

STATES OF JERSEY



DRAFT INCOME SUPPORT (MISCELLANEOUS PROVISIONS) (JERSEY) REGULATIONS 201-

**Lodged au Greffe on 27th August 2013
by the Minister for Social Security**

STATES GREFFE



Jersey

DRAFT INCOME SUPPORT (MISCELLANEOUS PROVISIONS) (JERSEY) REGULATIONS 201-

REPORT

1. Executive summary

Income Support is an in-work benefit, meaning that any adult in receipt of the benefit is required to be in full-time paid work or be exempt for a number of reasons. The requirement to seek and take up full-time work is backed up by financial penalties for those who do not comply. In a time of increased unemployment, the proposed Regulations are designed to strengthen the powers available to the Minister to address those Income Support claimants who are unwilling to attempt to support themselves through work.

The Regulations create a system where people who repeatedly breach the conditions of their job-seeking agreement will first be warned; and if they fail to heed this warning, they will face increasingly longer cuts to their benefit, followed by the eventual removal of benefit altogether. Those who are genuinely unable to find work will not be penalised, but repeat offenders will be given the clear message that failing to look for work will end their entitlement to Income Support. Penalties are also introduced for those people who leave paid work without a good reason and wish to claim Income Support.

The proposed Regulations also contain a minor amendment that removes a household's entitlement to a housing component in situations where all of its adult members are outside Jersey for longer than 4 weeks; or for similar periods where all adult members are in prison or in hospital.

In addition, the proposed Regulations clarify the matters which must be taken into account when determining any medical component payable in respect of a person. They also propose a slight revision to clarify the rules for assessment of a person who suffers from epileptic seizures.

2. Introduction

When the Income Support benefit was introduced at the beginning of 2008, Jersey's unemployment levels were some of the lowest in Europe. Previous low-income benefits had no legal requirement for people to seek work, and although unemployment had not historically been a major issue in Jersey, one of the new principles introduced as part of the Income Support scheme was the inclusion of clear and consistent conditions to require people to support themselves through work, whenever possible.

In subsequent years, Jersey's economy has been adversely affected by the global economic downturn and further by the loss of Low Value Consignment Relief (LVCR). Current levels of unemployment, whilst significantly lower than in many other communities, are at a historically high level for the Island.

One of the key aims of the Income Support benefit is to assist anybody who can work into full-time employment, to encourage them towards self-sufficiency and ultimately out of the benefit system. Many people receiving Income Support will find work on their own, and those who do require assistance are extensively supported by the Department's Back-To-Work scheme. The States' decision to provide dedicated funding to this scheme means that Islanders who require assistance finding work can be helped by personal advisors and by a range of courses, classes and work-placement opportunities tailored to the specific needs of different groups of unemployed people.

However, it is an inevitable fact of any employment-focused benefit system that there will always be a minority of people who will attempt to avoid their legal requirement to find work. The rise in local unemployment has brought this issue into sharp focus, and it has become apparent that the Department's current powers to sanction those people who don't look for work have proved insufficient to motivate this small minority into doing all they can to seek and take up employment. It is essential to create a balance between the incentives offered to take up work and the threat of financial penalties for those who do not uphold their end of the bargain. It is neither fair nor acceptable that any person who is able to work should continue to receive tax-funded benefits without making efforts to support themselves through paid employment.

3. Income Support current powers

Income Support is an in-work benefit, meaning that any adult in receipt of the benefit is required to be in full-time paid work or be exempt for a number of reasons.

People who are not required to look for work include –

- anyone over the age of 65;
- people with the main responsibility for the care of a child aged under 5;
- people who are unable to work due to long-term illness or disability; and
- young adults who are in full-time education.

Adults who do not fall into one of these categories are required to find full-time work; or part-time work in certain circumstances. Those people who are neither in full-time work nor exempt from seeking work are required to seek work in order to qualify for the full Income Support benefit.

International evidence suggests that the requirement to look for work must be backed up by a clear, rapid response in cases where people are unwilling to comply. A review of the interaction between Income Support and employment commissioned from the University of Nottingham in 2010 observed that –

“an effective intensive job assistance programme needs to be supported by a monitoring and sanctions regime. Jersey's current sanctions regime is complex and imposition of a sanction can take a relatively long period of time. Sanctions ‘work’, that is, encourage job search behaviour, through the deterrence effect”¹.

¹ *Stafford et al; Review of Income Support: Stage 1 – Interaction between Income Support benefit system and employment; p.96*

In response to the review, changes were made to the original process in order to increase the speed at which sanctions could be applied to failed job-seekers, and also to increase the initial level of sanction. These changes created the current sanctions regime which were approved by the States as P.107/2011, amending the Income Support (Jersey) Regulations 2007 and P.109/2011, amending the Income Support (Special Payments) (Jersey) Regulations 2007.

The current sanctions are based on a two-stage reduction in the basic adult component of the failed job-seeker. It has become apparent that these sanctions still take too long to come into effect and fail to address the issue of repeat offenders. They do not possess the deterrent effect that is necessary to address the minority of job-seekers who consistently fail to meet the requirements to look for work.

Current process for sanctioning a non-compliant job-seeker

The following process illustrates the way that sanctions presently operate for failed job-seekers –

1. Income Support recipient fails job-seeking requirements and is given a formal written warning.
2. The warning requires the job-seeker to complete job-seeking activities in the following 7 days.
3. If this is not done, the adult component of the failed job-seeker is reduced by 50% for one week.
4. If the failed job-seeker continues to fail for a further week, their adult component is reduced to zero.
5. Once the failed job-seeker has restarted job-seeking activities and undertaken them regularly for 2 weeks, their benefit returns to the original level.
6. Should the job-seeker fail again in the future, the process starts again at step 1.

