STATES OF JERSEY

DRAFT SOCIAL SECURITY (AMENDMENT OF LAW No. 4) (JERSEY) REGULATIONS 201-

Lodged au Greffe on 9th October 2012
by the Minister for Social Security

STATES GREFFE

Jersey

DRAFT SOCIAL SECURITY (AMENDMENT OF LAW No. 4) (JERSEY) REGULATIONS 201-

REPORT

Introduction

As with all other States departments, the Social Security Department is required to make savings in 2013 as part of the agreed Comprehensive Spending Review (CSR). Unlike other departments, Social Security is responsible for 3 separate funding streams, all of which are used to provide benefits and services. As well as receiving a cash limit from the States, the Department collects contributions into and pays benefits out of the Social Security and Health Insurance Funds.

The Minister for Social Security is also required to act on the decision of the States Assembly last year in respect of the proposition "Pensions: survivor's benefit – review" P.105/2011, which sought to achieve "… a significant reduction in the current annual expenditure (on survivor's benefits) of £5 million, whilst honouring the claims of current recipients".

This proposition draws together these 2 commitments and proposes an amendment to the Social Security (Jersey) Law 1974 to restrict future access to survivor's pension, so that it will only be payable to a surviving spouse or civil partner who has the care of a child. The net savings created by this measure will build up over a number of years to an eventual total of approximately £3.6 million per annum.

The survivor's pension is paid out of the Social Security Fund. However, the Comprehensive Spending Review requires savings in respect of tax funded budgets, and as part of this measure, it is also proposed to transfer responsibility for the payment of invalid care allowance from the tax funded budget to the Social Security Fund. This will transfer an annual cost of approximately £2.68 million in 2013.

The combination of these 2 measures will deliver a significant proportion of the required CSR saving against tax funded budgets from 2013 onwards, and will also create further savings to the Social Security Fund as the full impact of the change to survivor's pension is felt in the longer term. However, in the short to medium term it will create additional expenditure for the Fund.

The proposals within the Medium Term Financial Plan in respect of Social Security expenditure over the period 2013 to 2015 are based on these proposals and, in particular, the transfer of invalid care allowance to the Social Security Fund from January 2013.

Separately, these regulations propose minor and unrelated changes in respect of 2 other Social Security benefits – insolvency benefit and adoptive parent grant.

Survivor's benefits

In July 2011 the States approved the proposition "Pensions: survivor's benefit – review" (P.105/2011) by 32 votes to 4 (with 1 abstention). This proposition requested the Minister for Social Security to review the survivor's benefits available in Jersey and to propose a new scheme to achieve a significant reduction in the current expenditure of £5 million a year. The Minister's comments at that time identified the major workload on the Department and the complexity of Social Security benefits, and suggested that it would be difficult to undertake a full review of this topic by the end of March 2012. Subject to that proviso, the ministerial comments were supportive of the need for a review in this area.

As anticipated, it was not possible to undertake a complete review of survivor's benefits within the timetable proposed by P.105/2011. However, research has been undertaken on the international provision of survivor's benefits and an analysis of survivor's benefits currently in payment has been completed.

The full text of P.105/2011 is provided in the **Appendix** to this Report. It provides a summary of survivor's benefits both in Jersey and in neighbouring jurisdictions and explains the background to the proposal for a reduction in total spend.

The generosity of existing survivor's benefits is quite clear when compared to the availability of similar benefits in other jurisdictions. This proposal makes a simple change to the legislation, which will have a major impact on the overall cost of survivor's pensions over the coming years. The proposal is to maintain survivor's allowance to all claimants in line with the existing criteria but to restrict future awards of survivor's pension to those survivors who have dependent children.

Current survivor's benefits

There are 2 survivor's benefits available in Jersey.

Survivors benefits are only available if the couple was married or in a civil relationship. A survivor's allowance is paid for the first year following the death of a partner with an appropriate contribution record. The allowance is paid to a spouse or civil partner if either the deceased individual or the surviving partner was under pension age at the date of death. It is calculated at a rate 20% above the old age pension rate and the amount paid depends on the contribution record of the deceased person. At the end of the first year the survivor's allowance ceases and a survivor's pension is available to a working age survivor until he or she reaches pension age. The value of the survivor's pension is based on the contribution record of the deceased person and the rate is based on the old age pension. Both the allowance and the pension can be paid anywhere in the world and they are not subject to any means test or income bar. They cease to be paid if the survivor remarries, enters a civil partnership or cohabits with a partner.

Recent statistics provide the following analysis of current claimants:

Claims in Payment in April 2012	No of Claims paid in Jersey	Estimate of Annual Value of Claims paid in Jersey	No of Claims paid overseas	Estimate of Annual Value of Claims paid overseas	Total no of claims	Estimate of Total annual value of claims
Survivor's Allowance (first year)	43	£308,000	25	£94,000	68	£402,000

Survivor's pension (after first year)	462	£3,201,000	359	£1,077,000	821	£4,278,000
Total	505	£3,509,000	384	£1,171,000	889	£4,680,000

Table 1: Summary of Survivor's Benefit Claims in Payment – April 2012

In particular, many of these claimants do not live in Jersey. At the date of these statistics (April 2012) 37% of survivors allowance claims and 44% of survivors pension claims were being paid outside Jersey.

Proposal

It is proposed to make one simple change to the eligibility conditions for the survivor's pension. In future, the pension will only be payable to a survivor who has the care of a dependent child. It is also proposed that all survivors will continue to receive the survivor's allowance for the first year following the death of their spouse or civil partner.

For the purposes of survivor's pension, a "dependent child" will be defined in the Law as a child under compulsory school leaving age or a young person over that age but below the age of 25 who remains in full-time education. The child/young person must be the natural or adopted child of either the survivor or the survivor's deceased spouse or civil partner and she/he must be living with the survivor.

Survivor's benefits are paid to claimants living in Jersey and outside Jersey. Removing survivor's pension from Jersey residents who do not have dependent children will create some additional cost to the income support budget. In future, a survivor with a low household income may require additional income support, compared to the current position in which the survivor's pension makes up a proportion of the total household income. There will be no additional cost to income support in respect of survivors with children, as they will still receive the same value of survivor's pension as at present.

These proposals will have no impact on the entitlement of existing claimants, who will all still continue to receive survivor's allowance or survivor's pension under the current rules.

An analysis of claims provides the following breakdown:

	SP – receiving IS		SP – not receiving IS		Total	
Survivor's pension claims – April 2012	No of claims	Estimated annual value	No of claims	Estimated annual value	No of claims	Estimated annual value
Claims paid in Jersey – survivor has child under school leaving age	17	£101,000	23	£168,000	40	£269,000
Claims paid in Jersey – no dependent child	46	£312,000	376	£2,619,000	422	£2,932,000
Claims paid outside Jersey – survivor has child under school leaving age			2	£17,000	2	£17,000

Claims paid outside Jersey – no dependent child			357	£1,060,000	357	£1,060,000
Totals	63	£413,000	758	£3,865,000	821	£4,278,000

Table 2: Detail of Survivor's Pension Claims in Payment – April 2012

Costs associated with ongoing support for survivors with dependent children

Using existing departmental information, it is possible to estimate the number of children under school leaving age, as shown in the table above. These figures indicate that 6% of the value of current survivor's pension payments (42 claims) is paid to survivors who have a child under this age. However, the Department does not hold full information on the number of young people above this age who remain in full-time education. It is assumed that the number of survivor's pension claims that include a student above this age but under the age of 25, will increase the number of eligible claims by 50%, producing an estimate of 9% of the value of all survivor's pension payments. These claimants will continue to receive survivor's pension until the youngest child leaves full-time education.

This calculation over estimates the cost of ongoing support for dependent children. It is based on existing survivor's pension claims which can continue until pension age. In the future, no claim will continue after the youngest child has reached the age of 25, regardless of age of the survivor at that point.

Income support costs

As noted above, this change will have an impact on income support costs in respect of survivors who do not have dependent children and who do have a low household income. At present there are 46 survivors who are receiving a survivor's pension, do not have a dependent child and are also claiming income support. The value of their survivor's pension payments is approximately £312,000 a year at present, representing 7% of the total cost of survivor's pensions. It is assumed that the proportion of future survivors that require income support will be similar to the proportion of current claimants.

