

STATES OF JERSEY



REDUNDANCY PAYMENTS: BUSINESSES WHICH HAVE CEASED TRADING (P.120/2014) – COMMENTS

**Presented to the States on 8th July 2014
by the Minister for Social Security**

STATES GREFFE

COMMENTS

The Proposition asks the Minister to amend the insolvency scheme so that it applies where an employer is not insolvent. The scheme that the proposition refers to is the Social Security insolvency benefit, the eligibility criteria for which are established under the Social Security (Jersey) Law 1974.

One of the criteria is that the employer must be bankrupt. Bankruptcy is defined to include any form of insolvency that results in an inability on the part of the employer to continue trading or to continue performing the employer's activities, being insolvency that has occurred in Jersey or elsewhere; and has resulted in the employer's going into administration, liquidation or receivership (however expressed) in Jersey or elsewhere, or entering into an arrangement with the employer's creditors in Jersey or elsewhere.

The purpose of the insolvency benefit is to provide payments much more quickly than would be the case if the former employees of insolvent employers had to make individual claims as creditors in the insolvency proceedings, which can sometimes take years to complete, and employees often only receive a small proportion of the amounts that they were owed.

The Minister does not have discretion to pay insolvency benefit where there is not an insolvency situation. In other jurisdictions, legal and formal insolvency proceedings must generally be instituted before any payments are considered. In the UK, if the employer is not insolvent and owes money to employees, the Insolvency Service cannot help.

In administering the benefit, Social Security officers must receive confirmation, usually from an insolvency practitioner or the Viscount's Department, that some form of bankruptcy proceeding is underway, which takes longer in some cases than in others. It is vital that either the employer or those that are responsible for the insolvency proceedings work closely with the Department to ensure that the necessary evidence is provided to the Department in support of employee claims. The desire to provide prompt financial support does not mean that payments can be made to individuals before the necessary checks have been undertaken to satisfy the conditions set out in the Law. However, payments are processed quickly once the Department has received a fully completed claim from an eligible claimant.

The temporary insolvency scheme that the Deputy refers to in his report did include discretion for the Minister to make payments where an employer had ceased trading, whether insolvency was inevitable or not. The rationale was specifically to prevent undue delay in processing employees' compensatory payments given the absence of a statutory insolvency scheme and the absence of statutory redundancy pay at that time.

The temporary scheme provided compensation **only in respect of statutory notice pay** and the scheme closed when the more generous insolvency benefit became available on 1st December 2012. In addition to a component for statutory notice pay, the insolvency benefit also includes components for statutory redundancy pay, wages and holiday pay owed. These 3 components, which were not available under the temporary scheme, can be paid to claimants much more quickly than notice pay because they can be paid as soon as entitlements have been confirmed. Notice pay, however, can usually only be paid at the end of the notice period because the sum is mitigated for new earnings and income during the notice period.

The 2009 White Paper that proposed the new Insolvency Benefit stated: *“For the statutory scheme, discretion will **not** be available as it would introduce uncertainty, which is considered to be inappropriate in legislation. Where an employer has ceased trading but is not insolvent, an individual has recourse to the Employment Tribunal and to the Courts. Where hardship may result, an individual may apply for Income Support.”*

Any former employee who is suffering from financial hardship and who meets the qualifying conditions for Income Support may put in a claim for this benefit. Social Security Officers respond quickly and proactively where a number of employees are made redundant at the same time, by giving immediate attention to benefit claims and requests for assistance with job-seeking.

The Law provides an **insolvency** benefit. The Minister is not prepared to introduce discretion into a Law that could require large sums to be paid out where there is no indication as to whether or not an employer will recommence trading. In 2013, the total spend on insolvency benefit was over £1 million in respect of 9 employer insolvencies and 156 employee claims. Amending the Law so that payments would be made where an employer is not insolvent and has simply ceased trading is likely to considerably increase the cost of the benefit.

The financial and manpower implications section of the report accompanying the Proposition refers to an ‘Insolvency Fund’. There is no such dedicated fund. The money comes from the Social Security Fund which is made up of contributions from employers and employees.