

**WRITTEN QUESTION TO THE ATTORNEY GENERAL BY DEPUTY G.P. SOUTHERN OF ST.
HELIER**

ANSWER TO BE TABLED ON TUESDAY 1st APRIL 2008

Question

“In relation to the legal position of the States of Jersey with respect to its employees under the Employment Relations (Jersey) Law 2007 and its related codes of practice, will the Attorney General advise members:

- (a) whether he is aware of any other jurisdiction where government employees, whilst being regarded as employed by a single unified body, equivalent to the States of Jersey Employment Board, for all other employment and contractual purposes, are in the matter of employment disputes, regarded as being employed by the relevant Minister?
- (b) Of the arguments on either side of the question of whether the treatment applied by the States to its employees (above) could be found to be a disproportionate restriction on the right of States employees to take secondary industrial action in support of other States employees?
- (c) In the event of employers and trade unions failing to agree over which services (or elements of services) minimum service agreements outlined in articles 31 to 35 of Code 2 should apply to and what level of minimum services should apply, what legal position would pertain to –
 - (i) individual ministers as employers;
 - (ii) the States Employment Board;
 - (iii) trade unions concerned;
 - (iv) the Minister for Social Security;

in respect of their duty of care to provide and maintain essential services to Islanders?”

Answer

- (a) I am not aware of a direct parallel, but have not undertaken a comprehensive analysis of other jurisdictions on the point raised.
- (b) Article 5(3) of the Employment Relations (Jersey) Law 2007 is intended to ensure that certain disputes between Minister and employees are treated as falling within the definition of "collective employment dispute", where the Minister is not the contractual employer.

Article 5(3) and paragraphs 36 to 38 of Code 2, taken together, are also intended to prohibit secondary action where an employer or employees are not party to a dispute.

Restrictions or prohibitions in respect of secondary industrial action exist in other jurisdictions e.g. the United Kingdom. The existence of any such limitations does not automatically result in a contravention of ILO obligations or a breach of applicable human rights legislation.

It is ultimately for the courts, in an appropriate case, to determine whether such provisions are disproportionate. It is understood that the provisions were drafted to meet Jersey's constitutional framework and particular circumstances.

- (c)(i) Each Minister is a corporation sole and may have duties under statute and/or the customary law. Failure to provide essential services may, under certain circumstances, constitute a breach of statutory duty. Any liability arising would be subject to the particular facts of the case and to the jurisdiction of the courts.
- (ii) In relation to the provision and maintenance of essential services, it is unlikely that the States Employment Board would be held to owe a duty of care or be subject to legal liability in such circumstances.
- (iii) Registered trade unions possess some immunities under the 2007 Law in relation to their activities. There are circumstances in which a registered trade union acting outside the 2007 Law (e.g. unreasonable conduct as defined within an approved code of practice) would not benefit from such immunities (see especially Arts 18 to 20 of the 2007 Law). In such circumstances, proceedings might conceivably be brought against a registered trade union in tort. Such action has no precedent in Jersey, even though the immunities only came into existence relatively recently with the passage of the 2007 Law, and is also understood to be rare in other jurisdictions.
- (iv) The Minister for Social Security would not be in a different position to that of any other Minister, and the answer to (i) above applies.