EMPLOYMENT RELATIONS LEGISLATION

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Introduction

The Employment and Social Security Committee, in consultation with the Industries Committee, was charged by the States to introduce, or amend, existing legislation to provide statutory recognition of Trade Unions and regulate employee/employer relations. This report summarises the conclusions reached and the basis on which a law drafting brief will be prepared for a new law which incorporates some existing legislation.

Background

When the Employment and Social Security Committee took over the role of the then Industrial Relations Committee in 1997, it was decided to develop a new strategy to modernise Industrial Relations in the Island. Following extensive research, a consultative document, "Fair Play in the Workplace" was issued at the end of 1998 to stimulate debate on the issues present in the employment relationship.

Specifically, on trade unions and collective employment rights, the report enquired whether industrial relations legislation was out of date and/or ineffective, and if so, whether change could be achieved through a "partnership approach" supported by a dispute resolution system or whether a legal framework providing specific rights and liabilities was deemed appropriate. Responses at the time indicated that most did not place this as a high priority. The problems were largely perceived to be 'public' sector ones.

In June 2000, the Employment and Social Security Committee lodged its proposals on "Employment Legislation" (P.99/2000), advocating a phased approach and putting forward a priority order reflecting the outcomes of its research and the consultation process. An amendment to P.99/2000 was brought by the Industries Committee which resulted in employment relations matters being given higher priority.

Consultation on trade union issues

To examine the matter of trade union legalisation and regulation of employer/employee relations in more detail, the Employment and Social Security Committee undertook the necessary research and subsequently published a consultation document "Fair Play in the Workplace: Trade Union Issues" in September 2001. This report included a comparative analysis of legislation and systems present in other jurisdictions, particularly the smaller ones, but also highlighted the general approaches worldwide and commented on -

- the status of trade unions;
- trade union regulation and governance;
- regulation of employer/employee relations;
- definition and regulation of legitimate industrial action;
- institutional frameworks.

Outcome of public consultation

There were differing views expressed during the public consultation process but a reasonable consensus emerged on the general approach to new legislation as follows -

Non-adversarial

The majority of respondents believed that legislation should not create a system which was built upon adversarial procedures and processes. It was felt that negotiation, conciliation and arbitration, where appropriate, should be the primary means by which industrial relations problems and unrest should be addressed. During the debates about this issue, it was noted by many commentators[1] that the Island already had a very important piece of legislation - the Industrial Disputes (Jersey) Law 1956 - which should not be discarded but strengthened.

Minimal legislation

Of the four main legislative options highlighted in the report, the most common preferences which emerged during the consultation process (60% of respondents) included either the development of the current dispute resolution system or a minimalist legal approach. Generally it was thought that legislation which concentrated solely on trade unions was restrictive and that the emphasis should be on good employment relations, encompassing all the parties.

Clear definitions and simple registration process

There was a strong view that trade unions should be granted legal status and that a clear definition of what constituted a trade union should be present in Law. It was also thought that staff and employer associations should be included in this definition. In addition, most respondents were in favour of some form of simple certification/registration process.

New legal framework

Following the public consultation exercise, the Employment and Social Security Committee met representatives of the Industries Committee and the Human Resources Committee, to discuss the overall approach and basis of a new legislative framework. There was a broad measure of agreement between the Committees, and the Employment and Social Security Committee appreciates the detailed comments received from those Committees during and after that meeting, which have been reflected in this Report. The following proposals emerged.

Overall approach

It was agreed that one of the principal aims must be to create a climate which helps develop and enhance good industrial relations in the Island rather then merely focus on the outcomes of unrest. It was recognised that legislation alone cannot be expected to bring about good industrial relations. Laws, whether complex or minimalist in nature, may not, for example, shift outdated adversarial attitudes to collective bargaining and dispute resolution. Any Laws developed to improve industrial relations must underpin and support a cultural shift to collective bargaining in good faith, recognising the position of all parties, including -

- acceptance that both sides are in a relationship of interdependence;
- honesty and openness in the employment relationship;
- mutual respect between parties involved;
- justice in the procedures and institutions;
- encouragement of best practice;
- systems that ensure community interests as a whole are present.

There was general agreement that in order to modernise industrial relations practices in the Island and move from formal procedures which focus on the outcome of a dispute (e.g. a strike), effort should be concentrated on developing processes and frameworks which reduce the likelihood of disputes and enable early resolution where they occur.

A minimalist legislative framework was therefore seen as a platform from which modern employment relations can develop and flourish.

It was noted that the current legislation (the Industrial Disputes (Jersey) Law 1956, amended in 1959) already provides statutory procedures for dispute resolution. Whilst this Law has strengths, some provisions are outdated and do not reflect a modern approach to effective industrial relations. Furthermore, the legislation does not reflect the role of the new Jersey Advisory and Conciliation Service (JACS) which was established as an independent body in 2001 to conciliate, mediate and arbitrate should an individual or collective dispute occur.

