

# STATES OF JERSEY



## **DRAFT SOCIAL SECURITY (AMENDMENT No. 21) (JERSEY) LAW 201-**

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**Lodged au Greffe on 29th October 2013  
by the Minister for Social Security**

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**STATES GREFFE**





Jersey

## **DRAFT SOCIAL SECURITY (AMENDMENT No. 21) (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. 21) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Senator F. du H. Le Gresley**

*Minister for Social Security*

Dated: 28th October 2013

## REPORT

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The Island faces a substantial increase in both the number and proportion of older residents over the next 30 years, with care costs predicted to more than double by 2044. In response to this issue, in July 2011, the States approved the Long-Term Care (Jersey) Law 2012. Details of the operation of the proposed scheme have now been set out in Proposition P.99/2013, which will be debated before this Law is considered.

The introduction of a Long-Term Care (LTC) scheme is designed to share long-term care costs more fairly across the community; and the scheme will establish a clear and simple process to help individuals and their families understand the choices available and plan for the cost of long-term care. The proposed new scheme will provide financial support to Jersey residents who have significant long-term care needs and who are being cared for either in their own home or in a care home.

The report on the new Long-Term Care scheme, P.99/2013, includes details of the contributions that will be levied on local residents and paid into the new LTC Fund. Section 3 of the P.99/2013 report (pages 9–11) outlines the proposal to base LTC contribution liability on the Income Tax liability of an individual. This will include an allowance for marginal relief as in the Income Tax system but, unlike Income Tax, the maximum LTC contribution will be capped using the Social Security upper earnings limit (£152,232 in 2013).

Section 12 of the P.99 report proposes a timetable for the phased introduction of these contributions –

- no contributions to be levied in 2014,
- an LTC rate of 0.5% in 2015, and
- an LTC rate of 1% starting from 1st January 2016.

Most of the legal changes necessary to create the new LTC contribution are included in the Draft Social Security (Amendment of Law No. 6) (Jersey) Regulations 201- (see P.138/2013), which will be debated before this proposition. However, there are a number of issues that cannot be dealt with through the Regulation-making powers of the Social Security Law.

This amendment to primary legislation deals with 2 specific issues. It allows future changes to the long-term care contribution mechanism which is set out in Article 49B of the Income Tax Law to be amended by Regulations brought under the Social Security Law. It also introduces a surcharge mechanism for the long-term care contributions, in line with the existing surcharge mechanism imposed on late payments of income tax liability. The efficient joint collection of income tax liability and long-term care contribution liability is facilitated by a single approach in as many operational areas as possible.

### **Surcharge for late payment**

Articles 2, 4 and 5 define the way in which an LTC surcharge will be calculated, collected, and paid into the long-term care fund. Article 2 confirms that any LTC surcharges collected will be paid into the long-term care fund. Article 4 explains when a surcharge is payable and how it is calculated. These rules are based on the rules for income tax surcharges. In particular, If the Comptroller of Income Tax waives the income tax surcharge, then no LTC surcharge will be payable either. Article 5 makes changes to the Income Tax Law to allow the surcharge amounts to be collected and remitted to Social Security. Article 5(4) updates Schedule 1A. This Schedule provides

an updated version of each Article of the Income Tax Law that includes references to long-term care contributions.

### **Future changes to long-term care contributions**

Article 3 amends Article 50 of the Social Security Law. Article 50 creates Regulation-making powers across a wide range of social security areas. These are extended to include the power to impose surcharges in respect of late contributions and the power to make changes to Article 49B of the Income Tax Law. This is the Article that provides for the collection of LTC contributions by the Comptroller of Income Tax. Any changes in these areas are still subject to approval by the States Assembly and Regulations can only be proposed by the Minister for Social Security.

### **Financial and manpower implications**

The development costs of the LTC scheme are being met through existing departmental budgets. Ongoing costs will be met through the LTC Fund itself. It is estimated that an additional 9.5 FTE will be required to administer the new scheme.

