

Trade Union Legislation

Overview

Our Island Plan sets out a vision of a secure, vibrant and sustainable Island, with a commitment for the Department for Enterprise to deliver reforms to employment legislation, ensuring the Island is aligned with international standards and remains a competitive and attractive place to work.

Though in 2017 the Equality Act made a number of significant changes to employment law in the Island in relation to discrimination, over a number of years the Isle of Man has been falling behind international standards in relation to employment rights. The Department intends to make a number of changes to employment law in the current administration.

In 2022, the Department consulted on a number of topics that came to make up the Employment (Amendment) Bill 2023 that completed its progress through the Legislative Branches earlier this year. Those measures, which focused mainly on family leave rights and whistleblowing, will be implemented in the spring of 2025.

Why your views matter

The Department now seeks to make further improvements to employment legislation on the Isle of Man. **This consultation seeks views on the following areas of Trade Union legislation:**

Notice of industrial action

Mandate for industrial action

Ballot thresholds

Industrial action in essential services

Recognition of trade unions in the workplace

This consultation is issued in tandem with a series of other consultations that can be found on the Consultation Hub in relation to employment rights.

Throughout this consultation, the UK's legislation may be referenced. It should be noted that now the UK is under a Labour Government, that this may change in the future.

Following this consultation, the Department will review the responses and use this information to inform the development of the Employment (Amendment) Bill that will be brought forward in 2025.

A summary of responses will be published on this page within 12 weeks of the consultation closing.

If you would like to find out more about the Island's current statutory employment rights, please visit the [Guides to Employment Rights page on gov.im \(opens on a new tab\)](https://www.gov.im/categories/working-in-the-isle-of-man/employment-rights/guides-to-employment-rights/) <<https://www.gov.im/categories/working-in-the-isle-of-man/employment-rights/guides-to-employment-rights/>> .

More information on the [Employment \(Amendment\) Bill 2023 \(opens in a new tab\)](https://www.gov.im/categories/working-in-the-isle-of-man/employment-rights/employment-amendment-bill-2023/) <<https://www.gov.im/categories/working-in-the-isle-of-man/employment-rights/employment-amendment-bill-2023/>> .

Reasonable adjustments and alternative formats

The Department is committed to equal opportunities and our aim is to make our documents easy to use and accessible to all.

We will take steps to accommodate any reasonable adjustments and provide such assistance as you may reasonably require to enable you to access or reply to this consultation.

If you would like to receive this document as a paper copy, in another format or need assistance with accessing or replying to this consultation, please email jasmine.cowin@gov.im or telephone +44 1624 686559.

Responding to this consultation

You can respond to this consultation online by clicking on the 'Online Survey' link below.

About you

Please note that most questions on this consultation are **optional**, with the exception of the consent question below 'May we publish your response'. There are multiple text boxes provided throughout the consultation, but you are not required to complete them unless you want to explain your view.

What is your name?

Name

What is your email address?

Email

Are you responding on behalf of an organisation?

Please select only one item

- Yes
- No

Organisation

In what capacity are you responding as:

For clarity, an **employee** is someone who works under a contract of employment and perform their services personally for the employer.

Workers are people who are engaged on a contract for services. The term 'worker' can be used to cover a wide range of working relationships e.g. casual workers, freelance workers, employment agency staff and some independent contractors.

Please select only one item

- Employer
- Employee
- Worker
- Self-employed
- Other (please specify)

Other:

If you employ other people, how many employees & workers do you have?

Please select only one item

- 0
- 1 to 10
- 11 to 25
- 26 to 50
- 51 to 100
- 100+

May we publish your response?

Please read our [Privacy Policy](#) for more details and your rights.

More information

- Publish in full – your first name and surname, organisation name, along with full answers **will** be published on the hub (your email will **not** be published)
- Publish anonymously – only your responses **will** be published on the hub (your name, organisation and email will **not** be published)
- Do not publish – **nothing will** be published publically on the hub (your response will only be part of a larger summary response document)

(Required)

Please select only one item

- Yes, you can publish my response in full
- Yes, you may publish my response anonymously
- No, please do not publish my response

Introduction

The freedom to form and join trade unions, and for workers to organise collectively, is enshrined not only in international law, but the national law of the Isle of Man. Article 11 of the European Convention on Human Rights protects these rights, and the Convention is part of Manx law by virtue of the Human Rights Act 2001.

