

STATES OF JERSEY



DRAFT FOOD COSTS BONUS (JERSEY) REGULATIONS 201-

Lodged au Greffe on 22nd March 2011
by the Minister for Social Security

STATES GREFFE



Jersey

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REPORT

Background

As part of the Fiscal Strategy, the States has agreed to increase the rate of GST from 3% to 5% on 1st June 2011. Section 11 of the report on the budget proposals for 2011 (P.157/2010) described the FSR proposals and included the following commitment:

“The aim of the Council of Ministers’ three part plan to address the deficit is to raise any additional tax revenue required in a fair way. For these reasons it is proposed to compensate the less well off for the impact of the rise in GST. This will be done by increasing income support for those that receive it and maintaining an adequate GST bonus for those on low incomes but not receiving income support.”

The Food Costs Bonus (Jersey) Regulations 2008 have now replaced the original GST Bonus Regulations. 50% of the value of the bonus relates to the original compensation for the cost of GST on food and the remaining 50% relates to additional funding provided in 2009 in respect of food costs directly. The value of the bonus in 2010 was £153.60.

The Regulations were set up in 2008 and will expire on 23rd July 2011.

Renewal of Regulations

It is proposed to create a further set of triennial Regulations incorporating the existing compensation for food costs and the cost of GST in respect of food. The value of the bonus in 2011 will take into account the increase in the GST rate from 3% to 5% on 1st June. The rate for 2011 will be set at £189.15 per annum. The Regulations allow the Minister to increase the bonus in 2012 and/or 2013 by ministerial Order.

The penalties for offences under the Regulations have been brought in line with the level of penalties set under the TV licence benefit and as proposed for the new Christmas Bonus Law (see P.43/2011). The penalty is imprisonment for a term of up to 2 years and a fine. Under the previous Regulations, the term of imprisonment was set at a maximum of 7 years.

Financial and manpower implications

Based on a current uptake of approximately 2,000 claims per annum, the departmental cash limit includes an allocation of £386,000 for the food costs bonus in 2011.

Analysis of the recent Income Distribution Survey suggests that there may be a considerable number of households who are eligible to claim this benefit but are not currently doing so.

For example, an analysis of pensioner households indicates that there may be up to an additional 2,200 pensioner households who could be eligible for this bonus, but do not currently claim it.

The value of the benefit has increased substantially since its introduction in 2008 and it is likely that take-up will increase with this further increase in the rate of benefit.

Each additional 1,000 households claiming in 2011 would create an extra cost pressure of £190,000 which is not currently allowed for in the departmental cash limit.

A substantial increase in the number of claims would also have a significant impact on the volume of administration for the Department, creating pressures on existing manpower resources.

Explanatory Note

These Triennial Regulations create a “bonus” payable by the Minister for Social Security to households that do not receive income support or pay income tax. These Triennial Regulations come into force on 24th July 2011 following the expiry of the Food Costs Bonus (Jersey) Regulations 2008 (“2008 Regulations”) on 23rd July 2011.

These Regulations are very similar to the 2008 Regulations. The main change is in *Regulation 5*. The bonus under these Regulations is £189.15, compared with the bonus for 2010, that is, £153.60, under the 2008 Regulations. The main change from the 2008 Regulations is that the bonus for either or both of the second and third years of these Regulations (that is 2012 and 2013) may be increased by the Minister by Order. In contrast, the 2008 Regulations specify the increases for the second and third years (that is 2009 and 2010).

Regulation 1 is the interpretation provision. Many provisions borrow from income support legislation, and adults and households are defined in the same way as for that benefit.

Regulation 2 sets out the main elements of entitlement to a bonus, which are a qualifying household, a member who applies on behalf of the household, and the rate of bonus for that year.

Regulation 3 sets out the conditions for a household to qualify for bonus. The first is that it does not receive income support, other than a special payment, or a transitional protected payment, for a household which is not in residential care. The second is that no member of the household has been served with an income tax assessment notice showing a liability to tax for the previous assessment year. The third is that there is at least one adult who has been continuously ordinarily resident for the past 5 years, subject to rules on absence and imprisonment.