### **Human Rights**

The notes on the human rights aspects of the draft Law in the Appendix to this Report 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 Social Security (Amendment No. 21) (Jersey) Law 201- (“the draft Law”)

These Notes have been prepared in respect of the Draft Social Security (Amendment No. 21) (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.**

The draft Law engages 2 Articles of the ECHR –

- a. Article 1 of Protocol No.1 to the ECHR – Right to the peaceful enjoyment of property; and
- b. Article 6 of the ECHR – The right to a fair trial.

#### Article 1 of Protocol No. 1 to the ECHR (“**A1P1**”)

A1P1 provides that –

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

A1P1 will be engaged by the provisions contained in the draft Law, in particular Article 4, which provides that a person will have a liability to pay a Long-Term Care Fund Surcharge (“**LTC Surcharge**”) where they pay their long-term care contribution (“**LTC Contribution**”) late, i.e. after 6 p.m. on the Friday following the first Monday in December in the year following the year in which the liability arose.

A1P1 is a qualified right, so if the interference with the right can be justified, then no breach of A1P1 occurs. An interference with property is justified if it is in the public or general interest, it is in accordance with the law and is proportionate. Proportionality requires there to be a fair balance between the means employed and the public or general interest pursued. Measures taken to secure the payment of taxes or “contributions”, including compulsory contributions to State benefits are considered under the second paragraph of A1P1. It should be noted that a number of cases decided in Strasbourg have made it clear that States enjoy a very wide margin of appreciation in determining which laws it “deems necessary” in relation to the payment of taxes and other contributions.

A complete appraisal of the policy justification for the imposition of the LTC Surcharge was not available at the time of preparing these Notes. It is, however, presumed that the measure is intended to secure the timely payment of LTC Contributions. Moreover, it is noted that the regime in the draft Law reflects the existing regime for the imposition of surcharges under the Income Tax (Jersey) Law 1961 (the “**1961 Law**”) to secure the timely payment of income tax. In this

context it is unlikely that the imposition of the LTC Surcharge could be said not to strike a “fair balance” between the public interest in collecting LTC Contributions and the rights of the individuals, or indeed to be devoid of reasonable foundation, so that it might be successfully challenged on the basis that it is incompatible with A1P1.

Article 6 of the ECHR – The right to a fair trial

Case law of the European Court of Human Rights (“**ECtHR**”) has established that the right in Article 6 of the ECHR to a fair hearing applies exclusively to the determination of civil rights and obligations and to criminal charges. Tax matters governed by public law are regarded to be public in nature and considered to fall outside the scope of civil rights and obligations. It is unlikely that the obligation to make LTC contributions could be distinguished from this reasoning simply because the obligation has certain private law features.

It follows that Article 6 ECHR would only then apply to the decision to impose a surcharge if and to the extent that this would amount to the determination of a criminal charge. In order to determine whether a tax dispute involves a criminal charge it is necessary to look at 3 criteria –

- a. The legal classification of the offence in domestic law;
- b. The nature of the offence; and
- c. The degree of severity of the possible penalty.

It is considered unlikely that the decision to impose an LTC surcharge would engage the right in Article 6 ECHR in its criminal aspect. In particular, the draft Law contains no suggestion that the imposition of the LTC Surcharge arises from the commission of an offence and the surcharge itself is set at a low level, in keeping with the surcharge currently imposed under the 1961 Law. In conclusion, therefore, it is considered that the determination of liability to pay the LTC Surcharge does not engage Article 6 of the ECHR.

## Explanatory Note

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This Law amends the Social Security (Jersey) Law 1974 (the “1974 Law”) and the Income Tax (Jersey) Law 1961 (the “1961 Law”) so as to impose on an individual a surcharge for late payment of a long-term care contribution.

*Article 1* defines the 1974 Law and 1961 Law.

*Article 2* amends Article 30 of the 1974 Law so as to include in the Long-Term Care Fund Allocation that must be paid into the Long-Term Care Fund, surcharges imposed for late payment of a long-term care contribution (“LTC surcharges”).

*Article 3* amends Article 50 of the 1974 Law so as to widen the States power to amend the 1974 Law by Regulations. The power will include the power to amend the 1974 Law so as to add a surcharge or amend an existing surcharge. In addition, the States are empowered to amend Article 49B of, and Schedule 1A to, the 1961 Law. Article 49B and Schedule 1A are added to the 1961 Law by the Social Security (Amendment of Law No. 6) (Jersey) Regulations 201- (P.138/2013) and make provision for the collection of long-term care contributions by the Comptroller of Taxes as the agent of the Minister for Social Security.

