



**Isle of Man**  
**Government**

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## **The International Co-operation (Protection from Liability) Bill 2020**

### **Consultation Responses**

**Cabinet Office**  
**Oik Coonceil ny Shirveishee**

**January 2021**

## **1. Introduction**

- 1.1 On the 12 October 2020, the Cabinet Office launched a six-week public consultation on the draft International Co-operation (Protection from Liability) Bill 2020 (the Bill), ending on the 25 November 2020.
- 1.2 The draft Bill introduces provisions that will protect public authorities in the Isle of Man against claims for costs, damages or consequential losses when acting in matters of international assistance at the request of foreign jurisdictions. The provisions would ensure that, in cases where public authorities in the Isle of Man act at the request of other jurisdictions under international arrangements underpinned by legislation, those public authorities would not face claims for damages or adverse costs orders provided they were acting in good faith.
- 1.3 The protection offered does not prevent claims under the Human Rights Act 2001 or in respect of acts shown to have been done in bad faith, but does otherwise protect Isle of Man public authorities from claims alleging negligence.

## **2. Overall responses**

- 2.1 The draft Bill was circulated for public consultation on the Consultation Hub, attracting three public responses in total, two from individuals and one from a local firm of advocates. The Cabinet Office welcomed all responses and considered each comment made in the final drafting of the Bill.
- 2.2 The main area of concerns raised by the respondents were the level of protection offered and the potential conflict of interest and bias towards public authority immunity. It was felt also that the Bill should not be treated as a priority.
- 2.3 In addition to the three public responses, four responses were received from IoM Government Departments. These concerned the scope of the legislation under which an Isle of Man public authority may be acting in order to receive protection from liability under the Bill.
- 2.4 The table at Annex A shows the responses received and indicates whether they have been taken into account and the Bill amended, together with the consideration of the Cabinet Office where appropriate.
- 2.5 A list of respondents is also included at Annex B.

## **3. Next Steps**

The Bill will now be the subject of Parliamentary scrutiny. The legislative process is explained on the Tynwald Website under 'How Bills become Law' on the following site:

<http://www.tynwald.org.im/about/legproc/Pages/default.aspx>

**Changes made to the Bill**

In response to the feedback received, the following changes were made to the Bill.

**Schedule**

<b>You said</b>	<b>We did</b>
Four Government Departments raised queries concerning the legislation listed in the Schedule, under which a public authority is protected from liability.	The Schedule was amended accordingly to ensure all of the relevant enactments are captured, concerning where IoM public authorities directly engage in matters of international co-operation. The Schedule may, under the Bill, be amended by order of the Council of Ministers with Tynwald approval.

**Changes not made to the Bill**

Consideration was also given to the following suggestions, but it was not deemed necessary to amend the Bill further in light of this feedback for the reasons stated.

<b>You said</b>	<b>We did</b>
Two respondents observed that the Bill showed an inherent conflict of interest and bias towards public authority immunity. Expressing the view that the private sector in the Island are not advantaged with similar protection from such liabilities.	<p>Nothing in the Bill provides immunity from liability in respect of acts that are unlawful under the Human Rights Act 2001 or in respect of acts shown to have been done in bad faith. In respect of a conflict of interest, ultimately if a case was brought forward, it would be for an IOM court to determine whether the relevant public authority had acted in bad faith when acting on behalf of another jurisdiction. Public authorities would continue to be accountable for their actions. There are many stages at which an individual would be able to challenge, in court, actions taken by a public authority on behalf of another jurisdiction.</p> <p>Having considered the representations made, no amendments have been made to the draft Bill as a result.</p>

## Annex A – You said, we did

You said	We did
<p>One respondent felt the Bill was ambiguous and too vague when proscribing that public authorities must have 'acted in bad faith' and 'in a way which contravenes the 'European Commission Human Rights' convention, for the protection not to apply.</p>	<p>No provision within the Bill provides immunity from liability in respect of acts that are unlawful under the Human Rights Act 2001 or acts shown to have been done in bad faith (that is in a dishonest or improper way).</p> <p>Having considered the representations made, no amendments have been made to the draft Bill as a result.</p>

You said	We did
<p>One respondent questioned whether the Bill meets the requirements of domestic Equality and Human Rights legislation.</p>	<p>It has been confirmed that the provisions of the Bill are compatible with the requirements of domestic legislation.</p> <p>Having considered the representations made, no amendments have been made to the draft Bill as a result.</p>

You said	We did
<p>Two respondents felt the Bill was not a priority and questioned whether the protection offered was widely adopted by other jurisdictions. One respondent commented that there was not enough guidance provided on the intention, purpose or scope of the protection that the Bill would offer public authorities.</p>	<p>This Bill has not been prioritised at the expense of any other legislation.</p> <p>While similar legislation has not been widely adopted elsewhere, this does not imply that it is not required. As an international finance centre, the Isle of Man receives significantly more requests for assistance than it makes. Many of these requests concern considerable sums or assets such that liability when acting in response to an international request could have severe repercussions for a small jurisdiction. Notably Jersey has enacted similar legislation.</p> <p>Having considered the representations made, no amendments have been made to the draft Bill as a result.</p>

<b>You said</b>	<b>We did</b>
<p>One respondent was concerned regarding the lack of information and detail within the Bill and consultation regarding how it will affect appeal processes in the IOM. Without this information, the respondent could not be certain that the Bill reflects a fair balance of rights between those affected and public authorities.</p>	<p>There is nothing in the Bill which affects existing appeal processes. It would be for an IOM court to determine whether a public authority had acted in bad faith when acting on behalf of another jurisdiction.</p> <p>Having considered the representations made, no amendments have been made to the draft Bill as a result.</p>

<b>You said</b>	<b>We did</b>
<p>One respondent noted that the agreement to cost sharing was usually agreed in advance with the requesting country and that legislation for removing liability for costs was unusual.</p>	<p>The Bill aims to limit cost awards being made against Isle of Man public authorities by persons successfully challenging steps taken by the Island in providing assistance to foreign jurisdictions. The Isle of Man will continue to provide assistance, without costs, to a requesting jurisdiction, in accordance with international practice..</p> <p>Having considered the representations made, no amendments have been made to the draft Bill as a result.</p>

**Reponses Received**

Financial Intelligence Unit

Isle of Man Financial Services Authority

Gambling Supervision Commission

Income Tax Division

DQ Advocates

X2 Private Individuals