In the future, there may also be additional claims for income support from some individuals who do not have dependent children and who will not be able to claim survivor's pension. Additional costs would only be identified in respect of a single adult living on their own – survivor's benefits under both the current and future system are withdrawn if the survivor enters into a new relationship through marriage, civil partnership or cohabitation.

Summary of costs

Based on the above analysis of existing survivor's pension claims, it is estimated that 16% of the current budget will be needed to cover ongoing costs. As noted above, this estimate includes an over-provision for the cost of providing a pension to a survivor with a dependent child, and an under provision for additional income support claims in respect of survivors without dependent children It is assumed that these 2 factors will balance each other.

This will create a net saving of £3.6 million (2012 prices) when all survivor's benefits are being paid under the new rules. These estimates are based on data in respect of current survivor's benefits claimants and will be carefully monitored over the next few years.

Survivor's allowance claims

A similar analysis of the 68 survivor's allowances claims in April 2012 identified 7% of claims with children under school leaving age. There were no income support claims from survivor's allowance claimants who did not have dependent children. Survivor's allowance is paid at a higher rate (20% above) than survivor's pension and so it is reasonable that there are less income support claimants in this group. Whilst acknowledging this, there is no evidence from the survivor's allowance claimants that the ongoing cost associated with the changes to survivor's pension will be higher than the 16% calculated above.

Protection of Existing Claimants

P.105/2011 included a clear commitment that any changes to the provision of survivor's benefits should not affect existing claimants. The proposed Regulations ensure that the changes to survivor's pension will only apply to survivors who first make a claim for a survivor's benefit after 1st January 2013.

As existing claimants will be fully protected under these proposals, it will take some time for the full impact of the proposed change to be seen. The rate at which savings will be achieved under these proposals is governed by a number of factors, including the age distribution of existing survivor's benefit claimants, and the number of years that they will continue to be eligible for survivor's pension, until they reach pension age of 60 (only applies to women who joined the local Social Security system before 1975) or 65.

The next table shows the relative proportions of claimants currently receiving survivor's pension and the maximum number of years for which these claims will continue to be paid. Claims will close early in a number of situations, including the survivor entering into a new permanent relationship.

Analysis of existing survivor's pension claims in April 2012			
Maximum length of claim	No of existing claimants	Cumulative % of total number of claims	Cumulative % of estimate of total annual value
Up to 5 years	314	38%	41%
5 to 9 years	194	62%	63%
10 to 14 years	130	78%	77%
15 to 19 years	104	90%	90%
20 years or more	79	100%	100%

Table 3: Maximum length of current survivor's pension claims as at April 2012

As noted above, this change will not affect any survivor currently receiving a survivor's benefit at the end of December 2012. The amended law will apply to new claims for survivor's benefits starting from January 2013.

For example:

- Following the death of a spouse in October 2012, a survivor will be entitled to survivor's allowance from October 2012 to September 2013. The survivor will then be transferred to survivor's pension from October 2013 until they reach their own pension age or enter into a new relationship. She/he will not be affected by these changes.
- Following the death of a spouse in February 2013, a survivor will be entitled to survivor's allowance from February 2013 to January 2014. At that point, the survivor will only receive a survivor's pension if she/he is responsible for a dependent child. The survivor's pension will stop when the dependent child first leaves full-time education, or reaches the age of 25, whichever is sooner. The existing rules will also continue to apply, and the survivor's pension will also stop if the survivor reaches their own pension age or enters into a new relationship.

Home Carer's Allowance

The proposal to transfer the existing tax funded invalid care allowance to the Social Security Fund has been coordinated with the proposed savings in the survivor's pension, to create a package in respect of a significant proportion of the departmental CSR target for 2013.

Regardless of the savings target, the transfer of this allowance in respect of working age carers to the Social Security Fund is appropriate for a number of reasons. The value of the current invalid care allowance is already set at the same rate as the contributory benefit rate. The primary purpose of the benefit is to support working age carers who are no longer earning a wage due to their caring responsibilities and so fits well with other contributory benefits which support workers unable to work during periods of incapacity or maternity.

The role of carers is an increasingly important one in our ageing society and including the new home carer's allowance within the Social Security Law ensures that the value of the benefit will be maintained in line with other contributory benefits and that funding will be available from the ring fenced Social Security Fund. Although not directly linked, this proposal fits well with the ongoing development of the Long-Term Care Benefit Law. The proposition of the Council of Ministers – "Health and social services: a new way forward" P.82/2012 – also highlights the importance of care being provided in the community and identifies a number of new areas in which carers will be supported.

Background

Invalid care allowance (ICA) has been available in Jersey since 1978. It is available to the unpaid carer of a person with a severe disability. The benefit is principally aimed at working age individuals, although someone already claiming ICA can elect to continue to receive it after they reach pension age. From 1st October 2012 the value of ICA is £810.79 per month, and if the claimant is liable for class 2 contributions, these are paid by the Department (£ 460.75 per month in 2012).

To receive ICA, the carer must satisfy a residency test and both the carer and the cared for person must be present in Jersey. The carer must spend at least 35 hours a week engaged in caring activities. There are restrictions on the total household income of the carer and also restrictions on the amount of earnings that the carer can receive on a weekly basis. Whilst receiving ICA, the carer receives a full contribution record, paid for by the States. ICA is taxable. In September 2012, 186 individuals were receiving ICA, caring for adults and children across a wide age range.

Support for carers receiving Income Support

ICA was introduced many years before income support. Income support now provides financial assistance to low income families, including those that include adults who have caring responsibilities. The income from ICA is included as household income within the income support calculation on a "£ for £" basis. However, a carer receiving ICA and income support is also entitled to a carer's component under the income support legislation. This component is currently set at £46.97 per week and provides extra income into the carer's household. The carer's component is not subject to any age restriction and is available to young carers and to carers aged over 65 as well as working age carers.

Proposal

It is proposed to replace the existing tax-funded invalid care allowance with a new benefit – home carer's allowance (HCA) – funded from the Social Security Fund. Existing claimants will be transferred to the new benefit which will be paid at the same rate. There will need to be a number of changes to the benefit rules for new claimants, to acknowledge the change to a contributory benefit. The major changes are set out below.

Household income

The current legislation imposes a requirement for the total household income of the carer and their spouse/partner to be under a given maximum. This maximum is currently set at £62,382 per annum, rising to £63,786 for 2013.

With the transfer to the Social Security Law, it is no longer appropriate to impose a maximum household income bar on this benefit. It will be available to any carer, regardless of household income, as long as they meet the other requirements of the proposed benefit. This is in line with all other Social Security funded benefits which do not use means tests or income bars.

Contribution record

At present, there is no requirement for the carer to have paid contributions in order to claim ICA.

This benefit is paid primarily to working age people who give up paid employment due to their caring responsibilities and it is reasonable to require that the individual should have previously paid contributions in order to receive this benefit. As with other contributory benefits, it is proposed that the carer has paid contributions for at least 6 months at some time in the past. The carer will also need to have contributions in the relevant quarter – i.e. 2 quarters before the start date of the claim. To ensure that parents of young children are able to satisfy this condition, the contributions in the relevant quarter can be either paid or credited, including Home Responsibility Protection credits which are available to a parent caring for a child under five.

There are wives who were married before April 2001, who continue to be able to elect not to pay contributions, and who will receive a pension based on their husband's contribution record. A married woman in this situation may not have a contribution record in her own right, but she will still be entitled to claim the new benefit.

The requirement for a contributory record may exclude a small number of carers in the future, who would be covered under the current legislation. However, the income support system now exists to support low income families and the carer's component under income support will continue to be available to anyone who is the main carer for an individual with a severe disability.

Respite care

The new law will make additional provision for the carer to continue to receive HCA whilst the person they are caring for receives respite care, for up to 4 weeks a year. This is in addition to the existing rules which cover situations such as the carer or the cared for person receiving hospital treatment, or being out of the island for a short time.

Previous residence in Jersey

Following various legislative changes associated with the introduction of income support, there are currently no restrictions on the prior residence of the cared for person. It is proposed to re-establish a test on the prior residence of the cared for person, who should be ordinarily resident in Jersey for a continuous period of 12 months immediately prior to the date of the application. The requirement for ordinary residence allows for periods of time to be spent outside the island, for example, on holiday, receiving medical treatment, or at school or university.

