



A Guide to Work Permits

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Introduction

The Control of Employment Act 1975 together with the Regulations and Orders made under the Act provide the statutory framework under which the Department of Trade and Industry operates and enforces the work permit system.

Work permits were designed as a means of protecting employment opportunities for local (Isle of Man) workers. The system allows employers to employ individuals who are not Isle of Man workers, provided that there are no suitable Isle of Man workers available to fill those specific roles.

An application for a permit is made by an employer to employ an individual to carry out a particular role or else by a self-employed person. In each case, where successful, the permit will be granted for a set period. Where necessary, an application for renewal of a permit can also be made.

The booklet is structured as follows:

- Section 1 of this booklet sets out the relevant legislation;
- Section 2 sets out various employments which are exempt under the legislation;
- Section 3 sets out some of the Department's general policies and the administrative process for obtaining a work permit.

Terms used in this booklet are explained on the next page.

Note that persons who are not EEA nationals are likely to be subject to control under the Immigration Acts (of Parliament) and may require a work permit granted under the terms of *the Overseas Labour Scheme* whilst persons who are not EEA nationals granted leave to enter the Isle of Man as full-time students may apply for work permits under *the Overseas Students Scheme 2006*. This booklet is not concerned with either Scheme though contact information is to be found at section 1.14.

The booklet is written in general terms and is not intended to be a complete or authoritative statement of the law. Only the official wording of Acts, Regulations and Orders, and the interpretation given by the Courts, are authoritative. Copies of the legislation are available from www.emplaw.gov.im.

No responsibility can be accepted for errors or omissions, or their consequences.

Terms used in this booklet

1975 Act	the Control of Employment Act 1975
Committee	the Work Permit Committee (see 3.3)
Department	the Department of Trade and Industry of the Isle of Man Government
EEA national	a national of an EEA state ¹ or Switzerland
employee	the person employed or intended to be employed (including a self-employed person)
employer	the person by whom the employee is or is intended to be employed (in the case of a self-employed person, references to the employer are to that person)
Isle of Man worker	see 1.3
work permit	a permit granted by the Department under the 1975 Act authorising the employment of the person named in it in the employment specified in it

¹ The EEA states are the 27 member states of the European Union (Austria, Belgium, Bulgaria, Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Republic of Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom) and Norway, Liechtenstein and Iceland. Although Switzerland is not an EEA state, its nationals have the same rights to live and work in the Isle of Man as EEA nationals.

1. The Law regarding work permits

1.1 The relevant legislation

The relevant legislation is as follows:

- The Control of Employment Act 1975;
- The Control of Employment (Non-Resident Directors) Exemption Order 1988;
- The Control of Employment (Court Officers) Exemption Order 1989;
- The Control of Employment Regulations 1993;
- The Work Permits (Fees) Order 2004 (made under the Fees and Duties Act 1989)
- The Tribunals Act 2006;
- The Control of Employment (Exemptions) Order 2009;

Copies of the legislation are available from www.emplaw.gov.im.

1.2 Requirement for work permits.

Except in the case of a small number of occupations (see 1.4), anyone who is not an Isle of Man worker (see 1.3) requires a work permit to take up employment (including self-employment). In most cases the legislation only applies to EEA nationals who are not subject to control under the Immigration Act 1971 (of Parliament). Note that the legislation applies to United Kingdom nationals (i.e. British citizens) in the same way as other EEA nationals.

For persons who are not EEA nationals there is a separate and quite different work permit scheme called the "Overseas Labour Scheme" (see 1.14).

1.3 Who is an "Isle of Man worker"?

An "Isle of Man worker" is an individual:

- who was born in the Isle of Man;

- who has been ordinarily resident in the Isle of Man for at least 10 consecutive years;
- who has been ordinarily resident in the Isle of Man for at least 5 consecutive years and not having lived elsewhere more than once in the following 15 years; (residence in the Isle of Man before 1963 does not count for this purpose;)
- who is married to an Isle of Man worker;
- who has been married to an Isle of Man worker, has lived in the Isle of Man for at least 3 years immediately before becoming widowed or divorced and continued to live in the Isle of Man thereafter;
- who is a child of an Isle of Man worker who, at the time of the child's birth, was serving, or married to a person serving, in the armed forces;
- who is a person one of whose parents was born in the Isle of Man, where that parent was ordinarily resident in the Isle of Man for 5 consecutive years immediately after their birth; or
- who, whilst ordinarily resident in the Isle of Man, has been receiving full time education either in the Isle of Man or elsewhere; (a person who ceases to be resident in the Isle of Man ceases to be an Isle of Man worker under this head.)

1.4 Employments where permits are not required

There are certain employments which do not require a permit. These are set out at section 2 of this guide.

1.5 Application for a work permit

Application for a work permit is made to the Department by the employer (in the case of a self-employed person, by him- or herself). The information to be provided is set out in the application form.

An application for a work permit must be accompanied by the prescribed fee, currently £25 per application.

N.B. A work permit is granted for a specified employment and period. Therefore an employee cannot change employment unless the new employer obtains a fresh work permit.

