (b) a determination is made in respect of a benefit in payment that the claimant is no longer entitled to such a benefit, or part of such a benefit, a determining officer shall arrange for payment of the benefit to be adjusted accordingly.

## **6 Appeals**

- (1) The Schedule shall have effect with respect to appeals to a tribunal.
- (2) A person who is aggrieved by a decision of a tribunal may, on a point of law only, appeal to the Royal Court.
- (3) An appeal under paragraph (2) may only be made with leave of the tribunal or the Royal Court, and must be made before the end of the period of 28 days beginning with the date of notification of the tribunal's written decision to the person who was the appellant before the tribunal.
- (4) An application for leave to appeal under paragraph (3) may include an application to stay a decision of the tribunal pending the appeal.
- (5) No appeal shall lie from a decision of the tribunal refusing leave for the institution or continuance of, or for 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.
- (6) A tribunal, a determining officer or an approved registered person may refer any point of law to the Royal Court for the Royal Court to give a ruling on the point.

## **7 Notification of change of circumstances and furnishing of information**

- (1) Where a claimant or a claimant's partner knows or suspects that there has been a change of circumstances that might affect entitlement to, or the amount of, a benefit, he or she must, as soon as practicable, notify the Minister in writing of the change of circumstances.
- (2) The person mentioned in paragraph (1) must furnish to the Minister, in such manner and within such time as the Minister may specify, such information as the Minister may require as a consequence of the change of circumstances in order to determine whether a claimant's entitlement to, or amount of, a benefit is affected by the change.

**8 Persons acting on behalf of a claimant**

- (1) In this Article, “claimant” includes a person who is unable to make a claim.
- (2) In the case of a claimant in respect of whom none of the circumstances in paragraph (3) apply and who is unable to act in relation to a claim, the Minister may appoint a person (which may include the Minister or a determining officer) to act on the claimant’s behalf in relation to any matter relating to a claim or benefit including making a claim and receiving a benefit on the claimant’s behalf.
- (3) Those circumstances are that the claimant –
  - (a) has been received into guardianship in pursuance of a guardianship application under Article 14 of the Mental Health (Jersey) Law 1969;
  - (b) has a curator appointed under Article 43 of that Law to manage and administer his or her property and affairs; or
  - (c) has a *tuteur*.
- (4) An appointment under paragraph (2) shall terminate –
  - (a) if the claimant is received into guardianship, or has a curator or *tuteur* appointed;
  - (b) at the request of the person who has been appointed;
  - (c) if revoked by the Minister; or
  - (d) if the claimant becomes able to act.
- (5) A claimant who does not have another person acting for him or her under paragraph (2) and none of the circumstances in paragraph (3) apply, may appoint another person to act on the claimant’s behalf in relation to any matter relating to a claim or benefit including making a claim and receiving a benefit on the claimant’s behalf.
- (6) An appointment under paragraph (5) shall be in writing and copied to the Minister.
- (7) A person appointed under paragraph (5) may act on the claimant’s behalf until whichever of the following happens first –
  - (a) the claimant revokes the appointment;
  - (b) the Minister makes an appointment under paragraph (2); or
  - (c) one of the circumstances described in paragraph (3) apply to the claimant.
- (8) A person who is appointed to act on behalf of the claimant in accordance with this Article, or who is acting on behalf of the claimant by reason of any of the circumstances referred to in paragraph (3), is referred to in this Order as the claimant’s agent.
- (9) Where a person is appointed to act on behalf of a claimant under paragraph (2), the Minister may deduct any weekly amount that the claimant is required to pay under this Order or the Benefits Order towards the costs of long-term care from the weekly amount of any of the benefits specified in Article 12 of the Social Security (Jersey) Law 1974 payable to the claimant and shall pay, in accordance with Article 9(1)(c), a



weekly amount of the same amount that has been deducted to the approved care home in which the claimant is residing or a provider of the approved care package which the claimant is receiving.