This process does not provide any additional sanctions in respect of the small minority of job-seekers who repeatedly fail to engage with job-seeking requirements. It is also open to abuse by a few individuals who comply with their job-seeking requirements for long enough to return to full-rate benefit, or may only comply when they are a few days away from a financial penalty.

Job-seeking must be a consistent process for as long as it takes to secure paid employment, particularly in times where there is more competition for available work. The Department's Back-To-Work scheme has been developed into a comprehensive programme offering assistance, and incentives are to find work, but this assistance must be backed up by real and responsive financial penalties for those people who refuse to engage.

4. Proposed sanctions

The Minister is confident that robust sanctions, coupled with the Department's existing support to help people prepare for work, is the most appropriate way to create a clear deterrent and ensure that unemployment in Jersey is never perceived as a lifestyle choice. The University of Nottingham review states that "*there is evidence that compulsory job search requirements backed with sanctions for non-compliance are highly effective in promoting moves into employment*".

In contrast to the cycle of compliance and non-compliance described above, the overarching principle of the proposed sanction powers is that people who repeatedly fail to seek work, or to engage with training or work placements, should receive a warning that stays 'in force' to be reactivated if they fail to comply at a point in the

future. Those who fail for the first time will merely be warned, creating no immediate penalty, but that warning will remain in force for a year. Any subsequent failures (termed 'breaches') will trigger the loss of the adult component for 2 weeks, then 4 weeks, and finally the removal of the whole benefit claim for 6 weeks if people repeatedly fail to comply. If a person demonstrates they are actively seeking work, these financial penalties will in time fall away, but the warning will remain in force to be reactivated if another breach is recorded during the following 12 months.

It must be stressed that few job-seekers are expected to ever reach the higher levels of these sanctions. The proposals are proportionate and the majority of Income Support recipients will never see any changes to their benefit. The new sanctions will be communicated extensively to clients and employers, and it is expected that those who might contemplate avoiding their job-seeking requirements will see the increased sanctions as a strong deterrent.

Leaving paid work

There are currently no sanctions in place to prevent a person from leaving work voluntarily to claim Income Support, or for people who claim Income Support after being dismissed from work due to their own conduct. Equally, there is no penalty facing people already in receipt of Income Support who give up or are dismissed from paid employment. When compared to the expectations that would be placed on any employed person, it is clear that there is an imbalance which must be addressed.

Feedback from local employers has identified a small number of cases in which Income Support job-seekers have taken up a job for only a very short period before leaving, thereby creating additional expense for the employer and denying someone else the prospect of a job. The negative impression given to an employer who offers to provide a work opportunity to a local job-seeker, only to be let down a few days later, can be significant and may harm the chances for future job-seekers of finding work with the same employer. In other cases, individuals have voluntarily given up existing employment and sought to claim Income Support benefit.

An individual who leaves work without any reasonable excuse will not be able to claim the adult component of Income Support for a 13 week period. This period is extended if the individual fails to undertake job-seeking activities during that time, and applies both to people on Income Support and people who claim Income Support after they have left their job.

The sanctions proposed for leaving work will be underpinned by specific guidance to enable staff to decide whether a person had good cause for leaving employment. There are a number of situations that would fall under the category of leaving work, and it will be important to distinguish between people who leave work or are dismissed due to their own poor conduct, and those who are made redundant through no fault of their own. Those people who are made redundant or who cease work for some other good reason will not lose entitlement to benefit, whereas people who have no reasonable excuse for being dismissed or giving up work will face this sanction.

The date on which the individual left work may have occurred before the individual claimed Income Support. In these cases, the 13 week period in which they are required to seek work (before becoming eligible to receive the adult component of Income Support) can start to run before the date they approach the Department to claim benefit. This would only be possible when the individual has clear evidence to show that the activities undertaken during that time fully complied with all the 'actively seeking work' activities specified in the legislation.

This change will be extensively communicated to the general public and to all employers and local employee organizations, to ensure that employees are fully aware of the consequences of leaving work.

Progression of sanctions

This table summarises the effect of the various levels of sanction.

Fail to actively seek work	Written Notice served	Sanction applied	Length of warning
First occasion	Written warning	None	Remains in place for 1 year from date of receipt
Second occasion	1st breach of warning	Adult component £92.12* removed for 2 weeks	1 year from receipt of 1st breach letter
Third occasion	2nd breach of warning	Adult component £92.12* removed for 4 weeks	1 year from receipt of 2nd breach letter
Fourth occasion	3rd breach of warning	IS claim closed/cannot make new claim for IS for 6 weeks	1 year from receipt of 3rd breach letter
Subsequent occasions	Subsequent breach	IS claim closed/cannot make new claim for IS 6 weeks	1 year from receipt of subsequent breach letter
Leaving work	Leaving work letter	Adult component £92.12* not available for 13 weeks	

**Note: For a single parent, the standard adult component is £132.51.*

Decision-making

There will always be situations that present good reasons why a person is temporarily unable to comply with their job-seeking activities, perhaps due to illness. Likewise, there will be some situations where it is appropriate for an individual to leave paid employment. For example, a person who is physically unable to continue with a specific job will not face sanctions for giving up that job. There may also be personal or family circumstances that will legitimately prevent a person from seeking work, and these will be considered by the Department when deciding whether the person has failed to undertake job-seeking activities, or whether the actions that led to the individual leaving paid employment justify that decision. Robust procedures will be in place to ensure that the decision-making process is fair and consistent.

