



Economic and International Affairs Scrutiny Panel

Family Friendly Employment Rights

Witness: The Minister for Social Security

Thursday, 28th March 2019

Panel:

Deputy K.F. Morel of St. Lawrence (Chairman)

Deputy D. Johnson of St. Mary (Vice-Chairman)

Deputy S.M. Wickenden of St. Helier

Witnesses:

Deputy J.A. Martin of St. Helier, The Minister for Social Security

Deputy G.P. Southern of St Helier, Assistant Minister for Social Security

Ms. S. Duhamel, Director, Strategic Policy, Performance and Population

Mr. I. Burns, Director General, Customer and Local Services

[15:35]

Deputy K.F. Morel of St. Lawrence (Chairman):

Good afternoon and thank you so much for coming along. Yes, this is the second now of hearings on the review of the Employment Law (Amendment No. 11), otherwise known as family friendly legislation, which is being brought by you, Minister, so thank you for seeing us.

The Minister for Social Security:

Thank you.

Deputy K.F. Morel:

Because Employment Law (Amendment No. 11) is something of a mouthful, we are more likely to call it family friendly legislation throughout, as a kind of easier way of referring to it or the legislation,

for instance. I am sure you have read it before, take your time to have a look at the notice of engagement with Scrutiny before you get started.

The Minister for Social Security:

Yes.

Deputy K.F. Morel:

I think the Assistant Minister is looking for a biscuit.

The Minister for Social Security:

It is these, very family friendly.

Deputy K.F. Morel:

They are not family friendly at all.

Assistant Minister for Social Security:

Only about those for the last 10 years, they have not been changed.

The Minister for Social Security:

But cheap.

Deputy K.F. Morel:

They are really strange, really strange bottles. Brilliant.

Deputy S.M. Wickenden of St. Helier:

They might as well drill a hole halfway down ...

Deputy K.F. Morel:

That is true. Brilliant. You will have seen our terms of reference from a review and so we are looking today particularly at the consultation process but also the kind of effects of the legislation. But there is a large part on the consultation process, so just bear with us as we work through that. It is just literally to gather the evidence. But before we get going, I will ask everyone to state their names for the record. I am Deputy Kirsten Morel and I am chair of the Economic Affairs Scrutiny Panel.

Deputy S.M. Wickenden:

I am Deputy Scott Wickenden and I am a panel member and Deputy of St. Helier District 1.

Deputy D. Johnson of St. Mary (Vice-Chairman):

Deputy David Johnson, vice-chair of this panel and the Deputy of St. Mary.

Scrutiny Officer:

Kellie Boydens, Scrutiny Officer.

The Minister for Social Security:

Judy Martin, the Minister for Social Security and also Deputy of the No. 1 District, St. Helier.

Assistant Minister for Social Security:

Deputy Southern, Assistant Minister for Social Security and a representative of No. 2 District.

Director, Strategic Policy, Performance and Population:

Sue Duhamel, Strategic Policy Unit.

Director General, Customer and Local Services:

Ian Burns, D.G. (Director General) for Customer and Local Services.

Deputy K.F. Morel:

Brilliant, thank you very much indeed. We will get to start with the wider questions, the broader questions at the beginning. Minister, what are you trying to achieve with these amendments to the Employment Law and why?

The Minister for Social Security:

I think it states in the law we are trying to make an even playing field to get parental leave, so fathers can have as much time, if they want to, if they can afford to, with baby, as mum can; over the couple of years they can share leave. It will, hopefully, have the knock-on effect that a lot more younger Deputies than me, women Deputies are wanting and I want it too, but their passion is to make sure that we get the gender balance, we see people going through their work life and if they are taking time off when they need to. The headlines, I have only seen the headlines of PricewaterhouseCoopers to make sure that we could have ... I think it is 8 per cent more women in our local economy is over £200 million. Our Strategic Plan is literally putting children first and we do know the evidence is there; for the first 2 years of a baby's life, that is when they must be nurtured. You can do damage in that first 2 years that you can never reverse or you can with lots of therapy and thousands and thousands, hundreds of pounds. That is a broad and if I have not mentioned ...

Deputy K.F. Morel:

Perfect, thank you.

Deputy S.M. Wickenden:

It kind of falls into the next question, Minister. From your perspective, what are the main features of this legislation?

The Minister for Social Security:

As I say, to me, it literally evens out the playing field. Men and women, again, can decide, when they find out they are going to have a baby they can sit down: "Can we afford to take pay, when can we take pay and where are you in your career?" I think it is very, very simple. The other one is the breastfeeding breaks because we have a really good uptake at birth, we still have a pretty good uptake at 6 weeks and then it goes down. It seems to taper off, it is around the maternity leave time now. Is there a choice or is that: "I am going back to work and it is a bit hard for me to do"? That, to me, would be a fantastic thing for mums who want to do that.

The Deputy of St. Mary:

Just leading on in general terms; if approved how will this legislation compare with those in terms of jurisdiction and in fact how does it compare now?

The Minister for Social Security:

It compares very badly now. We are so far behind, we were woefully behind. We had nothing until 2015 but ...

The Deputy of St. Mary:

Breastfeeding or the parental leave and ...

The Minister for Social Security:

Maternity, parental, breastfeeding, we have got nothing; no, nothing at all. We have part maternity and a bit of paternity now but nothing before 2015 and I think the U.K. (United Kingdom) over the last 25 years it has gathered and got bigger and longer and longer.

The Deputy of St. Mary:

Okay, so we are way behind in not just the U.K. but other jurisdictions too.

The Minister for Social Security:

Obviously if you compare it to like Sweden and that we are woefully behind, so it is the U.K. compared to them but we were trying to benchmark where the least people ... if you are coming to work here from the U.K., which middle earners and other high earners do, you just expect at least the same rights but we are not.

Deputy K.F. Morel:

Out of interest, do you know how we compare with Guernsey or the Isle of Man, those sorts of similar jurisdictions?

The Minister for Social Security:

I do not, do you?

Director, Strategic Policy, Performance and Population:

At the end of the family friendly recommendation for the Employment Forum, it is on page 65, there are some comparisons with other jurisdictions, so we have Guernsey, the Isle of Man, the U.K. and then other countries on page 67. I think, compared to Guernsey, I think we are doing better now; we have gone from where Guernsey used to be. In terms of other countries, in terms of the E.U. (European Union) and the International Labour Organisation, the I.L.O., we are, again, quite far behind what they would expect is the standard these days.

Deputy K.F. Morel:

Just for the record, in Guernsey, if I have read this right, there is a basic maternity leave of 12 weeks and an enhanced period of an additional 14 weeks maternity leave after having completed 15 months of service, whereas the Isle of Man is 26 weeks of leave and an additional 26 weeks for employees who have completed 26 weeks' service. They are fairly similar to where Jersey is now.

Director, Strategic Policy, Performance and Population:

Where Jersey would, yes ...

Deputy K.F. Morel:

Where we are, without 26 weeks leave at the moment.

Director, Strategic Policy, Performance and Population:

Yes, but these are not paid, there is no paid provision here, so that makes it harder for the chance to ...

Deputy K.F. Morel:

Excellent. Minister, when looking at this legislation, what effects do you see the legislation having in broad terms on Island society? I think you have covered some of these but what are you hoping to get, how to change the Island as a society?

The Minister for Social Security:

As I said, it is one of those, it might not happen next year but, hopefully, as soon as the law is in and the cultural change, the conversations happen, that then you do want to see more fathers taking that time off with baby. As I say, it could be and I do not know but people have said, why is it that women's careers sort of here goes and can they take a year off and go back now into the same job or the same ... no, they cannot, they can take 26 weeks. They might want that year but that might be their pivotal part in their career and they might just say to dad: "If I am still feeling okay after the birth" because nothing prepares you for your first baby and how you are going to feel but: "I really need to do these exams, I want to do that. I would like you to take the first 3 months and I would have obviously a couple of weeks, you take the first 3 months and then I take 6 months." As I say, if we can retain women and they learn all the time, they are high earners, all the way across the gender pay gap and everything else. I just hope and I am sure it will do that; that is what I think it is intended to do.

Assistant Minister for Social Security:

I think it is about promoting equality, which is a fundamental part of the Strategic Plan and, yes, we are supposed to be doing. It opens up the avenue for men to take parental leave, as well as women. It also, I think, is designed and will improve working conditions and that, obviously, has to apply particularly to women.

[15:45]

But they are handicapped in many ways in our society without some structure around it to say, okay, we are not just committed to but we are acting on an equality agenda.

Deputy S.M. Wickenden:

What effects do you see the legislation having on employers?

The Minister for Social Security:

Employers. Again, I think at the moment I say it is an employees' market but if an employer treats the employee well they should be able to retain them. By the way, we are not starting with a level playing field. If I am in the industry and I can look across the road and somebody has trained me here but they are not giving me what that company is because they are basically U.K., and they just follow what the head office does, they are already getting the rights and the retention and everything, I vote with my feet. I am going. It brings it into the Island context and a level playing field brings fathers in a lot more but that is where we are. There are lots of companies, contractually, and because they follow U.K. already, do a lot, lot more and we are even asking for ...

