



Jersey

DEBT REMISSION (INDIVIDUALS) (JERSEY) LAW 2016

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DEBT REMISSION (INDIVIDUALS) (JERSEY) LAW 2016

A **LAW** to provide for debt remission for individuals who are unable to pay their debts.

Commencement [[see endnotes](#)]

PART 1

INTERPRETATION

1 Interpretation

In this Law –

“approved intermediary” means a person approved as an intermediary under Article 5(1);

“debt remission order” means a debt remission order granted under Article 6(5)(b);

“excluded debt” means a debt specified as such in an Order made under Article 2;

“Minister” means the Chief Minister;

“moratorium period” means the period referred to in Article 10(1);

“obtaining credit” includes obtaining goods under a hire purchase agreement within the meaning of the [Supply of Goods and Services \(Jersey\) Law 2009](#);

“qualifying debt” means a debt that –

(a) is for a liquidated sum payable either immediately or at some certain future time; and

(b) is not an excluded debt,

but a debt is not a qualifying debt to the extent that it is secured;

“prescribed” means prescribed by Order made by the Minister;

“Register” means the Debt Remission Register established under Article 7;

“working day” means a weekday (within the meaning of Part 1 of the Schedule to the [Public Holidays and Bank Holidays \(Jersey\) Act 2010](#)) other than –

- (a) a day specified in that Schedule as a day which is to be observed as a public holiday; or
- (b) a day noted in that Schedule as a day which is by custom observed as a general holiday.

PART 2

DEBT REMISSION

2 Excluded debt

The Minister may by Order specify that a debt is an excluded debt for the purposes of this Law.

3 Application for debt remission order

- (1) Subject to paragraphs (2) and (3) and Articles 4 and 5, an individual who is a debtor and who is unable to pay his or her debts may apply to the Viscount for a debt remission order to be granted in respect of his or her qualifying debts.
- (2) An application for a debt remission order must be made in the form approved by the Viscount and must include –
 - (a) a list of all debts to which the debtor is subject at the date of the application specifying –
 - (i) the amount of each debt including any interest, penalty or other sum that has become payable in relation to that debt on or before that date, and
 - (ii) the creditor to whom it is owed;
 - (b) details of security held in respect of any of those debts; and
 - (c) such other information about the debtor’s affairs (including his or her creditors, debts, liabilities, income and assets) as may be prescribed.
- (3) An application shall not be regarded as being made until –
 - (a) the application has been submitted to the Viscount;
 - (b) any fee payable to the Viscount in respect of the application has been paid; and
 - (c) any prescribed fee payable to an approved intermediary has been paid.

4 Eligibility

- (1) A debtor shall not be eligible for a debt remission order unless –

- (a) the debtor is at least 18 years of age on the date on which the application is made;
 - (b) the debtor has been ordinarily resident in Jersey during the 5 years immediately preceding the date on which the application is made;
 - (c) the debtor has not been the subject of a debt remission order within the 5 years immediately preceding the date on which the application is made;
 - (d) the debtor is not bankrupt within the meaning of Article 8 of the [Interpretation \(Jersey\) Law 1954](#);
 - (e) the amount the debtor owes in qualifying debts is less than £20,000 or such other amount as may be prescribed;
 - (f) the value of the assets of the debtor (excluding a motor vehicle with a value not more than £2,000 or such other amount as may be prescribed), does not exceed £5,000 or such other amount as may be prescribed; and
 - (g) after the deduction of tax, social security contributions and normal household expenses, the debtor's monthly disposable income is less than £100 or such other amount as may be prescribed.
- (2) A debtor shall not be eligible for a debt remission order unless the debtor acts in good faith.
- (3) For the purposes of paragraph (2), good faith does not include any of the following conduct by the debtor –
- (a) within 2 years prior to the date of the application –
 - (i) failing to keep or produce records relating to a loss of property by the debtor or by a business carried on by the debtor, or
 - (ii) entering into a transaction at undervalue;
 - (b) within one year prior to the application for the debt remission order, giving a preference to a person;
 - (c) incurring a debt knowing that he or she would be unable to pay the debt or being reckless as to such ability;
 - (d) failing to account satisfactorily for loss of property or for insufficiency of property to meet his or her debts;
 - (e) carrying on any gambling, rash and hazardous speculation or unreasonable extravagance which may have materially contributed to or increased his or her inability to pay his or her debts;
 - (f) careless neglect of business affairs materially contributing to or increasing his or her inability to pay his or her debts;
 - (g) fraud or fraudulent breach of trust; and
 - (h) failing to co-operate with the approved intermediary or with the Viscount.
- (4) For the purposes of this Article, a debtor enters into a transaction at undervalue if the debtor alienates property of any sort, either gratuitously or for significantly less than the property is worth.
- (5) For the purposes of this Article, a debtor gives a preference to a person if –

