

MINISTER'S RESPONSE TO THE RECOMMENDATIONS OF THE EMPLOYMENT FORUM ON THE MATTERS OF REDUNDANCY AND BUSINESS TRANSFERS

Foreword from the Social Security Minister

I am very grateful to the Forum for the very detailed work that has gone in to this recommendation, which deals with some very complex issues.

My Assistant Minister, Deputy Peter Troy, and I received the Employment Forum's recommendation on redundancy and business transfers on 16 February and met with two representatives of the Forum on 23 March to discuss the recommendations in detail.

I think that the recommendations are well balanced, taking into account both the protection of employees and protection of business and the economy in a small Island. I accept the general principles of the recommendations, and the following report details my response to each of the recommendations.

I will now request that the drafting of these proposals begins, with the intention of preparing draft legislation during 2007. I hope to bring a draft Law to the States in early 2008.

REDUNDANCY

Right to a redundancy payment

- **The Forum recommends that employees should have the right to redundancy payments.**

The Minister accepts the recommendation.

Definition of Employee

- **In the absence of a convincing reason why a narrower category of "employee" should be entitled to a redundancy payment than the "employees" who are already protected by the Employment Law, the Forum recommends that the existing Jersey definition should apply.**

The Minister agreed that it would be confusing to protect a more limited category of employees in the redundancy legislation than in the existing Employment Law. It is important to provide certainty and consistency for employers and employees. The Minister therefore accepts the recommendation.

Qualifying criteria

- **The Forum recommends a 2 year qualifying period.**

The Minister noted that responses ranged from a nil qualifying period to 2 years. Although significantly longer than the qualifying period for unfair dismissal, the Minister recognises that the purpose of redundancy payments is different from protection against unfair dismissal, as it compensates employees for loss of job security where they have remained in employment for such a period of time that justifies them having a stake in it. The Minister can see no justification to deviate from the UK and Isle of Man on this period and supports the Forum's recommendation.

Fixed Term Contracts

- **The Forum recommends that provision should not be made to entitle employees on fixed term contracts of 26 weeks or less to redundancy payments. The qualifying period of 2 years should apply to all employees.**

The Minister recognised that employees with short fixed term contracts enter into their jobs knowing that the work is not going to be long term or permanent, so there is no justification to make provision for redundancy payments for those on fixed term contracts of 26 weeks or less. Provision was made in the unfair dismissal legislation for such contracts; however those seasonal considerations do not apply in the case of redundancy. The Minister accepts the recommendation that all employees, whether permanent or fixed term, must be subject to the 2 year qualifying period.

Weekly Hours Worked

- **Based on the provisions of existing statute and for consistency, the Forum recommends that only employees working 8 hours or more per week are eligible for redundancy pay.**

On the basis that 8 hours a week is a defined period for the acquisition of other rights within the Employment Law (including the right to written terms of employment and protection against unfair dismissal) as well as a defined period with regard to Social Security contributions, the Minister understands that 8 hours work per week could, in principle, be a suitable minimum for entitlement to a redundancy payment.

- **The Forum recognises that sex discrimination legislation planned for the future might require the removal of the 8 hour threshold, however**

it is considered that consistency with existing legislation is more important at this time.

The Minister recognises the desire for consistency with the Employment Law, however is concerned that planned sex discrimination legislation is likely to necessitate the removal of this criterion from the employment legislation within the next two to three years. Unless it has a legitimate aim, the criterion is likely to be indirectly discriminatory to female employees who are more likely than men to work less than 8 hours per week.

Rather than making new legislation that will undoubtedly contravene future discrimination laws, the Minister considers it important to address and avoid any possible discrimination issues in the drafting of the new laws. The Minister will therefore propose that a minimum number of hours work is not required for entitlement to a redundancy payment. Any employees working less than 8 hours per week would then receive a proportionate (and probably small) redundancy payment).

The Minister will therefore also review the aims of the inclusion of an 8 hour minimum in the existing employment legislation.

