



Data Sharing Agreement

Between

The Jersey Taxes Office

And

The Social Security Department

in respect of

**Insolvency Benefit paid under the Social
Security (Jersey) Law 1974**

GOV276

1. Parties to the agreement:

The Jersey Taxes Office

PO Box 56
Cyril Le Marquand House
St Helier
Jersey
JE4 8PF

And

The States of Jersey Social Security Department

P O Box 55
Philip Le Feuvre House
La Motte Street
St Helier
JE4 8PE

2. Aim of this agreement

The aim of this agreement is to allow the Social Security Department to deduct the correct effective rate of income tax from any relevant payments of insolvency benefit and enable the Jersey Taxes Office to validate and correctly allocate such deductions to the correct person.

It also ensures that such data sharing will be carried out in accordance with the requirements of the Data Protection (Jersey) Law 2005, specifically Schedule 2, paragraphs 5 and 6, for the sole purpose of deducting income tax from insolvency benefit as provided for under the Social Security (Jersey) Law 1974 and the payment of those deducted amounts as provided for under the Income Tax (Jersey) Law 1961. No sensitive information will be shared under this agreement.

3. Insolvency Benefit

The Social Security (Amendment No.20) (Jersey) Law 2012 will amend the Social Security (Jersey) Law 1974, as of 1 December 2012, to introduce a new insolvency benefit. The benefit will provide financial assistance to employees whose employment has ended, on or after 1 December, due to the insolvency of their employer.

Previously, a 'temporary insolvency scheme' paid statutory notice pay to employees whose employment ended from January 2009 to November 2012 due to the insolvency of their employer. That temporary scheme will close to new claims as of 30 November 2012.

The Income Tax (Amendment No. 40) (Jersey) Law 2012 introduced via the insertion into the Law of Article 41HA the requirement that where the Minister of Social Security is required under the Social Security (Jersey) Law 1974 to

deduct income tax from a component of benefit, that amount shall be at the same effective rate that the person's employer would have been required to deduct.

It further requires that the amount of any income tax deducted as a result is to be remitted to the Comptroller.

Entitlement to insolvency benefit

Insolvency benefit will provide financial assistance where a person meets the following conditions;

1. The employer (or former employer) of the person must be undergoing a formal insolvency process and this must be the main reason for the fact that the person is no longer employed.
2. The person must have been an "employee" within the meaning of the Employment (Jersey) Law, 2003.
3. The person must have been employed wholly or mainly in Jersey.
4. The employer must have been liable to pay Class 1 contributions in respect of that person in any one or more months in the three months prior to bankruptcy.
5. The employer must owe the person amounts in respect of one or more of the four components of the benefit.

Calculating insolvency benefit

Insolvency benefit is calculated based upon any amounts owed to a person by their former employer in respect of the following four components of benefit;

1. **Unpaid wages** relating to the 12 months prior to employment ending; 'wages' as defined by the Employment (Jersey) Law 2003.
2. **Holiday pay** relating to the 12 months prior to employment ending.
3. **Statutory redundancy pay**; one week's capped pay for each year of service (subject to a minimum of 2 years' service), in accordance with the Employment Law.
4. **Statutory notice pay** in lieu of the minimum period of notice required on termination of employment; up to 12 weeks' pay, in accordance with the Employment Law.

Benefit is calculated by adding together all of the components that the person was owed by their former employer and making any appropriate deductions, including social security contributions and income tax where relevant. The claimant's liability for social security contributions and income tax will be met in respect of any components of benefit.

The maximum amount of benefit that may be paid to a claimant is capped at £10,000.

Claiming insolvency benefit

To claim benefit, a former employee of an insolvent employer is required to complete a claim form which includes a declaration of the individual's consent for the Social Security Department to approach other Government

Departments and agencies, any relevant Officer Holder in insolvency, and any new employer that the person works for during their statutory period of notice in order to validate the information supplied by that individual.

Deductions for income tax

The insolvency benefit legislation provides that if income tax payable under the Income Tax (Jersey) Law 1961 would have been deductible or payable in respect of any component of the insolvency benefit then that value is to be deducted from the relevant component.

Any payments made by way of insolvency benefit for

1. Unpaid wages
2. Holiday pay, and
3. Statutory notice pay

are subject to the deduction of income tax.