- (a) the person is a creditor of the debtor or a surety or guarantor for a debt or other liability of the debtor; and
- (b) the debtor –
 - (i) does anything, or
 - (ii) suffers anything to be done,that has the effect of putting the person into a position which, in the event of a debt remission order being granted in respect of that debtor's property, will be better than the position he or she would have been in if that thing had not been done.

5 Assistance and consideration by approved intermediary

- (1) The Minister may by Order approve a person to be an intermediary.
- (2) An application under Article 3 must be made to the Viscount through an approved intermediary.
- (3) An approved intermediary shall assist a debtor in making an application and shall check that an application is properly completed and shall, before the application is made, inform the debtor of –
 - (a) all the conditions to which an application for, and making of, a debt remission order is subject, as follows –
 - (i) that checks may have to be made to verify that the debtor meets the eligibility criteria under Article 4, and
 - (ii) that the approved intermediary must give its conclusions on the application to the Viscount under paragraph (4) and that the debtor will be informed of such conclusions when the application is sent to the Viscount; and
 - (b) the consequences of making the application including the potential criminal liability of the debtor under Part 3.
- (4) An approved intermediary through which an application is made shall assess the application having regard to the eligibility criteria referred to in Article 4(1) and (2) and shall offer its conclusion to the Viscount to assist the Viscount in determining the application.
- (5) An approved intermediary through which an application is made shall submit the application to the Viscount together with notice in writing of its conclusion.
- (6) The Minister may by Order provide for fees to be payable to an approved intermediary who assists a debtor under this Article.

6 Grant or refusal of debt remission order

- (1) The Viscount shall apply the following presumptions when determining an application for a debt remission order –
 - (a) that, subject to Article 4, the debtor is eligible for a debt remission order if such appears to be the case from the information supplied, and there is no reason to believe that the information is inaccurate or incomplete or that the debtor's circumstances have changed;

- (b) that the debts specified at the date of the application are qualifying debts, unless the Viscount has reason to believe otherwise.
- (2) The Viscount may consider an application for a debt remission order on the basis of the documents received and without oral arguments by the parties.
- (3) The Viscount may stay consideration of an application for a debt remission order until the Viscount has received answers to any queries raised with the debtor by the Viscount in relation to anything connected with the application.
- (4) Without prejudice to the generality of paragraph (3), the Viscount –
 - (a) may, in relation to the application, make such enquiries of the debtor, the approved intermediary or any other person as the Viscount considers appropriate;
 - (b) is not bound by any enactment or rule of law relating to the admissibility of evidence in proceedings before the courts.
- (5) The Viscount shall, in determining an application for a debt remission order, have regard to the conclusion of the approved intermediary and shall –
 - (a) refuse to grant the debt remission order if the Viscount is satisfied that –
 - (i) the debtor is not eligible for the grant of a debt remission order under Article 4,
 - (ii) the debtor has no qualifying debts, or
 - (iii) if any queries raised with the debtor have not been answered to the satisfaction of the Viscount within such time as the Viscount may specify; or
 - (b) grant a debt remission order in relation to the debts that the Viscount is satisfied were qualifying debts of the debtor at the application date if satisfied that the debtor is eligible for the grant of the debt remission order.
- (6) The Viscount shall within 5 working days of granting a debt remission order or refusing to make a debt remission order give notice in writing to –
 - (a) the debtor;
 - (b) the approved intermediary; and
 - (c) in the case of a grant of a debt remission order, each creditor to whom a debt included in the list of the debtor's qualifying debts under paragraph (10)(b) is owed.
- (7) Where the Viscount grants a debt remission order, the notice referred to in paragraph (6) shall include notice to the creditor of –
 - (a) the making of the debt remission order and its effect;
 - (b) the grounds on which a creditor may object; and
 - (c) any information as may be prescribed.
- (8) Where a debt remission order is refused, the Viscount shall, in the notice referred to in paragraph (6), give reasons for the refusal and inform the applicant of the applicant's right of appeal under Article 13.

