



Jersey

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

## **Official Consolidated Version**

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Jersey

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

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

THE MINISTER FOR SOCIAL SECURITY, in pursuance of Articles 18 and 19 of the [Income Support \(Jersey\) Law 2007](#), orders as follows –

Commencement [[see endnotes](#)]

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### 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;

“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;

“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;

“General Provisions Order” means the [Income Support \(General Provisions\) \(Jersey\) Order 2008](#);

“HIE” means –

- (a) medical benefit payable under Regulation 3 of the [Health Insurance \(Medical Benefit\) \(Jersey\) Regulations 2005](#); and
- (b) pharmaceutical benefit within the meaning of Article 15 of the [Health Insurance \(Jersey\) Law 1967](#) 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](#);

“Law” means the [Income Support \(Jersey\) Law 2007](#);

“protected HIE payment” means a payment to which Article 3(1A) refers;

“protected payment” means a payment to which Article 3(1) refers and, if a household is eligible for a protected HIE payment, it also means such a payment;

“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).<sup>1</sup>

## **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 by reason of this paragraph 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.<sup>2</sup>

- (1A) A household is eligible by reason of this paragraph for a payment under this Article known as a “protected HIE payment” if –
- (a) a member of that household, immediately before the appointed day, was eligible for and had claimed an HIE;
  - (b) a member of the household has made a claim for income support; and
  - (c) the household is entitled to such payment under Article 4.<sup>3</sup>
- (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.
- (5) However, a claim for income support in respect of a household that is entitled to a protected HIE payment may be made at any time before 1st May 2008 or, if the determining officer considers that there is sufficient reason for the claim to be made after that date, before such later date as he or she shall determine.<sup>4</sup>

#### 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.

- (2A) However, if the household is entitled to a protected HIE payment, the TUS is calculated by means of the formula –

$$(RB + RH) - ADIS$$

where –

RH is the sum of £1.96 multiplied by the number of individuals in the household who were, immediately before the appointed day, eligible for and had claimed HIE; and

RB and ADIS are the amounts to which paragraph (2) refers.<sup>5</sup>

- (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 –

$$\text{RRB} - \text{RADIS}$$

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.

- (1A) However, if the household is entitled to a protected HIE payment, the top-up sum shall be recalculated by means of the formula –

$$(\text{RRB} + \text{RRH}) - \text{RADIS}$$

where –

RRH is the sum of £1.96 multiplied by the number of individuals in the household who, immediately before the appointed day, would have been eligible for HIE had the circumstances giving rise to the recalculation existed on the appointed day; and

RRB and RADIS are the amounts to which paragraph (1) refers.<sup>6</sup>

- (2) <sup>7</sup>

## 6 Reduction and phasing out of top-up sum<sup>8</sup>

- (1) This paragraph applies where a member of a household was eligible for attendance allowance in respect of a child immediately before the appointed day and had claimed that allowance.
- (2) Where paragraph (1) applies, the household is entitled to the top-up sum each week during the period beginning 1st July 2012 and ending on the day the child in respect of whom the attendance allowance was payable reaches compulsory school leaving age.<sup>9</sup>
- (3) This paragraph applies where –

- (a) paragraph (1) does not apply; and
  - (b) a member of a household was eligible for attendance allowance in respect of an adult member of the household, disabled adult's allowance or disabled child's allowance immediately before the appointed day and had claimed any such allowance.
- (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 3 in the same row of the table.
- (5) This paragraph applies where –
- (a) neither paragraph (1) nor paragraph (3) applies; and
  - (b) 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.
- (6) Where paragraph (5) applies no top-up sum is payable.
- (7) This paragraph applies where –
- (a) none of paragraphs (1), (3) and (5) applies; and
  - (b)  $TUS > (CIH + ADIS) \times 25\%$
- where –
- CIH is the calculated income of the household on the appointed day.
- (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.
- (9) This paragraph applies where –
- (a) none of paragraphs (1), (3), (5) and (7) applies; and
  - (b) a member of a household –
    - (i) is aged 65 or over on the appointed day, or
    - (ii) was eligible for disability transport allowance immediately before the appointed day and had claimed that allowance.
- (10) Where paragraph (9) 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 5 in the same row of the table.
- (11) This paragraph applies where none of paragraphs (1), (3), (5), (7) and (9) applies.
- (12) Where paragraph (11) 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 6 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.

## **7A Phasing out of protected payments<sup>10</sup>**

No protected payment is payable after –

- (a) in the case of a household to which Article 6(1) applies, 30th June 2016;
- (b) in the case of a household to which Article 6(3) applies, 30th June 2015;
- (c) in the case of a household to which Article 6(7) applies, 30th June 2014;
- (d) in the case of a household to which Article 6(9) applies, 30th June 2013; and
- (e) in the case of a household to which Article 6(11) applies, 30th June 2012.

