

# **STATES OF JERSEY**



## **WORK AND RESIDENCE PERMITS: ESTABLISHMENT OF WORKING GROUP**

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**Lodged au Greffe on 30th July 2010  
by Deputy P.V.F. Le Claire of St. Helier**

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**STATES GREFFE**

## PROPOSITION

### THE STATES are asked to decide whether they are of opinion –

- (a) to agree that a working group of elected States members should be established to review and evaluate the merits of introducing a work permit and residence permit system for Jersey with the following terms of reference –
  - (i) to consider how the current protection of employment legislation compares to other jurisdictions that have similar socio-economic conditions to Jersey, in particular Guernsey and the Isle of Man;
  - (ii) to consider when, and why, work permits would be required to be used in Jersey for non-qualified residents, and if it is thought that they should be introduced, prepare clear guidelines as to the circumstances in which they should be introduced;
  - (iii) to ascertain how the current employment protection measures and housing controls compare with those of Guernsey and the Isle of Man as effective methods of protecting jobs for the residents of Jersey and whether or not there are benefits that could be gained by considering the application of similar controls in Jersey;
  - (iv) to compare rent control mechanisms in Guernsey and the Isle of Man, together with any appeals process, with the current legislation in Jersey;
  - (v) to report on the possible future introduction of a system of restricting the purchasing of property in Jersey to residents of the Island, with the working group taking into account the following matters –
    - (A) full and future employment, development and advancement in employment for residents that have established backgrounds on the Island; by allowing them preference over non residents for job vacancies that arise whether they are in the employment or not of the company whose need arises;
    - (B) the ability for the adult resident population and their children to have access to affordable housing and a reasonable standard of living;
    - (C) the effect that work permits, as opposed to current methods, may have on immigration and the management of the infrastructure and other such related or similar topics as deemed necessary;

- (D) whether a work permit system could dovetail with a residence permit;
  - (E) whether the proposed migration policy approved by the States in 2005 will, if implemented, achieve a fairer society or whether it will fail to meet the hopes and aspirations of residents in delivering a fair and sustainable society both environmentally and socially and, if so, why;
  - (F) in what way the options identified by the working group could strengthen the migration policy agreed in 2005 or in what way they should replace the policy (if at all);
- (b) to request the Council of Ministers to provide adequate assistance and resources for the working group and to request the working group to update the Assembly on its work and conclusions at regular intervals.

DEPUTY P.V.F. LE CLAIRE OF ST. HELIER

## **REPORT**

### **The population and immigration systems are on the near horizon!**

I believe that our Island discriminates heavily against those that are born here of ordinary means and abilities.

It also discriminates against those that are of ordinary means that come here to better themselves in my view, by ensuring they are also competing, in an unfair way with new arrivals, in better financial circumstances securing homes because of the disparity of purchasing power that exists between them and other dominant groups. It was borne out today as I finished this report, where in an article in the Jersey Evening Post it referred to a group of 9 Portuguese citizens who had been kept in qualified accommodation against the standards and category that they were entitled to for unlawful gain by the landlord.

The rooms they lived in, whilst clean and homely, were cramped and the fire service was refused access to the premises.

The Court handed down a fine that was double that which was requested by the prosecution.

This not only took advantage of Portuguese workers and families, but it denied the availability of the accommodation to locally qualified householders who may have wished to live there legally.

There is without a doubt clear evidence from this and other previous cases I have seen, that the control of accommodation in Jersey is not as controlled as it needs to be, especially given the cost and availability to the remainder of taxpaying Islanders who sit back in dismay and disbelief at the States who choose to do little or nothing for the majority.

Sixty per cent of people in Jersey do not own their own homes. This and the cost of housing driven by the financial investor means the dream of home ownership is just that – “a dream”. It is now time to consider closing access to purchasing property to those who are residents only. It is now time to ensure that new fields for first-time homebuyers are reserved in perpetuity for first-time homebuyers and most importantly buyers who live here. Not just those who are seeking to bloat their pensions by having locals pay them astronomical rents to cover their investments so that they have a paid-off flat to live in when they retire and the money to buy another to keep local residents in who can augment that retirement lifestyle.

I would also like the law to be changed to remove the clause from any lease prohibiting access to a rent control board and there should be and must be in my view the right to access a complaints procedure with the right of appeal for all residents.

The current situation of unaffordable housing is clear for all to see.

What is not so easy to see and appreciate, is the impact upon ordinary people to maintain their standards of life, let alone improve upon them, especially when the systems are not in place to protect them from new arrivals queue-jumping for the shortage of available properties and jobs in all sections of the market.

The cost of living, the increase in tax and decrease in allowances have a daily impact upon low-income families that, over time, erodes families' abilities to stay together on the Island; and standards of life for many are difficult, if not impossible, to maintain, for those that choose to remain or for those groups, like the elderly, who are not upwardly mobile.

The greatest proportion of anyone's budget by far is for rent or mortgage and unless we can guarantee the ability for ordinary people to meet these demands without great difficulty, we are brewing trouble for ourselves down the road.