1.6 Matters which *must* be taken into account

The Department must take following matters into account in deciding whether or not to grant a permit:

- the likelihood of there being suitable Isle of Man workers available for the employment concerned;
- the likelihood of suitable Isle of Man workers becoming available for the employment concerned within 12 months, bearing in mind general employment prospects;
- the family circumstances of the employee, provided that he or she has been working in the Island on a permit for at least 2 years;
- any criminal convictions, in the Island or elsewhere, of the employee; and
- if the employee is a craftsman in the construction industry, whether he or she is registered under the Department's *Scheme for the Certification of Craftsmen 1990*.

For further information as to how the Department interprets and applies these criteria in practice see 4.1.

1.7 Matters which *may* be taken into account

The Department is allowed to take the following additional matters into account in deciding whether or not to grant a permit:

- the employee's immigration status;
- the number of persons in the employee's family, the number of additional relatives coming to live in the Isle of Man and the likelihood of the numbers involved causing a problem to the Island;
- the character of the employee and of members of his or her family (including any conviction of a member of the family of a criminal offence in the Isle of Man or elsewhere);
- the medical history of the employee and of the members of his or her family;
- the employment history of the employee and his or her spouse;

- the percentage of Isle of Man workers already working for the employer;
- whether the wages and conditions offered are less favourable than those normally applying in the particular industry in the Isle of Man;
- the failure of the employee or the employer to pay National Insurance contributions;
- a change in industrial conditions whereby a number of Isle of Man workers have become available and suitable for the employment;
- whether or not the employer has made Isle of Man workers aware of the employment;
- whether a refusal would be harsh or oppressive in relation to the employee.

For further information as to how the Department interprets and applies these criteria in practice see 4.5.

1.8 Permits which are granted automatically to spouses

The Department must grant a one year permit (sometimes known as a "section 3A permit") on application to anyone who is married to a permit holder or an exempt person. The permit is renewable annually provided that the permit-holder's spouse is still working on a permit or an exempt person and the couple are still married.

Note that there is no entitlement to a 3A permit where the spouse is exempt because he or she is in temporary employment or because of a temporary exemption (see 1.4).

1.9 Renewals

Where necessary, an application for renewal of a permit can be made by the employer, or in the case of a self-employed person, by that person. (A renewal is made by completing the tear off section on the original permit).

An application for renewal should be made not less than 28 days before the expiry of the permit. The application must be accompanied by the prescribed fee, currently £25 per application.

1.10 Revocation of a permit

Work permits can be revoked in the following three circumstances:

- where the holder commits an offence punishable by custody, or an offence which makes his employment in the Isle of Man undesirable;
- where the application for the permit included a false statement or omission and the Department would not have issued the permit had the true position been known;
- where the holder fails to pay National Insurance contributions.

1.11 Refusal of work permit

Any person aggrieved by a decision of the Department, eg. to refuse a permit, may appeal to the **Work Permit Appeal Tribunal**.

The Tribunal is independent of the Department and is administered by the Tribunals Service. It consists of a legally qualified Chairman and two side members selected from panels representing, respectively, employers and self employed persons; and employees. For contact details see 6.

The right of appeal is explained in the letter which notifies the refusal or revocation of a permit. Written notice of an appeal should be given to the Tribunal Clerk within 7 days of the relevant decision.

There is a further right of appeal, but on a point of law only, to the **High Court**. The usual period allowed for bringing such an appeal is 6 weeks. Anyone considering an appeal from a decision of the Tribunal should take legal advice.

1.12 Offences

It is an offence, punishable with a fine up to £2,500 or custody for up to 3 months or both:

- for a person who is not an Isle of Man worker to undertake, or become or be engaged in, any employment in the Isle of Man; or
- for a person to employ any person who is not an Isle of Man worker in any employment in the Island;

except under and in accordance with the terms and conditions of a work permit.

An employer has a defence if he genuinely believed that the person he or she employed was an Isle of Man worker and took all reasonable steps to verify that belief.

It is an offence, punishable with custody for up to 6 months a fine up to £5,000, or both, if any person —

- knowingly or recklessly makes a false statement for the purpose of obtaining a permit; or
- impersonates a person who has been granted a permit; Act; or
- misrepresents to an employer that he or she is the holder of a permit or does not require a permit.

For this purpose 'employment' includes self-employment.

1.13 The work permit inspectors

The 1975 Act provides for enforcement to be carried out by authorised officers of the Department, referred to as 'inspectors'. These officers have statutory powers to enter any premises, to question persons and to require relevant documents.

Obstructing an inspector, or refusing to answer questions or to provide required information, is an offence punishable with a fine up to £5,000.

Inspectors are required to carry identification and individuals are advised to request production of such before allowing access.

As to the Department's enforcement policy see 4.8.

1.14 Permits for non-EEA nationals

Persons who are not EEA nationals are likely to be subject to control under the Immigration Acts (of Parliament) and may require a work permit granted under the **Overseas Labour Scheme**. Note that this scheme is due to be replaced in 2010 by the Points Based System.

Persons who are not EEA nationals granted leave to enter the Isle of Man as full-time students may apply for work permits under the **Overseas Students Scheme 2006**. Students are permitted to work up to 20 hours a week during term time, but there is no restriction as to the hours they may work during holidays. Applications for a permit are subject to £25 fee.

