

## IMPACT ASSESSMENT TEMPLATE

<b>DEPARTMENT: Department for Enterprise</b>		
<b>IMPACT ASSESSMENT OF: EMPLOYMENT (AMENDMENT) BILL 2023</b>		
<b>Stage: Post-consultation</b>	<b>Version:2</b>	<b>Date: 19/12/2022 – latest revision 30/06/2023</b>
<b>Related Publications:</b>		
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### SUMMARY: INTERVENTION AND OPTIONS

#### Briefly summarise the proposal's purpose

- What is the issue being addressed?
- What are the current or future harms that is being tackled?
- Why is Government best placed to resolve the issue?

#### Family leave rights

- *What is the issue being addressed?*

The Isle of Man lags behind other jurisdictions in a number of employment rights for workers and employees. In particular, in terms of time off work and family leave, the Isle of Man lacks some significant rights – for example, in the Isle of Man there is no right to shared parental leave, which means that in many cases fathers with new born children are entitled only to 2 weeks' paternity leave whereas mothers are entitled to 52 weeks' maternity leave. This limits the flexibility of families in caring for children and limits the opportunities for mothers to return to work should they wish to do so.

- *What are the current or future harms that are being tackled?*

There are a number of reasons as to why employment rights need to be strengthened. One argument for trying to ensure that the IOM's employment rights are comparable with the UK's is that the IOM Government is looking not only to maintain but to increase the economically active population. One way to encourage people to live and work in the IOM is to ensure that the Island has employment rights comparable to nearby jurisdictions such as the UK.

In addition, as the Island Plan, and a recent Tynwald Select Committee Report highlights, the IOM faces the challenge of ageing demographics, and low birth rates.

It should be noted that DfE consulted on the proposals relating to family leave in summer 2022. There was overwhelming support for the proposals in principle, though there were differing views over some of the detail. The review of responses can be found here: <https://consult.gov.im/economic-development/family-leave-rights/>

In December 2022 [the Tynwald Select Committee Report on Population Rebalancing](#) was published. Two of the recommendations explicitly address employment rights:

"Recommendation 6

That Tynwald is of the opinion that Shared Parental Leave should be introduced at the earliest opportunity."

"Recommendation 13

That the Isle of Man Government continue to modernise employment legislation to ensure statutory support for the retention of employment options on return to work and introduction of critical dependents' leave."

- *Why is Government best placed to resolve the issue?*

Individual businesses may already have in place policies which provide for some of the proposed statutory time off and leave. Nevertheless some of the proposals, such as shared parental leave, particularly require Government intervention because they may be too complex for businesses to put into effect in their own right. It should also be noted that in the IOM there is no requirement for statutory pay where maternity or paternity leave is taken, and mothers and fathers rely on the existing maternity and paternity allowance. The Bill does not make any legislative changes relating to allowances as this is a Treasury responsibility, though Treasury has confirmed that it is open to reviewing entitlement to the relevant social security allowances, as and when the rights to leave change.

## **Whistleblowing**

- *What is the issue being addressed?*

The Isle of Man's legislative framework for protection of whistleblowers in the workplace, contained in the Employment Act 2006, is based on UK legislation in the Employment Rights Act 1996. In 2020 a [Tynwald Select Committee published a report on whistleblowing](#). The report identified a number of issues with the current framework and recommended that some changes are made to the current legislation.

- *What are the current or future harms that are being tackled?*

The Tynwald Select Committee on Whistleblowing identified a number of issues with the current whistleblowing regime in the IOM. For example:

- there is confusion amongst workers about what constitutes whistleblowing – whistleblowing is intended to be about issues that are of public concern rather than narrow personal employment issues;
- though a claim can be made at the Tribunal if an employer subjects a worker to dismissal or detriment as a result of a whistleblowing disclosure, there is no explicit provision for a claim if they experience detriment by another employee or agent on behalf of the employer;
- those who do whistleblow often do not find out whether any action has taken place in relation to their report.

The Committee recommended a number of reforms to the whistleblowing regime.

In line with the Tynwald Select Committee's agreed recommendations the consultation also sought views on a number of wider proposals around establishing an IOM "Concerns at Work" Office, and how such an office might work.

