

# **STATES OF JERSEY**



## **DRAFT INCOME SUPPORT (JERSEY) REGULATIONS 200- (P.90/2007): SECOND AMENDMENTS**

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**Lodged au Greffe on 25th September 2007  
by the Health, Social Security and Housing Scrutiny Panel**

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**STATES GREFFE**

DRAFT INCOME SUPPORT (JERSEY) REGULATIONS 200- (P.90/2007): SECOND AMENDMENTS

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PAGE 45, REGULATION 1 –

*In paragraph (1) after the definition “child day care component” insert the following definition –*

“ ‘day care’ means the looking after a child –

- (a) by a day carer, or in day care accommodation, in circumstances regulated by the Day Care of Children (Jersey) Law 2002; and
- (b) by a nanny accredited by the Jersey Child Care Trust;”.

PAGE 47, REGULATION 2 –

*In paragraphs (1) and (2) for the words “35 hours a week” substitute the words “25 hours a week”.*

PAGE 47, REGULATION 2 –

(a) *After paragraph (1) insert the following paragraph and renumber the subsequent paragraphs accordingly–*

“(2) A person who works for at least 20 hours a week is treated as being engaged in full time work if the person has worked those hours for at least 12 months prior to a claim being made for income support by a member of the person’s household.”;

(b) *in the renumbered paragraph (3) after the words “35 hours a week” insert the words “(or for 20 hours a week if the person comes within paragraph (2))”.*

PAGE 48, REGULATION 4 –

*For the word “immediately” substitute the words “as soon as reasonably practicable”.*

PAGE 48, REGULATION 5 –

(a) *Renumber the existing text as paragraph (1);*

(b) *in paragraph (1)(b) delete the word “and”;*

(c) *in paragraph (1)(c) for the full stop substitute the word “and”;*

(d) *after paragraph (1)(c) insert the following sub-paragraph –*

“(d) either not received a written notice from the Minister in the form specified in paragraph (2) or if the person has received such a notice, has, during the 28 days since receiving it, complied with sub-paragraphs (a), (b) and (c).”;

(e) *after paragraph (1) insert the following paragraph –*

“(2) The notice mentioned in paragraph (1)(d) shall warn the person that, in the opinion of the

Minister, the person has not, during the past 28 days, been actively seeking work and unless he or she does so during the next 28 days he or she will be treated as not actively seeking work and will be liable to lose entitlement to income support.”.

PAGE 48, REGULATION 7 –

*After Regulation 7 insert the following Regulation –*

**“8 Article 5 of Law amended**

In Article 5(3)(c) of the Law after the word “household” there shall be inserted the words “or employing a nanny accredited by the Jersey Child Care Trust to look after that child”.

PAGE 50, SCHEDULE 1, PARAGRAPH 1 –

*After sub-paragraph (1) insert the following subparagraph and renumber the remaining sub-paragraphs and internal cross-references accordingly –*

“(2) However, a household shall continue to be entitled to that component in respect of a member of the household who comes within sub-paragraph (1)(c) or (d) only on account of needing medical treatment.”.

PAGE 51, SCHEDULE 1, PARAGRAPH 3 –

*In sub-paragraph (2)(a) for the words “aged 25” substitute the words “aged 21”.*

PAGE 51, SCHEDULE 1, PARAGRAPH 3 –

*In sub-paragraph (2)(b) for the words “whether in Jersey or elsewhere” substitute the words “and the parent or other person lives in Jersey”.*

PAGE 52, SCHEDULE 1, PARAGRAPH 4 –

*For sub-paragraph (5) substitute the following paragraph –*

“(5) In this paragraph a dwelling is appropriate to the needs of the household –

- (a) if it is no larger than is reasonably necessary for that household;
- (b) if, having regard to all the circumstances, it would be unreasonable to expect the household to move from that dwelling; or
- (c) where –
  - (i) it has become larger than reasonably necessary for the household because the household has become smaller within the last 12 months, and
  - (ii) the household is taking all reasonable steps to find alternative accommodation that is appropriate to the needs of the household.”.

