STATES OF JERSEY

DRAFT INCOME SUPPORT (SPECIAL PAYMENTS) (LONG-TERM CARE) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 6th May 2014
by the Minister for Social Security

STATES GREFFE

DRAFT INCOME SUPPORT (SPECIAL PAYMENTS) (LONG-TERM CARE) (JERSEY) REGULATIONS 201-

REPORT

In December 2013, the States Assembly approved various propositions in respect of the Long-Term Care ("LTC") Scheme. P.99/2013 set out the details of the Scheme and was accompanied by 7 items of primary legislation and Regulations required to implement various aspects of the Long-Term Care (Jersey) Law 2012 ("LTC Law").

Preparations for the introduction of the LTC benefit are well underway and the new Scheme will start on 1st July 2014.

As noted in P.99/2013[1], the LTC Scheme will only be available to adults who have lived in Jersey continuously for at least 10 years and for the year before they make a claim. Support for individuals with LTC needs who do not satisfy this condition, but do meet the residency requirement under the Income Support (Jersey) Law 2007 ("IS Law"), will continue to be provided through the IS Law.

The Income Support (Special Payments) (Long-Term Care) (Jersey) Regulations 201- provide fully means-tested support with LTC costs to this group of claimants.

This support will be available to people who –

- are aged 18 or above
- have lived in Jersey for at least the last 5 years, or for a continuous period of 10 years in the past[2]
- have high-level care needs
- are receiving care in an approved care home, or through an approved care package in their own home
- have assets (excluding the value of the family home) below the income support capital disregard level of £13,706 for a single person, or £22,719 for a couple
- are unable to afford their care costs from their household income, having made allowances for other essential household expenditure
- are not eligible to receive support under the LTC Law.

In the event of a homeowner needing support with LTC costs through the IS Regulations, this will be available as a loan secured against the value of any property owned in Jersey by the claimant and/or their partner. The loan will be

[1] Section 1.7, page 6.
[2] These are the main conditions. See Income Support General Provisions Order for a full list.

covered by the Social Security Hypothecs (Jersey) Law 2014, or the Security Interests (Jersey) Law 2012, and will be repayable if the claimant chooses to sell the family home, or following the death of the claimant. However, if the claimant's partner or their long-term carer continues to occupy the family home, the loan is not repayable until that person leaves the home.

The value of the support available will depend on the care level of the individual, with 4 separate care levels available. The rate for each level will match that used in the LTC Scheme. In addition to care costs, a standard amount is provided in respect of living costs in a care home, with an additional amount available for personal spending.

For people receiving care at home, these IS Regulations will assist with the cost of care, with the main IS Scheme supporting other household expenses, such as rent and day-to-day living costs.

The income of both the claimant and their partner is taken into account in calculating the level of support available, with allowances made for the living costs of the partner, and other essential costs, such as liability for income tax, social security and LTC contributions.

Comparison with the Long-Term Care Scheme

Most of the benefit rules used to calculate the value of benefits under these Regulations follow those of the main LTC Scheme, with the following 2 exceptions –

- Claimants will continue to contribute towards their total care costs for the full duration of their time in care. Under the LTC Law, the LTC benefit is available once the standard care costs of an individual have met the care cost cap.[3] There is no care cost cap for Income Support claimants.
- The asset disregard is set in line with other IS claimants. Under the LTC Scheme, an asset disregard of £419,000 will be used to protect the value of the family home and other household savings of claimants. Individuals receiving support with LTC costs under the IS Law will be subject to an asset disregard of £13,706 for a single person, or £22,719 for a couple. Claimants will be required to use up the value of any savings or other assets above this level before they qualify for any financial assistance. Homeowners will also be able to receive support with LTC costs through the IS Scheme, using a loan secured under a Social Security hypothec, but there will be no protection of the value of the family home.

In all other aspects, the calculation of financial support under the Income Support (Special Payments) (Jersey) Regulations 201- will follow the calculations under the LTC Law.