The Deputy of St. Mary:

Again, in general terms, it would be interesting to understand how the policy was developed and I am thinking particularly of the interaction between the department and Employment Forum. Did the department initiate this or did the Employment Forum come forward with the idea?

The Minister for Social Security:

It was not me because ...

The Deputy of St. Mary:

No, I was talking about the department per se, rather than you ...

The Minister for Social Security:

Yes. I have been reading some history and, literally, family friendly was sort of ... we have a timeline, yes, so that is it, yes. The Employment Forum started with unfair dismissal in 2001, holiday entitlements 2002, fixed-term contracts in 2004 and then phase 2 to include work on maternity rights. In 2003 we introduced the Employment Law, which I think was part of the States around 2007 or something; it was quite late. We should have been reading this, I did read this, I have read so much I could not have ...

Deputy K.F. Morel:

I can understand you entirely ...

The Minister for Social Security:

But we literally should have been a lot further on with maternity rights but when we had the downturn we had no redundancy rights. I think someone said this this morning, I think it was this Deputy to the right of me who took a proposition to the States. We introduced redundancy, it was passed and then it sort of put the maternity ... because it was really urgently needed at that time, companies were just going ...

Deputy K.F. Morel:

But for this particular piece of legislation that we are looking at now and last year's, to answer the Deputy of St. Mary's question, do you know whether it was instigated from the department, whether it was the Employment Forum that instigated it, was it popular demand, what kicked off that idea? Yes, Deputy Southern is ...

Assistant Minister for Social Security:

Yes, the structure is that the department, the officers, the Ministers decide on policy and we use the Employment Forum to consult and to advise around that policy making. I think many people would look at the consultation and the work that the Employment Forum does time and time again as very

effective and very detailed and in depth. They have got a great reputation for the level of their research and the advice that they give. It is very, very rare; I do not think any Minister has ever turned down the advice from the Employment Forum.

The Minister for Social Security:

Even on the minimum wage and that is the other thing they consult on yearly. As I say, they were around obviously before even we had employment law. They started around 1999, the Employment Forum, as a body. Sorry, David, sorry, Deputy ...

The Deputy of St. Mary:

No, that is all right. No, without wishing to challenge the validity of the input of the Employment Forum, and I have got terms of reference here, its original terms of reference appear to be in relation to the minimum wage, so have those terms of reference been extended or are now updating ...

The Minister for Social Security:

No, as I said, the Employment Forum started in 2001 in unfair dismissal, holiday entitlements and rest days, fixed-term contracts and unfair dismissal and rest day entitlements and operation.

The Deputy of St. Mary:

Okay, I have got you.

Deputy K.F. Morel:

Out of interest, I was going to say it is said in statute, in law, that it is there to advise on the minimum wage, which Deputy Johnson is correct in that in that respect but ...

Assistant Minister for Social Security:

I think you will find elsewhere that somewhere in the Social Security set-up it is described as "and any other advice that Social Security or the Minister feels he or she needs."

Director, Strategic Policy, Performance and Population:

Just the process it goes through when this work started, as the Minister said before, it was the previous Minister, Senator Gorst, so quite a long time ago. You are right, the forum has a statutory obligation to do minimum wage each year. Then on top of that the Minister for Social Security at the time can issue instructions to look at something else and that is what the Minister has referred to in terms of redundancy and stuff like that. Therefore, back in 2007 the Minister at the time asked the forum to look at family friendly for the first time, so that is how it was initiated. The Minister identifies the next area of and what to look at and if you go back to 2000 there is a States decision that lays out a long-term plan for the development of employment legislation in Jersey. Family

friendly was part of page 2, so the phase 1 was sort of basic stuff, minimum wage, payslips and stuff like that. This part, phase 2, I can refer you to the 2000 proposition if you like. Successive Ministers for Social Security have worked through a long, long process of bringing Jersey into modern employment practices, so that is what we are still doing. Each Minister in turn has issued instructions to the forum on the bits that they are currently at at the time. The first family friendly started a long time ago in 2007. The forum was asked to present it at that time, did that piece of work, that piece of work was not then carried through because that was the recession and, again, the States decided urgently to look at redundancy, that was in a shift through the Woolworths, the collapse of Woolworths in Jersey and there had been no local legislation around redundancy. That piece of work was put aside for quite a long time to allow the redundancy stuff to come through. Then a subsequent Minister picked it up, so that was probably Deputy Pinel would have picked it up and started the more recent piece of consultation in 2017. She writes a letter asking the forum to look at the next phase of it. She identifies the kind of remit that she wants to look at and then the forum prepare their consultation.

The Deputy of St. Mary:

Thanks a lot. Sorry, probably I am being unduly pedantic. I fully appreciate that the Minister for Social Security has a right to do all that, I am just concerned as to whether, on the other side of the fence, the Employment Forum has the ability to receive those instructions.

Director General, Customer and Local Services:

Yes, it is in the law, we can send you the relevant article, if you would like.

The Deputy of St. Mary:

Okay, that would be good, thank you.

Deputy K.F. Morel:

Thank you. I am going to jump ahead a little bit. Just obviously your predecessor, Minister, chose to adopt the Employment Forum's recommendations on this law almost without change. From that perspective, do you agree that there has been very little ministerial input into this legislation? Really this is, in some sense, the Employment Forum's legislation.

The Minister for Social Security:

No, it is definitely not the Employment Forum's legislation. They made recommendations. Deputy Pinel at the time was Minister for Social Security but I was in the Assembly at the time, and I am not sure I was not on that Scrutiny Panel, my Assistant might have been. But, literally, it was this is what we do now and this is what is coming. I thought, well, that is great, long overdue. If my

ministerial input was wanted it would be absolutely great. You said nearly this recommended everything; is “nearly”. What is not the nearly?

Deputy K.F. Morel:

I may have misread this but I believe the Employment Forum suggested 28 days’ notice if an employee wanted ...

The Minister for Social Security:

It is 28 days at the moment.

Deputy K.F. Morel:

I think that had changed to 14.

The Minister for Social Security:

It is 28 at the moment. If this goes through it is proposed to be 14.

Deputy K.F. Morel:

Yes, but I thought the Employment Forum recommended holding it at 28 days, maybe I misunderstood that but that was the only change ...

The Minister for Social Security:

Did they? They may have done but we will ask ...

Deputy K.F. Morel:

Yes, so nearly.

The Minister for Social Security:

Yes, that is a fair comment.

Deputy K.F. Morel:

I will carry on for a moment. As Minister coming in, as a new Minister and obviously the previous Minister had instigated this and carried this forward, what scrutiny of the legislation have you undertaken to ensure the legislation is fit for purpose, as Minister?

The Minister for Social Security:

I have read the consultation. I have read now the law drafting. I have looked at the law as much as the Articles. Does it do what I think the consultation asked it to do? Absolutely, yes. Does it do what I wanted it to do or Deputy Pinel wanted it to do on a team? Yes.

Deputy K.F. Morel:

In that scrutiny process, again, were you thinking of the effects, if you know what I mean, in the sense of the effects that the law could have elsewhere, so beyond the social effects but the effects on employers and the effects on the employees, et cetera? Was that in your mind as you were doing it?

The Minister for Social Security:

First, when you say: did I scrutinise the law? I have read the law, I have read the law and I have read the law. I am happy with what the law says. As I started, I think it will be absolutely beneficial to families, children and absolutely to employers out there as well.

The Deputy of St. Mary:

I think where the chairman might be coming from is the terms of reference side of what the Employment Forum is to say, before making any recommendation, Minister, the forum itself, et cetera, and have regard for the effects of the recommendations on the commune of Jersey and non-competitiveness. That, as I say, we will come to later but within what you have done, have you looked as to what recommendations were on that? Are you satisfied the forum has covered that point?

The Minister for Social Security:

Yes. As I said, if this allows companies to retain trained staff that they are saying, there could be a shortage of ... that is not necessarily this because we have got high employment at the moment, the economy is really getting going again. But they can keep their trained staff and people are not saying: "I am going to take the 26 weeks" and then go sick and then they do not return because they are not ready. They are putting themselves under stress, so they lose that employee completely. This gives them a lot more flexibility, it gives them 52 weeks and, as I say, brings us up to standard.

Deputy K.F. Morel:

If I could just jump in as well myself, there is something I do not quite understand in the logic of that. If you are saying that this law enables businesses to hold on to staff, if I refer to your answer you said earlier because, for instance, U.K. companies that offer it over here, they have very often the U.K. minimum as part of their terms of reference. But if that was the case that they were losing staff, those businesses would have put their kind of parental leave up themselves because the market would have dictated to them. We are losing staff to these U.K. companies because they have got better maternity and parental leave provisions, so we will make ours better. I do not understand your logic there in saying it will help them to hold on to staff.

The Minister for Social Security:

The logic is that Social Security makes the employment law, not the companies and obviously they will be a kickback from companies ...

Deputy K.F. Morel:

Yes, but in a market, in an employment market ...

The Minister for Social Security:

They are, I know ...