## **9 Payment of benefits**

- (1) Where a claimant is entitled to a benefit, payment may be made directly to any of the following –
  - (a) the claimant;
  - (b) the claimant's agent; or
  - (c) the approved care home in which the claimant is residing or a provider of the approved care package which the claimant is receiving.
- (2) A determining officer may, having taken into account the views of the claimant or, if applicable, the claimant's agent, decide which of the persons referred to in paragraph (1) is the most appropriate recipient for payment of a benefit and make payments to that recipient accordingly.
- (3) If a claimant dies, benefits calculated in accordance with paragraph (5) may continue to be paid for a period of 2 days starting the day after the date of death.
- (4) If a claimant leaves an approved care home for any reason (other than in the event of death), without prejudice to any benefits that may be payable in respect of long-term care provided to the claimant elsewhere following his or her departure, benefits calculated in accordance with paragraph (5) shall continue to be paid towards the costs of long-term care that the claimant would have expected to receive in that care home for a period of 2 days starting the day after the date of departure, if, in the opinion of a determining officer, the claimant was unable to give reasonable advance notice of the departure.
- (5) For the purposes of paragraph (3) or (4), the benefits shall be calculated and paid on the basis of the weekly costs referred to in Article 9(b), (c) (disregarding the amount for incidental expenses) and (d) of the Benefits Order chargeable to the claimant immediately before the date of death or departure, as the case may be.

## **10 Recovery of benefits wrongly paid**

- (1) If it is found at any time that any benefit has been paid that was not properly payable, the Minister may require it to be repaid by the person to whom it was paid or, in the case of the death of such a person, by either of the following –
  - (a) a person charged with the administration of the deceased recipient's estate; or
  - (b) the claimant's partner, if applicable, where the benefit was paid directly to the claimant.
- (2) Proceedings for the recovery of any sum which is required to be repaid under paragraph (1) may be instituted by the Treasurer of the States and

notwithstanding any enactment or rule of law to the contrary, any such proceedings may be brought at any time within 10 years from the time when that sum was paid, or, where the proceedings are for the recovery of a consecutive series of sums, within 10 years from the date on which the last sum of the series was paid.

- (3) Any sum which is required to be paid under paragraph (1) may, without prejudice to any other remedy, be recovered by means of deduction from any other payment due under the Law to the person who is required to repay the sum.

## **11 Notices**

- (1) For the purpose of this Article “notice” means any of the following –
  - (a) notification of an assessment or a reassessment under Article 4;
  - (b) notification of a determination or a redetermination under Article 5.
- (2) A notice –
  - (a) may be sent to the claimant and, if applicable, the claimant’s partner by post; and
  - (b) shall be treated as duly sent if sent to that person’s usual or last known address.

## **PART 3**

### **APPROVALS**

## **12 Approved registered persons**

- (1) Subject to the following provisions of this Article, the descriptions of registered persons who may make assessments for the purposes of Article 5 of the Law or for the purpose of approving care packages under Article 7 of the Law, or both, are as follows –
  - (a) nurse;
  - (b) social worker;
  - (c) occupational therapist;
  - (d) registered medical practitioner, andin this Article, except where specified otherwise, references to making assessments include approving care packages for the purposes of Article 7 of the Law.
- (2) A person who falls within a description in paragraph (1) may apply to the Minister to make assessments for the purposes of Article 5 or 7 of the Law or both.
- (3) An application under paragraph (2) must be made to the Minister on a form approved by the Minister, or in such other manner as the Minister may accept as sufficient in the circumstances of the case, and accompanied by such information, documents and evidence as the

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Minister requires for the purpose of enabling the application to be determined.