Details of Income Support (Special Payments) (Long-Term Care) (Jersey) Regulations 201-

Regulation 2 identifies the eligibility criteria to receive support for long-term care costs under the Income Support (Special Payments) (Long-Term Care) (Jersey) Regulations 201-. The following table summarises the main criteria against those of the LTC Law itself.

[3] Set at £50,000 in P.99/2013. This figure will be updated for July 2014.

Test	Long-Term Care Law	Income Support Regulations	IS Regs reference
Age	18 or above	18 or above	2(1)(a)
Residency condition	10 years as an adult, including/plus 12 months before the beginning of the claim*	5 years immediately before the claim; or 10 years at any age*	2(1)(b)
Care needs	The person has established permanent care needs	The person has established permanent care needs	2(1)(c)
Provision of care	The person is receiving care in an approved care home or through an approved care package	The person is receiving care in an approved care home or through an approved care package	2(1)(d)
Means test	A universal benefit is available under the LTC Scheme which is not subject to any means test Additional LTC support and LTC loans are based on a means test which includes an asset disregard of £419,000	All benefits are subject to a means test. The asset disregard is limited to £13,706 for a single person and £22,719 for a couple	2(1)(e) 2(2) 2(3)

*Additional rules apply in certain situations

Regulation 3 provides for means-tested assistance and loans in respect of LTC costs. If the family home (the principal residence) is not owned by the claimant or their partner and the other assets of the claimant and/or their partner fall below the relevant asset disregard (£13,706 or £22,719), then weekly special payments are available to support the cost of long-term care that the claimant cannot meet from their income.

If the claimant and/or their partner own the family home, then support is calculated in the same way, but is provided in the form of a loan which is secured against the property owned by the claimant and their partner. Support continues to be provided as a loan whilst value remains in the principal residence.

The repayment of a loan made under these Regulations follows the same rules as the LTC Law – the loan is due for repayment if the claimant sells the family home or on the death of the claimant. However the loan does not need to be repaid whilst the claimant's partner or their previous full-time carer continue to live in the family home.

Regulation 4 relates to homeowners who have already received support (i.e. up to 30th June 2014) through the existing IS legislation for LTC costs by way of a loan.

One of the legal changes that has been approved by the States as part of the overall LTC Scheme is the introduction of the Social Security Hypothecs (Jersey) Law 2014. This new Law allows the Minister for Social Security to register a charge against property to secure a loan that does not have a fixed value, but builds up over time in respect of the care costs to be met by the claimant.

There are approximately 50 claimants who are currently receiving support through the IS Law for their LTC costs through loans. These claimants have confirmed through a written agreement that the loan will be repaid but, until now, there has been no simple process available to secure this commitment (as the value of the loan increases during the time spent receiving care). Regulation 4 allows the existing amounts borrowed to be covered by the new Social Security Hypothecs Law.

Subject to States approval, these Regulations will come into force on 1st July 2014 at the same time as the full extent of the LTC Law comes into operation.

Details of Long-Term Care Scheme

The States approved P.99/2013 on 11th December 2013 and endorsed Section 1.1 to 1.8 of the report accompanying P.99/2013, which summarised the details of the benefits that are planned under the LTC scheme. The Long-Term Care (Benefits) (Jersey) Order 2014 (the "LTC Benefits Order"), made on 1st May 2014 by the Minister for Social Security, sets out these details (see R&O.43/2014). The IS Regulations use many of these details, and some accompanying notes are included as an **Appendix** to this report.

Financial and manpower implications

The Social Security Department currently provides support for LTC costs through the IS Scheme, and staffing and budget is included within the departmental business plan and tax-funded cash limit.

Following the implementation of the LTC Law, most of the existing budget will be transferred into the new LTC Fund. 10% of the existing budget will be retained within the IS budget to provide funding for individuals who require assistance under Regulations 2 or 3 but do not qualify for the LTC benefit itself.

As set out in P.140/2013 Add., the retained budget for these costs in 2014 amounts to £1.0 million (6 months) and £2.0 million for 2015.

