

# STATES OF JERSEY



## DRAFT INCOME SUPPORT (AMENDMENT) (JERSEY) LAW 201-

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

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STATES GREFFE





Jersey

## **DRAFT INCOME SUPPORT (AMENDMENT) (JERSEY) LAW 201-**

### **European Convention on Human Rights**

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000, the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security, the provisions of the Draft Income Support (Amendment) (Jersey) Law 201- are compatible with the Convention Rights.

Signed: **Deputy S.J. Pinel of St. Clement**

*Minister for Social Security*

Dated: 6th May 2015

## REPORT

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### 1. Executive summary

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

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

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

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

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

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

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

### 2. Summary of Income Support proposals for parents

The Income Support (Jersey) Law 2007 (the “Income Support Law”) was introduced in 2008. All adults receiving Income Support must be in work, be actively seeking work, or be exempt from the work requirement. A complete exemption was provided in respect of the parent of a child aged under 5. The parent could still choose to work if they wanted to, but they also had the option to stay at home with the child until its 5th birthday. From the age of 5 onwards, the parent was no longer exempt from the work requirement, but in most cases they would only be expected to work for part-time hours, normally up to 25 hours per week.

The Income Support system provides an allowance against earned income so that a parent receiving Income Support with a job always has a higher total income than a similar parent without a job. An allowance is also made for the cost of child care, so that the parent does not need to find the child care fees from their earnings.

In 2008, a child would start school at the age of 4, having its 5th birthday in the first school year. An Income Support parent with a child born in September would begin job-seeking almost as soon as the child started school, whereas a similar parent with a child born in August would not be required to start to job-seeking until the child had finished its first year of schooling.

In 2009, the ESC introduced a new scheme, offering a free term-time nursery place for every child in the year before formal schooling starts. Parents of children aged 3 each September can now choose to take up a term-time place in a nursery, funded by ESC. During the year, the child will learn valuable social skills and be well prepared for “proper” school.

Until now, it has not been possible to adjust the Income Support scheme in line with this additional nursery provision. The emphasis of the “Back To Work” teams has been on dealing with the historically high levels of unemployment, providing a service to a wide range of job-seekers, including people who have been made redundant and youngsters looking for their first job.

However, the improving economic climate and the success of the “Back To Work” initiatives have now led to capacity with the Department to extend services to a wider group of clients. This is in line with the States’ strategic aim to support individuals into employment, and the Social Security business plan for 2015 identifies parents and people with long-term health conditions as 2 target groups for additional BTW support. A change made earlier this year to widen job-seeking requirements to about 100 adults with long-term health conditions has had a positive impact on this group, with some individuals already successfully in employment. A pilot project has also been working with parents on a voluntary basis providing an 8 week programme designed to boost confidence, improve job-seeking skills and explore child care options.

If approved, these changes to Income Support legislation will affect approximately 100 Income Support parents who do not currently work and whose children will start nursery in September this year. Taking up the offer of a place at nursery provides the child with essential social skills in the year before education starts in earnest. As the child settles into the new routine of attending nursery, the parent will receive support from specialist “Back To Work” advisers to pick up their connection with the workplace, refreshing existing skills and learning new ones. The child not only benefits from the experience of nursery education, he or she also has a better chance of growing up in a household where parents are working and aiming for financial independence. In most cases, the parent will be expected to look for and take up part-time work, for up to 25 hours per week.

In parallel with the change to job-seeking requirements, the value of support available for child care costs will be increased and a wider range of child care facilities will be accepted for Income Support purposes. In particular, the Department is keen to work with ESC to identify breakfast clubs and after-school clubs that can be included under the Income Support rules. A further change will allow more flexibility in sharing job-seeking requirements across both parents of a young child.

As with all other job-seekers receiving Income Support, the parent will be required to engage with a “Back To Work” adviser and take appropriate steps to move towards and take up suitable employment. If a parent fails to take adequate steps, they will be subject to the standard range of job-seeker sanctions.

These proposals fully support other States policies –

- A key theme of the States of Jersey Strategic Plan is to promote social inclusion and tackle relative low income. The strategy notes that “our focus on economic growth is intended to help create more good jobs and opportunities for Islanders, remove barriers to employment and increase participation”.
- Migration policy – maximising the potential for local people to take up job opportunities is a crucial aspect of helping to control inward migration. With the right support, these parents can become an invaluable part of the local workforce and reduce the need for extra immigrants.
- 1,001 days – the recent States strategic debate endorsed support for the 1,001 days initiative, confirming the importance of providing the right start for each local child. In the first 2 years of its life, and up to the time at which their child starts nursery education, the parent receiving Income Support can choose to remain at home with their child without any requirement to undertake job-seeking activities. Only once the child is older, and has the opportunity to begin nursery, will the parent be expected to start job-seeking activities. By this age, the child will benefit from spending time in a good quality nursery environment, socialising with their peers, whilst their parents maintain contact with the world of work.
- Family-friendly employment rights – a range of changes to the Employment (Jersey) Law 2003 will be implemented with effect from September 2015. In addition to the introduction of periods of statutory maternity, parental and adoption leave, parents with caring responsibilities will have the right to request flexible working and, subject to States’ approval in June ([P.41/2015](#)), employees working part-time for less than 8 hours a week will have the same employment rights as other employees.