Regulation 4 enables an application to be made at any time of the year by one adult who meets the third condition. Depending on when in the year an application is made, the applicant’s entitlement will be determined either by reference to the household’s liability to income tax for the preceding year or for the year before that. However, a household’s liability to tax for one year cannot be used twice to determine entitlement to the bonus. So, if entitlement to bonus in 2011 is determined by reference to a household’s tax liability for 2010, entitlement to bonus for 2012 must be determined by reference to the household’s tax liability for 2011.

Regulation 5 sets out the amount of bonus as described above.

Regulation 6 and the *Schedule* import a modified version of the income support and social security legislation for administration of applications, determinations, redeterminations and appeals to the Social Security Tribunal and the Royal Court. It also ensures, in paragraph 5(3) of the Schedule, that the determining officer can refuse to process an application unless and until household members cooperate, where necessary, in obtaining information from the Comptroller of Taxes to check whether the household meets the income tax condition.

Regulation 7 creates offences related to making false statements or using false documents in support of a claim for this bonus.

Regulation 8 is the citation and commencement provision and provides for the Regulations, as Triennials, to remain in force only for 3 years.



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Arrangement

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Made [date to be inserted]

Coming into force [date to be inserted]

THE STATES, in pursuance of the Order in Council dated 28th March 1771¹, have made the following Regulations –

PART 1

INTERPRETATION

1 Interpretation

- (1) In these Regulations, unless the context otherwise requires –
- “2007 Law” means the Income Support (Jersey) Law 2007²;
 - “adult” has the same meaning as in the 2007 Law;
 - “bonus” means a Food Costs Bonus referred to in Regulation 2;
 - “Minister” means the Minister for Social Security.
- (2) In these Regulations –
- (a) references to a household are to be construed in the same way as they are for the purposes of the 2007 Law; and
 - (b) references to a person being a member of a household are to be construed in accordance with Article 5 of the Income Support (General Provisions) (Jersey) Order 2008³.

PART 2

ENTITLEMENT TO BONUS

2 Payment of bonus

The Minister must pay a Food Costs Bonus –

- (a) on behalf of a household that qualifies for it under Regulation 3;
- (b) to a member of that household who applies for it in accordance with Regulation 4;
- (c) at the rate specified in Regulation 5 for the year in relation to which the application is made.

3 Qualifying conditions

- (1) A household qualifies for a bonus in a year if it meets all of the conditions in paragraphs (2) to (5) in relation to that year.
- (2) The first condition is that no person has received on behalf of the household any payment which –
 - (a) relates to any of the 7 days preceding the day on which the application is made for the bonus;
 - (b) is made under the 2007 Law; and
 - (c) is not an exempt payment under paragraph (6).
- (3) The second condition is that, subject to paragraph (4) –
 - (a) where an application for a bonus is made on behalf of the household before 1st October in the year to which it relates, no member of the household was served with a notice of assessment under Article 25 of the Income Tax (Jersey) Law 1961⁴ showing a liability to income tax for the year of assessment falling 2 years before the year to which the application relates;
 - (b) where an application for a bonus is made on behalf of the household on or after 1st October in the year to which it relates, no member of the household was served with a notice of assessment under Article 25 of the Income Tax (Jersey) Law 1961 showing a liability to income tax for the year of assessment preceding the year to which the application relates.
- (4) Where a household has qualified for a bonus in a year by meeting the second condition in the case described in paragraph (3)(b), the household cannot qualify for a bonus in the following year by meeting the second condition in the case described in paragraph (3)(a) and, accordingly, any application made on behalf of the household for the following year, if made before 1st October, shall be deemed to have been made on or after that date.
- (5) The third condition is that at least one member of the household –
 - (a) is an adult on the date on which the application for the bonus is made; and
 - (b) subject to paragraphs (7) to (9), has been ordinarily resident in Jersey for a continuous period of 5 years immediately preceding the date on which the application for the bonus is made.
- (6) A payment is exempt if it is made on behalf of a household that does not fall within Article 7 of the Income Support (Transitional Provisions) (Jersey) Order 2008⁵, and –
 - (a) it is, or it includes, a protected payment under that Order; or

- (b) it is a special payment under the 2007 Law.
- (7) A person resident outside Jersey is nevertheless to be treated as being ordinarily resident in Jersey for any part of the period specified in paragraph (5)(b) in which that person's principal residence is in Jersey.
- (8) A person detained by virtue of a sentence of imprisonment, youth detention or similar punishment (whether in Jersey or elsewhere) is not to be treated as ordinarily resident in Jersey for the period during which the person is so detained.
- (9) However, the period during which a person was ordinarily resident in Jersey immediately prior to such detention is to be treated as if it immediately preceded the person's release from that detention.

