

# STATES OF JERSEY



## DRAFT SOCIAL SECURITY (BONUS) (JERSEY) LAW 201-

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Lodged au Greffe on 20th May 2014  
by the Minister for Social Security

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STATES GREFFE





Jersey

## **DRAFT SOCIAL SECURITY (BONUS) (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 Social Security (Bonus) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator F. du H. Le Gresley**

*Minister for Social Security*

Dated: 16th May 2014

## REPORT

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### **Introduction**

This draft Law presents a new framework to enable, via Regulations, the payment of bonuses. The creation of such legislation will offer several advantages.

In the past, the States have used triennial Regulations to bring bonuses into payment when constraints on resources or timescales would not permit the drafting of primary legislation. On occasions, these triennial Regulations have been subject to repeated renewals. The Social Security (Bonus) (Jersey) Law 201- (“the Law”) will offer a time-effective means for bringing future bonuses into payment without recourse to primary legislation and the Privy Council.

The first of these is the Cold Weather Bonus, which is paid to pensioners to defray the cost of winter heating bills. This bonus is currently paid via triennial Regulations and is due to expire in June 2014. The Law can be used to establish the Cold Weather Bonus in primary legislation.

In future, the Law may also be used to consolidate other benefits and bonuses, such as the Christmas Bonus and TV Licence Benefit. This will provide opportunities to standardise administration, with the potential to reduce the cost of administering bonus payments and improving the service offered in the application and payment processes.

### **Content of the Social Security (Bonus) (Jersey) Law 201-**

The purpose of the Law is to provide a framework within which detailed Regulations and Orders can be established to provide for a range of bonuses over time.

#### Regulations under the Law

The Law provides a new power for the States to make Regulations to entitle groups of people to a payment or a bonus. The power to make Regulations under the Law will be used to define the eligibility criteria for receiving the bonus and the nature of the bonus, which could be a money payment, vouchers, pre-paid card, or other system.

In addition, Regulations will also provide for the appointment of agents, determination of claims, reviews, appeals, recovery of sums wrongly paid, and offences and penalties.

#### Order-making powers

The Law provides for Order-making powers to set the initial value of the bonus and to prescribe how the value of the bonus and asset or income bars may be varied, to specify procedural matters, and to set administration fees associated with the Regulations.

#### Offences

The Law sets out offences which are standard to other benefits currently in payment and creates an offence in cases where a false claim is made. Such offences are liable to a fine and imprisonment. These offences have been subject to review and approval by H.M. Attorney General, and the Law has been validated against Human Rights requirements.

### **The Cold Weather Bonus Schedule**

The Cold Weather Bonus (Jersey) Regulations 2012 allow payment to lower-income pensioners to help with heating costs during winter months. These are triennial Regulations which are due to expire on 30th June 2014, and further provision must be

made if the bonus is to be paid in respect of the coming winter. The bonus has therefore been included as a Schedule to the Law.

### **Purpose of the cold weather bonus**

A cold weather bonus was first paid in May 2012, having been introduced by P.186/2011. It is essentially a 'domestic' bonus, designed to compensate lower-income pensioner households for fuel costs in cold winter months. It is available to both owner-occupiers and tenants, but does not extend to individuals living in hostels or care homes.

The value of the cold weather bonus varies according to the temperatures recorded during a cold weather month, these being October through to April inclusive. Payments are made in January in respect of October, November and December; and in May in respect of January, February, March and April. The amount paid is calculated according to the average daily temperature in each of the cold weather months. If the average recorded temperature for a day falls below 15.5 degrees, the amount by which it falls below 15.5 is noted and totalled. If this total sums to 90 or more during that month, then a cold weather bonus is paid. This formula is identical to that used for cold weather payments under Income Support (Jersey) Law 2007 and, like income support, the value of the bonus is automatically updated each year in line with the annual increase in fuel prices, as reported in the June RPI.

A cold weather bonus was first paid in respect of January to April 2012, where it totalled £170.61; and has ranged between £70 and £230 since its introduction.

### **Value of cold weather bonus since introduction**

January to April 2012	£170.61
October to December 2012	£72.87
January to April 2013	£231.75
October to December 2013	£72.25
January to April 2014	£127.89

### **Eligibility for a cold weather bonus**

The current Cold Weather Bonus Regulations define eligibility with reference to the Food Costs Bonus Regulations. These references have been removed, so it will function without reference to the triennial Food Costs Bonus (Jersey) Regulations 2011, which will fall away in 2016.

Despite this, eligibility for the cold weather bonus remains essentially unchanged from the previous Regulations, requiring that households that apply –

- do not receive a cold weather payment under the Income Support Law
- include a member who has at least 5 years' ordinary residence, continuously before the application
- do not include a taxpayer
- include a member over pensionable age who is in receipt of a Jersey old age pension
- include the tenant or owner of the accommodation, who is responsible for the cost of heating.