These proposals also improve the operation of Income Support –

- They support the overall aim of Income Support, as there is substantial evidence to suggest that consistent help and encouragement in finding employment is effective in lifting families out of low income.
- All Income Support parents will be treated fairly – under the current legislation, some parents do not start their job-seeking activities until almost a year after their child has started school.
- The Income Support scheme will be aligned with the nursery education now available through the ESC scheme – the parent will start their job-seeking activities at the same time as the child starts nursery. The parent will have had a shorter gap away from the workplace, and it will be easier to refresh skills and learn new skills.
- Jersey is a community where many parents successfully balance family life with part- or full-time employment, and these proposals support a similar pattern amongst low-income households.

### **3. Structure of legal changes**

In parallel with this proposed amendment, the Minister is also lodging the related Draft Income Support (Amendment of Law No. 2) (Jersey) Regulations 201- (P.51/2015), and the Draft Income Support (Amendment No. 13) (Jersey) Regulations 201- (P.52/2015). All 3 items are described in brief below in order to provide an overview of the overall change.

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

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

This proposition includes a new power that would allow the Minister, by Order, to approve a far broader range of child care options in future. If approved, the Department will be able to collaborate with other States departments, the charity sector and child care providers themselves to widen the options available to low-income parents.

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

These 2 changes are included in this draft Law. Further details and a summary of the other administrative changes included in this draft Law are described below in sections 4 to 6.

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

Separately, the Draft Income Support (Amendment of Law No. 2) (Jersey) Regulations 201- adjust the point at which a parent responsible for the care of a young child is required to be a person actively seeking work, by shifting that point from the child's 5th birthday, as it is now, to the date of 1st September (i.e. the start of the school year) before the child begins full-time education. This is the same point at which the child becomes eligible for assistance through the States-run Nursery Education Fund. The 'actively seeking work' activities will be realistic and proportional, and will recognise that some parents will need extra help before paid employment is a realistic outcome; but will not be optional. This change is likely to affect about 100 parents in the first year.

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

Finally, the Draft Income Support (Amendment No. 13) (Jersey) Regulations 201- seek to increase the standard hourly rate at which child day care is paid through Income Support.

**4. Extending the scope for help with child care**

These proposals will give the Minister the power to create future Orders defining what kinds of child day care can be funded by Income Support, and to establish or approve a scheme for the accreditation of providers of day care and accommodation.

The current definition of "day care" is restricted solely to providers registered under the Day Care of Children (Jersey) Law 2002, as maintained by the Minister for Education, Sport and Culture, or the alternative of a nanny accredited by the Jersey

Child Care Trust. Although these 2 definitions cover a wide range of good-quality care provided in the Island, the market for child care has now developed in such a way that many parents outside Income Support can opt for care provided by after-school and breakfast clubs. These care providers may be more convenient for parents, as they are often located in or close to schools, but are not always required to be registered under the Day Care of Children (Jersey) Law 2002. As it stands, parents using clubs not registered under that Law are therefore ineligible for help from the Income Support child care component.

Working parents receiving help from Income Support might in the future be better served by the option of choosing a different kind of child care provider, and so the aim of the proposed power is to allow the Minister to approve schemes for the accreditation of providers of child day care. Any work in this area will be developed with colleagues in Education, Sport and Culture, the Jersey Child Care Trust, and the child care providers themselves.

## **5. Allowing shared care arrangements between people responsible for the care of a very young child**

The proposed amendments also introduce a new provision that allows for parents to split the care of a young child aged 3 or below between themselves in situations where one parent is currently expected to work full-time. It will cover situations where both adults would prefer to work (or look for work) part-time, instead of one adult being made completely exempt from the requirement to look for work, whilst the other is expected to look only for full-time employment. For example, rather than just one parent being expected to work or look for work for 35 hours a week, both parents could find an arrangement where they work 20 hours each.

This concept of a ‘shared care’ arrangement is being proposed following requests from parents, and is supported by the Minister as it allows for parents to structure their child care responsibilities in such a way that both parents can keep in touch with the world of work. Such arrangements could enable greater numbers of parents to remain economically active whilst collaborating on child care, a situation which can only be of benefit to young children.

## **6. Miscellaneous administration changes**

Various changes are also made to improve the day-to-day administration of Income Support.

