

STATES OF JERSEY



EMPLOYEE PROTECTION: LEGISLATION (P.95/2006) – COMMENTS

**Presented to the States on 25th September 2006
by the Minister for Social Security**

STATES GREFFE

COMMENTS

The Employment and Social Security Committee's first 'Fair play in the Workplace' (November 1998) consultation document, sought the views of the public on a range of employment issues. The results of that consultation and the priority given to them by the public were outlined in an "Employment Legislation" proposition that was approved by the States (P.99/2000).

That proposition included the commitment to bring forward Phase 1, which comprises the Employment (Jersey) Law 2003 and the draft Employment Relations (Jersey) Law, followed by Phase 2 which includes legislation to protect employees in business transfer situations. Phase 2 also includes legislation dealing with maternity, family friendly and flexible working policies, work on which will begin after business transfers and redundancy.

As Senator Shenton states in his Report, the Employment Forum has recently consulted on the development of legislation relating to business transfers and redundancy.

The Employment Forum was established in 1999 as an independent, non-political consultative body in the creation of Employment Relations Legislation for Jersey. Its primary role is to consult with representatives from all sectors of the Island's business and working community regarding the development of employment legislation and to make recommendations. The Forum's role was formalised by the Employment Law.

The consultation document included such issues to consider as –

- in what circumstances should business transfers be protected;
- what employment terms and conditions should be protected on transfer; (particularly in relation to pensions);
- what information a transferring employer should have to give the new employer about the transferring employees;
- and what procedures should be required of the transferring employer to inform and consult employees who will be transferred with the business.

That consultation ended on 11th August and the Forum is in the process of considering the responses received and will finalise its recommendation before the end of 2006. Having considered that recommendation, the Minister will then prepare a proposition for the States outlining the principles to be adopted. Law drafting time has been proposed for 2007 in the Business Plan.

It is anticipated that a draft law might be presented to the States during 2008. In considering a possible date of enactment, time must be allowed for Scrutiny and Privy Council approval.

The eventual proposals for legislation will very much depend on the consultation outcomes and the Minister's consideration of those recommendations.

Senator Shenton states in his Report that the UK TUPE requirements are not onerous, however they are complex and have been the cause of some of the most difficult and intractable employment law problems in the U.K.

It is my intention that the eventual legislation is tailored to Jersey's needs and employment environment, as has been the aim with Jersey's other employment legislation. We will draw from other jurisdictions where appropriate, aiming to avoid any pitfalls that have been identified with provisions and to keep the law as simple as possible.

I appreciate the Senator's concession to the effect that implementation should take place "as soon as resources allow". The task is well underway and available resources are already directed to this additional employee protection. Proposals are being developed in accordance with our planned timetable for Phase 2. The decision to

give business transfers legislation priority in Phase 2 was not linked to any specific business transfer that may happen in the Island.

Employment legislation is provided to ensure minimum protection of employees, especially where employment contracts do not cover a specific issue. If an employer wishes to give protection to employees of their own volition, there is obviously no impediment to providing that by way of agreement, which can be a far better way of achieving a transfer.