

STATES OF JERSEY



DRAFT ACT ANNULING THE INCOME SUPPORT (GENERAL PROVISIONS) (AMENDMENT No. 17) (JERSEY) ORDER 2015

**Lodged au Greffe on 28th August 2015
by Deputy G.P. Southern of St. Helier**

STATES GREFFE

PROPOSITION

THE STATES are asked to decide whether they are of opinion –

to adopt an Act, as set out in the Appendix, annulling the Income Support (General Provisions) (Amendment No. 17) (Jersey) Order 2015.

DEPUTY G.P. SOUTHERN OF ST. HELIER

REPORT

This annulment is the result of the Ministerial Decision – MD-S-2015-0054 – of the Minister for Social Security, made on 17th July 2015 and notified to the Health and Social Security Scrutiny Panel on 9th July, as shown below. The decision, made by Order, as permitted by the Income Support (Jersey) Law 2007, changes the eligibility criteria for claiming Income Support.

“Dear Scrutiny,

The MTFP will be lodged next Tuesday, July 14 and States Members will be receiving a briefing tomorrow from the Chief Minister.

Your Panel will be aware that included in the package of savings required within the MTFP, the Social Security Department has been asked to make a contribution through reductions in benefit budgets. Summary information on areas affected will be included in the main MTFP document. Standing orders require a 12 week lodging period for the MTFP and this leads to a debate on 6 October.

Changes to benefits will require changes to existing legislation and these propositions will be lodged for debate on the same day, 6 October. The deadline for lodging these propositions is the normal six-week period, giving a final lodging date of 25 August.

The Minister will be publishing full details of the benefit changes and the associated changes to legislation to meet this lodging date of 25 August. We are very happy to provide additional information to the panel in advance of the formal publication of the social security propositions. We will be working on a detailed timetable over the next week or so, and will share this with you as soon as it is complete. It is likely that we will be lodging in advance of the 25 August deadline.

Please note that there is one change associated with the MTFP that the Minister will be making by ministerial order, before the main MTFP debate.

This is a change to the definition of an income support household, to bring the treatment of a jobseeker aged under 25 in line with the existing treatment of a student aged under 25. The Minister has chosen to make this order in July, so that young people making decisions about staying in education or moving into employment will be aware of the new rules before September and the new academic year.

The Ministerial order is currently planned to take effect from Monday 20 July and will apply to new claimants from that date.

Young people currently claiming income support as jobseekers who will be affected by this change will have the change explained to them during the course of next week, on a one-to-one basis. Their claim will be adjusted from 1 September. The impact of the change will be to transfer the adult component from the young person to the parents if the parents are also receiving income support. In this case there is no change in the total value of income support paid to the household as a whole. If the young person is living in a household

that is not receiving income support, the young person's claim will close in September as they will no longer be entitled to make a claim in their own name.

A young person with a disability, claiming personal care level 2 or 3, will continue to have their own claim and will not be affected by this change.

A young person who is living independently, for example, a care leaver, will continue to have their own claim and will not be affected by this change.

Please let me know if you would like any further information or a copy of the draft order.

Please note that this information remains strictly confidential until the MTFP is lodged.

Members will be aware that Ministerial Orders are designed to cater for routine or minor matters which should not legitimately take up the time of the States. However, in this case, we have a significant change of policy affecting the wellbeing and income of a significant number of young people.

Members will also note that this Order has been notified very much at the last minute and in confidence, so that even if a member wished to have the principles of this change debated in an annulment, this was not possible until the Order was made, its effect was in place, and the first payments were disallowed. Hence this debate cannot take place before 8th September, but payments will have been stopped with effect from 1st September.

Medium Term Financial Plan (MTFP) Savings

The detailed proposals set out in the report attached to the Social Security MTFP “include all the measures that need to be taken to achieve the £10 million savings target set by the MTFP. These measures”, we are told, “play only a small part of the £145 million target.”

We are further informed in the report that “Wherever possible, the opportunity has been taken to improve the overall fairness and structure of the benefit system. The proposals have been carefully chosen to meet the following objectives:

- *Promote financial independence*
- *Improve the targeting of benefits*
- *Minimise the impact on individuals”.*

In section 4.3 of the report, the changes to the eligibility of young adults for Income Support are described as “fair treatment of adults” as follows –

“Until recently, there has been a difference in the treatment of a young adult aged under 25 who remains in the family home, depending on whether they are a full-time student or a jobseeker. Whereas the student has been included in the Income Support claim of the family, the jobseeker aged between 19 and 24 was allowed to make an Income Support claim in their own right. In most cases this would give them a weekly benefit, based on the adult

