

STATES OF JERSEY



WOOLWORTHS EMPLOYEES: REDUNDANCY PAYMENTS (P.2/2009) – COMMENTS

**Presented to the States on 20th January 2009
by the Council of Ministers**

STATES GREFFE

COMMENTS

The Council of Ministers is fully aware of the impact that the recently announced job losses is having on former Woolworths staff and their families. Ministers are receiving regular briefings and are taking an active role in leading the process through which the staff, who through no fault of their own have been made redundant by Woolworths plc., are being given every possible assistance in these difficult times.

Strenuous efforts are being made on behalf of those former employees with the aim of meeting what has to be the primary objective, to safeguard their welfare by helping to secure their long-term livelihoods through further employment.

Furthermore, the Minister for Social Security has received a briefing from the Viscount with regard to the amounts due to the former Woolworths plc. employees from an insolvency law perspective.

The Viscount has advised of the steps he has already taken and anticipates taking to identify and best protect any legal rights of the employees, given that there remains property in the Island belonging to Woolworths plc., the sale or assignment of which will need the sanction of the Royal Court.

The Minister for Social Security is satisfied that every effort is being made to protect the legal rights of the former Woolworths plc. employees.

The Jersey Advisory and Conciliation Service (JACS) is working with the former employees to ensure that all claims for outstanding sums due under Jersey Employment legislation are notified to the Jersey Employment Tribunal as soon as possible.

Whilst Jersey does not currently have legislation in respect of redundancy pay, legislation does make provision for minimum periods of notice that an employer is required to give an employee on termination of their employment. These notice periods are longer than those required in the UK.

In addition to being briefed by the Viscount, the Minister for Social Security has written to the joint Administrators to express his disappointment and that of the Chief Minister in respect of the failure to meet their statutory obligations under Jersey Employment Law – in particular regarding the failure to make payments in lieu of notice. The Minister has further requested a meeting with the Joint Administrators to discuss these and related matters.

As well as providing individual advice on Income Support and the various employment services that are available, the Social Security Department and Careers Jersey have provided group-based workshops in order to maximise the opportunities of the individuals concerned to obtain further employment and to identify any longer term assistance that may be required. In addition, a 3 day workshop was held to provide more intensive support towards gaining employment.

As part of its efforts to support former Woolworths employees, Economic Development has been working with a potential new tenant for the store premises, to identify new employment opportunities. The Department hosted assessment centres over 3 days at which almost 60 former Woolworths employees were interviewed by the potential employer, to explore their suitability for future employment.

It is understood that almost half those attending successfully completed the assessment centres, and subject to property-related legal formalities being completed, may receive offers of future employment in due course.

In addition to this development, the Social Security and Economic Development Departments have facilitated meetings with the major food multiples in Jersey in respect of identifying potential employment opportunities, and it is understood that a number of former Woolworths plc. employees may now have secured work as a consequence.

Responding in this manner is in the very best interests of the long-term livelihoods of all the former Woolworths employees.

The good intentions of the Proposition are recognised by all; however, there is great risk in setting a moral precedent with regard to employee compensation that is not based on legislation.

Members may well agree with the sentiment of the proposition and may be tempted to vote in favour of it given the amount involved. However, making payments in respect of these employees will be to discriminate against others made redundant, and against those who could be made redundant over the coming months.

Not to make similar payments to all those who find themselves in the same predicament as the former Woolworths employees would be inequitable.

The costs of following the moral precedent that would inevitably be set by agreeing this Proposition could well turn out to be very considerable and are unknown.

A great deal of progress has been made on employment legislation in a relatively short time in Jersey. Employment legislation in other jurisdictions has been introduced over several decades. The introduction of the employment legislation in stages was necessary to give employers and employees time to understand and adjust to the new rights and working practices. This was a significant change, particularly for small local employers. The introduction of redundancy payments and an insolvency fund must be planned carefully, not only because the issues are complex, but also because the introduction of that legislation is likely to result in a cost to employers as well as to employees.

Legislation giving employees the right to redundancy payments will be lodged for debate by the States in April this year and priority will be given to the consideration of the establishment of an insolvency fund. However, such compensation for job loss is a right that others in Jersey do not yet have and an exception should not be made in this instance.

One of the main purposes of redundancy legislation is to prevent hardship.

States Departments are doing everything possible to provide benefits where applicable to prevent hardship and to provide those people affected with the support, tools and guidance necessary to gain further employment.

Considerable effort is also being made to ensure that the legal rights of the former employees of Woolworths plc. to amounts remaining unpaid are safeguarded.

In light of all these factors and that to make the payments proposed would be inequitable to all those facing the same circumstances, the Council of Ministers cannot support the proposition.

Additional comments in respect of the amendment to P.2/2009 of Senator Breckon

Many of the principles and issues raised in respect of the proposition apply equally to the Amendment and for those same reasons the Council of Ministers cannot support the Amendment.

The additional amount proposed in part (a) to the Amendment of £150,000 presumably seeks to provide for amounts which have not been paid in lieu of notice and holiday or other pay outstanding.

Although the Amendment qualifies the amount by making provision “up to” £289,500, the proposal does not detail how the revised sum has been estimated.

It is not clear whether the amounts proposed to compensate for unpaid notice periods have been estimated based upon the provisions of the Employment (Jersey) Law 2003, under those of the UK National Insurance Fund or by virtue of the contracts of employment of the local former employees of Woolworths plc.

In the first of these cases, the number of weeks’ notice entitlement is up to 16 weeks depending upon the length of service, and the weekly amount of wages which can be claimed for is uncapped. Under the rules of the UK scheme, the amount of weekly pay which can be claimed is capped at £330 and the maximum number of weeks

which can be claimed is 12 weeks, depending on length of service.

Although unclear, it is presumed that the intent is to follow the UK scheme, given that part (a) of the Amendment seems to be seeking to provide compensation equal to that provided under the UK Scheme, even though the amounts could well be less than those provided for under Jersey legislation, in the case of notice periods.

Under the rules of the UK scheme any payments made in respect of compensation for unpaid notice periods are limited to actual losses suffered. That is to say that the amounts are reduced by any amounts earned or benefits received during the period, including any Social Security benefits received.

The Amendment does not make it clear that the payments would be subject to Income Tax and Social Security contributions given that such payments would constitute compensation for lost earnings.

Part (b) of the Amendment requires the Minister for Treasury and Resources to register and pursue a claim with the Joint Administrators for any amounts paid out under part (a).

It is far from certain that any such claim would be valid or enforceable given that it would be in respect of *ex gratia* claims made by the States.

However, it may be possible for a claim to be registered in respect of those amounts paid which compensate for amounts due by right to the former employees of Woolworths plc, should they agree to assign their rights to the States in exchange for such payments.

With regard to part (c) of the amendment, the Social Security Department has been working closely with the Jersey Advisory and Conciliation Service (JACS), the latter of which has been providing, and will continue to provide, assistance to any of the former employees wishing to register claims in respect of unpaid notice pay, holiday pay and other amounts.