Following States approval for the amendment to P.115/2013, as proposed by the Minister for Social Security last year, the Schedule also extends eligibility to provide that pensioners who do not receive a Jersey old age pension may still apply on the condition that they have 10 years' continuous residency.

The existing rules regarding the year of assessment for income tax have also been amended to refer to the previous tax year only. This amendment provides clarity to applicants and operationally simplifies the application process.

The current triennial Regulations provide that a bonus is not paid if the dwelling is shared with another household which is receiving a cold weather payment under Income Support legislation, and that if more than one household occupies the same dwelling and more than one qualify for the cold weather bonus, that the bonus is split between households. These provisions are maintained.

**Financial and manpower implications**

There are no resource implications resulting from the creation of this framework Law. The cost of bonuses created under the Law will draw on Social Security Tax-funded Budgets and thus be subject to departmental financial controls within the Medium Term Financial Plan. The Schedule to provide for a cold weather bonus provides for the replacement of the existing bonus under similar terms and conditions, and the cost of the bonus is included within the existing departmental budget.

Over 1,000 pensioners receive the cold weather bonus and the Department will continue to promote the bonus and encourage more eligible pensioners to apply. In August 2012 and 2013, flyers were distributed with pension uprate letters informing pensioners of the other benefits and schemes they may be eligible for, and encouraging applications for the cold weather bonus. The flyers were updated in 2013, and the use of this publicity material may be responsible for an increase in uptake.

Cold weather month		Number of Claimants (Households)
January – April	2012	952
October – December	2012	1,063
January – April	2013	1,070
October – December	2013	1,131

The cost of the benefit varies considerably according to temperature, and across the 2 full years of operation has averaged £283,000. The forecast for 2014 is currently held at £253,000, considering the comparatively mild start to 2014.

Replacing the Cold Weather Bonus Triennial Regulations with the new Law is not associated with any increased administration, and there may be some minor savings in resources which would otherwise be used in the maintenance of triennial Regulations. It is anticipated that efficiencies can be realised if bonuses are arranged and standardised under the new Law.

**Human Rights**

The notes on the human rights aspects of the draft Law in the **Appendix** have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

**Human Rights Notes on the Draft Social Security (Bonus) (Jersey) Law 201-**

These notes have been prepared in respect of the Draft Social Security (Bonus) (Jersey) Law 201- by the Law Officers' Department.

In the Law Officers' opinion, the draft Law is compatible with the European Convention on Human Rights ("ECHR") as implemented under the Human Rights (Jersey) Law 2000. The States have, under the settled case-law of the European Convention, a very broad margin of appreciation in respect to determining the scope of benefit entitlements. This means that enactments concerning such entitlements will only be incompatible with the Convention if decisions are made which are clearly unjustifiable.

The draft Law creates an entitlement to cold weather payments. Those entitlements make distinctions based on age and residency, but such distinctions are non-discriminatory. It is manifestly justifiable to link entitlement to this sort of benefit to age, and likewise to base entitlement in terms of factors such as entitlement to a Jersey old age pension and residency. The extent of an individual's links to the Island and contribution to the economy over their working lifetime are obviously justifiable factors to include when defining benefit entitlement. It is noted that the entitlement criteria represent a liberalisation of the pre-existing regime, in that there is an alternative criterion for entitlement which does not require entitlement to a Jersey old age pension, but instead requires 10 years' residency prior to applying for the benefit. The reasons for this liberalisation are set out in [P.115/2013 Amd.](#), and the Law Officers believe that any Court would accept that the balance struck is well within the broad margin of appreciation given to the States.

The draft Law also creates a distinction on the basis that the household involved must be entitled to occupy the premises concerned. This is a manifestly justifiable approach, as otherwise such payments might facilitate illegal occupation of premises.

## Explanatory Note

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The Social Security (Bonus) (Jersey) Law 201- permits the making of Regulations to provide for the award or payment of bonuses and makes provision for a cold weather bonus.

*Article 1* defines “Minister” to be the Minister for Social Security.

*Article 2* empowers the States to make Regulations providing for a scheme to enable persons of a specified class to be entitled to receive a bonus in the form of an award or payment made to the person or on their behalf. Provision is made for the Regulations to specify the nature of the bonus; the criteria for eligibility for a bonus and the method by which a bonus may be awarded or paid. The Regulations may also provide for the Minister to appoint an agent to act on behalf of a person in relation to the grant and receipt of a bonus; the determination of claims and questions arising in respect of a bonus; the review of decisions of a person to grant or to refuse to grant a bonus; appeals against such reviews; the modification of the application, in relation to an appeal, of a Law or an enactment made under a Law relating to the conduct of appeals by a body or tribunal to which an appeal may be made; the recovery of amounts of a bonus wrongly awarded or paid; the extinguishment of rights to an award of, or sums payable as, a bonus; administrative expenses to be payable to members of a body or tribunal to which an appeal may be made and offences and penalties for contravention of the Regulations.