The DfE consultation sought views on the proposals by the Tynwald Select Committee and added a number of further proposals. The proposals consulted on by DfE were:

- Introduction of public interest test;
- Introduction of vicarious liability;
- Removal of good faith requirement;
- Clarification as to when a protected disclosure has been made;
- Require prescribed persons to annually report on whistleblowing cases;
- Introduction of powers for Tribunal to order interim relief;
- Establishment of a IOM Concerns at Work Office/Office for Whistleblowers;
- Maximum amount of compensation for unfair dismissal.

Having reviewed the responses the Department agreed to take forward the following proposals:

- Introduction of public interest test;
- Introduction of vicarious liability;
- Removal of good faith requirement;
- Clarification as to when a protected disclosure has been made;
- Require prescribed persons to annually report on whistleblowing cases;
- Introduction of powers for Tribunal to order interim relief;

It was determined that further discussion and research should take place on proposals to establish a whistleblowing office, as there was less consensus on these issues, and in addition there might be issues of complexity and resource.

*Why is Government best placed to resolve the issue?*

A statutory framework for whistleblowing/protected disclosures has been in place in the IOM since 2006. The way in which whistleblowers are treated is already closely bound up with the way in which that framework operates. The Tynwald Select Committee took evidence and made recommendations to amend legislation in ways which will be helpful to whistleblowers and employers alike in dealing with these cases.

Since the Tynwald Select Committee's report and the Tribunal's decision in the Rosalind Ranson case there has been further public comment and discussion about whistleblowing, in particular in the public sector. The amendments that the Department is making are intended to strengthen the current whistleblowing regime for whistleblowers in the public and private sectors alike.

It should also be noted that this is one part of Government's response to the Rosalind Ranson case. IOM Government has taken some measures to address issues with whistleblowing in other ways, for instance in updating the Whistleblowing Policy.

### **Zero hours contracts**

The issue of zero hours contracts was addressed in a Zero Hours Contracts Committee report in 2018. A number of recommendations were made. Though it is intended to address these mainly through secondary legislation, primary legislation is required to make one change relating to written statements of employment particulars – introduction of a right to a written statement from "day one" of employment, rather than, at present, within 4 weeks of employment.

#### **Briefly summarise the proposal's intended effects**

- What are the policy objectives / outcomes?
- Can these be described in a SMART (or similar) way?
- Other comments on the intended effects?

#### **Family leave**

- *What are the policy objectives / outcomes?*

The policy objectives and outcomes is that the statutory minimum level of provision for time off and leave in the IOM reflects provision in the UK, and that more people of working age are encouraged to remain and come to the IOM as a result.

- *Can these be described in a SMART (or similar) way?*

Though improving statutory rights to time off and leave is considered to be beneficial to the Island's community as a whole, the outcome "that more people of working age are encouraged to remain in, and come to, the IOM" is difficult to measure in a SMART way. The provision is likely to be one of a number of policies that will make the IOM a more attractive place to live and work overall.

Further, there is a lack of comprehensive information which would allow the proposals to be measured in a SMART way. For example, we do not know to what extent businesses already allow partners of mothers to be time off for ante natal appointments.

For example, in the case of shared parental leave: the UK Government's own estimates are that between 2-8% of eligible couples have taken up shared parental leave in the UK since it was introduced in 2014. Maternity Action, the UK maternity rights charity estimates that the take up is between 3 to 4%.

The Tynwald Select Committee on Population Rebalancing has also highlighted the importance of

measures such as shared parental leave in encouraging families to have more children. From such a perspective, one potential objective could be an increase in the number of children born in the Island.

- *Other comments on the intended effects?*

N/A

### **Whistleblowing**

- *What are the policy objectives / outcomes?*

The policy objectives are, in the short term, to make some amendments to the existing whistleblowing regime in order to improve the way that the current system works. It is only, however, part of the work to improve the system of whistleblowing in the Island, e.g. IOM Government has revised its own Whistleblowing Policy for its own employees. Ultimately the outcomes to which it is intended that the amendments contribute is that they encourage whistleblowing complaints to be dealt with, without the whistleblowers themselves being targeted for action by employers. At the same time however, where whistleblowers have been treated badly by employers they have adequate means of redress through the Tribunal.

- *Can these be described in a SMART (or similar) way?*

It is difficult to describe the outcomes in SMART, quantitative way. The proposals make a number of changes to improve the overall system for whistleblowing. It might be expected that one measure of the success of the proposals is that fewer whistleblowing cases go to the Employment and Equality Tribunal, or that there are fewer successful cases at the Tribunal. Nevertheless it is not clear that having fewer whistleblowing cases at the Tribunal is necessarily a desirable outcome in itself.

