

# STATES OF JERSEY



## DRAFT LONG-TERM CARE (JERSEY) LAW 201-

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**Lodged au Greffe on 7th June 2011  
by the Minister for Social Security**

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**STATES GREFFE**





Jersey

## **DRAFT LONG-TERM CARE (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security the provisions of the Draft Long-Term Care (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Deputy I.J. Gorst of St. Clement**

## REPORT

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### **The Long-term Care (Jersey) Law 201- introduces new arrangements for funding long-term care for Jersey residents.**

Jersey's population is ageing. By 2040, those aged 65 and over will account for 30% of the Island's population – double what it is currently.

As more of us are living longer, healthier lives, many more of us will need long-term care in our twilight years. Therefore, the demand for and cost of providing care is going to rise substantially. This poses significant financial challenges to government and individuals alike, and many countries are now reviewing how their societies fund long-term care. The UK is currently looking at the issue once again.

Long-term residential care and nursing care are very expensive. This only becomes apparent to many families when they need to organise care for a relative. Many find the current system of accessing financial assistance in respect of the costs of care complex and difficult to understand and some have questioned its fairness.

At present, the onus is largely on the individual to pay for their own care. However, many hard-working Jersey families are finding that the cost of this care means they are using up their savings and even having to sell their home.

Recognising the need to review the current funding arrangements for long-term care, the Minister for Social Security published a Green Paper (R.5/2010) early last year. Over 550 individuals responded to the consultation, as well as a number of other stakeholders and interested parties.

In light of the responses, the Minister issued a White Paper (R.131/2010) setting out his preferred way forward. The proposals reflected the general consensus around a scheme that moved away from the burden of individual liability to one where responsibility for paying for long-term care was shared across the community as a whole.

In Guernsey, a similar scheme to fund institutional long-term care has been operating successfully for a number of years. The need for change in Jersey was highlighted in Senator A. Breckon's Scrutiny Panel Report.

A key goal of the new scheme is the removal of the financial uncertainty and worry that many people currently face as they or a close family member moves into care.

Another key aim is to give people choice in how they are cared for and where that care is delivered. This gives effect to the wishes expressed by many to stay in their own home for as long as possible.

As a result of introducing this scheme, the amount many people will have to pay out of their savings when they need long-term care will be much less than under current arrangements. The amount will recognise the fact that that we all have to meet our day-to-day living costs whether we are in care or not. The need to use the value of the family home to pay the care fees will largely be a thing of the past. This will help safeguard the inheritance that many families have worked so hard for.

## Summary of the scheme

A new long-term care benefit will be introduced that will meet a large part of the care fees. There will be different rates of benefit according to the level of care required. Individuals requiring care will pay a co-payment towards day-to-day living costs – costs that we all incur. Means-tested assistance will be available for those who cannot meet the co-payment themselves. Individuals will be permitted to ‘top-up’ the benefit to pay for a more expensive room or facilities if they wish.

Access to the long-term care benefit will be based on an objective assessment of care needs and on meeting residency requirements. Care needs will be assessed by trained professionals using an objective placement tool.

Currently, the intention is that there will be 2 residency requirements: at least 10 years’ continuous residence as an adult at any time, **and** one year’s residence immediately before claiming the benefit. The residency conditions will be subject to a States decision.

The long-term care benefit will apply to stays in approved care homes and will also fund approved care packages covering high-level care provided at home. The benefit will only cover long-term care provided on the Island.

A new ring-fenced fund will be established based on compulsory contributions from employees, the self-employed, and pensioners. The initial contribution rate of around 1.5% will be fixed for 5 years. In addition, current States funding of up to £30 million a year will be paid into the Fund. The benefit will be funded on a ‘pay as you go’ basis (today’s contributions paying for those claiming the benefit today) with a small buffer built up to protect against temporary variations.

The benefit will be available to all eligible claimants, including those already in care at the time the scheme starts. The scheme will be administered by the Social Security Department.

It is the intention that the new long-term care benefit will be available in 2013.

The primary legislation giving effect to these proposals on long-term care funding accompanies this Report. The Law presented is an enabling framework with the exact detail of the long-term care scheme appearing in Regulations and Orders.

## Article by Article

**In this section, the Articles of the proposed Law are summarised and further details provided of what it is intended will be implemented following approval of this legal framework.**

**Article 1** is an interpretation provision. In particular, “fund” is defined to mean the long-term care fund.

**Article 2** establishes a new ring-fenced fund under the control of the Minister for Social Security, which will be used only to pay for long-term care.

Money raised from the dedicated Social Security contributions paid by individuals will be directed into this fund.

In the Green Paper consultation, the option of funding long-term care through regular compulsory contributions was rated the most acceptable option. All employees, including the self-employed, will be liable for contributions.

Contributions will be levied on all annual earnings up to the upper earnings limit of £150,000 if proposals currently before the States are adopted.

As in Guernsey, pensioners (except those on lower incomes) will also be expected to contribute. This will make the burden more manageable for all and support inter-generational fairness – especially as the effects of the ageing population are felt. It is expected that only between a third and a half of pensioners will be liable for the contribution. Today's pensioners will be among the first to benefit from the new funding arrangements.

