

STATES OF JERSEY



DRAFT INCOME SUPPORT (AMENDMENT No. 13) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 12th May 2015
by the Minister for Social Security

STATES GREFFE



Jersey

DRAFT INCOME SUPPORT (AMENDMENT No. 13) (JERSEY) REGULATIONS 201-

REPORT

1. Executive summary

The improving economic climate and the success of the 'Back To Work' initiatives over the last 3 years have provided the Department with the opportunity to enhance the support available to parents under the Income Support scheme and to co-ordinate the rules for parents more closely with current nursery provision available through the Education, Sport and Culture Department (ESC).

A set of 3 separate amendments to the Income Support legislation combine to provide the following changes –

- the alignment of the beginning of job-seeking activities for parents and the start of nursery education for the child
- an increase in the rate of funding for child care paid through Income Support
- a broader definition of child care that can be supported through Income Support
- flexibility in actively seeking work responsibilities to allow both parents to share the care of a young child.

The Minister firmly believes that helping parents progress into employment leads to a range of economic and social benefits for the family, and that it is counter-productive to allow low-income parents to remain outside the workforce for long periods of time. Support is now available to help them return to work and secure a greater likelihood of economic independence. Increasing the range and affordability of child care will help parents to take up the offer of a job.

The proposed changes support other States policies and the recently approved Strategic Plan. The proposals –

- remove barriers to employment and increase workforce participation
- reduce the need for inward migration
- are aligned with the 1,001 days policy
- are supported by the introduction of family-friendly employment rights with effect from September 2015.

The opportunity is also taken to make a number of separate, minor changes to Income Support legislation to ensure that the legislation is up-to-date and minor anomalies are removed.

2. Structure of legal changes

In parallel with this proposed amendment, the Minister is also lodging the related Draft Income Support (Amendment) (Jersey) Law 201- (P.50/2015) and the Draft Income Support (Amendment of Law No. 2) (Jersey) Regulations 201- (P.51/2015). All 3 items are described in brief below in order to provide an overview of the overall change. The full detail of the combined effect of all the proposed changes can be found in section 2 of the report accompanying the Draft Income Support (Amendment) (Jersey) Law 201-.

<i>Proposal</i>	<i>Draft legislation to give effect to the proposal</i>
Definition of child care	Income Support (Amendment) (Jersey) Law 201-
Share the care of a young child	Income Support (Amendment) (Jersey) Law 201-
Amend the exemption from job-seeking activities for parents	Income Support (Amendment of Law No. 2) (Jersey) Regulations 201-
Increase the rate of funding for child care	Income Support (Amendment No. 13) (Jersey) Regulations 201-

Draft Income Support (Amendment No. 13) (Jersey) Regulations 201- (P.52/2015)

The Draft Income Support (Amendment No. 13) (Jersey) Regulations 201- seek to increase the standard hourly rate at which child day care is paid through Income Support. The draft Regulations also increase the component for hostel accommodation and refine the rules around a fresh claim for Income Support for people who have lost all Income Support by repeatedly breaching a written warning about their activities in looking for work. They also update the impairment component and the carer's component. These changes are described in more detail in sections 3 to 6 below.

Draft Income Support (Amendment) (Jersey) Law 201- (P.50/2015)

Separately, the Draft Income Support (Amendment) (Jersey) Law 201- includes a new power that would allow the Minister, by Order, to approve a far broader range of child care options in future. If approved, the Department will be able to collaborate with other States departments, the charity sector and child care providers themselves to widen the options available to low-income parents.

It also introduces a new concept within the Income Support legislation, to allow working parents with a young child to undertake arrangements where both arrange their schedules together, so that they can each work reduced hours, as agreed with an officer of the Department. Currently, the legislation only allows for one parent to give up work full-time, whilst the other is always required to work or actively seek work on a full-time basis.