Currently it is difficult to assess how many whistleblowing complaints are made as a whole, across the Isle of Man. The proposal to require prescribed persons to annually report on whistleblowing is one way of improving transparency in this area.

- *Other comments on the intended effects?*

N/A.

### **What are the options that have been considered**

- What policy options have been considered?
- Are there alternatives to regulation?
- Please justify preferred option

### **Family leave**

- *What policy options have been considered?*

#### Option A: Do nothing (retain status quo)

Retaining the statutory status quo in this instance means that the level of time off and leave for domestic reasons provided to workers (e.g. to attend adoption appointments or for paternity leave over the 2 weeks statutory paternity leave) would be down to individual employers. Indeed there is nothing in theory to prevent employers providing time off and leave in line with the proposals, and it may be the case that individual employers do provide, e.g. time off for employees to attend adoption appointments. Nevertheless the consultation has identified widespread support for statutory provision for the proposals. It is also the case that a number of the proposals may be difficult for employers to implement without intervention from Government. For example, a shared parental leave system may be complex to put into practice without Government intervention.

#### Option B: Introduce the proposals via amendment of the Employment Act 2006 (preferred option)

Only introducing the proposals meets the outcomes in terms of: a) attempting to match UK employment rights for family leave; and b) making the Island an attractive place to live and work.

- *Are there alternatives to regulation?*

It is possible to simply leave this up to individual employers as there is nothing to prevent employers, for example, having their own systems in place for more generous paternity leave or shared parental leave. In many cases employers may allow employees time off for dependents.

- *Please justify preferred option*

Option B set out above is the preferred option. Consultation on the proposals has identified significant support for statutory provision for the family leave provision, including from businesses themselves.

#### **Whistleblowing**

- *What policy options have been considered?*

#### Option A: Do nothing (retain status quo)

Doing nothing in this case would not fulfil the will of Tynwald expressed in the approved recommendations of the Tynwald Select Committee on Whistleblowing. For example one of the resolutions of Tynwald was that "The Manx legislation regarding protected disclosures should be amended to include a public interest test". Both the Tynwald Select Committee on Whistleblowing and DfE's consultation on whistleblowing identified a number of issues with the current whistleblowing system, which will not be rectified by "doing nothing".

#### Option B: Introduce proposals listed in this assessment (preferred option)

This option is to introduce a number of changes which align the IOM whistleblowing framework more closely with the UK's whistleblowing framework. These proposals also fulfil recommendation 1 of the Tynwald Select Committee's report and feedback received from the consultation.

#### Option C: Introducing more fundamental changes to whistleblowing framework

The recommendations of the Committee as approved by Tynwald also committed DfE to consulting on more fundamental changes to the whistleblowing framework, centered on setting up a specific body – a "Public Concerns at Work Office" or Office for Whistleblowers – which would have specific duties relating to dealing with whistleblowing complaints. DfE consulted on these proposals over summer 2022 and the results can be found here:

- *Are there alternatives to regulation?*

As set out above, regulation already exists for whistleblowing. The amendments clarify and strengthen the existing law, for the benefit of workers, employers and for the Employment and Equality Tribunal. With one exception, the changes proposed have been introduced on a statutory basis in the UK.

Alternatives to further regulation would include, for example, strengthening and promoting guidance on the existing whistleblowing processes. However such guidance would not be able to correct the existing issues with the current Manx legislation which have been identified, e.g. by the Tynwald Select Committee on Whistleblowing.

- *Please justify preferred option*

Option B above is the preferred option (i.e. a number of amendments to the existing legislation),

which should improve the current whistleblowing regime. Given the issues identified by the Tynwald Select Committee on Whistleblowing and through public discussion of the Rosalind Ranson case, Option A (Doing Nothing) is not considered to be a viable option.

Developing the proposals on a Public Concerns at Work Office (i.e. Option C) would also require further consideration of costs and resource, as well as further examination of how such a system might work so DfE will examine further proposals for the Public Concerns at Work Office once the changes made by the Employment (Amendment) Bill 2023 are in place.

### **Zero Hours Contracts**

- *What policy options have been considered?*

#### Option A (Do nothing)

Doing nothing would on this particular proposal would not prevent the Department from carrying out the general proposal that the right to a written statement be extended from just employees at present, to all workers, as recommended by the Zero Hours Contracts Committee

However the proposal that a right to a written statement of written particulars of employment become a day one right was consulted on, and received 79% support.

