

INSOLVENCY BENEFIT

GUIDANCE FOR DULY APPOINTED INSOLVENCY PRACTITIONERS

Background

An amendment to the Social Security (Jersey) Law, 1974¹ (the 'Law'), came into force on 1 December 2012 that created a new Insolvency Benefit (the 'benefit').

The intention of the benefit is to ensure that the former employees of insolvent businesses receive compensation based upon a reasonable proportion of any monies owed to them by their former employer, including unpaid wages, holiday pay, statutory notice pay and statutory redundancy pay².

In 2009, the Minister for Social Security had introduced a 'temporary insolvency scheme'³ that paid compensatory notice pay to employees who had been made redundant due to the insolvency of their employer and who had not received the required period of statutory notice on termination of employment (or pay in lieu). That temporary scheme closed as of 30 November 2012.

The benefit is available to employees who employment ends due to bankruptcy on 1 December 2012, or later.

This guidance note replaces the Insolvency Practitioners guidance note to the temporary scheme, dated 28 March 2011. It is intended that this guidance note will assist the parties to understand what is expected in terms of best practice, including the giving of notice where that is possible, as well as the exchange and sharing of relevant information, so that claimants will not have to wait unduly to receive benefit.

When a benefit claim has been received and validated, it is the Social Security Department's intention that sums due will be paid as soon as possible, and the co-operation of the insolvency practitioner and claimants in the submission of the required evidence is necessary to achieve this.

Relevant guidance is available on the States website; www.gov.je/insolvencybenefit.

¹ Social Security (Amendment No. 20) (Jersey) Law 2012, adopted by the States on 9 June 2011; www.jerseylaw.je/laws/enacted/Pages/L-05-2012.aspx

² The statutory right to redundancy pay came into force on 1 January 2011

³ Further details can be found on the States Assembly website www.statesassembly.gov.je; See R.44/2009, which was extended by P.67/2009 and R.74/2011.

Entitlement to Insolvency Benefit

To qualify for benefit, a claimant must satisfy certain conditions, which are set out in the Law (see paragraph 12 of this guidance and Article 26 of the Law). To qualify for benefit, it is essential that the former employer of the claimant is bankrupt. Bankruptcy, as defined by the Law, 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 has occurred in Jersey or elsewhere; and 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. It does not matter whether an employer's trading or activities took place in Jersey or elsewhere.

Whilst the temporary insolvency scheme allowed the Minister to exercise discretion to make payments where an employer had ceased trading even if the business had not yet been declared bankrupt⁴, a person does not qualify for benefit unless the employer is bankrupt. Claims will usually be required to be submitted to the Department prior to a declaration of bankruptcy, but benefit will not be paid until bankruptcy has been formally declared.

Components of Insolvency Benefit

The benefit includes four components –

- i. Unpaid wages relating to the previous 12 months ('wages' as defined by the Employment (Jersey) Law 2003)
- ii. Holiday pay, or pay in lieu of holiday relating to the previous 12 months
- iii. Statutory redundancy pay (1 week's capped pay for each year of service, in accordance with the Employment Law)
- iv. Pay in lieu of statutory period of notice on termination of employment (up to 12 weeks' pay, in accordance with the Employment Law)

The benefit does not include compensation in respect of any other amounts owed to an individual by the former employer or through the insolvency practitioner, such as employer pension contributions or bonuses. Such amounts may be pursued by the individual as a creditor via the insolvency proceedings.

A claimant is required to mitigate their losses during their full statutory notice period and, if not employed, must be actively seeking work (unless in receipt of Short-Term Incapacity Allowance or Maternity Allowance). A claimant must not unreasonably refuse appropriate employment, including any employment offered by the insolvency practitioner. The notice pay component will be reduced, pound for pound, by certain types of income that the person receives (or could have received) during that period, including wages from employment, income from self-employment, and certain Social Security benefits.