*Article 3* provides for the making of Orders for the purpose of specifying the value of a bonus and the method by which the value of the bonus may be varied; specifying procedures and notification periods for applications, determinations and appeals in respect of a bonus; specifying the value of any income or asset specified in Regulations made under *Article 2(2)(b)* to be a criterion for eligibility for the grant of a bonus and setting the amount of administrative expenses payable under Regulations made under *Article 2(2)(k)*.

*Article 4* provides for the Schedule to have effect to provide a cold weather bonus and empowers the States to make Regulations to amend the *Schedule*. *Article 4* and the *Schedule* are both to cease to have effect on the date of coming into force of Regulations made under *Article 2* to provide for a scheme for a cold weather bonus.

*Article 5* creates offences relating to the making of false statements or using false documents in support of a claim for a bonus and makes provision for the criminal liability of partners, directors and other officers of a partnership with separate legal personality and a body corporate.

*Article 6* provides for the citation and commencement of the Law.

The *Schedule* provides for a cold weather bonus to be payable by the Minister for Social Security to households that have at least one adult member who is over pensionable age. The Schedule will replace the Cold Weather Bonus (Jersey) Regulations 2012 which will expire on 30th June 2014.

Paragraph 1 defines words and expressions used in the Schedule. In particular, a “cold weather bonus” is defined as a bonus payable to defray the expenses of heating a dwelling for any month from and including the months of October to April that is a cold weather month. A month being the month of October, November, December, January, February, March or April is a “cold weather month” if the aggregate of the amount by which the average daily temperature of each day in that month falls below 15.5 degrees Celsius exceeds 90.

Paragraph 2 requires the Minister to pay a cold weather bonus to the member of a household who applies for the cold weather bonus if the household qualifies for it.

Paragraph 3 sets out the conditions for a household to qualify for a cold weather bonus. The first condition is that, throughout the cold weather month no adult in the household has received (or has claimed and is entitled to receive) a payment under the Income Support (Special Payments) (Cold Weather Payments) (Jersey) Regulations 2008. The second condition is that no member of the household has been served with an income tax assessment notice showing a liability to tax for the year of assessment preceding the start of the series of the cold weather months (running from October in each year to April in the following year) to which the application relates. The third condition is that there is at least one adult who before the end of the relevant series of cold weather months is over pensionable age and who has been continuously ordinarily resident for the past 5 years in the case of a person receiving a Jersey old age pension or who has been continuously ordinarily resident for the past 10 years in the case of a person not receiving a Jersey old age pension, subject to rules on absence and imprisonment. The fourth condition is that during the cold weather month the household occupied a dwelling in respect of which at least one member of the household was the owner or has paid rent or held a lease to occupy the dwelling under the terms of a lease or licence or was employed as the caretaker in respect of which no wages are paid, or other money payments made, either by the employer or any other person and at least one member of the household was responsible for the cost of heating the dwelling.

Paragraph 4 sets out the amount of bonus payable and the manner in which it is calculated.

Paragraph 5 provides for the extinguishment of a right to a cold weather bonus where the payment of a cold weather bonus is not obtained within a period of 2 years from the date on which the right is to be treated as having arisen.

Paragraph 6 provides for an application for a cold weather bonus to be made on behalf of a household by a member of the household and provides for the time at which an application may be made. Provision is also made for the form of an application for a cold weather bonus.

Paragraph 7 makes provision for the furnishing of information and evidence in support of an application.

Paragraph 8 makes provision for the Minister to appoint a person to act on behalf of a person who is unable to act.

Paragraph 9 provides for an application for a cold weather bonus to be determined by a determining officer.

Paragraph 10 provides for a redetermination of an application for a cold weather bonus by a second determining officer.

Paragraph 11 provides an applicant or an adult member of the applicant's household with a right of appeal to the Social Security Tribunal ("the Tribunal") against a redetermination by a second determining officer.

Paragraph 12 permits the Tribunal to require further particulars to be furnished by the applicant or the determining officer.

Paragraph 13 provides a special procedure to be followed in cases of groundless appeals.

Paragraph 14 provides for the applicant and the Minister to agree that a matter before it may be properly determined by the Tribunal without a hearing and for the Tribunal to decide the matter without a hearing on the particulars supplied.

Paragraph 15 sets the procedure to be followed by the Tribunal.

Paragraph 16 provides for appeals against a decision on a point of law.

Paragraph 17 provides for administrative expenses to be payable to a member of the Tribunal.

Paragraph 18 provides for recovery of a cold weather bonus wrongly paid.

Paragraph 19 makes provision for the giving or sending of notices, notifications and other documents by post.