Redundancy Payment

- **The Forum recommends that the award should be one week's pay per year of service.**
- **However, if this recommendation is rejected and the legislation provides an award of more than one week's pay per year of service, the Forum recommends that there should be a cap on the award.**
- **One week's pay should be calculated as provided by the Employment Law.**
- **A non-regression clause should be provided to protect employees' existing contractual entitlements.**

The Minister accepts the Forum's recommendations. The Minister agrees that an uncapped amount is straightforward in order to reward employees according to what they have earned, and that the award should be set at one week's pay per year of service.

Award Scale

- **The Forum recommends that the number of weeks pay per year of service should be based on a scale relating only to length of service.**
- **The Forum recommends that length of service should accrue from the age of 16.**
- **The Forum recommends that the scale should end at 65, or at normal retirement age, to match the Employment Law. The Forum recognises that future age discrimination legislation might require the removal of the upper age limit in the calculation of awards; however it is considered that matching the existing legislation is important at this time to avoid confusion and inconsistency.**
- **The Forum recommends that the number of week's pay per year of service should be the same for any employee within that age range and should not vary for different age bands, as in the UK.**

The Minister accepts the recommendation that the award should be based on a scale relating only to length of service and that the award should not vary for different age bands.

The Minister also accepts the recommendation that the scale should begin at 16 and that length of service should accrue from that point. The Employment Law applies to all employees over the age of 16 and age discrimination legislation in the UK has resulted in all workers under age 18 being entitled to redundancy pay once they have completed the qualifying period.

The Minister recognises the Forum's desire for consistency with the Employment Law in its recommendation for that the scale should end at 65 (or normal retirement age) to match the Employment Law, however is concerned that this criterion is directly age discriminatory.

The 2006 Jersey Annual Social Survey showed that around one in ten males (9%) are continuing to work after the age of 65 and 17% of females after 60 years of age (7% of females working over age 65). The proportion of females working above the age of 59 has increased from 13% in 2005. The States Strategic Plan (2006-2011), in its commitment to meet the challenges and opportunities presented by an ageing population, intends to develop policies that will encourage more people to opt to work beyond normal retirement age.

Although there is currently no age discrimination legislation, the Minister understands that developments in this area could necessitate the removal of this criterion from the employment legislation. Rather than making new legislation that will undoubtedly contravene future discrimination laws, the Minister

considers it important to address and avoid any possible discrimination issues in the drafting of the new laws. The Minister therefore rejects the Forum's third recommendation relating to the "award scale" and will request that the legislation does not place an upper age limit on the calculation of awards.

As a result, the Minister also intends to give further consideration to any other consequences of the upper age limit remaining in the unfair dismissal provisions of the Employment Law.

Number of Years Service

- **The Forum recommends that there should not be a cap on the maximum number of year's service that may be taken into account when calculating a redundancy award, subject to the award being 1 week's pay per year of service.**
- **The Forum recommends that if it is decided that the legislation should provide for 2 week's pay per year of service, then the maximum number of year's service to be taken into account should be capped at 20 years.**

The Minister accepted the Forum's first recommendation for an award of one week's uncapped pay per year of service.

Award at Age 64

- **The Forum recommends that the award should decrease in the final year of employment (either 65, or at normal retirement age), calculated pro rata for the number of months until retirement, as consistency with existing legislation is considered to be more important until such a time as the Employment Law is reconsidered with the development of local age discrimination legislation.**

Although the Minister understands the rationale for the recommendation to reduce the award in the final year of employment, the Minister is concerned that this criterion is age discriminatory. Although there is currently no age discrimination legislation, the Minister understands that developments in this area could necessitate the removal of this criterion from the employment legislation, as it has in the UK.

Rather than making new legislation that will undoubtedly contravene future discrimination laws, the Minister considers it important to address and avoid any possible discrimination issues in the drafting of the new laws. The Minister has rejected the Forum's recommendation for an upper age limit in the calculation of

redundancy payments and therefore, for consistency, the proposed taper at age 64 will also have to be removed.

