



Jersey

## INCOME SUPPORT (TRANSITIONAL PROVISIONS) (JERSEY) ORDER 2008

### Arrangement

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## INCOME SUPPORT (TRANSITIONAL PROVISIONS) (JERSEY) ORDER 2008

*Made* 21st January 2008

*Coming into force* 28th January 2008

**THE MINISTER FOR SOCIAL SECURITY**, in pursuance of Articles 18 and 19 of the Income Support (Jersey) Law 2007<sup>1</sup>, orders as follows –

### 1 Interpretation

In this Order, unless the context otherwise requires –

“ADIS” has the meaning assigned by Article 4(2);

“appointed day” means 28th January 2008;

“attendance allowance” means an allowance payable under the Attendance Allowances (Jersey) Law 1973<sup>2</sup>;

“childcare allowance” means the non-statutory benefit paid on behalf of the Minister towards the cost of childcare for children aged under 5 years;

“disability transport allowance” means the allowance payable under the Disability Transport Allowance (Jersey) Law 1997<sup>3</sup>;

“disabled adult’s allowance” and “disabled child’s allowance” mean the allowances payable under Article 3 and Article 4 respectively of the Invalid Care and Disability Allowances (Jersey) Law 1978<sup>4</sup>;

“General Provisions Order” means the Income Support (General Provisions) (Jersey) Order 2008<sup>5</sup>;

“HIE” means –

- (a) medical benefit payable under Regulation 3 of the Health Insurance (Medical Benefit) (Jersey) Regulations 2005<sup>6</sup>; and
- (b) pharmaceutical benefit within the meaning of Article 15 of the Health Insurance (Jersey) Law 1967<sup>7</sup> for which the person is not required to pay a subscription charge in accordance with Article 7(7) of the Health Insurance (Pharmaceutical Benefit) (General Provisions) (No. 2) (Jersey) Order 2002<sup>8</sup>;

“Law” means the Income Support (Jersey) Law 2007;

“protected payment” shall be construed in accordance with Article 3;

“replaced benefit” means any benefit or allowance, whether or not payable under any enactment, that ceases to be payable on the appointed day except –

- (a) HIE; and
- (b) unless on the appointed day a member of the household is eligible for income support under Article 2(1)(b) of the Law, childcare allowance and any payment under the school age discount scheme;

“residential care” means services provided at an institution consisting of –

- (a) board and lodging; and
- (b) assistance with activities that are part of normal daily living (such as bathing, dressing, grooming, eating, medication management, money management and recreation);

“school age discount scheme” means the non-statutory scheme administered by the Jersey Child Care Trust on behalf of the Minister that, immediately before the appointed day, provided discounts for out of school care of children aged over 5 and under 12 years;

“top-up sum” shall be construed in accordance with Article 4(2).

## **2 Claims made and determined before the appointed day**

- (1) This Article applies to any household a member of which, immediately before the appointed day, was eligible for, and had claimed, any benefit or allowance, whether or not payable under any enactment, that ceases to be payable on the appointed day.
- (2) Any application or information furnished by or on behalf of a member of a household to which this Article applies in pursuance of a claim for income support before the appointed day shall be treated as a valid claim for income support under Article 6 of the General Provisions Order made on the appointed day.
- (3) Any purported determination of a claim mentioned in paragraph (2) made before the appointed day shall be treated as a determination under Article 12 of the General Provisions Order made on the appointed day.

## **3 Eligibility for protected payment**

- (1) A household is eligible for a payment under this Article (known as a “protected payment”) if –
  - (a) a member of that household, immediately before the appointed day, was eligible for, and had claimed, a replaced benefit;
  - (b) the total payable to the household in respect of replaced benefits was at least £2 a week;
  - (c) a member of the household has made a claim for income support; and

- (d) the household is entitled to such payment under Article 4.
- (2) A claim may be made for income support under this Article for the purpose of claiming a protected payment even though the person or household in question is not eligible for income support.
- (3) A protected payment is payable in addition to the amount of income support (if any) that a household is entitled to receive.
- (4) A claim for a protected payment must be made within one month of the appointed day unless the determining officer considers there is sufficient reason for the claim to be made after that date.

