

STATES OF JERSEY



LONG-TERM CARE LEGISLATION: P.136/2013, P.137/2013, P.138/2013, P.139/2013, P.140/2013, P.141/2013, P.142/2013 – COMMENTS

**Presented to the States on 3rd December 2013
by the Health, Social Security and Housing Scrutiny Panel**

STATES GREFFE

**HEALTH, SOCIAL SECURITY AND HOUSING SCRUTINY PANEL
COMMENTS ON –**

- P.136/2013 Draft Long-Term Care (Residency Conditions) (Jersey) Regulations 201-.
- P.137/2013 Draft Social Security (Hypothechs) (Jersey) Law 201-.
- P.138/2013 Draft Social Security (Amendment of Law No. 6) (Jersey) Regulations 201-.
- P.139/2013 Draft Social Security (Amendment No. 21) (Jersey) Law 201-.
- P.140/2013 Draft Long-Term Care (States Contribution) (Jersey) Regulations 201-.
- P.141/2013 Draft Long-Term Care (Health and Social Services Charges) (Jersey) Law 201-.
- P.142/2013 Draft Long-Term Care (Jersey) Law 2012 (Appointed Day) Act 201-.

COMMENTS

1.1 The Health, Social Security and Housing Scrutiny Panel is comprised of the following members –

Deputy K.L. Moore of St. Peter, Chairman
Deputy J.A. Hilton of St. Helier, Vice-Chairman
Deputy J.G. Reed of St. Ouen

Review Adviser – Dr. S. Harkness

1.2 This report sets out the work undertaken by the Panel on the pieces of subordinate legislation lodged under the *Long-Term Care (Jersey) Law 2012*, as set out below –

- [P.136/2013](#) – Draft Long-Term Care (Residency Conditions) (Jersey) Regulations 201-
- [P.137/2013](#) – Draft Social Security (Hypothecs) (Jersey) Law 201-
- [P.138/2013](#) – Draft Social Security (Amendment of Law No. 6) (Jersey) Regulations 201-
- [P.139/2013](#) – Draft Social Security (Amendment No. 21) (Jersey) Law 201-
- [P.140/2013](#) – Draft Long-Term Care (States Contribution) (Jersey) Regulations 201-
- [P.141/2013](#) – Draft Long-Term Care (Health and Social Services Charges) (Jersey) Law 201-
- [P.142/2013](#) – Draft Long-Term Care (Jersey) Law 2012 (Appointed Day) Act 201-.

1.3 This represents a continuation of the Panel’s work in this area. The Panel recently undertook a review of the Long-Term Care Scheme as set out in [P.99/2013](#). The Panel’s report was presented on 6th November 2013 (see [S.R.11/2013](#)).

1.4 The Panel agreed that the most appropriate approach to its review of the subordinate legislation would be to appoint Dr. S. Harkness from the University of Bath. At the request of the Panel, Dr. Harkness produced an analysis of the subordinate legislation which included her general comments on each; whether they would provide for the intended outcomes of the Long-Term Care Scheme; whether there were any consequences and whether they were fit for purpose.

1.5 Dr. Harkness was also commissioned to undertake a thorough review of the Long-Term Care Scheme itself (P.99/2013). Her analysis of the scheme was appended to the Panel’s final report.

1.6 The adviser's overall conclusion on each piece of subordinate legislation was as follows –

- P.136/2013 – Draft Long-Term Care (Residency Conditions) (Jersey) Regulations 201-

Overall, the residency conditions proposed are likely to provide for the intended outcomes of the LTC scheme by containing costs while meeting needs of Jersey residents.

- P.137/2013 – Draft Social Security (Hypothechs) (Jersey) Law 201-

Overall, the proposed regulation is fit for purpose. However, it would be appropriate to give further consideration to deal with the level of uncertainty surrounding property values and to ensure the fair treatment of those with property assets valued at just over the threshold.

Dr. Harkness noted that this may be more relevant to the LTC scheme rather than this specific regulation. The Social Security Department has since advised that this will be contained in a Ministerial Order.

- P.138/2013 – Draft Social Security (Amendment of Law No. 6) (Jersey) Regulations 201-

The proposals under these Regulations are likely to be fit for purpose and meet the needs of LTC reform.

- P.139/2013 – Draft Social Security (Amendment No. 21) (Jersey) Law 201-

The proposed reform is fit for purpose and will meet the needs of LTC reform.

- P.140/2013 – Draft Long-Term Care (States Contribution) (Jersey) Regulations 201-

Given the intention of LTC reform to create a hypothecated funding stream for LTC, the proposed Regulations are fit for purpose.