#### Option B (introduce "day one" right)

It is worth noting that the UK introduced the "day one" right to written statements at the same time as it extended the written statement to workers in 2019, where, prior to that, there was a two month window in which a written statement should be provided. The reason the day one right was introduced in the UK, was, according to the UK Government's [Impact Assessment](#): "The Government believes that it is important that all employees and 'workers' are clear about their working relationship when entering a new job. This is particularly important for those that are more vulnerable and are currently willing to accept work without having clear details about their hours or pay. These individuals are also usually more unclear about the rights they are entitled to." The UK's impact assessment also stated "We have considered simply extending the right to a written statement to all 'workers' and keeping the 2-month window to provide a statement. However, if the 2-month compliance period were retained, very short-term workers are unlikely to benefit from the extension. In addition, non-employee workers are more likely to be engaged on a casual basis, which could mean that they have the least certainty over their employment relationship and rights. To maximise the benefit associated with the written statement, regardless of length of service, it should be provided as soon as possible for the sake of clarity and certainty for workers." Again, in the case of the UK, as stated in the Impact Assessment, the evidence is that in the vast majority of cases (81%) written statements are provided on or before the first day of work (see pages 11 and 12 of the UK's Impact Assessment).

DfE consulted on a day one right for written statements in summer 2022. 79% of consultees (63 of 80) agreed that written statements should be a day one right, though IOM Chamber of Commerce and MIRS had concerns about this.

- *Are there alternatives to regulation?*

As set out above, regulation already exists in this area – the question in this case is, what should the appropriate regulation be?

- *Please justify preferred option*

As set out above, the UK introduced the right to a written statement of terms and conditions from the 1<sup>st</sup> day of employment in 2019. It is true that concerns have been expressed about the introduction of the right in the Island. Nevertheless it is considered that there are benefits to both workers and employers in the terms and conditions of employment being clear to both parties from day one.

**Link to Government Strategic Plan**

A Family Leave Rights Bill "To enable the introduction of shared parental leave, providing parents with a more flexible option of sharing care for young children" was listed in the Island Plan Interim Update published in June 2022 (See page 24):

<https://www.tynwald.org.im/business/opqp/sittings/20212026/2022-GD-0045.pdf>

**Link to Department/Statutory Board/Office Aims and Objectives**

Page 52 of the Department for Enterprise's Departmental Plan lists the Island Plan objective of "Creating the environment for vibrant economies where everyone, including entrepreneurs can flourish and recognising the important role they play in making the Isle of Man an attractive place to live, work and invest" with the actions to "Continue the employment law review" and "Consult on family rights legislation" by December 2022.

**Responsible Departmental Member**

There is no Departmental Member responsible for employment law.

**Ministerial sign off**

I have read the Impact Assessment and I am satisfied that the balance between the benefit and any costs is the right one in the circumstances.

Signed by the Responsible Minister

..... Date:

**SUMMARY: ANALYSIS AND EVIDENCE****IMPACT OF PROPOSAL****Resource Issues - Financial (including manpower)****Description and scale of monetised cost?**

Time off work

*Time off work to accompany partner to antenatal appointments*

The economic impact of this measure will depend on whether the measure is paid or unpaid.

Nevertheless, if it is assumed that the Isle of Man replicates the same provisions as in the UK, the time off would for two occasions for no more than 6 and a half hours each.

The number of births per year in the Isle of Man since 2011 ([taken from the Health and Social Care data pages on the IOM Government website](#)) are listed here:

Year	Number of Births
2011	938

2012	890
2013	859
2014	805
2015	785
2016	758
2017	753
2018	717
2019	710
2020	660
2021	675
2022	499*

\*2022 figures for up until end of Oct 2022.

So, if we take the birth figures for 2021 as an example, if we assume that the partners of the mothers of those children are all employed we can assume that a maximum of 675 partners would have to be away from work for 13 hours (6.5 hrs x 2) per pregnancy. Therefore 8,775 working hours would be lost by Manx businesses. Even if such time off was unpaid, there would undoubtedly be some disruption to businesses in having to let staff go off on leave – however it is difficult to quantify that cost.

If the time off was *paid*: using the figure of 38 average hours worked from the 2020 Earnings Survey and the figure of £788 gross average weekly earnings from the same survey, the cost of paid leave to IOM businesses and other employers in totality could be a maximum of £181,965 per year.