Draft Income Support (Amendment of Law No. 2) (Jersey) Regulations 201- (P.51/2015)

The Draft Income Support (Amendment of Law No. 2) (Jersey) Regulations 201- adjust the point at which a parent responsible for the care of a young child is required to be a person actively seeking work, by shifting that point from the child's 5th birthday, as it is now, to the date of 1st September (i.e. the start of the school year) before the child begins full-time education. This is the same point at which the child becomes eligible for assistance through the States-run Nursery Education Fund. The 'actively seeking work' activities will be realistic and proportional, and will recognise that some parents will need extra help before paid employment is a realistic outcome;

but will not be optional. This change is likely to affect about 100 parents in the first year.

3. Increasing the value of the child day care component

As stated above, increasing access to child care is an essential part of helping low-income families remain economically active. These proposed Regulations therefore increase the hourly rates that Income Support can pay towards the cost of child care. These have remained unchanged since October 2012, and the proposed Regulations increase them –

- (a) from £6.27 for a child under the age of 3 years to £6.48 (hourly rate);
- (b) from £4.90 for a child aged 3 years or over to £5.06 (hourly rate).

The proposed Regulations also streamline the categories, amending (b) to refer to all children over the age of 3, and effectively removing the need for a third category of children over the age of 5. This change is proposed as the rates for children between the ages of 3 and 5, and those for the age of 5 and older, have become extremely close in recent years. This change simplifies the value of the child day care component and should assist day care providers in planning rates available to households on Income Support.

The increase is based on an inflationary increase of 3.3% from the final quarter of 2012 to the final quarter of 2014. The annual cost of this increase is estimated to be approximately £45,000. However, the combination of all the proposed changes for parents will also lead to an increase in employment income and a reduction in Income Support benefit for some families. It is difficult to predict the net effect accurately, but an initial assumption is that the overall impact of the changes will be cost-neutral.

4. Increase in rate of accommodation component for hostels

Following discussions with providers of hostel accommodation to vulnerable people, it has become apparent that these organisations are facing significant challenges to their running costs. The services provided by specialist hostels are of great value to Income Support claimants. This component was last increased in October 2013.

The proposed Regulations increase the amount specified in the case of accommodation costs for a hostel resident from £80.64 per week to £95.13. This increase was calculated following discussions with hostel providers, and reflects cost increases arising from the shift in the type of specialist services they are required to provide to their clients, as well as changes in the make-up of the client base using hostel accommodation. It is essential that the value of the Income Support component increases to reflect the cost of dealing with what can be a challenging and complex group of clients.

Approximately 50 individuals claim this component at any one time. It is estimated that the annual cost of this increase will be approximately £32,000.

5. Claiming Income Support after losing entitlement due to 3 or more ‘actively seeking work’ breaches

As part of [P.101/2013](#), the States strongly endorsed enhanced powers brought in to affect those people required by the Income Support Law to be actively seeking work. These powers introduced a system where people failing in their responsibilities would first receive a written warning, and that any subsequent failure to seek work would be treated as a breach of that warning as long as it remained in force. Any breach of a warning in force attracts a financial penalty and an automatic extension of the warning period, with the third and subsequent breach of the warning resulting in the loss of all household entitlement to Income Support for a fixed period.

These powers have proved very successful in reinforcing the message that benefit is conditional on a reasonable effort to look for work. Most people required to look for work do so without incident, and even those who make mistakes and receive a written warning usually go on to change their behaviour and continue looking for work without further problems. However, there will always be a small minority who choose to ignore the support and advice given through “Back To Work”, ignore written warnings and receive a financial penalty. An even smaller number will eventually lose all entitlement to Income Support: during 2014, just over 100 people received this maximum penalty. This minor change addresses that small minority, and clarifies their entitlement in respect of a future claim to Income Support.

The Regulations introduce a new requirement on anybody who has lost all entitlement to Income Support through repeated failures to look for work. Should that person try to claim again, they will first be required to demonstrate to a determining officer’s satisfaction that they have been actively seeking work for a continuous period of 42 days at some point prior to making a fresh claim. Without demonstrating this period of compliance, no fresh claim will be allowed, unless the individual’s written warning has elapsed due to the passage of 365 days or the person reaching the age of 65 (state pension age).