- P.141/2013 – Draft Long-Term Care (Health and Social Services Charges) (Jersey) Law 201-

The reforms will lead to a rise in revenue to the HSS Department. The effect on the Departmental budget, and the implications for funding under Regulations P.140/2013, may require further consideration. This is to be covered in more detail in a separate report that will be published to accompany P.140/2013. The desired effect of ensuring consistency in the treatment of LTC recipients will, however, be achieved by the proposed legislative changes.

- P.142/2013 – Draft Long-Term Care (Jersey) Law 2012 (Appointed Day) Act 201-

The Act provides appropriate provision for the implementation of LTC benefits and funding and appears fit for purpose.

1.7 A copy of the adviser's briefing paper can be found in the attached **Appendix**.

APPENDIX

Briefing Paper on Draft LTC Regulations

Susan Harkness
November 2013

This briefing was commissioned with the objective of –

- a. Providing general comment,
- b. Identifying whether the Regulations (Laws and Act) provide for the intended outcomes of the LTC scheme, and
- c. What the consequences of the Regulations are, and whether they are fit for purpose,

On the supplementary proposed LTC Regulations/Laws.

The Regulations/Laws to be commented on are:

1. P.136/2013 Draft Long-Term Care (Residency Conditions) (Jersey) Regulations 201-
2. P.137/2013 Draft Social Security (Hypothecs) (Jersey) Law 201-
3. P.138/2013 Draft Social Security (Amendment of Law No. 6) (Jersey) Regulations 201-
4. P.139/2013 Draft Social Security (Amendment No. 21) (Jersey) Law 201-
5. P.140/2013 Draft Long-Term Care (States Contribution) (Jersey) Regulations 201-
6. P.141/2013 Draft Long-Term Care (Health and Social Services Charges) (Jersey) Law 201-
7. P.142/2013 Draft Long-Term Care (Jersey) Law 2012 (Appointed Day) Act 201-

BACKGROUND

The predicted rise in the number of older residents on the Island over the next 30 years is predicted to lead to a substantial increase in both the number of people requiring care, and in the cost of its provision. The introduction of a Long-Term Care (LTC) scheme is designed to ensure that the costs of care are shared fairly across the community with the scheme establishing a clear and simple set of funding rules which will allow individuals and their families to plan for their LTC. The new proposals will provide financial support to Jersey residents who have significant LTC needs, capping the cost of care for any individual at £50,000 over their lifetime, while extending means tested support to those with asset levels of up to £419,000 (compared to £13,076 for an individual, and £22,718 for a couple, in 2013). The additional costs will be met in the long term through the administration of a LTC fund, with contributions collected through the tax system.

The policy has been designed with the following aims in mind:

1. LTC Benefits

- Recipients face fair and predictable costs, allowing people to plan for LTC
- Avoidance of catastrophic costs
- Allowing individuals to retain their own home
- Supporting choice of care

2. Funding

- Sustainable funding, with a ring-fenced funding stream
- Fair distribution of costs across:
 - o recipients / potential recipients of care
 - o the old and young
 - o tax and non-tax payers
- Affordability and cost containment

The legislation reviewed will be assessed in terms of its impact across these dimensions.

1. P.136/2013 – Draft Long-Term Care (Residency Conditions) (Jersey) Regulations 201- – from 1/7/2014

The residency conditions for LTC benefits will require:

- Individuals to have been ordinarily resident in Jersey for 10 years continuously at some time from the age of 18, and
- For the 12 months prior to applying for LTC benefits.

For those under 28, the residency test will be modified, requiring recipients to be resident for 10 years by any age. The residency condition must be met immediately before application.

Residency does not include time in detention, although detention does not create a gap in continuity of residence. Time outside Jersey to meet health needs arranged by Health and Social Services (HSS) will be included as residency.

The two tests are “to ensure that individuals are likely to have made a reasonable contribution to the LTC fund, and potentially in other ways to the Island’s community”.

General Comment

The residency condition ensures that the new provisions for LTC do not incentivise those needing LTC to move to/return to Jersey purely to receive care. The conditions are important to ensure that costs are minimised and that there is a fair balance of costs between those that have paid into the system and others.

The tests requirements are likely to meet the aims of the LTC proposals of cost containment. The residency conditions, however, differ to those for income support (IS) which requires recipients to be either resident for 5 years continuously immediately prior to a claim (or to have spent five years in the past in Jersey, moving away for less than five years and then returning for a period less than the time away); resident for 10 years continuously at any time; or for Jersey born adults (or the children of ‘entitled’ residents who lived in Jersey before the age of 20) to have 10 years’ ordinary residence which need not be continuous.

