

STATES OF JERSEY



DRAFT SOCIAL SECURITY (AMENDMENT No. 20) (JERSEY) LAW 201-

**Lodged au Greffe on 19th April 2011
by the Minister for Social Security**

STATES GREFFE



Jersey

DRAFT SOCIAL SECURITY (AMENDMENT No. 20) (JERSEY) LAW 201-

European Convention on Human Rights

In accordance with the provisions of Article 16 of the Human Rights (Jersey) Law 2000 the Minister for Social Security has made the following statement –

In the view of the Minister for Social Security the provisions of the Draft Social Security (Amendment No. 20) (Jersey) Law 201- are compatible with the Convention Rights.

(Signed) **Deputy I.J. Gorst of St. Clement**

REPORT

Introduction

The proposed Social Security (Amendment No. 20) (Jersey) Law 201- is intended to provide a basic minimum standard of protection for employees where employment has ended due to an employer's insolvency. The intention is to promptly give employees some financial security by providing a benefit based upon a reasonable proportion of amounts owed.

This has been achieved in the form of a benefit that will sit within the existing framework of the Social Security (Jersey) Law 1974. The rate of benefit is calculated based on components for unpaid wages, holiday pay, statutory notice pay and statutory redundancy pay.

Background

There has been considerable political and public support for a method of promptly providing some financial security in such circumstances:

- In 2000, the States of Jersey adopted the then Employment and Social Security Committee's Proposition (P.99/2000), which included, as part of a programme to reform local employment legislation, the proposal that an insolvency fund would be necessary if a redundancy policy was introduced. A statutory right to redundancy pay was introduced on 1st January 2011.
- As part of a 2006 public consultation on the redundancy legislation, the Employment Forum asked respondents whether a fund should be set up to ensure that employees would receive redundancy payments due to them if their employer became insolvent. Of the 24 respondents, only 2 did not agree that there should be an insolvency fund for this purpose.
- Public and political interest in insolvency increased in December 2008, when Woolworths Plc. went into administration and Jersey employees were not entitled to statutory redundancy pay or compensation from an insolvency scheme. The States allocated funding to provide compensatory notice pay to these employees and further decided, on 24th March 2009, that the Woolworths payments constituted a precedent and the Minister for Social Security was required to establish a system to deliver compensatory notice in similar cases of redundancy through insolvency in Jersey.
- The Minister for Social Security presented the details of a temporary insolvency scheme to the States as a Report (R.44/2009) on 29th April 2009. Since that time, the Social Security Department has administered the scheme to issue compensatory notice payments in accordance with the criteria set out in the Report, as amended. The scheme has been successful in processing claims and making payments in a timely manner.

- The Department of Social Security issued a White Paper¹ in December 2009 setting out a more extensive statutory insolvency payments scheme that would entitle employees to claim notice pay, as well as other sums owed to them by an insolvent employer. Most of the respondents supported and endorsed the proposals in general, and none of the respondents were opposed to the broad proposals of the scheme. The draft legislation has been prepared on the basis of those proposals, which were broadly based on Jersey’s current Temporary Insolvency Scheme, as well as on insolvency schemes already operating in the UK and Isle of Man².
- The proposed legislation accords with the strategic aim of the States of Jersey to support the community through the economic downturn (2009 – 2014 Strategic Plan) and accords with the ongoing States strategy (3.1.1 of the 2006 – 2011 Strategic Plan) to promote a safe, just and equitable society by giving legal rights to employees and employers.

The Social Security (Jersey) Law 1974

The formation of a scheme to provide compensatory payments to employees in insolvency situations has resulted in this proposal for an amendment to the Social Security (Jersey) Law 1974 that will establish a new ‘insolvency benefit’.

The new benefit will sit within the existing framework of the Social Security Law and subordinate legislation that establishes the benefit administration process, the requirement to provide documents, time limits for claims, collection of contributions, giving claimants the right to a re-determination of their claim and the right of appeal to the Social Security Tribunal, as well as setting up enforcement mechanisms and penalties.