If one is lucky enough to achieve a mortgage, not many these days, then at least one can rent out some of the accommodation to others to help defray the costs, but with mortgages now beyond the reach of most, the only alternative is to rent or leave. The options on renting are not very good.

### **Opportunity lost**

The limited opportunities for ordinary residents to progress into home ownership by guaranteeing them advancement in employment will never change in the main unless we change the basic way we do things now.

We need to fully appreciate, understand and take into account that we are a geographically small jurisdiction, and as such, we have limited opportunities that need to be protected for residents and their children.

After all, what is the point of training our youngsters in nursing or physiotherapy for years, when they can't secure employment in the more lucrative and secure posts they have trained for because they have been filled by newcomers to the Island? Arguments are often made against employing returning graduates on the grounds of them lacking or having little experience.

There should be a survey conducted to see how many graduates who receive grants are placed and I ask the Minister for Education, Sport and Culture to join in by commenting upon these issues and my report. In these cases and in cases that have already been mentioned by myself before, the qualified are forced to go elsewhere when their employment opportunities are limited. Sometimes to far-away places like Australia, where they can find employment in the field in which they have trained themselves and where they can find an affordable home to start a family. Sadly, they are far removed from their families in Jersey where they were born, educated and raised.

"It is understandable if people want to travel to have a good standard of living – it is not so understandable when they are forced to by lack of controls and protection for them within their native lands!" Especially after all the education we have given them they are forced to migrate away because we do not give them the employment opportunities they have qualified for.

### **There should be a reasonable standard of living in Jersey**

One that enables an Island child to be born, educated, employed and housed in a way that allows them to plan a future that includes Jersey for themselves and their loved ones. At the moment that is denied to many who are qualifying or young that have no

chance of getting promoted or employed in a job that remunerates them and their partners if they have them to earn enough to purchase property and remain here.

### **The need to compete**

There have been many instances, where we have been told by the Ministers of influence that we as a jurisdiction, need to compete equally with the Isle of Man and Guernsey.

In the Isle of Man and in Guernsey, they employ work permits and residents' permits to control access to the availability of labour, to protect their local population against overwhelming pressures from those that might seek to work from elsewhere to the exclusion of locals and to the supplanting of their families.

It is now a common complaint that even summer jobs are unavailable for school-leavers and students, as many of these jobs are filled by people who work at night who have 2 jobs , speak 2 languages and have no ties whatsoever to the Island in any other respect than money. They have mortgages to pay, yes that is true, but not in Jersey. Many of them, in turn, once secure in accommodation, send for their relations, including grandparents, to come to work here. This displaces opportunities for work and accommodation for those waiting their 12 years to qualify.

It is a common theme in small jurisdictions where finance has flourished, that housing has risen beyond the level that it can be afforded by locally born or long-term residents. The controls are regularly tied to accommodation opportunities for newcomers and in that extent we are no different, but only so much by variety of controls employed.

I have attached in full at Appendix 1 the Resident Bill passed in the Isle of Man that regulates and monitors population there by registry. It is amazing that they had one done and dusted in 2001. They have much more land-mass than us and they understood very early that there is a need to introduce protective measures for their population.

*“Isle of Man  
Acts of Tynwald  
RESIDENCE ACT 2001  
(Chapter 7)*

*Received Royal Assent: 20 March 2001  
Passed: 20 March 2001  
IOM ACT 2001-7; RESIDENCE ACT 2001*

*AN ACT to provide for the registration of residents; regulating residence in the Island; and for connected purposes.”*

### **The argument against work permits**

Note it applies .....AT ALL TIMES!

**Heads = at a Time of Full Employment and Growth**

During a time of full employment it would be unwise to introduce such controls. Work permits are there to be used as a mechanism to control employment opportunities, when there is a weak economy and jobs are scarce.

**Tails = at a Time of Low Employment and Little or NO Growth**

During a time of low employment it would be unwise to introduce such controls. Work permits are there to be used as a mechanism to control employment opportunities, to introduce them at a time when the economy is weak would send out a signal that we are closed for business ...

**Heads We Win .....Tails You Lose!**

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**“Isle of Man – Employment Rights**

**Work Permits**

The Department of Economic Development operates and enforces the work permit system under the Control of Employment Act. 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.

**Work Permit Fees**

The processing fee for a Work Permit for Employment or Self-Employment is £50.

There is also a fee for Residential Status enquiries of £20 per application.

**Employment of people from outside the European Economic Area (EEA) or Switzerland**

Persons who are not nationals of the European Economic Area (EEA) 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. 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. Details at the bottom of the page.

*Please note, from July 9th 2010 there will be some major changes to how you currently obtain the necessary work permit, in replacement of the Overseas Labour Scheme.*

Following proposals approved by Tynwald in April 2009, the Isle of Man is introducing its own Manx Points Based System (PBS) for migrant workers and students. This will be in line with legislation which is already in place in the United Kingdom.