⁴ See P.67/2009 and R.74/2011

Detailed guidance

Notifying the Department of potential Insolvency Benefit claims

1. Insolvency Practitioners (IPs) will notify the Social Security Department (SSD) of any bankruptcy which has been formally declared involving an undertaking that employs one or more employees working wholly or mainly in Jersey, irrespective of whether it is considered likely that benefit will be claimed by any employee;
2. IPs and the SSD will each identify a contact point within their organisation for the purpose of communication and dealing with further enquiries;
3. IPs will provide an indication, at the earliest possible stage, as to the number of individuals who may be entitled to claim the benefit, it being understood that this is not a binding commitment.
4. IPs will provide employees with details of the benefit, copies of the claim form and notify them of any relevant time limits, in particular, the requirement for employee claims to be submitted to SSD within 30 days of the employee's employment ending.
5. IPs will advise the SSD of any offers that have been made to employees to stay on in continued employment after notice has been given and whether those offers have been accepted or declined and the reasons if declined.
6. IPs will provide details to the SSD of any sums paid to any employee who has remained in continued employment after notice has been given.
7. IPs will deal with the SSD in an open and co-operative manner.

Notice of termination of employment

Claimants are required to submit a claim form to the SSD which includes a declaration that the SSD *“may check this information with my former employer, their representatives, the relevant office holder in insolvency, and other government departments and agencies, as well as any new employer that I work for during the period of notice.”*

Information will primarily be exchanged between the employee and SSD, however IPs are expected to provide the following documentation:

8. Written notice to employees of any bankruptcy which has been formally declared and which has any effect in Jersey, together with an indication of any special issues arising with respect to their terms of employment, such as whether the work was seasonal in nature;

9. Written notice of termination of employment to each employee at the earliest opportunity (where the employer has not already given notice) and a copy of such written notice to be provided to the SSD;

10. A schedule identifying the following information (where it is available to the IP) in regard to each employee who might qualify for benefit, irrespective of whether the IP can confirm that benefit will be claimed by any employee;
 - Name of employee
 - Address
 - Social Security number
 - Date of birth
 - Weekly wage
 - Length of service
 - Period of notice owed, indicating where notice, or part of it, has either been serviced by an employee or paid in lieu
 - Whether there have been any gaps in service, explaining the reasons where there are any such gaps
 - Wages owed in respect of the previous 12 months
 - Holiday owed in respect of the previous 12 months
 - Statutory redundancy pay (or any part of it) that has not been paid

11. Copies of employee contracts of employment (identifying employment start date and contractual hours) and a copy of the most recent payslip or payroll record (to identify weekly wage).

12. Information, where it is available, to assist the SSD in determining whether a individual qualifies for benefit by meeting the following conditions:
 - a. The person was an “employee” of an employer, as defined by the Employment Law;
 - b. The employee was employed wholly or mainly in Jersey.
 - c. The employer is bankrupt
 - d. Bankruptcy is the main reason for the fact that the person is no longer employed
 - e. The employer has not paid the former employee any amounts owed in respect of the four components of benefit (See Article 26C(2)(a)-(d) of the Law for further detail).

Processing of claims by the Social Security Minister

The Social Security Department may provide IP's with personal information relating to claimants to insolvency benefit to allow IP's to validate the Social Security Minister's claims as a creditor in insolvency proceedings where the Minister is entitled to recover amounts relating to insolvency benefit.

IP's should ensure that they process this data in accordance with the requirements of the Data Protection (Jersey) Law 2005, specifically Schedule 2, paragraphs 5 and 6, for the sole purpose of validating and pursuing the Social Security Minister's claims in insolvency proceedings.

Security of data and confidentiality

Generally, IP's will not use personal data relating to claimants provided by the Social Security Department for any purpose other than to validate the Minister for Social Security's claims in insolvency proceedings.

Personal data relating to claimants should not, other than in confidence with legal and/or financial advisers in order to progress claims, be disclosed to any other party, other than with the individual's consent or with appropriate authorisation from the relevant data controller. However, it is acknowledged that IP's may need to share such data with their legal or financial advisors on a strictly confidential basis.

IP's should retain only such data as is required to validate the Minister's claims in insolvency proceedings, for as long as it is relevant to the administration of such proceedings or any rule of law or best practice requires.

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