The Minister therefore rejects the recommendation and will request that the legislation does not introduce a taper at the age of 64, so that redundancy entitlement is not reduced by one 12th every month until an employee is 65.

Capped Award

- **The Forum recommends that there should not be a cap on either the maximum week's pay per year of service, or the maximum award payable in total (subject to the earlier recommendation for the award to be 1 week's pay per year of service)**

The Minister accepts the recommendation.

Time Limits

- **In the absence of substantial evidence for a longer period, the Forum recommends an 8 week period in which applications must be made to the Employment Tribunal (with the possibility of an extension, where necessary, as currently provided by the Employment Law for unfair dismissal applications).**

The Minister recognises that this refers only to the time limit in which an initial application must be submitted to the Tribunal and that 8 weeks is consistent with applications for unfair dismissal made under the Employment Law. The Minister understands that it is not helpful for employers or employees if the dispute process is dragged out, so the time limit should not be any longer than necessary. The Minister therefore approves the recommendation for an 8 week time limit (which may be extended by the Tribunal in certain circumstances, as in the Employment Law)

The Minister notes that in the UK, consultation is currently underway regarding the standardisation of tribunal application time limits under all of the employment tribunal's different jurisdictions (unfair dismissal, discrimination, etc).

Insolvency Fund

- **The Forum recommends that an Insolvency fund should be created.**

- **The Forum recommends that an insolvency fund should be funded by a combination of contributions from both employers and employees, with no States funding (other than as an employer itself) and that further consideration should be given to how the fund is to be administered**

The Minister is aware that a great deal of further research will be required to set up such a fund and accepts that this will be necessary to ensure that employee's entitlements are protected, without the administration and cost of such a fund becoming disproportionate to its purpose.

The Minister would wish to ensure that the scheme is clear on the conditions that must be met in order that employees are paid what they are owed from the fund in genuine insolvency situations.

The Minister intends to discuss further with the Treasury Minister as to how such a fund might be administered.

Offers of alternative work

- **The Forum recommends that if an employee unreasonably refuses an offer of suitable alternative work, they should not be entitled to a redundancy payment.**
- **Employees should still be entitled to a redundancy payment if they have “reasonably” turned down suitable alternative work offered by the employer, which would be determined by the Tribunal.**
- **How “suitable” the alternative work is will depend on individual circumstances and might include consideration of –**
 - *whether it would be reasonable for the employee to undertake the new duties being offered (e.g. transferable skills, equivalent skill level)*
 - *If similar terms and conditions apply, including hours and location and remuneration*
 - *the employee's personal circumstances, e.g. health considerations*
 - *the actions of an employee as a result of him being given notice*

The Minister considers the Forum's recommendations to be appropriate and proposes that the first two bullet points are included in the legislation and the third point regarding the “suitability” of alternative work would be better placed in guidance.

Trial Periods

- **The Forum recommends that, unless the new terms and conditions are identical to the previous terms and conditions, employees should be allowed a trial period (to include any retraining) of 4 weeks. The trial period may be reviewed and extended for a further 4 weeks, with both parties agreement in writing. Employees' redundancy pay rights would still be intact if they "reasonably" refuse the alternative employment at any time during the trial period.**
- **The Forum recommends that the concepts of "similar" and "reasonableness" (in relation to alternative work and trial periods) would be better dealt with in guidance than in legislation. The Forum considers that the Isle of Man's 'Guide to Redundancy' provides a useful framework in relation to offers of alternative employment in redundancy situations.**

The Minister accepts the recommended trial period as long enough to try a new job, without being so long that it prevents the business from moving on.

The Minister would wish to clarify in the legislation that an employee would still be entitled to their redundancy payment if either the employer or the employee reasonably decides that the alternative work is unsuitable during the trial period. The Minister understands from discussion with Forum representatives that this is not contrary to its recommendation.

