

3.13 Deputy G.P. Southern of the Minister for Social Security regarding breaches of employment law by Jersey employers using zero-hours contracts:

I do smile sometimes ... What mechanisms, if any, does the Minister for Social Security have at his disposal to pursue a third-party complaint on breaches of employment law by Jersey employers who use zero-hours contracts to cover what, in reality, is permanent full-time employment?

Senator F. du H. Le Gresley (The Minister for Social Security):

Part 10 of the Employment (Jersey) Law 2003 provides that the Minister for Social Security may appoint officers or assign responsibility to officers to act for the purposes of the law. The powers of the assigned officers of the Social Security Department's Contributions and Enforcement team include the power to visit premises to inspect and require an explanation of records kept in relation to the Employment Law, and to require the production of any other information that might reasonably be required in order to establish whether the law has been complied with. These powers apply to reported breaches of the Employment Law in relation to employees on any type of employment contract, not just zero-hour contracts. The exercise of these powers may be triggered by a third party advising the Social Security Department of a suspected breach of the Employment Law. Officers would take into account any information provided and consider whether to undertake an inspection of that business, but would not report their conclusions to the third party. While some employers may employ staff on zero-hour contracts with the intention of avoiding their obligations under the Employment Law, enforcement officers and officers of J.A.C.S. (Jersey Advisory and Conciliation Service) routinely advise employers that the use of zero-hour contracts is unlikely to enable them to avoid their obligations under the Employment Law, including the payment of minimum wage, annual leave and protection against unfair dismissal. J.A.C.S. is actively ensuring that employers have a better understanding of the appropriate use of zero-hour contracts through its new Outreach Advisory Service.

3.13.1 Deputy G.P. Southern:

The Minister for Social Security specifically said that the officers in the Social Security Department would not report their findings to the complainant, should it be a third-party complaint. In what way would they publicise or announce their findings?

Senator F. du H. Le Gresley:

The only powers of enforcement that the officers have, which fall under the Employment Law, relate to dealing with non-payment of the minimum wage, therefore any inquiry, as I alluded to earlier, would be a matter of discussion between the employer and the department and would not be made public.

3.13.2 Deputy G.P. Southern:

Would the Minister for Social Security consider changing the law in order that his officers can publicise and announce serious breaches of the law, should they find them?

Senator F. du H. Le Gresley:

The role of the department in respect of the Employment Law relates, as I said, to carrying out investigations. If an employee believes that the employer is in breach of the Employment Law, they can obviously go through the process of a claim to the Employment Tribunal. If the complaint reaches a stage where a hearing is taking place, the records at the Social Security Department of any investigation could be requested by the Chairman of the Employment Tribunal and presented in a public forum.

3.13.3 Deputy G.P. Southern:

Does the Minister for Social Security accept that in reverting to the Employment Tribunal and the powers of J.A.C.S., he refers to individual cases brought by an employee, as a result of which they often end up sacked, so they do not bring individual cases? What we need and what the Minister for Social Security I think needs, is some powers in order to enforce third-party complaints about what I believe to be the widespread and extensive misuse of zero-hours contracts and employment through agencies that is taking place on this Island now.

Senator F. du H. Le Gresley:

I think that was more a statement than a question.

Deputy G.P. Southern:

Does he not agree that he needs some more powers?

Senator F. du H. Le Gresley:

No. I have already explained that the role of officers at the Social Security Department under delegation from the Minister for Social Security is to carry out investigations. If there is a serious breach and the employer fails to make amends and change their contracts, the issue arises that an employee who is affected by these failings will bring a claim to the Employment Tribunal.

3.13.4 Deputy M. Tadier:

I do not think this question has been asked, but would the Minister for Social Security state whether or not a zero-hour contract being used for what is demonstrably and essentially a permanent full-time position, constitutes a contravention of the law?

Senator F. du H. Le Gresley:

I would not go so far as to say “contravention” because zero-hour contracts are not defined in the law, but clearly it would be inadvisable for an employer to continue to issue zero-hour contracts where there is regular work being offered, and that is why J.A.C.S. and also our officers encourage employers to change those to fixed-term contracts or fulltime contracts.

3.13.5 Deputy M. Tadier:

Given the fact that these zero-hour contracts are being used widespread for positions which are otherwise permanent and full-time, and may even be being used by States departments, does the Minister for Social Security agree that his encouragement and that of J.A.C.S. is not sufficient to coerce employers to abide by the spirit and intention of what the Minister for Social Security is saying?

Senator F. du H. Le Gresley:

I would remind the Deputy that as a result of a proposition of Deputy Southern some 10 weeks ago, the review of the use of zero-hour contracts is being carried out by the Statistics Office and, once we have firm data by the end of 2014, we will decide whether further tightening up or changes to the Employment Law are required. Until we have more detailed information we are relying on hearsay and we cannot change policy on hearsay.

3.13.6 Deputy G.P. Southern:

Does the Minister for Social Security not accept that the fact that only an individual affected by these employment practices can take a case to J.A.C.S. which is likely to result in them being sacked, is a serious inhibiting factor in allowing his department to enforce a law that this body has passed?

Senator F. du H. Le Gresley:

I have already explained to the Deputy and the Assembly that the only enforcement powers of the department is in respect of the payment of minimum wage.