A number of caveats for the above figure should be noted:

- (a) Not every partner might take the two occasions they are entitled to;
- (b) It is unlikely that an ante natal appointment in the IOM would take 6.5 hours – perhaps half that time would be more likely – if that was the case the cost would be £90,000 per year.
- (c) It may be that some businesses already offer unpaid time off for employees to attend their partner’s antenatal appointments, so there would be less of an impact.

*Time off work to adoption appointments*

The following information on numbers of adoptions in connection with the IOM was provided by the Children and Families Division in Manx Care:

Number of children adopted on and off Island 2015- 2022	
Category	Number
Children placed in the IOM by off Island adoption agencies	7 (in 5 households)
Children from IOM placed for adoption in IOM	9
IOM children adopted off Island	2

So, over the course of 7 years 16 children have been adopted by individuals in the IOM, an average of just over 2 per year. It is assumed that in most cases each adoption would be by a couple rather than single person, so it can be assumed that perhaps 6 people per year might be taking time off for adoption appointments. Though recent changes to adoption aim to make the adoption process easier, it is unlikely that there would be a significant increase in the numbers for adoption.

In the UK, there is a right to paid time off for adoption appointments for one individual and for unpaid time off for a partner that is jointly adopting a child. In the case of the right to paid time off there is entitlement for a maximum of 5 appointments at a maximum of 6.5 hours each.

In the case of the right to unpaid time off for a partner, there is entitlement for a maximum of 2 appointments at a max of 6.5 hours each.



Again, though, given the small scale of adoption in the Island, the right is unlikely to lead to significant economic effects for the Island as a whole.

### *Shared Parental Leave*

The Shared Parental Leave proposals enable 52 weeks of leave to be taken by a mother and father to care for a child in the first 12 months of their life. This means that both a mother and father may take up to 52 weeks of leave in a combination of their choice, rather than a mother being entitled to 52 weeks leave and a father entitled to only 2 weeks' leave. So – fathers will potentially be entitled to more than 2 weeks' leave, but there is a corresponding reduction in the mother's leave. What this means is that, while there will be no greater impact on the IOM economy overall in terms of working hours "lost" to business, there will be some form of cost to businesses given that fathers will now be able to take more leave and therefore there may be disruption to businesses in terms of having to fill in for staff. The cost of this is however hard to quantify in a meaningful way.

It should be noted that when the UK introduced Shared Parental Leave it listed net employer costs of £17.1 million per year in its impact assessment:  
[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/290066/bis-14-657-modern-workplaces-shared-parental-leave-impact-assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/290066/bis-14-657-modern-workplaces-shared-parental-leave-impact-assessment.pdf)

Modifying this figure for inflation and relative population indicates that a comparable estimate for the cost of shared parental leave to Isle of Man businesses collectively in 2022 is £31,000 per year.

### *Current allowance expenditure*

The figures for IOM maternity and paternity allowance claims between 2017 and 2021 are as follows.

Year	MA	PA
2017	816	252
2018	779	262
2019	768	274
2020	747	224
2021	747	243

IOM Government expenditure on maternity, paternity and adoption allowances from 2000 to 2022 can be found [here](#).

The figures are as follows for 2022:

<b>Allowance</b>	<b>Expenditure for April 2021-March 2022</b>
Maternity	£3,521,000
Paternity	£10,000
Adoption	£84,000

Maternity, paternity and adoption allowance is payable for up to 39 weeks, and paid at 90% of earnings up to a maximum of £179.85 per week<sup>1</sup>.

It should once again be noted that the introduction of shared parental bereavement leave allowance is unlikely to make a significant difference to the allowance expenditure figures as it is likely that the system of shared parental leave that will be introduced simply re-apportions existing allowance expenditure from maternity, paternity and adoption leave.

### *Parental bereavement leave*

<sup>1</sup> From April 2023 the maximum rate of allowance for maternity, paternity and adoption allowance has increased to £210 per week.

In the UK there is a right to statutory pay for time off, but in the IOM there is no statutory pay. Though the possibility of a parental bereavement allowance has been discussed with Treasury officers no firm plans have been made. Though it should be noted that some women who suffer miscarriages may take some time off any way but use sick leave (and potentially incapacity benefit).

If there is no allowance the financial cost of such a right on the Isle of Man's economy would be limited to the lost hours of labour and disruption for businesses.