Definition of job-seeking tasks

In addition to the strengthened sanctions, the new Regulations provide a clearer definition of the activities a person will be required to undertake in order to be considered actively seeking work. The current Income Support Regulations include requirements that a person –

- (a) is willing and available to take up work;
- (b) takes all reasonable steps (including any appropriate training or work experience) to obtain suitable work;

- (c) does not unreasonably turn down any offer of suitable work;
- (d) attends job-seeker appointments.

The revised Regulations include all the existing conditions and also now explicitly require job-seekers to actively take part in training and work placement activities. This will allow the Department to consider sanctions in respect of individuals who attend training or work experience but then fail to participate, or who engage in disruptive behaviour. It is also made clear that job-seekers must be present in Jersey at all times unless they have good cause to be absent, ensuring that people will not be able to leave the Island to take holidays rather than seek work.

Individuals with barriers to employment

The Department recognises that some individuals have specific or complex barriers to employment that make it more difficult for them to find work or sometimes to participate in training and work readiness activities. Individuals who fall into this category are commonly identified as soon as they become job-seekers, and are assigned to a dedicated team within the Department trained to assist individuals with barriers to employment. The operation of the new sanction regime will include safeguards to protect vulnerable clients and ensure that sanctions are only imposed in appropriate cases.

People in detention

If a person is unable to comply with job-seeking activities because they are detained in custody, the period of compliance with job-seeking will pause until they are released. This is designed to ensure that a failed job-seeker cannot return to full benefit entitlement simply by remaining in prison. However, all job-seeking sanctions fall away after one year in custody. Individuals do not receive any Income Support if they are in prison for one week or longer.

5. Impact of sanctions

The intention is that firmer, clearer sanctions will act as a deterrent, and it is expected that few people will ever experience the complete withdrawal of benefit. As part of a review of its own sanction regime, the UK Department of Work and Pensions (DWP) commissioned research into the effectiveness of sanctions. The report, “A review of the JSA sanctions regime: Summary research findings,” states at its conclusion that “In general terms, the research has indicated that the sanctions regime is broadly effective”². It says “Sanctions can be seen to influence the behaviour of some customers and therefore have a deterrent effect. The extent to which the regime has a deterrent effect can partly be measured by the number of repeat sanctions; data from the Sanctions Evaluation Research indicates that the large majority of customers (73 %) have only been sanctioned once, while smaller proportions have been sanctioned twice (16%) or more than twice (10%). Furthermore, most customers (around 7 in 10) thought that the general principle of sanctions was fair. More specifically, even among those actually sanctioned, around two-fifths thought that their own sanction was fair.”³

It should be noted that the UK sanction regime does not operate entirely comparably to Jersey, in that the sanction can only be applied to the Job-seeker’s Allowance (JSA) benefit, and not to housing benefit, child support, tax credit or disability payments. Conversely, higher level sanctions in the UK (for example for leaving a job voluntarily) lead to claimants losing all of their JSA for a fixed period of 13 weeks for

² *Peters, Mark and Joyce, Lucy: A review of the JSA sanctions regime: Summary research findings; Department for Work and Pensions Research Report No. 313; p.7*

³ *Ibid Peters et al; p.49*

a first failure, 26 weeks for a second failure and 156 weeks for a third and subsequent failure (within a 52 week period of their last failure).

With the imposition of the 3rd breach under these proposals, there is a total withdrawal of Income Support benefit from the household. The Department is mindful that there may be circumstances where a person with a family to support nevertheless decides to ignore the series of formal warnings that lead to a complete withdrawal of benefit. In these situations the Minister will consider creating an exceptional payment (under ministerial discretion) to support only the other members of the household. However, such support would be dependent on all the circumstances of the household at that time. At the time at which the 3rd breach is imposed, the Department will write to the claimant (and the claimant's partner where applicable) explaining the removal of Income Support and the steps that need to be taken to re-establish the claim. It should be emphasized that individuals who may be sanctioned will have previously received numerous warnings (verbally and in writing) to inform them that continued non-compliance will have an effect on their entitlement to benefit.

European Convention on Human Rights

The proposed Regulations have been subject to a comprehensive Human Rights audit and are considered to be compliant with the European Convention on Human Rights.

6. Miscellaneous changes – housing and medical components

Housing component

The proposed Regulations also contain a minor amendment that removes a household's entitlement to a housing component in situations where all of its adult members are outside Jersey for longer than 4 weeks, and for similar periods where all adult members are in custody, detention or provided with board and lodging at public expense (e.g. in hospital).

At present, there is no legal restriction on the members of an Income Support household being away from their domestic property for extended periods, losing entitlement to other IS components, yet continuing to receive the accommodation component as long as they remain as the owner or the tenant of the property in question. This was never the intention, and the proposed minor amendment to the Regulations will prevent this from occurring in future.

The Department is aware that there will be genuine cases in which accommodation components should be maintained for more than 4 weeks whilst adult members of the household are either in prison, in hospital or out of the Island. These cases will be dealt with using exceptional payments under Article 8(2) of the main Law.

Personal care element – clarification to prevent 'double scoring'

Income Support includes a specific component to provide assistance to people who have additional needs due to long-term illnesses or disabilities. This impairment component includes a personal care element designed to help people who have personal care needs with general medical costs and the cost of assistance with daily activities such as washing, dressing and cooking.

The rate of the personal care element payable to a member of the household is calculated by assessing their functional ability across a series of 20 activities. These activities are broadly divided into physical and sensory activities (1–11) and mental health activities (13–18), with activity 12 relating to the frequency of epileptic seizures; and an additional 2 activities that are applied only to children. A key principle of the assessment is that it should consider physical or sensory disability

separately to those statements that deal with mental and cognitive disability, including the effects of an organic brain disease, and vice versa.