The Department is confident that this small change will address the small minority of job-seekers who persistently fail to fulfil their requirements to seek work. It will strengthen the message that receiving Income Support will always remain conditional on them upholding their end of the bargain and doing everything they can to find suitable employment.

European Convention on Human Rights

The provisions introduced in P.101/2013 were subject to a human rights audit. For consistency, Regulation 2 of the Draft Income Support (Amendment No. 13) (Jersey) Regulations 201- has therefore also been subject to a human rights audit. The Regulation is considered to be fully compliant with the European Convention on Human Rights.

6. Updating the impairment and carer’s component

The statements used to assess eligibility for the personal care and mobility elements of the impairment component are periodically reviewed by the Department to ensure that they allow for a fair and accurate assessment of a person’s level of impairment, according to the intentions of the original legislation.

Accordingly, the proposed Regulations make several small clarifications to remove some ambiguities that have become apparent through the daily application of these criteria. In addition, a minor wording change is incorporated that improves the statements concerning people who experience seizures causing loss of consciousness. These changes are fair, benefit the customer and reflect a development of medical awareness of these conditions since the wording of the legislation was originally drafted.

6.1 Use of aids or prostheses

The general principle of the award of the impairment component is that it assesses the loss of function caused by the persistent effects of an illness or disability. In order to keep the terms of assessment up to date, the proposed Regulations update the wording that relates to the use of aids and/or prostheses. This is achieved by updating the Directions at the start of Part 1 to Schedule 2 to the Regulations.

These are relevant to tests 1 to 11, which relate to a person's physical or sensory abilities.

One of the principles of the impairment test is that if an aid (taken to include any prosthetic limb or otherwise) is normally used, then the person is to be assessed based on their functional ability using that aid, and not without it. This is an important principle that takes into account the realistic capabilities of sick and disabled people, but also the common-sense observation that, for example, a person who normally uses glasses or a hearing aid should not be assessed for benefit as if they were not using those items.

At present, the legislation as currently worded only specifically refers to the use of aids in –

- Activity 4 – Walking (with a stick or other aid if normally used)
- Activity 9 – Vision, including visual acuity and visual fields, in normal daylight or bright electric light (with visual aids if normally worn)
- Activity 10 – Hearing (with a hearing aid if normally worn).

As currently worded, it is possible to argue that the use of aids only applies to those aids stated above, and then only for those specific activities. Likewise, the absence of any specific mention anywhere of prostheses could equally be considered to exclude these. This is not sensible, as it restricts the assessing criteria to an extremely narrow range of aids and prostheses that does not reflect the range of assistance that may today or in the future be available to ill or disabled people.

The proposed Regulations therefore remove these specific references in the activities, and amend the Directions at the beginning of Part 1 of Schedule 2 to insert 2 paragraphs that specifically refer to the use of aids and prostheses for all relevant activities. This only applies if aids or prostheses are normally used, or if the person could reasonably be expected to use them.

6.2 Seizures causing a loss of consciousness

A minor wording change is also incorporated that improves the statements concerning people who experience seizures causing loss of consciousness or altered consciousness. The former wording of statements 12A and 12B referred exclusively to seizures that occur following a diagnosis of epilepsy, but it has since become apparent that this narrow definition excludes persons who experience seizures with a similar functional impairment, but are not specifically caused by a diagnosis of epilepsy.

The proposed Regulations therefore widen this definition to include any seizure that causes functional impairment by means of a loss of consciousness or altered consciousness. This is an essential change that allows people who experience non-epileptic seizures of comparable severity to be eligible for assistance through the impairment component.

6.3 Minor housekeeping changes

In addition to the more substantial changes described above, the draft Regulations amend the list of statements in respect of the mobility element so that the wording used precisely matches the equivalent statements in respect of the personal care element. This change will have no practical effect on assessments carried out, but serves to improve the consistency within the legislation.

6.4 Carer's component

Following the introduction of the Long-Term-Care (Jersey) Law 2012, it is proposed to extend the carer's component in Income Support to include the carer of someone who is making a claim under the Long-Term Care Law, in addition to a person who satisfies the requirement of personal care component level 3 under the Income Support Law. This only applies to carers providing unpaid care at home.