APPENDIX

Overview of Long-Term Care (Benefits) (Jersey) Order 2014

Article 1 provides definitions of words and phrases used in the Order.

In particular, the principal residence of the claimant is the family home that they occupy, or used to occupy before moving into care. It can also include a new property that is purchased with the proceeds from the previous family home, after the claimant moved into care.

A partnership under the LTC Benefits Order includes partners who are married or in a civil partnership, or have a relationship that is similar to marriage or civil partnership. If a claimant begins a relationship after they have started to receive care, that relationship is not recognised under the LTC Benefits Order. This is relevant, as the assets and income of the partner are taken into account when calculating the amount of means-tested grant or property loan that the claimant may receive.

Article 2 provides a detailed definition of asset for the LTC Benefits Order. Assets include all types of property, capital, investments and savings, held anywhere in the world. This Article also deals with the divesting of assets.

- If an asset worth more than £5,000 is sold for less than its true value or given away during the 10 years before the claimant applies for an LTC benefit; or
- if the claimant has transferred the ownership of the family home, but has retained life enjoyment, at any time in the past,

then the full value of the asset/home is included in the calculation of any financial support, unless the claimant can show that the reason for the gift was not connected in any way with increasing the claimant's eligibility for receiving an LTC benefit. Note that this does not affect a claimant who has been given the life enjoyment of a property.

Article 3 provides a definition of a carer. If a carer is living with the claimant in the family home, or continues to live in the family home after the claimant has moved into a care home, the carer is given certain rights under the LTC Benefits Order.

Article 4 provides a definition of deemed income. One of the major features of the LTC Scheme is to provide a generous disregard in respect of family assets. When the Scheme starts in July 2014, an individual will be able to claim support from the LTC Fund, even if they have assets of up to £419,000. However, this support will be means-tested and claimants will be expected to produce a reasonable income from the assets that have been disregarded. This could be rental from the family home that is now empty, or income from savings and investment, or a combination of both. In some cases, individuals may choose not to produce an income from their assets and, in this case, a deemed income will be included in their benefit calculation. The deemed income will be set at a reasonable market level to reflect the actual income that could be achieved from the asset. If the claimant, claimant's partner or carer remain living in the family home, there is no need to produce any income from the value of the home, whatever its value, and no deemed income is calculated.

Article 5 provides a definition of dependant. Whereas the majority of people claiming LTC benefits will be elderly, the LTC Scheme also covers younger adults who may need care following an accident or a serious illness. The calculation for financial support includes allowances for other family members, including children and young adults still living in the family home. The definitions used are in line with the Income Support definition of household. If a claimant is receiving care at home and is living with his or her family, it is possible to receive Income Support to assist with day-to-day living costs, and LTC benefits to assist with care costs, at the same time. It is therefore helpful to use the same definition of household members.

Article 6 provides a definition of income. In order to qualify for financial assistance through a weekly benefit payment or a property loan, the claimant and the partner must provide details of all their income. Having established the gross income of the household, various deductions are made to ensure that the claimant can continue to meet a range of basic costs. The deductions include allowances for –

- Social Security contributions, LTC contributions and income tax payments
- property costs associated with a property that has been rented out
- property costs associated with a property that is being lived in by the claimant or their partner
- living costs for the claimant if they are being cared for in their own home
- living costs for the claimant's partner and any dependents.

If the claimant or the claimant's partner is receiving earned income, an allowance is made for this, and any amounts received from charities or as fostering allowances are fully disregarded.

An additional allowance can be provided, depending on the household circumstances. For example, this could be to meet the cost of a maintenance agreement in respect of an ex-partner, or to cover the cost of school fees for a limited period, to allow a student to complete external exams.

If both partners are receiving care at the same time, their joint income is calculated and used to pay towards the care of partner 1[4] first, with any excess then being allocated to partner 2.