- (4) On receiving an application under paragraph (2) the Minister may –
  - (a) grant the application for the purposes of Article 5 or 7 of the Law or both; or
  - (b) refuse the application (either in whole or in part).
- (5) The Minister shall notify the applicant in writing of the decision under paragraph (4) with reasons and, if the application is granted, whether the person has the status of being an approved registered person for the purpose of making assessments under Article 5 or 7 of the Law, or both.
- (6) The Minister shall not grant an application under paragraph (4)(a) unless he or she is satisfied that –
  - (a) the person, if a nurse, social worker or occupational therapist, is registered under the Health Care Law 1995;
  - (b) the person, if a medical practitioner, is registered under the Medical Practitioners Law 1960;
  - (c) if the application is for the purposes of Article 5 of the Law, the person is competent to make assessments for that purpose; and
  - (d) if the application is for the purposes of Article 7 of the Law, the person is competent to make assessments for that purpose.
- (7) A person whose application has been granted under paragraph (4) shall have the status of an approved registered person for the purpose stated in the Minister's decision.
- (8) A person's status as an approved registered person under paragraph (7) is suspended if –
  - (a) the person's name is removed from the register under Article 8 of the Health Care Law 1995;
  - (b) registration of the person under the Health Care Law 1995 is cancelled under Article 10 of that Law; or
  - (c) registration of the person under the Medical Practitioners Law 1960 is cancelled or suspended under Article 9 or 10 of that Law.
- (9) If, following a suspension of a person's status as an approved registered person under paragraph (8) –
  - (a) the person's name is restored to the register under the Health Care Law 1995;
  - (b) cancellation of the person's registration is rescinded under that Law; or
  - (c) registration of the person under the Medical Practitioners Law 1960 is no longer cancelled or suspended under that Law,the suspension under paragraph (8) no longer applies and the person's status is restored as an approved registered person for the purpose stated in the Minister's decision under paragraph (4).

- (10) If, following a decision to grant an application under paragraph (4) the Minister determines that –
- (a) in the case of an application granted for the purposes of Article 5 of the Law, the person is no longer competent to make assessments for that purpose; or
  - (b) in the case of an application granted for the purposes of Article 7 of the Law, the person is no longer competent to make assessments for that purpose,
- the Minister shall notify the person in writing of the Minister’s determination with reasons and from the date specified in the notice, subject to paragraph (13), the person shall no longer have the status of an approved registered person for that purpose.
- (11) A notification of a decision to refuse an application under paragraph (4) or of a determination under paragraph (10) shall be made only after consideration of any objections or representations in accordance with paragraph (12).
- (12) Before giving notification under paragraph (4) or (10), the Minister must serve notice on the person –
- (a) giving the Minister’s reasons for the Minister’s proposed refusal or determination; and
  - (b) stating that within such period as may be specified in the notice (not being less than 21 days beginning with the date of service of the notice) the person on whom it is served may make objections or representations in writing to the Minister concerning the proposal.
- (13) If a person is aggrieved by –
- (a) a decision of the Minister under paragraph (4); or
  - (b) a determination under paragraph (10),
- the person may appeal to the Royal Court no later than 28 days after the date of receipt of the notification of the decision or determination, as the case may be, on the ground that the decision or determination of the Minister was unreasonable having regard to all the circumstances of the case.
- (14) Unless the Royal Court so orders, the lodging of an appeal shall not operate to stay the effect of a decision under paragraph (4) or a determination under paragraph (10) pending determination of the appeal.
- (15) On hearing the appeal, the Court may confirm, reverse or vary the Minister’s decision or determination, as the case may be.

### **13 Approved care homes**

- (1) In this Article “registered home” means a home which is –
- (a) registered under the Nursing and Residential Homes (Jersey) Law 1994; or
  - (b) would be required to be registered under that Law were it not for Article 3(2)(a) or (c) of that Law.

