

STATES OF JERSEY



DRAFT SOCIAL SECURITY (AMENDMENT No. 19) (JERSEY) LAW 201-

**Lodged au Greffe on 26th October 2010
by the Minister for Social Security**

STATES GREFFE



Jersey

DRAFT SOCIAL SECURITY (AMENDMENT No. 19) (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 (Amendment No. 19) (Jersey) Law 201- are compatible with the Convention Rights.

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

REPORT

Summary

The purpose of this Draft Law is to allow changes to Social Security legislation to be made in a timely manner. The Social Security (Jersey) Law 1974 (“the Social Security Law”) is nearly 40 years old and its construction is now outdated. All amendments to the Social Security Law must be approved by the Privy Council before they can be brought into effect. This leads to significant delays between the approval of a policy and its implementation.

The need to allow for the possibility of collecting contributions above the current earnings ceiling in accordance with the Budget proposals is the specific trigger for this amendment, but the opportunity has been taken to include additional areas covered by the Social Security Law to facilitate other changes that are planned over the next few years.

The cumbersome timetable associated with Law changes under the current system is frustrating. This amendment does not remove any power at all from the States Assembly, but it does allow for changes to be made to the Social Security Law in a timely fashion so that benefits and contribution legislation can be kept up-to-date.

It is vital that the integrity of the Fund is maintained and this amendment seeks to strike the correct balance between creating a more flexible legal structure and maintaining the ultimate decision-making power of the States Assembly.

Social Security legislation

The Social Security Law sets out rules for the collection of contributions from employees and employers and funding from the States to create a fund which is used to pay pensions and a number of other benefits. The Law was approved in 1974 and has been amended from time to time since then.

Most of the major rules around the Social Security system are contained within the Law itself. There are a number of Ministerial Orders which deal with administrative and operational details, but the Minister is very restricted in these powers.

Under the Social Security Law there are only limited areas that can be amended by the States approving Draft Regulations. These are mainly concerned with making changes to the percentage rates that are collected through contributions and the value of the benefits that are available.

Comparison with other legislation

Some amendments to the Income Tax (Jersey) Law 1961 can be implemented immediately. This is provided for under Article 19 of the Public Finances (Jersey) Law 2005. Privy Council approval is still required, and if it is not forthcoming any tax collected would need to be repaid.

The Income Support (Jersey) Law 2007 contains extensive Regulation-making powers, and the proposed long-term care benefit Law will be constructed in the same way, with a simple enabling primary Law, with all the details of the types and values of benefits provided for in Regulations.

Fiscal Strategy Review (FSR)

The FSR recommendations include a proposal to make a fundamental change in the way in which contributions are paid. At present, the maximum contribution is set according to an earnings ceiling. Any earnings above the earnings ceiling are ignored, and the contribution liability of the employee and their employer is fully satisfied by making a contribution at this maximum level. Those earning below the earnings ceiling have their contributions supplemented up to the ceiling by the taxpayers of the Island. These provisions are set out in the Social Security Law and cannot be amended by Regulations or Orders.

The FSR proposal is to require contributions to be made in respect of earnings that are above the earnings ceiling. The additional income received from these contributions will be paid into the Social Security Fund and used to make up part of the shortfall in the contributions of lower-paid workers. At present, this shortfall is funded entirely through a transfer from the States to the Social Security Fund. This transfer is commonly known as “supplementation”. The cost to the States will be reduced by the value of the contributions received above the ceiling. This will reduce the overall States deficit.

The initial proposal is that a contribution rate of 2% should be paid by both employees and employers (a total of 4%) in respect of earnings that are in excess of the earning ceiling. For example, if someone earns £60,000 a year and the earnings ceiling is £43,752 a year, then the existing contribution rate of 10.5% will be applied to the first £43,752 of earnings and a new contribution rate of 4% will be applied to the additional £16,248 (the earnings above the ceiling). There will be no change to contributions to the Health Insurance Fund (2% contribution on the first £43,752 of earnings).

Changes to legislation

The proposal to extend contributions above the earnings ceiling is a fundamental change to the Social Security Scheme and its underlying legislation. As the Law currently stands, a change of this nature can only be brought in through an amendment to the primary Law. This will require a States debate and then approval by the Privy Council and registration of the Law in the Royal Court. This process takes a minimum of several months and can often last a year or more.

The amendment that is proposed to the Social Security Law does not deal directly with the provision of contributions above the earnings ceiling. Instead, it extends the ability of the States to make changes to Social Security legislation through the use of Regulations, rather than through individual amendments to legislation.

Only the Minister for Social Security will be permitted to propose Regulations under these powers and the States must approve each Regulation to bring it into force. The advantage of the use of Regulations is that it will allow the States to make decisions which can be implemented within a much shorter timescale compared to changes to primary legislation.