The intention is to set the contribution rate at a level which will sustain the fund for at least 5 years without further increases. Current estimates suggest that a contribution rate of around 1.5% is required over the initial 5 year period, but this is subject to further detailed calculations.

This figure will need to increase in the decades that follow, as the disparity between the number of older people requiring care and the number of younger people working is felt more acutely, but increases in the rate will be minimised by the inclusion of contributions from an increasing number of pensioners paying into the scheme.

It is expected that the bulk of existing States funding on long-term care – amounting to around £30 million a year and delivered through Social Security and Health and Social Services – will be directed into the new fund. However, the budget for some services (such as special care arrangements and assistance for those without 10 years' residency) currently funded from the £30 million will remain outside the long-term care fund. These arrangements need to be confirmed, with final details approved in Regulations.

The Fund will only be used to pay for:

- the main long-term care benefit;
- means-tested financial assistance for those who cannot make the necessary co-payment towards the cost of the care home fees;
- the cost of buying special equipment necessary for care at home; and
- the cost of administrative and other tasks linked to the Fund.

Allowing the Fund to purchase equipment for home care provides for the possibility of the Fund maintaining a supply of specialist equipment to be hired out to individuals as needed. The cost of the hire would be included in the approved care package – see Article 7.

### **Article 3 sets out the eligibility criteria to receive a benefit from the Fund.**

Access to the long-term care benefit will be based on satisfying criteria in a number of specific areas:

To qualify for the benefit, the individual will have to be **an adult** (i.e. aged 18 or over).

An individual's **care needs** will be assessed through a placement tool, administered by healthcare professionals (see Article 5). This system is already operating successfully as a first step for those applying for assistance

with long-term care fees through the current Income Support arrangements and for Health and Social Services placements. To qualify for the benefit, the placement tool must identify that the individual has high-level care needs.

**Residency requirements** will need to be met. The residency requirements will be set down in Regulations, which will be subject to States approval.

The Minister will propose that the individual seeking care will have to have at least 10 years' continuous residence in Jersey as an adult at any time and one year's residence immediately before claiming the benefit.

This means that, in effect, most potential recipients will, through working or retirement, have contributed to the fund for a minimum of 10 years during the course of their lives. Residence in the Island as a child will not count towards the residency condition, except in the case of young adults requiring care.

To access the benefit, the individual must have **secured a place** in what is termed an 'approved care home' or be in **receipt of** an 'approved care package' provided at home. (Definitions of these are covered under Articles 6 and 7.)

A condition of accessing the benefit is that the individual **commits to pay** their contribution to the fee levied by the care provider that relates to their day-to-day living costs – the co-payment. When added to the long-term care benefit, it will cover the total cost of a place in a care home. If someone is unable to pay the full co-payment, then they will be able to access means-tested help after a financial assessment that will take into account their income and assets and those of their partner.

The long-term care benefit will only be available to individuals who, in the absence of this scheme, would be **liable to pay for their care**. In other words, the benefit is not available to those who would not be expected to pay for their care – for example, those detained in hospital against their will under the Mental Health (Jersey) Law 1969 because they pose a risk to themselves or others.

Although there is no formal link to an individual's contributions history, it is a condition that individuals have **paid the contributions that they were liable for**, and are not subject to any legal proceedings under the Social Security Law or the Long-Term Care Law.

#### **Article 4 covers the benefits that will payable under the scheme**

Everyone who meets the eligibility criteria will receive the long-term care benefit. This will cover a major part of the cost of their care, but will not cover the day-to-day living costs of being in a care home. The claimant will be expected to make a contribution – termed the co-payment – towards these costs. If the claimant cannot afford to pay the full co-payment, then they can apply for additional means-tested assistance, which is also paid from the Fund.

The level of the long-term care benefit will be set by reference to the overall standard cost of a providing the required type of care package in a care home – accordingly, there will be a number of different levels of long-term care benefit, based on the exact level of care required.

These levels and the accompanying fees will be finalised during 2012. It is likely that there will be different benefit levels covering, for example: residential, higher residential and different levels of nursing care (also taking into account the special needs of dementia care).

Whatever the level of care required, the amount that the individual is expected to contribute in the form of their contribution – the co-payment – towards the overall gross fees will be the same. It is the long-term care benefit that will vary to reflect the higher cost of the more expensive types of care.

The levels of benefit will be set so that when combined with the contribution required from the individual the total amount will be sufficient to secure the required level of care in a regulated care home.

The contribution required under the new arrangements in the form of the co-payment will be considerably less than the full cost of care. It will be much more affordable for many families and will help to protect family assets and savings.

Choice is an important feature of the new scheme and individuals, subject to their means, will be free to choose the home they prefer and pay for higher-specification accommodation – such as a superior room or a room with a view – or to call on additional services if they wish. They will pay the extra cost as a “top-up” in addition to the standard co-payment.

Care homes will carry the responsibility for ensuring that an individual can continue to meet the top-up payment for a reasonable period without exhausting their funds so that they do not need recourse to the Fund for means-tested assistance at a later date.