7. Financial and manpower implications

There are no manpower implications for the States arising from these changes. The annual cost of the increase to the hostel rate in the accommodation component is estimated to be approximately £30,000.

The annual cost of the increase to the child day care components is estimated to be approximately £45,000. However, the combination of all the proposed changes for parents will also lead to an increase in employment income and a reduction in Income Support benefit for some families. It is difficult to predict the net effect accurately, but an initial assumption is that the overall impact of the changes will be cost-neutral. The Department already has the necessary staff required to deal with a greater number of parents requiring assistance with returning to the workforce.

The other changes do not represent an additional cost to Income Support.

Explanatory Note

These Regulations amend the Income Support (Jersey) Regulations 2007 (the “principal Regulations”).

Regulation 1 provides for the construction of references to Regulations and Schedules in these Regulations.

Regulation 2 amends Regulation 5B of the principal Regulations. Regulation 5B provides that a person who has been given a warning, because he or she has not been actively seeking work, and is still not actively seeking work, may be given notice that he or she is in breach of the warning. These amendments revise the duration of a third or subsequent warning.

Currently, a third or subsequent breach of a warning lasts for 42 days. The amendment has the effect that a third or subsequent breach will last until whichever is the earlier of –

- the person in breach showing, to the satisfaction of a determining officer, that he has been actively seeking work for a continuous period of 42 days commencing on or after the day he or she was given notice of the breach; and
- the warning expiring.

The warning would expire 365 days after the day on which the person is last given notice that he or she is in breach of it.

Regulation 5C of the principal Regulations contains further rules for the extension or termination of a warning or breach period, which are unaffected by these amendments.

Regulation 3 increases the rate of housing component for hostel accommodation from £80.64 to £95.13. This amendment would, as provided in *Regulation 9*, come into force on 3rd August 2015.

Regulation 4 requires an assessment of a person for the purposes of the mobility element of impairment component to be made having regard to the directions added to Part 2 of Schedule 2 of the principal Regulations by *Regulation 8(1)* of these draft Regulations.

Regulation 5 revises the rules for the payment of, and increases the rates of, the child day care component. Currently, there are 3 rates for the component, which decrease as the child grows older. They are – for a child under 3, £6.27; for a child of or over 3 but under 5, £4.90 and for a child of or over 5, £4.85.

The amendment has the effect that one rate will apply to all children aged 3 or more. The revised rates are – for child under 3, £6.48; for a child of or over 3, £5.06. This amendment would, as provided in *Regulation 9*, come into force on 3rd August 2015.

Regulation 6 revises the criteria for payment of the carer’s component. The criteria include –

- a condition that the carer must not personally be in receipt of a personal care element of the impairment component at the same rate as one of the persons he or she cares for, and
- a condition that one of the persons he or she cares for must meet the criteria for the highest rate payable for the personal care element of the impairment component.

The amendment adds, to both conditions, an alternative test of the carer or cared for person's degree of impairment, which is that the person has been assessed as being in need of long-term care.

Regulation 7 amends Part 1 of Schedule 2 of the principal Regulations, which contains statements, describing degrees of impairment, used to determine the rate paid for the personal care element of impairment component.

The amendment made by paragraph (1) has the effect that the direction requiring that a statement is selected having regard only to a person's physical and sensory ability is extended to statements 12A and 12B (seizure causing loss of consciousness or altered consciousness).

The combined effect of the amendments made by paragraphs (2), (3), (4) and (5) is to apply a general rule that, if a person normally uses or wears a prosthesis, aid or appliance, his or her degree of impairment will be assessed as if he or she was using or wearing that device. As a consequence, specific references to walking sticks, visual aids and hearing aids are removed.

Paragraph (6) substitutes statements 12A and 12B. Currently, the statements are expressed to apply to epileptic seizures with a loss of consciousness. The substituted statements are expressed to apply to seizures, with either a loss of consciousness or altered consciousness.