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- (2) A person carrying on a registered home may apply to the Minister for the home to be an approved care home.
  - (3) An application under paragraph (2) must be made to the Minister on a form approved by the Minister, or in such other manner as the Minister may accept as sufficient in the circumstances of the case, and accompanied by such information, documents and evidence as the Minister requires for the purpose of enabling the application to be assessed.
  - (4) On receiving an application under paragraph (2) the Minister may –
    - (a) grant the application;
    - (b) grant the application on a provisional basis; or
    - (c) refuse the application.
  - (5) The Minister shall notify the applicant in writing of any decision under paragraph (4) (a) or (b) with reasons and, if the application is granted –
    - (a) under paragraph (4)(a), that the home is an approved care home (such a home being referred to in this Article as a “fully approved care home”); or
    - (b) under paragraph (4)(b), that the home is an approved care home only to the extent that it provides long term care to individuals who were resident in the home immediately before the application was granted (such a home being referred to in this Article as a “provisionally approved care home”).
  - (6) The Minister shall not grant an application under –
    - (a) paragraph (4)(a), unless he or she is satisfied that –
      - (i) the home meets the description in paragraph (1), and
      - (ii) there is an agreement in place between the home, or a person representing the home, and the Minister with respect to the administration services provided by the home, such services being ancillary to the long-term care that the home provides; or
    - (b) paragraph (4)(b), unless he or she is satisfied that –
      - (i) the home meets the description in paragraph (1), and
      - (ii) although there is no agreement such as is described in paragraph (6)(a)(ii), arrangements have been agreed between the home, or a person representing the home, and the Minister, with a view to an agreement such as described in paragraph (6)(a)(ii) being made in the future.
  - (7) A fully approved care home or provisionally approved care home which ceases to be a registered home is no longer an approved care home for the purposes of the Law from the date that its cessation as a registered home takes effect.
  - (8) If the Minister is satisfied that a fully approved care home or a provisionally approved care home –

- (a) is in breach of a condition of registration under the Nursing and Residential Homes (Jersey) Law 1994 (in circumstances where paragraph (7) does not apply); or
- (b) is in breach of the agreement referred to in paragraph (6)(a)(ii) or the arrangements referred to in paragraph (6)(b)(ii), as the case may be,

the Minister may take the steps referred to in paragraph (9).

- (9) Those steps are that –
  - (a) in the case of a fully approved care home –
    - (i) the Minister may make a determination by imposing a restriction on the care home to the effect that it is an approved care home for the purposes of the Law only in respect of persons resident in the home immediately before the date that the restriction is imposed, and
    - (ii) if, after imposing such a restriction, the Minister is not satisfied that the breach of the condition or agreement referred to in paragraph (8) is likely to be remedied in a satisfactory manner, the Minister may determine that the home ceases to be an approved care home for the purposes of the Law from the date of the Minister's determination; or
  - (b) in the case of a provisionally approved care home, if the Minister is not satisfied that the breach of the condition or arrangements referred to in paragraph (8) is likely to be remedied in a satisfactory manner, the Minister may determine that the home ceases to be an approved care home for the purposes of the Law from the date of the Minister's determination.
- (10) A notification of a decision to refuse an application under paragraph (4)(c) or of a determination under paragraph (9) shall be by notice in writing with reasons to the person carrying on the care home and only after consideration of any objections or representations in accordance with paragraph (11).
- (11) Before giving a notification under paragraph (4)(c) or (9) the Minister must serve notice on the person carrying on the care home –
  - (a) giving the Minister's reasons for the Minister's proposed refusal or determination; and
  - (b) stating that within such period as may be specified in the notice (not being less than 21 days beginning with the date of service of the notice) the person on whom it is served may make objections or representations in writing to the Minister concerning the proposal.
- (12) If a person is aggrieved by –
  - (a) a decision of the Minister under paragraph (4); or
  - (b) a determination under paragraph (9),

the person may appeal to the Royal Court no later than 28 days after the date of receipt of the notification of the decision or determination, as the case may be, on the ground that the decision or determination of the Minister was unreasonable having regard to all the circumstances of the case.

- (13) Unless the Royal Court so orders, the lodging of an appeal shall not operate to stay the effect of a decision under paragraph (4) or a determination under paragraph (9) pending determination of the appeal.
- (14) On hearing the appeal, the Court may confirm, reverse or vary the Minister's decision or determination.