Provisions will be made by Regulations and Orders, as necessary, for any other administrative details that are specific to this benefit, including the required 0.032% increase to Class 1 employer Social Security contributions³, the timescales and forms for claims to be submitted, and any particular details that are required to validate claims in conjunction with the Viscount’s Department or other insolvency office-holder.

Insolvency benefit

The draft amendment sets out the provisions relating to the insolvency benefit that will provide the equivalent of an insolvency payments scheme –

1. The conditions that must be met for entitlement to insolvency benefit.
2. The components used to calculate the insolvency benefit.
3. The method of calculating benefit.
4. A mechanism to recover amounts paid in benefit via insolvency proceedings.

¹ The White Paper and Summary of responses are available on the website www.gov.je/Government/Consultations/Current/Pages/2010.aspx

² A summary of those schemes is set out in the Law Drafting instructions (MD-S-2010-0022).

³ Employee social security contribution rates will not be affected.

1. The conditions that must be satisfied to establish whether a person is entitled to insolvency benefit are –
 - (a) The person was an “employee” within the meaning of the Employment (Jersey) Law 2003.
 - (b) The person was employed wholly or mainly in Jersey.
 - (c) The employer is bankrupt and this is the main reason for the fact that the person is no longer employed.
 - (d) The employer was liable to pay Class 1 contributions in respect of that person in any one or more months in the 3 months prior to bankruptcy.
 - (e) The employer has not paid the person in full the amounts owed in respect of one or more of the components of this benefit.

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.

2. The basic components used to calculate the insolvency benefit are –
 - (a) **Unpaid wages** – relating to the person’s employment during the 12 months that ended with the cessation of that service and defined in accordance with the Employment Law; *“remuneration or earnings, however designated or calculated, capable of being expressed in terms of money and fixed by a relevant agreement or by or under an enactment, which are payable by virtue of a contract of employment by an employer to an employee for work done or to be done or for services rendered or to be rendered but does not include pensions contributions paid by the employer or any other ancillary non-monetary benefits.”*
 - (b) **Holidays and leave** – relating to the 12 months prior to redundancy; amounts owed in respect of leave taken but unpaid, and accrued holiday pay which would have become payable to the employee under their contract if employment had continued until they became entitled to a holiday. Leave includes public holidays (including Christmas) and bank holidays, if those days are not already included in the total contractual holiday entitlement.
 - (c) **Pay in lieu of a period of notice of termination of employment** – based on statutory entitlements according to Part 6 of the Employment Law, up to the maximum of 12 weeks’ pay. To be entitled to this component, a person must be available for, and actively seeking, remunerative work. This component is reduced, pound for pound, by any earnings that the employee receives from new employment, and any income from Short-Term Incapacity Allowance, Maternity Allowance, Invalid Care Allowance and any *additional* Income Support payments made as a result of the person’s unemployment.

- (d) **Redundancy pay** – in accordance with Part 6A of the Employment Law, which entitles a qualifying employee with 2 years' continuous service to one week's pay (capped at average earnings) for every full year of service, irrespective of age⁴.
3. The insolvency benefit is calculating by adding the components that the person was owed by their former employer and making appropriate deductions, including Social Security contributions (where contributions would have been due on those sums), and any amounts owed by the person to their former employer, including where leave was taken in excess of the employee's entitlement and any overpayment of wages.
- The maximum amount of insolvency benefit that may be paid to a person is capped at £10,000. The amendment sets out the order in which the components of the benefit are paid where a person is owed more than £10,000; unpaid wages owed being given priority, followed by unpaid and untaken holiday pay, notice pay, and then redundancy pay.
- Where a person recovers from their former employer any amounts in respect of the benefit that they received, they must refund that amount to the Social Security Fund.
4. The Minister for Social Security automatically takes on the person's claims for the sums paid in benefit and will pursue those amounts as a creditor when the proceeds of any remaining assets of the company are distributed amongst the creditors (the insolvency proceedings). Any sums recovered will be refunded to the Social Security Fund.

Implementation

If the States approves this Proposition, the Minister for Social Security intends that subordinate legislation will be prepared later in 2011 to establish the benefit administration process, time limits, right of appeal, and the collection of contributions.