Enquiries regarding immigration matters should be made to the Isle of Man Immigration Office. Enquiries regarding the Overseas Labour Scheme and the Overseas Student Scheme should be made to the Secretary to the Work Permit Committee. For contact details see 6.

2. Employments where permits are not required

2.1 Exempted employments

There are certain employments which do not require a permit, by virtue of —

- section 2(3)(a) of, and Schedule 1 to, the Control of Employment Act 1975;
- the Control of Employment (Non-Resident Directors) Exemption Order 1988;
- the Control of Employment (Court Officers) Exemption Order 1989;
- the Control of Employment (Exemptions) Order 2009 ("the 2009 Order").

These are set out below. Note that the 2009 Order has made important changes in respect of temporary and intermittent employments.

2.1.1 The criminality condition

None of the exemptions in the 2009 Order (and which are marked * below) applies to a person who has been convicted of an offence and sentenced (anywhere in the world) to a term of custody where —

- the sentence is excluded from rehabilitation by section 2 of the Rehabilitation of Offenders Act 2001 (e.g. custody for a term exceeding 30 months);
- the conviction is not a "spent" conviction for the purposes of that Act; or
- the employment in question is excluded from the operation of that Act (e.g. doctors, accountants).

Further information on the Rehabilitation of Offenders Act can be obtained from the Department of Home affairs (see "Contact details and further information" at 6).

2.2 Permanent employments

Work permits are not required in any of the following cases:

- employment as the Chief Constable or a member of the Isle of Man Constabulary;
- employment in the service of the Crown in right of the UK Government including any appointment made by Her Majesty, the holder of which is paid for money provided by Tynwald (e.g. the Lieutenant Governor, the Attorney General);
- employment in a diplomatic or consular capacity;
- a minister of religion;
- a registered dentist;
- a fully registered doctor;
- employment in a vessel or aircraft;
- self-employment of a purely cultural nature;
- *an officer of an international group in charge of the group's activities in the Island;.

(A "group" means a holding company and its subsidiaries (within the meaning of the Companies Act 1974); and an "international group" means a group comprising at least one company incorporated in the Island and at least one company incorporated in a country or territory outside the Island.)

- *employment as a voluntary worker (defined by reference to the exemption in the Minimum Wage Act 2001, which covers certain unpaid workers for a charity, a voluntary organisation, an associated fund-raising body or a statutory body).
- *subject to certain restrictions, employment by a branch or subsidiary being established in the Island of a business carried on elsewhere, or in a business being relocated in the Island from elsewhere. (See further at 2.6 below).

2.3 Temporary exemptions: general rules

2.3.1 The 3 day general exemption

A person may be in employment in the Isle of Man for up to 3 days at a time without requiring a work permit. This is for a person who comes to the Island, carries out a specific job and goes away not to return. Separate periods of connected employment of less than 3 days are added together, and where the total exceeds 3 days a permit will be required. The 3-day exemption period covers all employments.

2.3.2 Administrative exemption

Upon request, the Department may grant an exemption for employment for more than 3 days where it considers there is good reason. Such an exemption will be authorised in writing.

The Department sometimes authorises temporary exemptions in the following cases:

- persons providing services to specific projects in the film industry which have been approved by the Department;
- employment during the TT festival.

2.3.3 The 10 day exemption *

A person may be in employment in the Island for up to 10 days a year without requiring a work permit except in the following cases:

- mobile catering;
- retail where the retailer does not have a permanent place of business in the Island;
- construction.

Note that any days where a worker is employed in the Island but not actually working (e.g. weekends) will count against the 10 days.

2.4 Temporary exemptions for international companies *

A company which is a member of an international group may employ persons who are mainly employed outside the Island for up to 48 days a year. Certain employments are excluded from the exemption and a company using the exemption must supply the Department with an annual return containing certain information.

A "group" means a holding company and its subsidiaries (within the meaning of the Companies Act 1974); and an "international group" means a group comprising at least one company incorporated in the Island and at least one company incorporated in a country or territory outside the Island;

The exemption does not apply to employment:—

- in the supply, in the course of a business, of food or drink;
- in retail where the retailer does not have a permanent place of business in the Island (and it does not apply to basic shop work);
- in construction operations;
- in tourist premises;
- in licensed premises;
- in the provision of personal care;
- in clerical work (that is, office work of a routine administrative kind);
- in cleaning work.

The exemption is subject to a condition that not later than 31st January in each year the employer provides the Department with a return in writing (which could be a simple spreadsheet) giving, in respect of each person who has been subject to the exemption in the previous year, the following information:

- the person's name;
- the number of days he or she spent in paid employment in the Island during that year;
- the nature of his or her work in the Island;
- whether the person is still employed; and
- to the best of the employer's knowledge, whether the person is still residing in the Island.

2.5 Specific temporary exemptions

The following categories of temporary and intermittent employment are exempt:

2.5.1 Non-resident non-executive directors

Non-resident, non-executive directors who visit the Isle of Man for not more than 3 days in any calendar month do not require work permits.