Jersey

## DRAFT SOCIAL SECURITY (BONUS) (JERSEY) LAW 201-

### Arrangement

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Jersey

## DRAFT SOCIAL SECURITY (BONUS) (JERSEY) LAW 201-

A **LAW** to provide for the making of Regulations for the award or payment of bonuses to or on behalf of eligible persons and to provide for a cold weather bonus and for connected purposes.

*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 –

### 1 Interpretation

In this Law “Minister” means the Minister for Social Security.

### 2 Regulations

- (1) The States may by Regulations provide for a scheme to enable a person of a specified class to be entitled to receive a bonus in the form of an award or payment made to that person or on that person’s behalf.
- (2) Without limiting the generality of paragraph (1), Regulations made under this Law may –
  - (a) specify the nature of a bonus;
  - (b) specify the criteria for eligibility for a bonus;
  - (c) specify the method by which a bonus may be awarded or paid;
  - (d) provide for the Minister to appoint an agent to act on behalf of a person in relation to the grant and receipt of a bonus;
  - (e) provide for the determination of claims and questions arising in respect of a bonus;
  - (f) provide for the reviews of decisions of a person to grant or to refuse to grant a bonus;

- (g) provide for appeals, including appeals to a body or tribunal established under another Law, to be made against decisions of persons reviewing decisions in accordance with sub-paragraph (f);
- (h) modify the application, in relation to an appeal under the Regulations, of –
  - (i) a Law, or
  - (ii) an enactment made under a Law,  
relating to the conduct of appeals by a body or tribunal to which an appeal under the Regulations may be made;
- (i) provide for recovery of the amount of a bonus wrongly awarded or paid;
- (j) provide for extinguishment of rights to an award of, or sums payable as, a bonus;
- (k) provide for administrative expenses to be payable to members of a body or tribunal referred to in sub-paragraph (g);
- (l) specify offences for contravention of the Regulations and specify penalties for such offences not exceeding imprisonment for 2 years and a level 3 fine.

### **3 Orders**

The Minister may by Order make provision –

- (a) specifying the value of a bonus and the method by which the value of the bonus may be varied;
- (b) specifying procedures and notification periods for applications, determinations and appeals in respect of a bonus;
- (c) specifying the value of any income or asset specified in Regulations made under Article 2(2)(b) to be a criterion for eligibility for the grant of a bonus;
- (d) providing for the amounts of administrative expenses payable under Regulations made under Article 2(2)(k).

### **4 Cold weather bonus**

- (1) The Schedule shall have effect to provide for a bonus to be called a cold weather bonus.
- (2) The States may by Regulations amend the Schedule.
- (3) This Article and the Schedule shall cease to have effect on the date of coming into force of Regulations made under Article 2 to provide a scheme for a cold weather bonus.

### **5 Offences**

- (1) A person shall not, with intent to obtain a bonus, whether on behalf of that person, another person or any household –

- 
- (a) furnish any information that he or she knows to be false in a material particular;
    - (b) recklessly furnish any information that is false in a material particular; or
    - (c) withhold any material information.
  - (2) A person shall not obtain or receive a bonus, whether on behalf of that person or of another person or of any household, knowing that it was not lawfully payable to, or not lawfully receivable by, him or her.
  - (3) A person who contravenes paragraph (1) or (2) shall be guilty of an offence and liable to imprisonment for a term of 2 years and to a fine.
  - (4) Where an offence under paragraph (3) committed by a limited liability partnership, separate limited partnership or other partnership having separate legal personality or body corporate is proved to have been committed with the consent or connivance of –
    - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
    - (b) any person purporting to act in any such capacity,the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
  - (5) Where the affairs of a body corporate are managed by its members, paragraph (4) applies in relation to acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

## **6 Citation and commencement**

This Law may be cited as the Social Security (Bonus) (Jersey) Law 201- and shall come into force on the seventh day after it is registered in the Royal Court.

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**SCHEDULE**

(Article 4)

**COLD WEATHER BONUS****1 Interpretation**

(1) In this Schedule –

“2007 Law” means the Income Support (Jersey) Law 2007<sup>1</sup>;

“adult” has the same meaning as in the 2007 Law;

“applicant” means a person who has made an application for a cold weather bonus under this Schedule;

“cold weather bonus” means a bonus payable to defray the expenses of heating a dwelling for any month from and including the months of October to April that is a cold weather month;

“determining officer” means a determining officer as defined in the 2007 Law or as appointed under Article 33 of the Social Security (Jersey) Law 1974<sup>2</sup>;

“hostel” means a facility (other than a private house) providing board and lodging and generally staffed by persons providing support to vulnerable persons;

“Jersey old age pension” means a pension to which a person is entitled under Article 25 of the Social Security (Jersey) Law 1974;

“Registrar” shall be construed in accordance with Article 4 of the Social Security (Determination of Claims and Questions) (Jersey) Order 1974<sup>3</sup>;

“Royal Court” means the Inferior Number of the Royal Court;

“series of cold weather months” means the months running from October in each year through to April in the following year;

“Tribunal” means the Social Security Tribunal constituted under Article 8 of the Social Security (Determination of Claim and Questions) (Jersey) Order 1974.