- (9) Subject to paragraph (10), the Viscount shall within 5 working days of making a debt remission order issue a copy of the debt remission order to the debtor.
- (10) A debt remission order shall –
 - (a) be in the form determined by the Viscount; and
 - (b) include a list of the debts which the Viscount is satisfied were qualifying debts of the debtor at the application date, specifying the description of the debt, amount of the debt at that time and the creditor to whom it was then owed.
- (11) Where a debt remission order is made the Viscount shall make the appropriate entry in the Register.
- (12) The Minister may by Order specify any additional action to be taken by the Viscount or the debtor on the making of a debt remission order.

7 Debt Remission Register

- (1) The Viscount shall establish and maintain a register to be known as the Debt Remission Register.
- (2) The Register shall be kept in such form as may be prescribed and the Viscount shall enter in the Register such information as may be prescribed relating to a debt remission order.
- (3) The Viscount shall make arrangements for –
 - (a) public inspection of the Register; and
 - (b) subject to payment of the prescribed fee, the supply of certified or uncertified copies or extracts of entries in the Register.

8 Creditor's objection

- (1) Subject to paragraph (2), a creditor in relation to whom a debt included in the list of a debtor's qualifying debts under Article 6(10)(b) is owed may object –
 - (a) to the making of the debt remission order;
 - (b) to the inclusion of the debt in the list; or
 - (c) to the accuracy of the description or the amount of the debt specified in the debt remission order.
- (2) An objection under paragraph (1) shall –
 - (a) be submitted within such time as may be prescribed but in any event not more than 28 days after the creditor has been notified of the making of the debt remission order;
 - (b) be made in writing; and
 - (c) be supported by such information and documents as may be prescribed.

9 Review by Viscount

- (1) The Viscount shall consider an objection made under Article 8.

- (2) The Viscount may –
 - (a) as part of his or her consideration of an objection under paragraph (1) or on his or her own initiative, carry out such investigation in respect of the debt remission order as he or she thinks fit; and
 - (b) as part of the investigation referred to in paragraph (a), require any person to give the Viscount such information and assistance as the Viscount may reasonably require in connection with such investigation.
- (3) The Viscount shall, having considered the objection and having regard to any finding on an investigation under paragraph (2) –
 - (a) affirm the debt remission order;
 - (b) revoke the debt remission order (in which case the moratorium referred to in Article 10(1) terminates) or amend the debt remission order; or
 - (c) refer the matter to the Royal Court for directions or an order relating to the matter.
- (4) Upon a matter being referred to the Royal Court under paragraph (3)(c), the Royal Court may give any direction or make any order as it thinks fit including an order quashing a decision of the Viscount or revoking or amending the debt remission order.
- (5) A person who fails to comply with a requirement under paragraph (2)(b) shall be guilty of an offence and liable to imprisonment for a term of 6 months and a fine.

10 Moratorium

- (1) A moratorium shall commence on the date of entry of the debt remission order in the Register under Article 6 and shall continue for a period of one year beginning on the date of commencement unless the debt remission order is revoked under Article 9(3) or (4) or Article 11(7) or (8) (in which case the moratorium terminates) or the moratorium period is extended by the Viscount or the Royal Court under paragraph (2).
- (2) Subject to paragraph (3), the Viscount or the Royal Court may, for the purpose of –
 - (a) carrying out or completing an investigation under Article 9; or
 - (b) taking any action the Viscount or the Royal Court considers necessary (whether as a result of an investigation or otherwise) in relation to the debt remission order,extend the moratorium period for a maximum of 3 months beginning after the end of the initial moratorium period of one year referred to in paragraph (1).
- (3) Under paragraph (2), a moratorium period may be extended more than once, but any extension (including the first extension) must, before the moratorium period ends, be notified to the debtor and every creditor to whom a debt included in list of the debtor's qualifying debts under Article 6(10)(b) is owed.