The Points Based System will not apply to applications for work permits for people from within the EEA or Switzerland and these will continue to be dealt with under the

Control of Employment Act. Full and detailed guidance on the PBS is available below:

<http://www.gov.im/lib/docs/ded/employmentRights/DED/manxpbsmigrantspolicyguidance.pdf>

<http://www.gov.im/lib/docs/ded/employmentRights/DED/manxpbssponsorsguidance.pdf>”

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## **Isle of Man Residence and Property**

Immigration legislation on the Isle of Man is similar to that in the United Kingdom and applies to nearly everyone who is not a British Citizen or who does not have the right of abode in the United Kingdom, although Irish citizens and EEA citizens exercising Treaty rights are exempt from many provisions.

The Manx government permits non-residents to purchase and own real estate on the island. Indeed, without an influx of new residents there would be a decline in the overall population. The official policy is to target specific areas for growth and ensure their compatibility with the Manx community. The recent expansion of the finance sector has created many more jobs than could possibly be supplied by the existing market. The resulting need for professional and skilled people from outside the Island is therefore likely to continue for the foreseeable future.

In 2000 the Isle of Man’s parliament, Tynwald, passed a Residence Bill which would give the island’s administration the power to impose immigration controls on non-Manx individuals.

The Isle of Man is being pressured by shortage of housing for its local population – this is a normal symptom of increasing success for an offshore jurisdiction. The success of the island’s offshore financial services sector, together with a flow of wealthy individuals seeking relief from high EU taxes, is quickly driving house prices higher.

Local ‘Manx’ inhabitants form a high (although declining) proportion of the total population of 72,000, and by no means do they all benefit from the increasing wealth of the ‘offshore’ economy. Faced with the prospect of its indigenous population becoming paupers in a land of wealth, the Manx government will eventually have to follow other such jurisdictions in controlling rents and sale prices, or in limiting access to housing for foreigners.

The Royal Assent was granted to the Residence Act on the 20th March, 2001. The Act is perceived by the government as a piece of contingency planning: legislation to be kept in reserve and activated only in circumstances of necessity in response to a seriously deteriorating economic or social situation requiring government intervention. It was, and remains, the government’s hope that it will not prove necessary to activate the legislation and that any future growth in population can be absorbed and will not create the circumstances which would warrant activating the Residence Act.



After EU enlargement was agreed in early 2003, pressure increased on the island for residency controls to be boosted.

Speaking during a debate on the European Communities (Amendment ) Bill – which updates existing Manx laws to include the 2001 Nice Treaty – Labour member Peter Karran suggested that: “With this piece of legislation there will be even more need as far as residency control (in the Island) is concerned.”

This viewpoint was supported by then Chief Minister, Richard Corkhill, who announced that: “We are part of the UK immigration law.”

He went on to add: “The work permit control legislation is most likely to be our saviour. We must pay due regard to the legislation we already have.” In December 2008, the Department of Trade and Industry released a consultation document intended to precede new Regulations aimed at modernising aspects of existing work permit legislation.

The Department issues around 10,000 work permits each year, playing a vital role in ensuring employers are able to secure the suitably skilled workers they require. This in turn has assisted the economy to continue to grow at over 6% a year while the population has grown by less than 1%. The present review is intended to ensure that the legislation, the protection afforded to Isle of Man workers and the needs of the economy are in alignment to the greatest degree possible.

Key matters considered in the consultation include proposals to –

- update the economic and social criteria which are used to determine whether or not a permit should be granted;
- modernise exemption policy so that some key individuals, such as those being targeted by Government inward investment policy, and also some temporary and intermittent visitors would not require permits;
- ensure that the Department is aware of any relevant criminal convictions of persons applying for work permits and any relevant offences committed by persons subsequent to their being granted work permits.

Minister for Trade and Industry Hon David Cretney MHK commented –

*“The present consultation follows on from the Review of Work Permit Legislation and its Administration” which I asked Nick Black to undertake in 2007. That review confirmed my view that there was no need to remove the work permit system and that employers and the wider public were supportive of its broad aims. Nick Black did, however, consider there was a need to review the current operation of the system to ensure that the needs of the workforce were balanced with those of the economy. Whilst the Regulations have not been amended since 1995 the economy has moved on. The proposals in the consultative document are an attempt to create a work permit system which fits the economy of the Isle of Man in the 21st century and which carefully balances the interests of Man workers and employers on the Island.*

*If that balance is too much in favour of employers then some of our local workers may be overlooked for no good reason and may justifiably feel aggrieved; equally if employers perceive the legislation to be a strait-jacket they may choose not to invest, recruit or expand on the Island and the legislation may have the opposite effect to that which is intended.”*

Legislation to make immigration controls more lenient was approved on December 16 under the Control of Employment (Exemptions) Order 2009, and came into effect in the Isle of Man on January 1, 2010.

The new legislation exempts certain employments, the great majority of a temporary or intermittent nature, from the requirement for a work permit. The Order is designed to make the island an easier place to do business by reducing the administrative burden upon employers while at the same time protecting the essential interests of Isle of Man workers.

One of the main changes increases the general exemption period where a permit is not required from three days to 10 working days a year. With a very small number of exceptions – construction, mobile caterers and temporary retailers – this general exemption will apply across the board.

There is a longer exemption period for certain higher level employees of international companies. This is in recognition of the fact that such companies need to be able to move staff between jurisdictions; the exemption period is a maximum of 48 days year in this case. The exemption does not cover all employments, and is subject to certain conditions.