Again, it is difficult to calculate this cost. It should be noted, however, that the numbers of children under the age of 18 that die every year is small:

Year	Deaths aged 0-19
2020	5
2019	2
2018	5
2017	1

Figures from <https://www.gov.im/about-the-government/departments/cabinet-office/public-health/health-intelligence/mortality-reporting/>

In terms of number of stillbirths and miscarriage:

#### *Miscarriage*

It should be noted that, unlike in the UK, the provision will extend to stillbirths and miscarriages. According to the [NHS](#), it's estimated that, among those that know they are pregnant, 1 in 8 pregnancies end in miscarriage and that many more miscarriages occur before a person is even aware they're pregnant. The [Miscarriage Association](#) estimates that 1 in 5 pregnancies end in miscarriage, "probably around a quarter of a million in the UK every year".

If we adjust for the population size of the Isle of Man, assuming that 1 in 5 pregnancies end in miscarriage, the 250,000 figure equates to 300 miscarriages a year.

The devolved Northern Ireland Government recently published a [consultation](#) on the extension of parental bereavement leave to cover miscarriage in which it stated that, on the basis of the NHS estimate of 1 in 8 pregnancies ending in miscarriage per year, 3000 miscarriages occur in NI per annum.

The Northern Ireland estimate would equate to 120 miscarriages occurring each year in the IOM.

#### *Stillbirth*

Provisional [data for 2021 from the ONS in the UK](#), shows that there were 2628 stillbirths. If we adjust this figure for the IOM's population size, this equates to around 3 stillbirths per year. Again, if we assume two partners take a full 2 weeks' leave, this would equate to 12 weeks' per year.

So from the figures available it can be estimated that there might be between 128 and 308 miscarriages, stillbirths or child deaths per year that would be covered by the right to parental bereavement leave.

Assuming both parents take 2 weeks leave, this means that between 512 and 1232 work weeks might be "lost" each year.

However it may be that not all parents choose to take the leave in every case, particularly as there will be no statutory pay for the right.

#### *Keeping in touch days*

The legislation makes some minor changes to ensure that an individual may be able to work what are known as "keeping in touch" days: i.e. a certain number of days that an individual may work while on maternity leave without bringing their maternity leave to an end. Though small, this is likely to have a positive, rather than a negative effect.

### Whistleblowing

#### *Public interest test*

The likely effect of introduction of the public interest test for protected disclosures would be to reduce the number of likely whistleblowing claims at the Employment and Equality Tribunal. Though it is difficult to quantify the financial impact of this, it is therefore likely to reduce the time and cost for businesses and other organisations (including the public sector and the Tribunal) in dealing with complaints about detriment or dismissal as a result of whistleblowing.

#### *Vicarious liability*

Currently the Employment Act 2006 provides that a worker has the right not to be subjected to any detriment only by his or her employer as a result of a protected disclosure. In the UK this has been extended so that the whistleblower may not be subjected to detriment by a co-worker or "an agent" of the employer. Employers are therefore "vicariously liable" if a co-worker or agent subjects the worker who has made a protected disclosure to detriment. The proposal introduces vicarious liability.

Again, it is difficult to quantify the effects of this change. It is the case that it may make employers more cautious in dealing with whistleblowing cases, and it may be that it might make a few whistleblowing complaints more likely. It is however unlikely to have a significant impact on the IOM economy as a whole.

#### *Removal of "good faith" provision*

Currently in the majority of cases of protected disclosure in the Island a worker is expected to make a disclosure in good faith.

In the UK courts have held that where the predominant motive of the individual making the disclosure was not directed at remedying one of the wrongs listed in section 43B of the ERA 1996, but was instead for some ulterior purpose, the disclosure is unlikely to have been made in good faith.

Though the requirement that a disclosure is made good faith is to be removed, at the same time there will be an ability for the Tribunal to reduce compensation if it is considered that the disclosure was not made in good faith.

The financial impact of this change, if there is an impact, is likely to be minor. The removal of the good faith requirement may encourage a few more complaints to be made to the Tribunal. On the other hand, there will be an ability by the Tribunal to reduce any award if the disclosure is not made in good faith.

#### *Provision to make clear when a protected disclosure has been made*

This proposal aims to require that a worker should make it clear to their employer that a protected disclosure is being made. This may have the effect of reducing the number of complaints about detriment or dismissal as a result of protected disclosures, but it is unlikely to have a significant impact from an economic perspective.

#### *Interim relief*

The proposal is that a mechanism whereby it may be ordered by the Tribunal that a complainant is provided with "interim relief" by way of, e.g., continuance of contract of employment. Interim relief is rarely used in the UK, so it is unlikely to make a huge difference economically, though it may be that some businesses have to spend more money contesting claims for relief.