Deputy K.F. Morel:

... they will have reacted themselves, irrespective of the law.

The Minister for Social Security:

Some are, it is not just U.K. companies, you will find contractual; people are dictating their contract when they go in and they are saying if they are going to have a baby or thinking about it in the next few years their contractual arrangement will override anything that is in here. Probably you have got 2 companies and they both want you, you are going to say: "Let them give me the best leave and maternity cover and everything else." They are doing it, you are right, Deputy.

Deputy K.F. Morel:

Yes. But in which case the law would be unnecessary. What I am saying is the law is not to help companies hold on to staff, the law is to encourage or to make companies that do not need to do that bring in these provisions. Because they are in a market which is not demanding that they increase their parental leave requirements because they have not done it, otherwise they would have done that.

The Minister for Social Security:

You asked me at the beginning who do I think this will help. It will help the child first, the parents and, thirdly, it would be good for the employer.

Deputy K.F. Morel:

We will carry on discussing that.

The Minister for Social Security:

Yes. No, that is fine.

Deputy K.F. Morel:

It will be interesting to flesh out that benefit for the employer part of it as well ...

Deputy S.M. Wickenden:

Yes, sure. Could you explain a little bit more about what resources the Employment Forum have, as in staff and funding, please?

Director, Strategic Policy, Performance and Population:

The Employment Forum is a fully voluntary body.

Deputy S.M. Wickenden:

It is a voluntary body?

Director, Strategic Policy, Performance and Population:

Yes.

Deputy S.M. Wickenden:

Is there a set make-up for them or ...

Director, Strategic Policy, Performance and Population:

Yes, do you want me to go into that? Yes.

Deputy S.M. Wickenden:

Yes, please.

Director, Strategic Policy, Performance and Population:

Okay, so the forum is established by the Minister under the law and the law requires that there are 9 members of the forum, so there are 3 employer representatives, 3 employee representatives and 3 independent representatives. They are appointed under Employment Commission rules and obviously it is a body that membership is public.

[16:00]

They have a website. They say they work in a voluntary capacity. The current chair is Helen Ruelle and the deputy chair is Malcolm Ferey. They are supported by a States officer to provide some secretarial and executive support but, apart from that, they work in a completely voluntary capacity.

Deputy S.M. Wickenden:

Do they get funding for the likes of consultation, so they can undertake people to do consultation work or do they do it themselves?

Director, Strategic Policy, Performance and Population:

Yes, they have access to budgets for consultation if they need to do and just the cost of consultations, yes.

Deputy K.F. Morel:

Is it set on a case-by-case basis? For this consultation and for this employment legislation consultation, what resources were they given by the department?

Director, Strategic Policy, Performance and Population:

I can find that out for you, that is no problem but I do not have that with me.

Deputy K.F. Morel:

If you could, thank you.

Assistant Minister for Social Security:

You are seeing J.A.C.S., (Jersey Advisory Conciliation Service) are you not, on Wednesday?

Director, Strategic Policy, Performance and Population:

No, we are seeing the Employment Forum ...

Assistant Minister for Social Security:

The Employment Forum, okay, you are seeing them on Wednesday.

Deputy K.F. Morel:

Yes, but I would like the information ...

Assistant Minister for Social Security:

We will dig the figures out for you but ...

The Minister for Social Security:

Yes, we will get them as soon as we can.

Deputy K.F. Morel:

I would like the information to be provided, if you do not mind.

Assistant Minister for Social Security:

Yes, sure.

The Minister for Social Security:

Yes, absolutely.

The Deputy of St. Mary:

Yes, to follow that point really, it is sort of the same theme, it is a degree of oversight and involvement that the department has any consultation which the Employment Forum conducts. With something like this they obviously have control over the day-to-day operation of it but what input do you have during that time and what oversight do you have? What I am really getting at is at the end of the day when legislation comes forward, is it the Employment Forum's recommendations or has it undergone fairly intensive scrutiny by the department as well?

The Minister for Social Security:

I think my Assistant Minister, Deputy Southern, said cannot think of any ... over all the years, it is 20 years now, that any Minister has not tried to at least carry out what the Employment Forum said. They give their time but they are, as I say, employees, employers, I think, whoever is on there and it has had a different make-up over the years but they take it very seriously.

The Deputy of St. Mary:

But I do not doubt that for a moment, I am just wondering, your good department per se might have a different view on things to the forum and whether that will sort of scrutinise or discuss it at hearings ...

Assistant Minister for Social Security:

The Minister or the department could have a markedly different attitude to a particular aspect or the advice getting from the forum but it rarely happens. If ever that happened that is challenged because the relationship is such that they are a body that is tasked, as you say, on a wide basis, economic and competition particularly, in the economy and then that comes back to the Minister for their decision. It seems to me that is a perfectly sensible and effective and efficient way to work.

Deputy K.F. Morel:

Yes, it is important. We are genuinely not in any way criticising the Employment Forum here. What we are saying is we do not know what the Employment Forum is. We do not understand the relationship between the Social Security Department and the Employment Forum and that is what we are trying to understand.

The Minister for Social Security:

No, that is fine.

Deputy K.F. Morel:

There is no implied criticism here whatsoever of any decisions. It is, literally, to help us understand what the forum does.

Assistant Minister for Social Security:

But they are our advisory board, so they are tasked with doing the research, upon which we can then make a political decision as to where we go one way or another.

Deputy K.F. Morel:

Which is brilliant and what we are trying to understand right now is what understanding of the consultation process, the Minister, the Assistant Minister, the officers have. When you task the Employment Forum with heading off to undertake a consultation, what oversight do you have of that consultation process and what understanding of that consultation process do you have?

The Minister for Social Security:

Over the years they have built up a really good relationship with lots of employers across industries and that is who they consult with. They obviously consult with the bodies who represent them in industries, like the Farmers Union. The minimum wage is always a difficult one for the Farmers Union. I would just imagine, if they had only listened to them, the minimum wage would still have been £6. It is across the board, they have to go to the different industries, they have to then go through everything they have gathered and they have to make a decision. We know they are consulted, they have got their evidence and sometimes I think States Members think they have not gone far enough and other times it is ... the Minister has always accepted, sometimes there has been an amendment to the forum's recommendation, mainly on minimum wage but we are where we are but ...

Assistant Minister for Social Security:

It is not easy to change the direction, as I can clearly state. An interesting line and saying about that the relationship between the 2 bodies, the Minister and the advisory body, but it almost does not ask the question directly. But I would point to you to the report produced since December 2017, so we have been working at this for over 2 years now, which turned into a 2-stage process because that was decided that is the way forward, in order to give industry enough warning about what was in the pipeline, what was coming down 2 years ago. Look at it, we get to page 68 before we find a list of very detailed appendices, 22 recommendations. There are 22 recommendations, some of which

are really very tiny. The amount of thought and research that has gone into it is really quite commendable.

Deputy S.M. Wickenden:

Are you satisfied that the consultation process that informed the forum's recommendations ...

Deputy K.F. Morel:

Those 22 recommendations.

Deputy S.M. Wickenden:

Yes, that informed that family friendly legislation was robust. In your opinion, did the consultation process include a sufficiently representative selection of employees and employers?

The Minister for Social Security:

Yes.

Deputy S.M. Wickenden:

Yes. What evidence do you, as Minister, have to support that view?

The Minister for Social Security:

Because I have total faith in the Employment Forum. They have been doing this for 20 years. They have the people they consult with, you have seen the representatives they consult with. These are big bodies who sometimes do their own consultation and they come back to the forum and they go through everything in fine detail. I absolutely have total confidence in the forum.

Deputy K.F. Morel:

Are we to take faith in this evidence?

The Minister for Social Security:

I am telling you, I have total confidence in the forum and if you do not you have to find me some evidence to prove it.

Assistant Minister for Social Security:

Could I just point you, Chairman, to pages 4 and 5 of the document that the Employment Forum produced? You can see the consultation respondents there on page 4; 27 employer representative bodies in the main and individuals on the list on the right-hand side on page 5 is Jersey Farmers Union, Hospitality Association, Unite Union, N.A.S. (National Association of Schoolmasters), Childcare Trust, Employment Lawyers' Association, Advisory Conciliation Service, Chamber of

Commerce, I.o.D. (Institute of Directors), et cetera. We are then talking about 25 individual contributions after that. That seems to me to be a perfectly adequate consultation process. One can argue about one small area or another but I would have thought that is pretty comprehensive.

The Deputy of St. Mary:

I hear what you say on that and I understand why you say it. Part of this review has been prompted by representations made by the Chamber of Commerce, among others, that the degree of input from employers was not as great as it might be. The concern the panel has is that, has the forum itself undertaken a proper balance of views of employer as against employee and how does it ...