Article 7 provides a definition of loan. For properties that are bought and sold through the Royal Court, the loan is secured under the Social Security Hypothecs (Jersey) Law 2014, or for properties purchased using share transfer agreements, the loan will be secured under the Security Interests (Jersey) Law 2012. In both cases, the property used as security must include the family home (the principal residence).

Article 8 sets out the weekly values of the LTC benefit for different care levels. Four care levels are included, with level 1 being the lowest level of care that is included in the LTC Law, up to level 4. For each care level, a separate standard care cost is defined in respect of care provided in a care home. In the first version of the LTC Benefits Order, the rates quoted are those set out in P.99/2013. A revised version of the LTC Benefits Order will be approved prior to 1st July, setting out the benefit rates that will apply when the Scheme comes into effect. A single rate is quoted in respect of all care levels for residents of group homes run by Les Amis and the Health and Social Services Department. Separate rates will be established in this area by 2016.

Article 9 sets out the basic conditions to receive the universal LTC benefit. Three types of cost associated with care are identified, and the claimant is responsible for paying towards these costs. The costs are –

- 9(b): the cost of standard care (as shown in the table in Article 8) – this liability is limited by the care costs cap

[4] Partner 1 is the first partner to need long-term care.

- 9(c): for individuals receiving care in a care home, a standard contribution towards the weekly costs of living in the home, plus a standard amount for incidental expenses
- 9(d): additional costs associated with receiving care.

The LTC benefit is paid at the rate set out in Article 8 and does not depend on the income or assets of the claimant. However, it is only available once the claimant has incurred care costs up to the care costs cap (see Article 10).

Article 10 gives details of the care cost cap. The amount of £50,000 will be updated in line with the increase in the benefit rates in advance of 1st July. For a couple, the care costs cap is also reached if the total accrued by both partners reaches £75,000 before the individual cap of £50,000 is achieved.

Article 11 sets out the conditions for a claimant to receive financial support in the form of weekly grants. This support only covers the cost of standard care and standard weekly costs in a care home. Assets that are below the asset disregard are not included in the calculation, but any assets above the asset disregard must be used towards these costs, before any financial support is provided.

Article 12 sets out the conditions for a claimant to receive financial support in the form of a property loan. The loan will accumulate as care costs build up. Loans are provided in 2 separate situations –

- If the value of the claimant’s principal residence is above the property disregard, a loan is available to meet any of the care costs set out in Article 9.
- If the value of the claimant’s principal residence is below the property disregard, or a loan has built up to take the net value below the disregard, a loan can be provided to cover deemed rental income (if the property has been left empty) and/or any additional costs, over and above the standard costs. In this case, a loan is only provided if the claimant can sustain these costs for at least 5 years using their income and assets.

Article 13 considers the value of the principal property and the other assets of the claimant and identifies asset disregards. If the capital assets of the claimant (and partner) are valued at less than £419,000, all these assets are completely disregarded in the benefit calculation. Where assets exceed £419,000, Article 13 determines the value of the principal property that is disregarded, and the value of the other assets that is disregarded.

Article 14 deals with the valuation of assets and income, and requires the claimant (and their partner) to advise the Department of any change in their circumstances that could affect the value of their claim.

Article 15 sets out the time at which a loan becomes repayable. This will be if the claimant sells the family home whilst they are still alive, or at the date of their death. However, if the claimant's partner or carer remain living in the family home, the loan is only repayable when that person leaves the property. This Article also confirms that any loan bears interest at 0.5% above the Bank of England base rate at that time, with the total compounded on an annual basis.

Article 16 confirms that the Order will come into effect on 1st July. However, as noted above, the intention is to revise this Order before then to establish the initial benefit rates for the scheme.

Explanatory Note

These Regulations make provision for special payments under the Income Support (Jersey) Law 2007 ("2007 Law") to meet the costs of long-term care in circumstances where a person is not eligible for support under the Long-Term Care (Jersey) Law 2012 ("2012 Law").

Regulation 1 is an interpretation provision. Words and phrases used in these Regulations have the same definitions as in the Long-Term Care (Benefits) (Jersey) Order 2014 ("Benefits Order").