This is likely to be used rarely, so it is unlikely that it will make a significant impact. However the IOM Chamber of Commerce's comments on this from the consultation should be noted:

“As a remedy, interim relief is expensive for employers to defend as it requires a time-intensive and fast response, and could also mean that a claimant remains on full pay until the final disposal of their claim many months into the future, even if the Claimant ultimately loses at the final hearing. We submit that, as the cost to employers could be onerous if such legislation is introduced, that clear guidance should be issued as to the exceptional circumstances in which such orders are made. Consideration should also be given as to what remedies or redress are available to employers that are forced to defend meritless proceedings and incur unrecoverable costs as a result.”

Written statements

The amendment in the Bill will make written statements of employment particulars a “day one” right for all employees. It is further intended that secondary legislation will extend the right to written statements to workers as well as employees and make changes to the information that employers need to set out in the statements.

The UK made these changes in 2018 and in the [Impact Assessment](#) for the changes, the net annual cost to UK business in their totality was listed as £20.4 million (note that these are the overall estimated net cost for extension of the right to a written statement to all workers *in addition to* making it a day one right – the present Bill only deals with the “day one” right). Adjusting for the size of the IOM leads to an estimated cost to IOM business across the economy of £25,000 per annum.

It can be argued that there are financial benefits arising from the proposed changes in that providing clear details of employment terms and conditions will minimise disputes between employers and workers. However such financial benefits are difficult to quantify.

Likely Financial Costs	
	Average Annual (excluding one off)

Likely Financial Benefits	
One off	Average Annual (excluding one off)

These are covered in the section above.

Description and scale of non-monetised cost? i.e. social

These are covered in the section above.

Does the proposal comply with privacy law? Please provide a brief statement as to any issue of privacy or security of personal information

In relation to privacy – some of the provisions in the Bill relating to family leave presuppose that workers/employees may be providing to their employers information of a personal nature regarding pregnancy and medical matters, e.g. in relation to parental bereavement. However these are not likely to be over and above what employees/workers provide to employers in relation to absence for sickness currently and are therefore not supposed to be significant.

Which Business sectors/organisations will be impacted, if any, and has any direct consultation taken place?

All employers will be affected by these proposals, in the private sector, the public sector and the third sector. DfE undertook 3 consultations which covered these proposals over summer 2022:

<https://consult.gov.im/economic-development/family-leave-rights/>

<https://consult.gov.im/economic-development/whistleblowing-legislation/>

<https://consult.gov.im/economic-development/regulation-of-zero-hours-contracts/>

**SUMMARY: COMPLIANCE**

Does the proposal involved processing/ storing personal data? If yes, has a Data Protection Impact Assessment been carried out?

The proposals will require businesses and other organisations to process and store personal data (e.g. details of whether or not an individual has a child, the name of an employee’s partner). However the level of data is not significantly higher than the details already held by those businesses and organisations.

Has an Equalities Impact Assessment been carried out?

Yes.

Has a Climate Change Impact Assessment been carried out?

No. However it is not considered that the proposals have a climate change impact.

Has Treasury Concurrence been given for the preferred option?

Date of Treasury Concurrence: 14 June 2023

**Key Assumptions / Sensitivities / Risks**

Assumptions

Much of the financial impact of the proposals has been derived from impact assessments by the UK Government on similar proposals. Estimates of economic impact will rely on the extent to which those assessments were accurate.

DfE has attempted to minimise the number of assumptions by consulting on the proposals.

Sensitivities/risks

*Time off and family leave rights*

As most of the proposals will require implementation through secondary legislation, the success of the rights may depend to an extent as to how the detail of the “rules” are laid down in that legislation. E.g. the IOM Chamber of Commerce has raised the concern that shared parental leave will be complex to administer.

It should also be noted that one of the key issues relating to parents taking leave is the extent to which they can access adequate allowance/pay. It is the Treasury, rather than DfE, that is responsible for maternity, paternity, shared parental leave allowance etc.

As has been noted above, it is widely commented that the UK model for Shared Parental Leave has only been limited in its success. It is however difficult to properly assess as the UK Government has not yet published any review of the system. There are however independent reports, e.g. [Chapter 4 of the House of Lords Report – Children and Families Act 2014, a Failure of Implementation](#).