Financial and manpower implications

A funding requirement of £350,000 per year is estimated to be required, to include approximately 5% administration costs.

The Minister had proposed to achieve this by increasing Class 1 employer Social Security contribution rates (not including self-employed people and sole traders) by 0.032%.

However, given the difficult economic climate, the Minister intends that employer contributions will not be increased to fund the insolvency benefit in the short term, and funding will be drawn from existing Social Security funds.

A small increase in employer contributions will be required to fund this benefit in the future, which will be applied at the same time as contribution increases that will become necessary as a result of the ageing population. More defined estimates of the funding requirement for the insolvency benefit will then be available based on actual benefit spend.

⁴ Legislation entitling employees to a lump-sum payment on redundancy was enacted on 1st January 2011.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 requires the Minister in charge of a Projet de Loi to make a statement about the compatibility of the provisions of the Projet with the Convention rights (as defined by Article 1 of the Law). On 15th April 2011 the Minister for Social Security made the following statement before Second Reading of this Projet in the States Assembly –

In the view of the Minister for Social Security the provisions of the Draft Social Security (Amendment No. 20) (Jersey) Law 201- are compatible with the Convention Rights.

Explanatory Note

The object of this Law is to add provisions to the Social Security (Jersey) Law 1974 to provide for a benefit (referred to as an insolvency benefit) that may be paid to former employees in certain cases where their employer becomes insolvent and ceases trading.

Article 1 defines the expression “principal Law” to mean the Social Security (Jersey) Law 1974.

Article 2 substitutes Article 12 of the Social Security (Jersey) Law 1974 (which sets out a list of benefits under the Law) to include references to the adoptive parent grant (already provided for in the Law, but not previously included in the list in Article 12) and the insolvency benefit.

Article 3 amends Article 13 of the Social Security (Jersey) Law 1974 (which indicates how the rates and amounts of benefits may be calculated) to include references to the insolvency benefit.

Article 4 amends Article 14(1) of the Social Security (Jersey) Law 1974 to exclude reference there to the insolvency benefit because the conditions for that benefit are all set out in Part 3.

Article 5 adds Articles 26A to 26J to the Social Security (Jersey) Law 1974:

Article 26A specifies the conditions that must be satisfied to establish entitlement to an insolvency benefit.

Article 26B summarizes how an insolvency benefit is to be calculated.

Article 26C sets out the basic components (unpaid wages, pay in lieu of notice, redundancy pay and certain amounts accruing in respect of holidays) used to calculate an insolvency benefit.

Article 26D caps the insolvency benefit at £10,000 per job per person.

Article 26E requires a person to be looking for work if the person is to be paid the pay-in-lieu-of-notice component of an insolvency benefit.

Article 26F requires certain amounts of pay or benefit to be deducted from the pay-in-lieu-of-notice component.

Article 26G requires primary Class 1 contributions (if applicable) to be deducted from the components.

Article 26H makes it clear that, if a component becomes negative after deductions have been made to it under Articles 26F and 26G, it is to be treated as equivalent to zero when an insolvency benefit is being calculated.

Article 26I provides that the Minister may recover certain amounts in relation to a person’s former employment but only to the extent that the amounts were taken into account in calculating an insolvency benefit paid to the person.

Article 26J requires a person who is paid an insolvency benefit but recovers certain amounts (for example from the person’s former employer) to pay the

amounts to the Social Security Fund, but only to the extent that the amounts were taken into account in calculating the insolvency benefit.

Article 6 amends Article 30 of the Social Security (Jersey) Law 1974 to ensure that amounts recovered by the Minister by virtue of inserted Article 26I are paid into the Social Security Fund.

Article 7 sets out the name of the Law and provides for it to come into force in accordance with one or more Acts of the States.