Individual Consultation Requirements

- **The Forum recommends that individual consultation requirements of employers should remain as currently required for unfair dismissal purposes (to show that a fair process was undertaken). It is considered that the process is sufficient and does not require further legislation.**
- **The Forum recommends that guidelines should clarify how this requirement applies in individual redundancy situations and notes that adequate provision may already exist in the JACS "A to Z of Work". This handbook for employers gives information on minimising and avoiding redundancies, criteria for selection, individual and collective consultation and best practice.**

The Minister approved the recommendation that sufficient requirements of employers are already in place regarding consultation with employees about individual redundancy and intends to determine whether existing guidance is adequate for this purpose.

Collective Consultation Requirements

- **The Forum recommends that employers should be required to consult collectively where two conditions are met (as set out in the following two recommendations), and that consultation must begin at least 30 days before the first dismissal is due to take effect.**

The Minister accepts the recommendation that consultation must begin 30 days before the first dismissal is due to take effect, but suggested that there must also be some consideration of the reasonableness of an employers actions if, for example, an unexpected occurrence requires an employer to close their business (or part of it) through no fault of their own, with less than 30 days notice. The Minister suggests that this could be dealt with by the Tribunal in considering protective awards to employees where an employer has failed to consult (as discussed in the “Protective Awards” recommendation).

- **The Forum recommends that the requirement for employers to consult collectively when proposing redundancies should apply only where there are 21 or more proposed redundancies in a 90 day period.**

The Minister approves the recommendation as an appropriate threshold.

- **The Forum also recommends that, where there is a recognised union or staff association (that is registered under the Employment Relations Law), collective consultation requirements should be triggered where there is proposed to be more than one redundancy in a 90 day period.**

The Minister considers that the Forum has not provided sufficient background or explanation for this recommendation. It is unclear whether the employees proposed to be made redundant must be members of the recognised union in order for the collective consultation requirement to be triggered, or whether the proposed redundancies of members of two different unions or staff associations would trigger the requirements.

The Minister considers that, unless further detail is provided on this proposal, it would be very easy for employers to inadvertently contravene the requirements and therefore requests that the Forum provides a more detailed recommendation during the drafting of the proposed legislation.

Election of Employee Representatives

- **The Forum recommends that employee representatives may be elected for the purpose of consulting about redundancies, or may be part of an existing elected consultative body.**
- **If to be elected specifically for this purpose, appropriate representatives should be identified via a balloting/staff nomination procedure to select representative employees from within the establishment, and may include representatives of unions or staff associations that are not recognised by the employer for collective bargaining purposes.**
- **If this process for identifying representatives fails, other representatives from outside the establishment may be nominated by the employees. JACS or another external overseer may be asked to assist in this process. What constitutes a ‘failure’ to identify representatives, the consequences of such a failure, and whom the ‘other representatives’ from outside the establishment may be, should be set out in guidelines.**

The Minister approves the recommendations.

Protective Awards

- **The Forum recommends that a protective award should be payable where the employer has failed to engage in meaningful consultation. The employer will be required to pay each affected employee one week’s pay (as defined in the Employment Law) for each week of the protected period, up to 90 days.**

The Minister understands that without a penalty of some sort, there would be no disincentive for employers against failure to consult adequately with employees.

The Minister agrees that any award should be determined according to the wrong done by the employer, depending on the seriousness of the employers’ failure to consult, however feels that the Forum’s recommendation is unnecessarily confusing in regard to what award is payable and in what circumstances.

The Minister therefore requests that the Forum gives further consideration to how the award may be simplified, and also to consider any reasons for the employers’ failure to consult, which the Tribunal may take into consideration when making an award against an employer for failure to inform and consult employees.