Contribution credits

Under the current legislation, the States pays contributions on behalf of a carer if they have a contribution liability, to create a full contribution record whilst the carer is receiving the benefit. It will not be necessary to continue this practice in future, as the carer will receive contribution credits which will have a similar effect, protecting the pension record of the carer.

Determination and appeal procedure

The current legislation provides for determination, redetermination and independent appeals as is standard throughout departmental benefit legislation. This will not change. However, at present appeals are made to the Social Security Tribunal. It is proposed that decisions as to whether the carer meets the criteria for caring under the legislation will be referred to the Medical Appeals Tribunal. This tribunal includes a medical representative and a disability representative, as well as a lawyer, and is well placed to consider such decisions. The Medical Appeals Tribunal will also continue to hear appeals in respect of decisions relating to whether a cared for person satisfies the necessary personal care requirements.

Carers aged under 16 or receiving full-time education

The current law excludes an individual from receiving ICA if they are aged under 16 or they are receiving full-time education. The proposal to include a contribution requirement will automatically exclude young people aged under 16. However the income support scheme will continue to support young carers, below this age, with the carer's component.

It is proposed to remove the exclusion that a carer cannot be receiving full-time education. There are instances in which carers are undertaking online courses and, as long as the carer can demonstrate the extent of their caring responsibilities, educational activities should not act as a bar to receiving the benefit.

Overlapping benefits

The great majority of Social Security benefits are subject to overlapping conditions. These prevent an individual from claiming more than one full rate benefit at the same time. These rules also apply to ICA which cannot be paid at the same time as another Social Security benefit, with the exception of survivor's benefit. It is proposed that the normal overlapping rules should apply to the new benefit and there will no longer be a special case made for survivor's benefits. However, there are currently 2 claimants receiving both benefits and these claims will continue, using transitional provisions.

In other areas, the rules set out in the existing legislation will be transferred directly to the new benefit. These include the rules on the gainful employment of the carer, the definition of a cared for person and the treatment of a carer upon reaching pension age.

Transitional arrangements

All existing claimants will be automatically transferred to the new benefit, and they will not need to satisfy the initial eligibility conditions.

Other legislation

The Invalid Care Allowance (Jersey) Law 1978 will be repealed, as the new benefit is established.

Income tax is payable on the current ICA, and will continue to be payable on HCA and the Income Tax law will be amended to allow for this.

Implementation

The proposed Regulations refer, in a number of areas, to Ministerial Orders. Subject to States approval of the Regulations, these Orders will be finalised and signed before the end of 2012, to allow the full implementation of the new benefit from 1st January 2013. Existing claimants will receive a letter in advance explaining the change in the benefit and confirming that they remain eligible for and will receive the new benefit.

Other changes to Social Security benefits

The opportunity has been taken to make minor adjustments to 2 other Social Security benefits.

Insolvency Benefit

The States Assembly approved the establishment of an insolvency benefit in June 2011 and this is scheduled to come into force in December 2012. Until then, a temporary scheme continues to provide some financial support to workers affected by the insolvency of their employer.

Three specific areas are clarified under the proposed regulations. These relate to:

- the order in which the various components of the insolvency benefit are discounted if the total of the benefit would otherwise exceed £10,000 (the maximum payment allowed);
- a definition of wages;
- the ability of the Minister to seek to recover in any insolvency proceedings amounts that were paid in the form of Social Security contributions or income tax from an employer or other party.

Adoptive parent grant

This grant is available to parents who adopt a child, and is paid at the same rate as the maternity grant which is paid to a mother on the birth of a child. The current legislation contains very few restrictions on the circumstances in which parents may claim the adoptive parent grant. This has resulted in the possibility of the grant being paid in cases where it was not intended to be available. The proposed Regulation adds a new condition so that the grant cannot be claimed by a step parent, who is married to, or in a civil partnership with, one of the child's parents, as that parent is likely to have already received a maternity grant in respect of the child. At the same time, the contribution condition in respect of the adoptive parent grant is aligned with that of the maternity grant, so that only one adoptive parent must satisfy the contribution condition, rather than the current condition which requires both parents to do so.

Financial and manpower implications

Home carer's allowance and survivor's pension

There are no ongoing manpower implications. There will be a temporary period, lasting a few months, during which new applications will be processed manually until the departmental IT system is updated in line with the new benefit rules. There are approximately 5 ICA and 7 survivor's benefit applications per month and this additional temporary work will be absorbed within existing resources.

The cost of the existing ICA benefit will be removed from the tax funded budget of the Department, in line with the proposals published in the MTFP. This cost will be borne in future by the Social Security Fund. There will be an increase in the cost of benefits paid out of the Social Security Fund and a reduction in the income received by the Social Security Fund.

The cash limit within the Medium Term Financial Plan is based upon savings equivalent to the current budget of ICA of £2.2 million. Without the proposed transfer of ICA, the Department would also require a growth bid[1] of £480,000 in 2013 to meet the current level of ICA claims.

If the proposal to transfer ICA funding to the new HCA benefit is not agreed by the States then, without an amendment to the Medium Term Financial Plan, savings of £2.68 million from either income support or employment services will need to be made in 2013, on top of the £600,000 income support savings already identified for 2013 and the additional £3 million savings included within the 2014 cash limit.

The impact on each area of Social Security expenditure is set out below –

1. Tax funded budget – In 2013, the cost of ICA will be removed from the tax funded budget. The estimate of the 2013 cost is £2.68 million. This is made up of £1.82 million in benefit payments and £860,000 in contribution payments.

The changes to survivor's benefits will create no additional cost in respect of income support in 2013. Survivors who started to receive benefit before the end of 2012 will not be affected by the proposed changes and they will continue to receive their benefit under the current legislation. Survivors who start to receive a benefit during 2013 will all receive survivor's allowance for the first 52 weeks – this benefit is not changing.

From 2014 onwards, there will be a gradual increase in income support costs as a small proportion of new survivors will require additional income support payments at the end of their entitlement to survivor's allowance. The bulk of these costs will build up over the next 10 –15 years. The eventual cost is estimated at £320,000 per annum (2012 prices)

2. Social Security Fund – The changes will have an impact both on the income received by the Social Security Fund and the benefits paid out by the Fund.

At present, contributions are paid on behalf of the majority of ICA claimants into the Fund to maintain their contribution record. These contributions will not be paid in 2013, and the contribution income of the Fund will reduce by approximately £860,000. Note that there are no consequences for supplementation. At the same time, the cost of the proposed HCA benefit will be paid out of the Fund. The estimate of this cost in 2013 is £1.8 million. The cost of survivor's benefits in 2013 is not affected by the proposed changes.

[1] MTFP P.83 – Figure 14 – Proposed low priority – Bids not funded

However, from 2014 onwards there will be a reduction in the cost of survivor's pension payments, as these will be restricted to survivors with dependent children in respect of new claimants. As existing claimants will be fully protected from these changes, it will take time for the full impact of the savings to be felt. By the end of 2026, it is estimated that the net impact of the reduction in survivor's pension will equal the value of the HCA benefit, with further savings experienced in following years until everyone in receipt of a survivor's benefit at the end of 2012 is claiming an old age pension or is no longer entitled to survivor's benefit.

This table summarises the proposals:

	Tax funding	Social Security Fund	Combined impact
Abolish ICA	Reduce cost by £2.68M in 2013	Reduce contribution income by £860K in 2013	No net change
Create HCA		Increase benefit cost by £1.82M in 2013	
Amend SP	Increase in income support costs, gradually from 1/1/2014 Final impact: increased income support costs of £0.3 million	No change in contribution income. Reduce benefit cost gradually from 1/1/2014 Final impact: benefit saving of £3.9 million	Net annual saving of £2.68 million by 2026 Final impact: long term net annual saving of £3.6 million

Table 4: Summary of proposals

The long-term impact of these changes is an overall reduction of net costs of £3.6 million per annum. These estimates are based on an analysis of a "snapshot" of survivor's pension claims in April 2012. Actual expenditure will depend on a wide variety of factors.

During the transition period, the Social Security Fund will bear the cost of additional benefit payments. These short-term costs can be absorbed on the basis of a long-term reduction in benefit costs which will more than cover the transitional costs.

