STATES OF JERSEY

SUSPENSION OF STATES EMPLOYEES AND STATES OF JERSEY POLICE OFFICERS: REVISED PROCEDURES (P.46/2009) – SECOND AMENDMENT

Lodged au Greffe on 21st April 2009
by the Chief Minister

STATES GREFFE

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(1) In paragraph (a)(ii), after the word "representative" insert the word "or" and delete the words "or friend".

(2) In paragraph (a)(iii) for the words "a panel drawn from within the public service which shall be independent of the department where the suspended person is employed and which will report its findings to the States Employment Board" substitute the words "the States Employment Board or in the case of Police Officers, an appropriate senior officer, in conjunction with the appropriate Chief Officer".

(3) Delete paragraph (a)(iv).

(4) In paragraph (b) for the words "42 days" substitute the words "3 months".

CHIEF MINISTER

REPORT

1. The proposition seems to be based on a misunderstanding that States employees and Police Officers are suspended without any real thought being given to the decision and almost "in the heat of the moment" and that once suspended, they are effectively forgotten about! Nothing could be further from the truth. First, only a Chief Officer, or his/her nominee (clearly a senior manager), has the authority to suspend an employee. Second, an employee is suspended because of alleged gross misconduct, pending an investigation and/or hearing, on full pay, and where there is a view that his/her presence at work could interfere with an investigation or pose potential dangers to the department, the public or fellow staff. Thirdly, the department in question invariably incurs significant additional costs in a suspension for, in addition to paying the suspended employee's normal pay, it has to pay overtime costs or the costs of a temporary replacement to cover the suspended employee's duties. It is simply not true to say that these decisions are taken lightly and that the continued suspension is ignored.

2. The report which accompanies the proposition is based on inaccurate, misleading and unsubstantiated comments. For example –

- The report says that "it is alleged that some employees are still being suspended without receiving anything in writing." This is highly unlikely and where is the evidence for this allegation?

- The report says that "it is also apparent that there has been little adherence to employees' Human Rights". Again, where is the evidence for this assertion, which is denied by the employer? Paid suspension is a precautionary act only, pending a full disciplinary hearing at which the employee is given the right to present his/her case; the right to representation and the right of appeal if appropriate.

- The report says that "much more needs to be done to ensure that suspensions are not seen to be the first option rather than the last." This is a very sweeping statement. Employees are suspended by a Chief Officer, or his/her nominee, in circumstances of alleged gross misconduct. Suspensions are costly as staff often need to be covered by overtime working or temporary cover in addition to the suspended employee's normal pay which continues to be paid throughout the suspension.

- The report says that "it is not uncommon for employees to be called before an employer and informed that he/she is being suspended and they would receive "something in writing in due course". Again, where is the evidence for this? The practice is that employees are normally advised orally of the reasons for suspension at the point of suspension and these are put in writing within a period of at most 3 days.

- The report says that "examination of some suspensions has shown that 'investigations' have taken months and even years." Again, this is a misleading statement. Suspensions of this duration are extremely rare

and normally occur only in cases involving highly complicated investigations, normally involving Police or criminal proceedings.

- The report says that "the suspended person is presumed guilty therefore there is no need to rush things." This is a gross exaggeration. The employee is not presumed guilty; he/she is presumed to be innocent until at least the investigation and hearing are completed, let alone any appeal. As stated above, there is every reason to expedite matters given the cost of covering the employee's work in addition to paying his/her normal salary. Suspensions are always deemed to be precautionary only and hence normal salary is paid.

- The report says that "there appears to be an absence of any joined-up approach or urgency when investigating suspensions, particularly 'Neutral Acts'." Again, where is the evidence for this assertion?

3. The States Employment Board require every suspension to be notified to the Human Resources Department; it requires a Chief Officer to review the reasons for a continuing suspension in his department every month; and it receives a report every 6 months on the numbers of suspensions, the departments involved, the reasons and the outcomes.

4. It is a fact that the vast majority of suspensions which exceed 28 days do so because of complicated internal investigations, police inquiries and legal proceedings involved, and that **the procedures proposed in the proposition would have minimal effect on these**.

5. Paragraph (a)(i) of the Proposition reflects existing policy of the States Employment Board. The Board is satisfied now that employees are given a reason for suspension at the point of suspension and that this is followed up in writing within at most 3 days. Indeed, the disciplinary procedure of the largest pay group, the Civil Service, specifically provides for this.

6. The word "friend" in paragraphs (a)(ii) and (iv) of the proposition presents difficulties. In the disciplinary procedures, both the Board and the recognised trade unions invariably try to avoid allowing lawyers to participate in in-house employment matters. Their adversarial approach has a tendency to over-complicate matters and to bring criminal law tests to the proceedings which are out of place in the employment context. By using the term "friend" in this respect, the proposition is effectively allowing lawyers to join the proceedings. Under the Employment (Jersey) Law 2003, employees have a legal right to be represented only by workplace colleagues and trade union representatives in grievance issues. The Jersey Advisory and Conciliation Service (JACS) has confirmed that it does not support the use of lawyers in in-house grievances and disciplinary matters and that the intention of modern employment practice, as reflected in the current Employment Law, is to encourage settlement of issues in a "non legal" framework wherever possible. Amendment (1) seeks to achieve this whilst still allowing a broad level of support.

7. Paragraphs (a)(iii) and (iv) of the Proposition call for a panel drawn from within the public service to review suspensions beyond 28 days. No specific terms of reference are proposed for this panel. This proposal would create difficulties. Firstly, it would create the danger of the panel effectively

investigating or trying the disciplinary case involved. This would clearly be wrong, and would usurp the authority of the agreed procedures. Secondly, it would be resource-hungry. It is estimated that, given the proposal that the panel actually meets with suspended individuals, their representatives and Chief Officers, some 7 working days per month would be incurred for each panel member involved. In addition to the time spent by employees as members of the panel at the review hearings, it is estimated that the process would involve the dedication of half a post to support the administration involved in the proposed process.

8. It is considered that it is the responsibility of the States Employment Board to review these cases with its officers and the Chief Officers involved, and amendment (2) acknowledges that.

9. Given that the staff disciplinary procedures for some 20 pay groups will need to be amended, in agreement with appropriate trade unions and staff associations, 42 days is not long enough a period to implement the changes proposed. Hence amendment (4) proposes a period of 3 months, which is more realistic. It is understood that the Minister for Home Affairs will be bringing amendments to this proposition.

10. The Chief Minister and the States Employment Board are very concerned that matters affecting the contractual terms and conditions of States employees and Police Officers are being brought to the States Assembly for debate and determination. In as long ago as the 1950s, the States decided that it was not appropriate for 53 States members to determine the terms and conditions of a large and very varied workforce, and appointed appropriate bodies specifically for this purpose. These bodies were initially the Civil Service Board and Establishment Committee; followed by the Human Resources Committee and the Policy and Resources Committee, which had a sub-committee specifically for this purpose; and since 2005 the States Employment Board. These bodies have exercised this responsibility in negotiation and consultation with recognised trade unions and staff associations. It is regretted that the proposition runs counter to this long-standing arrangement.

11. Short of rejecting the whole proposition, Members are urged to support these amendments which are designed to improve as far as possible a loosely worded proposition and create a simpler, workable arrangement.

12. There are no additional financial or manpower implications for the States arising from these amendments.