Time off to look for work

- **The Forum recommends that the legislation, rather than guidelines, should require employers to allow redundant employees time off to look for work in order that employees may enforce that right.**
- **The Forum recommends that the legislation should provide that an employee who is under notice of redundancy is entitled to a “reasonable” amount of time off, equivalent to at least 2 normal working days for that employee, with pay.**
- **The Forum recommends that a complaint to the Employment Tribunal against an employer who has unreasonably refused a request for paid time off should result in an award at least equal to the pay to which the employee would have been entitled, the total award to be at the Tribunal’s discretion.**
- **The Forum recommends that any additional details should be provided in guidance, taking into account interview attendance and any other job seeking requirements, support and advice, which will vary depending on the circumstances, such as; methods of agreeing a mutually convenient arrangement for time off, whether days may be split or spread over a longer period, extended lunchtimes, etc.**

The Minister understands that the Forum hoped to avoid complexity in the law, but appreciates that a reasonable period of paid time off should be established in law, in order to put the onus on the employer to provide those days off, or be penalised.

The Minister accepts the Forum’s recommendation that the legislation must provide employees with a right to up to two normal working days off to look for work, and that the details of making such arrangements with employers should be provided in guidelines.

Where an employer has unreasonably refused time off, the Minister notes the recommendation that the Tribunal in its discretion may make an award greater than 2 days pay and accepts that this is in recognition of the fact that, if the potential award is only 2 days pay, the employer has nothing to lose in refusing those days off.

Tribunal Award Limits

- **The Forum recommends that provision be made in the legislation for a redundancy payment to be awarded by the Tribunal, that is not**

limited by any other award payable for breaches of the existing employment legislation.

The Minister accepts the recommendation and notes that consideration must also be given to whether the other awards relating to redundancy, (i.e. awards for employers failures regarding the protected consultation period and time off to look for work) should be included as part of the maximum award that may be made under Employment Law, or whether the award making power should be treated separately (and uncapped) as with the redundancy payment.

Notifying a Competent Authority

- **The Forum recommends that an employer planning 21 or more redundancies should be required to notify a “competent authority” 30 days before the first dismissal is due to take effect, and should be required to provide relevant details, including; the reasons for the dismissals, the number of workers and period in which their dismissals are intended to take effect. The Forum suggests that the Social Security Minister would ascertain what the most appropriate authority might be.**

The Minister accepts the recommendation and notes that the competent authority in the UK is the Secretary of State for Trade and Industry. The policy rationale in the UK is so that relevant government agencies (e.g. the job centre) are alerted and prepared to take any appropriate measures to assist or retrain the redundant employees. With that in mind, the Minister will discuss with other Ministers whom the most appropriate authority (or authorities) might be.

BUSINESS TRANSFERS

Protection of rights in business transfers

- **The Forum recommends that employee's rights should be protected following the transfer of ownership of a business.**

The Minister accepts the recommendation.

Public and Private Sector transfers

- **The Forum recommends that the legislation should protect employees in both the public and private sectors.**

The Minister recognises that business transfers could be an issue in both sectors and accepts the recommendation.

Small Business Exemptions

- **The Forum recommends that there should be no exemption for small businesses.**

The Minister was mindful of the potential impact of such legislation on small business, but was convinced that business transfers happen just as often in small companies and that the effect on affected employees is the same. The Minister recognised that small businesses are likely to be more flexible and able to adapt to such changes. The Minister was concerned that to provide an exemption could allow large employers to create small subsidiary companies in order to avoid the legislation. The Minister therefore accepted the recommendation.

Transfers Outside Jersey

- **The Forum recommends that the legislation should not give employees the right to maintain their terms and conditions of employment if their job is transferred outside of Jersey.**

The Minister recognises that employers are unlikely to relocate out of Jersey simply to avoid local legislation and wishes to avoid unnecessary complexity and uncertainty as to whether employee's contracts are governed by Jersey legislation. The Minister therefore accepts the recommendation.

Terms and Conditions to Transfer

- **The Forum recommends that all existing contractual terms and conditions should be automatically transferred, including any contractual terms incorporated into that contract via a collective agreement.**
- **The Forum recommends that where a collective agreement is in place at the time of transfer which covers any of the employees who are transferring, the agreement should transfer and apply, other than where it relates to pensions, for the duration of its application.**
- **The Forum recommends that where the old employer recognised a union in respect of employees who are being transferred, and after the transfer the group of employees maintains an identity that is**

distinct from the new employers business, then the recognition should apply between the union and the new employer *[in respect of the transferred employees.]*

The Minister accepts the recommendations.