The Minister for Social Security:

To be fair, Deputy, the Chamber were in the Gender Pay Gap Scrutiny Review in January, it is your review and I will quote the hair of the Jersey Chamber of Human Resources Committee, the lady who was there, I will not name her but we all know who she was. She was asked about family friendly and she says: "Yes, absolutely. Yes, there has been a big engagement and any work that the Chamber has done on family friendly, there has been quite a large engagement to gather people's views." Then she says: "Yes, absolutely", so I think there may have been another question but it has not been picked up. The Chamber then were convinced that they ... as I say, they have obviously gone through consultation and it says every time we have had family friendly there has been quite a large engagement. Again, surprised and when the Deputy asked me a question, Deputy Morel, in the Assembly and I was due to see Chamber and went on that Friday and, yes, I asked about that and the lady still said there has been lots of engagement. Then the president of the Chamber said about what he had said in that same Scrutiny interview about the breaks and different companies. I asked which industries ... because it was their consultation, they were telling me it was their consultation, to let me know the industries; is it agriculture, is it hospitality, is it retail, is it finance, whatever, and could you send me a letter? That is how we left it and the next letter we got on the following Friday was the letter that you have got in your pack and it went to all States Members. I did not really get much detail in it, it is just really what they reiterated when I saw them. I am surprised that they say that there was not enough consultation because I am sure they consulted their own 500 and whoever they represent.

Deputy S.M. Wickenden:

They would have done an email drop or something to all of their members, as that is what I think they normally do.

The Minister for Social Security:

I do not know about an email drop. The human resources lady says there is always a big take up on family friendly, so that has been over the last 18 years.

The Deputy of St. Mary:

Yes, I gather the responses were not quite so far but the Employment Forum's statement has no records of type and size of businesses that responded to the question of consultation. Based on that, how are you convinced that a fully representative range was conducted?

The Minister for Social Security:

Because I am convinced. You said you are not having a go at the Employment Forum but you seem to be asking ... they have been going for 20 years. Every recommendation, every minimum wage they have brought has gone through the Assembly. Today you are saying, why would I not be confident? Why ...

The Deputy of St. Mary:

I am not challenging your lack of confidence.

The Minister for Social Security:

I am sorry, Deputy, that is what I am hearing.

The Deputy of St. Mary:

I am just trying to establish a link that we have been advised that the consultation process was not adequate, obviously why should you follow it?

The Minister for Social Security:

If you believe that, you prove that.

The Deputy of St. Mary:

I will just say we are only here to find out whether we should believe it.

The Minister for Social Security:

I do not believe that. I do not believe they did anything different than they have done for the last 20 years and in fact their database has got bigger and bigger and bigger. They are well established. Companies know who they are. Sometimes they probably do not bring recommendations because they are hearing both sides. I do not know that but I have every confidence in them.

The Deputy of St. Mary:

Okay, yes.

Deputy K.F. Morel:

It is interesting because in the table on page 4 of the report Deputy Southern has said, it says that they got consultation responses from 27 employers and ...

Assistant Minister for Social Security:

Or employer representative bodies.

Deputy K.F. Morel:

No, and 3 employer representative bodies. Again, the concern comes from and in my head, I guess, and it is a concern, is that small businesses particularly and obviously we have also seen letters from small-business owners who are very concerned about this legislation; small businesses in particular make up thousands and thousands, they make up 70 per cent to 75 per cent, if not more, of the business population of this Island and thousands of businesses as a result, yet 27 have been in this consultation process and there is ...

The Minister for Social Security:

But then the trade unions and the Employers' Association is 5, which represent the other thousands over here.

Deputy K.F. Morel:

The thing is small businesses are not represented within trade unions and ...

Assistant Minister for Social Security:

Shall we just stop there, if I may? Yes, I mean the fact is if I was a small businessman and I was paying myself the appropriate body, whether it is the I.o.D. or the Chamber of Commerce, and then I discover that they have not consulted me properly on a major initiative, I would be well miffed off. The problem is not with the Employment Forum, which has consulted. The problem might be with the vice-chair of the small business branch, which has or has not done appropriate ...

[16:15]

Deputy K.F. Morel:

I think the Chamber represents 500 businesses. I think, and I stand to be corrected on that but there are 500. The trouble is that Jersey has thousands of small businesses, so I can guarantee you that Chamber does not cover the range of small businesses in Jersey and the I.o.D. is focused on larger businesses in general, because it is one of its directives.

The Deputy of St. Mary:

I think it is worth emphasising the point we are not challenging that. It is the fact that a lot of small businesses have come out of the woodwork to say: "We did not know about this. We are now looking at it and we are concerned."

The Minister for Social Security:

Firstly, Chamber came out of the woodwork. After Chamber saying in January they were quite happy, apart from the breaks, Chamber came out of the woodwork.

The Deputy of St. Mary:

Again, as the chairman said, Chamber might but the Chamber do not necessarily represent a lot of the small businesses we are talking about who are now coming out of the woodwork. That is the problem. Chamber does not represent every business on the Island.

Deputy K.F. Morel:

There is no obligation for businesses to be represented by Chamber.

The Minister for Social Security:

Absolutely not, and obviously if businesses are contacting you and telling you about different parts of the law, I mean, some will have different effects on different businesses, different sizes, are they all male or all female, which should not really because this law is completely level, the same amount of time except for if a woman goes back to work she can breastfeed. Other than that it is all the same.

Deputy K.F. Morel:

I will move on to the next question. This is, as you mentioned, the size of their database. The Employment Forum stated that it has a database of 300 people and organisations. Do you think that in itself is likely to be large enough to put the forum in contact with enough people and organisations to inform a consultation process?

The Minister for Social Security:

There is also J.A.C.S. and J.A.C.S. has been advertising these new laws since before they came in and as they are in, and they are even going out now telling them what has come in, and their newsletter goes out to 1,211 and they really have not had any issues. I understand your concerns, and I just need to hear who ...

Deputy K.F. Morel:

Given that the Department for Social Security has details of every employer in the Island and also details of every employee in the Island did the department itself write to you or contact by other means every employer in the Island to inform them of this?

The Minister for Social Security:

No.

Deputy K.F. Morel:

Why would the Department for Social Security not do that, as it is their consultation?

The Minister for Social Security:

It is something that has always been taken on by the Employment Forum. As I say they have built up ... there is a different relationship for me taking the contributions and the department, in that they can openly discuss their fears or what they want with the forum. It is completely confidential.

Deputy K.F. Morel:

Sorry, if I can just say, I did not mean to contact them to tell them to speak to the Department for Social Security, but you could contact every employer in the Island to tell them about the Employment Forum's consultation, so you could point them towards the Employment Forum's consultation. I was wondering if that had happened, and if not, why not?

The Minister for Social Security:

It did not happen, did it? It does not happen that way.

Director General, Customer and Local Services:

We have not previously used our data to promote any consultation by an independent forum. That is something we have not done. I think there was a press release issued when the Employment Forum launched their consultation. I think that also obviously received coverage in the media, so it is not like the Employment Forum keeps it secret. They will present it to the Island and of course business groups will also share it with their members as well and it will be used and covered by the *J.E.P. (Jersey Evening Post)* and the like but we do not promote.

Deputy K.F. Morel:

Can I ask why? Why do you not promote the work of the Employment Forum, when it is to inform the legislation that the department is looking at?

Director General, Customer and Local Services:

We are an independent forum. If we were writing on behalf of the Department for Social Security to businesses or employees that would be a significant cost and could also be potentially received in the wrong way. You are asking me and I will give an answer. It was not a consideration. Any of the consultations that we have done or the Employment Forum have done since I have been involved with the Department for Social Security we have never done that and it has never been in consideration, because the Employment Forum is independent and as the Minister has just said is set up in such a way that it has got employer and employee direct influences on it and that creates an independent balance, and a set of recommendations that the ministerial team look at and receive from the forum and as has been said many times before has been accepted by a number of different Ministers.

Assistant Minister for Social Security:

I think this is a political decision that was taken years ago, in the sense of we must be seen to be balanced, to be neutral, in terms of the way in which we create policy and law and particularly when we are consulting on things it is good to have a trusted body that you know is independent with a cross-section of people on it rather than a bunch of politicians saying: "What do you think of this?" Who knows what they are going to do with that. I am not sure, without having stated that we all use our database to conduct research, whether nowadays under the new data protection laws we would be allowed to do that, unless we specifically had organised ourselves to do so.

Deputy K.F. Morel:

I understand that, but even thinking about telecoms companies when they send you a bill, they often have a little advert at the bottom saying: "Get 20 per cent off for this or that". When the Department for Social Security sends out just circulars or bills to employers you could have something written on the bottom saying: "Did you know this consultation is taking place?" I wonder if you have ever thought of using your vastly superior database in that respect.

The Minister for Social Security:

It has not been done. I feel, over the years when I have read all of the things that the Employment Forum has produced, that companies just feel more comfortable speaking to the Employment Forum.

Deputy K.F. Morel:

Yes, I am asking them to speak to the Employment Forum. I am not saying they do not speak to the Employment Forum. I am simply saying you advertising the Employment Forum's work, the Department for Social Security advertising the Employment Forum's work, so not to speak to you. They still speak to the Employment Forum but you are saying: "Guys, click on this web address."

Assistant Minister for Social Security:

I think, Minister, it is something that we could put under consideration.

The Minister for Social Security:

Absolutely. Sorry, I get what you are saying now. The Employment Forum starts with the consultation: "We are doing a mail drop on something," it might be your contribution and just say: "P.S. (*post scriptum*), by the way on family-friendly" and so on.