Nevertheless the main framework for the rights of trade unions and trade union members is set out in other legislation. While the Employment Act 2006 provides rights for union members, the Trade Disputes Act 1985 and the Trade Unions Act 1991 deal with issues such as registration of unions, resolution of trade disputes and make provision for lawful industrial action.

Particularly in recent years, when industrial action has been more common in the Isle of Man a number of issues have been raised in relation to the Isle of Man's legislative provision for trade unions and balloting. This consultation sets out the current legislation for trade unions and seeks views on updating the legal framework.

Trade Disputes Act 1985

The Trade Disputes Act 1985 sets out a procedure for settlement of trade disputes. It enables an industrial relations officer to inquire into the dispute and offer conciliation or arbitration. In such a case, if there has been no resolution of the dispute, a request can be made that the Council of Ministers sets up a body referred to as a Court of Inquiry – essentially intended to be an independent panel which examines the facts of the dispute and makes recommendations to bring the dispute to an end.

The Act provides that such a Court of Inquiry is made up of 'such person or persons as the Appointments Commission thinks fit'. The Court of Inquiry is empowered to:

- 'inquire into the causes and circumstances of the dispute, or any matters appearing to it to be relevant to the dispute' and
- 'make a report to the Council of Ministers on the matters into which it has inquired, and shall where practicable make recommendations with a view to bringing about a settlement of the dispute'

Industrial relations officers are also empowered to 'take such steps as he thinks fit to secure such a settlement in accordance with any such recommendations'.

Section 3A of the Act makes provision for a Court of Inquiry in the case of a trade dispute under section 14(4) of the Trade Unions Act 1991, which sets out a procedure for trade disputes which involve an 'essential service'. This procedure is covered in the next section, on the Trade Unions Act 1991.

Trade Unions Act 1991

The Trade Unions Act 1991 requires that trade unions and employers' associations must register with the Registrar General, and sets out rules around applying for registration. It also sets out rules around the status of trade unions and employers' associations (e.g. they are capable of making contracts, and are capable of suing or being sued). In addition the Act provides for lawful industrial action by trade unions.

Industrial action normally constitutes a breach of the contract of employment between the employee and employer. However the Act makes clear that an employee who takes part in industrial action has immunity from being sued for damages for breach of contract, provided that the industrial action is taken 'in contemplation or furtherance of a trade dispute'.

A person or body organising industrial action (for instance a trade union or union official) would normally be liable to civil legal action by an employer or third party for inducing a breach of contract by the employees, and could also be prosecuted for the offence of conspiracy. Civil action might result in an award of substantial damages

for loss suffered by the employer or third party, injunctions and orders for legal costs against the union or official.

Under the Trade Unions Act 1991, however, a registered trade union and its officials have statutory immunity from civil or criminal liability if the action is 'in contemplation or furtherance of a trade dispute'. This immunity, however, is lost for organising 'official' industrial action if it is not supported by the majority of those voting in a ballot. The rules for lawful ballots, which must be conducted by post, are contained in the Act.

The trade union must also notify both the employer and an Industrial Relations Officer at three distinct stages:

- of its intention to hold an industrial action ballot (at least 7 days' notice required)
- of the result of the ballot (as soon as is reasonably practicable after the result is known)
- of planned industrial action (at least 7 days' notice required, as a 'cooling off period', which can be extended to 14 days by an Industrial Relations Officer)

In the Annex to this consultation [a table shows the process and notification requirements for taking Lawful Industrial Action under the Trade Unions Act 1991 \(opens in a new tab\)](#) <user_uploads/20240813-industrial-action-procedural-requirements---version-for-consultatio.pdf> .

In addition, industrial action must not commence later than 5 weeks from the date of the ballot (or 6 weeks if an Industrial Relations Officer has extended the 'cooling off period').