(This is intended to cover the situation where such a person comes to the Island e.g. to attend board meetings).

2.5.2 Temporary legal exemptions

The following do not require work permits:—

- employment as an acting Deemster;
- employment as a chairman or member of a commission, tribunal or inquiry established by Tynwald or by an enactment;
- employment as an inspector under any enactment. (This is intended to cover, for example, inspectors appointed on an ad hoc basis by the court under the Companies Act 1931 s.134, or by the Financial Supervision Commission under the Insider Dealing Act 1998 Sch.3, not permanent staff of a Department or Board.)
- employment as an arbitrator;
- employment as counsel or as a solicitor in proceedings in the Island;
- employment to assist the Attorney General or the Isle of Man Constabulary in relation to the investigation of any crime;
- other temporary employment in relation to any proceedings which have been or may be commenced before a court, tribunal or arbitrator in the Island, where the employed person is not ordinarily resident in the Island.

2.5.3 Commercial travellers

Employment as a commercial traveller for a non-Island trader for not more than 2 weeks at a time.

2.5.4 Employees undertaking training *

Employment for up to 48 days in a year where the work done consists only of undergoing training for the purposes of a business, public authority or voluntary organisation.

2.5.5 Clients or customers of Island businesses *

Employment for up to 48 days a year in connection with the supply of goods or services by a business in the Island to the employer or, in the case of a self employed person, to that person. ("Business" for this

purpose includes the ship and aircraft registries managed by the Department.) This exemption covers, for example, technicians who are sent to the Island in connection with orders placed with local engineering companies; and persons who are in the Island for the purpose of registering aircraft with the Island Registry.

2.5.6 Supply etc. of machinery *

Employment for up to 30 days a year in connection with the supply, installation, maintenance and repair of specialist plant, machinery or equipment, or training in its use. But the exemption does not apply where the necessary expertise or service is available in the Island.

2.5.7 Disaster recovery *

Employment for up to 48 days a year for the purpose of disaster recovery. Certain Island companies host disaster recovery facilities, such as data back up, for off Island businesses; the exemption allows staff from those businesses to come to the Island to access their data and implement recovery plans in the event of a disaster.

2.5.8 Media representatives *

Employment for up to 30 days a year as a media representative reporting on events of public interest.

2.5.9 Delivery workers *

Employment for up to 48 days a year in the delivery of goods from a place outside the Island to a place of business in the Island. This covers, for example, a UK company that makes a weekly delivery of goods to businesses in the Isle of Man that have placed orders with that company.

2.5.10 Coach drivers *

Employment for up to 48 days a year as a coach driver, provided that the vehicle is:

- registered outside the Island;
- can carry more than 8 passengers (in addition to the driver);
- is being used commercially for the carriage of passengers visiting the Island (otherwise than as a taxi).

2.5.11 Regulatory aircraft surveyors *

Employment for up to 48 days a year as an aircraft regulatory surveyor employed by the Department in connection with the Isle of Man aircraft register.

2.5.12 Employment in connection with conferences *

Employment for up to 30 days in a year in connection with any conference to be held in the Island. The exemption covers both the conference organisers and participants.

2.5.13 international organisations *

The order will exempt employment for a period of up to 30 days a year as a representative or an official of an international organisation, that is, an organisation of which 2 or more governments are members (for example the World Trade Organisation).

2.5.14 Theatrical and musical productions *

Employment for a period of up to 30 days a year in connection with any theatrical or musical performance (but not any film production) in the Island. The exemption covers employment as director, producer, actor, singer, dancer, musician or production crew.

2.6 Establishment of businesses from outside the Island etc.*

There is an exemption for employment which consists of establishing in the Island a branch or subsidiary of a business carried on elsewhere or relocating a business in the Island from elsewhere. The exemption is subject to a number of conditions:

- It only applies to a business being established or relocated from **outside** the Island (and so does not apply to new businesses being established from within the Island);
- It only applies to a business being so established or relocated after 1st January 2010;
- it does not apply to any of the excluded employments listed at 2.3.3 and 2.4 above;
- it may be claimed for up to 3 persons, or 10 per cent. of the persons employed in the business in the Island, whichever is the greater, subject to a maximum of 10 persons;

- the actual turnover of the business in the Island in the previous year (or, in the case of a business in its first year, the projected turnover) must not be less than £100,000 for each person employed in the business in the Island;
- not later than 31st January in each year the person claiming the exemption must provide the Department with a return in writing giving in respect of the previous year:
 - the name of each person in respect of whom the exemption was claimed;
 - the number of staff employed in the business in the Island; and
 - accounts or other information verifying that the turnover requirement was fulfilled.

3. Administration of work permits

3.1 How work permits are administered

The work permit system is administered by the Department.

The Department's work permit office is the contact point for permit applications. Each application is assessed and determined upon its merits on a case by case basis.

The Minister for Trade and Industry has delegated his powers to the Work Permit Committee (see 3.3), which in turn delegates some of those powers to civil servants in the Department, particularly the Secretary to the Committee.

The Minister has ultimate responsibility and, in particular, retains the right to make decisions in any cases.

