

# **STATES OF JERSEY**



## **DRAFT BANKRUPTCY (DÉSASTRE) (PENSIONS) (JERSEY) REGULATIONS 200**

---

**Lodged au Greffe on 10th October 2006  
by the Minister for Economic Development**

---

**STATES GREFFE**





Jersey

# **DRAFT BANKRUPTCY (DÉSASTRE) (PENSIONS) (JERSEY) REGULATIONS 200**

## **REPORT**

---

These Regulations allow a bankrupt to retain certain pension rights that he might have accrued or otherwise been entitled to prior to becoming insolvent. The rationale for this is that people ought to be encouraged to invest in pensions so as to provide an adequate income in retirement. A pension is a long-term arrangement, and neither debtors nor creditors should regard pension funds as being available to meet personal debts.

The Regulations will provide that certain types of pension arrangements are automatically excluded from a debtor's property in a désastre, and that other pension arrangements may be excluded from such property through an agreement between the Viscount and the debtor. The guiding principle is to permit a debtor to retain an adequate pension in retirement. The Bankruptcy Law includes provisions that allow any pensions contributions that are excessive to be reclaimed for the benefit of creditors, so the Regulations cannot be abused by those seeking to use pension arrangements to place assets out of a creditor's reach.

There are no financial or manpower implications for the States arising from these Draft Regulations.

## **Explanatory Note**

---

These Regulations provide that a person may retain, or be allowed to retain, certain pension benefits the person is entitled to despite the fact that the person is made bankrupt.

*Regulation 1* is a definition provision.

*Regulation 2* allows a debtor to retain pension benefits under arrangements approved under the Income Tax (Jersey) Law 1961 or granted by a government outside Jersey to its employees.

*Regulation 3* applies where *Regulation 2* does not apply and allows the Viscount to enter into an agreement with a debtor to exclude, either absolutely or to a specified extent, rights the debtor had under a pension arrangement specified in the agreement.

*Regulation 4* specifies what happens if an agreement is entered into under *Regulation 3*.

*Regulation 5* provides for the citation and commencement of the Regulations.





Jersey

# DRAFT BANKRUPTCY (DÉSASTRE) (PENSIONS) (JERSEY) REGULATIONS 200

## Arrangement

### Regulation

---

- 1 Interpretation
- 2 Certain pension benefits excluded from Law
- 3 Viscount may agree that pension benefits be excluded from Law
- 4 Property excluded from Law by agreement
- 5 Citation and commencement





Jersey

# **DRAFT BANKRUPTCY (DÉSASTRE) (PENSIONS) (JERSEY) REGULATIONS 200-**

*Made*

*[date to be inserted]*

*Coming into force*

*[date to be inserted]*

**THE STATES**, in pursuance of Article 8A of the Bankruptcy (Désastre) (Jersey) Law 1990<sup>[1]</sup>, have made the following Regulations –

---

## **1 Interpretation**

In these Regulations, “the Law” means the Bankruptcy (Désastre) (Jersey) Law 1990.

## **2 Certain pension benefits excluded from Law**

- (1) There shall be excluded from a debtor’s property for the purposes of the Law any rights the debtor may have under an approved pension arrangement.
- (2) In paragraph (1), “approved pension arrangement” means –
  - (a) a retirement benefits scheme set up by a government outside Jersey for the benefit, or primarily for the benefit, of its employees;
  - (b) a pension scheme, annuity contract or a drawdown contract approved under Part 19 of the Income Tax (Jersey) Law 1961<sup>[2]</sup>;
  - (c) an annuity purchased to give effect to rights under an arrangement mentioned in paragraph (a) or paragraph (b).

## **3 Viscount may agree that pension benefits be excluded from Law**

- (1) The Viscount may enter into an agreement with a debtor to exclude from the debtor’s property for the purposes of the Law, either absolutely or to a specified extent, rights the debtor had under a pension arrangement specified in the agreement.
- (2) The Viscount’s decision on the terms and provisions of such an agreement must be made by reference to –
  - (a) the future likely needs of the debtor and of the debtor’s family; and
  - (b) whether the debtor is likely to receive any benefits (by way of pension or otherwise) and the extent to which those benefits would be adequate to meet the needs of the debtor and of the debtor’s family.
- (3) The agreement –
  - (a) must be entered into within the 6 months following the declaration in respect of the debtor; and
  - (b) must be in writing signed by both the Viscount and the debtor.



- (4) The agreement may be revoked at any time by the Viscount if the Viscount is satisfied that before entering into the agreement the Viscount was provided with false or misleading information, either by the debtor or by any other person.

#### **4 Property excluded from Law by agreement**

- (1) This Regulation applies where the Viscount enters into an agreement with a debtor in accordance with Regulation 3.
- (2) There shall be excluded from the debtor's property for the purposes of the Law, to the extent specified in the agreement, rights the debtor had in the pension arrangement specified in the agreement.
- (3) Paragraph (2) shall be taken to have had effect immediately before the declaration was made in respect of the debtor.
- (4) Paragraphs (2) and (3) cease to apply if the agreement is revoked by the Viscount.

#### **5 Citation and commencement**

- (1) These Regulations may be cited as the Bankruptcy (Désastre) (Pensions) (Jersey) Regulations 200-.
- (2) They shall come into force 7 days after they are made.

---

[1]

*chapter 04.160*

[2]

*chapter 24.750*