One off development costs, mainly in respect of changes to software, are estimated to cost approximately £150,000 and these costs will be met from existing departmental allocations.

Insolvency Benefit and Adoptive Parent Grant

There are no significant resource implications in respect of these proposals. There will be a small saving in the costs of the adoptive parent grant as some future applications will not satisfy the proposed requirements.

APPENDIX TO REPORT

STATES OF JERSEY

PENSIONS: SURVIVOR'S BENEFIT – REVIEW

Lodged au Greffe on 7th June 2011
by Senator F. du H. Le Gresley

STATES GREFFE

2011 Price code: B P.105

PROPOSITION

THE STATES are asked to decide whether they are of opinion −

to request the Minister for Social Security to carry out a comprehensive review of survivor's benefits, and in particular to take into account the bereavement schemes available to survivors in Guernsey and the Isle of Man, and to report back to the States, no later than 31st March 2012, with proposals for a new scheme which should have a long-term aim of achieving a significant reduction in the current annual expenditure of £5 million, whilst honouring the claims of current recipients.

SENATOR F. DU H. LE GRESLEY

REPORT

Originally there were 4 categories of widow's benefits –

- widow's allowance – paid for the first year of widowhood
- widow's pension – paid after the first year of widowhood
- widowed mother's allowance – paid after the first year of widowhood
- widowed father's allowance – paid for the period when a widowed father has the sole responsibility for bringing up a child of his marriage who is in full-time education in Jersey.

A minor change to widow's benefits took place in 1991 when the States approved a proposition of the Social Security Committee to amend the Social Security (Jersey) Law 1974 so that a widow, regardless of age, gained access to widow's benefit for the period that she remained a widow. Prior to this Amendment, the Law prevented the payment of widow's benefit to widows without children who were under the age of 40 at the time of their husband's death or to widows where the children of the family had ceased full-time education before the widow reached the age of 40.

In their proposition P.105/1991, the Social Security Committee expressed the view that *"a widow's prospects of employment do not differ whether she is widowed at 25, 35 or 45, nor does the need for the compensation provided by widow's benefit"*. The Committee also pointed out that the existence of the age limit had only prevented the payment of benefit to less than 10 widows since 1974.

This change to the Social Security (Jersey) Law 1974 effectively removed widowed mother's allowance, as all widows moved from widow's allowance to widow's pension regardless of age or dependent children after the first year of widowhood.

In 1995, the Social Security Committee carried out a comprehensive review of the Social Security and Health Insurance Schemes and produced a major report called Continuity and Change. In the President's Foreword to the report he stated –

> *"Social Security schemes must change with the times if they are to continue to serve society as a whole....Within the workplace the proportion of women is increasing.....Within the family there has been a move away from the traditional male head of household role and divorce rates have increased as has the number of single parent families. In short, this could mean that more people may not be fully covered by the Scheme in future as it is based on traditional concepts of continuous full-time employment and the male as the head of the household...If the Jersey Social Security Scheme is to maintain its credibility, we must ensure that benefits accrued by those already in the scheme are honoured and, at the same time, introduce changes which will benefit our society in the future."*

The report recommended that the 3 elements of widow's benefits be replaced with survivor's benefits in order to give equal treatment to widows and widowers. It was also noted that the 20% "enhancement" during the first year of widowhood was a carry-over from the old UK system and was not a feature of many other Social Security systems, the UK having stopped this weekly enhancement in favour of a lump sum.

On 19th November 1996, the States adopted the proposition of the Employment and Social Security Committee, P.132/96 – Social Security: Continuity and Change. One of the proposals in P.132/96 was to replace widow's benefits by survivor's allowance and survivor's pension so that both men and women could benefit from contributions paid by their late spouse.

Current survivor's benefits scheme

Survivor's allowance is paid for the first 52 weeks after a spouse has died, at a rate 20% higher than the usual full rate of benefit. Contribution credits are awarded whilst a survivor is in receipt of survivor's allowance. The minimum requirement is for the deceased spouse to have contributions or credits for at least 10% of the number of months between the age of 18 and the month when they died. The full, standard, weekly rate of survivor's allowance is £216.02. A total of £745,472 was paid in 2010 to 205 separate claimants. As at 31/12/10, there were 85 open claims and 4 being processed.

A **survivor's pension** is paid until the recipient reaches "pensionable age", when the benefit changes to an age-related pension. In order to receive the survivor's pension at the full standard rate (currently £179.97 per week) the deceased spouse must have paid, or been credited with, full contributions from their 18th birthday up until the month before their death. If the deceased spouse had gaps in their contribution record, the amount paid is reduced. The minimum requirement is for the deceased spouse to have contributions or credits for at least 10% of the number of months between the age of 18 and the month when they died.

A total of £4,389,000 was paid in 2010. As at the 31/12/10 there were 847 open claims, of which 783 were for survivors aged 45 or above.

Why I am proposing a review of survivor's benefits?

Paying a survivor's pension to a widow, or widower, who has no children, or no dependent children, is, as far as I have been able to establish, unique to Jersey. Thirty-seven years ago, significantly less married women were in full-time or part-time employment compared with the make-up of the labour market today.

A survivor's pension is a very generous benefit as it is not means-tested and can be paid to a survivor who is in paid employment. Provided the survivor does not co-habit with another person of either sex or re-marry, the pension is paid until it is replaced with an old age pension based on the survivor's own contribution record.

In order to show the financial cost to the Social Security Scheme, I give an example below.

A childless husband or wife, aged 25, who looses their spouse at an early age of, say, 30 years, is currently entitled to receive the survivor's allowance for 12 months, totalling £11,230, and then the survivor's pension for 39 years, provided the deceased spouse had 12 years of full contributions or credits. Using the current rate of benefit, this means that the surviving spouse could potentially receive, in total, a survivor's pension of £364,979 before he or she reaches the current retirement age of 65 years. This is before allowing for annual increases in the rate of benefit in line with the average earnings index. With compounded annual increases of, say, 3%, the total cost to the Social Security Fund over the 39 years is potentially £705,000, assuming the widow or widower does not re-marry or co-habit before reaching State Pension Age. A person in receipt of a survivor's pension is also eligible to receive the Christmas Bonus.

At a time when the States of Jersey is endeavouring to find savings of £65 million per annum, it seems to me that we cannot ignore the fact that our survivor's benefits scheme costs in excess of £5 million per annum, yet in Guernsey the cost is £2 million, and in the Isle of Man £½ million. We are also paying £1 million of this benefit each year to people who have left the Island, and are totally reliant on their honesty to advise the Social Security Department should they start to co-habit or re-marry.

Before 2007, the only safety net for widows and widowers was parish welfare. Now all people who have been continuously resident for 5 or more years are entitled to claim income support benefit. Furthermore, when a recipient of a reduced survivor's pension is entitled to claim another benefit, based on their own contribution record, such as short-term incapacity benefit, he/she can choose to receive whichever is the most favourable.

All adults living in Jersey who are under pension age are required to pay Social Security contributions. The vast majority of women who do not have pre-school children are in paid employment, or in receipt of contribution credits or receiving benefits due to prolonged ill-health or temporary unemployment.

Whilst it goes without saying that the death of a spouse is a tragedy for the survivor, I would ask Members to consider if it is still appropriate for government to fund a survivor's pension to a survivor of any age until he/she reaches "pensionable age"? Perhaps the time has come for a survivor who has no children, or no dependent children, to only qualify for survivor's allowance for one year? On the other hand, there is clearly a need to help a survivor who has young children and therefore sound reasons why a survivor's pension should continue to be paid to a survivor who has a dependent child or children under school-leaving age, or aged 19 or under and still in full-time education.

How does our current survivor's benefit compare with other similar jurisdictions?

Guernsey

Guernsey changed their bereavement benefit scheme from the 1st January 2004. There are 3 benefits: bereavement payment – a lump sum (currently a maximum of £1,630.00) payable to all survivors; widowed parent's allowance (currently a maximum of £188.93 per week) – for survivors with children; and bereavement allowance (currently a maximum of £162.40 per week) – payable to survivors without children aged 45–64 inclusive, for up to one year following bereavement. All 3 benefits are calculated on the contribution record of the deceased spouse. The bereavement benefit scheme does not recognise civil partnerships.