For example, any score awarded through statements covering activities 1–11 must relate to physical or sensory impairment (for example, caused by osteoarthritis) or disablement (for example, traumatic loss of a leg). Therefore, a person with severe anxiety who is only able to sit in a chair for 10 minutes before moving is not considered under the sitting activity, as the difficulty with sitting is due to a mental health problem. Functional restrictions caused by anxiety are assessed under the mental health section (activities 13–18).

The Medical Appeal Tribunal, which is responsible for considering appeals made under this area of the Income Support Law, has requested that this differentiation should be made more explicit. Regulation 5 inserts additional wording into Schedule 2 to clarify the distinction between the different statements.

It should, of course, be noted that a person could legitimately suffer from more than one ailment that would allow them to score across all of the questions in respect of different ailments, or alternatively from an ailment such as a stroke that would have distinct cognitive as well as physical effects. These situations would not be considered to be ‘double scoring’ and will continue to be assessed across all appropriate activities.

Medical (Impairment) component – epilepsy

A further minor amendment is required to clarify the meaning of the activity that deals with epileptic seizures. It has become apparent that medical situations may exist in which an individual may suffer from epileptic seizures at night whilst asleep in bed. The individual has no useful warning of this due to being asleep but also no dangerous post-seizure (“post-ictal”) behaviour as they remain asleep during the fit and afterwards. It is only in the morning that the individual would be aware that a fit has occurred. This individual would have no personal care needs due to this medical condition, however under the currently wording of activity 12 they would score sufficient points to receive a personal care award.

The proposed Regulations therefore revise the rules for assessment of a person who suffers epileptic seizures. A person will not fall within the revised rule if his or her seizures are suffered whilst he or she is asleep and are not followed by any post-seizure dangerous behaviour.

7. Summary of proposed Regulations

Regulation 1

References to existing Regulations are defined.

Regulation 2(1) and 2(2)

Terms used in the new Regulations are defined.

In particular the concept of a “person required to seek work” is identified as an Income Support claimant who is required to seek full-time or part-time work under the Income Support Law.

Regulation 2(3)

The existing Regulations 4 and 5 are replaced by new Regulations 4, 5, 5A, 5B, 5C, 5D, 5E and 5F.

The existing Regulations 4 and 5 explain how a job-seeker is required to actively seek work and what happens if the job-seeker fails to actively seeking work for Income Support purposes.

New Regulation 4

This Regulation includes all of the existing tests of actively seeking work and includes extra conditions.

New Regulation 5

This Regulation introduces sanctions in respect of an individual who leaves paid work without a good reason and wishes to claim Income Support (either as an existing claimant or by submitting a new claim). A 13 week sanction period is created during which time the individual cannot receive the adult component of Income Support.

New Regulation 5A

This Regulation introduces a warning that will stay in force for at least a year. The warning is served on the job-seeker if the job-seeker fails to satisfy all the actively seeking work requirements set out in the new Regulation 4. The warning is extended if the job-seeker fails again to satisfy the actively seeking work requirements during that year.

New Regulation 5B

This Regulation sets up sanctions which increase in severity each time there is a further breach of job-seeking requirements. If a warning is already in force, the next time the job-seeker fails to actively seek work, the Regulation creates the first breach and the job-seeker loses their adult component for 2 weeks. If there is another breach, the adult component is removed for 4 weeks. Further breaches after this carry a penalty of 6 weeks and the full Income Support benefit is removed during this time. There must be a gap of at least 7 days between each breach. The job-seeker is sent a letter for each warning and each breach and can ask for any decision to be reviewed. As with other Income Support decisions there is also an appeal to an independent tribunal.

New Regulation 5C

This Regulation explains how warnings and sanction periods can be extended. If the job-seeker has left paid work and then fails to seek work during the 13 week sanction period, the 13 weeks is extended. If the job-seeker is in prison, any remaining warning period or sanction is suspended during the time in prison and then carries on when the person leaves prison. If the job-seeker reaches the age of 65 or remains in prison for more than one year, the warning and any outstanding sanction is cancelled.

New Regulations 5D and 5E

These two Regulations identify the financial penalty for each type of breach. For the first breach (2 weeks) and the second breach (4 weeks) the job-seeker loses their basic component. For the third breach, the whole Income Support claim is removed for 6 weeks. During the 6 weeks the household cannot make a claim for a special payment. If the job-seeker joins a new household during the 6 weeks, the job-seeker will not receive a basic component, but the new household does not lose the remainder of their claim.

New Regulation 5F

This Regulation explains that a breach that is already in force is not cancelled if a further breach is identified – each breach continues to run.

Regulation 3

This Regulation removes Regulation 5 from the Special Payments Regulations, which was used to provide payments during sanction periods under the existing Regulations.

Regulation 4

This Regulation removes the housing component from an Income Support household if all adult members of the household are out of the Island, in prison or in hospital for more than 4 weeks.

Regulation 5

This Regulation makes some minor changes to the details of the impairment component.

Regulation 6

If approved by the States, these Regulations will come into effect 7 days later.

8. Financial and manpower implications

These Regulations have limited financial implications. The intention of the strengthened sanctions is to create the appropriate benefit structure within which job-seekers are motivated to find and remain in paid employment. This should result in a decrease in benefit costs, as the small number of individuals who are currently trying to avoid their job-seeker responsibilities will, in future, undertake these responsibilities more diligently and will move into paid employment. If they fail to do so, benefit costs will be reduced as the sanctions are applied.