## **PART 4**

### TRANSITIONAL PROVISIONS

#### **14 Interpretation**

- (1) In this Part –
  - “HSS Charges Law” means the Long-Term Care (Health and Social Services Charges) (Jersey) Law 2014;
  - “long-term care services” has the same meaning as in the HSS Charges Law.
- (2) References in this Part to a person's long-term care needs before the date this Order comes into force shall be construed as a reference to the person's long-term care needs as described in Article 5(1) of the Law as if that Article were in force before that date.

#### **15 Deemed registered persons**

- (1) A person who –
  - (a) on the date that this Order comes into force is a registered person who is a nurse or social worker; and
  - (b) immediately before that date had an arrangement with the Minister for Social Security for the purpose of that person –
    - (i) making assessments of the long-term care needs of individuals equivalent to the assessments described in Article 5(1) of the Law, or
    - (ii) approving arrangements for providing care for a person with such needs equivalent to the arrangements described in Article 7(1) of the Law,shall be deemed to be an approved registered person for the purposes of Article 5 of the Law where clause (i) applies or for the purposes of Article 7 of the Law where clause (ii) applies.
- (2) A person to whom –
  - (a) paragraph (1)(b)(i) applies, is referred to in this Part as a “deemed Article 5 approved registered person”;
  - (b) paragraph (1)(b)(ii) applies, is referred to in this Part as a “deemed Article 7 approved registered person”.

**16 Deemed approved care homes**

A home which meets the description in Article 13(1) on the date that this Order comes into force shall, on that date, be deemed to be –

- (a) a fully approved care home if there is an agreement in place between the home, or a person representing the home, and the Minister with respect to the administration services provided by the home, such services being ancillary to the long-term care that the home provides; or
- (b) a provisionally approved care home if there is no agreement in place such as described in paragraph (a) but arrangements have been agreed between the home, or a person representing the home, with a view to an agreement such as described in paragraph (a) being made in the future.

**17 Assessments and approvals before the date this Order comes into force**

- (1) An assessment of an individual as having long-term care needs of a level equivalent to any level described in column 2 of the table in Article 8 of the Benefits Order by a deemed Article 5 approved registered person before the date this Order comes into force shall, subject to paragraph (2), have effect as an assessment of that person as having that level of need on the date this Order comes into force for the purposes of Article 5 of the Law, the Benefits Order and this Order.
- (2) An assessment shall have the effect described in paragraph (1) subject to confirmation by a determining officer that he or she is satisfied that the evidence justifies the level of need that has been assessed.
- (3) Where –
  - (a) an individual has been assessed as having long-term care needs described in paragraph (1);
  - (b) such needs are met by arrangements for providing long-term care to the individual in his or her home; and
  - (c) such arrangements were approved by a deemed Article 7 approved registered person before the date this Order comes into force or are equivalent to arrangements that could be approved by such a person,

those arrangements shall be deemed on the date that this Order comes into force to be an approved care package for the purposes of Article 7 of the Law, the Benefits Order and this Order.

**18 Deemed determinations**

- (1) Where, before the date that this Order comes into force, an individual has been notified by a person acting on behalf of the Minister of whether the individual is likely to be entitled to a benefit under the Law and, if so, the amount of such benefit, such notification will be deemed to be a determination by a determining officer made on 1st July 2014 under Article 5(1)(a) that the individual is entitled to such a benefit of that amount (“deemed determination”) and to have been received by the individual on that date.



- (2) Articles 5 and 6 shall apply to a deemed determination as they apply to a determination under Article 5(1)(a).