There are 2 contribution conditions that have to be met –

(1) the deceased spouse must have paid at least 156 weekly social security contributions at any time in their working life, and

(2) between the age of 20 and their age of death (before their 65th birthday), they must have paid or had credited an average of between 10 and 50 contributions each year that count towards benefit.

For a survivor to receive full benefit, the deceased spouse needs to have paid or had credited an average of 50 contributions each year from the age of 20. Benefit is paid at a reduced rate if the average is less than 50.

Widowed Parent's Allowance is only paid to a parent who has a child or children under school-leaving age or aged 19 or under and still in full-time education.

The current benefit rates are set out in the following table –

ALLOWANCES & WEEKLY PAYMENTS FROM 3.1.11

Yearly average of reckonable contributions paid or credited	Bereavement Payment	Widowed Parent's Allowance	Bereavement Allowance		Bereavement Payment	Widowed Parent's Allowance	Bereavement Allowance
50	**£1,630.00**	**£188.93**	**£162.40**				
Reduced rate at which payments and allowances are payable							
49	**£1,597.00**	**£186.22**	**£159.15**	29	**£945.00**	**£132.06**	**£94.19**
48	**£1,565.00**	**£183.51**	**£155.90**	28	**£913.00**	**£129.35**	**£90.94**
47	**£1,532.00**	**£180.81**	**£152.66**	27	**£880.00**	**£126.65**	**£87.70**
46	**£1,500.00**	**£178.10**	**£149.41**	26	**£848.00**	**£123.94**	**£84.45**
45	**£1,467.00**	**£175.39**	**£146.16**	25	**£815.00**	**£121.23**	**£81.20**
44	**£1,434.00**	**£172.68**	**£142.91**	24	**£782.00**	**£118.52**	**£77.95**
43	**£1,402.00**	**£169.97**	**£139.66**	23	**£750.00**	**£115.81**	**£74.70**
42	**£1,369.00**	**£167.27**	**£136.42**	22	**£717.00**	**£113.11**	**£71.46**
41	**£1,337.00**	**£164.56**	**£133.17**	21	**£685.00**	**£110.40**	**£68.21**
40	**£1,304.00**	**£161.85**	**£129.92**	20	**£652.00**	**£107.69**	**£64.96**
39	**£1,271.00**	**£159.14**	**£126.67**	19	**£619.00**	**£104.98**	**£61.71**
38	**£1,239.00**	**£156.43**	**£123.42**	18	**£587.00**	**£102.27**	**£58.46**
37	**£1,206.00**	**£153.73**	**£120.18**	17	**£554.00**	**£99.57**	**£55.22**
36	**£1,174.00**	**£151.02**	**£116.93**	16	**£522.00**	**£96.86**	**£51.97**
35	**£1,141.00**	**£148.31**	**£113.68**	15	**£489.00**	**£94.15**	**£48.72**
34	**£1,108.00**	**£145.60**	**£110.43**	14	**£456.00**	**£91.44**	**£45.47**
33	**£1,076.00**	**£142.89**	**£107.18**	13	**£424.00**	**£88.73**	**£42.22**
32	**£1,043.00**	**£140.19**	**£103.94**	12	**£391.00**	**£86.03**	**£38.98**
31	**£1,011.00**	**£137.48**	**£100.69**	11	**£359.00**	**£83.32**	**£35.73**
30	**£978.00**	**£134.77**	**£97.44**	10	**£326.00**	**£80.61**	**£32.48**
Less than 10	no benefit payable						

The most notable difference between the Jersey and Guernsey bereavement benefit schemes is that a survivor under the age of 45 with no children is only entitled to claim the lump sum bereavement payment, which at the full rate is currently £1,630.

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The Isle of Man

The Isle of Man has 3 bereavement benefits – age-related bereavement allowance, widowed parent's allowance and bereavement payment. The amount a survivor receives in bereavement benefits is based on the deceased spouse's or civil partner's National Insurance contributions record.

In order to receive a lump sum **bereavement payment** of £2,000, the deceased must have paid at least 25 Class 2 or 3 NI contributions or had earnings from employed earner's employment of at least 25 times the lower earnings limit for any tax year.

Widowed Parent's Allowance is a weekly benefit of £100.70, paid to a surviving husband, wife or civil partner who has dependent children for whom they are entitled to (or can be treated as entitled to) Child Benefit. The deceased spouse or civil partner must have paid at least 52 Class 2 or Class 3 contributions or earned at least 52 times the lower earnings limit in any one tax year and paid Class 1 contributions on those earnings. NI contributions must have been paid for 90% of the deceased spouse's or civil partner's working life for the allowance to be paid at the full rate. Widowed Parent's Allowance stops when the survivor no longer has a dependent child, i.e. at the same time as Child Benefit ceases, if this is within 52 weeks of bereavement the survivor may be entitled to Bereavement Allowance provided he/she is aged between 45 and State Retirement Age.

Age Related Bereavement Allowance is a weekly benefit **paid for a maximum of 52** weeks to a spouse or civil partner who has no dependent children and is aged 45 years or over when they became widowed or when their civil partner died. A survivor cannot receive Bereavement Allowance at the same time as Widowed Parent's Allowance. If the survivor is aged 55 or over he/she will receive the full rate of £100.70 per week. The allowance is reduced by 7% for each year of age by which the survivor was under the age of 55 when their spouse or civil partner died. The amount is fixed and does not increase after a birthday.

The contribution conditions require the deceased spouse or civil partner to have paid at least 52 Class 2 or Class 3 contributions or earned 52 times the lower earnings limit in any one tax year and paid Class 1 contributions on those earnings. NI contributions must have been paid for at least 90% of the late spouse's or civil partner's working life for the allowance to be paid at the full rate.

The current Age Related Bereavement Allowances are –

54	£93.65	49	£58.41
53	£86.60	48	£51.36
52	£79.55	47	£44.31
51	£72.50	46	£37.26
50	£65.46	45	£30.21

Note – In order to assist Members, I have summarised the main differences between Jersey, Guernsey and the Isle of Man bereavement schemes in a table at the Appendix to this proposition.

Conclusion

My original proposition, P.70/2011, asked the States to agree that any survivor's pension awarded after 1st January 2013 will only be paid to a survivor with a child or children under school leaving age, or aged 19 or under and still in full-time education, or a survivor who is aged 45 years and over but below State Pension Age. Subsequent research has revealed that an age limit of 40 was removed in 1991 and that there might only be 6 fewer awards of survivor's pension per annum if an age limit of 45 was introduced. The intention of my original proposition was to find a way of reducing the budget for survivor's benefits whilst at the same time protecting existing recipients. Producing a saving of £50,000 per annum is insignificant when the overall budget for survivor's benefits is in excess of £5 million. A comprehensive review is therefore required as we are clearly out of step with our neighbours.

The Minister for Social Security has advised me that, in principle, he agrees that survivor's benefits are generous and that a review is required. I am proposing that this review is carried out by 31st March 2012, as it may be necessary to consult with the public via a Green Paper.

I conclude with the words of the former President of the Social Security Committee, now our Chief Minister –

> *"If the Jersey Social Security Scheme is to maintain its credibility, we must ensure that benefits accrued by those already in the scheme are honoured and, at the same time, introduce changes which will benefit our society in the future."*

Financial and manpower implications

There will be manpower implications of carrying out a review of survivor's benefits, but there should be significant long-term savings, potentially up to £2 million per annum, for the Social Security Fund if a revised scheme is approved.

APPENDIX

SURVIVOR'S OR BEREAVEMENT BENEFITS							
	Total Expenditure 2010 £	**Number of Claimants as at 31/12/10**	**Population**	**Cost per Head of Population £**	**Deceased Spouse Contribution Conditions**	**Time that Benefit Paid**	**Bereavement Payment £**
Jersey	4,389,000 (pensions) 745,472 (allowances) Total: **5,134,472**	847 85	92,500	55.50	Minimum of 10% of years between the age of 18 and age at death	Survivor's allowance – 1 year Survivor's pension – up to pensionable age	n\a but 20% enhancement of benefit in first year = 1,871
Guernsey	Data unavailable (bereavement payment) Data unavailable (widowed parent's allowance & bereavement allowance) Total: **2,056,615**	9 60 207	62,274	33.02	3 years	Bereavement allowance (survivors aged 45-64 inclusive) – 1 year Widowed parent's allowance – until child/children is/are no longer in full-time education or until the age of 19.	Maximum of 1,630
Isle of Man	161,776 (bereavement allowance) 407,024 (widowed parent's allowance) Total: **568,800**	34 61	80,058	7.10	1 year	Age related bereavement – 1 year (survivor aged 45 years or over) Widowed parent's allowance – until the survivor no longer has a dependent child	2,000

Explanatory Note

These Regulations amend the Social Security (Jersey) Law 1974 (the "Law") so as to –

- introduce a new benefit, home carer's allowance, which replaces invalid care allowance;
- make further amendments connected with the introduction of insolvency benefit;
- revise an existing, and create a further, condition of eligibility for adoptive parent grant and create a further condition of eligibility for survivor's pension.

