

CODE OF PRACTICE ON RECOGNITION OF TRADE UNIONS BY EMPLOYERS- CONSULTATION FEBRUARY 2024

DEPARTMENT FOR
ENTERPRISE 



Isle of Man
Government

Reiltys Ellan Vannin

Background

Unlike the UK, the Isle of Man has no statutory provision for the recognition of trade unions in companies and other organisations. Instead the Isle of Man has in place a code of practice on trade union recognition.

Under section 171 of the Employment Act 2006, the Department for Enterprise may issue codes of practice, containing practical guidance for promoting the improvement of industrial relations. The Act provides that a failure to observe a provision in a code of practice is not a breach of the law, though a court can take into account the provisions of a code of practice in legal proceedings.

The current Code of Practice was issued in 2001, and is therefore due for a review. The Department for Enterprise publishes the revised Code for consultation.

The revised draft Code of Practice on Trade Union Recognition is appended. In the Code, revised new text is marked in red, while deleted text is marked in scored through red.

Main changes

As can be seen from the following draft Code of Practice, few significant changes to the existing Code have been made. Overall, the content is very much the same as the 2001 Code. The main changes are as follows.

In section 8, on conduct of ballots on trade union recognition, the draft Code now advises that, where practical, the employer should allow the union to hold one meeting of at least 1 hour in length for every 10 days of the working period, rather than a meeting of at least 30 minutes as in the 2001 Code. Section 8.8. is also amended to make clear that online ballots may be held.

References to legislation have been updated (e.g. the Employment Act 1991 is no longer in force and has been replaced by the Employment Act 2006).

References to bodies (e.g. the Department for Trade and Industry is now the Department for Enterprise) have been updated.

The language in general has been updated in some respects (e.g. the Code no longer uses the masculine pronoun "he" in relation to employers).

Some material that is superfluous has been removed e.g. paragraphs on inter-union issues relating to organizing in the workplace.

For comparison, the current Code may be found on the Isle of Man Government website:

<https://www.gov.im/media/622307/2001sd0564.pdf>

Further consultation on trade union legislation

Though the Department is consulting on the revised Code of Practice, a further consultation on employment law and trade union legislation is planned. It is likely that the consultation will, among other things, seek views on whether a statutory process for recognition of trade unions in the workplace, as in the UK, is appropriate. That consultation is intended to be published in summer 2024. Nevertheless the Department still considers it to be sensible to proceed with a revision of the Code of Practice on Trade Union Recognition as any firm proposals for statutory changes will be some way off.

Consultation

The Department for Enterprise seeks views on the revised Code of Practice.

The consultation runs until 12 April 2024.

You can respond to this consultation by emailing:

steven.tallach@gov.im

Contact details:

Steven Tallach
Legislation Officer
Department for Enterprise
St George's Court
Upper Church Street
Douglas
IM1 1EX

Tel: 01624 685375

Please note that the Department will assume, unless you tell us otherwise, that you do not object to your response or the name of your organisation (or your own name if you are responding as an individual) being made public. If you want all or any part of your reply to be treated as confidential, then please indicate this clearly in your reply.

Following consultation, the Department will:

- review and evaluate comments received from consultees; and
- publish a review of the comments received; and
- lay a finalised Code of Practice before Tynwald for approval.

Code of Conduct on the Recognition of Trade Unions by Employers

This is a code of practice made by the Department for Enterprise under Section 171 of the Employment Act ~~1991~~2006.

1 Introduction

1.1 This Code may be cited as the Code of Practice on the Recognition of Trade Unions 2024 and shall come into operation on X XXXX 2024.

1.2 The Code is issued for the following purposes:

- (a) to ~~give~~ provide practical guidance to employers and trade unions on recognition of trade unions by employers; and
- (b) to promote the improvement of ~~industrial~~ relations between employers and their employees and workers.

~~The Code imposes no legal obligation, and failure to observe it does not of itself render anyone liable to any proceedings. The Code does not, of itself, affect any recognition agreement currently in existence.~~

1.3 Section 171 of the Employment Act 2006, under which this Code is made, provides that a failure on the part of any person to observe any provision of this code of practice does not of itself render that person liable to any proceedings, but in any proceedings before a court or tribunal —

- (a) the code shall be admissible in evidence, and
- (b) any provision of the code which appears to the court or tribunal to be relevant to the question arising in the proceedings shall be taken into account in determining that question.