- (4) Subject to paragraph (5), during a moratorium period, a creditor to whom a debt included in list of the debtor's qualifying debts in the debt remission order under Article 6(10) is owed –
- (a) has no remedy in respect of the qualifying debt; and
 - (b) shall not –
 - (i) apply for a declaration of *désastre* in reliance on the qualifying debt, or
 - (ii) otherwise commence any action or other legal proceedings against the debtor for the qualifying debt, except with the permission of the Royal Court and on such terms as the Royal Court may impose.
- (5) A secured creditor of a debtor may enforce his or her security during a moratorium period.

11 Debtor's duties

- (1) If an application for a debt remission order is made, the debtor shall –
- (a) give to the Viscount such information;
 - (b) attend before the Viscount at such times; and
 - (c) do all such other things,
- as the Viscount may reasonably require for the purpose of carrying out his or her functions in relation to the application or the debt remission order made as a result of the application.
- (2) The debtor shall, in writing, notify the Viscount as soon as is reasonably practicable if the debtor becomes aware of –
- (a) any error in, or omission from, the information supplied to the Viscount in, or in support of, an application for a debt remission order; and
 - (b) any change in his or her circumstances between the date the application was made and the date of determination of the application that would affect, or would have affected, the application.
- (3) Paragraphs (1) and (2) shall apply before and after the determination of an application and for as long as the Viscount is able to exercise his or her functions under this Law.
- (4) Where a debt remission order is made, the debtor shall notify the Viscount as soon as is reasonably practicable if –
- (a) there is an increase in his or her income during the moratorium period applicable to the debt remission order;
 - (b) the debtor acquires any property or any property is devolved upon him or her during that period; or
 - (c) the debtor becomes aware of any error in or omission from any information supplied by him or her to the Viscount after the determination date.
- (5) A debtor shall not obtain credit during the moratorium period unless the debtor informs the intending creditor of the debt remission order.

- (6) A debtor who contravenes paragraph (5) shall be guilty of an offence and liable to imprisonment for a term of 6 months and to a fine.
- (7) Where the Viscount becomes aware or is notified of any matter mentioned in paragraph (2) or (4), the Viscount may –
 - (a) revoke the debt remission order (in which case the moratorium referred to in Article 10(1) terminates) or amend the debt remission order; or
 - (b) refer the matter to the Royal Court for directions or an order relating to the matter.
- (8) Upon a matter being referred to the Royal Court under paragraph (7)(b), the Royal Court may give any direction or make any order as it thinks fit including an order or revoking or amending the debt remission order.

12 Discharge from qualifying debts

- (1) On the expiry of the moratorium period applicable to a debt remission order, the debtor shall be discharged from all the debts included in the list of the debtor's qualifying debts under Article 6(10)(b), including any interest, penalties and other sums which may have become payable in relation to those debts since the date on which the application was made under Article 3.
- (2) Paragraph (1) shall not apply if the moratorium referred to in Article 10(1) terminates earlier than on the date of its expiry or in respect of a qualifying debt which the debtor incurred as a result of fraud or fraudulent breach of trust to which the debtor was a party.
- (3) The discharge of the debtor does not release any other person from –
 - (a) any liability (whether as a partner, joint owner or tenant of the debtor or otherwise) from which the debtor is released by the discharge; or
 - (b) any liability as guarantor for the debtor or as a person in the nature of such a guarantor.

13 Appeal

- (1) A debtor may appeal to the Royal Court against a decision of the Viscount, within 28 days of the decision being made, on any of the grounds specified in paragraph (3).
- (2) A creditor may appeal to the Royal Court against a decision of the Viscount under Article 9(3)(a) or (b), within 28 days of the decision being made, on any of the grounds specified in paragraph (3).
- (3) The grounds are that –
 - (a) the Viscount was wrong to decide that –
 - (i) the debtor met or did not meet the eligibility criteria referred to in Article 4, or
 - (ii) a particular debt should or should not have been included in the list of the debtor's qualifying debts in the debt remission order; or

- (b) the amount or description of a debt included in the list of the debtor's qualifying debts in the debt remission order under Article 6(10) was not accurate.
- (4) On any appeal under paragraph (1) or (2) the Royal Court may make such order as it thinks fit, and may affirm, reverse or vary the decision of the Viscount, or remit the matter with its opinion thereon to the Viscount.