In regard to the third recommendation, the Minister understands that the Forum's intention was that employees should not be in a worse situation than they were before the transfer. Where a union was, either voluntarily or in-voluntarily (via an Employment Tribunal declaration), in respect of some or all of the transferred employees, then the new employer would be required to recognise that union to the same extent after the transfer takes place, so long as the group of transferred employees maintain an identity which is separate from the remainder of the new employer's business. Where the employees do not keep a separate identity and are subsumed into the new employer's business, the trade union recognition lapses and would have to be renegotiated with the new employer.

Pension Protection

- **The Forum understands that pension scheme provision is a complex subject, and considers that it is not qualified to make a recommendation on this point without the benefit of full consideration of the possible complications from a business perspective. The implications of making an uninformed recommendation on this issue are serious. It is therefore recommended that expert actuarial advice is sought on this matter prior to drafting the legislation.**

The Minister understands that it was not possible to make a simple recommendation on this matter and agrees that expert advice should be sought during the drafting of the legislation.

Type of Pension Scheme

- **The Forum recommends that (subject to obtaining actuarial advice in the drafting process) the law should give some protection of employee's pensions, but the level of contribution or type of scheme should not have to be identical to that which applied before the transfer.**

The Minister agrees with the principle that some pension protection should be provided, and that it should not necessarily have to be identical to that which applied before the transfer.

Following a transfer, should there be a time limit after which any agreed changes to terms and conditions are not void?

- **The Forum recommends that there should not be a time limit after which any agreed changes to terms and conditions cannot be declared void. The Forum is advised that the position as set out by the two law firm respondents; that the common law situation combined with the protection provided by the Employment Law, is sufficient to protect employees, and that to introduce such a period would introduce excessive complexity.**

The Minister understands that the UK provisions on this aspect of business transfers were intended to prevent employers from changing employees terms and conditions immediately after a transfer and as a result of the transfer. Unfortunately, a more restrictive situation has been unintentionally created, whereby any re-negotiated terms and conditions may be declared void by a tribunal at any time in the future, if found to be less favourable than the original pre-transfer terms.

It was therefore suggested that if Jersey wishes to allow changes to be re-negotiated between the employer and employees at a future time after the transfer without the possibility of the changes being declared void, our law could provide a time limit, after which changes may not be declared void on the basis of comparison with pre-transfer terms.

During the preparation of the recommendation, the Forum was persuaded that the common law situation in Jersey, coupled with the provisions of the Employment Law, would provide adequate protection in this regard. However, following discussions with representatives of the Forum, the Minister understands that although this would protect employees, it would not protect employers and the recommendation does not therefore reflect the Forum's intentions.

The Forum was concerned that employers should be able to renegotiate terms and conditions an appropriate length of time after the transfer has occurred so that over a period of time, the terms and conditions of existing and transferred employees may be brought on a par. The Forum is now of the view that the advice followed in preparing this recommendation was based on a misunderstanding of the issue being consulted upon.

The Minister is assured by the Forum that in the absence of that advice, it would recommend a one year period, after which any changes can be freely negotiated (as in any other employer/employee relationship) and the Minister accepts that recommendation.

Employee Information

- **The Forum recommends that the employer should be required to provide all of the listed information (points 1 to 12) to the new employer at least 14 days before the transfer, with the following exceptions; points 5 and 6 should be limited to “current” action, not action within the previous 2 years, and points 9 and 10 should be provided only where they are “due to be taken, or are owed”.**
 1. The identity of the employees
 2. Their ages
 3. Information contained in their statements of employment particulars
 4. Information relating to collective agreements which apply to those employees
 5. Instances of any disciplinary action within the previous 2 years
 6. Instances of any grievances raised by the employees in the previous 2 years
 7. Instances of any legal actions taken by the employees against the former employer in the previous 2 years
 8. Instances of potential legal actions that may be brought by those employees
 9. Maternity leave taken or due
 10. Annual leave taken or due
 11. Employees educational or vocational qualifications
 12. Information relating to employees work permits / Regulation of Undertakings licensing information
- **The Forum recommends that any other information that the new employer wishes to be provided with before the transfer should be agreed between the two parties and shared at least 14 days before the transfer occurs, or within a time period agreed between the two parties.**
- **The Forum recommends that, where the old employer has failed to provide the required information in the time period, the Tribunal may award compensation to the new employer, such as it considers just and reasonable in the circumstances.**