Any payment made by way of insolvency benefit for Statutory Redundancy Pay is not subject to the deduction of income tax. Therefore any amounts paid for this component are not included in this agreement.

Any amounts deducted for income tax are then to be paid to the Comptroller.

4. Data to be shared

In order to establish the effective tax rate for benefit claimants the Social Security Department will provide to the Jersey Taxes Office the following details only when formal insolvency proceedings have been confirmed by an insolvency practitioner

Claimant

- Name
- Address
- Date of birth
- Social Security Number

Insolvent employer of claimant

- Name

On receipt of the above data the Jersey Taxes Office will provide to the Social Security Department the following details in respect of each benefit claimant;

- Name (for identification purposes)
- Social Security Number (for identification purposes)
- Effective rate notice
- Tax reference number

When the Social Security Department has confirmed a claimant's entitlement to any component of benefit that is liable to the deduction of income tax and has deducted income tax at the effective rate, the Social Security Department will provide to the Jersey Taxes Office the following details in respect of each benefit claimant;

- Name (for identification purposes)
- Social Security Number (for identification purposes)
- Address (first line)
- Tax reference number
- Total taxable benefit paid
- Total tax deducted

The Jersey Taxes Office may contact the Social Security Department to discuss and verify any of these details in order to validate the submissions.

Only personal data (as defined by the Data Protection (Jersey) Law 2005) will be shared. The sharing of sensitive personal data, such as health data, forms no part of this agreement.

5. Transfer of Data

Data will be communicated by phone and email, through the secure States network, and may also be communicated by written documents that will be hand-delivered, between authorised, nominated persons only. The procedure for the transfer of data is detailed in Appendix 2.

6. Nominated persons

The data is intended to be shared between nominated persons of either party.

For the Jersey Taxes Office

Sarah Hill – BIK Assessment Manager
Lindsay Proudfoot – Director of Information Systems

For the Social Security Department

Marion Gouyette – Work Zone Manager
Kay Wagner – Work Zone Team Leader
Kate Johnson – Work Zone Team Leader
Caroline Fernandes - Work Zone Team Leader

7. Security of data and confidentiality

Neither party will use the information for any purpose other than the purpose stated in this agreement. Personal data relating to claimants will not, be disclosed to any other party other than with the individual's consent or with appropriate authorisation from the relevant data controller.

The Jersey Taxes Office will retain only such data as is required to validate the income tax that has been deducted from insolvency benefit and paid to

the Jersey Taxes Office by the Social Security Department for as long as it is relevant to the administration of the income tax year to which the deductions relate or any rule of law or best practice requires.

The Social Security Department will retain only such data as is required to validate the income tax deductions from insolvency benefit and the payment of any amounts deducted to the Jersey Taxes Office for as long as it is relevant to the administration of the claim or any rule of law or best practice requires.

8. Access of data

Either party will assist the other in the execution of any requests for information from individuals, as if the request were made to them directly.

9. Review Arrangements

This agreement will be reviewed after two years.


10. Signatories to the agreement

Approved By: Acting Comptroller of Taxes – David Le Cuirot

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For the Jersey Taxes Office

Date:.....

Approved By: Chief Officer – Richard Bell


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For the Social Security Department

Date: 28/11/2012 .

Protocol Drafted	29 October 2012	Richard Jones Risk & Quality Manager Social Security Department
Protocol Reviews	Date	Reviewed By

Appendix 1: Legislation

Income Tax (Jersey) Law 1961

Article 13A of the Income Tax (Jersey) Law 1961

13A Power of Comptroller to disclose information for approved purposes

Notwithstanding anything in this Law contained, the Comptroller may disclose information to the administration of the States for which the Minister for Social Security is assigned responsibility for any purpose approved by the Minister.

Income Tax (Jersey) Law 1961

41HA Tax deducted under the Social Security (Jersey) Law 1974

- (1) If the Minister of Social Security is required under the Social Security (Jersey) Law 1974 to deduct income tax from a component of a benefit payable to a person under that Law, tax shall be deducted at the same effective rate which the person's employer would have been required to deduct had such component been paid by the employer to the person as earnings when such earnings were due to be paid.
- (2) The Comptroller may issue a notice, in writing, to the Minister for Social Security, of the effective rate for the purposes of paragraph (1).
- (3) The amount of income tax deducted under paragraph (1) shall be remitted to the Comptroller and received by the Comptroller as a payment of tax by the person to whom the benefit is paid.