A substantial number of departmental staff currently support job-seekers through the Back-to-Work teams. No additional manpower resources are required to administer the revised sanction regime.

Explanatory Note

These Regulations amend the Income Support (Jersey) Regulations 2007 (the “2007 Regulations”) and the Income Support (Special Payments) (Jersey) Regulations 2007 (the “Special Payment Regulations”) for several purposes.

Part 1 – Interpretation

Regulation 1 defines the 2007 Regulations and the Special Payments Regulations.

Part 2 – Eligibility for income support – work requirements

This Part revises the consequences of a person failing the test of actively seeking work and introduces new provision for the consequences of a person giving up remunerative work without good cause.

Regulation 2 amends the 2007 Regulations.

Paragraph (1) of Regulation 2 amends the interpretation provision in the 2007 Regulations. In particular, “person required to seek work” is defined. This definition includes both persons required to seek full time remunerative work and those required to seek part time remunerative work. The definition depends upon certain provisions of the Income Support (Jersey) Law 2007 (the “principal Law”), explained below.

Under Article 2(1)(c) of the principal Law, one of the conditions for being eligible for income support is that the person is a member of a household of which all the adult members are either –

- (a) engaged in full time remunerative work; or
- (b) exempted under Article 3 of the principal Law.

Article 3(1) of the principal Law exempts the following persons from the requirement to be in full time remunerative work –

- (a) persons aged 65 years or over;
- (b) persons with the main responsibility for the physical care of any child under the age of 5 years who is a member of the same household;
- (c) persons with the main responsibility for the physical care of any child aged 5 years or over who is a member of the same household;*
- (d) persons incapable of full time work due to any physical, sensory or mental impairment;*
- (e) persons undergoing education or training on any course approved by the Minister for the purposes of Article 3 of the principal Law;*
- (f) persons with the main responsibility for the physical care of any person with such degree of physical, sensory or mental impairment as would make the carer eligible to claim a special component under Article 5(3)(d) of the principal Law;*
- (g) persons available for, and actively seeking, full time remunerative work;
- (h) persons remanded in custody or detained by virtue of a sentence of imprisonment, youth detention or similar punishment (whether in Jersey or elsewhere).

The asterisk against some of these exemptions indicates that, in these cases, the person may be required to be in remunerative work for a specified number of hours (being less than full time) or available for and actively seeking such work.

If a person is exempt from the requirement to be in full time remunerative work for any other reason, he or she is not a “person required to seek work” for the purposes of the 2007 Regulations.

Paragraph (2) of Regulation 2 has the effect that the definitions of full time work and remunerative work already contained in Regulations 2 and 3 of the 2007 Regulations for the purposes of certain provisions of the Income Support (Jersey) Law 2007, shall also apply for the purposes of the 2007 Regulations.

Paragraph (3) of Regulation 2 replaces Regulations 4 and 5 of the 2007 Regulations. The substituted provisions contain new rules about when a person is available for and actively seeking work, and the consequences of a person required to seek work failing to do so. The current rule is in the existing Regulation 5 of the 2007 Regulations. It provides that if, at any time within a 14 day period, a person does not actively seek work, he or she may be warned that, unless he or she actively seeks work during the next 7 days, he or she will be treated as not actively seeking work, and may therefore lose entitlement to income support.

The substituted provisions also include new provision for the consequences of a person ceasing remunerative work without good cause.

The new rules are as follows.

Inserted Regulation 4 – Person treated as available for and actively seeking work

This Regulation restates and expands upon the conditions that a person must satisfy in order to demonstrate that he or she is available for and actively seeking work. It replaces the existing Regulations 4 and 5 of the 2007 Regulations. The rule now requires the person to be in Jersey or, if temporarily absent, to have a reasonable excuse for such absence. The person is also required to be willing and able to take up remunerative work that is suitable work. “Suitable work” and “remunerative work” are already defined in, respectively, Regulations 1 and 3 of the 2007 Regulations. When undertaking any training or work experience, as one of the steps towards obtaining work, the substituted Regulation makes it clear that the person is expected to engage in it to the best of his or her ability.

Inserted Regulation 5 – Consequence of ceasing work without good cause

If a person ceases work without good cause, he or she will not be entitled to the basic component of income support, during a period of 91 days. The person remains eligible for other components of income support and special payments.

The inserted Regulation 5C specifies circumstances in which the period of 91 days is extended or terminated.

Inserted Regulation 5A – Warning

This Regulation applies to any person who is required to seek work in order to be eligible for income support. The person may be given a warning notice if he or she does not seek work. The notice remains in force for a year. However, if the person breaches the warning by failing to seek work as required, the period of a year restarts from the date he or she is notified of the breach – or, if he or she has breached the warning more than once, from the date of the last notice.

The inserted Regulation 5C makes further provision for the extension of the warning period, and for its termination.

The warning itself does not have any effect upon the person's entitlement to income support but being in breach of it has the consequences described in Regulations 5B, 5D and 5E.

Inserted Regulation 5B – Breach of warning

If, whilst a warning is in force, a person does not seek work when, in order to be eligible for income support, he or she is required to do so, the person is in breach of the warning. The person will be given notice of a breach. On a first breach during the warning period, the person remains in breach for 2 weeks. On a second breach during the warning period, he or she is in breach for 4 weeks. On a third or subsequent breach during the warning period, he or she is in breach for 6 weeks.

Notice of a breach, or notice of a further breach, cannot be given less than 7 days after the person was given the warning notice or a notice of a previous breach whilst the warning is in force.

