

# Summary of Responses

## WHITE PAPER—Insolvency Payments Scheme

11 May 2010

### SUMMARY OF CONSULTATION DETAILS

The Department of Social Security published a White Paper between 3 December 2009 and 5 February 2010 seeking responses via public consultation on proposals for a statutory insolvency payments scheme.

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

In summary, the White Paper proposed a scheme that would;

1. Follow the principles of insolvency schemes operating in the UK and the Isle of Man.
2. Be based largely on the current Temporary Insolvency Scheme.
3. Entitle an individual to claim a number of outstanding payments (including wages and holiday pay owed, statutory notice pay and statutory redundancy payments) from the statutory insolvency fund if they meet five specific qualifying criteria.

4. Cap the maximum payment from the statutory insolvency scheme at the same cap applied to the Jersey Employment Tribunal (£10,000).
5. Provide a mechanism to transfer the employee's rights in insolvency proceedings to the Social Security Minister so that he can take steps to recover as much as possible of the amount paid out.
6. Be subject to a right of appeal to the Social Security Tribunal.
7. Be self funding by applying a small increase (0.032%) to Social Security contributions paid by employers, providing an insolvency fund of approximately £350,000 per year (to include administration costs at 5% of total expenditure).

## **OVERVIEW OF CONSULTATION RESPONSES**

Copies of the White Paper were circulated to more than 80 consultees (including representatives of employers and employees, independent advisory bodies, lawyers and insolvency practitioners) as well as all States Members and those who subscribe to the States Public Consultation Register.

Responses were received from ten individuals and organisations (listed at Annexe A). Eight of the respondents specifically stated that they supported and endorsed the proposals in general. None of the respondents were opposed to the broad proposals of the scheme. The majority of the comments received related to the funding of the scheme and administration of payments.

The Jersey Advisory and Conciliation Service (JACS) and the Viscount's Department have indicated their support for the scheme. Both were involved with the development of the White Paper given their specialist knowledge on the subjects involved. A number of detailed points regarding the operation of the scheme were addressed through discussion with JACS and the Viscount's Department during the drafting of the White Paper.

## MINISTER'S RESPONSE TO CONSULTATION

Having considered the consultation responses, the Minister has decided that further consideration is required in two areas:

1. The deduction of Social Security contributions from compensatory amounts paid to claimants, and
2. The requirements of the Social Security Tribunal in preparation for hearing appeals against decisions of the Department.

In order to take forward the proposals the Minister will formally request law drafting with the intention of preparing draft legislation by the end of 2010.

## SUMMARY OF RESPONSES

The table below summarises the responses received during consultation and the Minister's response to each point. Each of the respondents has given permission for their comments to be quoted and attributed to them, as detailed at Annexe A.

Respondent's comment	Minister's response
<b>Principles</b>	
The Jersey Rights Association was concerned that employees on short term contracts will not qualify for protection in terms of statutory redundancy payments.	Redundancy legislation has already been drafted requiring a two year qualifying period for entitlement to a redundancy payment. This consultation does not revisit that qualifying period. The Employment Law already gives employees some protection of continuity of employment where there are successive fixed term contracts with the same employer.

<p>Jon Scott noted that Social Security contributions are capped at an income threshold, over which contributions are not collected, which means that employer contributions to the insolvency fund will not be relative to the potential claims of their employees.</p>	<p>The total sum that may be claimed by an individual is capped at £10,000 which is unlikely to cover the full claims of a high earner. However, the matter of Social Security contributions at higher levels of earnings (currently above the contributions ceiling) will be considered as part of the Fiscal Strategy Review.</p>
<p>Two respondents noted that the scheme protects employees only if their employment is terminated when their employer becomes insolvent and suggested that the scheme could have scope for discretion. Jon Scott noted that employees may have difficulty obtaining compensation from a subsequently insolvent employer if they have been made redundant prior to formal insolvency. The Employment Lawyers Association (Jersey Branch) (ELA) shared this concern and suggested that former employees could be covered by the scheme where their employment ended within 6 months prior to insolvency.</p>	<p>The Minister had considered whether discretion should be available in such circumstances, however decided that a line must be drawn somewhere. As recognised by the ELA, the proposed scheme needs to be workable and economically viable. Any widening of the scheme would have cost implications at a difficult time for businesses. If the employee's period of notice takes them beyond the date of the employers' insolvency, they will qualify under the proposed scheme. If employment is terminated whilst an employer is solvent, they may claim amounts owed to them via the Employment Tribunal. If the employer subsequently becomes insolvent, the employee can claim amounts owed via the insolvency proceedings, along with other creditors.</p>
<p><b>Payments / Administration</b></p>	
<p>The Citizens' Advice Bureau (CAB) noted that, as proposed, payments to employees would be made gross, leaving employees to pay amounts owed to Social Security and Income Tax. CAB was concerned that this could leave employees with debt and possible loss of benefit entitlement. CAB suggested that deductions should be made prior to payment.</p>	<p>This is acknowledged. The paper intentionally did not address the matter in detail as it is complex and impacts on other legislation, however the Minister agrees that it may be necessary to amend other legislation and practices in order to achieve an appropriate outcome in regard to the deduction of Social Security contributions. The Income Tax Department has advised that insolvency payments should be made to employees without the deduction of income tax. Any tax due would be collected by the Income Tax Department from the individuals themselves.</p>

<p>An anonymous employee respondent within the Finance Industry commented that the new insolvency fund should aim to achieve less than the proposed £350,000 given that the existing temporary insolvency scheme had paid out less than half of its budget (to December 2009) during a period of economic downturn.</p>	<p>The existing temporary scheme only pays out statutory notice pay. The proposed scheme will cover additional amounts owed, up to £10,000 per person. The estimated cost of the scheme is based on a 'normal' year rather than an exceptional year such as 2009.</p>
<p>The Health, Social Security and Housing Scrutiny Panel proposed that the 0.032% increase in employer contributions could be raised to 0.05% to allow the Department to accumulate a financial buffer as a precaution.</p>	<p>The Department has carefully calculated the requirements of the proposed scheme and the Minister does not wish to increase employer's contributions more than is likely to be necessary; particularly given that there will be other pressures on the Social Security fund in the future arising from the ageing population. The level of contribution to the insolvency fund may be reviewed as necessary in the future.</p>
<p>Three respondents (John Scott, the Jersey Rights Association and an anonymous employee respondent within the Finance Industry) noted that employer contributions to the insolvency fund should be reviewed if funding is inadequate, or capped if funding is excessive in future.</p>	<p>It is not the Minister's intention to build up the fund significantly whilst continuing to levy the same percentage increase on employer contributions, unless continued economic downturn is predicted in the future. Provisions will be made to so that if the fund builds up beyond predicted requirements, funding will be reviewed. An arbitrary cap would not be useful.</p>
<p>The ELA (Jersey Branch) noted that further appointments, additional resources and member training may be necessary for the Social Security Tribunal to cope with the additional activity of appeals against decisions of the Department regarding insolvency payments.</p>	<p>The Department has considered the requirement for the Social Security Tribunal to be suitably prepared and intends to conduct further research into the potential caseload of appeals.</p>

## **Annexe A – List of respondents**

1. Health, Social Security and Housing Scrutiny Panel
2. Citizen's Advice Bureau
3. An anonymous employee respondent within the Finance Industry
4. Viscount's Department
5. Jersey Advisory and Conciliation Service
6. Jersey Rights Association
7. Deputy Roy Le Herissier
8. Adrian Walton
9. Employment Lawyers Association (Jersey Branch)
10. Jon Scott