There is a provision in the Act for special procedures to apply where there is a trade dispute affecting services which have been designated as 'essential services' through secondary legislation. However no services have ever been designated for this purpose.

There is no legal action immunity for trade unions for the following kinds of action:

- 'secondary action' i.e. industrial action against an employer who is not a party to the trade dispute
- industrial action because the employer employs or intends to employ non-union members, or to induce the employer to dismiss or take other action against non-union members
- action in support of a trade dispute which relates wholly or mainly to dismissals of those taking part in previous industrial action, unless those dismissals could give rise to complaints of unfair dismissal because they were in respect of 'protected industrial action' or amounted to victimisation

Over a number of years, certain issues have been identified with the provisions for balloting on industrial action. The Isle of Man's procedural requirements are simpler than those in the UK. However it can lead to confusion in certain circumstances. For example, in the case where a union provides 7 days' notification of industrial action, where discontinuous action takes place, it is not clear whether every occasion needs to be specified with 7 days' notice.

In the UK, provision relating to the circumstances of a ballot and notification of industrial action is more detailed and indicates a number of ways in which the process could be made clearer.

Notice of industrial action

Continuous and discontinuous action

As in the UK, the Isle of Man's Trade Unions Act 1991, where there has been a successful ballot for industrial action, requires that the trade union must notify whether the action is intended to be 'continuous' or 'discontinuous', in other words whether the disruption is planned to take place continuously for a number of days, or whether the disruption is planned to take place discontinuously.

'Discontinuous' action, according to the UK's Code of Practice on Industrial Action Ballots is action which takes place 'other than on all the days when action might be taken by those concerned'. So, for example, strike action taking place one day a week every week over a number of weeks or months would be discontinuous. The UK's Code of Practice notes that 'an indefinite strike would be 'continuous'; an overtime ban might be 'continuous' or 'discontinuous', depending on whether the ban applied to overtime working on all the days on which overtime would otherwise be worked or to overtime working on only some of those days.'

In recent years there has been confusion as to whether all the dates for discontinuous action must be specified in the notification. It is proposed that the position should be that either all dates on which discontinuous action is to place must be specified and any dates not specified must be set out in a further notification before the action can take place.

Suspended action

In the UK, where continuous industrial action is suspended, for example for further negotiations between the employer and union, the union must normally give the employer a further notice before resuming the action.

However, where the union agrees with the employer that the industrial action may be authorised or endorsed again on or after another date specified in an agreement no further notice is required to be given. The resumed industrial action, though, must be of the same kind as set out in the original notice.

Providing 14 days' notice for strike action

The UK's Trade Union Act 2016 increased the period for which notice must be given by a trade union that industrial action is to commence from 7 days to 14 days. However, where both the trade union and the employer agree the notice can be reduced to 7 days.

In the Isle of Man the legislation sets out that 7 days notice must be given, though this can be increased to 14 days by an industrial relations officer.

Do you think that the provision for notification of discontinuous action should be made clearer?

Please select only one item

- Yes
- No
- Neither

Please explain your view:

Do you think that provision for suspended action should be introduced?

Please select only one item

- Yes
- No
- Neither

Please explain your view:

Do you think that the 'default' notice for industrial action should be increased from 7 to 14 days?

Please select only one item

- Yes
- No
- Neither

Please explain your view:

Expiry of mandate for industrial action six months after date of ballot

The UK's Trade Union Act 2016 also introduced provision that a ballot for industrial action automatically expires six months after the date of the ballot, though there is provision for the ballot to expire up to nine months after the ballot with the agreement of both the union and the employer.

Prior to the Act there was in the UK a four week period in which industrial action could begin, though once a 'rolling' series of strikes (or action short of a strike) was commenced it could continue for a significant period, as there was no explicit provision for a mandate for industrial action to end, just as there is no explicit provision in the Isle of Man's Trade Unions Act 1991.

The UK Parliament's Committee Stage report on the legislation as it was progressing through the Houses of Parliament stated that the provision was 'intended to address the issue of 'rolling mandates' whereby, if industrial action is commenced within the current...time limit, it may continue for a prolonged period without the need for a fresh ballot...The Government see rolling mandates as problematic, entitling unions to rely on dated ballots.'

