

STATES OF JERSEY



INSOLVENCY: TEMPORARY SCHEME FOR COMPENSATORY PAYMENT – EXTENSION (P.67/2009) – COMMENTS

**Presented to the States on 1st June 2009
by the Minister for Social Security**

STATES GREFFE

COMMENTS

This Proposition is inconsistent with the decision of the States on 25th March 2009 (P.34/2009) to deliver compensatory notice payments to employees made redundant by insolvency. The Minister for Social Security agrees, however that a Temporary Scheme should be capable of demonstrating flexibility.

The Proposition does not detail the particular circumstances to which the Deputy intends that the Minister's discretion would extend; but it does refer to flexibility for the Minister "whilst insolvency proceedings are resolved", which suggests that an employer who has simply ceased trading would not attract the Minister's discretion, and that factual insolvency must have occurred, with a good prospect of formal insolvency resulting.

The Temporary Scheme, as set out by the Minister in R.44/2009, already provides that: *"An employee who disagrees with a decision made by the Social Security Department regarding their compensatory notice payment will have the right to request a review by the Minister for Social Security, whose decision will be final."*

The Minister will add to that Report the following: *"In wholly exceptional circumstances, where the employer has ceased trading, but has yet to become subject to formal insolvency proceedings, the Minister will give consideration, in consultation with the Viscount, to making compensatory payments where he is reasonably satisfied that the employer will become subject to such proceedings, or that related proceedings have commenced. A review of this nature may be instigated by an Officer of the Social Security Department at the request of one of the following; the employer, a former employee of that employer, the Viscount, or the prospective insolvency practitioner. The Minister's decision will be final."*

It would be reckless to make such payments purely on the grounds that an employer has simply ceased trading. To do so could allow an employer to avoid their statutory obligations regarding notice payments and potentially, once those obligations have been met by the States, the employer could recommence trading.