Regulation 2 sets out the conditions for receiving a special payment under these Regulations. The person must meet the test for residency prescribed under the 2007 Law. (Generally speaking, the test for residency is 5 years of ordinary and continuous residence immediately preceding an application with specific provision made for circumstances where this condition is not met.) The person must also have assets of less than £13,706 in the case of a single person or £22,719 in the case of a partnership. (The value of a principal residence in Jersey is disregarded in determining the value of a person's assets.)

Regulation 3 makes provision for the amount of a special payment. If a person or the person's partner does not own a principal residence in Jersey, the person receives weekly amounts for long-term care as set out in the Benefits Order less such amount as the person is able to afford to meet those costs from the person's income. The definition of "income" is set out in the Benefits Order and makes provision for certain amounts to be deducted. The income of a partner is also taken into account in assessing a person's income.

If a person does own a principal residence in Jersey, the amount of a special payment calculated as above takes the form of a loan secured on the residence to the extent that there is value in the residence. In determining whether there is value in the residence the aggregate value of the special payments loaned at the time of the payment must not exceed the value of the residence after deducting from that value (a) any other hypothec, charge or similar and (b) any amount that is equivalent to any proportion owned by a third party.

Regulation 4 is a transitional provision in respect of payments made under the Income Support (Transitional Provisions) (Jersey) Order 2008 ("Order"). Payments made in respect of residential care in an institution by that Order are treated as having been loaned special payments for the purposes of these Regulations if they were made in such circumstances that the person receiving them thought they were to be repaid; the person or the person's partner owns a principal residence and there is sufficient value in the residence. A residence is deemed to have sufficient value if its value is greater or equal to the aggregate of the payments made under the Order after deducting from that value (a) any other hypothec, charge or similar and (b) any amount that is equivalent to any proportion owned by a third party.

Regulation 5 sets out the title of these Regulations and provides that they will come into force on the same day that Parts 3 and 4 of the Long-Term Care (Jersey) Law 2012 come into force.

Jersey

DRAFT INCOME SUPPORT (SPECIAL PAYMENTS) (LONG-TERM CARE) (JERSEY) REGULATIONS 201-

Arrangement

Regulation

Jersey

DRAFT INCOME SUPPORT (SPECIAL PAYMENTS) (LONG-TERM CARE) (JERSEY) REGULATIONS 201-

Made	*[date to be inserted]*
Coming into force	*[date to be inserted]*

THE STATES, in pursuance of Articles 8 and 18 of the Income Support (Jersey) Law 2007[1], have made the following Regulations –

---

1 Interpretation

(1) In these Regulations –

"Income Support Law" means the Income Support (Jersey) Law 2007[2];

"Long-Term Care Law" means the Long-Term Care (Jersey) Law 2012[3];

"Long-Term Care Order" means the Long-Term Care (Benefits) (Jersey) Order 2014[4].

(2) Any word or expression that is not defined in these Regulations that is defined in the Long-Term Care Order shall have the meaning in that Order.

2 Special payment to meet costs of long-term care

(1) The Minister may make special payments to any person to defray the expenses of long-term care being provided to that person if –

(a) the person has attained the age of 18 years;

(b) the person meets the condition in Article 2(1)(b) of the Income Support Law;

(c) the person meets the condition in Article 3(2)(a) of the Long-Term Care Law;

(d) the person is –

(i) a resident of an approved care home, or

(ii) in receipt of an approved care package,

for which a charge is payable;

(e) the person meets the condition with respect to the person's assets as set out in paragraph (2); and

(f) the person is not an eligible person under the Long-Term Care Order.

(2) The condition for the purposes of paragraph (1)(e) is that the value of the person's assets, excluding the value of any owned principal residence, is less than –

(a) £13,706, in the case of a single person; or

(b) £22,719, in the case of a partnership.