A further exemption category covers persons relocating businesses to the island or establishing a branch or subsidiary of a non-IoM business.

In total, 13 types of temporary and intermittent employments are exempted, along with three categories of permanent employment.

Minister for Trade and Industry, David Cretney MHK explained that –

*“The Department listened very carefully to consultees and worked hard to produce a balanced package of measures aimed at increasing the attractiveness of the Isle of Man for employers – and hence overall employment opportunities – without diminishing protection for Isle of Man workers.”*

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### **The Jersey experience**

The Jersey experience is mirrored in many ways from the text above. We, however, in Jersey, have no bar on those from the European Union who would wish to come here to live and work and limited controls by application from elsewhere, with only a never-ending promise that something is coming to address the concerns.

In my view it is now patently obvious that we have passed the point where we can continue to allow the current employment controls and residence controls to manage

our Island sustainably and it has passed the point where we can wait for the migration systems to come forward as they are no longer credible. I cannot be the only States member who recognises that the price of homes in Jersey has far surpassed affordability for the majority of locally born people and homes are fast becoming unattainable for most, without some help from the States or the bank of Mum and Dad.

I have also, most disturbingly, recently read accounts in the media where locally born and educated people are being forced out of the work-place because they do not speak the same language as the rest of the workers who come from a non-English-speaking EU country. Had this been the reverse, there would no doubt be genuine calls for an investigation by many of those who seek, like me, to have a fair society which is genuinely multi-cultural.

Some might say that a work permit system may be heavily bureaucratic and expensive. I disagree: this is a very weak argument, and weaker still when one considers the domino effect of the lack of controls that we currently have and those that are forever on the near horizon. Work Permits are chargeable for each individual, negating cost, and by way of example the Isle of Man manage their work permit department with 7 people; we run our population office with 20.

### **The Regulation of Undertakings Law**

It is this law that has caused significant concern to businesses in my experience, including banks, who have agreed that a work permit scheme would be preferable as it is something that they know and understand worldwide. The Regulation of Undertakings and Development considerations that are run under the Law should be an Economic Development consideration as to types of business, but the Housing Department, in my view, should grant resident permits based upon work permit approvals that are judged against criteria that evaluates and guarantees need and available labour within the Island that could meet the need or be trained to in a short period of time; and in that instance a condition should be made that any permit be linked to a requirement to train a resident so that the need to grant approval is temporary, and so that the temporary worker does not by default add to the population and enter into the housing market with an unfair advantage over those who are already established.

There should be on going opportunity for advancement into new work or transfers from one sector to another, preferentially given to locally established people.

I believe the time has come for us to control the work available so that it benefits those that are already committed to Jersey by their families and residency.

I would like to see the introduction of work permits and residency permits but not in a retrospective way. That should be clear.

That would obviously be contrary to human rights. It is not what I am proposing.

It therefore would mean all those who were resident in Jersey and registered on the day that the law came into affect would not suddenly find themselves out of work or accommodation.

The existing residents would be protected.

It would have to be done from a set date, i.e. 1st January 2011, in order to make sure it did not fall foul of the Human Rights Law. That would mean all those that currently benefit from residency in Jersey would retain those rights.

I am not asking the Council of Ministers to introduce something that would be contrary to the EU Human Rights Law.

In fact, they would not do such a thing, so to suggest otherwise is ridiculous.

As a party to the UK responsibility, the Isle of Man and Guernsey (see Appendix 2), who use these systems, are doing so within an acceptable Human Rights framework and we should in my view do the same.

A review in the first instance can provide everyone with the information we need, so that any future decision to establish such a system when one is required has been worked through.

I, for one, have no confidence in the current system and I am tired of watching the Immigration issues drift from one elected Assembly to another with little change.

#### **Financial and manpower implications**

To review the current legislation and conduct a review along the lines of scrutiny for this exercise I estimate would cost less than £50,000 which I consider can be met within existing resources.

The reason for that is the Laws exist, so accumulating them, with the aid of Guernsey and the Isle of Man, should not prove difficult, all islands now have comprehensive websites where all information is readily available for all to see.

I anticipate the group might need to travel to both islands to consider their methods and practices perhaps. It may be that we could develop some common grounds for the benefit of future generations and enhance inter-island co-operation. It certainly would help us to understand what we have and what others have as methods to protect employment and access to affordable housing and government services in a transparent and evidence-led way.

ISLE OF MAN

RESIDENCE ACT 2001

(Chapter 7)

Signed in Tynwald: 20th March 2001  
Received Royal Assent: 20th March 2001  
Announced to Tynwald: 20th March 2001  
Passed: 20th March 2001

AN ACT

to provide for the registration of residents;  
regulating residence in the Island; and for  
connected purposes.

**W**E, your Majesty's most dutiful and loyal subjects, the Council and Keys of the said Isle, do humbly beseech your Majesty that it may be enacted, and be it enacted, by the Queen's Most Excellent Majesty, by and with the advice and consent of the Council and Keys in Tynwald assembled, and by the authority of the same, as follows (that is to say):—

PART 1

REGISTRATION OF RESIDENTS

**1. Register of individuals qualified to reside in the Island.**

1. (1) A register of individuals qualified to reside in the Island (in this Act called "the register") shall be maintained by the Registrar in accordance with this Part and Part 3.

