

# STATES OF JERSEY



## **DRAFT ACT ANNULLING THE INCOME SUPPORT (GENERAL PROVISIONS) (AMENDMENT No. 17) (JERSEY) ORDER 2015 (P.106/2015): COMMENTS**

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**Presented to the States on 18th September 2015  
by the Council of Ministers**

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**STATES GREFFE**

## COMMENTS

### Summary

#### **States Members are strongly urged to reject this Proposition.**

- The annulment proposed by Deputy G.P. Southern of St. Helier seeks to reverse a change which tightens the rules for jobseekers under 25 previously receiving Income Support claims in their own right.
- The change is to treat a jobseeker living in the parental home as a member of the parental household until the jobseeker is 25 years old.
- This change is estimated to reduce Income Support spend by approximately £0.2 million a year, and is one of the measures put forward to achieve a total reduction of £10 million in the overall benefit budget by the end of the MTFP 2016 – 2019.
- The change improves the targeting of Income Support and encourages individuals to take more financial responsibility.
- The change will only result in a reduction of benefit if the family has a sufficiently high income that they would not qualify for Income Support when considered as a household.
- The change has no impact on vulnerable young people, who continue to receive the full range of Income Support benefits.
- The change has no impact on the total amount of Income Support received by low-income households which include a jobseeker aged under 25.
- All young jobseekers with ‘Entitled to Work’ status will continue to be fully supported by the ‘Back to Work’ teams.
- The Ministerial Order was made in July to allow young people time to consider their options before the beginning of the academic year in September.
- The change does not raise any human rights issues.
- Accepting this annulment will leave a shortfall in States finances from 2016 onwards.

### Background

The proposition seeks to annul part of an Order made by the Minister for Social Security [[R&O.85/2015](#)] so as to reverse the change included in Article 2 of that Order. Income Support is a benefit that is paid to an entire household, and the change in question is based on improving the overall fairness and consistency of the Income Support system by including jobseekers between the ages of 19–24 in the parental household, in the same way that students are currently treated. Note that the remainder

of the Order (Articles 3 to 12) contains further uncontentious changes to Income Support that are not addressed by the annulment proposition.

The change to the rules for jobseekers aged 19–24 is part of the Minister for Social Security’s proposals to achieve the benefit savings required under the Medium Term Financial Plan. In order to create sustainable public finances and provide funding for the strategic aims of strengthening our health and education systems, a total figure of £145 million needs to be identified. The £10 million of benefit budget reduction represents just 7% of this total, but reinforces the message that every area of public spending must be examined in order to return to a balanced budget by 2019.

### **Proposed change**

Jobseekers below the age of 19 and students below the age of 25 are already included in the households of their parents for Income Support purposes. The Ministerial Order is based on the important principle of achieving fairness in the benefit system, and brings the treatment of jobseekers aged 19–24 in line with the treatment of students of the same age. It is not appropriate to allow jobseekers in this age bracket to claim separately from the household in which they live, when all other households have their entire income considered. Without this change, Income Support would continue paying benefit to jobseekers living in households with sufficient incomes that the household does not, as a whole, need Income Support.

The changes made by Social Security will not affect the support provided to low-income households. Including jobseekers aged 19–24 in the parental household simply means that their needs are considered as part of the overall financial situation of that household. The change can only result in a reduction of benefit if the family has a sufficiently high income that the family would not qualify for Income Support when considered as a household. Jobseekers who have low-income parents will continue to be eligible for the adult component; the only change is that it will now be paid as part of the weekly Income Support payments made to their parents.

The Ministerial Order was made in July, in advance of the MTFP debate, so that young people making decisions about staying in education or moving into the labour market were aware of the new rules before September and the new academic year. Delaying the decision until mid-October – after the MTFP debate – would mean delaying the change (and therefore the saving) until September 2016.

The following claims were adjusted following the making of the Order –

- 75 jobseekers aged 19–24 stopped receiving £92.12 per week from 1st September, as they were part of a household that is not otherwise eligible to receive Income Support.
- 55 jobseekers aged 19–24 moved to their parents’ Income Support claim on 1st September, and altogether they weren’t made better or worse off.

Other young people living independently, young parents, care leavers, and young people with disabilities are still be eligible for the full range of Income Support components and were not affected by this change.

### **‘Back to Work’ support**

The full range of ‘Back to Work’ schemes and services is available to all jobseekers affected by this change, and the ‘Advance to Work’ programme has recently been extended to cover young people up to the age of 24.

Since these changes were announced, over 20% of these jobseekers have already found employment with the support of ‘Back to Work’.

### **Government support for people aged under 25**

The proposed Income Support move is in line with the treatment of people aged under 25 in other areas of government support. People aged under 25 are not normally eligible for social housing, and this is reflected in the Income Support accommodation component which is also normally only available from age 25. A student aged under 25 on a higher education degree level course will receive financial support for tuition and maintenance costs from the Education Department, based on the income of the student’s parents.