Deputy K.F. Morel:

Exactly, yes.

The Minister for Social Security:

I will absolutely look into that, yes.

Deputy K.F. Morel:

Or email, or something like that.

The Minister for Social Security:

Yes. Sorry, I really did not understand the question first of all, but you are right, the more people who know and I have said that over the years as well.

Assistant Minister for Social Security:

It may well be that we have got a task in the revolution that is taking place now with the re-organisation left, right and centre, as part of those changes that we ought to take a good look at the way we communicate and see if there are more effective ways of reaching particular groups where we want to make sure the consultation is as comprehensive as it could be. It is certainly something to take under our wing.

The Deputy of St. Mary:

Moving on again, sorry to keep on going on about the Employment Forum, and this is the connection between the 2, assuming that the Employment Forum in the recommendation acknowledge that they were sensitive to the impact on Jersey to the recommendation but it was almost overtaken by the further indication that substantial progress would be made in regards to parental rights, are you happy that the forum was indeed so sensitive to the impact on businesses? We are back to the same question as to what the needs of businesses, small businesses in particular, should be taken into account when making the recommendation.

The Minister for Social Security:

I do not want to keep repeating myself. I have confidence in the forum. You do have the forum, I think, coming in to you, so I think asking me what was in their mind, what weight they gave to this, I am not aware of that, but as I say, as the body, I have confidence in them.

The Deputy of St. Mary:

Right, so leading on from that, I appreciate why you have confidence in them, so that means that questions we might have as to how convinced you were on the fact that there will be this impact on financial provisions in businesses or any effects, you are happy to accept that the forum is right on that and you need not concern yourselves with that?

The Minister for Social Security:

You said they were aware of and sensitive to the fact that this might have an impact, but as we stated at the beginning, I want the impact, and I see the impact, across the board mainly being positive, because it will retain staff, it will level the playing field and at the end of the day it will be the best for the family and the child.

The Deputy of St. Mary:

Again I am not challenging your reliance on the Employment Forum. It is at odds with what we are receiving from other quarters now so we have to pull that up.

The Minister for Social Security:

Absolutely. Obviously, I have got to take notice of your report. I want to see your report and do that. Also, for the amount of people working, we have quite a low birth rate. It went down last year, so you have got to weigh that out and not everybody is having babies. This extra legislation will not enable people to have more children, and it is not compulsory legislation. Most hard-working people ...

The Deputy of St. Mary:

Nor is having babies, by the way.

Deputy G.P. Southern:

Is it compulsory now?

The Minister for Social Security:

Not at all. Most people who are working hard will sit down ... it is about affordability at the end of the day. This is just enabling legislation to have that conversation with each other to say: "Can we afford to have some time off?" and I think the average is about 29 weeks, some paid, and unpaid. I

do not think that is going to shoot up anytime soon. These are the people who can afford to take that and some do not take hardly any.

Deputy K.F. Morel:

I will jump to a question that I have got buried much further down. You mention that very point. One concern that struck me about the legislation was exactly what you just said, some people cannot afford to take that amount of parental leave. Is there a danger, in your view, and given the importance, as you stated at the very beginning, of those first 2 years of life and the care and the family bonds that are built, that we could be creating a division in society, because you will have those that can afford 52 weeks' leave and those who can afford to take 4, above their 6 weeks' paid leave, and so you are going to have those kids who are brought up very closely with their parents over their first year or 2 years, because their parents can afford to be off work for a year, 2 years if there are 2 parents, and those kids who are in families who cannot afford it? What are your thoughts on that possible inequity in society?

The Minister for Social Security:

There is nothing in the new law that would not be happening now.

Deputy K.F. Morel:

You have just extended it now. You have just made it even longer.

The Minister for Social Security:

If it was a States decision or a policy decision to say that we would pay a lot more, but again it goes down to what is paid in. You can only pay out what is paid in.

Deputy K.F. Morel:

No, I am asking: are you concerned that the law, as you are proposing it, could create this kind of 2-tier? Kids whose parents could not take 52 weeks' leave, kids whose parents could afford to take 52 weeks' leave. Is that something that could be a consequence of this law, in your view?

The Minister for Social Security:

It is happening now, so I really do not know if this law would make it any worse.

Assistant Minister for Social Security:

When you look at the take-up of maternity leave, and that is the way we support maternity so far, directly, then you look at how long that lasts and what is the major reason for giving up and going back to work, giving up the care of your baby and organising yourself, is economic and I am very aware of that. We have not taken a look at the maternity allowance, which is a separate issue from

the employment law yet but it is something that we have to take a look at and consider whether we need to make some moves there as well exactly to respond to what you are saying is one rule for those who can afford it and another for those who cannot.

Deputy K.F. Morel:

Is this something that you will be monitoring?

Assistant Minister for Social Security:

It is certainly something that I think we would be advising we would monitor very carefully.

Deputy K.F. Morel:

Thank you. Sorry, it was just because you mentioned it. There is a further question in there, 23 we are on at the moment.

Assistant Minister for Social Security:

Can I go back to the question you were asking before? I just came across page 27 of the report and we have got the little paragraph at the bottom: "An extension to the parental leave period by 4 weeks was supported by the majority of respondents across all categories of respondent, 76 per cent, including 82 per cent of employees, 68 per cent of other respondents and 50 per cent of employers. The most popular choice of parental leave period for all categories of respondent including 39 per cent of employees and 60 per cent of employers was 4 weeks."

[16:30]

So we are looking at a fair cross-section there, employees, employers, others and there is substantial support for what is paid leave, an element, substantial support among employers.

Deputy K.F. Morel:

Yes, I read that part as well, absolutely, and thank you for taking it. It is important.

Deputy S.M. Wickenden:

The Employment Forum, on recommendation 9, said that: "6 weeks' maternity leave should be paid by the employer at 100 per cent pay." It also said that the forum is of the view that the States of Jersey should be asked to consider providing funding for 6 weeks of paid leave at 100 per cent of pay afterwards. Is that something that you have looked into?

Deputy K.F. Morel:

That would create 12 weeks of paid leave and that is something the forum wanted to do.

Assistant Minister for Social Security:

That would create 12 weeks of paid leave?

Deputy K.F. Morel:

Yes, 6 weeks paid by the employer, 6 weeks paid by the States of Jersey.

Assistant Minister for Social Security:

Right. Are we talking about parental leave, not maternity leave? Not the maternity allowance?

Deputy K.F. Morel:

No, parental leave, as I understand it.

Deputy S.M. Wickenden:

It is recommendation 9. It goes off the back of beginning from page 27 to page 30.

Deputy K.F. Morel:

Is there a reason you did not go down that route?

Deputy S.M. Wickenden:

Apart from complete affordability?

The Minister for Social Security:

Yes, apart from complete affordability.

Assistant Minister for Social Security:

The thing is that if we start looking at affordability then you are talking about creating another fund or increasing a fund in order to pay for that. While we certainly have seen some correspondence that says: "Why do we not have a system like in the U.K.?" where there is a means by which the employer can claim money back off the Government that has created a tremendously high rate of National Insurance. We are talking about 13.8 per cent or whatever it is now, compared to our 6.5 per cent. Yes, it can be done, in theory, but there is a cost to it and if we are talking about putting up social security contributions by X in order to do that then I think there might be a different response from the employer. That is a clearly quantifiable cost that may or may not be affordable.

Deputy S.M. Wickenden:

Yes, because it says about 100 per cent of the wages, so it would differ depending on how much the person who is on leave was earning.

Assistant Minister for Social Security:

So therefore would not necessarily solve the problem we had before, with the last question, rich and poor.

Deputy K.F. Morel:

If it is a case of affordability and the Government are unable to afford the cost of parental leave as originally wanted to be recommended by the Employment Forum, so if the Government cannot afford to pay 6 weeks of parental leave, what evidence do you have that small businesses can afford to pay 6 weeks of parental leave?

The Minister for Social Security:

There are lots of companies already doing it and we have had this conversation.

Director, Strategic Policy, Performance and Population:

Can I make a technical point about that forum recommendation? Since the Employment Forum was set up under the employment law that past recommendation about the States paying it does sit outside their remit, so you would never pay money out of the employment law. You would have to pay it out of some other law, and therefore it does sit outside the other recommendations. We have a well-established social security system in Jersey that does pay set rates of benefit pay, £260 a week for maternity allowance. We do not have any system in Jersey that pays people benefits based on their wages and so that is quite a big departure from what we do now. It is not to say that we might not do that in the future, but at the minute that would be quite a big change from where we are now. I think the previous Minister was extremely keen to pursue the family-friendly agenda quickly, given the significant delay that happened prior to her time, and the current Minister has obviously picked up the same remit. Therefore to do things within the current law is something that you can achieve more quickly and more smoothly than perhaps a really big change to the way that we pay benefits. If we start paying maternity benefits or parental benefits based on wages why do we not do that for the sickness benefit or for other kinds of benefits? You are raising giant new political questions that you will need to think through. This is an issue of acknowledging that this is what the employment law wants to do and this is the employment law's response to the family-friendly question and that is where we are today. You are absolutely right, we have left unanswered that challenge. It is a challenge that is just a wee bit outside of the remit of the Employment Forum as it stands.