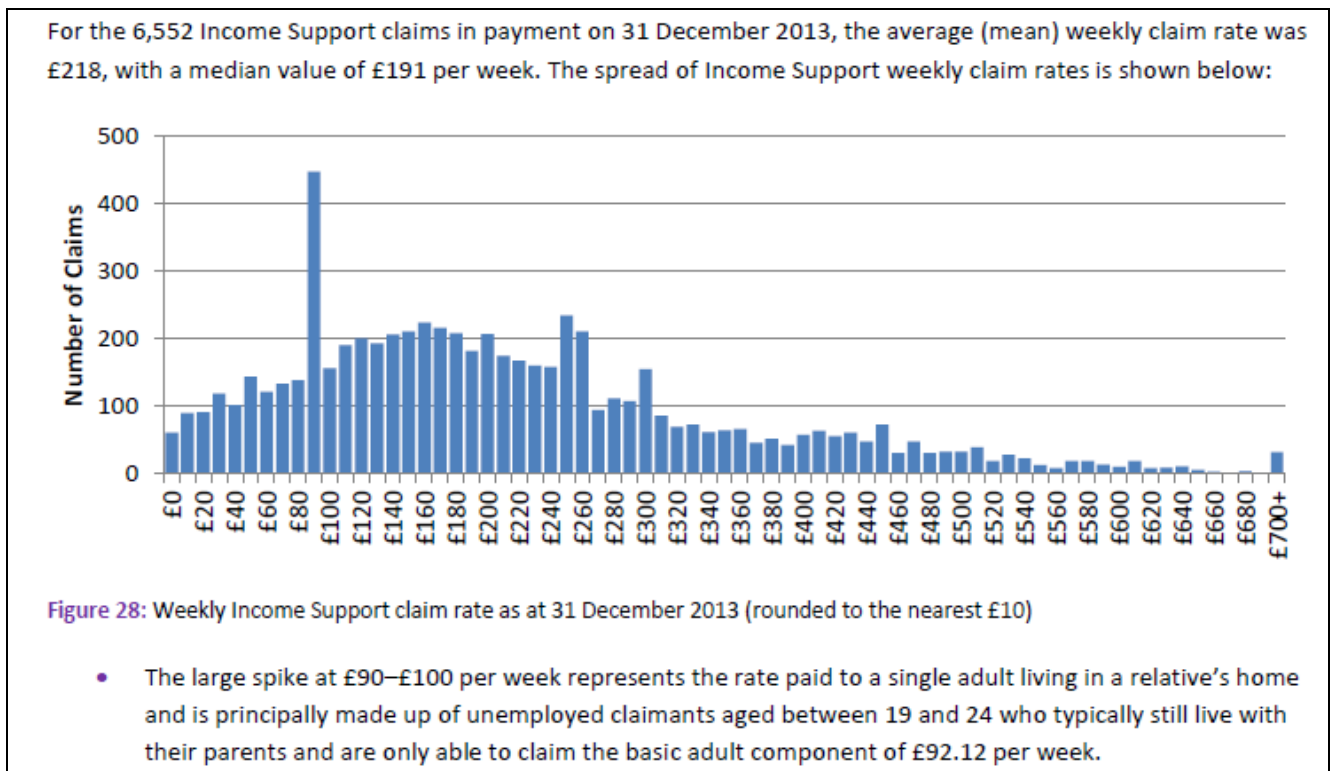
component, of £92.12 a week. This does not seem appropriate where the parental household does not qualify for Income Support, and may in some cases be wealthy.

Therefore, to improve the fairness of the system, and provide equal treatment for students and jobseekers, the Minister has recently amended the Income Support rules so that both jobseekers and students are included in the family Income Support claim. This improves the targeting of benefits towards low income families.”.

The issue of fairness is addressed later in this report, but for the moment let us be content with noting that these measures remove the adult component £92 per week from some 75 young jobseekers living in their parents’ households, a potential overall saving of £360,000 annually.

Parental responsibility

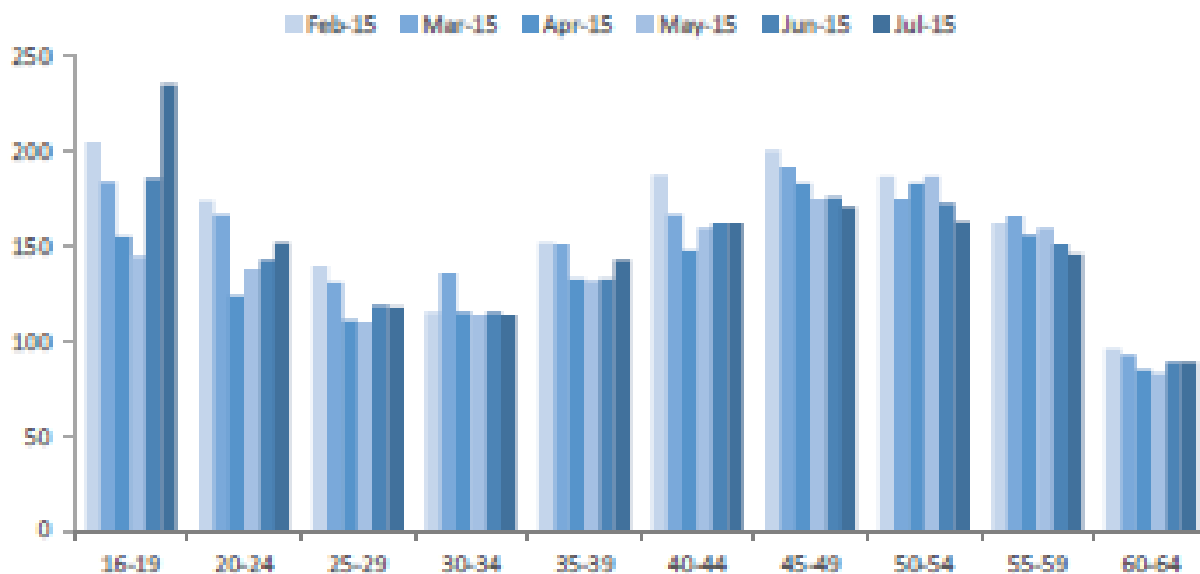
As can be seen in the following distribution of Income Support awards, there are significant numbers of young adults living in the parental home:



(Social Security Department: Minister’s Report and Financial Statements – 2013: R.123/2014)

Many of these under-25s will be actively seeking work, as can be seen in the latest unemployment figures –

Figure 3 – Individuals registered as ASW by age, February 2015 – July 2015



One has to ask why so many of the under-25s, whether in education, in work or unemployed and actively seeking work, remain in the parental household. The answer, of course, is the shortage and high cost of rental accommodation, combined with the fact that under-25s cannot normally claim the rental component of Income Support.

To suggest that ‘the removal of the adult component from some under-25s who are actively seeking work and living in the parental home is one which is fair because those who are in education are similarly treated’ is a nonsense which ignores the facts. For those who undertake higher education locally, there is assistance available as follows.

Highlands HE students are assessed in the same way as UK undergraduates. The only difference is Highlands’ fees are cheaper and therefore this will impact on the entitlement. We assist with the full-time degree courses and the Foundation degree course only: IT for Business, Social Sciences, Childhood Studies, Financial Services, Business Management, Accounting and Finance, and Sports Management. Part-time, we assist with Social Science and Childhood Studies, but with fees only.

Under-25s will be dependent students, unless they fall in to the independent criteria.

As a rough and ready calculation, those who study at Highlands get, on average, £6,000 of grant support to assist them.

To remove the right to any support from some of those actively seeking work discriminates against them.

Studies of the impact of the recession on the earning power of a range of groups reveal that the group most harmed is this group of under-25s who are struggling to find and establish themselves in work. It seems perverse, to say the least, that we should ignore the worst affected who are most in need of support.

All	-10%
Men	-12%
Women	-7%
Age 18-24	-16%
10 th	-10%
Percentile	
90 th	-11%
Percentile	

Discrimination

Article 14 of the European Convention on Human Rights (ECHR): Protection from discrimination

I believe that the measures proposed by the Minister could be open to challenge as age discrimination under Article 14 of the ECHR.

The protected ground of age relates simply to differential treatment or enjoyment that is based on the victim's age. Although age discrimination *per se* does not fall within the ambit of a particular right in the ECHR (unlike religion or sexual orientation), issues of age discrimination may arise in the context of various rights. As such, the European Court of Human Rights (ECtHR) has, as in other areas, adjudicated on cases whose facts suggested age discrimination, without actually analysing the case in those terms – in particular in relation to the treatment of children in the criminal justice system. The ECtHR has found that 'age' is included among 'other status'.

Furthermore, Article 14 can only be applied in the scope of another Article. In this context, the ECtHR has found in many other cases where any form of State benefit becomes payable, that this will either fall under the scope of Article 1 of Protocol 1 (because it is deemed to be property), or Article 8 (because it affects the family or private life), for the purposes of applying Article 14.

Both the ECHR and EU law acknowledge that discrimination may result, not only from treating people in similar situations differently, but also from offering the same treatment to people who are in different situations. The latter is labelled 'indirect' discrimination because it is not the treatment that differs, but rather the effects of that treatment, which will be felt differently by people with different characteristics.

Article 2(2)(b) of the Racial Equality Directive states that "indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons". The ECtHR has drawn on this definition of indirect

discrimination in some of its recent judgments, stating that “a difference in treatment may take the form of disproportionately prejudicial effects of a general policy or measure which, though couched in neutral terms, discriminates against a group”.

In this particular case, the argument made by the Minister that “*equal treatment for students and jobseekers*” will “*improve the fairness of the system*”, may not be sufficient to justify the change in treatment if it is seen to unfairly and disproportionately disadvantage the under-25s who are actively seeking work, and whose families have incomes just over the threshold for Income Support.

Financial and manpower implications

This annulment will reduce the Minister’s proposed £5.1 million savings on benefits in 2016 by £200,000. There are no manpower implications arising.

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(GENERAL PROVISIONS) (AMENDMENT No. 17)
(JERSEY) ORDER 2015**

Made

[date to be inserted]

Coming into force

[date to be inserted]

THE STATES, in pursuance of the Subordinate Legislation (Jersey) Law 1960, annulled the Income Support (General Provisions) (Amendment No. 17) (Jersey) Order 2015.