The proposed residency condition for LTC is more stringent than that for IS, and is therefore likely to exclude more people from this benefit, helping to limit costs. The fact that the condition should be more stringent seems appropriate because the intended recipients are mostly elderly and therefore likely to have accumulated longer periods of residency in Jersey. However, there are some anomalies, in particular:

- There is no conditionality based on being Jersey born in the LTC Regulations.
- Some will be entitled to IS but not LTC benefits (those with 5 years’ or more residence immediately prior to a claim, and those who have had 5 years’ residence recently with a break of less than 5 years and then returning to the Island for longer than they have been away) and who are not Jersey born with 10 years’ residence at another time.

- Some will fall outside the rules for receipt of either benefit. This group will continue to be managed as at present with Ministers able to provide discretionary assistance in exceptional circumstances.

For younger residents the residency conditions are modified, but only for those under 28. In the UK, the Dilnot proposals for reform to LTC suggested young people should be treated differently, because their need for LTC is unlikely to have been predictable and because those of working age are less likely to have had the capacity to save or plan for these needs. In addition, as this group are more likely to be geographically mobile for work and other reasons, and because their care needs are likely to have arisen from unexpected circumstances, it would seem likely that they will also face a higher risk of being excluded from the LTC benefit. Those brought up in Jersey, or who have been in Jersey for the last 5 years, will be able to claim income support. As younger people are less likely to have acquired substantial assets, the tighter rules of income support are expected to have less impact on the support that they will be able to claim for their LTC needs. However, as changes in the costs of LTC for younger and working age people are unlikely to grow in the same way as those for the elderly population and, given this, relaxing the conditions for receipt of LTC for this group are unlikely to lead to major changes in costs over future years.

Finally, the proposition notes that the two tests are “to ensure that individuals are likely to have made a reasonable contribution to the LTC fund, and potentially in other ways to the Island’s community”. However it should be noted that there is no explicit link between LTC contributions and benefits. Only those that pay income tax will contribute to the fund and, as noted in the OXERA report, only a small share of income tax payers will pay the full contribution. Those with incomes below the income tax threshold will not contribute to the LTC fund. Pensioners in particular are likely to have incomes that fall below this threshold. The proposed conditions for benefit receipt are not based on a contributions history but instead are likely to provide a more universal set of benefits to those who have lived for a significant time in Jersey.

Overall, the residency conditions proposed are likely to provide for the intended outcomes of LTC scheme by containing costs while meeting needs of Jersey residents.

2. P.137/2013 – Draft Social Security (Hypothecs) (Jersey) Law 201-

This Law aims to protect those with assets above the asset disregard level (of £419,000) by allowing them to retain their own home while in LTC. It proposes that a charge will be made against the value of the property, and that this debt will become payable when the property next changes hands.

The new LTC Law is intended to ensure that where a household is ‘cash-poor’ but ‘property rich’ the Social Security Department may make LTC payments on an individual’s behalf for a period of time, with these payments being treated as a loan. This will enable the cash poor to retain their home. The process proposed is a simple one with registration requiring claimants registering their property with the Social Security Department (SSD).

General Comment

This Law provides for a key objective of LTC reform, allowing those individuals that require LTC to retain their own home while they are in care. This reform deals specifically with the needs of those that have properties of a value higher than the asset disregard of £419,000 but who may be cash poor, and therefore need to draw on their property assets to fund this care.

The proposals will meet the objective of ensuring that home ownership can be maintained while individuals are in receipt of LTC. It is worth noting that the value of the loan will effectively be limited either because:

- The point at which the asset disregard is reached (e.g. if the property is valued at £450,000 the maximum loan under the proposed disregard of £419,000 will be £31,000 – assuming that no other assets are held).

Or,

- For those with properties valued at greater than £469,000 the cap on the standard care costs, which is to be set at £50,000, will limit the value of the loan. The total loan may exceed £50,000 depending on the need for additional borrowing that may be needed to meet the balance of the cost of the co-payment that cannot be met through the claimant’s income. This is because the £50K cap only applies to standard care costs which are set equal to the value of the care benefit for each care level. This is the amount that accrues towards the £50K cap. Those with very low income can use the bond to make up their co-payment, or can fund a more expensive care package using a top-up. These costs can be included in the bond but do not count towards the care costs cap.

Given that this regulation will benefit those that are asset rich, the Regulations should ensure that *interest rates* on the loan are not set in such a way as to distort incentives, in particular it should not incentivise individuals to hold housing assets in favour of other assets. The loan’s interest rate should therefore reflect current market rates. If the rate were to be too low then it would reduce incentives for the elderly to downsize, or to move to potentially more appropriate housing. The limited size of the loan (which is implicitly limited as described above under the new LTC proposals) may however limit the degree of distortions in the market.

