

EMPLOYMENT LEGISLATION (P.99/2000): AMENDMENTS

**Lodged au Greffe on 24th October 2000
by the Industries Committee**



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EMPLOYMENT LEGISLATION (P.99/2000): AMENDMENTS

- (a) *after paragraph (1) insert the following paragraph -*
- (2) to charge the Employment and Social Security Committee, in consultation with the Industries Committee, as part of its first phase of new legislation as set out in paragraph (1) above, to introduce legislation, or amend existing legislation as appropriate -
- (i) to provide statutory recognition and regulation of trade unions in the Island;
- (ii) to provide for the regulation of employee/employer relations; and
- (iii) to define and regulate legitimate industrial action.
- (b) *renumber paragraph (2) as paragraph (3).*
- (c) *in the renumbered paragraph (3) delete sub-paragraph (a) and renumber sub-paragraphs (b) and (c) accordingly.*

INDUSTRIES COMMITTEE

REPORT

Purpose of the amendment

The purpose of this amendment is to charge the Employment and Social Security Committee, in consultation with the Industries Committee, as part of the first phase of implementation, to introduce legislation to provide statutory recognition, for the first time in Jersey, of trade unions; and the regulation of employee/employer relations.

In particular, it seeks to remove the uncertainty as to the status of trade unions; to provide a framework suitable for the effective promotion of collective agreements and other matters, combined with a forward-looking dispute resolution process, which includes provisions relating to industrial action; the whole in accordance with best practice in other jurisdictions (but principally smaller countries and states elsewhere).

The Industries Committee supports fully the proposals for the introduction of minimum employment legislation put forward by the Employment and Social Security Committee. However, it believes that the absence of legislation in Jersey relating to the legal status of trade unions, the rights of trade union members, due process for collective bargaining and the definition and regulation of industrial action is a serious issue in the twenty first century.

The present situation is especially unsatisfactory because most of the trade unions in Jersey are branches of United Kingdom national trade unions that are themselves subject to statutory law in the United Kingdom, but not in Jersey.

This amendment, therefore, seeks simply to put a higher priority on the introduction of trade union-related legislation than is currently proposed. It is important at this point to address two particular concerns -

- (a) It is not intended to add a further burden on employers and organisations representing employees. The Industries Committee has listened carefully to feedback regarding the possibility of the imposition of excessive employment legislation.

- (b) The Employment and Social Security Committee has repeatedly expressed the view that to introduce this legislation would significantly delay the introduction of the other parts of its employment law reform in Phase I.

In response -

- (a) The Committee does not believe that this amendment will impose unduly onerous obligations on any party. On the contrary, there is much to commend an immediate clarification for all parties in the workplace environment, consonant with enlightened modern practice. For example, it is intended to reduce rather than increase the opportunity for adversarial relations; furthermore, the current philosophy of partnership already promoted by the States and major union representatives will be enhanced.
- (b) The Industries Committee has never held the view that it would be desirable to delay the remainder of Phase I. The Employment and Social Security Committee has been aware of this stance since earlier this year. On careful consideration of all those matters set out in this report, but principally on legal advice, it has concluded that it is essential to include other matters in Phase I. We believe that the necessary draft Law can - indeed should - be prepared in parallel, drawing on models from elsewhere which command respect from all stakeholders.

Current status of trade unions in Jersey

Quite simply, there is no law in Jersey directly relating to trade unions. The situation is highly unsatisfactory because unions have been operating in the Island for many years. It could be argued that unions in Jersey have a status similar to those in the United Kingdom prior to the Trade Union Act 1871, which declared that purposes of trade unions were not illegal merely because they were in “restraint of trade”. They were - and therefore in Jersey could still be - “unlawful organisations”.

There is also resultant uncertainty over the status of collective agreements negotiated between employers and trade unions. If a union were not recognised under Jersey law or its status uncertain, the many collective

agreements which are already in place could be susceptible to legal challenge.

It is probably true that Jersey is one of the very few jurisdictions in the developed world that has no law covering any aspect of trade union activity; nor even a law that recognises trade unions as lawful organisations. It is perhaps useful to note here a statement by Donaldson MR in 1982¹ that parties to industrial disputes “should know what is and what is not offside. And they must be able to find out for themselves by reading plain and simple words of guidance.”

Whereas this statement by the Master of the Rolls was apparently aimed at the complexity of the United Kingdom law, the position in Jersey is even more uncertain. No one really knows “what is and what is not offside”.

Rights of trade unions and their members

The lack of clarity of the legal status of trade unions as organisations and of individual members is a matter for some concern in the year 2000. In the United Kingdom and elsewhere, trade unions and their individual members have statutory rights and obligations covering a very wide range of activities.

Similarly, employers have rights and obligations, and it is important that such matters are established in law to ensure all parties to agreements -

- (a) know what their rights, responsibilities and obligations are;
- (b) have recourse to due process for the resolution of differences; and
- (c) also have access to legal remedies, including litigation if ever necessary.

Previously it has been suggested that a “partnership agreement” be entered into with the main unions as agents for their members with the government of Jersey. The legal and practical difficulties identified by the

¹ Merkur Island Shipping Corp v Laughton 1982.

Law Officers' Department, and described above, preclude the conclusion of a mutually acceptable agreement.

International Conventions on employment law

The Island is through the United Kingdom bound by certain conventions sponsored by the United Nations' International Labour Organisation.

The European Convention on Human Rights also protects the freedom of association (Article 11) and freedom from forced labour (Article 4).

For example, the ILO Convention on the Freedom of Association and Protection of the Right to Organise Convention 1948, provides for the right to establish trade unions (Articles 2 and 11), with separate legal personality (Article 7) and so on.

Both the spirit and letter of these international obligations appear to require the Island to remove any uncertainty as to the rights of the employees, whilst setting mutual obligations in the context of modern practice. Recently, it has been brought to the Committee's attention that the Island may be in contravention of these treaties, a possibility that cannot be ignored or allowed to continue if correct.

Summary

Jersey is a modern society with a healthy economy. The Industries Committee fully endorses the introduction of legislation to protect and enforce the rights of individual employees and their employers. Rather than the phased approach in relation to employees' rights proposed by the Employment and Social Security Committee, the Industries Committee believes strongly in a parallel and balanced approach, which we believe is achievable within the current law drafting allocation approved in the Resource Plan. It is likely that the Industrial Disputes Law will be too out-moded to be revamped, and it would be our expectation that it would be replaced with a more contemporary and straightforward piece of legislation.

It wishes to support a workplace environment where optimum employee/employer relationships can be fostered and maintained; and parties can work in partnership to their mutual benefit - but particularly for the benefit of the community as a whole.