Part 1 – Introductory

Regulation 1 provides for references to Articles and other sub-divisions of a Law to be read as references to the Articles and sub-divisions of the Law.

Part 2 – Home Carer's Allowance

Regulation 2 amends Article 12 of the Law. That Article lists the various benefits payable under the Law. The amendments add home carer's allowance to the list of benefits.

Regulation 3 amends Article 14 of the Law. Article 14 gives effect to Schedule 2, in which contribution conditions for benefits are set out. It also confers a power, by Order, to provide that a person is entitled to a benefit notwithstanding that he or she does not wholly satisfy the contribution conditions for the benefit. The amendment extends the Order-making power to home carer's allowance.

Regulation 4 inserts Article 18A in the Law. Article 18A sets out the circumstances in which a person (the "carer") is entitled to home carer's allowance. The circumstances are as follows:

- The carer must be regularly and substantially engaged in caring for another person (the "cared for person"). Upon commencement of the provisions of these Regulations related to home carer's allowance ("commencement") an Order will contain further provisions as to what it means to be regularly and substantially engaged in caring for another person. Those provisions will include a requirement that the care is provided in Jersey.
- The carer must satisfy any requirement for residency or presence in Jersey that is prescribed by Order. Upon commencement, an Order will prescribe presence, but not residency, conditions for a carer.
- The carer must satisfy the relevant contribution conditions, added to Schedule 2 to the Law by Regulation 10 below.
- The carer's earnings must not exceed the amount prescribed by Order. Upon commencement, an Order will prescribe an amount that is 75% of the lower monthly earnings limit.
- The carer must not receive earnings for providing the care to the cared for person.

- The cared for person must meet the criteria for the income support rate payable in respect of the highest level of the personal care element of the impairment component. It is immaterial whether the cared for person is in receipt of income support.
- The cared for person must satisfy any requirement for residence or presence in Jersey that is prescribed by Order. Upon commencement, an Order will prescribe residence, but not presence, conditions for the cared for person.

Generally, a carer who is over pensionable age is not entitled to home carer's allowance. However, there is an exception for a carer who was entitled to and claimed the allowance before he or she attained pensionable age.

A carer may only receive home carer's allowance in respect of one person at a time.

Only one carer may receive home carer's allowance in respect of the cared for person. If a cared for person has 2 or more carers, an Order will determine which of them receives the home carer's allowance.

Regulation 5 amends Article 26F of the Law. Article 26F is concerned with the component of insolvency benefit that relates to pay in lieu of notice of termination of employment. Under that Article, there would be deducted from the component any amount of invalid care allowance to which a person becomes entitled as a consequence of being made redundant. The amendment substitutes the reference to invalid care allowance with a reference to home carer's allowance.

Regulation 6 amends Article 28 of the Law. Article 28 confers a power to make Orders as to the adjustment of overlapping benefits and pensions. Currently, the Order-making power only permits adjustments in respect of benefits and pensions paid out of public funds in Jersey. Invalid care allowance, which home carer's allowance replaces, is adjusted to take into account of certain state pensions paid outside Jersey. This Regulation, then, amends Article 28 so as to widen the Order-making power in order to allow adjustments to be made in respect of pensions paid out of public funds in other countries or territories.

Regulation 7 amends Article 33 of the Law. Article 33 confers a power to make Orders for the determination of any question connected with a claim for benefit. Currently the Order-making power provides for all appeals against a decision of a determining officer in respect of benefit to be heard by the Social Security Tribunal. In the case of home carer's allowance, there will be 2 issues for determination which are better suited to being heard, on appeal, by the Medical Appeal Tribunal constituted in accordance with Article 15 of the Income Support (General Provisions) (Jersey) Order 2008. The 2 issues are (1) whether or not a carer is regularly and substantially engaged in caring for the cared for person and (2) whether or not a cared for person meets the criteria for the income support rate payable in respect of the personal care element of the impairment component. Article 33 is amended so that appeals relating to either of these issues are heard by the Medical Appeal Tribunal.

Regulation 8 inserts Article 54B in the Law. Article 54B provides for the transition from invalid care allowance to home carer's allowance upon the commencement of this Part of these Regulations.

In a case where a person was entitled to and had claimed invalid care allowance before commencement, that person, and the cared for person are taken to satisfy the conditions for entitlement to home carer's allowance that are described in paragraph (2)(a) to (d) of Article 54B. The condition that the carer is taken to be regularly and substantially engaged in caring for the cared for person is only taken to be satisfied until such time as the case is reviewed following commencement. However, the condition that the carer must satisfy the relevant contribution conditions and any prescribed residence conditions that the carer and cared for person must satisfy are taken to be satisfied indefinitely.

Under Article 18A, inserted by Regulation 4, above, home carer's allowance is only available to a person over pensionable age if the person was entitled to and claimed that allowance before attaining that age. For the purposes of that rule, transitional provision is made to the effect that a person who was entitled to and claimed invalid care allowance before attaining pensionable age is treated as if the person was so entitled to, and claimed, home carer's allowance.

Provision is made by Order under Article 28 of the principal Law for benefits payable under the Law to be offset against each other in the case of a person who is in receipt of more than one benefit. Transitional provision is made to override that rule in the case of a person who, immediately before commencement, receives both invalid care allowance and survivor's benefit. Following commencement, the person will receive home carer's allowance and survivor's benefit in full, without any offset.

Regulation 9 amends Part 1 of Schedule 1 to the Law, in which the rates of benefit are set out. The amendment provides that the weekly rate of home carer's allowance is equal to the standard rate of benefit. The standard rate of benefit itself is determined in accordance with Article 13(2) of the Law. Initially, home carer's allowance will be paid monthly, as was invalid care allowance.

Regulation 10 amends Schedule 2 to the Law so as to add the contribution conditions for home carer's allowance. The conditions are that the carer has paid contributions for at least 6 months in a year at any time in the past, and has either paid or been credited with contributions in the second quarter preceding the quarter in which the carer is first entitled to the home carer's allowance. A married woman who has made an election under Article 3 of the Social Security (Married Women) (Jersey) Order 1974 is taken to have satisfied the contribution conditions.

Regulation 11 repeals the Invalid Care Allowance (Jersey) Law 1978. The Invalid Care Allowance (Jersey) Regulations 1999 and the Invalid Care Allowance (Jersey) Order 2008 will lapse upon the repeal of that Law.

Regulation 11 also amends Article 130 and repeals Article 130A of the Income Tax (Jersey) Law 1961, consequentially upon the withdrawal of invalid care allowance. Article 130A of that Law provided for invalid care allowance to be charged to tax and, for that purpose, treated as earned income. Home carer's allowance will fall within the description of benefits under the Law that are charged to tax by virtue of Article 130(1) of that Law. Article 130 is amended to the effect that home carer's allowance is treated, for all the purposes of the Law, as earned income.

Regulation 11 also amends the Christmas Bonus (Jersey) Law 2011 so as to substitute in it a reference to home carer's allowance for a reference to invalid care allowance. The allowance is a qualifying benefit for the purpose of determining entitlement to a Christmas bonus.

Part 3 – Insolvency Benefit

Regulation 12 amends Article 26D of the Law, which sets out the order in which the various components of insolvency benefit are discounted. Discounting is applied only when the total amount of insolvency benefit would exceed £10,000, and only so far as it is required to reduce the amount to £10,000. The proposed discounting would apply first to any amount owing in lieu of notice, then to any redundancy payment owing, then to any holiday pay for holidays taken or accrued, and finally to any amount of unpaid wages.

