

STATES OF JERSEY



DRAFT INCOME SUPPORT (AMENDMENT No. 2) (JERSEY) LAW 201-

Lodged au Greffe on 31st January 2017
by the Minister for Social Security

STATES GREFFE



Jersey

DRAFT INCOME SUPPORT (AMENDMENT No. 2) (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 Income Support (Amendment No. 2) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy S.J. Pinel of St. Clement**

Minister for Social Security

Dated: 27th January 2017

REPORT

Summary

Following changes to the funding provided to Family Nursing and Home Care (“FNHC”), the Health and Social Services Department (“HSS”) and the Social Security Department (“SSD”) have worked together to propose an extension to the existing Income Support system to incorporate additional support for low-income individuals who receive a care package in their own home, but who have care needs below the level at which they would qualify for the Long-Term Care (“LTC”) Scheme.

This enabling legislation is needed to allow care assessments to be considered under the Income Support (Jersey) Law 2007 (“Income Support Law”). At present, care assessments can only be undertaken under the Long-Term Care (Jersey) Law 2012. Income Support claimants who apply for the additional support will receive a care assessment from a qualified health professional using the same format as the existing LTC assessments.

Subject to the approval of this enabling legislation by the States Assembly, draft Regulations will then be lodged for debate, setting out the details of the additional Income Support personal care component.

Changes to FNHC Funding

In November 2016, HSS confirmed that it would cease commissioning and funding FNHC’s home care services with effect from 1st January 2017. However, to enable FNHC’s clients to transition to the new fee structure that is required, HSS is making available transitional funding to FNHC to maintain a lower rate for those not in receipt of LTC funding until 31st December 2017. This transitional funding applies only to FNHC clients as at 31st December 2016, and does not apply to new clients thereafter.

Income Support legislation

The Income Support Law provides means-tested support for basic living costs to households that satisfy residency, work and means tests. It is available to individuals and families, and includes components for adults, children, household expenses, accommodation costs, child care costs and health-related costs. Health-related costs are supported through separate personal care, mobility and clinical cost elements. The personal care component is paid at 3 levels, ranging from £22.96 a week to £145.25 a week.

Subject to the approval of this enabling legislation, a further, flexible personal care component¹ will be introduced. This component will not have a fixed value, but will be set according to the value of the care package required by the individual claimant.

The enabling legislation is required to expand the remit of the Income Support Law to allow appropriately qualified health professionals to undertake assessments of care packages for these claimants.

¹ Note that this component is described by Deputy G.P. Southern of St. Helier as personal care component level 4 in his proposition [P.122/2016](#) (‘Funding for Family Nursing and Home Care services – petition’).

Long-Term Care Scheme

The LTC Scheme was introduced in 2014 to support people with the significant cost of LTC fees. To qualify for the Scheme, a claimant needs to have a minimum level of care needs. For people with needs above this minimum, the Scheme provides a range of benefits, including loans. The LTC Scheme provides benefits to anyone who has received care for a certain length of time, with additional means-tested benefits available from the start of care. Individual care needs range considerably, depending on personal circumstances and underlying medical conditions, and often increase over time. The LTC Scheme supports individuals who continue to live at home, including some existing FNHC clients. However, there will also be people with care needs that fall below the minimum set for the LTC Scheme. The proposal for a new Income Support component will extend the financial support available to low-income households in this area. The Income Support component will only be available to a claimant who does not meet the minimum care needs under the LTC Law. There will be no overlap between the 2 Laws.

Financial and manpower implications

There are no resource implications arising from the enabling legislation. The proposed Regulations will allow for a new component within the Income Support Scheme. The increased costs of Income Support will be met by a budget transfer from HSS. Assessments under the Regulations will be undertaken by HSS staff using existing resources.

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 on the Draft Income Support (Amendment No. 2) (Jersey) Law 201-

These Notes have been prepared in respect of the Draft Income Support (Amendment No. 2) (Jersey) Law 201- (the “**draft Law**”) by the Law Officers’ Department. They summarise the principal human rights issues arising from the contents of the draft Law and explain why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“**ECHR**”).

These notes are included for the information of States Members. They are not, and should not be taken as, legal advice.

Article 8 ECHR provides –

- “(1) Everyone has the right to respect for his private and family life, his home and his correspondence.
- (2) There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 3 of the draft Law would insert paragraph (3B) into Article 5 of the Income Support (Jersey) Law 2007 (the “**2007 Law**”). The draft Law would give the Minister the power to require an assessment to be carried out for the purpose of ascertaining the nature and degree of a person’s physical, sensory or mental impairment; require approval of a care package in respect of the person’s physical, sensory or mental impairment; or require both such assessment or approval, in support of a claim under Article 4 of the 2007 Law to entitlement of the person’s household to the impairment component of Income Support.

New Article 5(3B) of the 2007 Law, inserted by Article 3 of the draft Law, would require the Minister, by Order, to make provision specifying, among other things, the descriptions of persons who may make assessments or give approvals, for the approval of such persons and for appeals against decisions regarding the approval of such persons; specifying procedures for making such assessments or giving such approvals and for reassessment and reviews of such assessments or decisions regarding approvals.