4 Application for bonus

- (1) An application for a bonus must be made to the Minister –
 - (a) in the year to which it relates;
 - (b) on behalf of a qualifying household by a member of that household who meets the condition in Regulation 3(5).
- (2) Only one application for a bonus may be made for any one year on behalf of any one qualifying household.

5 Rate of bonus

- (1) For 2011 and subsequent years the amount of the bonus is £189.15.
- (2) For either or both of the years 2012 and 2013 the Minister may, by Order, specify an increased amount of bonus instead of the amount specified in paragraph (1).
- (3) Any amount specified under paragraph (2) for 2013 must not be less than the amount for 2012.

PART 3

PROCEDURAL AND MISCELLANEOUS PROVISIONS

6 Applications, determinations and appeals

The Schedule, which provides procedures for applications, determinations and appeals, has effect.

7 Offences

- (1) A person must not, with intent to obtain a bonus, whether on behalf of that person or of another person or of any household –
 - (a) furnish any information that he or she knows to be false in a material particular;

- (b) recklessly furnish any information that is false in a material particular; or
 - (c) withhold any material information.
- (2) A person must not obtain or receive a bonus, whether on behalf of that person or of another person or of any household, knowing that it was not properly payable to, or not properly receivable by, him or her.
- (3) A person who contravenes paragraph (1) or (2) is guilty of an offence and is liable to imprisonment for a term of 2 years and to a fine.
- (4) Where an offence under paragraph (3) committed by a limited liability partnership or body corporate is proved to have been committed with the consent or connivance of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (5) Where the affairs of a body corporate are managed by its members, paragraph (4) applies in relation to acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

8 Citation and duration

- (1) These Regulations may be cited as the Food Costs Bonus (Jersey) Regulations 201-.
- (2) These Regulations come into force on 24th July 2011 and, unless earlier revoked, they remain in force for 3 years.

SCHEDULE

(Regulation 6)

PROCEDURAL PROVISIONS**1 Interpretation**

In this Schedule, unless the context otherwise requires –

“applicant” means a person who has made an application for a bonus under these Regulations;

“determining officer” means a determining officer as defined in the 2007 Law or as appointed under Article 33 of the Social Security (Jersey) Law 1974⁶;

“Registrar” shall be construed in accordance with Article 4 of the Social Security (Determination of Claims and Questions) (Jersey) Order 1974⁷;

“Royal Court” means the Inferior Number of the Royal Court;

“Tribunal” means the Social Security Tribunal constituted under Article 8 of the Social Security (Determination of Claims and Questions) (Jersey) Order 1974.

2 Manner in which applications are to be made

- (1) Every application for a bonus must be made to the Minister on a form approved by the Minister, or in such other manner as the Minister may accept as sufficient in the circumstances for the case.
- (2) An application is treated as having been made on the day on which it is received by the Minister at an office approved by the Minister for the receiving of applications.
- (3) If an application is defective at the date when it is received or has been made in a manner otherwise than as required by sub-paragraph (1), the Minister may refer the application to the applicant or, as the case may be, supply him or her with the form, and if the form is received properly completed within 14 days from that date on which the application is so referred, or the form is so supplied, to the applicant, the Minister must treat the application as if it had been duly made in the first instance.
- (4) An applicant may, by notice in writing to the Minister, amend an application at any time before the application is determined and the Minister may treat the application as if it had been made as so amended in the first instance.

3 Late application

If in any case the applicant proves that there was good cause for a failure to make the application before the date on which it was made, the time prescribed by Regulation 4(1)(a) for making that application is extended to the date on which the application is made, subject to maximum extension of 6 months.