PAGE 54, SCHEDULE 1, PARAGRAPH 7 –

*Delete sub-paragraph (2) and renumber the remaining subparagraph and internal cross-references accordingly.*

PAGE 55, SCHEDULE 1, PARAGRAPH 9–

*In sub-paragraph (b)(ii) delete the words “if the education or training being undertaken is likely to result in an increase in the member’s earning capacity”.*

PAGE 55, SCHEDULE 1, PARAGRAPHS 9 AND 10 –

*(a) In paragraph 9 (b) –*

*(i) in clause (i) delete the word “or”;*

*(ii) in clause (ii) for the full stop substitute the word “; or”;*

*(iii) after clause (ii) add the following clause –*

*“(iii) Article 3(1)(g) of the Law.”;*

*(b) In paragraph 10(2)(b), for the words “or education or training commitments” substitute the words “, education or training commitments or job-seeking commitments”.*

HEALTH, SOCIAL SECURITY AND HOUSING SCRUTINY PANEL

## REPORT

This report starts by drawing attention to the fundamental reasons underlying the introduction to Income Support as outlined in both P.90/2007 Draft Income Support (Jersey) Regulations 200- and P.102/2006 Draft Income Support (Jersey) Law 200- concerning both the Law and Regulations:

### ***'Reasons for change***

*Currently over £60 million (2007) is spent annually in Jersey on means-tested benefits to support over 20% of households (circa 8,000). Available research suggests that even though the total estimated sum spent on social protection in Jersey is less than the European average, the incidence of poverty is about the same but the severity or depth of poverty is less.*

*The existing benefit systems –*

- are often not easy for residents in Jersey to understand;*
- do not always target money to best effect;*
- cause duplication of effort by officials and customers which leads to frustration amongst those trying to get support at difficult times of their lives.*

*The combined effect of the current benefits is an uneven distribution of assistance and, in some instances, the creation of disincentives conspiring to make people worse off as they earn more.*

*Redesigning the current systems to create one benefit with one consistent income assessment will create a fairer, more transparent and accessible system which will be a major step in the drive to minimize the impact of poverty in Jersey.*

*The new system will help and enable people to both avoid poverty and to take appropriate actions and life decisions to get out of poverty. The system will do this by effectively tackling real needs whilst promoting work and encouraging self-reliance. It will be equitable, consistent, sustainable, easily understood and accessible whilst taking account of the whole needs of the family.'*

The Sub-Panel fully accepts the reasoning and the logic of this passage to create 'a fairer more transparent and accessible system to minimise the impact of poverty in Jersey.' However, we have severe reservations that the overall impact of the IS law and regulations as currently drafted will fail to achieve the aims of 'promoting work and encouraging self-reliance.' In particular, we believe that the resources required to deliver sufficient support for increased numbers of applicants to seek and maintain work are insufficient. For a full discussion of these serious reservations members are directed to examine our Scrutiny Report S.R.17/2007 which is due to be presented to the States shortly.

### 1. Page 45, Regulation 1 – Child Day-Care Component

The first amendment concerns the child day-care component of Income Support. This is an essential element in enabling parents, particularly mothers, to undertake work, and Income Support is defined as an 'in work' benefit. Regulation 1 limits payment to carers regulated by the Day Care of Children (Jersey) Law 2002. This Law does not cater for day care provided by accredited nannies; the amendment seeks to extend payment to this form of day care.

The Jersey Child Care Trust in their submission to the Sub-Panel have pointed out that they run an accreditation scheme for nannies, and that in their view there is no reason why a parent should not choose nanny-based day care in their own home for their child or children. Furthermore they have researched the situation and find that there is

no obstacle to the sharing of a nanny by 2 or more families. They have been in discussions with Senators Routier and Le Sueur to promote the use of accredited nannies as a legitimate expense under the Income Support system.