1.4 For simplicity:

- ~~(a) the Code's provisions apply equally to men and to women, but the masculine pronoun is used throughout;~~
- ~~(b) whilst "union" is used in the singular the provisions of the Code apply equally to joint applications for recognition.~~

2 General principles

2.1 ~~The law neither gives trade unions a right to be recognised for any purpose by an employer nor places an obligation on employers to recognise a union. Where a trade union is recognised, the Employment Act 1991 (Sections 26 and 27) confers on employees certain rights to take time off to carry out trade union duties and /or activities.~~ The principles of the International Labour Organisation dictate that, where there is no system of statutory recognition, employers should be encouraged to recognise trade unions which prove their representativeness and there should be voluntary negotiations between the employer and trade unions.

2.2 Where a trade union is recognised, sections 35 and 37 of the Employment Act 2006 confer on employees certain rights to take time off to carry out trade union duties and /or activities. It is also the case that whether or not a particular trade union is recognised by an employer has no impact on the ability of a trade union to represent members individually or to organise in a workplace.

2.3 The Department ~~of Trade and Industry~~ for Enterprise considers that good relations between employers and their employees may be fostered by agreements on recognition and that it is important for employers to take action where appropriate. Further, organisations that fail to grant recognition may be at a disadvantage in the recruitment and retention of talented employees. The Department favours self-regulation based on increased understanding as the best way to encourage employers to enter into appropriate recognition agreements.

2.4 The traditions and framework of law for the conduct of **industrial-employment** relations in the Isle of Man encourage the voluntary resolution of issues between employers and employees. The Code emphasises the desirability of this approach. It encourages each party to:

- (a) respect the independence of the other;
- (b) be prepared to consult and negotiate in good faith about trade union recognition;
- (c) listen to, take account of, and respond to the other's case;
- (d) base its case on accurate statements of whether or not:
 - (i) the union in question is registered;
 - (ii) the union is an appropriate union for the particular category of employees;
 - (iii) the parties will enter into, and honour, procedural and substantive collective agreements;
 - and
 - (iv) recognition has the support of the employees concerned.

~~If no agreement on recognition exists between an employer and a trade union, employees' contracts of employment should be silent on the matter.~~

3 Recognition of trade unions

Recognition of one or more trade unions occurs when an employer accepts a trade union as entitled to act on behalf of a group (or groups) of employees for specified purposes. Recognition can take a number of forms, but is usually associated with an employer's agreement to participate in collective bargaining with one or more trade unions.

4 Collective bargaining

Collective bargaining is a process of conducting negotiations about specified matters, usually about wages or physical working conditions and other terms and conditions of employment, between an employer and representatives of a trade union, with a view to reaching agreement. The scope of collective bargaining is normally specified by the parties in an agreement on recognition and normally covers negotiations about pay, hours and holidays. Some matters that might be considered for inclusion are listed in the Appendix.

5 The bargaining unit

5.1 A bargaining unit is a group (itself perhaps comprising smaller groups) of employees covered by a recognition agreement. In determining the appropriate bargaining unit, the parties should take account of:

- (a) the compatibility of the group with effective management;
- (b) each other's views;
- (c) any current local, bargaining arrangements;
- (d) the desirability of avoiding small, fragmented bargaining units within a business or other body;
- (e) the characteristics of the employees falling within the proposed bargaining unit and of any other employees of the employer (including the need to avoid conflicts of interests between members);
- (f) the location of the employees; and
- (g) the true structure of the organisation.

5.2 Where the parties cannot agree what comprises an appropriate bargaining unit they should consider approaching the Manx Industrial Relations Service.