PART 3

OFFENCES

14 False and misleading information

- (1) A person who makes a statement in any document, material, evidence or information that is required to be provided to the Viscount under this Law that –
 - (a) at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact; or
 - (b) omits to state any material fact the omission of which makes the statement false or misleading,shall be guilty of an offence and liable to imprisonment for a term of 7 years and to a fine.
- (2) A person shall not be guilty of an offence under paragraph (1) if the person did not know that the statement was false or misleading and with the exercise of all due diligence could not have known that the statement was false or misleading.

15 Concealment or falsification of documents

- (1) A person who falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction of or disposal of, information or documents which he or she knows or suspects are or would be required or relevant in relation a debt remission order, shall be guilty of an offence and liable to imprisonment for a term of 7 years and a fine.
- (2) Paragraph (1) applies regardless of whether the debt remission order was revoked after the commission of the offence.
- (3) A person shall not be guilty of an offence under paragraph (1) if the person proves that he or she had no intention of concealing facts disclosed by the information or documents.

16 Fraudulent disposal of property

- (1) A debtor in respect of whom a debt remission order has been made and who fraudulently disposes of any property during the 3 years immediately preceding the application date or during the moratorium period applicable to the debt remission order shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.

- (2) Paragraph (1) applies regardless of whether the debt remission order was revoked after the commission of the offence.

17 Fraudulent dealing with property obtained on credit

- (1) A debtor who during the moratorium period applicable to a debt remission order made in relation to the debtor disposes of property that he or she acquires on credit for which he or she has not paid and any other person who knowingly receives such property shall be guilty of an offence and liable to imprisonment for a term of 7 years and a fine.
- (2) A debtor shall not be guilty of an offence under paragraph (1) if the disposal or acquisition was in the ordinary course of the debtor's business, having regard to the price paid for the property.

18 Obtaining credit or engaging in business during the moratorium period

- (1) A debtor who (whether alone or jointly with another person) during the moratorium period applicable to a debt remission order made in relation to the debtor –
 - (a) obtains credit in an amount greater than the amount prescribed for that purpose; or
 - (b) trades in a name other than that in which the debt remission order was made without disclosing the debtor's status to the person with whom the debtor is trading,shall be guilty of an offence and liable to imprisonment for a term of 2 years and a fine.
- (2) A person may be guilty of an offence committed under paragraph (1) notwithstanding that the conduct or transaction complained of was done or effected outside Jersey.

19 Criminal liability of partners, directors and other officers

- (1) Where an offence under this Law committed by a limited liability partnership, a separate limited partnership, any other partnership having separate legal personality or a body corporate is proved to have been committed with the consent or connivance of –
 - (a) a person who is a partner of the partnership, or director, manager, secretary or other similar officer of the body corporate; or
 - (b) any person purporting to act in any such capacity,the person is also guilty of the offence and liable in the same manner as the partnership or body corporate to the penalty provided for that offence.
- (2) Where the affairs of a body corporate are managed by its members, paragraph (1) applies in relation to acts and defaults of a member in connection with the member's functions of management as if he or she were a director of the body corporate.

PART 4

MISCELLANEOUS PROVISIONS

20 Regulations

The States may by Regulations –

- (a) amend any provision of this Law;
- (b) make such consequential, incidental, supplementary and transitional provision as appear to the States to be necessary or expedient for the purposes of the Law.

21 Orders

The Minister may, by Order, make provision for any matter which may be prescribed under this Law.

22 Rules of Court

The power to make Rules of Court under the [Royal Court \(Jersey\) Law 1948](#) shall include the power to make Rules for the purposes of this Law.

23 Citation

This Law may be cited as the Debt Remission (Individuals) (Jersey) Law 2016.

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Debt Remission (Individuals) (Jersey) Law 2016	L.6/2016	8 April 2016

Table of Renumbered Provisions

Original	Current
23	spent, omitted
24	23

Table of Endnote References

There are currently no endnote references