

STATES OF JERSEY



DRAFT INCOME SUPPORT (SPECIAL PAYMENTS) (CHILD PERSONAL CARE) (JERSEY) REGULATIONS 201- (P.90/2014): AMENDMENT (P.90/2014 Amd.) – COMMENTS

**Presented to the States on 30th June 2014
by the Minister for Social Security**

STATES GREFFE

COMMENTS

Summary

States Members are strongly urged to reject this amendment.

- Income Support was implemented only after extensive consultation and several decisions to means-test disability benefit. The Minister's proposals simply regularise the existing provision of payments that have always been made to the most severely disabled children. Deputy J.A. Martin of St. Helier's amendment includes all households, regardless of income or any evidence that these households have significant financial need.
- Families of disabled children receive support from a number of different States departments. Any additional financial resources should be carefully targeted between the different services to ensure that they provide the most effective help to these families. It is by no means clear that this amendment would achieve what is best, across the board, for all children living with a disability.
- Deputy Martin's amendment greatly expands the provision of the proposed benefit, but without providing supporting research or evidence as to whether the groups addressed require additional financial support beyond that already available to them under Income Support.
- The Department's budget has been set within the Medium Term Financial Plan, and in order to meet these additional costs it would be required to find savings from other areas of tax-funded departmental expenditure.
- Although the Department's proposals only take into account personal care level 3, where there are exceptional circumstances that do require additional funding the Minister will continue, as now, to support households with children who meet the criteria for personal care levels 1 and 2. This is preferable to blanket payments to all households, which would include those with high incomes.

Objective of Minister's proposals (P.90/2014)

Since the introduction of Income Support in 2008, families that include a child with the highest level of disability (personal care level 3) have qualified for financial support in 3 separate ways –

- as part of an Income Support household
- as a protected payment under the transitional provisions of Income Support
- as a Ministerial exceptional payment.

The Minister's proposed Regulations that form P.90 seek to replace these 3 separate routes with a new benefit that is no longer income-related, and provides support for children with the highest personal care needs, regardless of their family income. This is in line with the previous disability benefit system prior to Income Support, as well as the actions taken by successive Ministers through exceptional payments made under

the Income Support system. Essentially, it regularises existing provision based upon the Department's experience with the needs of relevant households.

Deputy Martin's proposed amendments to P.90/2014

The proposed amendments significantly extend the Minister's proposals by including all children who have personal care needs – level 1 and level 2, in addition to the group qualifying for personal care level 3 ("PC3"). This would provide benefits to a much larger group of households, including those with low and medium levels of disability or long-term illness, regardless of the income of the household.

The amendments extend the payments to a range of children who do not meet the high threshold that qualifies for the award of PC3. For example, PC3 captures those with conditions such as severe learning disabilities, severe physical disabilities or the most challenging psychological and emotional disorders. The bar to qualifying for PC3 is intended to capture those children with a very high and consistent need for additional care, and it is the case that the majority of those qualifying for PC3 are well above this bar.

Support for children who do not meet the condition for PC3 is provided through the Income Support system, but there is no precedent for providing additional support, regardless of household income, for children qualifying for the lower levels of personal care. If approved, this amendment would lead to a significant increase in benefit expenditure, as families with higher incomes would be able, for the first time, to receive this type of benefit. There is no precedent under Income Support, and no precedent under the historic benefit system, to award this kind of benefit in respect of children, with no regard to household income. The criteria to qualify for personal care level 1 are set below the minimum level for previous disability-related benefits, specifically to provide additional support to low-income families who did not previously qualify for any additional support in this area.

Practical support through the provision of equipment, services and respite is provided through primary care, the Health and Social Services Department and the community voluntary sector to all children, depending on the nature of their illness or disability.

It is difficult to estimate the exact cost of Deputy Martin's amendment without undertaking detailed research, but it is estimated that a budget of at least £750,000 would need to be allowed until more accurate data is available. The Treasury has confirmed that in order to meet this cost, savings would need to be found in other areas of existing tax-funded benefit budgets.

More accurate information on the number and range of children with disabilities in the Island will be available in the near future. The Chief Minister's Department will be undertaking research in 2014 as part of the preparatory work to establish a disability strategy.

With better local information, decisions can then be taken as to the best use of scarce resources to meet clearly identified needs, and a proper strategy can be developed across departments to provide co-ordinated support for families of disabled children in the most effective way.

Comment on points raised in the accompanying report to the proposed amendments

States' endorsement of the principle of means-tested benefits

Deputy Martin's report accompanying her amendments suggests that the States has not discussed the principle of means-testing of benefits for disabled children. This is inaccurate, as the lengthy period of work that created the Income Support benefit involved a series of propositions and reports which discussed the general principle of means-testing all benefits through a common assessment of income. These propositions included –

- [P.44/2000](#): Minimising material and social deprivation: low income support
- [P.178/2003](#): Disability Benefit System: reform
- [P.86/2005](#): Income Support System.