Inserted Regulation 5C – Extension or termination of periods under Regulations 5, 5A and 5B

This Regulation makes provision for the extension or termination of a sanction period under Regulation 5, a warning under Regulation 5A or a breach under Regulation 5B. A sanction period is extended by 7 days if the person is warned and by any period during which the person is in breach of a warning. All of the periods are extended if the person is remanded in custody or detained. All of the periods are terminated once the person reaches the age of 65 or if the person is remanded in custody or detained for a year.

Inserted Regulation 5D – Consequence of first or second breach

On the first or second occasion that a person is in breach of a warning, the household of which he or she is a member is not entitled to a basic income support component for the person. The person's eligibility for any other component or for a special payment is unaffected.

Inserted Regulation 5E – Consequence of third or subsequent breach

On the third or a subsequent occasion that a person is in breach of a warning, the consequences are more serious.

- The person is not eligible for any special payments specified in Regulations, although the Minister would retain the discretion to make a special payment in exceptional circumstances.
- The income support claim of the household of which he or she was a member on the day notice of the breach was served is deemed withdrawn, the household does not receive income support, and the household cannot make a fresh claim whilst the person in breach remains a member of it. Again, the Minister would retain the discretion to make a special payment in exceptional circumstances. The fact that income support is not paid to the household during the period does not affect any determination, and the consequences of any determination, that any member of the household has given up remunerative work without good cause or not actively sought work when required to do so.

- If the person becomes a member of another household, that other household is not entitled to the basic income support component in respect of him or her. (A person becomes a member of another household if he or she resides with a new partner.)

Inserted Regulation 5F – Consequences and periods of successive breaches may run concurrently

This Regulation makes it clear that if a person breaches a warning whilst he or she is already in breach, the successive breach periods, and their consequences, according to whether the breach is a first or second breach or a third or subsequent breach, will run concurrently, rather than the consequences of a breach ceasing to have effect upon the consequences of a subsequent breach taking effect.

Regulation 3 deletes Regulation 5 of the Income Support (Special Payments) (Jersey) Regulations 2007. That Regulation allowed for a special payment to be made to a household which was not eligible for income support because one of its adult members was required to seek work but was not doing so.

Part 3 – Miscellaneous and closing

Regulation 4 removes a household's entitlement to a housing component if all of the adult members of the household are, for 5 weeks or more, outside Jersey; in custody or detention; or provided with board and lodging at public expense (unless in residential care).

Regulation 5 makes 3 amendments in respect of the impairment component of income support.

Paragraphs (1), (2) and (4) of Regulation 5 clarify the matters to which regard may be had in determining any personal care element of impairment component payable in respect of a person.

Paragraph (3) of Regulation 5 revises the rules for assessment of a person who suffers epileptic seizures. A person will not fall within the revised rule if his or her seizures are suffered whilst he or she is asleep and are not followed by any post-ictal dangerous behaviour.

Paragraph (5) of Regulation 5 substitutes the statement in respect of the mobility element of impairment component that is relevant to a person who suffers epileptic seizures. The substituted statement is the same as that for which the lowest score is given in respect of the personal care element of impairment component.

Regulation 6 provides for the citation and commencement of the Regulations.



Jersey

DRAFT INCOME SUPPORT (MISCELLANEOUS PROVISIONS) (JERSEY) REGULATIONS 201-

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Jersey

DRAFT INCOME SUPPORT (MISCELLANEOUS PROVISIONS) (JERSEY) REGULATIONS 201-

Made [date to be inserted]
Coming into force [date to be inserted]

THE STATES, in pursuance of Articles 3(3), 5(4) and (5), 8 and 18 of the Income Support (Jersey) Law 2007¹, have made the following Regulations –

PART 1

INTERPRETATION

1 Interpretation

In these Regulations –

“2007 Regulations” means the Income Support (Jersey) Regulations 2007²;

“Special Payment Regulations” means the Income Support (Special Payments) (Jersey) Regulations 2007³.

PART 2

ELIGIBILITY FOR INCOME SUPPORT – WORK REQUIREMENTS

2 2007 Regulations amended

(1) In Regulation 1(1) of the 2007 Regulations –

(a) after the definition “bedsit” there shall be inserted the following definition –

“ ‘breach period’ means the period for which a person is treated as being in breach following a breach, in accordance with Regulation 5B;”;

(b) after the definition “foster child” there shall be inserted the following definition –

“ ‘full time’, in relation to work, shall be construed in accordance with Regulation 2;”;

- (c) after the definition “owner” there shall be inserted the following definitions –

“ ‘person required to seek full time work’ means an adult member of a household who –

- (a) is not engaged in full time remunerative work; and
- (b) is not exempt from the requirement in Article 2(1)(c) of the Law to be in such work by virtue of any sub-paragraphs (a) to (f) and (h) of Article 3(1) of the Law;

‘person required to seek part time work’ means an adult member of a household who –

- (a) is not exempt from the requirement in Article 2(1)(c) of the Law to be in full time remunerative work by virtue of any of sub-paragraphs (a), (b) and (h) of Article 3(1) of the Law;
- (b) is a person to whom any of sub-paragraphs (c) to (f) of Article 3(1) of the Law applies and in whose case a number of hours has been determined in accordance with Article 3(2)(b) of the Law; and
- (c) is not engaged in remunerative work for the number of hours so determined;

‘person required to seek work’ means a person required to seek full time work or part time work;

‘remunerative’, in relation to work, shall be construed in accordance with Regulation 3;”;

- (d) after the definition “suitable work” there shall be inserted the following definition –

“ ‘warning’ means a warning that is in force under Regulation 5A.”.

