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The Manx Model Provides a Brexit Template



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The Manx Model Provides a Brexit Template

Manx employment lawyer John Aycock looks ahead to a post Brexit UK and sees a potentially serendipitous outcome for our local labour laws.

One cannot help but observe that the Isle of Man's current Protocol 3 relationship with the European Union provides an enticing model for a post Brexit United Kingdom. Enjoying some of the single market and free movement benefits without the financial, constitutional and law making obligations that EU membership brings is likely to be the starting point for Theresa May and her negotiating team. Time will tell whether they can reach that goal.

The Isle of Man's legislative model is a small snapshot of how an 'independent' UK might shape up. For years, the Isle of Man has been able to cherry pick the EU driven laws enacting only those which Tynwald considers beneficial to a small jurisdiction. A good illustration of this is the make-up of the Island's labour laws. Discrimination rights and family leave are now well established in our employment law yet other EU derived law such as removing the cap on discrimination awards, the working time regulations and automatic employee rights on transfers of businesses (TUPE) have not been enacted here. The UK has had no choice but to incorporate such EU Directives into its primary law.

Being optimistic, a situation might arise whereby not only does the Isle of Man provide a good model for the UK's new relationship

with the EU but we ourselves may benefit from the UK's inevitable scrutiny of its own EU mandated law. Let me explain how this might transpire in the employment law field. UK commentators are already focusing on the implications for labour law post Brexit. The vast majority of such law is good common sense and would form part of any responsible democracy but some EU Directives have irritated UK business, for instance the Agency Workers Regulations 2010 appear to be unpopular, recent European Court of Justice decisions extending holiday pay entitlement were poorly received by UK employers and TUPE itself continues to spawn complexity, the occasional unintended consequence and some commercial discontent.

Now the UK will clearly not repeal all such law, not least because continuing to enjoy a trading relationship with the EU might well require substantial compliance with such EU based law; just as Switzerland and the EEA countries have negotiated in their trade agreements with the EU. So the far more likely scenario is that post Brexit UK legislators will modify, rather than excise, some of the less popular Brussels inspired provisions. For instance commentators predict they might tweak some of the recently extended holiday pay rights and perhaps water down the effect of TUPE to give business the ability to harmonise terms and conditions after a transfer of a business, while preserving the basic right of automatic transfer of employment.

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These are areas that might interest future Isle of Man legislators. Our lawmakers could review a wider menu of EU-lite laws expressed in the legislative concinnity of a well resourced jurisdiction. Less onerous new UK transfer law might for instance tempt Tynwald to dip its toe into the hitherto overly cold TUPE waters. Or perhaps a more business-friendly collective redundancy consultation (not currently part of Manx labour law) might attract Tynwald's attention. And while legislative autonomy and the specialist requirements of a small jurisdiction must remain paramount, a certain harmony with new diluted UK labour laws might assist the Island as we sit on the UK's coattails during its negotiations of new trading arrangements with worldwide partners.

So perhaps in time the UK's anticipated moderate overhaul of its EU inherited employment law (conducted with an eye on the Manx model) will be of great interest to this small jurisdiction. The UK's aim will be to enjoy the best of both worlds by maintaining all the necessary and sensible employment protection rights to preserve stability and allow continued trading with the EU bloc while trimming some of the less popular and too restrictive EU driven labour law rights. The Isle of Man and other Crown Dependencies will share that aim.

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