For those who cannot afford to meet the co-payment, means-tested assistance will be available, subject to a financial assessment. All income and assets of the individual and their partner will be taken into account.

In general, all regular income will be used towards meeting the co-payment. If this income is below the level of the co-payment, means tested assistance will be provided if the assets of the claimant (and their partner) fall below certain limits.

The Minister will finalise the details of the asset limits during 2012. The following values are indicative.

For homeowners, acknowledging the special status of the main residence, family homes worth up to £750,000 will be disregarded from the assessment of assets, with homeowners allowed to hold other capital of up to £25,000 and still be eligible for financial assistance with the co-payment.

Where the main residence is worth more than £750,000, an individual will be given assistance with the co-payment for the initial 3 months of care to allow time for families to make arrangements to meet the co-payment.

For non-homeowners, assistance will be provided if their capital and savings are under £100,000. They would be expected to use any sum above this amount to meet the co-payment before qualifying for assistance.

Someone who has 5 or more years’ residency but less than the 10 years required to qualify for the long-term care benefit will be eligible for support



with their care fees on a means-tested basis, as now, through Income Support and will be subject to the current Income Support rules that include consideration of homes within the means test.

Means-tested assistance with the co-payment will only apply for the amount necessary to secure a standard room. Top-ups will only be an option open to those paying the full co-payment themselves.

**Article 5 covers provisions relating to the long-term care assessment of the individual.**

In order to be confirmed as in need of long-term care, a person will be assessed – through the placement tool – as requiring permanent help with activities that are an essential part of normal daily living (such as bathing, dressing, grooming, eating). This help has to be required for the rest of the person's life.

The tool is an aid to identifying the care setting most appropriate to meeting the needs of an individual by selecting the level of assistance required under various categories.

This care assessment can only be undertaken by health care professionals qualified to do so, such as nurses or social workers.

Recognising that individuals' care needs may change, regular assessments may be undertaken and their care adjusted accordingly – an individual's needs may be reassessed such that they need to move from residential to nursing care, for example.

To ensure consistency, completed placement tools will be subject to regular monitoring and inspection to ensure that the integrity of the system is maintained.

**Articles 6 and 7 provide definitions for 'approved care homes' and 'approved care packages' that can be delivered at home.**

Work on an updated Regulation of Care Law is being undertaken by Health and Social Services. When complete, all care homes, including those that are States-run will have to be registered under the revised Regulation of Care Law.

One of the key aspects of the new scheme is a recognition that there is a strong desire on the part of many older people to stay in their own home and retain their independence for as long as possible.

It is proposed that the long-term care benefit will be available to help fund care packages at home where qualified professionals have deemed it appropriate and safe to do so.

It is intended that the long-term care benefit will be available for care in the home if an individual's care needs are assessed as being such that they would otherwise qualify for entry into a care home.

Individuals receiving an approved care package at home will not be required to make a co-payment themselves as they are already meeting their everyday living costs. However, they will be able, within reason, to top-up the care

benefit if doing so allows them to stay at home, but still under an approved care package.

Currently, suppliers in the domiciliary (home) care sector are not regulated, but the intention is that they will be in the future under the new Regulation of Care Law. Social Security will work closely with Health and Social Services next year to determine the level of support that will be available for care at home in 2013. This may include the signing of service level agreements with suppliers in advance of the new Regulation of Care Law.

**Articles 8 to 10 cover the administration of benefits.**

The procedures for claiming and paying out benefits will be finalised and published in Orders.

If an individual is dissatisfied with a decision regarding their eligibility for the long-term care benefit, then there will be scope for them to appeal to a tribunal – the Social Security Tribunal or the Medical Appeal Tribunal as set up under existing Social Security and Income Support legislation.

These Articles also cover the expenses of tribunal members; offences and penalties in connection with making false benefit claims; and attempts to commit offences.

**Articles 11 to 15** inclusive cover administration of the long-term care fund, including provision for accounts of the Fund to be prepared annually and laid before the States, and actuarial reports concerning the Fund to be prepared every 3 years and laid before the States.

**Articles 16 to 18** cover various miscellaneous provisions.

**Implementation**

If the States approves this Proposition, the Minister for Social Security intends that subordinate legislation will be prepared over the next 12 months to establish the exact detail of the scheme, including the level of the long-term care benefit, the benefit administration process, and confirmation of the level of contributions.

**Financial and manpower implications**

This Law in itself does not have any financial and manpower implications, but it does provide for Regulations and Orders that will.

The costs of developing the scheme ahead of any funding available through contribution liability will be borne from existing resources.

During the development and implementation phase there will be a requirement to seek temporary manpower to carry out specific tasks such as the assessment of existing care recipients.

All the costs associated with carrying out the assessments and administering the scheme will be confirmed at a later date. Ultimately, these will be borne out of contributions paid into the dedicated long-term care fund.

### **European Convention on Human Rights**

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 6th June 2011 the Minister for Social Security made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Social Security the provisions of the Draft Long-Term Care (Jersey) Law 201- are compatible with the Convention Rights.

## Explanatory Note

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This draft Law makes provision for benefits associated with long-term health care for Jersey residents.