- (2) In Regulations 2(1) and 3(1) of the 2007 Regulations, after the words “Article (2)(1)(c) of the Law” there shall be inserted the words “and these Regulations”.
- (3) For Regulations 4 and 5 of the 2007 Regulations there shall be substituted the following Regulations –

“4 Person treated as available for and actively seeking work

- (1) For the purposes of Article 3 of the Law, a person is to be treated as available for, and actively seeking, remunerative work if he or she –

- (a) is –
 - (i) in Jersey, or
 - (ii) temporarily absent from Jersey and has a reasonable excuse for the absence;

- (b) is willing and able to take up, as soon as reasonably practicable, any remunerative work that is suitable work;
- (c) is taking all reasonable steps to obtain remunerative work that is suitable work;
- (d) does not unreasonably turn down any offer of remunerative work that is suitable work; and
- (e) attends every interview arranged by the Minister, unless the person has a reasonable excuse for not attending.

(2) For the purposes of paragraph (1)(c), the steps include –

- (a) attending any training that may assist the person in obtaining remunerative work that is suitable work, unless the person has a reasonable excuse for not so doing and, when attending the training, participating in it to the best of the person's ability; and
- (b) attending any work experience placement that may assist the person in obtaining remunerative work that is suitable work, unless the person has a reasonable excuse for not so doing and, when attending the work experience placement, undertaking it to the best of the person's ability.

(3) For the purposes of Article 3(1)(g) of the Law, the remunerative work referred to in paragraph (1) must be full time.

(4) For the purposes of Article 3(2)(b) of the Law, the remunerative work referred to in paragraph (1) must be for such number of hours as a determining officer considers appropriate in the person's particular circumstances.

5 Consequence of ceasing remunerative work without good cause

(1) This Regulation applies to a person who ceases remunerative work without good cause.

(2) During the sanction period, the household of which he or she is a member is not entitled to a basic component under Article 5(2)(a) or (b) of the Law in respect of the person.

(3) Subject to Regulation 5C, the sanction period is 91 days.

(4) The sanction period commences –

- (a) in a case where the household was, at the time the person ceased work without good cause, in receipt of income support – on the day the person ceased work;
- (b) subject to paragraph (5), in any other case – on the first day that income support is paid to the household after the person ceased work without good cause or would have been paid had a basic component been payable to the household in respect of the person.

(5) In a case where –

- (a) the household was not, at the time the person ceased work without good cause, in receipt of income support; and
 - (b) the person proves, to the satisfaction of the officer determining his or her claim for income support, that he or she has, before the day described in paragraph (4)(b), complied with the requirements of Regulation 4,
- the sanction period commences with the day the person commenced such compliance.

- (6) For the purposes of paragraph (4)(a), the day a person ceases work is the day following the last day on which that person is in that work.

5A Warning

- (1) A person required to seek work may be warned if –
 - (a) he or she does not comply with the requirements of Regulation 4; and
 - (b) there is not a warning currently in force in respect of him or her.
- (2) Subject to paragraph (3) and Regulation 5C, a warning remains in force for the period of 365 days beginning with the day the person is given notice of it.
- (3) If, whilst a warning is in force in respect of a person, he or she commits a first, second, third or subsequent breach of the warning, the warning shall remain in force until the expiry of the period of 365 days following the date he or she was given notice of the breach or, if he or she has committed more than one breach, the date he or she was given notice of the most recent breach.

5B Breach of warning

- (1) A person in relation to whom a warning is in force is in breach of the warning if he or she –
 - (a) is a person required to seek work; and
 - (b) does not comply with the requirements of Regulation 4.
- (2) A person who is in breach of a warning for a first time shall be treated as being in breach for 14 days.
- (3) A person who is in breach of a warning for a second time shall be treated as being in breach for 28 days.
- (4) A person who is in breach of a warning for a third or subsequent time shall be treated as being in breach for 42 days.
- (5) A period of time in paragraph (2), (3) or (4) –
 - (a) begins with the day the person is given notice of the breach; and
 - (b) is subject to Regulation 5C.

- (6) A person cannot be given notice of a breach less than 7 days after he or she has been given notice of a warning or of a previous breach whilst the warning is in force.
- (7) Paragraph (6) does not prevent any act or omission of the person during the 7 days referred to in that paragraph being taken into account in determining whether the person has complied with the requirements of Regulation 4.

5C Extension or termination of periods under Regulations 5, 5A and 5B

- (1) A sanction period applicable in a person's case under Regulation 5 shall be extended by 7 days if the person is warned.
- (2) A sanction period applicable in a person's case under Regulation 5 shall be extended by the number of days for which the person is in breach of a warning, as described in Regulation 5B.
- (3) Any period applicable in a person's case under Regulation 5, 5A or 5B shall be extended, subject to paragraph (4)(b), by the number of days for which the person is remanded in custody or detained as described in Article 3(1)(h) of the Law.
- (4) Any period applicable in a person's case under Regulation 5, 5A or 5B shall be terminated upon –
 - (a) the person being exempt from the requirement to be in full time remunerative work by virtue of Article 3(1)(a) of the Law; or
 - (b) the person having been remanded in custody or detained as described in Article 3(1)(h) of the Law for a continuous period of 365 days.

5D Consequence of first or second breach

- (1) This Regulation applies where a person is in breach of a warning for a first or second time.
- (2) During the breach period, the household of which the person in breach is a member is not entitled to a basic component under Article 5(2)(a) or (b) of the Law in respect of the person in breach.