Deputy K.F. Morel:

I appreciate that. Can I ask, trying to look at it from someone who does not work in the States of Jersey, so they are out there, they are working in their small business, they are doing their business

and they hear you say: "That is quite a big departure from what we do now" there is every chance, do you not think, that they are looking at the proposed law and thinking themselves: "Well, that is quite a big departure from what I do now" yet you are making them have this big departure from the way they work now, and you are unwilling to accept that as the States of Jersey, as a big departure from what the States of Jersey does now. Is there not an inequity there?

Director, Strategic Policy, Performance and Population:

I think there is an issue of scale. The Minister talked about the number of babies born in Jersey each year so it is not an enormous number of new babies born in Jersey each year, so the spread of babies across employers is quite spread out. In 2015 we introduced 2 weeks of paid maternity leave. In 2018 we introduced a possible 8 weeks, so 6 weeks for the mum and 2 weeks for the dad and this law looks to put it up to 12 weeks altogether, so from 2 to 8 to 12, so that is the direction of travel. The direction of travel represents the mood of Government to support families and to be seen as a Government that supports good employment practice through their legislation. There is undoubtedly a cost to business of doing that and there is a cost to Government in doing other kinds of benefit systems. These are decisions that politicians have to make from time-to-time as they see fit.

Deputy K.F. Morel:

Can I ask another one, sorry? I am absolutely off the script here. You mentioned there is a cost to business in doing this. Has there been any attempt to calculate that cost to business?

Director, Strategic Policy, Performance and Population:

I think there were about 900 babies born last year. About 90 per cent of those mothers were in work, so that is about 800 babies. We can do the rough calculations. We do not have direct knowledge of what wages these individual mothers were earning. It would be a very ballpark figure.

Deputy K.F. Morel:

So the answer is: "No, we have not tried to analyse the cost to business"?

Assistant Minister for Social Security:

The cost to business of ...

Deputy K.F. Morel:

Sorry, Deputy, I was asking Sue.

Director, Strategic Policy, Performance and Population:

It is correct that we have not tried to identify the wages of the parents who had babies last year and there are many things that the Government do not know. Government do not know the contractual arrangements between employers and employees, so it would be quite hard for us to work out what the extra cost is to businesses of these laws. We have talked about before that many businesses already provide very good contractual arrangements for the families and so at the end of the day although there are a large number of small employers most people work for large employers and large employers are much more likely to have U.K.-based H.R. (Human Resources) systems, the States has to pay maternity pay already, and things like that, so the number of people who work for small employers is really quite small compared to the total population. I think the Minister said before the bigger picture around the impact of the economy, the impact on retaining staff, those are slightly more difficult qualities to measure, but the ability for your law to support you in retaining good staff by providing good parental facilities is an important thing and we are at the risk of losing staff if they are not there.

The Deputy of St. Mary:

Looking at the thing from a different angle, the law is obviously geared or assumes that the contract is between the employer and employee, but of course the law itself will affect not just those 2 individuals but it will affect the whole running of the business. The business will run on a team basis, so any time off is going to impose on and create tension on other employees. I am trying to understand to what extent that was factored into your thinking or the Employment Forum's thinking.

The Minister for Social Security:

You would have to ask the Employment Forum that, but if somebody takes time off for paternity or maternity they can replace that person, so why would it have an effect on the team?

The Deputy of St. Mary:

Perhaps I did not explain myself very well. It is because leaving aside the original term of notice when you sit down with an employer, the employee can vary it at 2 weeks' notice only. Now, the employer is going to need, surely, a lot more time depending on his business to take cover or arrange cover. He might already have cover in place on the original arrangement and this could be disruptive to undo it. What surprised me slightly is that while on the breastfeeding arrangements 15K of the law provides for a reasonable consultation on various aspects to take into account the facilities, practicality, cost, extent of financial, administrative and other resources available to the employer and the characteristics of the employer as to the nature of the business. It strikes me that those same considerations would or should be applied to any change in notice, because I can see real problems in an employee, on a mere 2 weeks' notice, deciding to vary his or her period of absence. Do you have any comments on that, or has that been thought through?

The Minister for Social Security:

I think Deputy Morel mentioned this earlier, that it was originally 28 days and it is now reduced to 14 to vary. If you can tell me that is really a problem to employers it is something I could look at. I need to check. This went to law draftsmen and they have brought this back, but also it is a varying start and return, so you might want to return early to your employer, or you might want to give that notice as quick as you can. It is a balance.

The Deputy of St. Mary:

Yes. You say it is a balance, but I am not sure it is a proper balance as between looking at it in the context of the overall business. I see real problems for a small business, or even a bigger business, because businesses run in departments and a legal firm might have 3 or 4 specialist lawyers dealing in certain areas and one goes, and it is going to create enormous problems. They need to make sure the summer period is covered and so on. I would even question whether 28 days' notice is enough. All I am trying to get at is if any consideration has been given to introducing to that area of the law something similar to that which you did for breastfeeding, which asks the business ...

The Minister for Social Security:

Well, that is only in the breastfeeding to help say: "Your time is short, and the business has not even got a fridge, so mum can express if she wants to and she can put it in a flask." It does not even have to have a fridge, so these are reasonable steps. This has been ...

The Deputy of St. Mary:

No, sorry, I am not challenging ...

The Minister for Social Security:

No, but ...

The Deputy of St. Mary:

They are doing it under various headings and the headings do include characteristics of the employer and the nature of business.

The Minister for Social Security:

No, you are absolutely right. In the law there is no discussion, so the pregnant couple will sit down together, discuss what they can afford, when the baby is going to be born, and then 15 weeks before the baby is born they sit down with their employer and they discuss the leave. They tell them the leave. There is no discussion, no reasonable steps, no. That is how it is now.

Deputy K.F. Morel:

I think the point Deputy Johnson is trying to make, is that with the 14 days' notice so they have told the employer of the leave they are going to take but then the parents can come back, and as long as they give 14-days' notice they can then change the time that they had previously said they would and I think ...

The Minister for Social Security:

Yes, that is in the law now.

Deputy K.F. Morel:

Yes, but I think the question here is, if the employer has already hired somebody else to cover that period of absence and now they are being told: "We are not going to have that period, we are going to have it ..." there is only 14 days in which they then have to change their hiring arrangements ...

[16:45]

The Deputy of St. Mary:

If they can.

Deputy K.F. Morel:

If they can ... possibly pay other people, find somebody else, that sort of thing. Has any thought been given to the employer and I think that is why Deputy Johnson is saying a reasonable steps type clause may make that easier for the employer to work with?

The Minister for Social Security:

No, because it is already in the law. It is not a negotiation. The employee decides when they are going to take the maternity - it will now be parental leave - and it has not been causing any problems.

Deputy S.M. Wickenden:

Could I ask the Assistant Minister whether he is concerned that this would be an increase in zero-hour contracts for cover?

Assistant Minister for Social Security:

If that was what turned out, yes. It seems to me some employers are using any excuse to put people on zero-hour contracts for jobs that are far from zero-hour contracts and if that were to happen as a result of anything that you were doing I would take a long and serious look at it.

Deputy S.M. Wickenden:

When somebody asks for some leave, so parental leave, the employer gets cover but they can only get cover on a zero-hour contract because at any given time within the 14-days' notice the employee that is on leave can say: "Well, I am coming back" and so you cannot give somebody a fixed-term contract in that manner, you can only give them a zero hours or a temporary contract.

Director, Strategic Policy, Performance and Population:

You can give a fixed hour contract. So you are absolutely right that employees are protected under the employment law for unfair dismissal. They have obviously been told somebody is coming back early so you have not done anything wrong but in that situation where you are being recruited to cover a period concerning parental leave your right to employment can be terminated because the person who you are covering has come back to work, yes, so that does not make it unfair dismissal. You can give somebody a proper contract for the proper employment positions and the employer is not under any ... I mean the particular risk of having to pay 2 people at the same time. The cover person's contract can be stopped when the main person comes back. That is already in the employment law now, yes. That will not change.

Deputy S.M. Wickenden:

Okay. I just want to ask how many

The Minister for Social Security:

Deputy, if you have a got a contract and it is zero hours you are covered for maternity leave and everything as well. We do not have a worker employer under our law. If you have a contract, a zero-hour contract, you are covered from day one as well under this law. I know it is a different side of the argument, Deputy, but ...

Deputy S.M. Wickenden:

On the proposed 55I, which is the right to return to work after parental leave it states in 2(a): "That somebody when they return to work has to begin with such seniority, pension rights and all other rights in relation to the employee's job as she or she would have had if he or she had not been absent on such leave." Now, when you get to 55H on paragraph 1(b) it states that you can just take 2 weeks within this. Do you not think that there should be some kind of control in there because that basically says you can have a similar role when you come back from your leave? Yes, it does not have to be the exact same role but it has to have the same rights, the same seniority but it can be a different role but if somebody has gone 2 weeks the employer might go: "Well, I am just going to move them after 2 weeks", would there not be a kind of protection and control to say that you can only be moved to such seniority after a longer period of time rather than ...