On the basis that this transfer of information is intended to help the new employer to understand the inherited rights, duties and obligations in relation to employees who will be transferred, the Minister accepted the Forum’s recommendations and agreed with the changes to the list of information, as suggested in the first recommendation.

Due to data protection and confidentiality concerns, the Minister suggests that the requirement to share the information should apply only after a sale and

transfer agreement has been finalised, otherwise a great deal of employee information is being shared with third party, who might terminate the transfer after receiving this information. It is also important that this information is released subject to the employee's agreement, where appropriate.

The Assistant Minister suggested that consideration should be given to a requirement for information to be transferred about arrangements for employees with special needs, for example, access needs.

Informing and Consulting Employees

- **The Forum was minded to recommend that detailed information and consultation requirements of employers should be included in guidelines rather than legislation. However, in the interest of ensuring that employees are informed of business transfers and the potential consequences for their jobs, the following sections provide the Forum's recommendations for legislative provision.**

The Minister accepts the Forum's justification for legislative provisions rather than guidance.

Information and Consultation Procedure

- **The Forum recommends that employers should be required to inform and consult employees "in good time" before a transfer occurs, meaning, as soon as reasonably practical after a binding business transfer agreement has been reached between the old and new employers.**
- **The Forum recommends that the legislation should require employers to inform the employees who will be affected by the transfer (or appropriate representatives of such employees) of the following information;**
 - **The date or proposed date of the transfer**
 - **The reasons for the transfer**
 - **The legal, economic and social implications of the transfer for the employees**
 - **Any measures envisaged in relation to the employees.**
- **The Forum also recommends that a model procedure should be provided in the guidelines, elaborating on those legal requirements.**

The Minister accepted the recommendations, but expressed caution regarding the phrasing of the requirement for employers to inform employees of the “social implications” of the transfer. The Minister is concerned that employers cannot reasonably be expected to anticipate the social implications for individual employees and if it is to appear in the legislation, employers must be clear on what is expected of them in this regard.

Similarities with Consultation Requirements in Collective Redundancies

The Forum recognised that where a business transfer agreement has been reached, the purpose of consulting employees (or their representatives) differs from the purpose of consulting employees about collective redundancies. Where collective redundancies are planned, employers must undertake collective consultation with employees to include suggestions for alternative solutions to redundancies. However, consultation regarding business transfers is intended to provide employees with sufficient information regarding measures that will be taken by the old or new employer as a result of the transfer, with a view to reaching agreement to those measures with the affected employees, rather than agreement to the transfer itself.

- **The Forum recommends that the legislation should require employers to consult with “appropriate representatives” of affected employees; the provisions for the election of appropriate representatives (in cases where there is no recognised trade union) to be the same as those recommended by the Forum in relation to collective redundancies.**
- **The Forum recommends that this should apply irrespective of the number of employees likely to be affected by the business transfer, and must not necessarily occur at least 30 days before the transfer takes place.**
- **The Forum recommends that where an employer has failed to comply with the recommended information and consultation requirements, employees may be awarded compensation up to a maximum of 90 days pay, having regard to the seriousness of the employers’ failure to comply. The Tribunal should also have the power to consider whether the old or new employer is liable (or whether jointly liable) for the failure to inform employee representatives of measures envisaged with regard to the transfer.**

The Minister understands the similarities and differences between the importance of consulting and informing employees in these two different situations and approves the Forum’s recommendations.