

**WRITTEN QUESTION TO THE MINISTER FOR SOCIAL SECURITY BY DEPUTY G.P. SOUTHERN  
OF ST. HELIER**

**ANSWER TO BE TABLED ON TUESDAY 12th FEBRUARY 2008**

**Question**

1. In the debate on P.9/2008 on 29th January 2008, the Minister stated that “*what we are bringing forward is common practice in a lot of jurisdictions*”; in respect of Articles 36 and 38 of the code of practice, and Articles 5(3) and 20 of the Employment Relations (Jersey) Law 2007 will the Minister identify for members which jurisdictions he was referring to?

**Answer**

In developing the codes of practice, consideration has been given to employment relations systems in a wide range of other jurisdictions, some that we are geographically close to and others that we are similar to.

This statement was made by the Minister in regard to preventing “wildcat” action by requiring unions to ballot members prior to strike action and to give notice to an employer about when and how a strike would happen. It is common practice in other jurisdictions to regulate for balloting and/or strike notices prior to taking action, including in the United Kingdom, the Isle of Man, France, the United States and South Africa.

The statement was not in reference, as the Deputy implies, to paragraph 36 of Code 2 (which provides that secondary action is unreasonable), paragraph 38 of Code 2 and article 5(3) of the Law (which makes provision regarding States employees and secondary action) and article 20 of the Law (which qualifies a union’s immunity in the event of unreasonable action). However, there are also limitations on secondary action in other jurisdictions, including the United Kingdom, the Isle of Man, Germany and the United States.

**Question**

2. The Minister also stated that “*the code specifically states that action shall not be classed as secondary where a union official is acting in support of his union members despite not having the same employer*”
  - a) would the Minister inform members whether this provision is found in the Code or the Law and explain to members what distinction, if any, is drawn between the actions of an “official” and the actions of “members” of a union?
  - b) what is the position under the Code of a union member acting in support of colleagues despite not having the same employer?

## Answer

Question 2(a) requests information that is already in the public domain. Paragraph 41 of Code 2 refers to action by officials in support of union members who are picketing. "Union official" is clearly defined at paragraph 42 of Code 2.

Question 2(b) requests information that is already in the public domain, as provided at paragraph 36 of Code 2.

## Question

3. Further to the Minister's statement that "*being employed in different premises does not prevent employees from taking action in support of colleagues who have the same employer*" will the Minister explain the statutory basis, if any, for this statement and state whether, or to what extent, this is limited by the codes which are applicable to the "bargaining unit"?

## Answer

The Minister made this statement in regard to the extent of the limitations on secondary action; specifically point 36 of Code 2. Action is defined as unreasonable by the code where it is taken against an employer who is not a party to the collective employment dispute. That definition does not result in action being deemed "secondary" and unreasonable where employees are employed by the same employer and there is only a physical division of work premises.

Employees clearly must be part of the same bargaining unit in order to take action in support of their colleagues. Where an employee is employed by the same employer but is not part of the bargaining unit that is in dispute with the employer, any action taken by that employee would not constitute a "collective employment dispute" under the Law. Therefore the question of whether the action was secondary is irrelevant

## Question

4. Would the Minister explain what he meant by his statement "*I believe that the limitations on secondary action reflect our local conditions*"?

## Answer

This information is in the public domain. The Minister explained during the debate of P.9/2008 that he believes that the limitations on secondary action reflect our local conditions and the interests of the majority of Islanders on the basis that, in a very small and geographically isolated economy, the ability for trade unions to widen industrial action to involve others who are not party to the primary dispute would be extremely disruptive to the life of the island and to the provision of necessary commodities and services to citizens.

## Question

5. Would the Minister inform members of his response, if any, to the issues raised in Paragraph. 1534 of the ILO report on the Employment Relations Law and in particular to the request contained in the final sentence which stated that "*The Committee requests the Government to take the necessary measures to ensure that sympathy strikes and social and economic protest action are protected under the law*"?

## Answer

The Minister has followed the required protocols via the UK's Department for Work and Pensions (DWP) which is responsible for responding to the International Labour Organisation (ILO) on Jersey's behalf. The Minister understands that the DWP has responded to the ILO's "request to be kept informed of

developments” regarding the Employment Relations Law and that the UK’s response will be published by the ILO in due course.

### **Question**

6. Would the Minister inform members in what areas, regarded as essential services covered by Articles 31 to 35, minimum service agreements are already in place and in what further areas he anticipates such agreements being negotiated?

### **Answer**

The Minister suggests that the Deputy should make enquiries of trade unions and of employers as to whether minimum services agreements are already in place for any particular services in the Island. There are likely to be many collective agreements in existence in the Island, which may or may not currently include a minimum service agreement; however there is no requirement for the details of collective agreements to be made publicly available.

The Deputy’s question goes on to seek the Minister’s opinion as to what other services might negotiate minimum service agreements. The Minister anticipates that, where it is identified that any element of a service falls under the definition provided by Code 2, the employer and union will negotiate an appropriate agreement, if one does not already exist.