### Part 1 – Interpretation

*Article 1* is an interpretation provision. In particular, “Fund” is defined to mean the Long-Term Care Fund.

### Part 2 – Source of Funds

*Article 2* establishes the Long-Term Care Fund and provides that it is under the control of the Minister for Social Security.

### Part 3 – Entitlement to Benefits

*Article 3* provides that a person over 18 who fulfils prescribed residency requirements and specified conditions is entitled to a benefit under the Law. The specified conditions are that –

- (a) the person has been assessed as being in need of long-term care under the Law;
- (b) the person has a place at an “approved care home” or has an “approved care package” (defined in the draft Law) for which the person would normally incur a cost;
- (c) the person makes any payments that the person may be required to make by Order towards the cost of long-term care;
- (d) the person is not subject to any proceedings under the Social Security (Jersey) Law 1974 or this Law brought against the person; and
- (e) the person meets such other conditions, including conditions as to residency, as the States may specify by Regulations.

Any Order under (c) must provide for any required payments to be means-tested.

*Article 4* makes provision for the Minister to determine, by Order, the rate of the following benefits: long-term care benefit; a benefit to meet all or part of the cost of any required payment under Article 3, and such other benefit as may be prescribed by Order. Such Orders may prescribe different rates of benefit for different types or levels of long-term care; minimum and maximum rates of benefit and for benefits to be means-tested.

*Article 5* requires the Minister, by Order, to make provision for assessing whether a person needs permanent long-term care (that is help with normal daily activities such as bathing, dressing, grooming and eating). Such assessments must be carried out by registered persons, that is, broadly, doctors or persons in occupations registered under the Health Care (Registration) (Jersey) Law 1995 (such as nurses and social workers). “Permanent” means that the need for long-term care will continue, or is likely to continue, for the rest of a person’s life.

*Article 6* requires the Minister, by Order, to make provision for the approval of care homes for the purposes of this Law (referred to as “approved care homes”). An Order

may cover such things as conditions for approval, procedures and revocation of approval.

*Article 7* requires the Minister, by Order, to make provision for registered persons (as described above under Article 5) to approve care arrangements for persons needing long-term care, such arrangements being provided in a person's home or other premises (other than in approved care homes).

#### **Part 4 – Claims and Payment of Benefits**

*Article 8* requires the Minister to make Orders with respect to the procedures for claiming and paying out benefits. A claim for benefit or questions or matters arising out of such a claim will be determined initially by a “determining officer” appointed by the Minister and by a second determining officer if the person is dissatisfied with the first determining officer's decision. The Minister must make such provision by Order as he or she thinks fit with respect to a range of specified matters including provision for appeals to a tribunal, that is to the Social Security Tribunal established under the Social Security (Jersey) Law 1974 or the Medical Appeal Tribunal established under Article 9 of the Income Support (Jersey) Law 2007.

*Article 9* allows the Minister to pay the expenses of tribunal members in connection with any reference or appeal.

*Article 10* sets out offences in connection with making false benefit claims. The penalty for each such offence is a maximum term of imprisonment of 7 years.

#### **Part 5 – Administration of the Fund**

*Article 11* makes provision for the accounts of the Fund to be prepared and laid before the States.

*Article 12* requires actuarial reports concerning the Fund to be prepared every 3 years and laid before the States.

*Article 13* enables civil proceedings to be instituted to recover sums due to the Fund at any time within 10 years of the matter arising.

*Article 14* allows sums due to the Fund to be recovered by deductions from earnings. An employer who is required to furnish a certificate of an employee's earnings and who does not do so is guilty of an offence and liable to a maximum level 2 fine on the standard scale (that is up to £500). An employer who furnishes a false certificate is guilty of an offence and liable to a maximum level 4 fine on the standard scale (that is up to £5,000). If an employer fails to make any deduction, as required, from an employee's earnings, the amount due can be recovered from the employer.

*Article 15* makes provision for recovery of sums due to the Fund in the event of bankruptcy and similar proceedings.

*Article 16* allows the States, by Regulations, to amend any enactment, including the draft Law, for the purpose of making such transitional, incidental and consequential amendments as they think fit. The Article also allows the Minister to make similar provisions by Order, other than amending any enactment.

*Article 17 and the Schedule* make consequential amendments to the Social Security (Jersey) Law 1974 to enable contributions to be allocated to the Long-Term Care Fund.

*Article 18* sets out the title of the Law and provides that it will come into force by Appointed Day Act.



Jersey

## DRAFT LONG-TERM CARE (JERSEY) LAW 201-

### Arrangement

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Jersey

## DRAFT LONG-TERM CARE (JERSEY) LAW 201-

A **LAW** to make provision for the long-term health care of Jersey residents.