Jersey

DRAFT SOCIAL SECURITY (AMENDMENT No. 20) (JERSEY) LAW 201-

Arrangement

Article

1	Interpretation	13
2	Article 12 substituted	13
3	Article 13 amended	14
4	Article 14 amended	14
5	Articles 26A to 26J inserted	14
6	Article 30 amended	19
7	Citation and commencement	20



Jersey

DRAFT SOCIAL SECURITY (AMENDMENT No. 20) (JERSEY) LAW 201-

A LAW to amend further the Social Security (Jersey) Law 1974

Adopted by the States [date to be inserted]

Sanctioned by Order of Her Majesty in Council [date to be inserted]

Registered by the Royal Court [date to be inserted]

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law –

1 Interpretation

In this Law “principal Law” means the Social Security (Jersey) Law 1974¹.

2 Article 12 substituted

For Article 12 of the principal Law the following Article shall be substituted –

“12 Description of benefits

Benefit shall be of the following descriptions –

- (a) incapacity benefit, which shall consist of short term incapacity allowance, long term incapacity allowance and incapacity pension;
- (b) maternity benefit, which shall consist of maternity grant and maternity allowance;
- (c) adoptive parent grant;
- (d) survivor’s benefit, which shall consist of survivor’s allowance and survivor’s pension;
- (e) old age pension;
- (f) death grant;

- (g) insolvency benefit.”.

3 Article 13 amended

In Article 13 of the principal Law –

- (a) in paragraph (1)(a) for the words “and death grant” the words “, death grant and insolvency benefit” shall be substituted;
- (b) for paragraph (1)(b) there shall be substituted the following sub-paragraphs –
 - “(b) the weekly rate of long term incapacity allowance shall be the percentage of the standard rate of benefit in which the degree of incapacitation, assessed in accordance with the provisions of Article 16, is expressed; and
 - (c) the amount of insolvency benefit shall be calculated in accordance with Articles 26A to 26H.”.

4 Article 14 amended

For Article 14(1) of the principal Law the following paragraph shall be substituted –

- “(1) The contribution conditions for the several descriptions of benefit (other than insolvency benefit) shall be as set out in Schedule 2.”.

5 Articles 26A to 26J inserted

After Article 26 of the principal Law the following Articles shall be inserted –

“26A Qualifying for insolvency benefit

- (1) A person qualifies under this Article if all of the following conditions are satisfied –
 - (a) the person was in employment as, within the meaning of the Employment (Jersey) Law 2003², an employee of an employer;
 - (b) the person was so employed wholly or mainly in Jersey;
 - (c) the employer is bankrupt;
 - (d) that bankruptcy is the principal reason for the fact that the person is no longer so employed;
 - (e) the employer was liable to pay Class 1 contributions, in respect of the employee and the employment, in any one or more contribution months that fell within the period of 3 months that ended when the employer became bankrupt;
 - (f) the employer has not paid the employee in full the amounts specified in Article 26C as they relate to that employee and that employment.

- (2) In this Article and Article 26C, ‘bankruptcy’ in relation to an employer includes 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 –
 - (a) has occurred in Jersey or elsewhere; and
 - (b) has resulted in the employer’s going into administration (however expressed), liquidation (however expressed) or receivership (however expressed) in Jersey or elsewhere or entering in Jersey or elsewhere into an arrangement (however expressed) with the employer’s creditors.
- (3) For the purposes of this Article, it does not matter whether an employer’s trading or activities took place in Jersey or elsewhere.

26B Insolvency benefit and deductions

A person who qualifies under Article 26A shall be entitled to an insolvency benefit calculated by firstly adding the components referred to in Article 26C, secondly making the deductions (if any) specified in Articles 26F and 26G and finally applying the discounts (if any) under Article 26D.

26C Components of insolvency benefit

- (1) A component of the insolvency benefit shall be any unpaid amount of wages (where ‘wages’ has the same meaning as in the Employment (Jersey) Law 2003) that relate to the person’s service in employment by the relevant employer during the 12 months that ended with the cessation of that service.
- (2) The components of the insolvency benefit shall also include any unpaid amounts that relate to the person’s employment by the relevant employer and are payable to the person (or would have been payable to the person except for the fact that the person was dismissed by virtue of the order of a court, being an order relating to the bankruptcy or winding up of the employer) as follows –
 - (a) subject to Article 26E, an amount in lieu of a period of notice of termination of that employment, where the amount is in accordance with Part 6 of the Employment (Jersey) Law 2003;
 - (b) an amount of redundancy payment in respect of that employment, where the amount is in accordance with Part 6A of the Employment (Jersey) Law 2003;
 - (c) any amount (being an amount not already accounted for under paragraph (1)) owing in respect of a holiday actually taken by the person during the 12 months that ended with the cessation of the person’s service in that employment;
 - (d) any amount (being an amount not already accounted for under paragraph (1) or sub-paragraph (c)) that –