(2) In this Schedule –

(a) a month, being the month of October, November, December, January, February, March or April, is a “cold weather month” if the aggregate of the amount by which the average daily temperature of each day in that month falls below 15.5 degrees Celsius exceeds 90;

(b) references to a household are to be construed in the same way as they are for the purposes of the 2007 Law; and

(c) references to a person being a member of a household are to be construed in accordance with Article 5 of the Income Support (General Provisions) (Jersey) Order 2008<sup>4</sup>.

**2 Payment of cold weather bonus**

- (1) The Minister shall pay a cold weather bonus, being an amount calculated in accordance with the formula in paragraph 4 –
  - (a) on behalf of a household that qualifies for it under paragraph 3; and
  - (b) to a member of that household who applies for it in accordance with paragraph 6,in relation to any cold weather month.
- (2) Any cold weather bonus that is payable for the months of October, November or December shall be paid on or after 1st January the following year.
- (3) Any cold weather bonus that is payable for the months of January, February, March or April shall be paid on or after 1st May of that year.

**3 Qualifying conditions**

- (1) A household qualifies for a cold weather bonus for a cold weather month, if it meets all of the conditions in sub-paragraphs (2) to (5) in relation to that cold weather month.
- (2) The first condition is that no adult in the household has received (or has claimed and is entitled to receive) a payment under the Income Support (Special Payments) (Cold Weather Payments) (Jersey) Regulations 2008<sup>5</sup> in respect of the cold weather month.
- (3) The second condition is that, where an application for a cold weather bonus is made on behalf of the household, no member of the household was served with a notice of assessment under Article 25 of the Income Tax (Jersey) Law 1961<sup>6</sup> showing a liability to income tax for the year of assessment preceding the start of the series of the cold weather months to which the application relates.
- (4) The third condition is that at least one member of the household, before the end of the relevant series of cold weather months –
  - (a) is an adult who is over pensionable age; and
  - (b) subject to sub-paragraphs (6) to (8) –
    - (i) in the case of a person who is in receipt of a Jersey old age pension, has been ordinarily resident in Jersey for a continuous period of 5 years, or
    - (ii) in the case of a person who is over pensionable age but not in receipt of a Jersey old age pension, has been ordinarily resident in Jersey for a continuous period of 10 years.
- (5) The fourth condition is that during the cold weather month the household occupied a dwelling in respect of which at least one member of the household –
  - (a) was the owner or has paid rent or held a lease to occupy the dwelling under the terms of a lease or licence; or

- (b) was employed as the caretaker in respect of which no wages are paid, or other money payments made, either by the employer or any other person,
- and at least one member of the household was responsible for the cost of heating the dwelling.
- (6) A person resident outside Jersey shall nevertheless be treated as being ordinarily resident in Jersey for any part of the period specified in sub-paragraph (4)(b) in which that person's principal residence was in Jersey.
- (7) A person detained by virtue of a sentence of imprisonment or similar punishment (whether in Jersey or elsewhere) shall not be treated as ordinarily resident in Jersey for the period during which the person is so detained.
- (8) The period during which a person was ordinarily resident in Jersey immediately prior to the detention shall be treated as if it immediately preceded the person's release from that detention.
- (9) The fourth condition referred to in sub-paragraph (5) shall not be satisfied where the dwelling being occupied is lodgings or a hostel.
- (10) In this paragraph "pensionable age" has the meaning assigned in Article 1 of the Social Security (Jersey) Law 1974<sup>7</sup>.

#### 4 Amount of cold weather bonus

- (1) The amount of cold weather bonus payable shall be calculated according to the formula –

$$C \times \frac{T - 90}{450}$$

where –

C is calculated according to sub-paragraph (2); and

T is the aggregate, up to a maximum of 540, of the amount by which the average daily temperature of each day in that month falls below 15.5 degrees Celsius.

- (2) C is –
- (a) for each cold weather month from October 2014 to April 2015 inclusive, £153.23 increased or decreased by the same percentage as that of the rise or fall in the fuel element of the Jersey Retail Prices Index published by the States of Jersey Statistics Unit for the 12 months ending in the previous June;
- (b) for each subsequent cold weather month, the figure produced by increasing or decreasing the figure for the previous April by the same percentage as that of the rise or fall in the fuel element of the Jersey Retail Prices Index published by the States of Jersey Statistics Unit for the 12 months ending in the previous June.
- (3) The product of each formula in this paragraph shall be rounded up to the next whole penny.