4 Extinguishment of right to sum payable by way of bonus

- (1) The right to payment of any sum by way of bonus is extinguished where payment of the sum is not obtained within the period of 2 years from the date on which the right is to be treated as having arisen.
- (2) For the purpose of this paragraph the right is to be treated as having arisen –
 - (a) in relation to any such sum contained in an instrument of payment which has been given or sent, for the purposes of making payment of that sum, to the applicant or to an approved place for collection by the applicant (whether or not received or collected as the case may be), notwithstanding that that sum is greater or less than the sum to which the applicant has the right to payment –
 - (i) on the date on the said instrument of payment, or
 - (ii) if a further instrument of payment has been so given or sent as a replacement for an instrument of payment previously given or sent, on the date on the last such instrument of payment;
 - (b) in relation to any such sum to which clause (a) does not apply, but where notice is given (whether orally or in writing) or is sent that the sum contained in the notice is available for collection, notwithstanding that that sum is greater or less than the sum to which the applicant has the right to payment –
 - (i) if written notice is sent through the post, on the date on which it would be delivered in the ordinary course of post, and
 - (ii) in any other case, on the date of the notice, and if more than one such notice is given or sent, on the date determined by reference to the first such notice;
 - (c) in relation to any such sum to which neither clause (a) nor (b) applies, on such date as the Minister determines.
- (3) Where a question arises whether the right to payment of any sum by way of bonus has been extinguished by the operation of this paragraph and the determining officer or the Tribunal is satisfied that –
 - (a) after the expiration of the said period of 2 years the Minister has received notice requesting payment of that sum; and
 - (b) throughout a period commencing within the said period of 2 years and continuing up to the day on which the said notice was given there was good cause for not giving that notice,the said period of 2 years is extended to the date on which the determining officer or the Tribunal decides that question, and, for the

purposes of the operation of this paragraph, after that decision the right to payment of that sum is to be treated as having arisen on that date.

- (4) This paragraph applies to a person authorized or appointed to act on behalf of an applicant as it applies to an applicant.

5 Information and evidence in support of an application

- (1) An applicant or such other adult member of the household as the determining officer may specify must furnish such certificates and other documents and information as the determining officer may require in connection with the application and, if reasonably so required, must for that purpose attend at such office or place as the determining officer may direct.
- (2) Without prejudice to the generality of sub-paragraph (1) and paragraph 2(1), the Minister may require the application to contain at least the following information –
- (a) the address of the household;
 - (b) in relation to each adult member of the household, including the applicant, that person's –
 - (i) title and full name (including any previous surname),
 - (ii) date of birth,
 - (iii) social security number,
 - (iv) relationship to the applicant, and
 - (v) employment status;
 - (c) a copy of any notice of assessment under Article 25 of the Income Tax (Jersey) Law 1961 for the preceding year served on or related to any adult member of the household, including the applicant; and
 - (d) in relation to the applicant only –
 - (i) confirmation of that person's period of ordinary residence in Jersey, and
 - (ii) details of a bank account, if available, into which the bonus can be paid, including the name of the bank, the sort code, the account number and the name of the account holder.
- (3) The determining officer may treat an application as not having been made unless and until each adult member of the household has taken any step requested of that member by the determining officer to assist in enabling the Comptroller of Taxes to release to the determining officer any information that –
- (a) is held by the Comptroller; and
 - (b) is required by the determining officer in order to determine whether the household meets the second condition, as set out in Regulation 3(3).

6 Persons unable to act

- (1) In the case of an applicant who is unable to act who –
 - (a) has not been received into guardianship in pursuance of a guardianship application under Article 14 of the Mental Health (Jersey) Law 1969⁸;
 - (b) does not have a curator appointed under Article 43 of that Law to manage and administer his or her property and affairs; and
 - (c) does not have a *tuteur*,the Minister may, on receipt of a written request, appoint a person to act on the applicant's behalf.
- (2) However, such appointment terminates –
 - (a) if the applicant is received into guardianship, or has a curator or *tuteur* appointed;
 - (b) at the request of the person appointed;
 - (c) if revoked by the Minister; or
 - (d) if the applicant becomes able to act.