*Article 4* amends Schedule 1D to the 1974 Law so as to add the liability to pay an LTC surcharge. The liability arises if a person’s LTC contribution for the year is not paid by 6 p.m. on the Friday following the first Monday in December. This is the same deadline as applies to the income tax surcharge. The surcharge is 10% of the amount unpaid – the same rate as applies to the income tax surcharge. A person is not liable to pay an LTC surcharge if he or she is not liable to pay an income tax surcharge. A person is not liable to pay an income tax surcharge if the person has, by the deadline, paid 70% of his or her tax liability. Further, the Comptroller of Taxes may waive payment of the income tax surcharge if it would amount to £50 or less, or if the income tax due is paid late by reason of the actions of a third party or is due to death, serious illness or other grave and exceptional circumstances. If the Comptroller of Taxes refuses to waive a person’s income tax surcharge, and the person appeals successfully against the refusal, the person’s liability to pay the LTC surcharge is taken to have been waived.

*Article 5* amends Article 49B of the 1961 Law. Article 49B modifies the provisions of the 1961 Law for collection of income tax in a case where a taxpayer is also liable to pay a long-term care contribution. The provisions are further modified to require the Comptroller of Taxes, when notifying an individual of the income tax surcharge he or she is liable to pay, to notify the individual of the LTC surcharge that he or she is also liable to pay.

*Article 6* provides for the citation and commencement of this Law.





Jersey

## **DRAFT SOCIAL SECURITY (AMENDMENT No. 21) (JERSEY) LAW 201-**

### **Arrangement**

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#### **Article**

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Jersey

## **DRAFT SOCIAL SECURITY (AMENDMENT No. 21) (JERSEY) LAW 201-**

**A LAW** to amend further the Social Security (Jersey) Law 1974 and, consequentially, the Income Tax (Jersey) Law 1961

*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 –

“1961 Law” means the Income Tax (Jersey) Law 1961<sup>1</sup>;

“1974 Law” means the Social Security (Jersey) Law 1974<sup>2</sup>.

### **2 Article 30 of the 1974 Law amended**

In Article 30(3B) of the 1974 Law for the words “shall be the aggregate of” to the end of the paragraph there shall be substituted the words –

“shall be the aggregate of –

(a) the LTC contributions determined in accordance with Schedule 1C; and

(b) LTC surcharges determined in accordance with paragraph 4A of Schedule 1D,

and collected in accordance with Schedule 1D and the 1961 Law.”.

### **3 Article 50 of the 1974 Law amended**

In Article 50 of the 1974 Law –

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

“(3A) The States may by Regulations amend in, or add to, this Law provision for the imposition of a surcharge where contributions of any specified class are not paid, whether by the insured person or any other person, by the date required by or under this Law.”;

(b) after paragraph (5) there shall be inserted the following paragraph –

“(5A) Regulations made under this Article may amend Article 49B of, and Schedule 1A to, the 1961 Law.”.

#### 4 Schedule 1D to the 1974 Law amended

In Schedule 1D to the 1974 Law after paragraph 4 there shall be inserted the following paragraph –

##### “4A Surcharge for late payment of LTC contribution

- (1) In this paragraph, ‘specified time’ means 6 p.m. on the Friday following the first Monday in December in a year.
- (2) An insured person who is liable to pay an LTC contribution for a year shall be liable to pay an amount in addition to that contribution (hereafter referred to as the ‘LTC surcharge’) equal to 10% of so much of the LTC contribution for the year which remains unpaid, if the LTC contribution for the year is not paid in full by the specified time.
- (3) A person shall not be liable to pay the LTC surcharge if –
  - (a) the Comptroller has, under Article 41I(2) of the 1961 Law, waived the person’s payment of the tax surcharge due; or
  - (b) the person is not, by virtue of Article 41I(3) of the 1961 Law, liable to pay the tax surcharge.
- (4) If, on an appeal under Article 41I(7) of the 1961 Law, the Commissioners direct that a person’s liability under Article 41I(2) shall be waived, the person’s liability to the LTC surcharge shall be taken to have been waived.
- (5) In this paragraph ‘tax surcharge’ means a surcharge that a person is liable to pay under Article 41I of the 1961 Law.”.