### **6.1 Expansion of Regulation-making power**

Article 3 expands the existing Regulation-making power specifically found in Article 3(3)(a) of the principal Law. This is the part of the Law that determines which people are eligible to receive Income Support despite not being engaged in full-time work. At present, the power only permits the States to amend paragraph (1) of Article 3 of the principal Law by Regulations, which has necessitated the relatively limited changes outlined in this report to be referred to the UK’s Privy Council for approval. If the changes are approved, the power is extended so as to allow the States to amend the whole of Article 3 of the principal Law, apart from the Regulation-making power itself. Future variations of this area could then be achieved without the need to amend primary legislation, although it is important to note that Regulations must still be lodged “au Greffe” and go to the States Assembly for approval.



## **6.2 Circumstances in which payments of Income Support may be suspended or withheld**

Article 4 amends Article 4 of the principal Law to expand the existing Order-making power to enable the Minister to prescribe circumstances in which payments of Income Support may be suspended or withheld; Article 5 does the same thing in relation to special payments. The purpose of these related changes is to create the power for the Minister to specify circumstances where payments should be suspended or withheld. This power is expected to be used for limited administration reasons, typically to prevent households being overpaid benefit which they are later required to pay back.

## **6.3 Reference of questions of law to the Royal Court**

Article 6 amends Article 9 of the principal Law to expand the existing Order-making power to provide for reviews of and appeals against determination of claims. In layman's terms, this amendment would allow the Minister to make an Order specifying when and why questions of law can be referred to the Royal Court for a ruling. This power is relatively minor, but will prove of great benefit in situations where the Department requires legal clarity, but perhaps more importantly where customers appealing against a decision by the Department require legal clarification before their appeal can be properly heard.

## **7. Financial and manpower implications**

There are no financial or manpower implications for the States arising directly from these changes. The impact of the overall changes to support for working parents is expected to be approximately cost-neutral, with additional child care costs balanced by additional income from employment. The Department already has the necessary staff required to deal with a greater number of parents requiring assistance with returning to the workforce.

## **8. Human Rights**

The notes on the human rights aspects of the draft Law in the Appendix have been prepared by the Law Officers' Department and are included for the information of States Members. They are not, and should not be taken as, legal advice.

## APPENDIX TO REPORT

### **Human Rights Note on the Draft Income Support (Amendment) (Jersey) Law 201-**

This Note has been prepared in respect of the Draft Income Support (Amendment) (Jersey) Law 201- (“the draft Law”) by the Law Officers’ Department. It summarises the principal human rights issues arising from the contents of the draft Law and explains why, in the Law Officers’ opinion, the draft Law is compatible with the European Convention on Human Rights (“ECHR”).

Article 3 of the draft Law may affect a person’s entitlement to receipt of benefits provided under the Income Support (Jersey) Law 2007 (“the 2007 Law”).

Article 3(2)(a)(i) of the 2007 Law currently provides that not more than one person may be treated as having the main caring responsibility for a child for the purposes of the exemption from the requirement to be in full-time remunerated work in order to claim income support. Article 3 of the draft Law removes that restriction, but also extends a caveat so that if more than one person is treated as having the main responsibility for a child, then those persons must be engaged in, or actively seeking, remunerative work for the hours (if any) that the determining officer deems appropriate.

As the effect of the draft Law is to extend entitlement to income support in some cases, albeit subject to a caveat, there is no realistic argument that the draft Law’s effect infringes relevant provisions of the ECHR, such as Articles 3 or 8 of, or Article 1 of the first Protocol to, the ECHR.

Orders made by the Minister under Articles 4 and 5 of the draft Law may allow a person’s benefits to be suspended or withheld in certain circumstances. Articles 4 and 5 do not conflict with any ECHR provisions, as they merely provide additional Order-making powers, which does not in and of itself have any direct impact on entitlement to benefits. Although the manner in which the Minister may exercise such powers has the potential to engage the ECHR, the Minister is obliged to act compatibly with the ECHR if she wishes to make any Order under the amended provisions.

Consequently, it is considered that the draft Law is compatible with the ECHR.

## Explanatory Note

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This Law amends the Income Support (Jersey) Law 2007 (the “principal Law”).

*Article 1* defines the principal Law.

*Article 2* amends Article 1 of the principal Law so as to empower the Minister for Social Security (the “Minister”) to amend the definition “day care” by Order and, in so doing, establish or approve a scheme for the accreditation of providers of day care and accommodation. This would enable the Minister to arrange for a wider description of providers to be recognized for the purposes of the principal Law, subject to being satisfied that they are suitably qualified. Currently, the definition “day care” is confined to registration under the Day Care of Children (Jersey) Law 2002, by the Minister for Education, Sport and Culture. The payment of the day care component depends upon the day care that is provided being day care as defined or taking the form of employing a nanny accredited by the Jersey Child Care Trust.