It was agreed that a new law should be created to provide clarity in the relationships with emphasis on good ‘Employment Relations’ and incorporating the current dispute resolution legislation, updated and strengthened.

An “Employment Relations (Jersey) Law”

In keeping with the key objectives, the following ‘core’ components of a new law were discussed and agreed.

Status of trade unions and associations

At present trade unions and associations are not defined in Law nor do they hold legal status. As such they are unable to enjoy the legal rights of other legal entities and are not subject to the responsibilities placed upon such legal bodies.

It was generally agreed that a new law must include clear definitions which should be wide enough to cover most situations of industrial unrest. In addition to the traditional trade unions, associations, both staff and employer, should be incorporated into a definition. Furthermore the Law should clarify the status of such bodies as legal entities.

Process for registration of trade unions and associations

Consultation clearly demonstrated that the vast majority of respondents were in favour of a very simple system of approving bodies as "trade unions" for the purposes of the Law. It is proposed that a 'registration' process be introduced whereby representative unions (and associations) would be required to provide information on the following lines to verify their status and become a "registered organisation" -

- the name and address of the union or association;
- the names of the officials;
- a copy of their internal rules and regulations;
- a copy of procedures regarding balloting;
- information on the availability of accounts to members.

It is envisaged that a Register would be maintained, which would place information in the public domain.

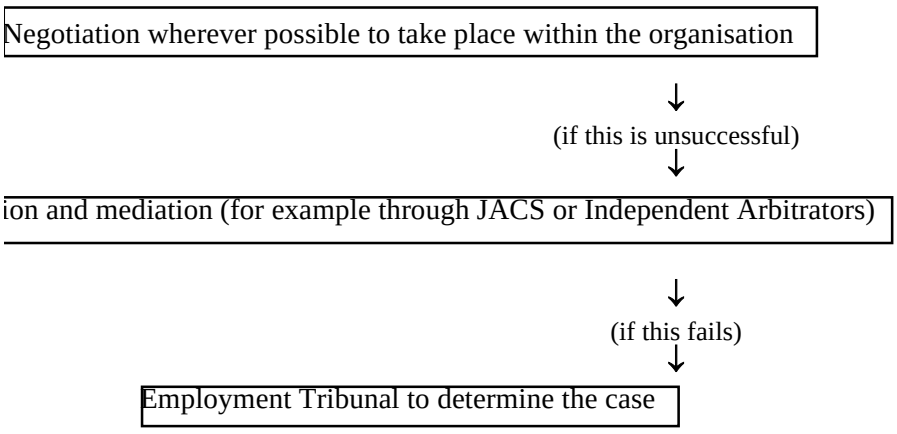
Dispute resolution process

It was acknowledged that where unrest does surface, there should be a speedy and effective dispute management process. Clearly, its implementation should not provoke 'industrial' or precipitous action but provide for an ordered process which encourages and facilitates resolution of disputes.

One of the most important steps has already been taken with the inception of JACS. It was noted that the number of cases referred to the Industrial Disputes Officer has reduced as a consequence and feedback from individuals, organisations and associations who have had cause to work with JACS is extremely positive. It is therefore appropriate to support and encourage the proactive work undertaken by JACS in preventing and resolving potential disputes. It was noted that the present Industrial Disputes Officer, Deputy Breckon, believes the Industrial Disputes (Jersey) Law 1956 is a very effective piece of legislation in this respect and could be improved upon.

Fair dispute resolution

Taking the current Industrial Disputes Law as the basic model, it is suggested that the process would be -



In practice, the process above is likely to be iterative based on the experience of the current Industrial Disputes Officer. For example, if a case is referred for conciliation, the parties could still be asked to go back to the negotiating table, within certain time limits, where it is clear that they have not negotiated in good faith or where negotiations have not been fully exhausted.

Voluntary -v- compulsory processes

Considerable thought has been given to whether any process of dispute resolution should be voluntary or compulsory. Experience shows that you cannot force parties to negotiate, and, where this is attempted, the outcomes are less successful and indeed may fail if people simply go through a process for the sake of it. It is difficult to see how a party which did not want to be at the bargaining table would contribute to dispute resolution constructively. It is accepted, therefore, that the initial stages should be 'voluntary' with encouragement being provided through the process prescribed in law and the availability of independent conciliation through JACS. It is more likely with a voluntary conciliation process that the decision would be accepted in good faith by both sides.

Employment tribunals

Where agreement cannot be reached by voluntary means, then it is proposed that the matter be referred to an Employment Tribunal.