(2) The register shall be available for public inspection at the Registrar's principal office during the normal office hours of the Registrar.

(3) The register shall contain particulars of the name, sex, date of birth and last known residence in the Island of each registered individual.

(4) Subject to subsection (5), an application for registration shall be made to the Registrar in the prescribed form which shall be accompanied by such documents and information as may be prescribed.

(5) Where an individual is under a disability his parent, guardian or other person in whose care or custody he is for the time being, may make application for registration on his behalf.

*Residence Act 2001*

(6) The Registrar may by notice in writing served on the applicant require him to provide such further documents or information as the Registrar considers reasonably necessary for the purpose of establishing eligibility for registration.

(7) If the applicant fails to comply with a requirement under subsection (6) within 3 weeks or such further period as the Registrar may permit, the Registrar shall treat the application as withdrawn and he shall serve written notice of that fact on the applicant.

(8) The Registrar shall not register an individual unless he is satisfied that the individual is qualified for registration in accordance with section 2 or 3.

(9) The Registrar shall in relation to every application for registration —

- (a) register the individual who is the subject of the application; or
- (b) refuse to register that individual.

(10) The Registrar shall, within a reasonable time, serve on the applicant written notice of his decision under subsection (9).

(11) If the Registrar refuses to register an individual he shall include reasons for the refusal in the notice under subsection (10).

**2. Unconditional registration.**

(1) The following individuals are qualified to be registered as of right and without the imposition of conditions (in this Act called "unconditional registration") —

- (a) an individual who was resident in the Island immediately before the commencement of this section;
- (b) an individual who, immediately before the commencement of this section, was not resident in the Island but who, at any time before the commencement of this section, had established his permanent home in specific residential accommodation in the Island and continues to maintain it there;
- (c) an individual who was born in, and whose birth was registered in, the Island;
- (d) an individual who has at any time been resident in the Island for an aggregate period of at least 10 years;
- (e) the spouse of an individual qualified under any of paragraphs (a) to (d);
- (f) a widow, widower or divorcee of an individual qualified under any of paragraphs (a) to (d);
- (g) an individual, one of whose parents is qualified under any of paragraphs (a) to (f);

*Residence Act 2001*

(2) For the purposes of subsection (1)(a), no account shall be taken of any period during which an individual was in the Island for the purpose only of receiving medical treatment.

(3) For the purposes of subsection (1)(d), no account shall be taken of any period during which an individual was in the Island in contravention of section 9(1).

**3. Conditional registration.**

(1) Subject to the provisions of this section and of regulations and Directions, the Registrar may register an individual who satisfies any of the criteria specified in this section or in regulations (in this Act called "conditional registration").

(2) The dependants of any person who is registered under this section shall be entitled to conditional registration.

(3) On the grant of conditional registration the Registrar —

- (a) shall impose such conditions as are required by regulations; and
- (b) may, in accordance with Directions, impose such other conditions as he considers appropriate in the circumstances.

(4) Conditional registration shall, unless sooner determined, expire

- (a) on the date specified in conditions under subsection (3); or
- (b) on the date on which the individual concerned ceases to be resident in the Island.

(5) An individual who is the subject of conditional registration may at any time apply in the prescribed form to the Registrar for the variation of any condition imposed under subsection (3).

(6) The Registrar shall in relation to every application under subsection (5) either —

- (a) subject to Directions, vary the conditions in accordance with the application; or
- (b) refuse to vary the conditions.

(7) Where the Registrar refuses to vary a condition he shall, within a reasonable time, serve on the applicant written notice of his decision and he shall include reasons for his decision.

(8) Any individual who is in contravention of a condition imposed under subsection (3) shall be guilty of an offence.

(9) In this section "dependants" means, in relation to an individual who is the subject of conditional registration, such individuals as are specified in regulations.

**4. Variation of register.**

- (1) If the Registrar is satisfied on reasonable grounds that —
  - (a) a registered individual has died;
  - (b) any individual has been born in the Island;
  - (c) the particulars contained in the register in relation to any individual are incorrect (whether by reason of clerical error or otherwise);
  - (d) an individual's registration has expired or otherwise come to an end,

he may vary the register.

(2) Where the Registrar varies the register on any of the grounds mentioned in paragraphs (b) to (d) of subsection (1), the Registrar shall forthwith serve written notice of the variation on the individual concerned or, where that individual is under a disability, on that individual's parent, guardian or other person in whose care or custody he is for the time being.

(3) The Registrar may exercise his powers under subsection (1) on information made available to him from any source.

(4) In this section "vary" includes the cancellation or addition of an entry in the register.

**5. Review of decisions.**

- (1) Any person aggrieved by a decision of the Registrar —
  - (a) to refuse registration under paragraph (b) of section 1(9);
  - (b) to impose conditions under paragraph (b) of section 3(3);
  - (c) to refuse to vary conditions under paragraph (b) of section 3(6);
  - (d) to vary the register on any of the grounds mentioned in paragraphs (b) to (d) of section 4(1),

may apply to the Tribunal established under this section in such manner as may be prescribed to review that decision.