Regulation 13 inserts a definition of "wages" for the purposes of Article 26F of the Law, which deals with certain deductions from pay owing in respect of a period of notice. One such deduction applies to wages from employment undertaken during that period, and the term "wages" is given here the same definition as in the Employment (Jersey) Law 2003 (that is, the same meaning as in Article 26C(1) of the Law where that Article specifies unpaid amounts of wages as a component of insolvency benefit). The definition taken from Article 1(1) of the Employment (Jersey) Law 2003 is as follows:

> "wages" means remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by a relevant agreement or by or under an enactment, which are payable by virtue of a contract of employment by an employer to an employee for work done or to be done or for services rendered or to be rendered but does not include pensions contributions paid by the employer or any other ancillary non-monetary benefits.

Regulation 14 inserts paragraphs (1A), (1B) and (2A) into Article 26I of the Law –

(a) to make it clear that if the Minister proceeds to recover from an employer or other party sums that the employer owed to an employee who has been paid insolvency benefit, the amount recovered may include amounts deducted from components of insolvency benefit in the form of social security contributions or tax; and

(b) to make it clear that an employee who proceeds to recover amounts owed by an employer cannot recover in those amounts any amounts of social security contributions or tax, or indeed any amount owed by the employee to the employer.

Part 4 – Adoptive parent grant

Regulation 15 amends Article 23A of the Law which confers entitlement to adoptive parent grant. Currently, there are only 2 conditions for entitlement to the grant. The first condition is that an adoption order has been made. The second condition is that the person adopting the child, and that person's spouse or civil partner (if any), satisfy the relevant contribution conditions.

This second condition is revised so that only one of the persons adopting the child need satisfy the relevant contribution conditions.

A new condition is added, that the person or persons adopting the child are not already connected with it, by virtue of being the child's natural mother or father; the spouse or civil partner of the child's mother at the time of its birth; or the current spouse or civil partner of any of those persons.

Part 5 – Survivor's pension

Regulation 16 substitutes Article 24 of the Law, which confers entitlement to survivor's allowance and survivor's pension. The revised Article 24 adds a new condition for entitlement to survivor's pension and clarifies the operation of the existing rules.

The new condition for entitlement to survivor's pension is that the pension is only payable if, at the end of the year following the death of his or her spouse or civil partner, the surviving spouse or civil partner (the "survivor") has a dependent child – that is, a child living with the survivor and who is below school leaving age, or over that age but under 25 and in full-time education. Survivor's pension will cease to be payable once that child ceases to be dependent upon the survivor.

Currently, the survivor of a deceased spouse or civil partner is entitled to survivor's pension if, at the time of the death, the survivor is under the age of 65 and has not elected to take a reduced old age pension. Although the test for entitlement is applied at the time of the death, survivor's pension only becomes payable at the end of the year following the death. At the end of the year, therefore, the test for eligibility is in effect applied for a second time.

The test for eligibility for survivor's pension is revised so that it is applied only once, at the end of the year following the death. In restating the test, 2 of the existing rules are made clearer. They are that (a) a survivor who marries or forms a civil partnership during the year is not eligible for survivor's pension and (b) a survivor who, at the end of the year, is in a relationship that is like marriage or civil partnership is eligible for survivor's pension, although the pension would only be payable if and when the relationship ended.

Regulation 17 inserts Article 54C in the Law, to make transitional arrangements in respect of the changes to entitlement to survivor's pension. The additional condition that a person will only be entitled to survivor's pension for so long as he or she has a dependent child will not apply to a person who, immediately before this Part comes into force, is in receipt of either survivor's allowance or survivor's pension.

Part 6 – Closing

Regulation 18 provides for the citation of the Regulations and their commencement. The provisions relating to insolvency benefit and adoptive parent grant would come into force on 1st December 2012. The provisions relating to home carer's allowance and survivor's pension would come into force on 1st January 2013.

Jersey

DRAFT SOCIAL SECURITY (AMENDMENT OF LAW No. 4) (JERSEY) REGULATIONS 201-

Arrangement

Regulation

Jersey

DRAFT SOCIAL SECURITY (AMENDMENT OF LAW No. 4) (JERSEY) REGULATIONS 201-

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

THE STATES, in pursuance of Articles 50 and 51 of the Social Security (Jersey) Law 1974[1], have made the following Regulations –

PART 1

INTRODUCTORY

1 Interpretation

In these Regulations, a reference to an Article of or Schedule to a Law, or to any other sub-division of a Law, by number, is a reference to the Article, Schedule or other sub-division of that number in the Social Security (Jersey) Law 1974[2].

PART 2

HOME CARER'S ALLOWANCE

2 Article 12 amended

In Article 12 after paragraph (g) there shall be added the following paragraph –

"(h) home carer's allowance.".

3 Article 14 amended

In Article 14(2) –

(a) after the words "incapacity benefit," there shall be inserted the words "home carer's allowance,";

(b) after the words "3(1)(b)," there shall be inserted the words "3A(1)(b),".

4 Article 18A inserted

After Article 18 there shall be inserted the following Article –

"18A Home carer's allowance

(1) Subject to the provisions of this Law, a person (the 'carer') shall be entitled to a home carer's allowance for any day on which –

(a) he or she is regularly and substantially engaged in caring for another person (the 'cared for person'); and

(b) the conditions in paragraphs (2) and (3) are satisfied.

(2) The carer must –

(a) satisfy such conditions as to residency and presence in Jersey as may be prescribed;

(b) satisfy the relevant contribution conditions;

(c) not have earnings, for any prescribed period, that exceed such amount as may be prescribed; and

(d) not receive earnings for the provision of such care to the cared for person.

(3) The cared for person must –

(a) meet the criteria for the rate payable in respect of the personal care element of the impairment component under paragraph 6(3)(c) of Schedule 1 to the Income Support (Jersey) Regulations 2007[3]; and

(b) satisfy such conditions as to residency and presence in Jersey as may be prescribed.

(4) A carer who has attained pensionable age shall not be entitled to a home carer's allowance in respect of a cared for person unless the carer –

(a) was entitled to such allowance in respect of the cared for person (or is treated by Order as having been so entitled) immediately before attaining that age; and

(b) claimed such allowance before attaining that age.

(5) A carer shall not be entitled for the same day to more than one home carer's allowance.

(6) Where, apart from this paragraph, 2 or more carers would be entitled for the same day to home carer's allowance in respect of the same cared for person, one of them only shall be entitled as determined in the prescribed manner.

(7) The Minister –

(a) shall prescribe, for the purposes of paragraph (1)(a), the circumstances in which a carer is to be treated as regularly and substantially engaged in caring for a cared for person; and

(b) may prescribe earnings that are to be disregarded for the purposes of paragraph (2)(c) or (d).".

5 Article 26F amended

In Article 26F(1)(d) for the words "invalid care allowance under the Invalid Care Allowance (Jersey) Law 1978" there shall be substituted the words "home carer's allowance, as referred to in Article 18A,".

6 Article 28 amended

In Article 28(1)(a) –

(a) before clause (i) there shall be inserted the following clause –

"(ai) any pension payable out of the public funds of Jersey or the public funds of any other country or territory is payable to or in respect of that person or that person's wife, husband or civil partner,";

(b) in clause (i) the words "pension or" shall be deleted.

7 Article 33 amended

In Article 33 –

(a) in paragraphs (3), (4) and (7), for the words "Social Security Tribunal", in each place that they appear, there shall be substituted the word "Tribunal";

(b) after paragraph (8) there shall be added the following paragraph –

"(9) In this Article, 'Tribunal' means –

(a) in the case of any appeal from any determination of a determining officer as to whether, for the purposes of Article 18A(1)(a), a carer is regularly and substantially engaged in caring for a cared for person or whether a cared for person meets the criteria described in Article 18A(3)(a) – the Medical Appeal Tribunal constituted under Article 9(2)(a) of the Income Support (Jersey) Law 2007[4]; and

(b) in the case of any other appeal from any determination of a determining officer – the Social Security Tribunal constituted under Article 33A.".

8 Article 54B inserted

After Article 54A there shall be inserted the following Article –

"54B Transitional arrangements: replacement of invalid care allowance by home carer's allowance

(1) This paragraph applies where –

(a) immediately before commencement, a person (the 'first person') was, under the 1978 Law, entitled to invalid care allowance in respect of the care of a severely disabled person (the ‘second person’); and

(b) the first person had claimed such allowance before commencement.