3.2 The work permit office

The office aims to handle applications for work permits in a confidential and discreet way, as the information it deals with is often sensitive and of a personal nature.

Staff are available to provide assistance and to answer any questions. There is a work permit helpline whilst, in addition, personal callers are welcome though it is advisable to ring in advance to make a prior appointment. Persons that have any difficulty in communicating should contact the office (or ask a friend or helper to do so) in order that alternative arrangements can be made. The office can provide forms and information in alternative formats (large print, audio and Braille).

Application forms and other documents can be downloaded from the website. For contact details of the office and the website address see Section 6.

3.3 The Work Permit Committee

The Minister for Trade and Industry has delegated his power to make initial decisions on work permits to the **Work Permit Committee**. This Committee, which consists of a chairperson and two other members, has a wide knowledge of employment matters. Due to the large volume of applications it is impractical for the Committee to consider every case, and straightforward cases are dealt with on behalf of the Committee by its Secretary, acting under delegated authority.

The Committee operates within an overall framework laid down by the Minister. Further, economic data is issued to the Committee on a quarterly basis so that the criteria used to make decisions on granting work permits reflect the short and long term needs of the economy and the wider social needs of the Island.

In the majority of case the Committee will make a decision based on the paperwork alone. Where this is not the case the Committee may defer making a decision and invite the employer to the following meeting to make oral submissions.

3.4 Cases that are referred to the Work Permit Committee

The Committee deals with all applications which involve the following issues:

- borderline cases where criminal convictions are declared; (all serious cases may be refused without referral to the Committee;)
- where the employee has been convicted of a criminal offence for which a custodial sentence was imposed (except a serious case refused without referral to the Committee);
- where an offence (except certain traffic offences) has been committed in the Isle of Man since the granting of a work permit;
- where a written objection has been received (see s.5);
- where the employment is considered to be publicly or politically sensitive;
- where the Secretary considers that the employment should have been advertised.

The Committee also deals with all cases involving revocation of a permit, and such other cases as may be directed by the Committee from time to time.

3.5 Timescales

Application for a permit should be submitted at least 7 days before the date when the employment is proposed to begin. The employment must not begin until the application is approved and the permit has been issued.

An application for renewal of a permit **must** be made at least 28 days before the expiry of the permit.

Provided that the application form is properly completed and there are no unusual circumstances which need further investigation, it is usual for a decision to be made and the permit issued to the employer or self-employed person within 5 working days.

In certain circumstances the Department may verbally approve the grant of a work permit.

However, if a case is referred to the Work Permit Committee it may take longer than 5 days to deal with. Where an application is referred to the Committee for consideration, the employer will be notified by email (if an email address has been supplied).

3.6 Objections to the granting of a work permit

Where a written objection in respect of a particular application is received, and the case is not one which can be refused by the Secretary under delegated powers, it will generally be referred to the Work Permit Committee. The objection will be placed before the Committee with the application. The Committee will usually defer making a decision on the particular application and invite both the employer and the objector to its next meeting.

3.7 Appeal

The grant of a permit is subject to an appeal being made by a person aggrieved, eg. an Isle of Man worker who considers that the permit should not have been granted. An appeal must normally be lodged within 7 days of the date the decision is notified. If an appeal is made, there is always the possibility of the permit being rescinded by the Work Permit Appeal Tribunal

4. Guidance on departmental policy and practice

4.1 Advertisements

The Department will require information as to whether the position for which a permit is sought was advertised and, where appropriate, a copy of the advertisement.

It is the Department's policy that the following methods of advertising are required for applications as a minimum:

- executive and managerial positions: these must be either advertised in the local press or advertised with a recruitment agency and the JobCentre;
- non-executive roles: the positions must be either advertised in the local press or in the JobCentre.

Advertising at the JobCentre is free of charge.

All jobs must be advertised in English, though advertisements can be in other languages as well.

Advertisements must be fair and must not be tailored to suit a particular person. In addition, all advertisements must be lawful under the Employment (Sex Discrimination) Act 2000. (For further information on that Act see 6.)

4.2 Other documentary evidence that may be required

Where Isle of Man workers applied for the post but were considered unsuitable, the employer is required to provide brief details about the number of applications received from Isle of Man workers and the reasons why those workers are considered unsuitable.

If that information is considered insufficient, the employer may be asked to provide fuller details such as:

- evidence that the position been adequately advertised, including a copy of the advertisement;
- the job specification (which should be reflected in the advertisement).
- short-listing summary sheets;

- application forms or CVs of all Isle of Man workers who applied for the position, together with reasons why they were unsuitable;
- interview assessment sheets;
- the report of the chairperson of the interview panel.

The Department may ask an employer to re-advertise a position when a permit needs to be renewed.

4.3 Requirement for additional information

Applicants for certain positions will be asked to provide further evidence before a work permit is issued. For example:

- driving instructors - evidence of registration in the appropriate Isle of Man register will be required;
- childminders or providers of day-care for children – evidence of registration in the appropriate Isle of Man register will be required;
- taxi drivers – a copy of the public passenger vehicle driver licence will be required;
- security staff for licensed premises — evidence of registration in the the appropriate Isle of Man register will be required;
- persons offering acupuncture, tattooing, body-piercing or electrolysis — evidence of registration in the appropriate Isle of Man register will be required

4.4 Guidance regarding matters which *must* be taken into account

As noted at 1.6 above, the legislation obliges the Department to consider the following matters. Additional guidance as to how these are interpreted is set out after each matter.