The Minister for Social Security:

Well, I think the answer to the question ... it was to J.A.C.S. I think when we had the States Assembly Members and I think that is in there because take it the other way and somebody has 8 months off and their department, as Deputy Johnson has sort of described, is moved around and they have to go in, so if you are just off 2 weeks I would hope your job is still there.

Deputy S.M. Wickenden:

But it could be a bad employer that is then using it as the excuse to move somebody into a different position where they do not want. That is what I am talking about; protection.

The Minister for Social Security:

That is where you go to J.A.C.S. They will soon be told: "No, that is not happening." Then you have got all the way up to the employment ...

Deputy S.M. Wickenden:

The tribunal.

The Minister for Social Security:

... tribunal and they would be very hot on that.

Deputy S.M. Wickenden:

I was just wondering whether you could see what I mean that it could be used in a negative manner.

The Minister for Social Security:

Yes. As I say this is the law. Deputy Johnson is a lawyer and I mean you have seen the drafting ...

The Deputy of St. Mary:

A mere English barrister.

The Minister for Social Security:

I know but you have been drafting. You are drafting and when you are going backwards and forwards you really want to get the thing ...

Assistant Minister for Social Security:

You are not a lawyer yet.

The Deputy of St. Mary:

Deputy Wickenden mentioned clause 55I, the right to return to work after parental leave, so perhaps a pedantic question, but what happens if the job does not exist? Again, I am looking at small

employers who themselves are ... just to go back to an earlier point, a lot of the small employers are themselves family people and changes to help their employees are going to impact adversely on their own situation. So I can see situations arising where it is in his interest, the employer's interest, to refabricate their business. In fact there will not be a job. Is the employee protected if the firm folds or ...

The Minister for Social Security:

Yes. Would they be entitled to redundancy then?

Director, Strategic Policy, Performance and Population:

Yes, they have got exactly the same rights. The States have given it. Obviously, they are a significant organisation ... staffing input and a consultation and their jobs are changing. If there was somebody who was on parental leave they would be involved in that consultation process as if they were still at work. It does not make any difference. You have got all the rights of being the employee therefore you are subject to statutory consultation around changes to your job or redundancy or anything else like that. It makes no difference. You have got all the rights you had already. You are not losing anything at all.

The Deputy of St. Mary:

Yes. So in the consultation if it is sort of tips below the edge, et cetera, then it is the employee relying on redundancy payments or whatever in the law?

The Minister for Social Security:

Yes. They would still be treated as employee but under the redundancy law. Is that correct? Yes.

Director General, Customer and Local Services:

The same if you are off sick.

The Deputy of St. Mary:

Sorry?

Director General, Customer and Local Services:

If you were off ill for a long period.

The Deputy of St. Mary:

Okay. I understand about unintended consequences. That is all.

Deputy K.F. Morel:

If we can move you on to kind of the certification side of things. The proposed law states: “An expectant mother, if requested, needs to provide a certificate of her pregnancy from either a registered practitioner or registered midwife.” Can I just check, is that the case now? I just want to check.

Assistant Minister for Social Security:

Yes.

Deputy K.F. Morel:

Yes, that is fine. Do fathers to be, so to speak, need to provide the same certificate given that they now have the parental leave themselves?

Assistant Minister for Social Security:

They would be lucky if they got the blue stripe.

Deputy K.F. Morel:

Pardon?

Assistant Minister for Social Security:

They would be lucky if they got the blue stripe.

The Minister for Social Security:

No, but in the law and it ... the father or the partner, same sex, does not matter, partner has to, it says, have the role of caring for the child so they do not ...

Director, Strategic Policy, Performance and Population:

Yes, that is it really. There is a pregnant woman and there is a partner who accepts the fact they would be fully involved with the care of the child so there can only be one partner for each baby.

Deputy K.F. Morel:

How does the employer receive proof that they are that person because the mother has to provide a certificate and we are just wondering what the father has to provide?

The Minister for Social Security:

That is a very interesting question.

Deputy K.F. Morel:

Similarly in the same vein under 55F(b) it states: "That if requested the employee provides [this is do with mothers and surrogate parents] the employee provides a certificate from either a registered medical practitioner, registered midwife or registered nurse stating the expected week of childbirth." We are just wondering, is there any reason why this is slightly different to the one I have just stated because the previous one does not give the opportunity of a registered nurse. I am just wondering is there a reason why where surrogacy is involved, a registered nurse is able to sign that certificate ... where it is not involved, registered nurses, according to the law, is not able to sign that.

The Minister for Social Security:

I have no idea but we will literally look into that. I have absolutely no idea why there is an extra one in there.

Deputy S.M. Wickenden:

It is 15G Article 8(a) just asked for 2 things whereas ...

The Minister for Social Security:

Yes. No, absolutely interesting point.

Assistant Minister for Social Security:

Needless to say they have the cost of a visit to their G.P. (general practitioner).

Deputy S.M. Wickenden:

Or just the ink.

Assistant Minister for Social Security:

It is the district nurse.

Deputy K.F. Morel:

Just quickly rifling through some of these more yes or no answers. Definition of childbirth includes the birth of a child whether living or dead at any time after 24 weeks of pregnancy. So pregnancy has gone to 24 weeks, if the child is born, whether living or dead, that counts as childbirth. In cases where a child is stillborn do the parental leave rights still apply?

Director, Strategic Policy, Performance and Population:

Yes, they would.

Assistant Minister for Social Security:

I think they do. I think I have seen that.

The Minister for Social Security:

And they do now.

Deputy K.F. Morel:

So in theory could they then take 52 weeks unpaid leave, et cetera, while the child is stillborn?

The Minister for Social Security:

Yes.

Deputy K.F. Morel:

They would then be entitled to 52 weeks.

The Minister for Social Security:

Yes.

Deputy K.F. Morel:

I have no view on that, whether that is a positive or negative. I do not know. Did you think of including specific rights for births where there is a stillbirth? Did you think of including specific leave rights tailored around that in the sense that sadly the development of the child does not play a part in the parental leave where the child was stillborn?

The Minister for Social Security:

No, but it will be under the mother...

Assistant Minister for Social Security:

It could well be in the mother's mind.

The Minister for Social Security:

The mother would ...

Deputy K.F. Morel:

Absolutely, so I am just wondering whether there is any other specific ...

The Minister for Social Security:

Well, no, but it is specific that they are still treated as if they have given birth and obviously they will be going through a terrible grieving time but it is recognised that after 24 weeks baby born is baby born.

Deputy K.F. Morel:

That is absolutely fair enough.

Deputy S.M. Wickenden:

In the law it has got a definition for childbirth. Do you think there should also be a definition for expectant mother? There is not one that says: "That is what we mean by the term expectant mother" but there is one that says: "This is the term that categorises what childbirth is."

Director, Strategic Policy, Performance and Population:

Again, I am very happy to answer these questions in writing. That was all.

Deputy S.M. Wickenden:

It is just as we have been going through we have just been trying to ...

Assistant Minister for Social Security:

Where that phrase is used it takes the meaning normally accepted in law or in the English language. It would be one of things, will it not?

Deputy K.F. Morel:

Another question, as there is no qualifying employment period for parental leave, so from day one of employment you are entitled to this, how do you envisage employers being able to operate probation periods if someone leaves for up to 52 weeks during their first few weeks of employment? When they come back does their probation continue or do they kind of get through their probation while on leave having done no work?

Assistant Minister for Social Security:

Presumably it is back to that first ...

Director, Strategic Policy, Performance and Population:

The answer to that is a contractual right not a statutory right and therefore it is up to the employer how they want to do it ...

Deputy K.F. Morel:

Sorry, I could not hear that.

Director, Strategic Policy, Performance and Population:

It would be up to the employer to decide how to organise that because it is a contractual obligation not a statutory one.

Deputy K.F. Morel:

So would the employer have to make that clear before the employment of that sort of thing so the employee knows where they stand?

Director, Strategic Policy, Performance and Population:

Yes, a probationary period would be in your contract of employment. It is not a statutory requirement to be included in a contract of employment and therefore it is up to the employer and employee to decide that and therefore that would have to make it clear as to how the probationary period would run.

Deputy K.F. Morel:

So if they wanted it you would come back after 52 weeks unpaid leave or 13 weeks. They should have it in their contract to say that your probation period will continue.

Director, Strategic Policy, Performance and Population:

Yes.

Deputy S.M. Wickenden:

In Article 55D it explains qualifying relationship with a child. How would the employer confirm the qualifying relationship because obviously fathers can father children to multiple partners but it tends not to work the other way round?

Deputy K.F. Morel:

So if one male had more children within a very short period of time with 3 different mothers would they be able to take leave for each of those children from 3 different mothers?

The Minister for Social Security:

As I said earlier there is a certain ... under the law that your ... if it is the father or mother ... no, father or the partner. As I say, they do not have to be living together to be the father of the baby. Under the law they should be looking after the baby while they are taking the leave.

