

STATES OF JERSEY



DRAFT AIR AND SEA PORTS (INCORPORATION) (JERSEY) LAW 201- (P.5/2015): SECOND AMENDMENT

Lodged au Greffe on 12th May 2015
by Deputy G.P. Southern of St. Helier

STATES GREFFE

1 PAGE 48, ARTICLE 38 –

- (1) In paragraph (1), at the beginning of sub-paragraph (b) insert the words “subject to paragraph (4),”.
- (2) At the end add the following paragraphs –
 - “(4) Nothing in this Article shall be taken to derogate from or to terminate any right to redeployment (however described and whether created expressly by a contract of employment, or implied by any operation of law) enjoyed by a person immediately before the transfer date, and such a right –
 - (a) shall not be changed; and
 - (b) for the avoidance of doubt, may be exercised by the person at any time,within the period of 3 years beginning with the transfer date.
- (5) In this Article –
 - (a) for the purposes of paragraphs (2) and (4), “contract of employment” has the meaning given by Article 1 of the Employment of States of Jersey Employees (Jersey) Law 2005;
 - (b) for the purposes of paragraph (4), “redeployment” refers to re-employment within any administration of the States as a States’ employee;and in sub-paragraph (b), “administration of the States” and “States’ employee” have the meanings given by Articles 1 and 2 of that Law respectively.”.

2 PAGE 49, ARTICLE 40 –

At the end delete the full stop and add the following words –

“, and shall not be changed within the period of 3 years beginning with the transfer date.”.

3 PAGE 49, ARTICLE 41 –

At the end add the following paragraph –

“(3) Where this Article applies, the terms, rights and liabilities mentioned in sub-paragraph (2)(b) shall not be changed within the period of 3 years beginning with the transfer date.”.

DEPUTY G.P. SOUTHERN OF ST. HELIER

REPORT

These amendments address some of the concerns raised by employee representatives of staff at the ports and airport over the transfer of staff to the incorporated entity. Notwithstanding the extensive engagement with staff and trade unions that has taken place, referred to in section 11 of the report attached to P.5/2015, in the main they are designed to address concerns over the non-statutory nature of the 'T.O.P.S.E.' policy which covers the transfer.

11. Staff transfer

There has been extensive communication and engagement with staff and trade unions. A staff transfer policy (the transfer of public sector employees or 'T.O.P.S.E.' policy) has been developed with the full involvement of the trade unions, which states that staff will all transfer on their existing terms and conditions, including maintaining current pension arrangements. There will be no job losses or reduction in levels of pay as a result of incorporation. The union Prospect carried out its own review of T.O.P.S.E. that showed that these arrangements are equal to T.U.P.E. in the UK, and in some areas better.

The stated intent in P.70/2012 was that staff would be transferred to the incorporated entity on 'identical terms to those which they are entitled to as States' employees'.

In order to achieve this, a comprehensive and inclusive process was established, known as the Staff Transfer Working Party (S.T.W.P.). The S.T.W.P. has held over 25 meetings with all appropriate parties, including representatives from Prospect, Unite, the Housing Department, Ports of Jersey and the Central Human Resources Department.

The key principles contained within the T.O.P.S.E. policy, which has been based upon an over-riding principle that roles and role-holders transfer across on a like-for-like basis, are as follows –

- There will be no redundancies as a result of the process of incorporation.
- There will be no requirement for existing employees to apply for their current roles, nor will there be any probationary period.
- All current employees will be transferred on their existing pay, terms, conditions and main policies and procedures. Importantly, existing employees will continue to participate in the Public Employees Contributory Retirement Scheme (PECRS). This provision is an improvement on UK T.U.P.E. legislation which does not provide any pension protection.

Employees who do not wish to transfer to the new entity will be deemed to have resigned. This is in line with T.U.P.E. legislation.

The statements below are taken from the evidence submitted by the Prospect Negotiations Officer, Mr. B. King, to the Economic Affairs Scrutiny Panel Hearing into the incorporation held on 23rd March 2015.

B. King:

“I held a number of meetings, open meetings, at the airport and a number of meetings down at the harbour and talked to our members there about what their concerns were. One of the key concerns was the fact if there was a reduction in posts within the ports and airport – and you are right to say that could happen at any time, businesses change, processes change, so there could be a change or a reduction – was their loss of option at the moment they have.

(Currently) they could seek by redeployment to find another job somewhere else in the civil service, so it gives them a larger area to come back to. That route is cut off to them after incorporation, so if it is in order to make a proposition, Prospect’s position is that if there are redundancies that come up, those people should be allowed to go back into the redeployment pool and seek employment within the civil service as an alternative to redundancy, as they could do prior to the transfer.