*Whistleblowing*

Support for all the whistleblowing proposals was identified in the consultation. It should be noted that the proposals present a balance: some of the proposals strengthen the legislation for the worker on the one hand (e.g. vicarious liability and removal of good faith provision), while other proposals (e.g. the public interest test) clarify the legislation for employers.

Approximate date for legislation to be implemented if known

Assuming, that the Bill completes its progress through the Branches and receives Royal Assent, it is

likely to be spring 2024 when Assent is granted.

Once it is brought into operation it will require new Regulations on time off work, shared parental leave and parental bereavement leave to be approved by Tynwald. It is unlikely they will come into force until spring/summer 2024.

Most of the whistleblowing provisions will be able to be brought in immediately once Royal Assent is obtained, so can come into force in spring 2024. However the regulations concerning reports by prescribed persons will require Tynwald approval and it is likely therefore that it will be summer 2024 before they come into force.

### **SUMMARY: CONSULTATION**

Consultation in line with Government standard consultation process Yes

#### Date

1<sup>st</sup> Consultation: June to September 2022 2<sup>nd</sup> Consultation: N/A

#### Summary of Responses:

The summary of responses regarding family leave, whistleblowing and zero hours contracts can be found here:

<https://consult.gov.im/economic-development/family-leave-rights/>

<https://consult.gov.im/economic-development/whistleblowing-legislation/>

<https://consult.gov.im/economic-development/regulation-of-zero-hours-contracts/>

## EVIDENCE BASE

Use this space to set out any further evidence, analysis and detailed narrative from which you have generated your policy options or proposal.

### *Time off and family leave rights*

IOM Government Open Data on Health and Social Care –

<https://www.gov.im/about-the-government/government/open-data/health-and-social-care/>

Tynwald Select Committee on Population Rebalancing -

<https://tynwald.im/spfile?file=/business/opqp/sittings/20212026/2022-PP-0168.pdf>

UK Government Shared Parental Leave Impact Assessment, March 2014–

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/290066/bis-14-657-modern-workplaces-shared-parental-leave-impact-assessment.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/290066/bis-14-657-modern-workplaces-shared-parental-leave-impact-assessment.pdf)

UK House of Commons, oral evidence on “Fathers in the Workplace”, November 2017 -

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/women-and-equalities-committee/fathers-and-the-workplace/oral/74379.html>

“Missing: reform of Shared Parental Leave”, briefing by Maternity Action UK–

<https://maternityaction.org.uk/wp-content/uploads/Missing-reform-of-SPL-v2-23-08-22.pdf>

IOM Government expenditure on maternity, paternity and adoption allowance –

<https://www.gov.im/media/1368109/benefit-claims-expenditure-2000-to-2022-open-data-070722.xlsx>

IOM Government, mortality reporting figures –

<https://www.gov.im/about-the-government/departments/cabinet-office/public-health/health-intelligence/mortality-reporting/>

NHS UK webpages on miscarriage - <https://www.nhs.uk/conditions/miscarriage/>

UK Miscarriage Association website - <https://www.miscarriageassociation.org.uk/media-queries/background-information/>

Northern Ireland Department for the Economy, Consultation on Miscarriage Leave and Pay, October 2022–

<https://www.economy-ni.gov.uk/sites/default/files/consultations/economy/public-consultation-miscarriage-leave-and-pay.pdf>

### *Whistleblowing*

Tynwald Select Committee on Whistleblowing -

<https://tynwald.im/spfile?file=/business/pp/Reports/2020-PP-0199.pdf>

UK Government Explanatory Notes on Protected Disclosure provision in the Enterprise and Regulatory Reform Act 2013 –

<https://www.legislation.gov.uk/ukpga/2013/24/notes/division/5/2/7>

Decision of the Employment and Equality Tribunal, Ranson v Department of Health and Social Care, EET, 2021/20 –

<https://www.judgments.im/content/J2943.htm>

### *Zero Hours Contracts*

Chief Minister’s Zero Hours Contracts Committee - <https://www.gov.im/media/1366407/chief-ministers-zero-hours-contracts-committee-report-2019.pdf>

UK Government Impact Assessment on extending right to a written statement –  
[https://www.legislation.gov.uk/ukia/2019/110/pdfs/ukia\\_20190110\\_en.pdf](https://www.legislation.gov.uk/ukia/2019/110/pdfs/ukia_20190110_en.pdf)

[UK Office for National Statistics, Births in England and Wales, 2021](#)