- (4) Only one cold weather bonus is payable at any time in respect of a dwelling.
- (5) If a dwelling is occupied by 2 or more households entitled to a cold weather bonus, the cold weather bonus is divided equally between all the households entitled to it.
- (6) No cold weather bonus shall be payable where a dwelling is occupied by 2 or more households and one or more of those households receives, or has applied for and is entitled to receive, a cold weather payment under the Income Support (Special Payments) (Cold Weather Payments) (Jersey) Regulations 2008<sup>8</sup> in respect of that dwelling.

## **5 Extinguishment of rights to cold weather bonus**

- (1) The right to a payment of a cold weather bonus is extinguished where the payment of the cold weather bonus is not obtained within the period of 2 years from the date on which the right is to be treated as having arisen.
- (2) For the purpose of this paragraph the right is to be treated as having arisen –
  - (a) in relation to any such sum contained in an instrument of payment which has been given or sent, for the purposes of making payment of that sum, to the applicant or to an approved place for collection by the applicant (whether or not received or collected as the case may be), notwithstanding that that sum is greater or less than the sum of the payment to which the applicant has the right –
    - (i) on the date on the instrument of payment, or
    - (ii) if a further instrument of payment has been so given or sent as a replacement for an instrument of payment previously given or sent, on the date on the last such instrument of payment;
  - (b) in relation to any such sum to which clause (a) does not apply, but where notice is given (whether orally or in writing) or is sent that the sum contained in the notice is available for collection, notwithstanding that that sum is greater or less than the sum of the payment to which the applicant has the right –
    - (i) if written notice is sent through the post, on the date on which it would be delivered in the ordinary course of post, and
    - (ii) in any other case, on the date of the notice, and if more than one such notice is given or sent, on the date determined by reference to the first such notice; or
  - (c) in relation to any such sum to which neither clause (a) nor (b) applies, on such date as the Minister determines.
- (3) Where a question arises whether the right to payment of any sum as a cold weather bonus has been extinguished by the operation of this paragraph and the determining officer or the Tribunal is satisfied that –

- (a) after the expiration of the period of 2 years referred to in sub-paragraph (1) the Minister has received notice requesting payment of that sum; and
- (b) throughout a period commencing within the period of 2 years referred to in sub-paragraph (1) and continuing up to the day on which the notice was given there was good cause for not giving that notice,

the period of 2 years referred to in sub-paragraph (1) is extended to the date on which the determining officer or the Tribunal decides that question, and, for the purposes of the operation of this paragraph, after that decision the right to payment of that sum is to be treated as having arisen on that date.

- (4) This paragraph applies to a person authorized or appointed to act on behalf of an applicant as it applies to an applicant.

## **6 Application for cold weather bonus**

- (1) An application for a cold weather bonus may be made to the Minister –
  - (a) on behalf of a household that meets the conditions specified in paragraph 3 on the date of the application; and
  - (b) by a member of that household.
- (2) Subject to sub-paragraph (3), an application for a cold weather bonus may be made at any time during a series of cold weather months and only in respect of those months.
- (3) In any case where the applicant proves that there was good cause for a failure to make the application before the date on which it was made, the time specified in paragraph (2) for making the application is extended to the date on which the application is made, subject to a maximum extension of 5 months.
- (4) An application for a cold weather bonus must be made to the Minister on a form approved by the Minister, or in such other manner as the Minister may accept as sufficient in the circumstances for the case.
- (5) An application is treated as having been made on the day on which it is received by the Minister at an office approved by the Minister for the receiving of applications.
- (6) If an application is defective at the date when it is received or has been made in a manner otherwise than as required by sub-paragraph (4), the Minister may refer the application to the applicant or, as the case may be, supply him or her with the form, and if the form is received properly completed within 14 days from that date on which the application is so referred, or the form is so supplied, to the applicant, the Minister must treat the application as if it had been duly made in the first instance.
- (7) An applicant may, by notice in writing to the Minister, amend an application at any time before the application is determined and the Minister may treat the application as if it had been made as so amended in the first instance.

**7 Information and evidence in support of an application**

- (1) An applicant or such other adult member of the household as the determining officer may specify must furnish such certificates and other documents and information as the determining officer may require in connection with the application and, if reasonably so required, must for that purpose attend at such office or place as the determining officer may direct.
- (2) Without prejudice to the generality of sub-paragraph (1) and paragraph 6(4), the Minister may require the application to contain at least the following information –
  - (a) the address of the household;
  - (b) in relation to each adult member of the household, including the applicant, that person's –
    - (i) title and full name (including any previous surname),
    - (ii) date of birth,
    - (iii) social security number, and
    - (iv) relationship to the applicant;
  - (c) a copy of any notice of assessment under Article 25 of the Income Tax (Jersey) Law 1961 for the year preceding the start of the series of cold weather months related to any adult member of the household, including the applicant; and
  - (d) in relation to the applicant only –
    - (i) confirmation of that person's period of ordinary residence in Jersey, and
    - (ii) details of a bank account, if available, into which the cold weather bonus can be paid, including the name of the bank, the sort code, the account number and the name of the account holder.
- (3) The determining officer may treat an application as not having been made unless and until each adult member of the household has taken any step requested of that member by the determining officer to assist in enabling the Comptroller of Taxes to release to the determining officer any information that –
  - (a) is held by the Comptroller; and
  - (b) is required by the determining officer in order to determine whether the household meets the second condition, as set out in paragraph 3(3).