(2) In a case to which paragraph (1) applies, upon commencement –

(a) the first person shall, for the purposes of Article 18A(1)(a), be taken to be regularly and substantially engaged in caring for the second person;

(b) the first person shall be taken to satisfy any residency requirement prescribed under Article 18A(2)(a);

(c) the first person shall be taken to satisfy the requirement in Article 18A(2)(b);

(d) the second person shall be taken to satisfy any residency requirement prescribed under Article 18A(3)(b).

(3) Paragraph (2)(a) shall cease to have effect upon the completion of the first review carried out, following commencement, in the prescribed circumstances, of the first person’s entitlement to home carer’s allowance.

(4) The references in Article 18A(4)(a) and (b) to a person having been entitled to and claimed home carer’s allowance include references to a person having been entitled to and claimed invalid care allowance.

(5) Notwithstanding the provisions of any Order made under Article 28, where a person was, immediately before commencement, in receipt of invalid care allowance and survivor’s benefit, an adjustment shall not be made, in the person’s case, between home carer’s allowance and survivor’s benefit.

(6) In this Article –

‘1978 Law’ means the Invalid Care Allowance (Jersey) Law 1978[5];

‘commencement’ means the day Part 2 of the Social Security (Amendment of Law No. 4) (Jersey) Regulations 201-[6] came into force;

‘invalid care allowance’ means the allowance that, before commencement, was payable under the 1978 Law.”.

9 Schedule 1 amended

In Part 1 of Schedule 1 after paragraph 2 there shall be inserted the following paragraph –

“2A. Home carer’s allowance Standard rate of benefit.”.

10 Schedule 2 amended

In Schedule 2, after paragraph 3 there shall be inserted the following paragraph –

"3A Home carer's allowance

(1) The contribution conditions for home carer's allowance are that –

(a) the claimant has paid contributions prior to the end of the relevant quarter and the annual contribution factor derived from those contributions is not less than 0.5; and

(b) the claimant has either paid or been credited with contributions in respect of the relevant quarter and the quarterly contribution factor derived from those contributions is 1.00.

(2) A married woman who has made an election under Article 3 of the Social Security (Married Women) (Jersey) Order 1974[7] and whose election has not been cancelled shall be taken to satisfy the contribution conditions in sub-paragraph (1).

(3) In this paragraph the expression 'relevant quarter' means the previous quarter but one before the quarter in which entitlement to home carer's allowance first arises.".

11 Repeals and amendments

(1) In the proviso to Article 130(1) of the Income Tax (Jersey) Law 1961[8] for the word "insurance," there shall be substituted the words "insurance or home carer's allowance payable to a wife,".

(2) Article 130A of the Income Tax (Jersey) Law 1961 is repealed.

(3) The Invalid Care Allowance (Jersey) Law 1978[9] is repealed.

(4) In Schedule 1 to the Christmas Bonus (Jersey) Law 2011[10] for sub-paragraph (h) there shall be substituted the following sub-paragraph –

"(h) a home carer's allowance under that Law.".

PART 3

INSOLVENCY BENEFIT

12 Article 26D amended

For Article 26D(3)(a) to (d) there shall be substituted the following sub-paragraphs –

"(a) first to the amount of the component referred to in Article 26C(2)(a);

(b) then to the amount of the component referred to in Article 26C(2)(b);

(c) then to the total of the amounts of the components referred to in Article 26C(2)(c) and (d);

(d) then to the amount of the component referred to in Article 26C(1),".

13 Article 26F amended

After Article 26F(2) there shall be added the following paragraph –

"(3) In this Article, 'wages' has the same meaning as in the Employment (Jersey) Law 2003[11].".

14 Article 26I amended

In Article 26I –

(a) after paragraph (1) there shall be inserted the following paragraphs –

"(1A) In relation to any insolvency benefit paid to a person, the Minister shall also be entitled to recover the amount of any deduction of value made under Article 26G(1) or (2).

(1B) The Minister may recover that amount from a party from whom the Minister is entitled, pursuant to the subrogation referred to in paragraph (1), to recover part or all of the amount of the component from which the value was so deducted.";

(b) after paragraph (2) there shall be inserted the following paragraph –

"(2A) Nothing in paragraph (2) shall entitle the person to recover an amount corresponding to any value deducted under Article 26G(1) or (2) or to recover any amount deducted under Article 26G(3).".

PART 4

ADOPTIVE PARENT GRANT

15 Article 23A amended

In Article 23A –

(a) for paragraph (1) there shall be substituted the following paragraph –

"(1) Subject to the provisions of this Law, a person shall be entitled to an adoptive parent grant if –

(a) an adoption order is made authorizing the person to adopt a child;

(b) the person or his or her spouse or civil partner (if any) satisfies the relevant contribution conditions; and

(c) the person or persons authorized to adopt the child is not, or are not, connected with the child.";

(b) after paragraph (1) there shall be inserted the following paragraph –

"(1A) For the purposes of paragraph (1)(c), a person is connected with the child if –

(a) the person is the natural mother or father of the child;

(b) at the time of the child's birth, the person was the spouse or civil partner of the child's natural mother; or

(c) at the time the adoption order is made, the person is the spouse or civil partner of a person described in sub-paragraph (a) or (b).”.

PART 5

SURVIVOR’S PENSION

16 Article 24 amended

For Article 24 there shall be substituted the following Article –

“24 Survivor’s benefit

(1) Subject to the provisions of this Law, where a person who dies (the ‘deceased’) is, at the time of his or her death, married or a civil partner, the spouse or civil partner who survives him or her (the ‘survivor’) shall be entitled to survivor’s benefit if the deceased satisfied the relevant contribution conditions, and –

(a) in the case of survivor’s allowance, at the time of the death of the deceased, either the deceased or the survivor was not entitled to an old age pension, or was under pensionable age; or

(b) in the case of survivor’s pension, at the expiry of 52 weeks following the death of the deceased, the survivor –

(i) has not, since the death of the deceased, married or formed a civil partnership,

(ii) is under pensionable age,

(iii) is not entitled to a reduced old age pension under Article 25(1A), and

(iv) has a dependent child.

(2) Subject to paragraphs (4) and (6), survivor’s allowance shall be payable to a survivor for the 52 weeks following the death of the deceased.

(3) Subject to paragraphs (4), (5) and (6), survivor’s pension shall be payable to a survivor from the expiry of 52 weeks following the death of the deceased until the survivor becomes entitled to a reduced old age pension under Article 25(1A) or attains pensionable age.

(4) A survivor shall cease to be entitled to survivor’s benefit if he or she marries or forms a civil partnership.

(5) A survivor shall cease to be entitled to survivor’s pension when every child who was a dependent child at the time described in paragraph (1)(b) has ceased to be a dependent child.

(6) Survivor's benefit shall not be payable to a survivor in respect of any period when the survivor is in a relationship with another person that is like marriage or civil partnership.

(7) For the purposes of this Article, 'dependent child' means a child who is –

(a) the natural or adopted child of the deceased or the survivor;

(b) under the age of 25; and

(c) living with the survivor as part of his or her household.".

17 Article 54C inserted

After Article 54B there shall be inserted the following Article –

"54C Transitional arrangements: survivor's benefit

(1) Article 24(1)(b)(iv) and (5) shall not apply in the case of a person who, immediately before commencement, was entitled to survivor's benefit.

(2) In this Article, 'commencement' means the day Part 5 of the Social Security (Amendment of Law No. 4) (Jersey) Regulations 201-[12] came into force.".

PART 6

CLOSING

18 Citation and commencement

(1) These Regulations may be cited as the Social Security (Amendment of Law No. 4) (Jersey) Regulations 201-.

(2) Parts 1, 3, 4 and this Part shall come into force on 1st December 2012.

(3) Parts 2 and 5 shall come into force on 1st January 2013.

[1] *chapter 26.900*
[2] *chapter 26.900*
[3] *chapter 26.550.30*
[4] *chapter 26.550*
[5] *chapter 26.600*
[6] *P.101/2012*
[7] *chapter 26.900.44*
[8] *chapter 24.750*
[9] *chapter 26.600*
[10] *chapter 26.200*
[11] *chapter 05.255*
[12] *P.101/2012*