The asset disregard level has been set at £419,000. While this regulation does not deal with the setting of this value, there appears to be no difference between the asset disregard for individuals and couples. This is with the intention of protecting a families assets with no distinction between a married couple and a widow/er. The regulation proposed here does however allow for spouses to remain in the property until the property changes hands.

Finally, property values are often highly uncertain and depend on the willingness of an individual to pay. This is particularly the case where the housing stock is varied – and among higher value homes property values may be particularly uncertain. This uncertainty may have implications for the scheme if the property either sells for below or above its assessed value. For the highest value properties this will have little impact on the scheme (as the cost of care, and presumably therefore the loan, is limited), but for those closer to the asset disregard value (for example, between £419,000 and £469,000), variations in asset prices may lead to a high degree of uncertainty. This is further complicated by the fact the property may gain (or lose) value between the period of assessment and sale. A further degree of refinement in the regulation may be required to deal with this element of uncertainty and to ensure the fair treatment of those with property assets valued at just over the threshold. This may however be of more relevant to the LTC scheme than this specific regulation.

Overall the proposed regulation is fit for purpose. However it would be appropriate to give further consideration to the above.

3. P.138/2013 – Draft Social Security (Amendment of Law No. 6) (Jersey) Regulations 201-

These Regulations amend the Social Security and Income Tax Laws to establish the liability of individuals to pay LTC contributions, and to provide for the calculation and collection of these contributions. Contributions are to be levied on local residents and paid into a new LTC fund. 2014 and 2015 are transitional periods, with no contributions payable in 2014 and 0.5% from 2015. From January 2016 contributions will be payable at 1%.

The contributions will, through these amendments, make those eligible for income tax contributions to be in addition liable for LTC contributions. There is an exception for non-resident landlords, and for those that are working temporarily in Jersey but who continue to be liable for social security contributions elsewhere. Liability for LTC contributions will be based on marginal and full rate tax rates. Unlike income tax, there will be an upper earnings limit beyond which LTC contributions will no longer be accumulated, which is to be set at the same rate as for Social Security contributions (£152,232 p.a. in 2013).

LTC contributions will not have age related opt-outs (as social security contributions currently do) and this is important for ensuring intergenerational equity in sharing the costs of LTC.

General Comment

The amendment is in line with meeting the LTC objectives of creating a separate funding stream for LTC. That the elderly should also be liable for contributions is an important principle to ensure that the costs of care are fairly spread between the old and young. Inclusion of an Upper Earnings Limit (UEL) is also important because the contributions are to be paid into a hypothecated fund for LTC. Contributions above this level would create a disconnection between LTC contributions and potential benefits.

Those that pay social security contributions elsewhere are excluded from liability and this is administratively straightforward and likely to be a sensible proposal.

The proposals under these Regulations are likely to be fit for purpose and meet the needs of LTC reform.

4. P.139/2013 – Draft Social Security (Amendment No. 21) (Jersey) Law 201-

This proposal introduces an amendment allowing a surcharge to be paid for late payment of LTC contributions. The surcharge mechanism will be in line with the existing surcharge mechanism for late payments of income tax. The surcharge rate will be the same as the rate payable on late income tax payments. The Comptroller of Income Tax will retain the right to waive the charge under a number of specific circumstances.

General Comment

This administrative change will have no substantive impact on the operation of the LTC funding mechanism. It will help to ensure that LTC payments are made in a timely manner and ensure the sustainability of the fund.

The proposed reform is fit for purpose and will meet the needs of LTC reform.

5. P.140/2013 – Draft Long-Term Care (States Contribution) (Jersey) Regulations 201-

One objective of LTC reforms is to create a dedicated LTC fund from which all LTC costs will be paid, with the intention of reducing pressure on other tax-funded budgets in the future as the costs of care rise. The fund is to be paid for by (i) a contribution from the States, and (ii) individual contributions collected through the tax system. This regulation deals with the States funded contribution.

The regulation imposes an obligation on the States to make a contribution to the LTC fund from the Consolidated Fund. This will commence from 2016 with alternative arrangements being put in place during 2014/2015.

The States' contribution in 2016 will be based on three elements (uplifted by the RPI):

1. Savings in HSS revenue expenditure that would have been made in 2014 had the LTC benefit commenced on 1 Jan 2014;
2. Any increase in income that HSS would have received in 2014 for charges in long term stay patients had these been increased from 1 Jan 2014.
3. The under-spend that would have occurred in the SSD budget for IS for residential care if the LTC benefits had commenced in Jan 2014.