Note that provision is already made in the [Income Support \(Jersey\) Law 2007](#) for the situation in which a student is potentially receiving support from both an education grant *and* as part of an Income Support household. In that situation, Income Support is not paid whilst the grant is in payment. This only applies to degree-level students and therefore only affects a minority of students at Highlands. The majority of Highlands students are not studying at degree level, do not receive financial support from the Education Department, and are eligible for Income Support in the usual way.

### **European Convention on Human Rights (ECHR)**

The report accompanying the annulment suggests that the Ministerial Order could be open to a human rights challenge. This argument is not accepted, and an analysis of relevant human rights principles and case law is provided in the **Appendix** attached to these Comments.

### **Financial implications**

The proposed annulment motion identifies an annual cost of £200,000. Deputy Southern does not suggest any mechanism for making up this shortfall in the benefit budget. Approval of the annulment would therefore lead to the serious situation in which the departmental budget is not sufficient to meet the cost of the statutory benefits provided by the Social Security Department.

In this situation, recurring savings of an additional £200,000 will need to be identified from 2016 onwards, either from the Social Security Department budget or from other departments.

**Analysis of Human Rights issues relevant to proposed annulment**

It is assumed that this issue does touch on Article 14 and Article 1 of Protocol 1 by making age a characteristic to determine welfare entitlement.

The essential point is that the margin of appreciation given to law-makers in matters of welfare allocation is very broad, the measure must be “manifestly without reasonable foundation” in order to breach human rights. It will not usually be possible to say that distinctions based on age are wrong *per se*, as such distinctions are common. It is not enough to have cogent arguments against an age distinction – the legislation must have some fundamental flaw, usually an inherent contradiction, or a have effect in such a way that it misses its target. Similarly, it is seldom enough to show that a rule may cause hardship in some cases, as it is inevitably the case in welfare provisioning that the variety of human life will only roughly be captured by rules having sufficient certainty to be administratively workable. It is necessary for a person challenging the rules to show that such hardship is readily avoidable. Hence, it was held in *Humphreys v HMRC [2012] UKSC 18* that, even if the court felt that a welfare law could be dealt with better, it did not follow that the relevant legislation was incompatible with human rights.

It is very difficult to make good a human rights argument in a welfare context, and no proper argument has been made as to why the distinction of age is necessarily invalid, only that a potentially discriminatory distinction has been made. For example, the proposition states –

“In this particular case, the argument made by the Minister that ‘equal treatment for students and jobseekers’ will ‘improve the fairness of the system’, may not be sufficient to justify the change in treatment if it is seen to unfairly and disproportionately disadvantage the under-25s who are actively seeking work, and whose families have incomes just over the threshold for Income Support.”

To say that something “may not be sufficient to justify” is not enough to found a human rights argument. It is necessary to show that the measure concerned lacked any foundation. To argue that something may not be justified is to pose a question that is one of policy, not of law.

Although case-law shows that the generic standard of human rights review (“manifestly without reasonable foundation”) must always be borne in mind, it is useful if those raising human rights objections would identify the particular reason why they believe the relevant legislation lacks such a foundation. The full formal, 4-part proportionality test (set out below) provides a useful structure for doing so (*Huang v Secretary of State for the Home Department [2007] UKHL 11; [2007] 2 AC 167 [19]*) –

- (a) Did the legislation seek to achieve an illegitimate end?
- (b) Was the legislation rationally linked to its end?
- (c) Could the legislative objective be achieved in a better way?
- (d) Was the legislation a sledgehammer to crack a nut?

Those 4 criteria set out the legal test for disproportionality in detail, and framing any objections in the terms of one or more of those criteria will assist in responding to human rights objections in terms of human rights law. In the absence of any such particularised objections, all that can be said by way of legal comment on the new rules is that –

- (i) It is often the case with successful human rights objections to welfare reform that a benefit is removed in a way which contradicts the policy of the scheme of the benefit itself. This would be the case if the legislation had removed an individual's entitlement to support by treating him as part of the household without allowing for appropriate adjustments to the effect on household finances. This is not the case here. The “new” member of the household will be fully taken into account in the parents' own entitlements to Income Support.
- (ii) The *Humphreys* case shows that arguments relating to who should be the person to receive benefits in the first instance are difficult to make. Given that *Humphreys* was in the context of divorced/separated parents, and this Order deals with adult children living in the parental home, it is plain that the human rights objections were stronger in *Humphreys* – but they still were unsuccessful.
- (iii) There is no argument given as to why age is necessarily an irrelevant factor in giving benefits in the context of a young person living with their parents – nor why a bright-line rule of under 25 is inappropriate.

Given the broad margin of appreciation given to legislatures on welfare matter, it is difficult to see how a human rights case would succeed in the present cases. It is difficult for such arguments to succeed unless they lay bare a compelling failing in the legislative scheme.