**8 Persons unable to act**

- (1) In the case of an applicant who is unable to act who –
  - (a) has not been received into guardianship in pursuance of a guardianship application under Article 14 of the Mental Health (Jersey) Law 1969<sup>9</sup>;

(b) does not have a curator appointed under Article 43 of the Mental Health (Jersey) Law 1969 to manage and administer his or her property and affairs; and

(c) does not have a *tuteur*,

the Minister may, on receipt of a written request, appoint a person to act on the applicant's behalf.

- (2) An appointment by the Minister under sub-paragraph (1) terminates –
- (a) if the applicant is received into guardianship, or has a curator or *tuteur* appointed;
  - (b) at the request of the person appointed;
  - (c) if revoked by the Minister; or
  - (d) if the applicant becomes able to act.

## **9 Functions of determining officers**

- (1) An application for a cold weather bonus must be determined by a determining officer and where required under paragraph 10, redetermined by a second determining officer.
- (2) The determining officer must notify in writing the applicant (or other person acting on his or her behalf) and all the other adult members of the applicant's household –
- (a) of every adverse decision made in respect of the household and the reasons for it; and
  - (b) of their rights to challenge an adverse decision, as set out in sub-paragraph (3) in the case of a first determination or as set out in sub-paragraph (4) in the case of a redetermination.
- (3) In the case of an adverse decision on a first determination, the determining officer must notify the other persons mentioned in sub-paragraph (2) –
- (a) of the right of any of them to have every adverse decision reconsidered by a second determining officer;
  - (b) that this right must be exercised within 21 days of the person receiving notice of the decision; and
  - (c) that if the right is not exercised there is no right of further appeal.
- (4) In the case of an adverse decision on redetermination, the determining officer must notify the other persons mentioned in sub-paragraph (2) of the right of any of them to appeal to the Tribunal.
- (5) Where the determining officer or, in the case of a redetermination, the second determining officer, has determined that the household is entitled to a cold weather bonus and the amount of the cold weather bonus, he or she must allow payment of the cold weather bonus to be made.

## **10 Redetermination by second determining officer**

If an applicant or an adult member of the applicant's household is dissatisfied with any decision under paragraph 9 that is made by a first determining officer

determining the matter, he or she may require the matter to be redetermined by a second determining officer at any time within 21 days of receiving notice of the decision.

### **11 Appeals to Tribunal**

- (1) If an applicant or an adult member of the applicant's household is dissatisfied with any redetermination by a second determining officer, he or she may appeal to the Tribunal within 14 days of receiving notification of the decision.
- (2) An appeal made outside the 14 day period, but within 28 days of receiving notification of the decision, may be allowed with the consent of the chairman of the Tribunal.
- (3) Every appeal must be made in writing to the Registrar on a form approved by the Registrar for that purpose, or in such manner as the Registrar may accept as sufficient in the circumstances of the case.

### **12 Further particulars**

- (1) The Tribunal may at any time require the applicant or the determining officer to furnish it with further particulars in writing and within such time as it may direct with regard to any appeal, and may at any stage of the proceedings allow the amendment of any application for appeal or any statement or particulars and extend the time for furnishing any statement or particulars.
- (2) If, after the expiration of the time, or where the time has been extended, expiration of the extended time, for furnishing any statement or particulars under sub-paragraph (1), the applicant has failed to do so, the appeal is to be treated as having been abandoned.