7 Functions of determining officers

- (1) An application for a bonus must be determined by a determining officer and where required under paragraph 8, redetermined by a second determining officer.
- (2) The determining officer must notify in writing the applicant (or other person acting on his or her behalf) and all the other adult members of the applicant's household –
 - (a) of every adverse determination or decision made in respect of the household and the reasons for it; and
 - (b) of their rights to challenge an adverse determination or decision, as set out in sub-paragraph (3) in the case of a first determination or as set out in sub-paragraph (4) in the case of a redetermination.
- (3) In the case of an adverse first determination, the determining officer must notify the other persons mentioned in sub-paragraph (2) –
 - (a) of the right of any of them to have every adverse determination or decision reconsidered by a second determining officer;
 - (b) that this right must be exercised within 21 days of the person receiving notice of the determination or decision; and
 - (c) that if the right is not exercised there is no right of further appeal.
- (4) In the case of an adverse redetermination, the determining officer must notify the other persons mentioned in sub-paragraph (2) of the right of any of them to appeal to the Tribunal.
- (5) Where the determining officer or, in the case of a redetermination, the second determining officer, has determined that the household is entitled to an award and the amount of the award, he or she must allow payment to be made.

8 Reconsideration by second determining officer

If an applicant or an adult member of the applicant's household is dissatisfied with any determination under paragraph 7 that is made by a first determining officer considering the matter, he or she may require the matter to be reconsidered by a second determining officer at any time within 21 days of receiving notice of the decision or determination.

9 Appeals to Tribunal

- (1) If an applicant or an adult member of the applicant's household is dissatisfied with any redetermination by a second determining officer, he or she may appeal to the Tribunal within 14 days of receiving notification of the decision.
- (2) However, an appeal made outside the 14 day period, but within 28 days of receiving notification of the determination, may be allowed with the consent of the chairman of the Tribunal.
- (3) Every appeal must be made in writing to the Registrar on a form approved by the Registrar for that purpose, or in such manner as the Registrar may accept as sufficient in the circumstances of the case.

10 Further particulars

- (1) The Tribunal may at any time require the applicant or the determining officer to furnish it with further particulars in writing and within such time as it may direct with regard to any appeal, and may at any stage of the proceedings allow the amendment of any application for appeal or any statement or particulars and extend the time for furnishing any statement or particulars.
- (2) If, after the expiration of the time, or where the time has been extended, expiration of the extended time, for furnishing any statement or particulars under sub-paragraph (1), the applicant has failed to do so, the appeal is to be treated as having been abandoned.

11 Special procedure in cases of groundless appeals

- (1) Where, in the opinion of a determining officer, an application for appeal is made on grounds that are bound to fail, the determining officer may, within 14 days of receiving the application, request the Registrar to place the papers before the chairman or deputy chairman of the Tribunal.
- (2) If, on considering the papers, the chairman or deputy chairman of the Tribunal is of the opinion that the appeal is bound to fail, he or she must send a notice to the applicant stating that –
 - (a) he or she has considered the application for appeal and is of the opinion that the appeal is bound to fail; and
 - (b) unless the applicant renews his or her application to the Tribunal within 14 days of receiving the notification, the appeal will be treated as having been abandoned.

12 Decision without a hearing

If the applicant and the Minister agree and the Tribunal thinks that the case can properly be determined on the particulars supplied by the parties without a hearing, it may decide the matter without a hearing on the particulars so supplied.