(2) A hearing of the Tribunal will be held in public unless the applicant requires it to be held in private.

(3) Applicants may appear in person or by their appointed representative.

(4) The Tribunal shall take account of Directions in reaching a decision.

(5) The Tribunal may confirm, vary or reverse such a decision of the Registrar and the decision of the Tribunal shall be final.

(6) The Registrar shall make such alterations to the register as are necessary to give effect to a decision of the Tribunal under this section.

- (7) The Tribunal shall consist of —



*Residence Act 2001*

- (a) a chairman who shall be the High Bailiff; and
  - (b) 2 members who shall be appointed by the Council of Ministers.
- (8) The term of office of a Tribunal member appointed under subsection (7)(b) shall not exceed 3 years.
- (9) The Council of Ministers may for good cause, at any time rescind the appointment of a Tribunal member appointed under subsection (7)(b) and appoint a replacement member under that subsection.
- (10) A member of the Tribunal whose term of office expires is eligible to be re-appointed.
- (11) The Council of Ministers may appoint deputy members of the Tribunal to exercise the functions of members in their absence.
- (12) No defect in the appointment of a member or deputy member of the Tribunal shall vitiate the proceedings of the Tribunal in which he may have taken part.
- (13) In subsection (1), "person aggrieved" means the individual to whom the application or, as the case may be, registration relates and includes, where that individual is under a disability, a parent, guardian or other person in whose care or custody he is for the time being.

**6. Obligations to supply information.**

- (1) A registered individual shall within 3 weeks of any change in the particulars contained in the register serve written notice of such change on the Registrar.
- (2) Where a registered individual is under a disability his parent, guardian or other person in whose care or custody he is for the time being, shall comply with subsection (1) on his behalf.
- (3) Any person who is in contravention of subsection (1) shall be guilty of an offence.

**7. Access to official records.**

- (1) The Chief Registrar shall, as soon as practicable after receiving the quarterly returns of live-births and deaths supplied to him under section 32 of the Civil Registration Act 1984, supply a copy of those returns to the Registrar.
- (2) Notwithstanding any restriction on disclosure of information imposed by any enactment or otherwise, the Assessor of Income Tax and the Department of Health and Social Security may disclose relevant information to the Registrar or an officer authorised by him for the purpose of assisting the Registrar in the performance of his duties under this Act.

**8. Effect of registration.**

(1) Notice of registration under section 1(10) shall be evidence that the necessary requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with.

(2) Except as expressly provided by this Act, registration shall not be construed as affecting the status, rights or duties of any person and accordingly, no person shall be prejudiced in any proceedings by reason only of an inclusion in or omission from the register, save any proceedings relating to an offence under this Act.

**PART 2**

**CONTROL OF RESIDENCE**

**9. Restriction on residence.**

(1) Subject to this Part and regulations, an individual shall not be entitled to reside in the Island unless he is registered or is an exempt person.

(2) Subject to this Part and regulations, a person shall not cause or permit another to reside in the Island unless that other is registered or is an exempt person.

(3) Any person who is in contravention of subsection (1) or (2) shall be guilty of an offence.

(4) Without prejudice to paragraph (e) of section 19(2), for the purposes of this section an individual is an exempt person if—

- (a) he was resident in the Island immediately before the date of commencement of this section but only for so long as that individual resides in the residential accommodation in which he was resident immediately before that date; or
- (b) he is in the Island for the purpose of undergoing full-time education in the Island but only for so long as the individual is undergoing such education.

**10. Certificate of registration.**

(1) Upon application to the Registrar a registered individual shall be entitled to a certificate in the prescribed form confirming that—

- (a) the applicant;
- (b) any child of the applicant; or
- (c) any person under a disability who is in the care or custody of the applicant,

is registered.

(2) A certificate of registration shall be valid for such period as may be specified in the certificate.

**11. Procedure on commencement of residence.**

(1) An individual shall, before commencing to reside in any residential accommodation, produce to the person who is providing the accommodation, or to that person's advocate or agent, a valid certificate of registration in respect of the persons who are intending to reside in the accommodation.

(2) Where a registered individual is under a disability his parent, guardian or other person in whose care or custody he is for the time being, shall comply with subsection (1) on his behalf.

(3) A person providing accommodation shall be under a duty to require the production of certificates of registration in accordance with subsection (1).

(4) For the purposes of subsection (1), the person providing the accommodation shall be the person from whom the accommodation or the right to reside there is obtained, whether by purchase, lease, licence or any other arrangement (formal or informal).

(5) Any person who is in contravention of subsection (1), (2) or (3) shall be guilty of an offence.

(6) In proceedings brought against an individual for a contravention of subsection (1), it shall be a defence for him to prove that it was not practicable in the circumstances to produce the certificate to the person providing the property before the date on which that individual commenced to reside there.

PART 3

GENERAL

**12. Investigation.**

(1) An authorised person may make such investigations as may be necessary for ascertaining whether this Act is being, or has been, complied with.