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### PART 1

#### INTRODUCTORY

##### 1 Interpretation

In this Law, unless the context otherwise requires –

“approved care home” shall be construed in accordance with Article 6;

“approved care package” shall be construed in accordance with Article 7;

“benefit” shall be construed in accordance with Article 4;

“determining officer” means a person appointed as determining officer under Article 8;

“Fund” means the Long-Term Care Fund established under Article 2;

“long-term care” means such care as a person is assessed as needing under Article 5;

“Minister” means the Minister for Social Security;

“prescribed” means prescribed by Order;

“registered person” means a registered medical practitioner under the Medical Practitioners (Registration) (Jersey) Law 1960<sup>1</sup> or a person in a

registrable occupation under the Health Care (Registration) (Jersey) Law 1995<sup>2</sup>;

“Social Security Law” means the Social Security (Jersey) Law 1974<sup>3</sup>;

“tribunal” means the Social Security Tribunal established under Article 33A of the Social Security (Jersey) Law 1974 or the Medical Appeal Tribunal established under Article 9 of the Income Support (Jersey) Law 2007<sup>4</sup>, as the case requires.

## **PART 2**

### **SOURCE OF FUNDS**

#### **2 Long-Term Care Fund**

- (1) For the purposes of this Law, there shall be a fund called the “Long-Term Care Fund” which shall be under the control and management of the Minister.
- (2) There shall be paid into the Fund –
  - (a) the appropriate Long-Term Care Fund allocation specified in Article 30 of the Social Security Law; and
  - (b) such other sums as the States may by Regulations determine.
- (3) There shall be paid out of the Fund –
  - (a) benefits payable under this Law;
  - (b) such expenditure as the Minister may determine related to the cost of long-term care, including the purchase and maintenance of equipment for long-term care; and
  - (c) all expenses of whatever nature incurred by the Minister in carrying this Law into effect, including any Regulations and Orders made under this Law.
- (4) Draft Regulations to be made by the States under this Article may be lodged only by the Minister.

## **PART 3**

### **ENTITLEMENT TO BENEFITS**

#### **3 Persons entitled to benefits**

- (1) Subject to the provisions of this Law, every person who has attained the age of 18 years and who, after the date this Article comes into force, meets the conditions set out in paragraph (2) is entitled to such benefit under this Law as may be determined in accordance with the provisions of this Law.
- (2) Those conditions are that –

- (a) the person has been assessed as being in need of long-term care under Article 5;
  - (b) the person –
    - (i) is a resident of an approved care home, or
    - (ii) is in receipt of an approved care package,and the person would incur a charge imposed by the approved care home or provider of the approved care package were it not for any benefit payable to the person under this Law;
  - (c) the person meets any such conditions as may be prescribed with respect to the person making a payment towards the costs of long-term care;
  - (d) the person is not subject to any proceedings (whether civil or criminal) brought against the person under the Social Security Law or under this Law; and
  - (e) the person meets such other conditions as are applicable to the person, including conditions as to residency, that the States may specify by Regulations.
- (3) An Order under paragraph (2)(c) –
- (a) shall make provision for –
    - (i) determining, whether generally or by description or with reference to some other matter, the persons required to make a payment,
    - (ii) determining the amount of any payment that may be required with reference to such of a person's means as may be specified in the Order,
    - (iii) determining the times at which such a payment must be made,
    - (iv) determining the circumstances in which such payment may be deducted from such benefits payable under the Social Security Law as may be specified in the Order; and
  - (b) may make such provision as the Minister thinks necessary or expedient relating to the extent to which the divesting of a person's assets may be taken into account for the purpose of determining a person's means where the purpose, or a primary purpose, of the divesting was to obtain a benefit payable under this Law or to increase the amount of such a benefit.
- (4) In paragraphs (3)(a)(ii) and (3)(b) –
- (a) "person" means the person entitled to benefit and may include the person's spouse or any individual living in a marriage-like relationship with the person (whether or not of different sexes); and
  - (b) "means" includes any assets, financial or otherwise, available to a person.

#### 4 Benefits

- (1) The Minister shall, by Order, determine the rate for –

- 
- (a) a benefit in respect of the costs of long-term care, to be known as a “long-term care benefit”;
  - (b) a benefit to meet all or part of the cost of a payment prescribed under Article 3(2)(c);
  - (c) any other benefit as may be prescribed.
- (2) An Order may provide –
- (a) for different rates of benefit to be payable in respect of different types or levels of long-term care;
  - (b) for the minimum and maximum rates of benefit;
  - (c) for the rate of any benefit to be subject to such of a person’s means as may be specified in the Order.
- (3) For the purposes of paragraph (2)(c), “person” and “means” have the same meaning as in Article 3(4).

## **5 Long-term care assessment**

- (1) A person may be assessed as being in need of long-term care if the person needs permanent help with activities that are an essential part of normal daily living (such as bathing, dressing, grooming, eating).
- (2) An assessment under this Article must be carried out by a registered person.
- (3) The Minister shall, by Order, make provision as respects all such matters as he or she thinks fit for assessments including, without limiting the generality of the foregoing –
  - (a) specifying the descriptions of registered person who may make assessments for the purposes of this Article or Article 7, or both;
  - (b) the appointment and removal of such persons;
  - (c) the criteria to be taken into account in making assessments;
  - (d) procedures for assessments, including subsequent reviews;
  - (e) provisions for appeals against removal of registered persons from appointment and appeals against assessments.
- (4) The Minister may require the needs of a person assessed as being in need of long-term care under this Article to be reviewed at any time.
- (5) In this Article “permanent” means continuing, or likely to continue, for the rest of the person’s life.