## **19 Payment towards standard care costs**

- (1) Any payment made by an individual on or after 1st January 2013 and before the date this Order comes into effect to meet the individual's long-term care needs shall be treated as having been paid towards the costs of the person's appropriate level of standard care for the purpose of meeting the condition in Article 9(b) of the Benefits Order if –
- (a) at the time of the payment the individual was an adult;
  - (b) at the time of the payment the individual met the conditions for residency referred to in Article 3(2)(e) of the Law as if that Article were in force at the time of the payment and references to the time of the person's claim for benefit were references to the time of that payment;
  - (c) the care provided to the individual at the time of the payment was for meeting the individual's needs of a level that has been assessed and has effect as described in Article 17(1);
  - (d) the care provided to the individual at the time of the payment was –
    - (i) in a home that, on the date this Order comes into effect, is deemed to be an approved care home under Article 16, or
    - (ii) comprised in arrangements deemed to be an approved care package under Article 17(3); and
  - (e) the individual has made a claim as described in Article 2 or has received a deemed determination as described in Article 18(1).
- (2) Article 10 of the Benefits Order shall apply to any payment that is treated under paragraph (1) as being paid for the purpose described in that paragraph.

## **20 Persons receiving payments with respect to residential care under the Income Support (Transitional Provisions) (Jersey) Order 2008**

- (1) This Article applies to an adult who, immediately before the date that this Order comes into force –
- (a) was eligible for a payment under Article 9 of the Income Support (Transitional Provisions) (Jersey) Order 2008 (“Article 9”); or
  - (b) was a member of a household eligible for a payment under Article 4 of that Order in circumstances where Article 6 does not apply by virtue of Article 7 (“Article 4”),
- such a person being referred to in this Article as an “eligible person”.
- (2) On the date that this Order comes into force, an eligible person is deemed to –
- (a) meet the conditions for residency referred to in Article 3(2)(e) of the Law; and

- (b) have made a claim for benefit in accordance with Article 2 of this Order.
- (3) If the amount of a weekly payment to which an eligible person was entitled immediately prior to the date that this Order comes into force under Article 9 or to which the eligible person's household was entitled under Article 4 exceeds the amount of benefits for any week which are payable to the eligible person under the Benefits Order, the aggregate amount of such benefits shall be increased by such amount as the amount of payment –
  - (a) under Article 9; or
  - (b) the amount of payment under Article 4 to the extent that such payment was for the costs of residential care for the eligible person,  
  
exceeds the amount of the benefits payable for that week to the eligible person under the Benefits Order.
- (4) In paragraph (3) the reference to benefits payable to an eligible person under the Benefits Order refers to the aggregate of all the weekly benefits payable to the eligible person under any of Articles 9, 11 and 12 of that Order.
- (5) On and after the date that this Order comes into force –
  - (a) an eligible person is no longer entitled to a weekly payment under Article 9; and
  - (b) a household is no longer entitled to a payment under Article 4 to the extent that such payment is for the costs of residential care for an eligible person.

## **21 Persons paying in full charges under the HSS Charges Law**

- (1) This Article applies to a person aged 65 years or over who, immediately before the date that this Order comes into force –
  - (a) was receiving long-term care services in a hospital as defined in the Long-Term Care (Health and Social Services Charges) (Jersey) Order 2014;
  - (b) was liable to pay the amount specified in that Order for those long-term care services; and
  - (c) did not receive any support from the Minister for Social Security in respect of the amount payable under that Order,  
  
such person being referred to in this Article as an “eligible person”.
- (2) On the date that this Order comes into force an eligible person is deemed to –
  - (a) meet the conditions for residency referred to in Article 3(2)(e) of the Law; and
  - (b) have made a claim for benefit in accordance with Article 2 of this Order.
- (3) An eligible person who continues to receive long-term care services on and after the date this Order comes into force, subject to meeting the

conditions in paragraph (4), shall receive a long-term care benefit in the form of a weekly grant instead of the grant referred to in Article 9 of the Benefits Order as follows –

(A + B + C) minus D,

where –

A is the standard care costs at the rate shown in the table in Article 8 of the Benefits Order for the eligible person's appropriate level of standard care for the person in an approved care home;

B is the amount shown in Article 9(c) of the Benefits Order towards the weekly costs of the eligible person living in an approved care home (disregarding the amount for incidental expenses);

C is the weekly amount, if any, that was payable by the Minister for Health and Social Services for the provision of long term care services to the eligible person in an establishment, other than one funded by the Minister, immediately before the date that this Order comes into force to the extent that amount is in excess of A + B;

D is £485.31.