(2) If it is shown to the satisfaction of a justice of the peace on sworn information in writing that it is necessary for the purposes mentioned in subsection (1), the justice may by warrant under his hand authorise an authorised officer to enter the residential accommodation concerned for that purpose.

(3) A warrant issued under this section shall continue in force for 7 days from the date on which it is issued.

(4) An authorised person entering residential accommodation under a warrant under this section may take with him such other authorised persons and constables as may be necessary, and on leaving unoccupied accommodation that he has entered under such a warrant he shall leave it as effectually secured against trespassers as he found it.

(5) Where the Registrar, after investigation, has reasonable cause to believe that an individual is residing in the Island in contravention of

section 9(1), the Registrar may serve notice on that individual informing him of that belief and requiring him within 7 days from the date of service of the notice to satisfy the Registrar that he is not in contravention of that section.

(6) If any individual on whom notice under subsection (5) is served fails to satisfy the Registrar within the said period of 7 days, the Registrar may, on any prosecution brought for an offence under section 9(1), certify to the court that the individual has so failed, and the production to the court of that certificate shall, unless and until the contrary is proved, be sufficient evidence to prove that the individual to whom it relates is in contravention of section 9(1).

**13. False statements and obstruction.**

(1) Any person who in purported compliance with any provision of this Act or a requirement imposed under any such provision, provides information which he knows to be false in a material particular or recklessly provides information which is false in a material particular, shall be guilty of an offence.

(2) Any person who intentionally obstructs an authorised person in the exercise of any power under this Act shall be guilty of an offence.

(3) Where a person is convicted of an offence under subsection (1) in respect of any statement or information made or provided in the course of an application for registration, the court may, if it thinks fit, order that the registration be cancelled and shall cause a copy of the order to be sent to the Registrar.

(4) The Registrar shall, on receiving a copy of an order under subsection (3) cause the entry concerned to be removed from the register and the registration of the person concerned shall thereupon cease to have effect.

(5) An order under subsection (3) shall not prevent the person who is the subject of the order from making a fresh application for registration.

**14. Directions.**

(1) The Council of Ministers may give the Registrar such general directions (in this Act called "Directions") as it thinks fit with respect to the exercise or performance of the Registrar's powers under this Act and the Registrar shall comply with any such Directions.

(2) The Council of Ministers shall cause Directions under subsection (1) to be laid before Tynwald.

(3) The Registrar shall supply a copy of any Direction to any person requesting the same at such reasonable charge as the Registrar may determine.

**15. Information.**

(1) Subject to subsection (2), information which is received for the purposes of, or in the discharge of functions under, this Act by an authorised person or any other person having any official duty under this Act is confidential and shall not be disclosed to any person without the consent of the person from whom the information was received or if different, the individual to whom it relates.

(2) Subsection (1) shall not preclude the disclosure of information —

- (a) to the person to whom it relates;
- (b) by order of a court in the Island;
- (c) with a view to the institution of or otherwise for the purposes of criminal investigations and criminal proceedings;
- (d) for the purposes of a review under section 5;
- (e) if the information is or has been available to the public from other sources; or
- (f) in a summary or collection of information framed in such a way as not to enable the identity of any individual to whom the information relates to be ascertained.

(3) Any person who is in contravention of subsection (1) shall be guilty of an offence.

**16. Offences : supplementary provisions.**

(1) No person shall be prosecuted for an offence under this Act without the consent of the Attorney General.

(2) Any complaint relating to an offence under this Act may be tried by a court of summary jurisdiction if —

- (a) it is made within 6 months after the commission of the offence; or
- (b) it is made within 3 years after the commission of the offence and not more than 2 months after the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge.

(3) For the purpose of subsection (2)(b) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

(4) Where an offence under this Act, committed by a body corporate, is proved to have been committed with the consent of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting

*Residence Act 2001*

to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

(5) Where the affairs of a body corporate are managed by the members, subsection (4) shall apply in relation to the acts and defaults of the member in connection with his functions of management as if he were a director of the body corporate.

(6) For the purposes of subsection (4), "body corporate" includes a limited liability company constituted under the Limited Liability Companies Act 1996 and, in relation to such a company, any reference to a director, or other officer of a body corporate is a reference to a member and to the company's manager and registered agent.

(7) In proceedings brought against any person for an offence under this Act it shall be a defence for him to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

**17. Penalties.**

(1) Any person who commits an offence under this Act shall be liable on summary conviction to a fine not exceeding £5,000 or to custody for a term not exceeding 6 months, or to both.

(2) The court before which a person is convicted of an offence under this Act may, if it is satisfied that the person is not entitled to reside in the Island, make an order requiring that person to leave the Island.

(3) If an order is made by the court under subsection (2), the Registrar shall arrange for such order to be enforced as soon as is practicable by a constable or other person authorised by the Registrar, and such constable or other person is authorised to enforce such order and to take all necessary steps which may be practicable, for procuring the conveyance of such person to the country where such person previously last resided.

(4) After an order under subsection (2) has been enforced, the Registrar shall forthwith forward a written report to the court which made the order specifying the steps which were taken to enforce it.