The Chairman of the Jersey Child Care Trust, Colin Powell, wrote to Senator Routier on 12th July this year to again ask him to include Accredited Nannies in the new scheme. The Minister for Social Security has responded in the negative as follows –

*‘I can now confirm that the use of accredited nannies has not been included in the Income Support Legislation and this expense will not be considered in any Income Support calculations.’*

The Sub-Panel fully endorse the views expressed by the Jersey Child Care Trust that the inclusion of accredited nannies would be a sensible and useful addition. The Sub-Panel’s first amendment changes the definition of “child day care component” to include a nanny accredited by the Jersey Child Care Trust. This then allows for a “household” to employ an accredited nanny for Child care and if on Income Support to receive the childcare component.

This amendment is straightforward and has the full support of the Child Care Trust. The Sub-Panel believe that the position of the JCCT will widen the opportunities for appropriate childcare to the many more families that will be required to become job seekers under the new system.

In order to enable this Regulation to be adopted, Article 5 of the Income Support Law also needs a consequential amendment contained in page 48, Regulation 7.

This amendment is neutral as far as manpower and financial resources are concerned.

## 2. Page 47, Regulation 2 – Work Requirements/full time work

*Regulation 2* proposes that the definition of “*full time remunerative work*”, participation in which is the underlying condition for entitlement to Income Support under Article 2(1)(c) that applies to all adults in families that claim, be defined as 35 hours a week.

The Sub-Panel agrees with the Minister’s attempt to promote employment as a fundamental aim of Income Support. However it has grave concerns about the manner in which it is being done. If Regulations 2 to 5 are passed as proposed they will have a range of effects on employment that are not optimal if taken together.

The Minister for Social Security has set a very high threshold in Regulation 2 for the definition of full time work of 35 hours a week. The Regulation of Undertakings Department defines full time remunerative work as 25 hours.

The adoption of the high threshold of 35 hours will increase the workload of those involved in supporting Income Support claimants in full time work very significantly.

The workload required to enable Income Support applicants to return to full time work is indeed onerous. For example the operation of the job seekers agreement places many conditions on the jobseeker. The reasonable steps that the jobseeker should complete within a timescale (normally 1 to 4 weeks) include –

- Applying for three to four jobs per week (depending on the labour market at the time);
- Preparing a CV;
- Undertaking appropriate training provided by the Department;
- Attending a careers appointment;
- Obtaining references from previous employers; and
- Undertaking appropriate voluntary work.

Furthermore, the approach of producing exact definitions of full and part-time work as well as outlining detailed conditions may prove to be too prescriptive to implement and it will necessitate putting in place –

- employment advice and job matching;
- soft and hard skills training services to reflect the needs of the Income Support population- many of whom may have considerable constraints on the type and hours of work they are able to do; and in addition
- imposing tough work conditions places the responsibility on the Minister to deliver a range of services for a whole new population.

In an e-mail of 24th August 2007 to the Sub-Panel the Social Security Department admitted that they will be unable to deliver all of the work related elements required (our emphasis) –

1. The Department has an in-house trainer who is providing most of the Income Support training. Social Security are also using other senior members of staff to deliver specialised training. As Income Support is a purpose-built benefit for Jersey, external trainers would be of little use in delivering training in this area;
2. The Work Zone will be increased by 2 FTE to help with its additional responsibilities. Within the Department, all customer services advisors (the majority of the customer-facing staff) have generic job descriptions;
3. Over the first year or so of Income Support the Department will aim to redistribute staff within the various zones, if identified areas are under-resourced;
4. ***In the first few months of Income Support the Department will not be enforcing the job seeker requirements rigorously on all claimants.*** They will target groups that need particular help (youngsters, people made redundant, etc.) and continue to provide help to anyone who requests it;
5. ***As the system settles down, the Department will write to other groups (parents of older children, individuals with less serious medical conditions, etc.)*** to explain the new system and offer them help in getting back into the work place; and
6. ***Guiding individuals into training and employment will gradually be introduced over the first year or so*** of the new system, to ensure that everyone does receive all the support that they need.

