

STATES OF JERSEY



DRAFT EDUCATION (AMENDMENT No. 2) (JERSEY) LAW 201-

Lodged au Greffe on 23rd April 2013
by the Minister for Education, Sport and Culture

STATES GREFFE



Jersey

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European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Education, Sport and Culture has made the following statement –

In the view of the Minister for Education, Sport and Culture the provisions of the Draft Education (Amendment No. 2) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy P.J.D. Ryan of St. John**

Minister for Education, Sport and Culture

Dated: 22nd April 2013

REPORT

In November 2012 the Minister made a statement in the States proposing –

‘to introduce fairer arrangements similar to those now in place in Guernsey and the Isle of Man whereby the calculation of a student award is based on an assessment of household income. Where the student principally resides with his or her parent(s), the assessment will continue to be based on the gross income of the parent(s). However where the student’s parents have separated or divorced and the parent whose income will be assessed now lives with a new partner, the assessment will be based on the gross household income of both partners. In making this assessment, account will be taken of any maintenance received and paid out.’

This proposal was confirmed following a debate in the States on 29th January 2013 in response to a proposition (‘Higher Education Grants: method of assessment’, P.134/2012) lodged by Deputy G.C.L. Baudains of St. Clement.

A Ministerial Decision was made on 23rd November 2012 asking the Law Draftsman to consider how these changes could be brought in to practice. Following discussions with officers, their recommendation is that, in order to make the necessary change to the Grants Orders, there will need to be an amendment to the principal Law, i.e. the Education (Jersey) Law 1999. The relevant sections of the Law, Article 51, paragraphs (d) and (e) currently state –

- “(d) the grounds for entitlement to assistance, including the age, educational qualifications and financial status of the applicant, and the financial status of the applicant’s parent;*
- (e) in the case of a grant, the conditions subject to which it is given, including the amount of any contribution that the applicant or the applicant’s parent is required to make;”*

The proposed amendment extends the scope of the Order-making power so as to enable the Minister to prescribe –

- (i) any relevant person whose financial status may be taken into account for the purposes of assessing an applicant’s eligibility for financial assistance by way of a grant or loan;*
- (ii) any relevant person in respect of whom a contribution is required as a condition of awarding a grant;*
- (iii) any other relevant factors.*

A relevant person could therefore, for example, include a divorced parent’s new spouse or partner.

This has the effect of “future-proofing” the Law in the event of further changes to the method of assessment. Such changes would be carried out through the Discretionary Grants Orders which are presented to the States prior to implementation. This approach reflects common practice in other areas of the Island’s legislation, and it has been discussed with Law Officers’ Department.

Timetable

As previously indicated to the Assembly, it is the intention of the Minister for Education, Sport and Culture to introduce a revised system of assessment, for students commencing a course of higher education in autumn 2013, in which the calculation of

a student award is based on an assessment of household income. Subject to approval by the States of this amendment to the Education Law, it would be the Minister's intention to make an Order in due course to bring this change into effect from September 2013 onwards.

In order to meet this timetable, the Minister will be asking the States to consider this amendment to the Law on 4th June 2013, as this allows sufficient time for the Privy Council to approve the change prior to the summer recess.

Financial and manpower implications

There are no financial or manpower implications arising from this change as it will be managed by existing staff in the Student Finance section of the Department for Education, Sport and Culture.

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.

APPENDIX TO REPORT

Human Rights Notes

The draft Law proposes to amend Article 51 of the Education (Jersey) Law 1999 (the “**principal Law**”), which enables the Minister for Education Sport and Culture (the “**Minister**”) to make provision by Order in respect to discretionary financial assistance available to persons over compulsory school age attending courses of education. Specifically, Article 1 proposes to substitute Article 51(e) and (d) of the principal Law to widen the scope of those: (i) whose financial status may be taken into account for the purposes of assessing an applicant’s eligibility for financial assistance, and (ii) in respect of whom a contribution is required as a condition for awarding a grant. Currently, it is only the financial status of applicants and (other than independent students) their parents who may be taken into account under such an Order. The draft Law will allow the Minister to make Orders that address the financial status and contributions of “relevant persons” in addition to providing for other relevant factors to be taken into account in assessing eligibility for financial assistance.