(3) For the purposes of determining the value of a person's assets under paragraph (2) –

(a) there shall be deducted –

(i) the amount secured by any existing charge, hypothec or similar on the asset, and

(ii) where an asset is owned in part by a third party, an amount that is equivalent to the proportion owned by the third party; and

(b) if the person ("first person") is in a partnership, the assets of the partner shall be taken into account to the extent that such assets are not jointly owned and included as part of the first person's assets.

3 Amount of special payments

(1) Where a person's assets, as determined in accordance with Regulation 2(3), do not include an owned principal residence, the person shall, subject to paragraph (2), receive weekly special payments in the form of grants of whichever is the lower of the following amounts –

(a) the weekly costs shown in the table in Article 8 of the Long-Term Care Order for the person's appropriate level of standard of care as shown in column 3, 4 or 5 of that table, as the case may be and, if applicable, where a person receives long-term care in an approved home, the amounts shown in Article 9(c) of that Order; or

(b) the actual weekly costs to the person in place of the amounts referred to in sub-paragraph (a).

(2) From the amount of a special payment to which a person is entitled under paragraph (1), there shall be deducted the maximum amount possible from the person's weekly income as is sufficient to meet in whole or in part the person's weekly costs referred to in that paragraph.

(3) For the purposes of paragraph (2) –

(a) if the person is in a partnership, the income of the partner shall be included; and

(b) the amount of a person's weekly income shall be assessed after making such deductions as are described in Article 6(2) of the Long-Term Care Order.

(4) Where a person's assets, as determined in accordance with Regulation 2(3), include an owned principal residence, the amount of a

special payment shall be determined in accordance with paragraphs (1) and (2) and, to the extent that there is sufficient value in the owned principal residence, take the form of a loan which shall be repayable in the same way that a loan is repayable under the Long-Term Care Order.

(5) For the purpose of paragraph (4), there is sufficient value in the owned principal residence where, at the time each special payment is loaned, the aggregate value of the special payments loaned under these Regulations is equal to or less than the value of the principal residence after deducting from that value –

(a) the amount secured by any other existing charge, hypothec or similar on residence; and

(b) where the residence is owned in part by a third party, an amount that is equivalent to the proportion owned by the third party.

4 Transitional provision in respect of payments made under the Income Support (Transitional Provisions) (Jersey) Order 2008

(1) In this Regulation –

"Order" means the Income Support (Transitional Provisions) (Jersey) Order 2008[5];

"payment" means a payment made under –

(a) Article 9 of the Order, or

(b) Article 4 of the Order in circumstances where Article 6 does not apply by virtue of Article 7.

(2) Any payment shall be treated as having been made as a special payment in the form of a loan under these Regulations if –

(a) it was made in such circumstances that the person receiving the payment understood it was to be repaid;

(b) the person or the person's partner has an owned principal residence; and

(c) there is sufficient value in the owned principal residence.

(3) For the purposes of paragraph (2)(c) there is sufficient value in the owned principal residence where the value of the owned principal residence is, at the time of a valuation done for the purposes of this Regulation, equal to or greater than the aggregate amount of payments made after deducting from the value of the residence –

(a) the amount secured by any existing charge, hypothec or similar on residence; and

(b) where the residence is owned in part by a third party, an amount that is equivalent to the proportion owned by the third party.

(4) A payment treated as a loan under paragraph (2) shall be repayable in the same way that a loan is repayable under the Long-Term Care Order except to the extent that interest on the loan is not chargeable on payments made before 1st July 2014.

(5) This Regulation does not apply to any payment made to a person under the Order who died before the date these Regulations come into force.

5 Citation and commencement

These Regulations may be cited as the Income Support (Special Payments) (Long-Term Care) (Jersey) Regulations 201- and shall come into force on the same day that Parts 3 and 4 of the Long-Term Care (Jersey) Law 2012[6] come into force.

[1] *chapter 26.550*
[2] *chapter 26.550*
[3] *chapter 26.600*
[4] *R&O.43/2014*
[5] *chapter 26.550.80*
[6] *chapter 26.600*