#### **4 Calculation of protected payment**

- (1) A protected payment is payable if the household is entitled to a top-up sum.
- (2) A top-up sum (also referred to in this Order as a “TUS”) is calculated by means of the formula –

$$RB - ADIS$$

where –

RB is the weekly amount of replaced benefits to which the household was entitled immediately before the appointed day; and

ADIS is the amount of income support (if any) to which the household was entitled on the appointed day.

- (3) A protected payment is calculated by means of the formula –

$$(CTUS + ADIS) - CIS$$

where –

CTUS is the amount of TUS remaining after any reduction that may be required from time to time by Article 5; and

CIS is the current amount of income support to which the household is entitled.

- (4) Where the calculation in paragraph (3) results in a nil or negative amount, there shall be no further entitlement to a protected payment.

#### **5 Change in entitlement to a protected payment**

- (1) Where –
- (a) a household is entitled to a protected payment; and
- (b) the circumstances of the household change so that any replaced benefit, if it had not ceased to be payable on the appointed day, would nevertheless because of that change of circumstances cease to be payable,

the top-up sum shall be recalculated by means of the formula –

$$RRB - RADIS$$

where –

RRB is the weekly amount of replaced benefits to which the household would have been entitled immediately before the appointed day had the circumstances giving rise to the recalculation existed on the appointed day;

RADIS is the amount of income support (if any) to which the household would have been entitled on the appointed day had the circumstances giving rise to the recalculation existed on the appointed day.

- (2) No protected payment is payable after 30th September 2012.

## **6 Reduction and phasing out of top-up sum**

- (1) This paragraph applies where the calculated income of a household on the appointed day is more than 3 times the total amount payable in respect of all the components of income support to which the household is entitled under Article 5 of the Law.
- (2) Where paragraph (1) applies, the top-up sum is reduced to nil on and after 1st October 2008.
- (3) This paragraph applies where –
- (a) paragraph (1) does not apply; and
  - (b)  $TUS > (CIH + ADIS) \times 25\%$

where –

CIH is the calculated income of the household on the appointed day.

- (4) Where paragraph (3) applies, the amount of a top-up sum to which a household is entitled each week during a period specified in column 1 of the table in the Schedule is the percentage of that TUS specified in column 2 in the same row of the table.
- (5) This paragraph applies where –
- (a) neither paragraph (1) nor paragraph (3) applies; and
  - (b) a member of a household –
    - (i) is aged 65 or over on the appointed day, or
    - (ii) was eligible for attendance allowance, disabled adult's allowance, disabled child's allowance or disability transport allowance immediately before the appointed day and had claimed any such allowance.
- (6) Where paragraph (5) applies, the amount of a top-up sum to which a household is entitled each week during a period specified in column 1 of the table in the Schedule, is the percentage of that TUS specified in column 3 in the same row of the table.
- (7) This paragraph applies where none of paragraphs (1), (3) and (5) applies.
- (8) Where paragraph (7) applies, the amount of a top-up sum to which a household is entitled each week during a period specified in column 1 of the table in the Schedule is the percentage of that TUS specified in column 4 in the same row of the table.

**7 Households receiving residential care**

- (1) Where any part of a top-up sum relates to a household consisting entirely of persons receiving residential care, the top-up sum is not subject to any reduction under Article 6.
- (2) However, the household shall cease to be entitled to a protected payment when the Minister approves a contract providing for the payment of fees in respect of the household's residence at the home in which the care is provided.