- (i) accrued as holiday pay at any time during the 12 months that ended with the cessation of the person's service in that employment, and
 - (ii) under the person's contract of employment –
 - (A) had in those 12 months become payable to the person in respect of the period of a holiday, or
 - (B) would in the ordinary course have become payable to the person in respect of the period of a holiday if the person's service in that employment had continued until the person had become entitled to a holiday.
- (3) In adding the components relating to a person under this Article, if any one amount (or part of an amount) relates to more than one component it shall not be counted more than once towards the sum referred to in Article 26B.
- (4) Despite anything in this Article, a component shall not be counted towards the sum referred to in Article 26B to the extent (if any) that the Minister may prescribe by Order.
- (5) A reference in this Article to a holiday includes annual leave and leave (if not already included in annual leave) in respect of public holidays (including Christmas) and bank holidays.
- (6) For the purposes of paragraph (2)(a), Part 6 of the Employment (Jersey) Law 2003 shall be read as if any reference to notice in that Part were to the notice that would apply under that Part in the absence of any relevant agreement, as referred to in Article 56(7) of that Law, for a period of notice longer than those specified in paragraphs (1) and (2) of that Article.
- (7) For the purposes of paragraph (2)(b), Part 6A of the Employment (Jersey) Law 2003 shall be read as if Article 60D of that Law had no effect.

26D Cap on insolvency benefit

- (1) An insolvency benefit payable to a person who qualifies under Article 26A cannot in aggregate exceed an amount of £10,000 in respect of any one employment of the person.
- (2) If the insolvency benefit payable to a person would (but for the operation of this paragraph) in aggregate exceed an amount applying under paragraph (1), the aggregate shall be discounted so that it equals that amount.
- (3) The discounting shall be applied in the following order –
 - (a) first to the amount of the component referred to in Article 26C(2)(b);
 - (b) then to the amount of the component referred to in Article 26C(2)(a);
 - (c) then to the total of the amounts of the components referred to in Article 26C(2)(c) and (d);

(d) then to the amount of the component referred to in Article 26C(1),

but only to such of the components (in that order), and to such extent, as is necessary to bring the aggregate down to the amount that applies under paragraph (1).

(4) The Minister may by Order prescribe –

(a) a different amount (or one or more different amounts in respect of more than one employment) for the purposes of paragraph (1); or

(b) another order in which amounts are to be discounted under paragraph (3), or proportions in which those amounts are to be discounted, or both such an order and such proportions.

(5) Anything so prescribed shall apply instead of what is specified in paragraph (1) or (3), as the case requires.

26E Pay in lieu of notice: requirement to be looking for work

(1) For an amount referred to in Article 26C(2)(a) in lieu of a period of notice of termination of a person's employment to be treated as a component of insolvency benefit, the person must have been, in that period, available for, and actively seeking, remunerative work.

(2) In this Article, except to the extent to which the States by Regulations otherwise prescribe for the purposes of this Article –

‘actively seeking’ in relation to a person and to work means doing all of the following –

(a) taking all reasonable steps (including any appropriate training or work experience) to obtain suitable work;

(b) not unreasonably turning down any offer of suitable work; and

(c) attending every interview with an officer of the Department of Social Security to which the person has been invited unless the person has a reasonable excuse for not so attending;

‘available for’ in relation to a person and to work has the same meaning as under Article 3 of the Income Support (Jersey) Law 2007³;

‘remunerative work’ has the same meaning as under Article 3 of the Income Support (Jersey) Law 2007.