The Human Resources Committee take the view that reference of collective disputes to an Employment Tribunal should be by agreement of both parties on the basis that with a joint and voluntary approach the decision of the Tribunal is more likely to be accepted by both sides.

The alternative view is that either of the parties should have the ability to take the matter to an Employment Tribunal when all avenues have been exhausted, on the basis that two parties already in disagreement may not be able to agree on such a course of action and thus it would be difficult to break any deadlock.

Generally, it was agreed that the decision of the Tribunal would be binding.

Legislation currently being drafted in the main Employment (Jersey) Law 200- for an Employment Tribunal System provides that a decision of the tribunal is to be treated as a decision of the Royal Court. As such, any party which does not comply with the decision of the tribunal would, technically, be in contempt of Court. Remedies would need to be considered by the Courts and ultimately fines or other appropriate sanctions could be imposed on an organisation and/or individuals. It is proposed that the Tribunal would be the final arbiter in any dispute, other than an appeal to the Royal Court on a point of Law.

The Employment Tribunal will be drawn from a panel of people, expert in areas of employment relations. It is proposed that the panel of members would be called upon to constitute a tribunal either to consider individual claims (e.g. unfair dismissal) or to determine collective issues.

The advantage of having an Employment Tribunal for both individual and collective disputes is that one body would be responsible for all forms of final dispute resolution and therefore expertise would be strengthened and costs minimised. Furthermore, by repealing provisions present in the Industrial Dispute (Jersey) Law 1956, the posts of Industrial Disputes Officer and the Deputy (by Law, members of the States) would be removed.

Limiting disputes

Consideration was given to limiting disputes in various ways such as excluding "Essential Services". However, it was noted that, without sanctions, any law prohibiting certain groups from striking may be difficult to enforce in practice. Groups were unlikely to accept such limitations without some recompense and a fair system of resolving disagreements. It was noted that a number of agreements are now in place in both private and public sector organisations, having been negotiated between the relevant parties.

Consideration was also given to the type of 'secondary action' legislation in place in the U.K. Again, it was noted that despite a huge amount of legislation giving unions immunities and then taking some away (such as secondary action) as well as complicated processes, (for example, around balloting), compulsory rules often lead to "stand-off" situations and laws may also be ignored or avoided by alternative forms of action. Furthermore, few employers will risk inflaming the situation by taking legal action at this point.

It was generally considered that the most effective way for the Island to deal with secondary picketing would be through the

underlying power of the employment tribunal to resolve disputes on a compulsory basis, supported by effective codes of practice.

Codes of practice for good employment relations

In keeping with the minimalist legal approach it is proposed that the basic legislation described above be supplemented by codes of practice which describe good employment relations practice; in particular, how to provide balance within the employee/employer relationship and avoid disputes. It is suggested that codes would initially be on the following topics -

- resolving disputes;
- circumstances where it is considered reasonable that a union should be recognised;
- balloting for industrial action;
- reasonable limitations on industrial action.

Whilst codes would not be legally enforceable, if a case were to reach the final stage in the dispute resolution process, the Employment Tribunal would be empowered to take into account the extent to which the parties involved observed the appropriate codes when reaching a decision. As such a party who acted unreasonably without regard to the codes could be held to have acted outside the spirit of the legislation.

Conclusions

A new core law should be formulated, incorporating some of the current Industrial Disputes (Jersey) Law 1956, and including -

- status of trade unions and associations;
- registration of trade unions and associations;
- dispute resolution process;
- employment tribunals: final arbiters;
- provisions for codes of practice to be issued.

It is proposed that the title of the new Law should reflect the spirit of co-operation and be called the “Employment Relations (Jersey) Law 200-”. This Law should encourage the parties to follow each of the stages in the disputes resolution model above. Should arbitration be required, the Employment Tribunal will make a binding decision. The concept of binding arbitration is not new and is presently provided for in the Industrial Disputes (Jersey) Law 1956.

Codes of practice would be developed which include the setting out of a detailed framework for resolving disputes when they occur and a means of addressing issues in a timely manner. Specific provision should be present in Law giving powers to produce codes. Whilst codes of practice should provide flexibility, in order that the most appropriate means of dispute resolution can be adopted during any period of industrial action/ unrest, legislation would provide “teeth” to ensure that codes are followed, within acceptable parameters.

Whilst new legislation and associated codes of practice will provide a framework for encouraging good practice and timely management of disputes, they must be underpinned by a culture in Jersey which supports the enhancement of good employment relations. JACS will continue to have a key role to play here both in the education process and, when appropriate, as a professional, independent body which can help the parties resolve their differences.

The approach described above has an overall benefit in that all of the agencies are to be involved in the resolution of both individual and collective disputes, satisfying a strategic objective of providing a straightforward and uncomplicated framework of law and process.

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[1] Including Olga Aitken (IPD/IOM/IOD Seminar).