Regulation 8 amends Part 2 of Schedule 2 of the principal Regulations. Part 2 of Schedule 2 contains statements used to assess a person's entitlement to the mobility element of the impairment component.

Paragraph (1) introduces directions regarding how a statement is to be selected. The directions replicate those applied to the selection of a statement under Part 1 of Schedule 2.

Paragraphs (2) and (3) replace or amend existing statements, making them consistent with the equivalent statements in Part 1 of Schedule 2.

Regulation 9 provides for the citation and commencement of these Regulations.



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Arrangement

Regulation

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Jersey

DRAFT INCOME SUPPORT (AMENDMENT No. 13) (JERSEY) REGULATIONS 201-

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

THE STATES, in pursuance of Articles 3(3)(b), 5 and 18 of the Income Support (Jersey) Law 2007¹, have made the following Regulations –

1 Interpretation

In these Regulations, a reference to a Regulation or Schedule by number only is to the Regulation or Schedule of that number in the Income Support (Jersey) Regulations 2007².

2 Regulation 5B amended

For Regulation 5B(4) there shall be substituted the following paragraph –

“(4) A person who is in breach of a warning for a third or subsequent time shall be treated as being in breach until whichever is the earlier of –

- (a) the person proving, to the satisfaction of a determining officer, that he or she has satisfied the requirements of Regulation 4 for a continuous period of 42 days commencing on or after the day the person is given notice of the breach; and
- (b) the expiry of the warning.”

3 Schedule 1 Part 2, paragraph 4 amended

In paragraph 4(2)(a) of Part 2 of Schedule 1, for the amount “£80.64” there shall be substituted the amount “£95.13”.

4 Schedule 1 Part 2, paragraph 7 amended

After paragraph 7(3) of Part 2 of Schedule 1, there shall be added the following sub-paragraph –

“(4) Whether or not a statement set out in Part 2 of Schedule 2 applies to a member of a household shall be assessed in accordance with the directions set out in that Part.”.

5 Schedule 1 Part 2, paragraph 10 amended

For paragraph 10(3) of Part 2 of Schedule 1 there shall be substituted the following sub-paragraph –

“(3) The rates payable under this sub-paragraph are –

(a)	for a child under the age of 3 years	£6.48
(b)	for a child aged 3 years or over	£5.06.”.

6 Schedule 1 Part 2, paragraph 11 amended

For paragraph 11(1)(b) and (c) of Part 2 of Schedule 1 there shall be substituted the following clauses –

“(b) the carer –

- (i) is not in receipt of a personal care element of the impairment component at the rate mentioned in paragraph 6(3)(c), and
- (ii) has not been assessed, under Article 5 of the Long-Term Care (Jersey) Law 2012³, as being in need of long-term care; and

(c) at least one of the persons cared for –

- (i) meets the criteria for the rate payable in respect of the personal care element of the impairment component under paragraph 6(3)(c), or
- (ii) has been assessed, under Article 5 of the Long-Term Care (Jersey) Law 2012, as being in need of long-term care.”.

7 Schedule 2 Part 1 amended

(1) In paragraph (1) of the Directions at the beginning of Part 1 of Schedule 2, for the number “11” there shall be substituted the number “12B”.

(2) After paragraph (1) of the Directions at the beginning of Part 1 of Schedule 2 there shall be inserted the following paragraphs –

“(1A) Where a member of a household is normally fitted with or normally wears a prosthesis, he or she shall be assessed as if he or she was fitted with or wearing that prosthesis.

(1B) Where a member of a household normally wears or normally uses any aid or appliance, or could reasonably be expected to normally wear or normally use any aid or appliance, he or she shall be assessed as if he or she was wearing or using that aid or appliance.”.