6 Circumstances where it is considered reasonable that recognition should be granted

6.1 ~~There is nothing to prevent an employer recognising a union irrespective of levels of trade union membership. However, where an employer and trade union cannot reach a voluntary agreement, if a union can demonstrate conclusively that it has at least 50% of employees in membership in respect of the bargaining unit concerned it is reasonable that the employer should recognise that union.~~

6.2 Where a union cannot demonstrate conclusively that it has at least 50% of employees in membership in respect of the bargaining unit concerned or if the employer does not accept the union's estimate of membership, then, provided that the union can demonstrate that at least 10% of the employees in the proposed bargaining unit are in membership of the applicant union or would be willing to take up membership were recognition to be granted, a ballot of employees in the bargaining unit should be held.

6.3 If a ballot of employees in the bargaining unit confirms that ~~50% of those employees voting and 40% of those entitled to vote:~~

- 40% of those entitled to vote; and
- 50% of those employees voting,

are in favour of the union being granted recognition, it is reasonable that the employer should recognise the union.

7 The process of seeking trade union recognition

7.1 Where a trade union seeks recognition by an employer, it should, in the first instance, seek informal talks with the employer. These may produce agreement in principle to recognise the union and agreement on the way to proceed, **with or without the need for the union to demonstrate a certain level of membership.**

7.2 Following ~~such talks where an agreement is not reached~~, or, if the employer declines to participate in them, the union should write to the employer requesting recognition for the purposes of collective bargaining. The request should normally:

- (a) identify the union;
- (b) confirm it is registered;
- (c) specify the group, or groups, of employees on whose behalf recognition is sought;
- (d) the number of those **groups** who are members of the union or who would be willing to take up membership were recognition to be granted and the extent of recognition sought.

7.3 The employer should respond within a period of 10 working days, in writing, to a request for recognition. The response should confirm the employer's:

- (a) agreement to the request on the terms proposed; or
- (b) agreement to recognise the union on different terms, giving reasons; or
- (c) rejection of the request, giving reasons.

7.4 If the employer agrees to the request, the parties should conclude a written agreement on recognition.

7.5 If the employer agrees to recognise the union, but on different terms (for example, the composition of the bargaining unit), the parties should negotiate with a view to reaching an agreement. Where negotiations are successful a written agreement should be concluded.

7.6 In circumstances where a ballot is appropriate, the union should write to the employer to request a ballot, and to seek a meeting. The employer should respond within 10 working days. Within a further 10 working days both parties should meet to discuss and conclude arrangements for the ballot and for the union's representatives to have access to the employees for the purpose of the ballot (see **paragraph section 8** below).

7.7 The ballot should take place between 10 and 20 working days after arrangements for the ballot and for the union's representatives to have access to the employees have been finalised.

7.8 If the employer fails to respond to a written request for recognition, the union should consider approaching the **Manx** Industrial Relations Service.

8 Conduct of ballots and access to employees during ballots

8.1 Where a ballot is to be held, both parties should co-operate and behave reasonably and responsibly in connection with the ballot and access to the employees. **The employer must not interfere with the ballot, such as by seeking to encourage or coerce employees to vote in a specific way.**

8.2 An access agreement, preferably in written form, should be established. It should be agreed who should have access to the employees constituting the bargaining unit, and where, when, for how long and in what form this access is to be provided. The arrangements should reflect local circumstances.

8.3 Approaches to employees from the employer and union should be balanced and fair. Where they are suitable for the purpose, the employer's typical methods of communicating with his workforce should be used as a benchmark for determining how the union should communicate with members of the same workforce during the access period.

8.4 Where practical, the employer should allow the union to hold one meeting of at least **30 minutes 1 hour** in duration for every 10 working days of the access period, or part thereof, which all workers or a substantial proportion of them are given the opportunity to attend.

8.5 The union may want to display written material at the place of work. Where it is practical, employers should provide a notice board for the union's use. This notice board should be in a prominent location in the workplace and the union should be able to display material, including references to off-site meetings, without interference from the employer.

8.6 The union should ensure that disruption to the business of the employer is minimised. Consideration should be given to arranging meetings of employees at the bargaining unit during rest periods or towards the end of the working day/shift.

8.7 The employer should not be expected to pay the employees if they are present at the workplace for the purposes of access when they would not otherwise have been at work nor receiving pay from the employer.

8.8 Ballots held in respect of trade union recognition should be:

- (a) conducted by an appropriate independent person such as an Industrial Relations Officer;
- (b) held in secret;
- (c) held at the workplace, by post, **or online**; and
- (d) funded equally by the employer and the union.