#### 5 1961 Law amended

(1) After Article 49B(8) of the 1961 Law there shall be inserted the following paragraphs –

“(8A) Where an insured person liable to pay a surcharge under Article 41I is also liable, pursuant to paragraph 4A of Schedule 1D to the 1974 Law, to pay an LTC surcharge, Article 41I shall have effect with the following modifications –

- (a) for paragraph (4) there shall be substituted the following paragraph –
  - ‘(4) The Comptroller shall issue a written notice to a person of his or her liability under paragraph (2) and

of his or her liability to an LTC surcharge under paragraph 4A of Schedule 1D to the 1974 Law.’;

- (b) at the end of paragraph (6) there shall be added the words ‘under paragraph (2)’.

(8B) Where the Comptroller receives an LTC surcharge paid under paragraph 4A of Schedule 1D to the 1974 Law and Article 41I of this Law as modified by paragraph (8A), the Comptroller shall remit the sum to the Minister for Social Security.’.

- (2) In Article 49B(10) of the 1961 Law, for the words “and 41E” there shall be substituted the words “, 41E and 41F”.
- (3) In the heading to Schedule 1A to the 1961 Law, for the words “and 41E” there shall be substituted the words “, 41E and 41F”.
- (4) In Schedule 1A to the 1961 Law, after Article 41E there shall be inserted the following Article –

**“41I Late payment surcharge**

- (1) In this Article, ‘specified time’, in relation to a year of assessment, means 6 p.m. on the Friday following the first Monday in December of the year next following the year of assessment.
- (2) Any person chargeable to tax, whether or not an assessment has been served on that person, shall be liable to pay an amount in addition to that tax (hereafter referred to as the ‘surcharge’) equal to 10% of that tax which remains unpaid, if the tax chargeable on that person for the year of assessment is not paid in full by the specified time.

Provided that the Comptroller may waive payment of the surcharge –

- (a) if it amounts to £50 or less for any year of assessment;
- (b) where failure to pay the tax by the specified day is caused by the action of a person, in accordance with Article 3A, not connected with the person liable to the surcharge and the failure is remedied without unnecessary delay; or
- (c) the Comptroller is satisfied that death, serious illness or other grave and exceptional circumstance prevented payment by the specified time.
- (3) Paragraph (2) shall not apply where the aggregate of the amounts received by the specified time by the Comptroller, pursuant to Article 41G, as payment of a person’s tax for the year of assessment, is 70% or more of the person’s liability to tax for that year.
- [(4) The Comptroller shall issue a written notice to a person of his or her liability under paragraph (2) and of his or her liability to an LTC surcharge under paragraph 4A of Schedule 1D to the 1974 Law.]

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- (5) A person may, within 40 days of the issue of a notice under paragraph (4), apply to the Comptroller in writing for a waiver under paragraph (2).
  - (6) Where a person applies under paragraph (5), the Comptroller shall give notice to the person of whether or not he or she has waived the person's liability [under paragraph (2)].
  - (7) A person aggrieved by the Comptroller's refusal to waive liability under paragraph (2) may appeal to the Commissioners, on giving notice in writing to the Comptroller within 40 days of the issue of notice of refusal.
  - (8) The following provisions of this Law shall apply, with the necessary modifications, to an appeal under paragraph (7) as they apply to an appeal against any assessment –
    - (a) the proviso to Article 27(1);
    - (b) Article 27(2);
    - (c) Article 28(1);
    - (d) Article 29, with the omission of paragraphs (4) and (5);
    - (e) Articles 29A and 31 to 36.”.

## **6 Citation and commencement**

This Law may be cited as the Social Security (Amendment No. 21) (Jersey) Law 201- and shall come into force on 1st January 2015 or, if later, 7 days after it is registered.

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- <sup>1</sup> *chapter 24.750*  
<sup>2</sup> *chapter 26.900*