

7. The Chairman of the Health, Social Security and Housing Scrutiny Panel - statement regarding P.143/2010 (Draft Employment (Amendment No. 6) (Jersey) Law 201-)

7.1 Deputy G.P. Southern (Chairman, Health, Social Security and Housing Panel):

Members will be aware of my action last week in calling-in P.143 of 2010, Draft Employment (Amendment No. 6) (Jersey) Law 201- under Standing Order 72 on Wednesday, 1st December 2010. I do so as Chairman of the Health, Social Security and Housing Scrutiny Panel. Not because of my concerns with the content but because of serious concerns I have about the process by which P.143 came to the States for approval. P.143 contained an amendment to the Employment Law outlining the need for and conditions attached to collective consultation over redundancies. The fact is that terms for collective consultation had already been debated and voted on by the States on 1st April 2009 in P.27 of 2009, Draft Employment Law (Amendment No. 5) (Jersey) Law 200- contained a proposal to set the minimum number of redundancies required to trigger collective consultation at 21. These proposals were lodged on 24th February 2009. As a member of the then Health, Social Security and Housing Scrutiny Panel I was asked by the panel to examine the proposals and report back to them. This I did and was able to endorse the majority of the Minister's proposals. Only in the area of the numbers required to trigger collective consultation did I find issue. I, therefore, lodged an amendment on 18th March 2009. This reduced the numbers of redundancies to 2 where a trade union was recognised or 6 otherwise. A comment from the H.S.S.H. (Health, Social Security and Housing) Panel was subsequently presented on 31st March 2009. This was largely supportive of the Minister's approach but endorsed the amendment to the conditions for collective consultation. In the event, my amendment was carried by 23 votes to 21. The decision of the States was to replace the number 21 by the numbers 2 and 6, as appropriate. Article 16 of the Jersey Law states: "All matters coming or arising before the States shall be done and decided by a majority of the Members present and voting on them." Towards the end of the debate, in Third Reading, the Minister said: "The Assembly in a democratic manner has accepted the amendments now of Deputy Southern and that is the will of the House, and I maintain these Articles." My concern is that following a clear decision of the States, the Minister is now trying to vary the States decision. Although the law as amended in 2009 was sanctioned by the Privy Council and registered in the Royal Court in its amended form, the Minister decided not to include the relevant Article when he lodged the Appointed Day Act for the law in P.142 of 2010. He has now returned to the States some 19 months after the 2009 decision with an amending law which seeks to introduce a compromise position on collective consultation. Where was that compromise at the time of the debate? None was brought. Examination of both the States of Jersey Law and Standing Orders reveals that apart from Article 16 of the States of Jersey Law quoted above there is no requirement for any Minister to carry out the will of the States. Article 18 of the States of Jersey Law outlines the functions of Ministers but makes absolutely no reference to decisions of the Assembly. We are often told by Ministers that it is the States who make the decisions yet this example would indicate otherwise. If Ministers can avoid acting in accordance with States decisions there appears to be little point in debates and votes in this Chamber. The Health, Social Services and Housing Panel requests that the Privileges and Procedures Committee investigates this incident and examines the States of Jersey Law and Standing Order to clarify as necessary the role of Ministers with respect to States decisions. But at this stage the panel does not wish to scrutinise the legislation today.

The Bailiff:

Very well. Does any Member wish to ask questions?

7.1.1 Connétable P.F.M. Hanning of St. Saviour:

The chairman of P.P.C. has had to leave the Chamber and the vice-chairman is malade. The chairman has asked me to say that this matter will be on the agenda for our next meeting.

7.1.2 Senator B.I. Le Marquand:

I wish to ask the Deputy what is the difference between a Minister seeking to amend a law as passed by the States and a non Minister taking back to this Assembly in a slightly different form issues which this Assembly has already determined?

Deputy G.P. Southern:

No, I cannot. Could the Minister put his question in a different way that I might understand it.
[Laughter]

7.1.3 Senator B.I. Le Marquand:

Perhaps a little unkindly I am trying to imply that the Deputy thinks there should be one rule for Ministers and a different rule for non-Ministers. I took as examples the current example, on the one hand, and the example which I believe this Assembly has seen on a number of occasions of the same matter being rehearsed a number of times brought back in a slightly different form by a non-Minister.