## **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](#).
- (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](#) 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), 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).

## **9A Payment in respect of medical services<sup>11</sup>**

- (1) A payment may be made under this Article where –
- (a) a member of a household, being in need of medical services, is provided with such services on or after 28th January 2008 but before 1st October 2010;
  - (b) at the time the services are provided, the household is eligible for a protected HIE payment; and

- (c) a special payment has not been made under the [Income Support \(Special Payments\) \(Jersey\) Regulations 2007](#) to defray the cost of the provision of the services.
- (2) The amount of the payment that may be made under this Article in respect of the provision of medical services is whichever is the lesser of –
  - (a) the full cost of defraying the cost of the medical services; or
  - (b) such amount as represents a reasonable cost for those services.
- (3) In this Article, “medical services” has the same meaning as in the [Health Insurance \(Jersey\) Law 1967](#).

## **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**

This Order may be cited as the Income Support (Transitional Provisions) (Jersey) Order 2008.

**SCHEDULE<sup>12</sup>**

(Article 6)

**REDUCING PERCENTAGES OF TOP-UP SUM**

<b>1</b> Period	<b>2</b>	<b>3</b> Percentage payable under Article 6(4)	<b>4</b> Percentage payable under Article 6(8)	<b>5</b> Percentage payable under Article 6(10)	<b>6</b> Percentage payable under Article 6(12)
From 1st July 2011 to 30th June 2012		80	60	50	33
From 1st July 2012 to 30th June 2013		60	40	25	0
From 1st July 2013 to 30th June 2014		40	20	0	0
From 1st July 2014 to 30th June 2015		20	0	0	0
From 1st July 2015 to 30th June 2016		0	0	0	0

## ENDNOTES

### Table of Legislation History

Legislation	Year and No	Commencement
Income Support (Transitional Provisions) (Jersey) Order 2008	<a href="#">R&amp;O.13/2008</a>	28 January 2008
Income Support (Transitional Provisions) (Amendment) (Jersey) Order 2008	<a href="#">R&amp;O.38/2008</a>	17 March 2008
Income Support (Transitional Provisions) (Amendment No. 2) (Jersey) Order 2008	<a href="#">R&amp;O.124/2008</a>	30 September 2008
Income Support (Transitional Provisions) (Amendment No. 3) (Jersey) Order 2009	<a href="#">R&amp;O.99/2009</a>	1 October 2009
Income Support (Transitional Provisions) (Amendment No. 4) (Jersey) Order 2011	<a href="#">R&amp;O.47/2011</a>	1 July 2011
Income Support (Transitional Provisions) (Amendment No. 5) (Jersey) Order 2012	<a href="#">R&amp;O.75/2012</a>	1 July 2012

### Table of Endnote References

- <sup>1</sup> Article 1 amended by R&O.38/2008
- <sup>2</sup> Article 3(1) amended by R&O.38/2008
- <sup>3</sup> Article 3(1A) inserted by R&O.38/2008
- <sup>4</sup> Article 3(5) added by R&O.38/2008
- <sup>5</sup> Article 4(2A) inserted by R&O.38/2008
- Article 6 of R&O.38/2008 makes the following transitional provision -
- “6 First protected HIE payment**
- (1) This Article applies notwithstanding Articles 4(2A) and 5(1A) of the principal Order (as inserted by Articles 4 and 5 respectively of this Order).
- (2) In calculating TUS in respect of the first period for which it is payable after this Order comes into force (but only in respect of that first period) –
- (a) if TUS is calculated in accordance with Article 4(2A), RH shall be multiplied by 8; and
- (b) if TUS is recalculated in accordance with Article 5(1A), RRH shall be multiplied by 8.”
- <sup>6</sup> Article 5(1A) inserted by R&O.38/2008
- <sup>7</sup> Article 5(2) See the transitional provision in Article 6 of R&O.38/2008, above deleted by R&O.99/2009, former paragraph amended by R&O.124/2008
- <sup>8</sup> Article 6 substituted by R&O.47/2011; former Article substituted by R&O.124/2008
- <sup>9</sup> Article 6(2) substituted by R&O.75/2012

- <sup>10</sup> *Article 7A* substituted by R&O.47/2011, former Article inserted by R&O.99/2009
- <sup>11</sup> *Article 9A* inserted by R&O.99/2009
- <sup>12</sup> *Schedule* substituted by R&O.47/2011, amended by R&O.75/2012