9 Derecognition

9.1 Derecognition occurs where an employer (whether or not at the request of at least 10% **of his** employees) ceases to accept a trade union as entitled to act on behalf of a particular bargaining unit.

9.2 Such circumstances may occur if the union:

- (a) ceases to be registered; or
- (b) can no longer meet the criteria set out within **paragraphs sections** 6.1 or 6.3.

10. Circumstances where it is considered reasonable that a union should be derecognised

10.1 Where an employer (whether or not at the request of at least 10% of **his** employees in a bargaining unit) seeks to derecognise a union, then, **where the following conditions apply**, it is reasonable that a trade union should be derecognised:

- (a) statutory recognition was awarded on the basis **of union membership that 50% of employees in a particular bargaining unit were members of the union**(see **paragraph-section** 6.1 above);

- (b) a period of at least three years has elapsed since recognition was awarded, (see [Paragraph section 13](#) below); and
- (c) it can be demonstrated conclusively that fewer than 50% of employees in respect of the bargaining unit concerned are in membership of the union.

10.2 Where the union does not accept the employer's estimate of membership in respect of the bargaining unit concerned or, where an employer (whether or not at the request of at least 10% of his employees) seeks to derecognise a union in circumstances other than those set out in [Paragraph section 10.1](#), then, provided that a period of at least three years has elapsed since recognition was awarded, a ballot of employees in the bargaining unit should be held.

10.3 If a ballot of employees in the bargaining unit confirms that 50% of those employees voting and 40% of those entitled to vote, are in favour of the union being derecognised, it is reasonable that the employer should derecognise the union.

11 The process of seeking derecognition of a trade union

11.1 Where an employer seeks to derecognise a union, [he the employer](#) should, in the first instance, seek informal talks with the union. These may produce agreement that the union be derecognised.

11.2 Where there is a failure to reach agreement the employer should write to the union to propose derecognition, setting out the reasons that support the proposal.

11.3 The union should respond within a period of 10 working days, in writing, to the proposal.

11.4 If the union agrees to the proposal, the employer and the union should agree in writing that recognition has ceased.

11.5 If the employer and the union wish to maintain recognition but on different terms, they should negotiate with a view to reaching a new agreement.

11.6 In circumstances where a ballot is appropriate, the employer should write to the union to request a ballot, and to seek a meeting. The union should respond within 10 working days. Within a further 10 working days both parties should meet to discuss and conclude arrangements for the ballot and for the union's representatives to have access to the employees.

11.7 The ballot should take place between 10 and 20 working days after arrangements for the ballot and for access to the employees to have been finalised.

11.8 The standards for conducting such a ballot should be the same as those concerned with recognition as set out in [Paragraph section 8](#) of this Code.

11.9 If the union fails to respond to a written proposal for derecognition, the employer should consider approaching the [Manx](#) Industrial Relations Service.

12 Changing a recognition agreement

12.1 Each agreement on recognition relates to a particular group of employees. There may be circumstances in which an employer re-organises the workforce, thereby altering the previous organisational structure. In such a case, either party may consider that the agreement on recognition requires re-negotiation on the grounds that the bargaining unit is either no longer appropriate or has ceased to exist. Other circumstances in which one or other party may wish to change a recognition agreement include a wish to change the range of matters in scope of the agreement, or how they are handled.

12.2 The parties should seek to agree on new arrangements. If agreement is not reached, the Manx Industrial Relations Service may be invited to assist.

13 Re-applying for recognition or derecognition

Where a ballot of employees on recognition or derecognition has taken place, it would not be reasonable for a further request for recognition, or derecognition, to be submitted by the same union or the employer (as appropriate) for a period of three years in respect of the same, or a substantially similar, bargaining unit, except where there have been significant changes in the original circumstances of the case.

14 Disputes about recognition or derecognition

14.1 Where possible, disputes between an employer and a trade union about recognition or derecognition should be resolved voluntarily by the parties.

14.2 If this proves unsuccessful, or if no procedure exists for resolving disputes, the matter should be referred to the Manx Industrial Relations Service, which may make recommendations to either or both of the parties on the issues. Failing resolution, the procedure for the settlement of trade disputes under the [Trades Disputes Act 1985](#) may be invoked.