- (3) In the heading to activity 4 in Part 1 of Schedule 2, the words “(with a stick or other aid if normally used)” shall be deleted.
- (4) In the heading to activity 9 in Part 1 of Schedule 2, the words “(with visual aids if normally worn)” shall be deleted.
- (5) In the heading to activity 10 in Part 1 of Schedule 2, the words “(with a hearing aid if normally worn)” shall be deleted.
- (6) In Part 1 of Schedule 2, for activities 12A and 12B there shall be substituted the following activities –

“12A Seizures causing loss of consciousness or altered consciousness: persons aged 12 and over			
a) in the past 6 months has had 6 or more seizures with loss of consciousness or altered consciousness and either – (i) was awake when the seizure commenced but had no useful warning of the seizure, or (ii) had dangerous post-ictal behaviour	15	12 years	None
b) in the past 6 months has had 3 or more seizures with loss of consciousness or altered consciousness and either – (i) was awake when the seizure commenced but had no useful warning of the seizure, or (ii) had dangerous post-ictal behaviour	9	12 years	None
c) in the past 6 months has had 1 or more seizures with loss of consciousness or altered consciousness and either – (i) was awake when the seizure commenced but had no useful warning of the seizure, or (ii) had dangerous post-ictal behaviour	6	12 years	None
d) none of the above	0	12 years	None
12B Seizures causing loss of consciousness or altered consciousness: persons aged under 12			
a) at least once a week in the past 6 months has had a seizure with loss of consciousness or altered consciousness and was awake at any time during the seizure	15	1 year	12 years
b) at least once a month in the past 6 months has had a seizure with loss of consciousness or altered consciousness and was awake at any time during the seizure	9	1 year	12 years
c) at least once every 2 months in the past 6 months has had a seizure with loss of consciousness or altered consciousness and was awake at any time during the seizure	6	1 year	12 years
d) none of the above	0	1 year	12 years”.

8 Schedule 2 Part 2 amended

- (1) At the beginning of Part 2 of Schedule 2 there shall be inserted the following words –

“Directions

- (1) A statement in respect of any of the activities numbered 1 to 3 shall be selected having regard only to the member of the household’s physical and sensory abilities.
 - (2) Where a member of a household is normally fitted with or normally wears a prosthesis, he or she shall be assessed as if he or she was fitted with or wearing that prosthesis.
 - (3) Where a member of a household normally wears or normally uses any aid or appliance, or could reasonably be expected to normally wear or normally use any aid or appliance, he or she shall be assessed as if he or she was wearing or using that aid or appliance.
 - (4) A statement in respect of any of the activities numbered 4 to 6 shall be selected having regard only to the member of the household’s mental and cognitive abilities.
- (2) For paragraphs 1 to 3 of Part 2 of Schedule 2, there shall be substituted the following paragraphs –

“1 Walking

- (a) Cannot walk at all.
- (b) Cannot walk more than a few steps on level ground and/or up and down one stair without having to stop or feeling severe discomfort, even with the support of a handrail.
- (c) Cannot walk more than 50 metres on level ground and/or walk up and down a flight of 12 stairs without having to stop or feeling severe discomfort.

Note: Statement is not relevant in the case of child under the age of 3 years.”.

2 Vision, including visual acuity and visual fields, in normal daylight or bright electric light

- (a) Cannot see the shape of furniture in the room.
- (b) Cannot see well enough to read 16 point print at a distance of 20 cm.
- (c) Cannot see well enough to recognise a friend at a distance of 5 metres.

Note: Statement is not relevant in the case of child under the age of 3 years.”.

3 Seizures causing loss of consciousness or altered consciousness

In the past 6 months has had one or more seizures with loss of consciousness or altered consciousness and either –

- (a) was awake when the seizure commenced but had no useful warning of the seizure; or
- (b) had dangerous post-ictal behaviour.

Note: Statement is not relevant in the case of child under the age of 12 years.”.

- (3) In paragraph 5(b) of Part 2 of Schedule 2, for the word “warned” there shall be substituted the word “instructed”.

9 Citation and commencement

- (1) These Regulations may be cited as the Income Support (Amendment No. 13) (Jersey) Regulations 201- and, subject to paragraph (2), shall come into force 7 days after they are made.
- (2) Regulations 3 and 5 shall come into force on 3rd August 2015.

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- ¹ *chapter 26.550*
² *chapter 26.550.30*
³ *chapter 26.600*