4.4.1 The likelihood of there being suitable Isle of Man workers available for the employment concerned

In general terms, a person is taken to be "suitable" if he or she is capable of doing the job to the required standard; a person does not have to be the best person for the job.

An Isle of Man worker does not have to be unemployed to be "available". Someone who wishes to change employment, or is already

working for the employer and capable of being transferred or promoted, is treated as available. Where Isle of Man workers have applied for an advertised position, the employer is asked to provide brief details stating why those applicants are considered unsuitable. If that information is considered insufficient, the employer may be asked to provide fuller details in order to demonstrate the unsuitability of Isle of Man worker applicants (see further at 4.2).

A permit is more likely to be granted in respect of an occupation for which there is a shortage of qualified persons in the Island.

For self-employment, the Department will generally seek to establish if there is a demand for the proposed service and, if so, whether there are Isle of Man workers or existing businesses capable of providing it.

4.4.2 The likelihood of suitable Isle of Man workers becoming available within 12 months, bearing in mind general employment prospects

If the Department is aware of likely redundancies in one sector of the economy, then it might decide that no permits be issued for that sector, or that permits be issued only on a short-term basis.

The Department will not treat Isle of Man workers as "suitable" who plan to take training courses in the 12 months following an application for a permit and who might become suitable if they were to pass. They will only be considered as suitable once they have qualified.

4.4.3 The family circumstances of the employee, provided that he or she has been working in the Island on a permit for at least 2 years

A permit is less likely to be refused if the employee shows that he or she has a commitment to the Isle of Man such as:

- having a child or children already living in the Island;
- having been in steady employment; or
- having bought a home in the Island.

Account would also be taken as to whether a refusal would be harsh and oppressive (see further at 4.5.7).

4.4.4 Any criminal convictions, in the Island or elsewhere, of the person concerned

A criminal conviction does not necessarily mean that a permit will be refused; it depends on the nature of the offence and when it occurred.

For further information see 4.9

4.4.5 In the case of a craftsman in the construction industry, whether that person is registered under the Department's *Scheme for the Certification of Craftsmen 1990*.

The Scheme is designed to ensure that craftsmen in certain trades are suitably qualified to carry out work in their trade. In order to register under the Scheme, a craftsman must produce evidence of his or her training and competence. If a craftsman is not registered a permit will be refused. For further information see 6.

4.5 Guidance regarding matters which *may* be taken into account

As noted at 1.7 above, the legislation gives the Department a discretion to consider various matters. Additional guidance as to how certain of these matters are interpreted is set out below.

4.5.1 the employee's immigration status

Further information on immigration status is obtainable from the Isle of Man Immigration Office – for contact details see 6.

4.5.2 the percentage of Isle of Man workers already working for the employer;

In broad terms, if an employer shows that most of the current workforce is made up of Isle of Man workers, there is a better chance of a permit being granted.

4.5.3 whether the wages and conditions offered are less favourable than those normally applying in the particular industry in the Isle of Man;

A permit may be refused if the wages and conditions are below the standard normally expected in the type of employment concerned.

4.5.4 The failure of the employee or the employer to pay National Insurance contributions;

The Department may defer consideration of the application pending payment of any outstanding contributions.

4.5.5 A change in industrial conditions whereby a number of Isle of Man workers have become available and suitable for the employment;

The Department may take into consideration any general downturn in the economy or the position of any recently redundant Isle of Man workers when deciding whether to grant a permit, and may require the employer to re-advertise the position.

4.5.6 Whether or not the employer has made Isle of Man workers aware of the vacancy

The employer is expected to give Isle of Man workers the chance to apply for the employment concerned, normally by advertising. The Department takes into account the extent to which this has been done e.g. in the local press or in trade journals or through the JobCentre or an employment agency. The response from local workers and the reason for their rejection will also be noted. See also the Department's usual requirements regarding the advertising of vacancies, at 4.1.

4.5.7 Whether a refusal to grant or renew a permit will be harsh or oppressive in relation to the employee;

This criterion may in practice overlap with that at 4.4.3. The family circumstances of employee are taken into consideration.

4.6 Policy regarding duration of work permits

Permits in respect of the following are usually granted for a period of 12 months, except where a shorter period has been requested:

- the construction industry;
- employment agencies workers;
- shop assistants;
- hotel work including chambermaids (which term is to be taken as including any males carrying out similar duties);
- bar staff;

- waiters and waitresses.

Permits in respect of work which is predominantly of a managerial or supervisory nature may be granted for up to 5 years, depending upon the circumstances of the particular case.

4.7 Application fee

Payment of the prescribed fee (see 1.5 and 1.9) is required at the time the application is submitted. The fee is to cover administration and is not refundable if the application is refused.

The Department is able to accept payment by credit card (please ask when the application is submitted).