Deputy G.P. Southern:

I believe there is a difference because no Back-Bencher can form policy in this Chamber. The States Assembly as a whole takes decisions and empowers that Minister to bring about the result of that vote and that debate. The fact is there is nothing in the States of Jersey Law nor in Standing Orders that makes that connection between any vote taken here and a decision taken by this Chamber and the subsequent actions of the Minister responsible. I am wondering whether in fact we need to make that link formal because there is nothing at the moment. There is nothing to stop a Minister just sitting and ignoring any decision this Chamber makes apparently and returning in 19 months' time with a different answer.

7.1.4 Senator A. Breckon:

The chairman said he had done some research on behalf of the former panel of which I should say I was chairman. Is the chairman aware of the percentage of employees in the workforce who work in companies or workplaces of under 10 employees who may be excluded if the Minister's proposal of 21 was set to trigger collective consultation?

[17:15]

Deputy G.P. Southern:

Indeed, I believe the proportion is around 97 per cent of employers under 10 people, thereby excluding a lot of employers from this triggering of collective consultation. But, as I have said in my statement, I am no longer arguing with the number that is set. What I am concerned about is the process by which we have waited 19 months to enact something which we decided in this Chamber happened 19 months ago. The fact is that after a short time, a short investigation, I think in June 2009 ...

The Bailiff:

Can you give a precise answer, please, Chairman, because other Members ...

Deputy G.P. Southern:

... revealed that there were problems and yet the Minister chose not to bring back to this House a rescindment to get that decision changed but just ploughed on.

7.1.5 Deputy J.A. Martin:

Maybe it is the timing of the debate, 1 April 2009. Obviously the Minister for Society Security thinks we are all fools because it very worrying the principle of what Deputy Southern is saying. We are going to spend the next 4 days in this House doing amendments to a budget which I think

the Ministers can all ignore. It is a principle. Would the Deputy agree that that is what the Minister should be bringing back: the number that was debated in this House as an amendment? It is nothing like what the Minister for Home Affairs is saying where he thinks that we should not be able to bring back things in slightly different ways just because they are Ministers. Either we can amend propositions as they stand or we cannot amend propositions. It would appear to me we might as well go home for the rest of the week.

Deputy G.P. Southern:

Indeed, I do agree with the questioner. The fact is that this Chamber makes decisions when it votes on particular principles and it expects its Ministers to go away to enact those principles and to come back and return to say: "This is done". That did not happen in this case, I believe, and should have happened.

7.1.6 The Connétable of St. Ouen:

Would the Chairman not agree with me that when the Minister brought this latest proposition, it was still in the hands of this House to either reject it or accept it?

Deputy G.P. Southern:

What I am of the opinion is that action should have been taken far, far sooner by the Minister and not waiting 19 months to get this piece of legislation through.

7.1.7 Deputy I.J. Gorst:

Would the Deputy not confirm, as he well knows, that the reason for the delay was, in fact, twofold: one, that the legislation was delayed at Privy Council for various reasons which we might go into when we get to that debate, and secondly, that I quite rightly and properly asked the Employment Forum to re-consult on the issue and that was due to the time delay? There has been no delay *per se*.

Deputy G.P. Southern:

I repeat what I said earlier. I believe there was a report on the Minister's desk in June 2009. He could easily, as any other Member of this House would have been able to do, have brought a rescindment motion at that time to say: "Hang on. We have got it wrong. Let us rescind that and let us move on".

Deputy I.J. Gorst:

Could I just ask, I might be totally incorrect here, I am not aware that I would have been allowed to bring a rescindment motion if a draft law was before Privy Council?

7.1.9 The Deputy of St. Martin:

The Chairman will recall that I did mention that a similar episode had occurred to me about the States Employment Board membership when the Chief Minister himself amended an amendment which the House had approved. Will the Chairman consider bringing forward his original amendment to the States so the States can agree whether they wish to support his amendment at the next debate, or indeed, accept P.143 which the Minister now is proposing?

Deputy G.P. Southern:

I repeat: I have no argument any longer with the compromise proposition that the Minister is proposing for 12 to be the figure number, and I do not wish to prolong the introduction of this much-needed safety net into law any further. So I will not be opposing that particular number. I will be asking and I have - and I am glad P.P.C. has agreed - an investigation of how it is, what is the connection between Ministerial action and decisions made by this House?

The Bailiff:

Does any Member wish to ask any questions? Very well, then. We move on then to the next statement on a matter of official responsibility, which is a statement by the Minister for Treasury and Resources about St. Martin's School.