Taking a power to require the conduct of a physical or psychological assessment to inform an entitlement to income support will engage the Article 8 ECHR right to privacy. However, the Minister is required to make an order making provision with respect to the exercise of this power that should ensure that the power is hedged by appropriate safeguards. These will include restrictions on the persons who may perform an assessment to ensure they are qualified to do so.

In principle the draft Law is compatible with Article 8 ECHR, though in practice it will be important to ensure that the power to order the conduct of these assessments is used proportionately for the purposes of Article 8(2) of the ECHR.

In addition to the above, Article 6 ECHR provides for the right to a fair trial. In particular, Article 6(1) ECHR requires that those who face a determination of their 'civil rights and obligations' must be entitled to a 'fair and public hearing ... by an independent and impartial tribunal'. The guarantees afforded by Article 6 ECHR will only be relevant to the extent that an act or a decision is determinative of a 'civil right' or 'obligation'. New Article 5(3B) of the 2007 Law would require the Minister to make provision for appeals against the outcome of an assessment or approval to the Medical Appeal Tribunal and subsequently to the Royal Court. Therefore, to the extent that such assessments or approvals may be said to determine civil rights, the requirement to make an order should ensure that the draft Law is compatible with Article 6(1) ECHR.

Explanatory Note

This Law amends the Income Support (Jersey) Law 2007 (the “principal Law” as defined in *Article 1*) to make provision for assessments of impairment and approvals of care packages in respect of claims for the impairment component of income support. The term “care package” is defined (by the definition inserted into Article 1(1) of the principal Law by *Article 2*) to mean an arrangement for providing care for a person.

Article 3 inserts a new paragraph (3A) into Article 5 of the principal Law (the “new Article 5(3A)”) to give the Minister the power to require an assessment to be made for the purpose of ascertaining the nature and degree of a person’s physical, sensory or mental impairment; require approval of a care package in respect of the person’s physical, sensory or mental impairment; or require both such assessment and approval, in support of a claim under Article 4 of the principal Law to entitlement of the person’s household to the impairment component of income support. *Article 3* amends Article 5(7) of the principal Law to give the States the power to amend the new Article 5(3A) by Regulations.

Article 3 also inserts a new paragraph (3B) into Article 5 of the principal Law to require the Minister, by Order, to make provision specifying the descriptions of persons who may make assessments or give approvals required pursuant to the new Article 5(3A); for the approval of such persons; for appeals against decisions regarding approval of such persons; specifying procedures for making such assessments or giving such approvals and for reassessment and reviews of such assessments or decisions regarding approvals. The Minister is also given the power, by Order, to make such other provision as he or she thinks fit in relation to assessments or approvals required pursuant to the new Article 5(3A).

Article 4 sets out the title of this Law and provides that it will come into force 7 days after it is registered.



Jersey

DRAFT INCOME SUPPORT (AMENDMENT No. 2) (JERSEY) LAW 201-

Arrangement

Article

1	Interpretation	11
2	Article 1 amended	11
3	Article 5 amended	11
4	Citation and commencement	12



Jersey

DRAFT INCOME SUPPORT (AMENDMENT No. 2) (JERSEY) LAW 201-

A LAW to further amend the Income Support (Jersey) Law 2007.

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 Income Support (Jersey) Law 2007¹.

2 Article 1 amended

In Article 1(1) of the principal Law –

- (a) after the definition “calculated income” there shall be inserted the following definition –

“ ‘care package’ means an arrangement for providing care for a person;”;

- (b) after the definition “income support” there shall be inserted the following definition –

“ ‘Medical Appeal Tribunal’ means the Medical Appeal Tribunal constituted under Article 9(2)(a);”.

3 Article 5 amended

In Article 5 of the principal Law –

- (a) after paragraph (3) there shall be inserted the following paragraphs –

“(3A) Subject to paragraph (3B), the Minister may require –

- (a) an assessment to be made for the purpose of ascertaining the nature and degree of a person's physical, sensory or mental impairment;
- (b) approval of a care package in respect of a person's physical, sensory or mental impairment; or
- (c) both an assessment to be made in accordance with sub-paragraph (a) and an approval to be given in accordance with sub-paragraph (b),

in support of a claim under Article 4 to entitlement of the person's household to the special component referred to in paragraph (3)(b).

(3B) The Minister –

- (a) shall, by Order, make provision –
 - (i) specifying the descriptions of persons who may make assessments or give approvals required pursuant to paragraph (3A),
 - (ii) for the approval of persons referred to in clause (i),
 - (iii) for appeals against decisions regarding approval of persons referred to in clause (i) to be made to the Royal Court,
 - (iv) specifying procedures for making assessments or giving approvals required pursuant to sub-paragraph (3A),
 - (v) for reassessments of assessments or decisions regarding approvals required pursuant to sub-paragraph (3A),
 - (vi) for reviews, on medical grounds, of reassessments referred to in clause (v) to be made by the Medical Appeal Tribunal, and
 - (vii) for appeals against decisions of the Medical Appeal Tribunal on questions of law to be made to the Royal Court; and
- (b) may, by Order, make such other provision as he or she thinks fit in relation to assessments or approvals required pursuant to paragraph (3A).”;

- (b) in paragraph (7), for the words “paragraph (2) or paragraph (3)” there shall be inserted the following words “paragraph (2), (3) or (3A)”.

4 Citation and commencement

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

¹ *chapter 26.550*