15 Inter-union issues

15.1 If two or more unions wish to make a joint request for recognition in respect of the same group of employees, the unions should act jointly in preparing and submitting their request. They should confirm that they will co-operate with each other in a manner that is likely to secure and maintain stable and effective bargaining arrangements. If the employer wishes, the unions should enter into arrangements that provide for collective bargaining to be conducted by the unions working together as a single team at a single table.

~~15.2 Except in those circumstances set out at paragraph 15.3 below, no union should commence organising activities in respect of any bargaining unit where another union has the majority of employees in membership and/or is recognised to negotiate terms and conditions, unless by arrangement with that union. Neither, in such circumstances should a union respond to an employer initiative, which would have the effect of, directly or indirectly, undermining the position of the established union.~~

~~15.3 Where a union considers that another union has low levels of membership, and no agreement or a moribund agreement, within any organisation in respect of any group of employees, the union should consult with the other union, before commencing organising activities (or as soon as it is informed of the interests of the other union).~~

15.4 A dispute between trade unions about recognition should be resolved by the unions themselves using procedures that have the confidence of the parties to the dispute. Affiliated unions should make use of the services of the Isle of Man Trade Union Council where practicable.

16 Protection of employees from discrimination and victimisation on grounds of trade union membership or activities

~~16.1 Section 21 of the Employment Act 1991 provides that every employee has the right to complain to the Employment Tribunal if an employer takes action short of dismissal (for example, withholding opportunities for transfer, training and promotion) against him as an individual to:~~

~~(a) prevent or deter him from becoming a member of a registered trade union;~~

~~(b) penalise him for becoming a member of a registered trade union;~~

~~(c) prevent, deter or penalise him for participation in the activities of a registered trade union; or~~

~~(d) compel him to be or become a member of any trade union.~~

Under the Employment Act 2006, a worker has the right not to suffer any detriment (e.g. withholding benefits, or opportunities for transfer, training or promotion):

- (a) to prevent, deter or penalise him or her for membership of a registered trade union;
- (b) to prevent, deter or penalise him or her for taking part in the activities of a registered trade union or for making use of its services;
- (c) to compel him or her to be a member of a trade union;
- (d) for the worker's failure to accept an inducement;
- (e) to penalise him or her for not making a payment (e.g. a trade union subscription, or a donation to charity in lieu) if he or she is or is not a member of a particular trade union.

The right does not cover dismissal of an employee, but dismissal for any of these reasons is automatically unfair.

The right may be enforced by complaint to the Employment and Equality Tribunal within 3 months of the action in question (or the last of a series of actions) but the Tribunal can allow a complaint out of time if there was a good reason for the delay.

Sections ~~45–1~~ and ~~120~~ of the Employment Act ~~1991~~ 2006 and ~~Section 1 of the Employment (Amendment) Act 1996~~ include similar provisions relating, ~~respectively~~, to the dismissal of an employee and the failure to recruit an applicant for such reasons being automatically unfair.

Appendix: Some matters that might be considered for inclusion in an agreement on recognition

- (a) The names of the parties
- (b) Definition of the bargaining unit
- (c) Statement of intent
- (d) The procedure in the event of a dispute over the interpretation of an agreement
- (e) Procedure for negotiation and constitution of the negotiating committee
- (f) Issues for negotiation
- (g) The procedure in the event of failure to agree, following negotiations
- (h) The role of trade union representatives
- (i) The election of trade union representatives
- (j) The number and constituencies of trade union representatives
- (k) Time off for trade union representatives
- (l) Training of trade union representatives
- (m) Facilities for the trade union
- (n) Deduction of trade union subscriptions from members' pay
- (o) Meetings of employees during working time
- (p) The procedure for calling a special meeting of the bargaining unit
- (q) Forums for consultation
- (r) Health and safety
- (s) Notice to terminate the agreement

Minister for Enterprise

EXPLANATORY NOTE

~~(This note is not part of the Code)~~

~~This Code of Practice provides guidance as to those circumstances in which it is considered reasonable for an employer to recognise one or more trade unions for collective bargaining purposes and on related matters.~~