### **13 Special procedure in cases of groundless appeals**

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

**14 Decision without a hearing**

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

**15 Procedure of Tribunal**

- (1) The parties to an appeal before the Tribunal are the applicant and the Minister and each party or any person acting on behalf of that party may make representations to the Tribunal.
- (2) The Tribunal must sit in public unless the Tribunal considers it necessary to sit in private.
- (3) However, no person other than the Registrar may be present while the Tribunal is considering its decision.
- (4) The Tribunal may adjourn the hearing from time to time as it thinks fit.
- (5) The Tribunal may, if it thinks fit, admit any duly authenticated written statement or other material as evidence of any fact in any case in which it thinks it just and proper to do so.
- (6) The Tribunal may, if it thinks fit, call for such documents and examine such witnesses as appear to it likely to afford evidence relevant and material to the issue, although not tendered by either the applicant or the Minister.
- (7) If, after notice of the hearing has been duly given, the applicant or the Minister fails to appear at the hearing, the Tribunal may proceed to determine the appeal notwithstanding the absence of both or either of them, or may give such directions with a view to the determination of the application as the Tribunal thinks just and proper.
- (8) The Tribunal may require any party to proceedings before the Tribunal under this Schedule or any witness in the proceedings to give evidence on oath and, for that purpose, the chairman or deputy chairman presiding over the Tribunal has power to administer an oath.
- (9) Where, in connection with the determination of any application, there is before the Tribunal medical advice or medical evidence relating to the applicant that has not been disclosed to the applicant and, in the opinion of the chairman or deputy chairman, the disclosure to the applicant of that advice or evidence would be harmful to the applicant's health, such advice or evidence is not required to be disclosed to the applicant, but the Tribunal is not by reason of such non-disclosure precluded from taking it into account for the purpose of the appeal.
- (10) On the appeal of any case under this paragraph, the Tribunal may confirm, reverse or vary the decision of the second determining officer and must give its decision in public.
- (11) The decision of the majority of the members of the Tribunal is the decision of the Tribunal and there must be a written record of the decision signed by the chairman or deputy chairman as the case may be which –

- (a) includes the names of the Tribunal members;
  - (b) includes the reasons for the decision; and
  - (c) records any dissent and the reasons for such dissent,
- and the Registrar must send a copy of such written record to the parties as soon as practicable after the appeal has taken place.
- (12) Where the Tribunal has made a decision adverse to the applicant, the applicant must be advised that the decision on the facts is final but that he or she may appeal to the Royal Court on a point of law.
  - (13) Subject to this paragraph, the Tribunal may regulate its own procedure.

## **16 Appeals and references**

- (1) A person aggrieved by a decision of the Tribunal, may on a point of law only, appeal to the Royal Court.
- (2) An appeal under sub-paragraph (1) may only be made with leave of the Tribunal or the Royal Court, and must be made before the end of the period of 4 weeks beginning with the date of the Tribunal's written decision.
- (3) An application for leave to appeal under sub-paragraph (2) may include an application to stay a decision of the Tribunal pending the appeal.
- (4) No appeal shall lie from a decision of the Tribunal refusing leave for the institution or continuance of, or for the making of an application in, proceedings by a person who is the subject of an order under Article 1 of the Civil Proceedings (Vexatious Litigants) (Jersey) Law 2001<sup>10</sup>.
- (5) The Tribunal or a determining officer may refer any point of law to the Royal Court for the Royal Court to give a ruling on the point.

## **17 Administrative expenses**

The Minister may pay to any member of the Tribunal who exercises any functions under this Schedule, and any other person whose advice or assistance may be required for the purposes of this Schedule by the Tribunal or by a determining officer, such remuneration and expenses as the Minister may determine.

## **18 Recovery of cold weather bonus wrongly paid**

- (1) If it is found at any time that any cold weather bonus has been paid that was not properly payable, the Minister may require it to be repaid –
  - (a) if it was paid to a person in his or her own right or on behalf of a qualifying household, by that person; or
  - (b) if it was paid to a person on behalf of another person or a qualifying household, by that person, by that other person or by a member of that household.
- (2) If it is found at any time that any cold weather bonus properly payable has been paid to a person not being a person by whom it was properly

receivable, the Minister may require it to be repaid by the person to whom it was paid.

- (3) In case of the death of a person who could be required to repay a sum under this paragraph, the Minister may require it to be repaid by the person charged with the administration of the deceased person's personal estate.
- (4) Proceedings for the recovery of any sum which a person is required under this paragraph to repay to the Minister may be instituted by the Treasurer of the States and notwithstanding any enactment or rule of law to the contrary, any such proceedings may be brought at any time within 10 years from the time when that sum was paid, or, where the proceedings are for the recovery of a consecutive series of sums, within 10 years from the date on which the last sum of the series was paid.
- (5) Any sum which a person is required under this paragraph to repay to the Minister may, without prejudice to any other remedy, be recovered by means of deduction from any other payment due under the provisions of this Schedule to the person to whom the sum was paid, unless it was paid to that person on behalf of another, in which case it may, without prejudice to any other remedy, be recovered by means of deduction from any payment due under the provisions of this Schedule to that other person.

## **19 Notices**

Any notice, notification or other document required or authorized by this Schedule to be given to any person is deemed to have been given or sent if it was sent by post to that person at the person's ordinary or last known address.

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- <sup>1</sup> *chapter 26.550*
  - <sup>2</sup> *chapter 26.900*
  - <sup>3</sup> *chapter 26.900.28*
  - <sup>4</sup> *chapter 26.550.20*
  - <sup>5</sup> *chapter 26.550.65*
  - <sup>6</sup> *chapter 24.750*
  - <sup>7</sup> *chapter 26.900*
  - <sup>8</sup> *chapter 26.550.65*
  - <sup>9</sup> *chapter 20.650*
  - <sup>10</sup> *chapter 04.240*