## **6 Approved care home**

- (1) This Article applies to an establishment for the residence and care of persons who are or may be assessed as being in need of long-term care.
- (2) An establishment to which this Article applies may be approved by the Minister for the purposes of this Law, such establishment being known as an “approved care home”.

- (3) The Minister shall, by Order, make provision as respects all such matters as he or she thinks fit concerning approval under paragraph (2) including, without limiting the generality of the foregoing –
  - (a) conditions subject to which approval may be given;
  - (b) procedures for approval and subsequent reviews;
  - (c) the form and manner of an application for approval, including any application fee;
  - (d) revocation or suspension of approval;
  - (e) provision for appeals against revocation or suspension of approval.

#### **7 Approved care package**

- (1) This Article applies to arrangements for providing care for a person assessed as being in need of long-term care under Article 5, such care being provided in the person's home or in other premises not being an approved care home.
- (2) Arrangements to which this Article applies may be approved by a registered person for the purposes of this Article, such arrangements to be known as an "approved care package".
- (3) The Minister shall, by Order, make such provision as he or she thinks fit concerning approval under paragraph (2) including, without limiting the generality of the foregoing –
  - (a) descriptions of registered persons who may give approval;
  - (b) conditions subject to which approval may be given;
  - (c) procedures for approval and subsequent reviews;
  - (d) revocation or suspension of approval;
  - (e) provision for appeals against revocation or suspension of approval.

### **PART 4**

#### **CLAIMS AND PAYMENT OF BENEFITS**

#### **8 Procedures in relation to claims and payment of benefits**

- (1) A claim for benefit, or any question or matter arising in relation to such a claim, shall be determined by one or more persons, to be known as "determining officers" appointed by the Minister.
- (2) If a person in respect of whom a claim is made is dissatisfied with any determination of a determining officer under this Law, the matter shall be redetermined by a second determining officer.
- (3) The Minister shall, by Order, make such provision as he or she thinks fit in relation to consideration by a determining officer or a tribunal of any matter concerning a claim and payment of a benefit, including without prejudice to the generality of the foregoing, provisions for –

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- (a) procedures for claims, including forms to be used, the evidence which is required and the circumstances in which any official record or certificate is to be sufficient or conclusive evidence;
  - (b) when, by whom and in what circumstances notice must be given of any change of circumstances affecting the continuance of entitlement to a benefit or to a particular rate of benefit;
  - (c) determining the frequency and manner of payment of benefits;
  - (d) the appointment of a person (which may include the Minister) to act on behalf of a person making a claim or for the receipt of benefits, including provision for determining when benefits shall be made directly to a person acting for an approved care home or providing an approved care package;
  - (e) the procedure for appeals to a tribunal;
  - (f) time limits for any claim or appeal or for producing any evidence or other information;
  - (g) the reference to the Royal Court for a decision of any question of law arising in connection with the determination of a question by a determining officer or by a tribunal;
  - (h) appeals to the Royal Court from a decision of a tribunal on any question of law;
  - (i) summoning persons to attend and give evidence or produce documents and for authorizing the administration of oaths to witnesses;
  - (j) for the representation of one person, at any hearing of a case, by another person, whether or not that other person has professional representation;
  - (k) for adjustment of benefit following a determination or appeal and for repayment where necessary.
- (4) Where, in any proceedings for an offence under this Law or for the recovery of any sums due to the Fund, any question arises that is required to be determined in accordance with an Order under this Article, provision may be made by Order –
- (a) that the decision relating to that question shall be conclusive for the purpose of those proceedings;
  - (b) for obtaining such a decision when it has not been given; and
  - (c) for adjourning the proceedings until such a decision has been given.

## **9 Expenses of persons required to attend proceedings**

- (1) The Minister may pay such travelling and other allowances, including compensation for loss of remunerative time, as the Minister may determine to any member of a tribunal in connection with any reference or appeal to the tribunal under this Law.
- (2) The Minister may also pay to any such member of a tribunal any other expenses incurred in connection with the member's work as appear to the Minister to be reasonable.

**10 Offences in relation to claims for benefit**

If a person for the purpose of obtaining any benefit, whether for the person or some other person –

- (a) knowingly makes any false statement or false representation or withholds any material information;
- (b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which the person knows to be false in a material particular; or
- (c) fails to notify a change of circumstances as required by an Order under this Law,

the person shall be liable to imprisonment for a term of 7 years and to a fine.