*Article 3* amends Article 3 of the principal Law. Article 3 exempts certain classes of persons from the requirement to be in full time remunerative work in order to be eligible for income support. In particular, these currently include the following exemptions –

- (a) one person in a household will be exempt if the person has main responsibility for the physical care of a child under the age of 5 who is in the same household (Article 3(1)(b) of the principal Law);
- (b) one person in a household will be exempt if the person has main responsibility for the physical care of a child aged 5 or over who is in the same household, provided the person is engaged in or actively seeking work for such hours (if any) as a determining officer considers appropriate in the person’s circumstances (Article 3(1)(c) of the principal Law).

The amendment has the effect that more than one person in a household may be exempt by reason that they have the physical care of a child, whether under 5 or aged 5 or more, provided that each of them is engaged in or actively seeking work for such hours (if any) as a determining officer considers appropriate in the person’s circumstances.

The opportunity is also taken, in *Article 3*, to expand the existing Regulation-making power in Article 3(3)(a) of the principal Law. Currently, the power only permits the States to amend paragraph (1) of Article 3 of the principal Law by Regulations. The power is extended so as to allow the States to amend the whole of Article 3 of the principal Law, apart from the Regulation-making power itself.

*Article 4* amends Article 4 of the principal Law. The amendment expands the existing Order-making power so as to enable the Minister to prescribe circumstances in which payments of income support may be suspended or withheld.

*Article 5* makes the same amendment as *Article 4*, but in relation to special payments.

*Article 6* amends Article 9 of the principal Law. The amendment expands the existing Order-making power to provide for reviews of and appeals against determination of claims. The amendment would empower the Minister to make

an Order providing for questions of law to be referred to the Royal Court for a ruling.

*Article 7* provides for the commencement of the Law.



Jersey

## **DRAFT INCOME SUPPORT (AMENDMENT) (JERSEY) LAW 201-**

### **Arrangement**

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#### **Article**

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Jersey

## **DRAFT INCOME SUPPORT (AMENDMENT) (JERSEY) LAW 201-**

**A LAW** to amend further the Income Support (Jersey) Law 2007

*Adopted by the States* [date to be inserted]

*Sanctioned by Order of Her Majesty in Council* [date to be inserted]

*Registered by the Royal Court* [date to be inserted]

**THE STATES**, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

### **1 Interpretation**

In this Law “principal Law” means the Income Support (Jersey) Law 2007<sup>1</sup>.

### **2 Article 1 amended**

In Article 1 of the principal Law –

- (a) the paragraph number “(1)” shall be inserted at the beginning;
- (b) after paragraph (1) there shall be added the following paragraphs –
  - “(2) The Minister may, by Order, amend the definition ‘day care’ in paragraph (1).
  - (3) An Order made under paragraph (2) may, for the purposes of the definition, establish or approve a scheme for the accreditation, whether by the Minister or by a person designated by the Minister, of either or both of –
    - (a) a person as a provider of day care;
    - (b) premises as a place at which day care is provided.”.

### **3 Article 3 amended**

In Article 3 of the principal Law –

- (a) for paragraph (2)(a) there shall be substituted the following sub-paragraphs –

- “(a) not more than one person may be treated as having the main responsibility for the physical care of a person mentioned in paragraph (1)(f);
  - (aa) where more than one person is treated as having the main responsibility for the physical care of a child mentioned in paragraph (1)(b) or (c), those persons are only eligible for income support if they both comply with paragraph (2A);”;
- (b) in paragraph (2)(b) for the words beginning “if they are engaged in” to the end of the sub-paragraph there shall be substituted the words “if they comply with paragraph (2A)”;
- (c) after paragraph (2) there shall be inserted the following paragraph –
  - “(2A) The persons must be engaged in, or available for and actively seeking, remunerative work for such hours (if any) as the determining officer considers appropriate to their particular circumstances.”;
- (d) for paragraph (3)(a) there shall be substituted the following sub-paragraph –
  - “(a) amend this Article (apart from this paragraph); and”.

#### **4 Article 4 amended**

After Article 4(3)(e) of the principal Law there shall be inserted the following sub-paragraph –

- “(ea) the circumstances in which payments may be suspended or withheld;”.

#### **5 Article 8 amended**

After Article 8(6)(b) there shall be inserted the following sub-paragraph –

- “(ba) circumstances in which special payments may be suspended or withheld;”.

#### **6 Article 9 amended**

After Article 9(3) of the principal Law there shall be added the following paragraph –

- “(4) Orders under paragraph (1) may further provide for any question of law arising in connection with the determination of a claim by a determining officer or a review or appeal before a Tribunal to be referred to the Royal Court for a ruling on the question.”.

#### **7 Citation and commencement**

This Law may be cited as the Income Support (Amendment) (Jersey) Law 201- and shall come into force 7 days after it is registered.



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<sup>1</sup> *chapter 26.550*