The amendment itself is a change to primary legislation and it will take several months to complete the process of approval and registration. A States debate in late 2010 and a priority passage through the Privy Council process will be needed to ensure that these Regulation-making powers are available to the States during 2011 in order that changes can be debated and approved before the end of 2011. This will allow additional contributions to be collected from the beginning of 2012.

The extension of the Social Security Law to allow for the collection of contributions above the earnings ceiling is not a straightforward matter. Once Regulation-making powers are available, the States will need to debate and approve a number of Regulations to specify this process in detail. Existing Orders will need to be replaced. There will also need to be changes to administrative and IT systems, both within the Social Security Department and for local employers. These changes will need to be planned and agreed ready for implementation in January 2012.

At the same time as providing flexibility in the way in which contributions are calculated and collected, the amendment also introduces flexibility in other areas of Social Security legislation.

Details of the amendment to the Social Security Law

The sections of the amendment that deal specifically with changes that will be needed to introduce contributions above the earning ceiling are:

50(1)(a) – this section deals with the classification of individuals under the Law, when they are liable to pay contributions and how much their contribution is. It also covers the rules surrounding contribution credits which are provided in certain situations to people who are not paying contributions at that time.

50(1)(b) – this section deals with employers, including the definition of an employer, the manner in which they are liable to pay contributions and the value of those contributions.

50(1)(c) – this section allows amendments regarding the way in which contributions are collected.

50(1)(e)(i) – this section deals with the way in which contributions are allocated to the Health Insurance Fund and the Social Security Fund.

50(1)(f) – this section deals with the way in which the States pay money into the Social Security fund (“supplementation”).

50(2) – 50(4) – these additional provisions allow for additional definitions to be added, and allow additional orders to be specified.

As well as allowing for changes to enable the collection of contributions above the current ceiling, these provisions will also make it easier to make amendments in respect of other contribution matters including the contribution liability of self-employed workers.

In addition to these powers, two further powers are specified:

50(1)(d) – this section deals with benefits and allows for changes to the nature of benefits, eligibility conditions, the value of any benefit and how benefits can be backdated.

50(1)(e)(ii) – this covers the uses to which the Fund can be put.

These powers have been included to allow for future changes to benefits and to allow Social Security Funds to be allocated to specific projects.

For example, at present the Social Security Law specifies that Short Term Incapacity Allowance (STIA, commonly known as sickness benefit) can be paid for up to a year and that individuals cannot undertake any work whilst they are receiving the benefit (Article 15(2) and (3)). It is impossible under the current Law to allow someone to gradually return to work and continue to provide them with benefit. International

evidence suggests allowing people to make a phased return to work provides better health outcomes for individuals and reduces overall benefit costs. The power contained within this amendment would allow a change to be made to the rules of STIA by Regulations, and allow a new policy to be implemented much more quickly, subject to States approval.

Under the current legislation, Social Security funds can only be allocated to specific benefits and their associated administration. The ability to seek States approval for funding for specific projects would allow the Department to provide services that would reduce overall benefit costs. For example, an occupational health nurse could be employed to advise on return-to-work plans for individuals receiving incapacity benefit.

There are also a number of areas of Social Security law that are not covered by these powers.

In particular, there is no attempt to allow for additional measures in respect of fraud and anti-avoidance powers. Powers of this nature must be considered very carefully in the context of human rights legislation; and any move to extend the power of the Department to examine personal records or enter premises will be taken as a separate amendment to the primary legislation. Due to the increased value of contributions in the future, it will be necessary to provide for additional anti-avoidance powers and draft legislation to this effect will be lodged during 2011.

Conclusion

The powers provided by this amendment change nothing other than providing the States Assembly with the ability to make changes to Social Security Law through Regulations, as opposed to the time-consuming process of altering primary legislation. This will increase the flexibility of the Social Security Law and future changes to the definition of contributors, the amount of contributions and the amount and type of benefits available will be dealt with directly by the States Assembly, without reference to the Privy Council.

All changes to the Social Security Law will still need to be debated and approved by the States Assembly before they can be brought into effect.

Financial and manpower implications

There are no financial or manpower implications arising from the Draft Law itself. The Draft Regulations that will be brought to the States Assembly following the registration of this Law will play a major role in the FSR process and will have significant financial implications.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 25th October 2010 the Minister for Social Security made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Social Security the provisions of the Draft Social Security (Amendment No. 19) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

This draft Law paves the way for the preparation of Regulations to revise the scheme for social security contributions and benefits with effect from 1st January 2012.

Article 1 defines the Social Security (Jersey) Law 1974 as the “principal Law”.

Article 2 substitutes Article 50 of the principal Law. Article 50 already empowers the States to amend in the principal Law the amounts of contributions, the standard level of contribution, the lower threshold level, the date on which the standard rate of benefit is to be determined, the standard rate of benefit, the Health Insurance Fund allocations and the rates of amounts of benefits.