By prior arrangement and at the Department's discretion, accounts can be arranged for employers who submit frequent applications for permits.

4.8 Enforcement policy

The Department is responsible for ensuring that all persons and businesses in the Isle of Man comply with the legislation. To this end the Department has developed an enforcement strategy which is summarised as follows:

- The Work Permit Office will provide information and advice on the legislation for which it is responsible upon request.
- Advice from an officer will be put clearly and simply and confirmed in writing on request, explaining why any remedial action is necessary and over what timescale, and making sure that legal requirements are distinguished from best practice.
- The Work Permit Office has introduced a line management procedure to ensure that any breaches of legislation detected by its officers will be handled in a fair, equitable and consistent manner.
- All officers responsible for enforcing legislation may apply grades of enforcement action when they detect breaches. The grades are as follows:
 - provision of advice or information,
 - warning or formal caution, and ultimately
 - prosecution.

- The seriousness of the breach will determine the appropriate enforcement action to be taken, and in most cases the 3 steps of the hierarchy will be applied sequentially where recurrent breaches of the same provisions are detected i.e. a first breach will result in advice being given, a second breach will attract a warning or a formal caution and a third breach may result in a prosecution.
- Where officers detect more serious offences on the first occasion (such as those attracting fines of £2,000 or more, or custody or both) they may issue both advice and a warning or, on advice from the Attorney General's Chambers, a formal caution simultaneously.
- Where a serious breach involves such matters as (but not restricted to) significant safety issues, fraudulent intent, reckless disregard for the legislation or failure to obtain the necessary licence, registration, permit or authorisation before commencing business, then prosecution proceedings may be instituted in the first instance even where advice or formal cautions have not been issued previously.
- Where there are rights of appeal against formal action, advice on the appeal procedure will be clearly set out in writing at the time that action is taken, or as soon as possible thereafter.
- Each case will be considered on its merits and officers are given considerable discretion in determining the most appropriate enforcement action to apply. The fact that no advice or formal caution has been issued at the time of detecting any breach should not be regarded as preventing a prosecution from being instituted.
- Non-compliance with the legislation will be brought to the attention of both the Minister and the Work Permit Committee. Future applications by that employer may be referred to the Committee.

4.9 Criminal conviction checks

Police checks are not carried out automatically on work permit applications but may be carried out at any time. It is the responsibility of the employer to apply for a police check, and where any relevant convictions become evident the Department should be informed. An employer must apply directly to the Data Protection and Information Security Officer of the Isle of Man Constabulary (for contact details see 6).

A conviction which is treated as "spent" under the Rehabilitation of Offenders Act 2001 need not be disclosed. Any criminal conviction which is not "spent" under the Act must be declared on the application. Failure

to do so could result in prosecution or revocation of any permit already granted, or both (see 1.10). (For further information on that Act see 6.)

The Department itself may also seek to obtain a police check in certain circumstances, eg. where there are grounds for suspicion that an employee may have a criminal record, or where an offence believed to have been committed by the holder of a permit may require the permit to be revoked.

4.10 Status as an "Isle of Man worker"

On request, and on provision of all relevant information, by an employer or employee, the Department will give its opinion as to whether an employee is an Isle of Man worker.

However, it must be understood that such an opinion is not conclusive: only a ruling by the Tribunal or the High Court is legally binding.

5. Frequently asked questions

How much does a permit cost, and who has to pay it?

A prescribed fee of £25 is payable on submission of an application. It may be paid by either the employer or the employee.

How long does a permit take to process?

The work permit office has a target that 75% of work permit applications will be processed within 5 working days of receipt. An application referred to the Work Permit Committee will take longer.

I am an EEA national thinking of moving to the Island; do I need a work permit?

EEA nationals are normally free to move to the Isle of Man and take up residence without the need for permission. However, an EEA national wishing to take up employment (including self-employment) must obtain a work permit, unless he or she is an "Isle of Man worker" or the employment is exempt.

I am not an EEA national; do I need a work permit to work in the Island?

For individuals who are not EEA nationals there is a separate and quite different scheme called the Overseas Labour Scheme. For contact details see 6.

I have a criminal conviction; do I have to declare it?

Any criminal conviction which is not "spent" under the provisions of the Rehabilitation of Offenders Act 2001 must be declared on application. Basic information about that Act can be found on page 8 of the work permit application form.

What is a "section 3A permit"?

The spouse of the holder of a work permit, or of a person in exempt employment (except temporary employment), is entitled to be granted a one-year work permit (known as a "section 3A permit") on application by the employer. There is no entitlement to such a permit if the

A section 3A permit is renewable annually, provided that the conditions for the permit continue to be met.

Is a partner entitled to a "section 3A permit?"

No. This section only applies to married couples and not to partners. However, the Department will look sympathetically at applications for standard permits from partners (including same-sex partners) of holders of work permits.

I am an employer and have been asked to supply copies of applicants' CVs, which are confidential documents; do I have to supply them?

If requested by the Work Permit Committee, CVs of all applicants for the post must be submitted in order to establish whether any suitable Isle of Man workers applied for the position. Such a disclosure of personal data is permitted by the Data Protection Act 2002.

Can I start work without a work permit?