**PART 5****ADMINISTRATION OF THE FUND****11 Accounts**

- (1) Annual accounts of the Fund shall be prepared in such form, in such manner and at such times as the Minister may determine, and the Comptroller and Auditor General shall examine and certify every such account, and copies thereof (together with the report of the Comptroller and Auditor General thereon) shall be laid before the States.
- (2) Any monies forming part of the Fund may from time to time be paid over to –
  - (a) the Treasurer of the States; or
  - (b) an investment manager,and may, by either of them, be invested in accordance with such directions as may be given by the Minister for Treasury and Resources.
- (3) The Minister for Treasury and Resources may, after consultation with the Minister, appoint one or more investment managers.
- (4) The Minister for Treasury and Resources shall not appoint an investment manager under paragraph (3) unless, having considered the value of the fund monies from the Fund to be managed by such investment manager, he or she is satisfied that such value will not be excessive having regard to –
  - (a) proper advice;
  - (b) the desirability of securing diversification of management of the Fund; and
  - (c) the value of the Fund.
- (5) The terms of appointment of an investment manager shall –
  - (a) provide for its termination without notice;
  - (b) require the investment manager to provide the Minister for Treasury and Resources, at least once every 3 months or such other

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- period as may be specified in the terms of appointment, with a report setting out the action taken by the investment manager under the appointment;
- (c) require the investment manager to comply with such instructions as the Minister for Treasury and Resources may give;
  - (d) require the investment manager to have regard to the need for diversification of investment of monies from the Fund and to the suitability of investments of any description.
- (6) The Minister for Treasury and Resources, on consideration of each report provided to him or her under paragraph (5) and any other information he or she thinks relevant, shall, having regard to –
- (a) the need for diversification of investment of monies from the Fund;
  - (b) the suitability of investments of any description; and
  - (c) proper advice,
- consider the desirability of continuing or terminating the investment manager's appointment.
- (7) In this Article –
- (a) “investment manager” means a person or persons reasonably believed by the Minister to be suitably qualified by ability in, and practical experience of, financial matters to make investment decisions on his or her behalf;
  - (b) “proper advice” means the advice of a person or persons reasonably believed by the Minister for Treasury and Resources to be qualified by his or her ability in, and practical experience of, financial matters to give such advice.
- (8) Regulations made under the Public Finances (Jersey) Law 2005<sup>5</sup>, if and to the extent that they apply to any monies paid over under paragraph (2), are subject to this Article.

## 12 Actuarial reports

- (1) An actuary, appointed for the purpose by the Minister, shall review the operation of this Law during the period ending 31st December in the year following the year that this Article comes into force and thereafter during the period ending with 31st December in every 3rd year and, on each such review, make a report to the Minister on the financial condition of the Fund and the adequacy or otherwise of the contributions payable to the Fund to support the benefits under this Law having regard to its liabilities under this Law.
- (2) The Minister may at any time reduce the period to be covered by a review and report under paragraph (1) and accelerate the making of that and subsequent reviews and reports accordingly.
- (3) A copy of every report under this Article shall be laid before the States as soon as practicable after it is made.



**13 Civil proceedings to recover sums due to the Fund**

Proceedings for the recovery of sums due to the Fund 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 the matter complained of arose.

**14 Recovery of sums due to Fund by deductions from earnings**

- (1) Where judgment has been obtained for the payment of any sum due to the Fund by any individual (in this Article referred to as the “judgment debtor”) then, notwithstanding any enactment or rule of law to the contrary and without prejudice to any other means of recovery, the sum payable under the judgment together with the recoverable costs (in this Article referred to as the “judgment debt”) may be recovered in accordance with the provisions of this Article.
- (2) Where it is desired to recover any judgment debt under this Article –
  - (a) the Minister may serve notice on the employer for the time being of the judgment debtor requiring the employer to furnish the Minister, within such time (not being less than 7 days) as may be specified in the notice, with a certificate of the amount earned by the judgment debtor in the employ of the employer during such past period or periods as may be so specified; and
  - (b) subject to paragraph (3), whether or not such a certificate as aforesaid has been required to be furnished, the Minister may serve notice on the employer for the time being of the judgment debtor requiring the employer to make such deductions from the earnings of the judgment debtor as may, having regard to all the circumstances of the case, appear to the Minister to be reasonable and to pay the amounts so deducted to the Minister at such times as may be specified in the notice, and the amount so paid shall be applied towards the satisfaction of the judgment debt.
- (3) Where the judgment debt has been ordered to be paid by instalments, the Minister shall not require such deductions to be made as would at any date reduce the judgment debt by a greater amount than that by which it would have been reduced had the instalments been paid.
- (4) An employer who refuses or without lawful excuse fails to furnish a certificate which, under paragraph (2)(a), the employer is required to furnish within such time as may be so required is guilty of an offence and is liable to a fine of level 2 on the standard scale.
- (5) An employer who furnishes a certificate under paragraph (2)(a) which is false in a material particular is guilty of an offence and is liable to a fine of level 4 on the standard scale.
- (6) Any notice under paragraph (2)(b) may at any time be varied by a subsequent notice under that sub-paragraph.
- (7) A copy of every notice served under paragraph (2)(b) or (6) shall be served also on the judgment debtor.

- (8) Where an employer fails to deduct any amount which the employer is required by virtue of paragraph (2)(b) to deduct, or to pay to the Minister any amount so deducted, the amount may be recovered from the employer as a debt due to the Fund.
- (9) Service of any notice under this Article may be effected by sending it by registered post to the person on whom it is to be served at his or her usual or last known place of abode or his or her principal place of business or, in the case of a company, at its registered office.

#### **15 Recovery in bankruptcy, etc.**

In the event of any *dégrévement, réalisation, désastre*, bankruptcy or composition with creditors, any amount due to the Long-Term Care Fund shall rank for payment *pari passu* with other privileged debts and in priority to all other debts.