- (4) The conditions referred to in paragraph (3) are –
- (a) the eligible person pays £485.31 a week for the provision of such long-term care services on and after the date that this Order comes into force or, in the case of any period of less than a week, £69.33 a day; and
  - (b) the eligible person receives long-term care services in the same establishment in which the person was receiving such services on the date immediately before the date that this Order comes into force.
- (5) Where paragraph (3) applies to an eligible person, the conditions in Article 9 and the provisions in Articles 11 and 12 of the Benefits Order shall be disregarded.
- (6) If an eligible person does not meet the condition in paragraph (4), an amount of £182.82 for each week the eligible person received long-term care services for the period ending 30th June 2014 and beginning not earlier than 1st January 2013 shall be treated as having been paid towards the costs of the eligible person's appropriate level of standard care for the purpose of meeting the condition in Article 9(b) of the Benefits Order.
- (7) If the condition in paragraph (8) is satisfied, the weekly amount of any benefit payable under the Benefits Order to an eligible person to whom paragraph (6) applies shall be increased by the weekly amount, if any, that was payable by the Minister for Health and Social Services for the provision of long-term care services to the eligible person in an establishment, other than one funded by the Minister, immediately before the date that this Order comes into force to the extent that amount is in excess of A + B where –

A is the standard care costs at the rate shown in the table in Article 8 of the Benefits Order for the eligible person's appropriate

level of standard care for the eligible person in an approved care home;

B is the amount shown in Article 9(c) of the Benefits Order towards the weekly costs of the eligible person living in an approved care home (disregarding the amount for incidental expenses).

- (8) The condition referred to in paragraph (7) is that the eligible person continues to receive long-term care services in the same establishment in which the eligible person was receiving long-term care services immediately before the date that this Order comes into force.

## **22 Persons under the age of 65 receiving long-term care services**

- (1) This Article applies to a person who, immediately before the date this Order comes into force, was an adult under the age of 65 years receiving long-term care services within the meaning of the HSS Charges Law for which the person would have been liable to pay a charge under the Long-Term Care (Health and Social Services Charges) (Jersey) Order 2014 if the person had been aged 65 years or over, such a person being referred to in this Article as an “eligible person”.
- (2) On the date that this Order comes into force, an eligible person shall be deemed to –
- (a) meet the conditions for residency referred to in Article 3(2)(e) of the Law;
  - (b) have made a claim for benefit in accordance with Article 2 of this Order; and
  - (c) have no income or assets for the purposes of calculating the person’s entitlement to benefits in accordance with the Benefits Order.

**PART 5**

**CLOSING**

**23 Citation and commencement**

This Order may be cited as the Long-Term Care (General Provisions) (Jersey) Order 2014 and shall come into force on the same date that Parts 3 and 4 of the Long-Term Care (Jersey) Law 2012 come into force.

*Signed*.....

*Date*.....

*Minister for Social Security*

**SCHEDULE**

(Article 6)

