
STATES OF JERSEY



INSOLVENCY: TEMPORARY SCHEME FOR COMPENSATORY PAYMENT IN LIEU OF STATUTORY PERIOD OF NOTICE ON TERMINATION OF EMPLOYMENT – EXTENSION

**Presented to the States on 20th June 2011
by the Minister for Social Security**

STATES GREFFE

REPORT

The Minister for Social Security presented a Report to the States on 29th April 2009 setting up a scheme ('the temporary scheme') to deliver compensatory notice payments to employees made redundant by insolvency [R.44/2009 – *Insolvency: temporary scheme for compensatory payment in lieu of statutory period of notice on termination of employment*].

On 17th June 2009, the States decided to extend the temporary scheme to enable the Minister, in consultation with the Viscount, to use discretion to make payments to workers who have been made redundant without the payment of statutory notice by businesses that have stopped trading, even if the businesses have not yet been declared insolvent. That discretion has since been applied in accordance with a Comment presented by the Minister [P.67/2009 Com. – *Insolvency: Temporary Scheme for Compensatory Payment – extension (P.67/2009) – comments*] which extends the scheme where insolvency is underway or inevitable.

The Minister believes that the temporary scheme should be capable of demonstrating flexibility, and has decided that discretion should also be available (in consultation with the Viscount) where an employer is not insolvent, but has ceased trading and is unlikely to recommence trading. The intention is to entitle affected employees to claim statutory notice pay without having to wait for the sale of assets and any amounts to be shared via any enforcement process.

During 2010, a small number of businesses ceased trading, resulting in employees being made redundant, but in circumstances where a formal insolvency situation is unlikely to ensue. This extension will be applied retrospectively to the employees concerned.

The Report (R.44/2009) will be amended so that the paragraph on page 4 which starts "The temporary scheme only applies where the employer has become formally insolvent..." will be removed and replaced with the following 2 paragraphs setting out the 2 types of discretion. Any references to the insolvency of the employer will be interpreted as including a situation where discretion has been extended as described.

*"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.*

*In wholly exceptional circumstances, where the employer has ceased trading, **but has not become subject to formal insolvency proceedings**, the Minister will give consideration, in consultation with the Viscount, to making compensatory payments under the Scheme where he is reasonably satisfied that the employer will not recommence trading, and that a court judgment has been taken against the employer."*