The addition of several thousand employees currently working between 26 and 34 hours is likely to render these targets undeliverable in any reasonable timescale. A far better approach, in the view of our adviser, would be to lower the proposed definition under Regulation 2 of “full time remunerative work” to 25 hours, to make it consistent with the Regulations of Undertakings rules, thereby allowing the Minister to focus on improving services in his Department in the short to medium term.

This would allow the Minister to return to the States with a future amendment to increase the limit to 35 hours or other appropriate level when he can show that the Department has the capacity to provide sufficient services to support it.

There are no financial or manpower implications.

### 3. Page 47, Regulation 2 – Work Requirements/part-time work

This amendment adds a further exemption from the requirement to be in full-time employment to those who, at the time of claiming Income Support, have been in established part-time work of 20 hours or more for the preceding 12 months. This is designed to give recognition to such people who are already making efforts to be self-sufficient and for whom it is unreasonable to expect them to change jobs or to work more hours.

*The Statistics Unit confirmed in an e-mail of 29th August 2007 there were 8,200 part-time workers (individuals working 25 hours or less) in the private sector as at December 2006 out of a total workforce of 51,780.*

Of course, the Sub-Panel recognises the value of in-work advice and assistance. But for these part-time workers any increase in their working hours and income received should be voluntary. Until it is clear that the Minister has the required services in place to enable all such workers to have access to the support needed in seeking additional hours or better remuneration. It would be unwise to attempt to apply this regulation universally.

This proposal will enable the Department to replace the admittedly unachievable targets set with much more reasonable aims which can be built on once resource requirements are known.

Part (b) of this amendment is consequential. There are no additional financial or manpower requirements arising from this amendment.

4. Page 48, Regulation 4 – Availability for Work

For the word “immediately” substitute the words “as soon as is reasonably practicable”.

Regulation 4 puts forward the obligations associated with being available for work and puts forward the position that this is fulfilled if “a person is available for work if the person is willing and able to take up immediately any remunerative work that is suitable work”. However, if we consider that people placed under this obligation may well be in part-time work already and that such employment may require notice of resignation, the wording “immediate” is unfortunate. It is certainly the case that anyone who is currently not working and is “available for work” should be immediately able to take up employment but it would be an error in drafting not to distinguish such cases from those already working. Given that “immediately” will probably mean in practice the next day or following week, even for those who are out of work, the amendment more accurately defines the situation for both existing workers and non-workers.

There are no financial or manpower requirements.

5. Page 48, Regulation 5 – Actively Seeking Work

Regulation 5 of P.90/2007 defines a set of conditions which are required to be met by any adult to qualify as actively seeking work in order that the household should be eligible for Income Support. As currently drafted any adult who fails to meet these conditions will cause the household to have its Income Support automatically withdrawn and to be required to apply for special payments contained in P.91/2007.

The Sub-Panel is of the opinion that these penalties are significant and if applied would result in family hardship. The Sub-Panel therefore recommends that a 28 day warning period be put in place to ensure that households are fully aware of the seriousness of these sanctions and can take steps to comply with the requirements to be actively seeking work before any sanctions are applied.

Extensive research in the UK and OECD shows that the use of sanctions most often affects those with learning difficulties who fail to understand the system, rather than those who might be described as work shy.

There may be limited financial or manpower implications, in that payment may continue longer but the administration costs of withdrawal and restoration of benefit may be reduced.

6. Page 50, Schedule 1 Paragraph 1

This simply requests the Minister to allow the Household to keep the basic component after 4 weeks for a person who needs medical treatment but may be receiving this treatment in the U.K. or elsewhere, for example one member of the household (either child or adult) needing treatment for cancer.

To remove this would be unnecessarily bureaucratic to the point of being cruel. In addition it places the burden on the family to reapply when the person returns to the household after the treatment.

There may be limited manpower and financial implications/savings.



## 7. Amendment Page 51, Schedule 1 Paragraph 3 – Housing Component

For the words “aged 25” substitute the words “aged 21”.