The substituted Article 50 widens the States powers to amend the social security scheme by Regulations. Amongst other things, it empowers the States to introduce different classes of insured persons, to determine contributions by reference to income in addition to or instead of earnings and to alter the rules for supplementation. By virtue of the Interpretation (Jersey) Law 1954, the power conferred to amend the principal Law includes the power to add to, substitute, vary or repeal its provisions.

The widened Regulation-making power would not confer any power to alter rights of appeal and enforcement powers in the principal Law other than to merely reflect any changes in the benefits regime.

Article 3 amends Article 51 of the principal Law. Article 51 supplements all enabling powers in the Law, allowing subordinate enactments to make different provision for different cases and include such incidental or supplementary provisions as are expedient. The power is widened further so as to make it clear that subordinate enactments may also include transitional arrangements.

Article 4 provides for the citation of the draft Law and for it to commence 7 days after it is registered in the Royal Court.



Jersey

DRAFT SOCIAL SECURITY (AMENDMENT No. 19) (JERSEY) LAW 201-

Arrangement

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Jersey

DRAFT SOCIAL SECURITY (AMENDMENT No. 19) (JERSEY) LAW 201-

A LAW to amend further the Social Security (Jersey) Law 1974.

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 “principal Law” means the Social Security (Jersey) Law 1974¹.

2 Article 50 substituted

For Article 50 of the principal Law there shall be substituted the following Article –

“50 Power to amend Law by Regulations

(1) The States may by Regulations amend in this Law –

(a) in respect of insured persons –

- (i) who is an insured person for the purposes of this Law,
- (ii) the classification of insured persons for the purposes of this Law,
- (iii) the liability of insured persons to pay contributions,
- (iv) the amounts of the contributions payable by insured persons,
- (v) the circumstances in which an insured person is entitled to a contribution credit, rules for calculation

- of contribution credits and circumstances in which an insured person is or may be entitled to a backdated contribution credit;
 - (b) in respect of employers of insured persons –
 - (i) who is an employer of an insured person for the purposes of this Law,
 - (ii) the liability of employers of insured persons to pay contributions in respect of those persons,
 - (iii) the amounts of the contributions payable by employers of insured persons in respect of those persons;
 - (c) in respect of the collection of contributions, the manner in which, when and by whom contributions are to be paid;
 - (d) in respect of benefits –
 - (i) the descriptions of benefit,
 - (ii) who is entitled to a benefit of any description,
 - (iii) the conditions for a person’s entitlement to a benefit of any description,
 - (iv) the period or periods for which a person is entitled to a benefit of any description,
 - (v) the rate or amount of any benefit (including a standard rate of benefit),
 - (vi) the circumstances in which and the extent to which any benefit shall or may be backdated;
 - (e) in respect of the Social Security Fund –
 - (i) the rules for calculation of amounts to be allocated to the Health Insurance Fund before contributions are paid into the Social Security Fund,
 - (ii) the purposes for which money shall be paid out of the Social Security Fund and, where appropriate, how the amount to be paid out is to be determined;
 - (f) any provision for the payment of money into the Social Security Fund by the States –
 - (i) where the States is or is to be required to make payments, as to how the amounts are to be determined, the periods to which they are to relate and when they are to be paid, or
 - (ii) so as to remove any obligation for the States to make payments into the Fund.
- (2) Without prejudice to the generality of paragraph (1)(a)(iii) and (iv) Regulations may –
- (a) amend the definition ‘earnings’ in Article 1;
 - (b) add a definition ‘income’ in Article 1;

- (c) amend this Law to provide that an insured person's contributions are calculated by reference to the person's income; and
 - (d) amend this Law to provide for the determination of the amount of an individual's earnings or income for a specified period.
- (3) The States may by Regulations amend this Law so as to provide for the aggregation of contributions of different classes.
 - (4) Regulations made under this Article may also, for the purposes of supplementing any amendment made pursuant to paragraphs (1) to (3) –
 - (a) amend in this Law any power to make an Order; and
 - (b) amend this Law to provide that any further matter shall or may be made by Order.
 - (5) Regulations made under this Article may amend any other enactment consequentially upon any amendment of this Law made pursuant to paragraphs (1) to (3).
 - (6) Regulations made under this Article shall not amend this Article or Article 51.
 - (7) Draft Regulations to be made by the States under this Article may only be lodged by the Minister.”.

3 Article 51 amended

In Article 51(2) of the principal Law after the words “may contain such” there shall be inserted the word “transitional.”.

4 Citation and commencement

This Law may be cited as the Social Security (Amendment No. 19) (Jersey) Law 201- and shall come into force 7 days after it is registered.

¹

chapter 26.900