26F Pay in lieu of notice: deductions of certain amounts

(1) The following amounts payable to a person in respect of the whole or any part of any period of notice to which the person is or has been entitled in respect of the termination of the person's employment shall be deducted from the component referred to in Article 26C(2)(a) that relates to the person –

- (a) any wages that the person earns from employment that the person commences during that period (but not any wages that the person earns during that period from the continuation of any employment that –
 - (i) the person started before the beginning of that period, and
 - (ii) is employment that the person intended to engage in in addition to the employment that was terminated);
 - (b) any benefit under this Law in the form of short-term incapacity allowance, as referred to in Article 15;
 - (c) any benefit under this Law in the form of maternity allowance, as referred to in Article 22;
 - (d) such part of any amount of invalid care allowance under the Invalid Care Allowance (Jersey) Law 1978⁴ as would not have been payable but for the termination of the person's employment;
 - (e) such part of any amount of income support under the Income Support (Jersey) Law 2007 as would not have been payable but for the termination of the person's employment;
 - (f) such other amounts as the Minister may prescribe by Order.
- (2) The reference in paragraph (1)(a) to wages that the person earns from employment that the person commences during a period includes –
- (a) wages to which the person is entitled in respect of that employment during the period even if payment (in part or in whole) of those wages occurs after the end of the period; and
 - (b) wages to which the person would have been entitled in respect of that employment during the period but for the fact that the person agreed to waive his or her entitlement to those wages or to postpone his or her entitlement to those wages until after the end of the period.

26G Other deductions

- (1) If primary Class 1 contributions would have been payable in respect of any component specified in Article 26C if that component had been paid by the employer, their value shall be deducted from the component.
- (2) If income tax payable under the Income Tax (Jersey) Law 1961⁵ would have been deductible or payable in respect of any component specified in Article 26C if that component had been paid by the employer, its value shall not be deducted from the component.
- (3) However, nothing in this Article affects the liability under the Income Tax (Jersey) Law 1961 of a person who receives an insolvency benefit for income tax on that benefit.

- (4) Any amount owed by the employee to the employer in respect of leave that has been taken in excess of the employee's entitlement, in respect of any overpayment of wages or in respect of any other matter shall be deducted from the sum of the components under Article 26C.

26H Components cannot be negative

The value (after any deductions referred to in Articles 26F and 26G have been made) of a component referred to in Article 26C, or of the sum of the components referred to in Article 26C, cannot, for the purposes of any of Articles 26A to 26G, be less than zero.

26I Subrogation

- (1) The Minister shall be entitled to be subrogated to the right of a person to recover any amount referred to in Article 26C(1) or (2), being so entitled to the extent to which the amount has counted towards an insolvency benefit paid to the person.
- (2) Nothing in paragraph (1) shall prevent the person from recovering any amount referred to in Article 26C(1) or (2) to the extent to which the amount has not counted towards an insolvency benefit paid to the person.
- (3) The operation of this Article shall not be affected by the death, or any incapacity, of the person.
- (4) In this Article and Article 26J –

‘count towards’ means have a net positive effect on the amount of an insolvency benefit after any requirement under Articles 26A to 26H to make a deduction, discount or other treatment has been complied with;

‘person’ means a person who is paid an insolvency benefit;

‘recover’ means recover from the relevant employer or from another person, and otherwise than as an insolvency benefit or as a component of an insolvency benefit.

26J Repayment where employee recovers some amounts

- (1) A person who recovers any part of an amount referred to in Article 26C(1) or (2) shall repay the part so recovered to the Social Security Fund to the extent to which the part has counted towards an insolvency benefit paid to the person.
- (2) For the purposes of this Article, ‘part’ includes all and none.”.

6 Article 30 amended

In Article 30(2) of the principal Law for the words “and the proceeds of all charges imposed under this Law,” the words “, the proceeds of all charges

imposed under this Law and any amount recovered by virtue of Article 26I(1);” shall be substituted.

7 Citation and commencement

- (1) This Law may be cited as the Social Security (Amendment No. 20) (Jersey) Law 201-.
- (2) This Law shall come into force on such day or days as the States may by Act appoint.

-
- ¹ *chapter 26.900*
 - ² *chapter 05.255*
 - ³ *chapter 26.550*
 - ⁴ *chapter 26.600*
 - ⁵ *chapter 24.750*