So although we say ... and you asked Nick (Corbel, Regional Officer Unite) the question, is T.O.P.S.E. better than T.U.P.E.? I would say no because it has no statutory basis.

If it had statutory basis, then it would be an improvement over the T.U.P.E., which is based in the European Acquired Rights Directive. It would be better, so again our proposition would be that you seek statutory basis for that.

My understanding is, and I feel I am well advised on this, that actually the Chief Minister made a statement in the Assembly that he intended to follow the Cabinet Office protocol. So for those of you not familiar, in the U.K. there is a Cabinet Office protocol because T.U.P.E. does not apply to governmental transfers. They came up with their own protocol. Now, that protocol does include the protections for pensions.

It is called Fair Deal and it also is considerably better worded than T.U.P.E., which is slightly arcane now. So, again, I would suggest maybe the Panel look at that document. It is widely available. It is on the Intranet, but I understand the Chief Minister was asked the question – I do not have the Hansard, I am afraid – in the Assembly as to whether he intended to use that and the answer was yes. I think that was in a debate around the ports and airport. That would be ... you know, I would say that, would I not? We feel it is a well-written piece of documentation and could potentially go forward to have statutory basis, which would then relieve some of the anxieties obviously we have”.

The position of the Prospect negotiator thus, is that whilst there will be no redundancies “as a direct result of incorporation”, there could be a reduction in posts at any time due to business, technology or process change. In such a case, in the absence of any **statutory** protection, Prospect seeks to extend the scope for redeployment elsewhere in the public sector for a 3 year period. The amendment to Article 38 extends this protection.

In relation to the protection of terms and conditions, Mr. King expressed reservations about the potential protection of terms in the light of the States’ refusal to apply T.O.P.S.E. to the recent transfer of the tourism department to “Visit Jersey” –

“My overall concern, and I will close with this point, is from my previous experience of seeing good models and bad models, I do not believe there is enough detail in the legislation. I am not suggesting you should overly legislate, but the first case I arrived to on the Island and was greeted with – and I do not want this to take up too much of your time – was the tourism industry where I have a number of exceptionally unhappy members who were on the end result of possibly the worst form of sell-off I have seen. I have been through the post office. I have been through B.T. (British Telecom) in the late 1980s, early 1990s, which was atrocious. But essentially our members in tourism have effectively been abandoned and you are losing some really ... I talked to one guy who studied tourism at college and tourism at university and went to work in the tourism industry. That is all he has ever done and he is effectively now out of a job and he is coming back into the civil service. So if there was a lesson to learn on that I would say if you are looking for something to base a success story on, maybe look at Andium Homes. Do not look at tourism. But this model legislatively needs considerably more detail in terms of the transfer terms, in terms of what the protections are going to be post transfer, about how they are going to be disposed of in terms of who is making those decisions.”

Once again he returned to the issue of the non-statutory nature of T.O.P.S.E., and the need to offer greater protection than that offered by T.O.P.S.E. “at the point of transfer”.

“This is the difficulty where T.O.P.S.E. is worded better than T.U.P.E. but without the statutory basis it is a bit flimsy. Under T.U.P.E. if there is a job loss because of the transfer it is automatically unfair. So if there is a job loss because of a business need, we would expect that to come through the normal collective bargaining procedure and we would talk about it and we would do again what would be expected if we were going through redundancies and there was a reduction in jobs, the employer to put as its number one priority to mitigate those redundancies. So ... in terms of the protection, this is about protecting the minimum terms and conditions, so the terms and conditions they transfer, for a period of time (3 to 5 years) to give them calm around that.”

The Connétable of Grouville:

“If we had, say, 3 years then, does it not just delay the inevitable, the concerns you have on ...? If there is no protection at all after day one why does waiting 3 years help or 5 years?”

Mr. B. King:

“Well, because what it does is it gives some credence to ... it is not necessarily the 3 year period. It is the fact that the employer is confident enough in its economic model that it knows it is not going to have to do anything drastic outside of the normal day to day issues of business within that 3 year period. So it is giving some confidence. I mean, you know, from what I have read, and I have not had access to all of the detailed economic modelling, this is something that is a 25 year plan. So if there is no certainty about the first 3 years, how can we be certain about the next 22 after that? You know, if it is modelled correctly then it should be fairly easy for the employer to just say:

'Yes, we can guarantee minimum terms of 3 years. It is really not going to affect us because what we are going to be doing in the first 3 years is growing the business. We are going to be bringing more income in, not less, so meeting those terms and conditions is not going to be a problem.' It is a confidence thing more than anything else.'

The adoption of the amendments to Articles 40 and 41 provide the requested “period of calm” that there will be no major reductions in terms and conditions in the short term in the absence of statutory protection.

Financial and manpower implications

There are no direct financial or manpower costs for the States arising from the adoption of this amendment.