Social Security (Jersey) Law 1974

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 2003, 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 2007;

‘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 1978 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 1961 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 be deducted from the component.
- (3) 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

Insolvent benefit claim form

DECLARATION

I declare that the information that I have given on this form is correct and complete and that it will be used to help determine my claim for Insolvency Benefit.

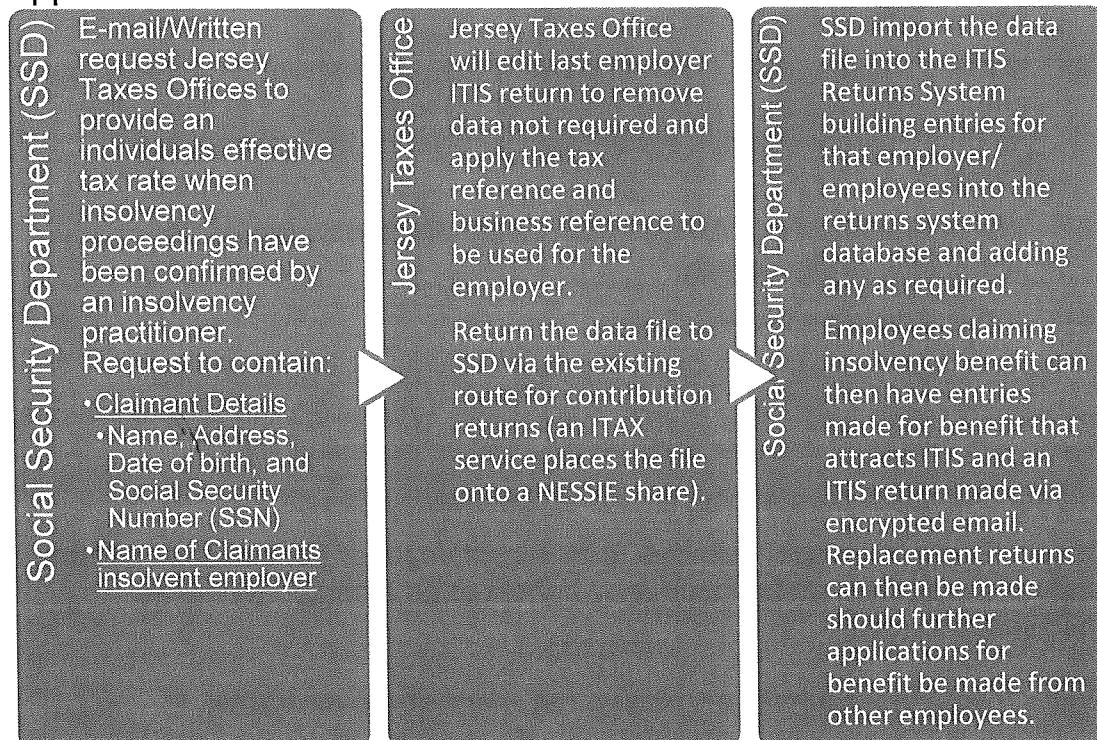
You may check this information with my former employer, their representatives, the relevant office holder in insolvency, and other government departments and agencies, as well as any new employer that I work for during the period of notice.

This is my only application for Insolvency Benefit for this employment. If I have made a false statement on this form, I understand that you may refuse to make payment and/or reclaim any payments already made to me.

PRIVACY STATEMENT

The Social Security Department collects information for the purpose of dealing with all matters relating to the benefits and services it administers. We may check information about you with other information we have. We may share information regarding your claim with the Jersey Taxes Office only to ensure the correct and timely processing of your claim. We will not give information about you to anyone else outside the Department unless the Law allows us to or we have your consent. The Social Security Department is the Data Controller for the purposes of the Data Protection (Jersey) Law 2005.

Appendix 2: Data Transfer Procedure



For any employees not covered by the above method either paper effective rate notices will be issued or details sent to Social Security in encrypted form. Depending on numbers of employees it may be possible generate an import file from a template incorporating the required data.