Details of the budgets are to be published in a separate analysis of departmental budgets. The interim budgets for 2014 and 2015 are to be directly linked to the net reduction in departmental budgets resulting from the introduction of the LTC scheme. The States' contribution to the fund in future years will then be based on spending in the previous year, uplifted by the RPI (if the RPI is negative the contribution will be the same as the previous year).

General Comment

The proposal will ensure adequate financing for LTC in the short-term. However, over the longer term the costs of care are predicted to rise at a much greater rate than inflation. The pressure of rising LTC costs will therefore need to be borne by increases in LTC contributions, which are to be paid by all those paying income tax.

As the States' contribution will remain constant in real terms, it will decline as a share of tax funded spending (assuming tax revenues rise in line with economic growth). The higher the rate of economic growth, the smaller the share of the States funding for LTC share in tax funded expenditure (assuming total spending also grows in line with economic growth). With an assumed economic growth rate of 1% and the same rate of growth of tax revenue/spending (as assumed in the OXERA report), and if there are no further changes in tax funded spending, the share of States funded LTC in total tax funded expenditure would fall to 90% of its current level in 10 years, and to 75% in 30 years. At a higher rate of growth the fall in spending shares would be more rapid – with a 2% average growth rate the share of States spending on LTC in total current tax funded spending would fall to 80% of its current level in 10 years and 50% in 30 years. Over time, therefore, the States' share of the LTC budget will shrink as a proportion of total spending, and also as a share of LTC funding. Setting the growth rate of the LTC budget at the RPI therefore has implications for the LTC contributions

rate, which will be higher than would be needed if the States' contribution was to grow in line with the economy as a whole.

Given the intention of LTC reform to create a hypothecated funding stream for LTC, the proposed Regulations are fit for purpose.

6. P.141/2013 – Draft Long-Term Care (Health and Social Services Charges) (Jersey) Law 201-

The proposed Law is put forward to allow for fees to be charged for LTC services provided or arranged by HSS. This Law will replace the existing hospital charges (Long Stay Patients) Law 1999, which restricts the ability of the HSS to charge fees for LTC services. The new Law will allow HSS to charge fees in line with LTC standard rates and minimum co-payments.

The current arrangements for LTC are to cap the payments made by those in LTC that has been arranged by HSS at £474.81, and no charge is made to those under 65 who are placed by HSS. The actual cost of provision is closer to £1000 per week, and those who have made private arrangements for care must pay the full fee. The current system, therefore, provides a considerable subsidy to those in LTC who are placed by HSS but are able to afford the costs. This discrepancy is considered unfair.

The hospital charges Law is therefore to be replaced by a LTC (HSS Charges) Law, which will allow HSS to levy fees in line with LTC benefits. The new Law will impose the same charge on everyone with the same care needs (for all over 18) and is to be introduced in July 2014 for all in LTC. The proposed changes will mean that all are required to make a contribution towards their care costs if they are able to afford it, with means tested support available (through the LTC fund) to those unable to afford the costs. The additional charges for LTC will raise the income received by HSS. The legislation does not specify the level of charges, although current LTC reforms propose gross fees of between £640 per week and £1240 per week.

General Comment

Under the current arrangements HSS can charge £0 (under 65) or £474 (65+) for providing care. Under the new Law, HSS will charge all adults at the LTC benefit rate plus the minimum co-payment i.e. between £640 and £1240 per week. The impact on the HSS Department is that the income it receives will increase.

However, at the same time the budget it is allocated will be reduced by the same amount so there is no net impact on the HSS Department. Existing claimants who are still in HSS care on 1 July 2014 will be able to choose to stay on the old system or move to the new system. Non home-owners who are already receiving means tested support will not notice any difference.

Those that chose to place themselves in private care have no impact on the HSS Department but will benefit from being able to claim the new LTC benefit (if their care needs are assessed as meeting the qualifying conditions).

The reforms will lead to a rise in revenue to the HSS Department. The effect on the Departmental budget, and the implications for funding under regulation P.140/2013, may require further consideration. This is to be covered in more detail in a separate report that will be published to accompany P.140.

The desired effect of ensuring consistency in the treatment of LTC recipients will however be achieved by the proposed legislative changes.

**7. P.142/2013 – Draft Long-Term Care (Jersey) Law 2012 (Appointed Day)
Act 201-**

The Act gives effect to the LTC Law in Jersey. The Act will come into effect in stages, with LTC benefits to be paid out from 1 July 2014 and LTC contributions to be collected from January 2015. Interim funding is to be provided by States funding from other Departmental budgets.

The Act provides appropriate provision for the implementation of LTC benefits and funding and appears fit for purpose.