In a States Act dated 17th February 2004, Members agreed that the new Income Support system should contain a 'disability component' for the extra cost of disability to replace all the existing non-contributory disability benefits. The approval of P.86/2005 (43 votes pour; 4 votes contre) specifically endorsed this stated principle that all disability benefits, including those available to children (Attendance Allowance, Child Disability Allowance) would "be replaced by one system based on a common evaluation of current household income".

The firm approval of these historic propositions, and the lack of amendments to the contrary, constitutes a consistent approval by successive States Assemblies of the key principle of a means-tested benefit with components for different levels of disability. The exceptions now proposed to be brought under law by the Minister's P.90/2014 have been present since the start of Income Support, in recognition of the distinct needs of a relatively small number of families containing children with the very highest care needs.

Exceptional circumstances of families with severely ill or disabled children

Deputy Martin's report refers to the historic practice of continuing to pay the most severely ill or disabled children through a Ministerial Exceptional payment. This policy dovetails with the transitional provisions afforded to those qualifying for Attendance Allowance immediately prior to Income Support, and the same principle is the driver behind the administrative changes proposed by the Minister as P.90/2014. This practice recognises that the help needed by families with children with the highest care needs constitute them as a small and distinct group. For example, the level of disability identified by PC3 also allows the parent of a disabled child to apply for the Home Carer's Allowance (previously Invalid Care Allowance).

Deputy Martin's report also refers to families with more than one child with a disability below PC3. Although a family in this situation would not be covered by the changes to PC3, the existing income support system provides financial support through a wide range of household incomes. The Income Support benefit provides a set value for each of the components that makes up the benefit; as household income increases, the amount of Income Support available to the household gradually reduces.

For example –

- A family with 2 children each qualifying for personal care level 2¹, and renting a three-bedroom house, would qualify for some Income Support benefit with a household annual income of up to £65,000.
- If this family owned their home, they would need to earn over £42,000 to be above the income limit for Income Support.

Continued availability of exceptional payments from the Minister

Deputy Martin's report suggests that the Minister's proposed Regulations "create a mess", or an inequality between families, or that some people will receive more through discretionary awards from the Minister, whilst families in comparable situations will not. The proposed Regulations do none of these things, and it is in fact the precise opposite they seek to achieve, by bringing a system that has continued on an ad-hoc basis under clear, equitable Regulations that apply to all families with a severely sick or disabled child. It is the current system that suffers from a lack of transparency, as decisions are not subject to published criteria or a right of appeal. The proposed Regulations will ensure that all children who meet the published criteria will receive the same rate of payment, regardless of the income of their household.

If situations occur which are genuinely unusual, the Minister retains the right to make exceptional payments on a case-by-case basis. For example, there have been recent occasions where the Minister has decided to make these payments to households that do not qualify for Income Support due to household income, and where the child does not meet the criteria for an award of personal care level 3. This process will continue to support local families when exceptional cases are brought to the attention of the Department, and the strong working relationship that officers have with colleagues in other departments, voluntary agencies and charities, will ensure that this is always the case.

Comparison with UK Disability Living Allowance (DLA) for children

The report makes use of a comparison between the UK's Disability Living Allowance and the Income Support personal care levels. Whilst the 2 benefits have similar aims and 3 levels of payment, they are not directly comparable in terms of the types of disabled children to whom they are available.

To qualify for the lowest level of the DLA components, the child must need attention in connection with their bodily functions for a significant part of the day, whereas qualification for the middle rate of the care component requires either frequent attention throughout the day or night in connection with bodily functions, or continual supervision throughout the day or night to avoid substantial danger to themselves or others. These criteria are considerably more severe than those applied to personal care level 1 or 2, and are in fact closer to the requirements that would qualify a child for personal care level 3.

¹ This limit will be higher if either child also qualifies for a mobility component.

Administration implications

The lower test attached to the qualification for Personal Care levels 1 and 2 would inevitably necessitate additional administrative costs in order to meet the increased workload generated by new applications for benefit. The broader scope of Deputy Martin's amendment will bring forward a great number of new cases. Therefore, should this amendment be approved, the Minister will be required to seek a delay in the original implementation to allow the Department to prepare for the substantial number of new claims, and to recruit and train the additional manpower resources required.

Statement under Standing Order 37A [Presentation of comment relating to a proposition]

These comments were submitted after the deadline set out in Standing Order 37A because the deadline had been brought forward following the States' decision to sit on Monday 30th June, and it was not possible to finalise the comments before the earlier, noon Thursday, deadline.