### **PART 6**

#### **MISCELLANEOUS AND CLOSING**

#### **16 Regulations and Orders**

- (1) The States may, by Regulations, amend any enactment, including this Law, for the purpose of making such transitional, consequential incidental, supplementary and savings provisions as they consider necessary or expedient in respect of any provision of this Law.
- (2) The Minister may, by Order –
  - (a) make such transitional, consequential, incidental, supplementary and savings provisions (other than amending any enactment) as he or she considers necessary or expedient in respect of any provision of this Law; and
  - (b) prescribe any matter that shall or may be prescribed under this Law.
- (3) Any Regulations or Order under this Law may contain such transitional, consequential, incidental or supplementary provisions as appear to the States or the Minister, as the case requires, to be necessary or expedient for the purposes of the Regulations or Order.

#### **17 Social Security Law amended**

The Schedule shall have effect.

#### **18 Citation and closing**

This Law may be cited as the Long-Term Care (Jersey) Law 201- and shall come into force on such day or days as the States may by Act appoint.

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**SCHEDULE**

(Article 17)

**SOCIAL SECURITY LAW AMENDED****1 Article 1 of Social Security Law amended**

In Article 1(1) of the Social Security Law<sup>6</sup> after the definition “Law of 1950” there shall be inserted the following definitions –

“ ‘Long-Term Care Fund’ means the Fund established under Article 2 of the Long-Term Care (Jersey) Law 201-<sup>7</sup>;

‘Long-Term Care Fund allocation’ has the meaning given by Article 30;”.

**2 Article 4 of Social Security Law amended**

In Article 4(1) of the Social Security Law after the words “Health Insurance Fund allocation” there shall be inserted the words “and the Long-Term Care allocation each”.

**3 Article 30 of Social Security Law amended**

In Article 30 of the Social Security Law –

(a) in paragraph (2) after the words “Health Insurance Fund Allocation” there shall be inserted the words “and appropriate Long-Term Care Fund Allocation”;

(b) after paragraph (3) there shall be inserted the following paragraph –

“(3A) The appropriate Long-Term Care Fund Allocation which shall be paid into the Long-Term Care Fund shall be the aggregate of the amounts expressed in Schedules 1A and 1B to be allocated to that Fund.”.

**4 Article 50 of the Social Security Law amended**

In Article 50(1)(e)(i) of the Social Security Law after the words “Health Insurance Fund” there shall be inserted the words “or the Long-Term Care Fund”.

**5 Schedule 1A to the Social Security Law amended**

In Schedule 1A to the Social Security Law –

(a) in the sub-heading, for the words “and 30(3)”, there shall be substituted the words “30(3) and 30(3A)”;

- (b) in paragraph 3(1) –
  - (i) the word “and” following clause (a) shall be deleted,
  - (ii) after clause (a) there shall be inserted the following clause –
    - “(aa) such percentage as the States may specify by Regulations of the person’s earnings that do not exceed the standard monthly earnings limit, which amount shall be allocated to the Long-Term Care Fund;”,
  - (iii) after clause (b) the word “and” and the following clause shall be added –
    - “(bb) such percentage as the States may specify by Regulations of the person’s earnings that exceed the standard monthly earnings limit but do not exceed the upper monthly earnings limit, which amount shall be allocated to the Long-Term Care Fund.”.

## 6 Schedule 1B to the Social Security Law amended

In Schedule 1B to the Social Security Law –

- (a) in the sub-heading, for the words “and 30(3)” there shall be substituted the words “30(3) and 30(3A)”;
- (b) in paragraph 3 –
  - (i) after sub-paragraph (a) there shall be inserted the following sub-paragraph –
    - “(aa) such percentage as the States may specify by Regulations of the standard monthly earnings limit, which amount shall be allocated to the Long-Term Care Fund;”,
  - (ii) the word “and” following sub-paragraph (b) shall be deleted,
  - (iii) after sub-paragraph (b) there shall be inserted the following sub-paragraph –
    - “(bb) such percentage as the States may specify by Regulations of the amount that is the difference between the standard monthly earnings limit and the upper monthly earnings limit, which amount shall be allocated to the Long-Term Care Fund; and”;
- (c) in paragraph 4 –
  - (i) after sub-paragraph (a) there shall be inserted the following sub-paragraph –
    - “(aa) such percentage as the States may specify by Regulations of the person’s earnings that do not exceed the standard monthly earnings limit, which amount shall be allocated to the Long-Term Care Fund;”,
  - (ii) word “and” following sub-paragraph (b) shall be deleted,
  - (iii) after sub-paragraph (b) there shall be inserted the following sub-paragraph –
    - “(bb) such percentage as the States may specify by Regulations of the person’s earnings that exceed the standard monthly

earnings limit but do not exceed the upper monthly earnings limit, which amount shall be allocated to the Long-Term Care Fund; and”.

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- 1* chapter 20.600
  - 2* chapter 20.300
  - 3* chapter 26.900
  - 4* chapter 26.550
  - 5* chapter 24.900
  - 6* chapter 26.900
  - 7* P.108/2011