No. If an individual is not an Isle of Man worker, and the employment is not exempted, then he or she must not work in the Isle of Man except in accordance with a work permit.

I am changing jobs and currently hold a work permit; do I need a new work permit?

Yes. A work permit is limited to a specified employment by a specified employer. An employee may not take up employment with another employer without a new work permit.

I am hoping for a change of job with my current employer, does my employer need to apply for a new permit and advertise the position?

Yes. A work permit is limited to a specified employment by a specified employer. An employee may not take up a different job with the same employer, without a new work permit, and the same procedures must be followed (including advertising, where appropriate) as before.

I have to move a pregnant employee due to health and safety concerns – do I need a new work permit?

In certain circumstances an employer may need to provide alternative work for a pregnant employee who cannot continue in post due to health and safety concerns. In these circumstances full details should be supplied to the Department for consideration.

I am coming to work in the Island as an intermittent visitor, which in total will be more than 3 times; do I need to apply for a work permit?

Yes. Intermittent visitors must hold valid work permits for the times in which they are in the Island working. You can apply for a work permit to cover a 12 month period which will take in all your visits.

Can a permit be renewed?

If the employment is to continue past the date of expiry of the work permit, the employer (or self-employed person) must apply for renewal. It is not necessary to fill out a new application form; the permit contains a tear-off section which can be sent to the work permit office.

An application for renewal must be made not less than 28 days before the expiry of the permit. A fee of £25 is chargeable.

What are the penalties for not complying with the legislation?

It is a criminal offence for a person who is not an Isle of Man worker to work in the Island, or for a person to employ any person who is not an Isle of Man worker in the Island. Such an offence may be punished by custody for up to 3 months or a fine of up to £2,500, or both.

It is also an offence, punishable by custody for up to 6 months or a fine of up to £5,000, or both, knowingly or recklessly to make a false statement to obtain a work permit.

6. Contact details and further information

<p>(1) The Work Permit Office Department of Trade and Industry Hamilton House Peel Road Douglas IM1 5EP</p> <p>Tel.: 682393 (work permit helpline) Fax: 682388 Email: workpermit@dti.gov.im Web: www.gov.im/dti/employmentrights/workpermits.xml</p>	
<p>(2) The Secretary to the Work Permit Committee Address as (1) above Tel.: 682390</p>	<p>Note that the Secretary also deals with enquiries regarding the Overseas Labour Scheme and the Overseas Student Scheme</p>
<p>(3) The Work Permit Inspectors Address as (1) above Tel.: 682385 / 682386 E mail: inspectors@dti.gov.im</p>	

<p>(4) Clerk to the Work Permit Appeal Tribunal</p> <p>Tribunal Service Manager Isle of Man Courts of Justice Deemsters Walk Bucks Road Douglas Isle of Man IM1 3AR</p> <p>Tel: (01624) 682382 Fax: (01624) 685976 Email: ray.quinn@gov.im</p>	<p>The Tribunal hears appeals from decisions of the Work Permit Committee</p>
<p>(5) The Isle of Man Immigration Office</p> <p>Passport Office Government Office Buck's Road Douglas IM1 3PG</p> <p>Tel. 685203 Fax 685210 Email immigration@cso.gov.im Web www.gov.im/cso/immigration/</p>	<p>For enquiries regarding immigration.</p>
<p>(6) Registrar of the Certification of Craftsmen Scheme</p> <p>Training Services Hills Meadow Peel Road Douglas IM1 5EB</p> <p>Tel.: 687190 Web: http://www.gov.im/dti/training/craftsmencert.xml</p>	<p>For information on the Registration of Craftsmen Scheme 1990</p>

<p>(7) Equality Adviser (Discrimination Officer)</p> <p>Department of Trade and Industry Hamilton House Peel Road Douglas IM1 5EP</p> <p>Tel 682372 Fax 682355 Email equalityadviser@dti.gov.im Web www.gov.im/dti/employmentRights/equality.xml</p>	<p>For advice on the Employment (Sex Discrimination) Act 2000, non-discriminatory advertisements etc.</p>
<p>(8) Data Protection & Information Security Officer, Isle of Man Constabulary</p> <p>Corporate Services Department Police Headquarters Douglas Isle of Man IM2 4RG</p> <p>Tel 631391</p>	<p>Employers' contact for seeking police checks</p>
<p>(9) Department of Home Affairs</p> <p>Legislation Section 88 Woodbourne Road Douglas IM2 3AP</p> <p>Tel. 694305 Fax 621298</p>	<p>For advice on the Rehabilitation of Offenders Act 2001</p>

Employment Law Updates

The Department publishes an electronic newsletter, *'IOM Employment Law Update'* which contains information about developments to existing employment law and related matters. If you would like to subscribe to the newsletter please send your name, position, the name of your organisation and your e mail address to **emplaw@dti.gov.im**

The Department will not pass on your details to any third party.

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How helpful was this booklet to you? Did it answer your questions? Was it detailed enough? Was it clear? Does it contain any typographical errors? Do you have any comments or suggestions as to how the Department might further improve future editions? Please e mail your feedback to emplaw@dti.gov.im



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