5E Consequence of third or subsequent breach

- (1) This Regulation applies where a person is in breach of a warning for a third or subsequent time.
- (2) During the breach period, the person in breach shall not be eligible for any payment under Article 8(1) of the Law.
- (3) Any claim for income support by the original household of the person in breach shall be taken to be withdrawn upon the commencement of the breach period.

- (4) During the breach period, whilst the person in breach is a member of his or her original household –
 - (a) no income support shall be paid to the household;
 - (b) no member of the household shall be eligible for any payment under Article 8(1) of the Law; and
 - (c) the household cannot make a fresh claim for income support.
- (5) The fact that, under paragraph (4), no income support is paid to the original household does not affect –
 - (a) whether any member of the household is a person required to seek work and the consequences of the person not complying with the requirements of Regulation 4; or
 - (b) any determination that a member of the household has ceased remunerative work without good cause and the consequences of such a determination under Regulation 5.
- (6) If, during the breach period, the original household makes a fresh claim for income support after the person in breach has ceased to be a member of it, but the person in breach subsequently rejoins the household, the fresh claim for income support shall be taken to be withdrawn upon the person in breach becoming a member of the original household again.
- (7) Whilst the person in breach is a member of another household, that other household is not entitled to a basic component under Article 5(2)(a) or (b) of the Law in respect of the person in breach.
- (8) In this Regulation, ‘original household’ means the household of which the person in breach was a member at the time he or she received notice of the breach.
- (9) For the purposes of this Regulation the person in breach is a member of another household if, after he or she receives notice of the breach, another person who was not a member of the original household becomes a member of the same household as the person in breach, by virtue of Article 5(1) of the Income Support (General Provisions) (Jersey) Order 2008, in the circumstances described in sub-paragraph (a) or (aa) of that provision.

5F Consequences and periods of successive breaches may run concurrently

A breach of a warning by a person for a second or subsequent time does not affect the operation of Regulations 5B to 5E in relation to the previous breach or breaches of the warning by the person.”.

3 Special Payments Regulations amended

Regulation 5 of the Special Payments Regulations is deleted.

PART 3

MISCELLANEOUS AND CLOSING

4 2007 Regulations amended: housing component

After paragraph 3(2) of Schedule 1 to the 2007 Regulations there shall be added the following sub-paragraph –

“(3) A household is not entitled to a housing component during any week for which –

(a) the household is not entitled to a basic component under Article 5(2)(a) or (b) of the Law in respect of any of the adult members of the household; and

(b) each of those adult members is –

(i) a person in whose case paragraph 1(1)(b) applies for a fifth or subsequent week of a continuous period, or

(ii) a person in whose case paragraph 1(1)(c) or (d) applies.”.

5 2007 Regulations amended: impairment component

(1) At the beginning of paragraph 6(2)(a) of Schedule 1 to the 2007 Regulations there shall be inserted the words “in accordance with the directions set out in Part 1 of Schedule 2,”.

(2) Before the table in Part 1 of Schedule 2 to the 2007 Regulations there shall be inserted the following words –

“Directions

(1) A statement in respect of any of the activities numbered 1 to 11 in the table shall be selected having regard only to the member of the household’s physical and sensory abilities.

(2) A statement in respect of any of the activities numbered 13 to 18 in the table shall be selected having regard only to the member of the household’s mental and cognitive abilities.”.

(3) In the table in Part 1 of Schedule 2 to the 2007 Regulations, for the statements numbered 12A and 12B there shall be substituted the following statements –

“12A Epileptic seizures causing loss of consciousness: persons aged 12 and over			
a) in the past 6 months has had 6 or more epileptic seizures with loss of consciousness and either – (i) was awake when the seizure commenced but had no useful warning of seizure, or	15	12 years	None

(ii) had dangerous post-ictal behaviour			
b) in the past 6 months has had 3 or more epileptic seizures with loss of consciousness and either – (i) was awake when the seizure commenced but had no useful warning of seizure, or (ii) had dangerous post-ictal behaviour	9	12 years	None
c) in the past 6 months has had 1 or more epileptic seizures with loss of consciousness and either – (i) was awake when the seizure commenced but had no useful warning of seizure, or (ii) had dangerous post-ictal behaviour	6	12 years	None
d) none of the above	0	12 years	None
12B Epileptic seizures causing loss of consciousness: persons aged under 12			
a) at least once a week in the past 6 months has had an epileptic seizure with loss of consciousness and was awake at any time during the seizure	15	1 year	12 years
b) at least once a month in the past 6 months has had an epileptic seizure with loss of consciousness and was awake at any time during the seizure	9	1 year	12 years
c) at least once every 2 months in the past 6 months has had an epileptic seizure with loss of consciousness and was awake at any time during the seizure	6	1 year	12 years
d) none of the above	0	1 year	12 years”.

- (4) The note following the table in Part 1 of Schedule 2 to the 2007 Regulations shall be deleted.
- (5) In Part 2 of Schedule 2 to the 2007 Regulations for paragraph 3 there shall be substituted the following paragraph –

“3 Epileptic seizures causing loss of consciousness

In the past 6 months has had one or more epileptic seizures with loss of consciousness and either –

- (a) was awake when the seizure commenced but had no useful warning of seizure; or
- (b) had dangerous post-ictal behaviour.

Note: Statement is not relevant in the case of child under the age of 12 years.”.

6 Citation and commencement

These Regulations may be cited as the Income Support (Miscellaneous Provisions) (Jersey) Regulations 201- and shall come into force 7 days after they are made.

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- ¹ *chapter 26.550*
² *chapter 26.550.30*
³ *chapter 26.550.70*