**8 Temporary automatic entitlement to impairment component for persons on certain benefits**

- (1) In this Article a reference to a numbered paragraph without further identification is a reference to the paragraph of that number in Schedule 1 to the Income Support (Jersey) Regulations 2007<sup>10</sup>.
- (2) Where a person or the person's household, immediately before the appointed day, was entitled to a benefit mentioned in paragraph (3) of this Article, this Article applies until a determining officer considering a household's entitlement to income support otherwise determines the household's entitlement to the impairment component in accordance with the criteria set out in paragraphs 5 to 8.
- (3) Except where he or she is receiving residential care –
  - (a) where a person in the household was, immediately before the appointed day, eligible for attendance allowance, the household is entitled in respect of that person to the rate of personal care element in paragraph 6(3)(c);
  - (b) where a person in the household was, immediately before the appointed day, eligible for disabled adult's allowance or disabled child's allowance, the household is entitled in respect of that person to the rate of personal care element in paragraph 6(3)(b);
  - (c) where a person in the household was, immediately before the appointed day, eligible for disability transport allowance and not any of the allowances mentioned in sub-paragraph (a) or (b) of this paragraph, the household is entitled in respect of that person to the rate of personal care element in paragraph 6(3)(a) and to the mobility element in accordance with paragraph 7(3);
  - (d) where a person in the household was, immediately before the appointed day, eligible for HIE and any of the allowances mentioned in sub-paragraph (a) or (b) of this paragraph, the household is entitled in respect of that person to the rate of clinical cost element in paragraph 8(2)(b);
  - (e) where a person in the household was, immediately before the appointed day, eligible for HIE and –
    - (i) long term incapacity allowance under Article 16 of the Social Security (Jersey) Law 1974<sup>11</sup> following an assessment of a degree of incapacitation of 75% or more,

- (ii) invalidity benefit under Article 15(2)(b) of that Law (as enacted prior to its amendment by the Social Security (Amendment No. 14) (Jersey) Law 2000<sup>12</sup>), or
- (iii) an incapacity pension under Article 17 of that Law, the household is entitled in respect of that person to the rate of clinical cost element in paragraph 8(2)(b);
- (f) where a person in the household was, immediately before the appointed day, eligible for HIE but is not eligible for any other allowance, benefit or pension mentioned in sub-paragraphs (a), (b), or (e)(i), (ii) or (iii) of this paragraph, the household is entitled in respect of that person to the rate of clinical cost element in paragraph 8(2)(a).

## **9 Payments to persons receiving residential care only after appointed day**

- (1) Payments may be made under this Article to a person receiving residential care where –
  - (a) the Minister considers that the household is in need of financial assistance;
  - (b) the person meets the criteria for the rate payable in respect of the personal care element of the impairment component under paragraph 6(3)(d) of Schedule 1 to the Income Support (Jersey) Regulations 2007; and
  - (c) the person only receives residential care after the appointed day but before the Minister approves a contract providing for the payment of fees in respect of the person's residence at the home in which the care is provided.
- (2) Payments under this Article shall be of such amount as the Minister considers appropriate, being an amount not exceeding the reasonable cost of providing residential care to a person of the person's age and level of impairment.
- (3) No payment may be made under this Article after the Minister approves a contract as mentioned in paragraph (1)(c).

## **10 Claims, determinations and appeals**

Articles 6, 7, 8, 9, 12, 13, 17 and 18 of the Income Support (General Provisions) (Jersey) Order 2008 apply to and in respect of claims and determinations under this Order as they apply to and in respect of claims and determinations with respect to income support.

## **11 Citation and commencement**

This Order may be cited as the Income Support (Transitional Provisions) (Jersey) Order 2008 and shall come into force on 28th January 2008.

**SENATOR P.F. ROUTIER**

*Minister for Social Security*



**SCHEDULE**

(Article 6)

**PERCENTAGE REDUCTION OF TOP-UP SUM**

<b>1.</b> Period	<b>2.</b> Percentage payable under Article 5(3)	<b>3.</b> Percentage payable under Article 5(5)	<b>4.</b> Percentage payable under Article 5(7)
From 1st October 2008 to 30th September 2009	80	75	66
From 1st October 2009 to 30th September 2010	60	50	33
From 1st October 2010 to 30th September 2011	40	25	0
From 1st October 2011 to 30th September 2012	20	0	0

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- 1 L.9/2007*  
*2 chapter 26.100*  
*3 chapter 26.300*  
*4 chapter 26.600*  
*5 R&O.12/2008*  
*6 chapter 26.500.18*  
*7 chapter 26.500*  
*8 chapter 26.500.22*  
*9 L.9/2007*  
*10 R&O.125/2007*  
*11 chapter 26.900*  
*12 L.42/2000*