In early drafts of Income Support Regulations – certainly up to June of this year – the Minister for Social Security had committed himself to reducing the age of entitlement from 25 (which was the rule applying to rent rebate and abatement) down to 21. In doing so, he clearly rejected the previous view that parental obligations to children continue well into their young adulthood, that is until 25 years of age. Furthermore, he had also accepted the principle that Income Support was to be a fresh start and not a continuation of previous, inadequate schemes. It is clearly the case that young people who have already left home and established their own independence without recourse to Income Support or rent rebate should be eligible for Income Support should they fall on hard times.

For example, a young person leaves home at 18 because they have a job – then fall unemployed at 21. In these circumstances it is clear that they should be given housing support in their own right. The Sub-Panel therefore finds it surprising that late in the day (July 2007) the Minister chose to move the age of eligibility back to 25. The only argument for doing so put forward by the Minister to the Sub-Panel is that with hindsight introducing a lower age would be too costly.

P.90/2007 however says: “those that have lived away from their parents for a length of time, and having set up a home and then falling on difficult circumstances” would be covered if they “*would not be able to move back to the family home because circumstances in the family home may have changed to prevent this*”.

We consider that such considerations are irrelevant as the young person has achieved independence, is likely to have paid social security contributions and tax and should thus be considered in their own right irrespective of age and with no consideration of availability or reasonableness of parental housing.

The Sub-Panel considered the most simple and effective amendment would be to revert to the age of 21.

Social Security have confirmed that reducing the age limit from 25 to 21 for access to a housing benefit is not anticipated to create many additional claims as the housing department already provides subsidies to most of the household types that would be likely to qualify for income support (vulnerable adults, parents) Additional claimants would be likely to be restricted to single, unemployed people.

About 100 individuals aged 19 – 24 are registered as unemployed at any one time, so it is reasonable to expect that around 70 registered unemployed would be aged 21 – 24. The maximum income support for a single jobseeker would be approximately £250 a week. This would give a total cost of £900,000 based on 100% awards and take-up.

- Some of these claimants will be receiving support from parish welfare under the current system.
- Some of these individuals will already qualify for housing benefit for other reasons (e.g. is married/has a child).
- Some claimants will have household income from other sources.
- Not all claimants will receive as much as £250 benefit (living in lodgings or hostel, still living at home).

Estimates have been made on the assumption that the additional cost will be one quarter to one third of the theoretical maximum. Extra cost would thus be in the range of £230,000 – £300,000.

This represents 0.5% of the total Income Support bill and the Sub-Panel believes that this amendment is so important we recommend that Social Security adjust the levels of Income Support components to accommodate this small change.

**The Sub-Panel is of the opinion that maintenance of an arbitrary cut off age at 25 is discriminatory and likely to be open to challenge as unreasonable under the terms of the ECHR provisions included in the Human Rights (Jersey) Law 2000.**

8. Page 51, Schedule 1 Paragraph 3 – Housing Component

The Sub-Panel believes that the wording of 2(b)(b) is too widely drafted and could be interpreted as giving the power to the Minister to request a young person to leave the Island and rejoin his parents in any part of the world. The amendment removes this possibility.

There are no financial or manpower implications.

9. Page 52, Schedule 1 Paragraph 4 – Rent Component

Restrictions on Rent Component to Reflect Size of Household

The Regulations propose restricting the amount of housing component to reflect set amounts that are deemed reasonable market rents for the size of property that is appropriate for the needs of the household. The Sub-Panel recognises that the concern to avoid subsidising under-occupation is valid and appropriate. However, there is the need for some flexibility to be given a statutory basis in implementation of the approach.

The Sub-Panel considers that it is crucial to allow a period for claimants to move to reduce their housing costs if they are deemed to be under-occupying. This is because tenancy agreements often require a period of notice and such notice can be a month or longer in some instances. If an Income Support claimant has a contractual obligation to pay rent on a property that is larger than Income Support rules allow for, it is entirely reasonable that they be given a period during which they receive the higher amount (still stipulated as the maximum market rent under Schedule 2 of the Regulations) while they make arrangements to move to a smaller property.