The draft Law does not define who may be a “relevant person”, but the power given to the Minister must be exercised reasonably. The principal Law does not seek to be prescriptive as to what family relationships may be addressed, the most obvious potential relevant persons are those in a “step-parent” relationship with the applicant, whether by marriage or by virtue of cohabiting with the parent with care.

The draft Law is plainly compatible with the Human Rights Law. This is for the simple reason that it has no legal effect absent secondary legislation, and any secondary legislation which was itself contradictory to the Human Rights Law would be automatically invalid by virtue of Article 7(4) of that Law. As the draft Law does not purport to require anything to be done regardless of the Human Rights Law, such secondary legislation will not be validated by Article 7(6) of that Law.

The final draft Order was not available at the time of preparing these Notes. However, it should be stressed: (a) the Human Rights Law does not provide a basis for objecting to the principle of looking to those who are in a *de facto* step-parent relationship with the applicant; and, (b) defining a “relevant person” by virtue of a simple bright-line rule such as the existence of cohabitation, and/or the length of such cohabitation, is well recognised as a proportionate way to determine the existence of a substantial family relationship for the purpose of legislation such as that in consideration here.

Explanatory Note

This draft Law would amend the Education (Jersey) Law 1999 (the “Education Law”). *Article 51(d)* and *(e)* of the Education Law enables the Minister for Education, Sport and Culture to make provision by Order in respect of a person’s eligibility for financial assistance to attend a course of higher education based upon the person’s financial status or that of his or her parents. The Order may also provide for any contribution that is required from the person awarded a grant or from his or her parents. The existing Order-making power under *Article 51* is therefore limited to making provision about assessing the financial status of, or contribution from the applicant or his or her parents only.

Article 1 would amend *Article 51(d)* and *(e)* of the Education Law by extending the scope of the Order-making power so as to enable the Minister to prescribe –

- (a) any relevant person whose financial status may be taken into account for the purposes of assessing an applicant’s eligibility for financial assistance by way of a grant or loan;
- (b) any relevant person in respect of whom a contribution is required as a condition of awarding a grant;
- (c) any other relevant factors.

The extended scope of the Order-making power in *Article 51* would enable an Order to make provision about eligibility for financial assistance having regard to a number of factors any one or more of which may be taken into account, including the nature of the person’s family unit and other relevant factors, the details of which would be specified in the Order.

Article 2 provides for the title of the draft Law and for its coming into force 7 days after it is registered in the Royal Court.



Jersey

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Arrangement

Article

1	Education (Jersey) Law 1999 amended.....	11
2	Citation and commencement.....	12



Jersey

DRAFT EDUCATION (AMENDMENT No. 2) (JERSEY) LAW 201-

A LAW to amend further the Education (Jersey) Law 1999

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 Education (Jersey) Law 1999 amended

In Article 51 of the Education (Jersey) Law 1999¹, for paragraphs (d) and (e), there are substituted the following paragraphs –

“(d) the eligibility for assistance, having regard to any one or more of the following factors –

- (i) the age, educational qualifications and financial status of the applicant,
- (ii) the financial status of the applicant’s parent,
- (iii) the financial status of any relevant person that may be prescribed,
- (iv) the composition of the applicant’s family unit,
- (v) any other relevant factors that may be prescribed;

(e) in the case of a grant, the conditions subject to which it is given, including the amount of any contribution that any one or more of the following is required to make –

- (i) the applicant,
- (ii) the applicant’s parent,
- (iii) any relevant person that may be prescribed; and”.

2 Citation and commencement

This Law may be cited as the Education (Amendment No. 2) (Jersey) Law 201- and shall come into force 7 days after it is registered.

¹ *chapter 10.800*