Deputy S.M. Wickenden:

That is the thing. The father of the child is obviously the biological father of the child but if a man was to get 3 women pregnant would he be able to have 3 lots of leave because in the law I think it also states that there is ... it does not stop after one child. You can continue to do this.

The Minister for Social Security:

So 4(b)(3): "Has or expects to have responsibility for the upbringing of the child or the main responsibility apart from any responsibilities of the mother for the upbringing of the child." Again, you say the father is the biological father. I am saying not necessarily. It could be man meets woman, she is already pregnant or she might have just had the baby. He wants to play a part in the woman's life or woman woman, man man. It is the responsibility of the child and it does not really go down to biologically.

[17:00]

Obviously most couples will be married couples and having babies in the marriage.

Deputy K.F. Morel:

I appreciate the majority but we are thinking about the minority.

The Deputy of St. Mary:

Can I say what I see as a practical problem? Probation periods; now they are normally inserted in contracts, offering contracts subject to satisfactory performance. Now, if you become pregnant in that 3-month period, for instance, your probation employer could think of a reason why probation was not confirmed or whatever, how is that covered under the law?

Director, Strategic Policy, Performance and Population:

That would be sex discriminate.

Assistant Minister for Social Security:

We just answered that.

The Deputy of St. Mary:

We can ask the same question 53 times if we want to.

The Minister for Social Security:

So Deputy Johnson was asking about if they got pregnant and I think you were saying when they would be pregnant so it is a slightly different question but it is ...

Director, Strategic Policy, Performance and Population:

If the feeling was that you had failed your probation because you were pregnant you would have a very strong case of sex discrimination and therefore that would just be unfair dismissal.

The Deputy of St. Mary:

Okay, I accept that but a contract could be drawn up ... yes, they would have to argue on that basis but employers might find other reasons, legitimate or otherwise. I am just looking at possible ways of employers seeking to avoid their obligation under this law; that is all.

Director, Strategic Policy, Performance and Population:

Well, that is why sex discrimination and employment law has been developed together to make it as hard as possible for bad employers to kind of take advantage of people and as easy as possible for employees to make sure that they can have fair employment situations and obviously those laws are there to protect employees. We talk about employers but there also a strong desire within society to make sure the employees have reasonable protection within their workplace.

The Deputy of St. Mary:

You refer to sex discrimination but that same probation period could apply to a partner of the mother, could it not?

Director, Strategic Policy, Performance and Population:

I am not an expert but indirect discrimination.

The Deputy of St. Mary:

If he is entitled to his parental leave by virtue of ... pardon.

Director, Strategic Policy, Performance and Population:

I think that would be indirect discrimination that would apply. You can have direct and indirect discrimination.

Deputy K.F. Morel:

Can I just move to a different point? Again, this is concern about the way the law might be misused. If you are having a surrogate child you are obviously entitled to parental leave, you are entitled to 6 weeks' paid leave and obviously you can take that 6 weeks paid leave up to 11 weeks before the child is born elsewhere so to speak. That could open up a loophole because you can equally notify that the surrogacy is not happening so you could in theory take the 6 weeks paid leave before any baby is born and then say: "Oh, by the way now the biological mother is not going through with the surrogacy. Sorry, I do not need the rest of my leave", but you have taken 6 weeks paid leave. How does the law protect against that happening?

The Minister for Social Security:

Could that not happen as well because it is 11 weeks before the birth you can start taking your leave? Something could go wrong at birth, before, and the baby is not there.

Deputy K.F. Morel:

Yes, but I am talking about something going wrong is very different to people doing it on purpose. What I am saying is because you cannot fake a pregnancy in that respect but you can fake a surrogate pregnancy because the employer might never see the biological mother. They could be in a different country.

The Minister for Social Security:

You just state the Article where it asked and it gives an extra nurse certificate for surrogacy so why would they be faking them?

Director, Strategic Policy, Performance and Population:

I understand what the question is. The question is that there is a surrogate pregnancy and the mother that is pregnant does not transfer the baby but the leave has been taken. I would offer a couple of facts which is there is probably one surrogacy pregnancy in Jersey a year and then an opinion which is that surrogate parents are highly involved and getting to be a surrogate parent is a very long process. You do not go through that easily or comfortably and anybody that got to that stage and then did not have the baby I think would also be in a very emotional state and might need the leave anyway.

Deputy K.F. Morel:

But could it be that someone staged the whole thing in order to get 6 weeks paid leave, as unlikely as that sounds? Does the law enable that to happen?

Director General, Customer and Local Services:

I would imagine then the employer would probably to take action against the employee.

Deputy K.F. Morel:

Yes, that is what I mean. Would fraud be a possible route if that sort of thing could be?

Director General, Customer and Local Services:

The relationship between the employee and the employer would have broken down tremendously I would have thought.

Deputy K.F. Morel:

Just last question, if you do not mind. This is going to the kind of process we got to. We had the 2018 law come in back in September and we have now got obviously these new proposals. I wondered what brought you to the conclusion that 12 months is a sufficiently large gap between the introduction of each part of the legislation to allow businesses time to prepare and so far what analysis of the impact on businesses of the 2018 legislation has been made?

The Minister for Social Security:

Well, as to the consultation; late 2017 it was all proposed. I think that did not happen - 2 things politically - because of the elections and it was a big piece of law drafting so they did the easy bit. Not the easy bits but the things that were already in law, like breastfeeding there is no law at all so the reasonable steps and everything. So that is where we are. People know. J.A.C.S. had been promoting this law coming in and since it has been in 2018 there is still very low ... they had about 65 queries last year, and it is 70 I think this year, but in context I think their highest is unfair dismissal. So 66 family friendly to 75, or it might be other way round, to unfair dismissal last year was 309 to this year 243. I just have not heard anything. Nobody has been saying this is really affecting me as they know it is coming. Sorry, there was a second part to your question.

Deputy K.F. Morel:

Is the department planning to do any analysis of the effects of that 2018 law before this one comes in, is what I am saying?

The Minister for Social Security:

J.A.C.S. are the people who will hear everything. Their newsletter. They are already doing training. It is about even. I think they have had about 35 employees and about a similar amount of employers ring them on what is in and what is coming in and what they have got to do to prepare for but this has been known to be coming in. How do you monitor something that is not in? But the other thing is there is ...

Deputy K.F. Morel:

No, but the monitoring of the one that is in is what I am saying. Monitoring from September 2018 until now, are you planning to do any assessment of the impact of that law?

The Minister for Social Security:

I am saying the impact is so quiet that it seems to be going very smoothly. If it really affected businesses they would be screaming it from the rooftops.

Deputy K.F. Morel:

So I can take it that your measurement of that impact is purely enquiries for J.A.C.S.; that is how you measure the impact of this law, the 2018 law. That is your measure.

Director, Strategic Policy, Performance and Population:

You have got to go back to the beginning of the process which is 2015. So in 2014 when the first part of the law was brought in it was decided that the first bit is to provide 2 weeks paid leave and that there should be a gap of a year before any extra work was done. So we brought in the first stage in September 2015 and then 2016 was the 12-month period of settling down and the beginning 2017 the limit of that time then asked the forum to look now to see what the impact of the first stage was and I had to look to the second stage. The forum came back with - sorry, this is slightly confusing - a 2-stage response which was for 2018 and 2019 but the forum, on page 6, talk about the fact that it was in 2 stages, the 2018 and 2019 bit, and they understand that you cannot do it in 2 stages to give employers more time. Then they asked for the whole piece to be done in 2019 in one go and then they say at the end: "The forum would be reluctant to see a delay in the implementation of any of its recommendations." As well as what the Minister said about J.A.C.S. in the new period there has also been the period since 2015 where this has been well-publicised and flagged up that it is happening. We have just not seen anything other than positive support for these moves. There has been very little negative feedback from employers as to the impacts of the first part of the law or the second part of the law and this is the well-publicised third part of the law.

Deputy K.F. Morel:

So basically in short there is no planned assessment of the impact of the 2018 law.

Director, Strategic Policy, Performance and Population:

Other than it was part of the remit of the forum in 2017.

Deputy K.F. Morel:

Yes. So that is what I am saying, there is no plan to assess the impact of the 2018 law before this law is brought in if it is passed in 2019.

Director, Strategic Policy, Performance and Population:

Because the phasing in was ...

Deputy K.F. Morel:

You see it as one law. Again I think there is a thing here of how the States sees something and how the rest of the Island sees things. I think other people see 2 laws but there is one law. I think that is the reality bit.

The Minister for Social Security:

No, it could have been one law. We could have been bringing it all in and we are ahead of the game. That is the way I look at it.

Deputy K.F. Morel:

Yes. Thank you very much indeed. Thank you for staying 12 minutes later but thank you.

The Minister for Social Security:

It went really quickly. It was a pretty good point, the Minister for the Economic Development asked about what the Order says. You thought it was a policy but it is an Order that employers can get anybody in to cover their period of leave and it is an Order that I have already spoken to the Chief Minister and I have got commitment that if this goes through that will be extended. It is not a policy. It will be an Order. Thank you.

[17:11]