**APPEALS TO THE MEDICAL APPEAL TRIBUNAL OR THE SOCIAL SECURITY TRIBUNAL****1 Appeals to the Tribunal**

- (1) In this Schedule –
- “Tribunal” means the Medical Appeal Tribunal constituted under Article 9 of the Income Support (Jersey) Law 2007 or the Social Security Tribunal constituted under the Social Security (Jersey) Law 2007, as the case requires;
- “Registrar” means the person appointed under Article 4 of the Social Security (Determination of Claims and Questions) (Jersey) Order 1974.
- (2) If, within 14 days of receiving notification of a reassessment or redetermination as the case may be –
- (a) a claimant is dissatisfied with a reassessment, he or she may appeal to the Medical Appeal Tribunal for a review of the reassessment; or
- (b) a claimant or a claimant’s partner is dissatisfied with a redetermination, he or she may appeal to the Social Security Tribunal for a review of the redetermination.
- (3) An appeal made outside the 14 day period, but within 28 days of receiving notification of the reassessment or redetermination may be allowed with the consent of the chairman of the Tribunal.
- (4) Every appeal must 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.
- (5) The parties to an appeal before the Tribunal are the appellant and the Minister and each party or any person acting on behalf of that party may make representations to the Tribunal.
- (6) The Tribunal may admit any duly authenticated written statement or other material as evidence of any fact where it thinks it just and proper to do so.
- (7) The Tribunal may at any time require any of the following –
- (a) the appellant;
- (b) the approved registered person who made the reassessment;
- (c) the determining officer who made the redetermination,
- to furnish it with further particulars in writing within such time as it may direct, and may, at any stage of the proceedings allow the amendment of any appeal or any statement or particulars and extend the time for furnishing any statement or particulars.
- (8) If, after the expiration of the time, or where the time has been extended, expiration of the extended time, for furnishing any statement or

particulars under sub-paragraph (7), the appellant has failed to do so, the appeal is to be treated as having been abandoned.

- (9) Subject to this Schedule, the Tribunal may regulate its own procedures.

## **2 Procedure in cases of groundless appeals**

- (1) Where, in the opinion of a determining officer, an appeal is made on grounds that are bound to fail, the determining officer may, within 14 days of receiving a copy of the appeal on behalf of the Minister, request the Registrar to place the papers before the chairman or deputy chairman of the Tribunal.
- (2) If, on considering the papers, the chairman or deputy chairman of the Tribunal is of the opinion that the appeal is bound to fail, he or she must send a notice to the appellant stating that –
- (a) he or she has considered the grounds for appeal and is of the opinion that the appeal is bound to fail; and
- (b) unless the appellant renews his or her appeal to the Tribunal within 14 days of receiving the notification, the appeal will be treated as having been abandoned.

## **3 Decision without a hearing**

If the appellant and the Minister agree and the Tribunal thinks that a matter before it can properly be determined on the particulars supplied by the parties without a hearing, it may determine the matter without a hearing on the particulars so supplied.

## **4 Hearings of the Tribunal**

- (1) The Tribunal must sit in public unless the Tribunal considers it necessary to sit in private.
- (2) However, no person other than the Registrar may be present while the Tribunal is considering its decision.
- (3) The Tribunal may adjourn the hearing from time to time as it thinks fit.
- (4) 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 appellant or the Minister.
- (5) If, after notice of the hearing has been duly given, the appellant or the Minister fails to appear at the hearing, the Tribunal may proceed to determine the appeal notwithstanding the absence of both or either of them, or may give such directions with a view to the determination of the appeal as the Tribunal thinks just and proper.
- (6) The Tribunal may require any party to proceedings before the Tribunal under this Schedule or any witness in the proceedings to give evidence on oath and, for that purpose, the chairman or deputy chairman presiding over the Tribunal has power to administer an oath.

- (7) Where, in connection with the determination of any appeal, there is before the Tribunal medical advice or medical evidence relating to the appellant that has not been disclosed to the appellant and, in the opinion of the chairman or deputy chairman, the disclosure to the appellant of that advice or evidence would be harmful to the appellant's health, such advice or evidence is not required to be disclosed to the appellant, but the Tribunal is not by reason of such non-disclosure precluded from taking it into account for the purpose of the appeal.

## **5 Tribunal decisions**

- (1) The Tribunal may confirm, reverse or vary the reassessment or redetermination and must give its decision in public.
- (2) The decision of the majority of the members of the Tribunal is the decision of the Tribunal and there must 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 must send a copy of such written record to the parties as soon as practicable after the appeal has been determined.
- (3) Where the Tribunal has made a decision adverse to the appellant, the appellant must be advised that the decision on the facts is final but that he or she may appeal to the Royal Court on a point of law.