As stated above, though there is a requirement in the Isle of Man's Trade Unions Act 1991 that the action must begin no later than 6 weeks after the date on which the ballot was held, there is no provision for the expiry of the ballot.

Do you think that provision should be introduced for a mandate for industrial action as a result of a ballot to expire after 6 months?

Please select only one item

- Yes
- No
- Neither

Please explain your view:

Ballot threshold requirements

In addition the UK's Trade Union Act 2016 introduced two new balloting requirements:

- 50% turnout requirement – in order to lawfully undertake industrial action at least 50% of the union members entitled to vote must do so. Currently in the Isle of Man there is only a requirement that the majority of those voting in the ballot have voted for industrial action
- 40% support requirement in important public service – where industrial action is planned in a number of 'important' public sector services, there is a new requirement that at least 40% of the members concerned must vote in favour of action in order for it to be lawful. The sectors include health, education, fire services, and transport services

Do you think that a balloting threshold of 50% of members entitled to vote should be introduced?

Please select only one item

- Yes
- No
- Neither

Please explain your view:

Industrial action in essential services

As referred to before, there is special provision for a Court of Inquiry in the Isle of Man's Trade Unions Act 1991 for industrial action which affects 'essential services'.

Section 14(1) of the Act provides that Council of Ministers may designate the supply of goods or services as an 'essential service' if it appears to the Council that the disruption by industrial action is likely:

a. 'to deprive the community of the essentials of life, or

b. to endanger the life, health or personal safety of the whole or any part of the community'

If such a supply has been designated as an essential service, and industrial action is planned which will disrupt that supply, Council of Ministers may direct that a Court of Inquiry is set up to make a determination on the relevant. A decision by the Court of Inquiry in the case of a dispute involving an essential service is binding on the parties to the dispute.

It should be noted however that, even though the decision of a Court of Inquiry is binding on all parties in such a dispute, nothing in the Trade Unions Act 1991 theoretically prevents the industrial action in such a case taking place, as long as the action begins after the Court of Inquiry has reported and within 6 weeks of the original notification of industrial action.

These powers have, however, never been tested, as an order designating essential services has never been made.

Though the UK has no provision for a Court of Inquiry or other such body to examine an industrial dispute involving an essential service and make a decision, the Strikes (Minimum Service Levels) Act was passed in 2023 to provide minimum service levels during strikes in certain sectors, such as passenger rail services, ambulance services and fire and rescue services, so that important services are not subject to large scale disruption.

Do you think that extra balloting requirements for essential services should be introduced?

Please select only one item

- Yes
- No
- Neither

Please explain your view:

Do you think that the provision for a Court of Inquiry in the case of an industrial dispute in an essential service should be kept, and that an order designating essential services for this purpose should be made?

Please select only one item

- Yes
- No
- Neither

Please explain your view:

Do you think that provision for minimum service levels in specified essential sectors during industrial action should be introduced?

Please select only one item

- Yes
- No
- Neither

Please explain your view:

Recognition of trade unions in the workplace

An employer may need to work with trade unions to negotiate on the terms and conditions of workers represented by the union. If an employer wishes to 'recognise' a trade union so that the union can represent their staff in the workplace then the employer is free to do so.

However in the UK, if an employer does not voluntarily agree that a trade union is recognised, there is a statutory process that the trade union can go through in order to gain that recognition.

In contrast, in the Isle of Man there is an informal process for a union gaining recognition (and similarly for 'derecognition' in a case where a union no longer represents a significant proportion of workers) in a workplace. This is set out in a Code of Practice. There is no legal basis for this process, which may or may not be followed by employers and trade unions.

In the UK, if the employer does not voluntarily agree to recognising a trade union, the union can apply to a body called the Central Arbitration Committee. The Committee determines whether or not the trade union should be recognised.

Do you think that the Isle of Man should introduce statutory provision for trade union recognition in the workplace similar to the UK model?

Please select only one item

- Yes
- No
- Neither

Please explain your view:

Additional comments

Do you have any other comments?