13 Procedure of Tribunal

- (1) The parties to the appeal are the applicant and the Minister and each party or any person acting on behalf of that party may make representations to the Tribunal.
- (2) The Tribunal must sit in public unless the Tribunal considers it necessary to sit in private.
- (3) However, no person other than the Registrar may be present while the Tribunal is considering its decision.
- (4) The Tribunal may adjourn the hearing from time to time as it thinks fit.
- (5) The Tribunal may, if it thinks fit, admit any duly authenticated written statement or other material as *prima facie* evidence of any fact or facts in any case in which it thinks it just and proper to do so.
- (6) The Tribunal may, if it thinks fit, call for such documents and examine such witnesses as appear to it likely to afford evidence relevant and material to the issue, although not tendered by either the applicant or the Minister.
- (7) If, after notice of the hearing has been duly given, the applicant or the Minister fails to appear at the hearing, the Tribunal may proceed to determine the appeal notwithstanding the absence of both or either of them, or may give such directions with a view to the determination of the application as the Tribunal thinks just and proper.
- (8) The Tribunal may require any party to proceedings before the Tribunal under this Schedule or any witness in the proceedings to give evidence on oath and, for that purpose, the chairman or deputy chairman presiding over the Tribunal has power to administer an oath.
- (9) Where, in connection with the determination of any application, there is before the Tribunal medical advice or medical evidence relating to the applicant that has not been disclosed to the applicant and, in the opinion of the chairman or deputy chairman, the disclosure to the applicant of that advice or evidence would be harmful to the applicant's health, such advice or evidence is not required to be disclosed to the applicant, but the Tribunal is not by reason of such non-disclosure precluded from taking it into account for the purpose of the appeal.
- (10) On the appeal of any case under this paragraph, the Tribunal may confirm, reverse or vary the decision of the second determining officer and must give its decision in public.
- (11) The decision of the majority of the members of the Tribunal is the decision of the Tribunal and there must be a written record of the decision signed by the chairman or deputy chairman as the case may be which –

- (a) includes the names of the Tribunal members;
- (b) includes the reasons for the decision; and
- (c) records any dissent and the reasons for such dissent,

and the Registrar must send a copy of such written record to the parties as soon as practicable after the appeal has taken place.

- (12) Where the Tribunal has made a decision adverse to the applicant, the applicant must be advised that the decision on the facts is final but that he or she may appeal to the Royal Court on a point of law.
- (13) Subject to this paragraph, the Tribunal may regulate its own procedure.

14 Appeals and references to Royal Court

- (1) A person aggrieved by a decision of the Tribunal may appeal to the Royal Court on a point of law.
- (2) The Tribunal or a determining officer may refer any point of law to the Royal Court for the Court to give a ruling on the point.

15 Administrative expenses

The Minister may pay to any member of the Tribunal who exercises any functions under these Regulations, and any other person whose advice or assistance may be required for the purposes of these Regulations by the Tribunal or by a determining officer, such remuneration and expenses as the Minister may determine.

16 Recovery of awards wrongly made

- (1) If it is found at any time that any award has been paid that was not properly payable, the Minister may require it to be repaid –
 - (a) if it was paid to a person in his or her own right or on behalf of a qualifying household, by that person; or
 - (b) if it was paid to a person on behalf of another person or a qualifying household, by that person, by that other person or by a member of that household.
- (2) If it is found at any time that any award properly payable has been paid to a person not being a person by whom it was properly receivable, the Minister may require it to be repaid by the person to whom it was paid.
- (3) In case of the death of a person who could be required to repay a sum under this paragraph, the Minister may require it to be repaid by the person charged with the administration of the deceased person's personal estate.
- (4) Proceedings for the recovery of any sum which a person is required under this paragraph to repay to the Minister may be instituted by the Treasurer of the States and notwithstanding any enactment or rule of law to the contrary, any such proceedings may be brought at any time within 10 years from the time when that sum was paid, or, where the

proceedings are for the recovery of a consecutive series of sums, within 10 years from the date on which the last sum of the series was paid.

- (5) Any sum which a person is required under this paragraph to repay to the Minister may, without prejudice to any other remedy, be recovered by means of deduction from any other payment due under these Regulations to the person to whom the sum was paid, unless it was paid to that person on behalf of another, in which case it may, without prejudice to any other remedy, be recovered by means of deduction from any payment due under these Regulations to that other person.

17 Notices

Any notice, notification or other document required or authorized by this Schedule to be given to any person is deemed to have been given or sent if it was sent by post to that person at the person's ordinary or last known address.

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- 1 *chapter 15.120*
 - 2 *chapter 26.550*
 - 3 *chapter 26.550.20*
 - 4 *chapter 24.750*
 - 5 *chapter 26.550.80*
 - 6 *chapter 26.900*
 - 7 *chapter 26.900.28*
 - 8 *chapter 20.650*