The Social Security policy guidelines 7.7 under-occupying a property, to be issued to members of the public to explain the system, already take this into consideration.

The Sub-Panel considers that these guidelines are sufficiently important to appear as regulations, thereby mandating rather than offering guidance to determining officers.

There are no financial or manpower implications.

10. Page 54, Schedule 1, Paragraph 7 – Residential Care

The Social Security Department has made a clear statement of intent as to how residential care will be treated under Income Support –

‘When Income Support is introduced, people in residential care will continue to receive the same support as they receive now. Individuals entering residential care in 2008 will also be supported at comparable rates to existing clients in similar establishments.’

Furthermore it goes on to state that –

*‘A range of standard contracts will be negotiated with care providers during 2008.’*

It is clear then that Income Support arrangements for those in residential care will not be finalised until negotiations and consultation are completed by the end of 2008. The Sub-Panel believes that it is inappropriate pending the completion of this process to remove the mobility element from those in residential care.

The Sub-Panel has gathered evidence from several sources that the ability to get out and about independently is of vital importance to the health and well-being of those in residential care. For example at the public hearing of 11th June 2007 the Service Head and Clinical Lead, Psychological Assessment and Therapy stated –

*'...there is a very high instance of people using anti-depressant medication that are in long term care because they tend to have very few outlets. They do not go out very much, they tend to have few limited social contacts as well. So I think anything which ameliorates that, if you like, which means that they can go out, they can feel they are part of the world and the world is part of them, it would be an excellent idea for that to continue.'*

At another Hearing on 4th June 2007 the Occupational Therapist stated –

*'You know, it is to enable people to become more independent so as they can attend work, or is it to enable them to be more independent and engage in leisure activities or social activities?'*

At the same Hearing on 4th June 2007 the Director and Manager for Mental Health Services states, in answer to the following question –

*Deputy G. S. Southern: 'So, DTA (Disability Transport Allowance) currently plays an important role in enabling people you work with to live a therapeutic life?'*

*Director and Manager for Mental Health Services: 'Yes, I mean, it does.'*

There will be no financial or manpower implications in protecting these payments until the end of 2008 as they will already be covered during that period by transitional arrangements.

11. Page 55, Schedule 1, paragraph 9 – Childcare component (training)

We have asked that the sentence that states if the education or training being undertaken is likely to result in an increase in the member's earnings be deleted.

It was pointed out to the Sub-Panel, again by the Chairman of the Jersey Child Care Trust Mr. C. Powell, that this was very prescriptive, and may limit a person who has one skill training for a much-needed other skill either for themselves or for the required demands in Jersey's employment market.

For example, Jenny works in the Finance industry on £30,000 per year and then has children. After the children reach 5 years of age, it may encourage her back to work if she could retrain with a new skill. It could be in childcare, catering or care of the elderly, all of which may not pay as much to Jenny, however any of these jobs could better fit into her family life because they offer more flexible hours. Jenny should be able to receive cost for day care while undergoing training.

There are no financial or manpower implications.

12. Child Care Component – Actively seeking work

The effect of the amendment is to enable a child day care component to be paid not just where a person is exempted from the requirement to be in full time work under Article 3(1)(d) (because of disablement) or 3(1)(9) (e) (because of undergoing education or training) but also where the person is available for and actively seeking remunerative work – Article 3(1)(g). Without this amendment a jobseeker would not be able to get the component but may need to pay out large sums of money in child care while trying to get work.

It will enable a person who is actively seeking work to afford childcare so that he or she is free to attend interviews or meetings with officers of the Social Security Department. It will also give the child an opportunity to meet and settle into a care environment at a reasonable pace and give the child time to get used to his/her new carer before the parent starts work.

There are no financial or manpower implications for the States arising from these amendments.