**18. Effect of contravention on contracts etc.**

No conveyance, lease or licence, or any other agreement whatsoever, shall be void, voidable or rendered unenforceable by reason only that, at the relevant time, any party to the transaction is in contravention of any provision of this Act.

**19. Regulations.**

(1) The Council of Ministers may make such regulations as it may consider necessary or expedient to carry into effect the provisions of this Act.

*Residence Act 2001*

- (2) Without prejudice to the generality of subsection (1) regulations may provide for —
- (a) the criteria to be satisfied for conditional registration under section 3(1);
  - (b) such conditions as are required to be imposed on the grant of conditional registration under paragraph (a) of section 3(3);
  - (c) the form of the register (whether documentary or otherwise);
  - (d) the form of the certificate of registration;
  - (e) exemptions from this Act;
  - (f) the modification of section 2(1);
  - (g) the modification of the meaning of the expression "resident" given in section 20(1) by prescribing circumstances in which an individual is not to be treated for the purposes of this Act as being resident in the Island;
  - (h) the imposition of a duty on any public authority or the operator of an educational or training establishment —
    - (i) to keep such particulars as may be specified in relation to individuals residing in residential accommodation which is vested in, or managed or controlled, by it;
    - (ii) in the case of the operator of an educational or training establishment, to keep such particulars as may be specified in relation to individuals attending courses of instruction there;
    - (iii) to make such returns to the Registrar as may be specified at such intervals as may be specified.
- (3) Regulations under this Act shall not come into operation unless they are approved by Tynwald.

**20. Interpretation.**

- (1) In this Act —

"authorised person" means a person who is authorised in writing for the purposes of this Act by the Council of Ministers and includes the Registrar;

"certificate of registration" shall be construed in accordance with section 10(1);

"child" includes adopted child, step-child and a child who is not a marital child;

"conditional registration" has the meaning given by section 3(1);

"conditions" includes limitations;

"Directions" has the meaning given by section 14(1);

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"exempt person" means a person who is exempted from the provision in which the reference appears;

"parent" includes a step-parent and an adoptive parent;

"the register" has the meaning given by section 1(1);

"the Registrar" means the person appointed by the Civil Service Commission to undertake the functions conferred on that office-holder by this Act;

"regulations" means regulations made under section 19;

"resident" means ordinarily resident and "reside" shall be construed accordingly but, without prejudice to the generality of that definition, a person shall not be treated as ordinarily resident by reason only of the fact that the person is present in the Island for an aggregate period not exceeding 6 months in any 12 consecutive months,

"residential accommodation" means —

(a) any premises, vehicle or vessel, or any part of any premises, vehicle or vessel; and

(b) any other place,

used for the purposes of human habitation;

"unconditional registration" has the meaning given by section 2(1);

"vessel" means a Manx ship within the meaning given in section 1 of the Merchant Shipping Registration Act 1991.

(2) For the purposes of this Act an individual shall be treated as under a disability while —

(a) he is a minor; or

(b) by reason of mental disorder within the meaning of the Mental Health Act 1998, he is incapable of managing and administering his property and affairs.

(3) For the purposes of this Act, a person shall not be treated as resident in the Island by reason only of his serving a term of custody in the Island.

**21. Financial.**

There shall be paid out of money provided by Tynwald any sums necessary for and attributable to the administration of this Act.

**22. Amendments.**

The enactment referred to in the Schedule is amended in accordance with that Schedule.



*Residence Act 2001*

**23. Savings.**

Nothing in this Act shall affect the operation of —

- (a) the Immigration Act 1971 (an Act of Parliament) or any statutory provision amending or replacing that Act, as they have effect in the Island;
- (b) the Data Protection Act 1986.

**24. Short title and commencement.**

- (1) This Act may be cited as the Residence Act 2001.
- (2) This Act shall come into operation on such day as may be appointed by order made by the Council of Ministers and different days may be so appointed for different provisions and for different purposes.

## **Work Permits**

### **Isle Of Man**

Whilst there are no special restrictions on access to the Island (other than those under the Immigration Act <http://www.gov.im/cso/immigration/?menuid=7672> which apply equally in the United Kingdom) the ability of newcomers to take up work is governed by the Control of Employment Acts which require anyone who is not an 'Isle of Man worker' to have a work permit before starting employment or self-employment in the Island. (There is a certain limited number of occupations for which permits are not required, e.g. doctors, dentists, ministers of religion or the police).

Qualification as an 'Isle of Man worker' includes being born on the Island, resident for at least five years, married to an 'Isle of Man worker', having received full-time education during residence (and having remained on the Island thereafter) or having a Manx-born parent who has spent the first five years of their life on the Island. Full details are given in the <http://www.gov.im/ded/employmentRights/workpermits.xml> Department of Economic Development web site.

### **Work Permits**

The Department of Economic Development operates and enforces the work permit system under the Control of Employment Act. 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.

### **Work Permit Fees**

The processing fee for a Work Permit for Employment or Self-Employment is £50.

There is also a fee for Residential Status enquiries of £20 per application.

### **Employment of people from outside the European Economic Area (EEA) or Switzerland**

Persons who are not nationals of the European Economic Area (EEA) 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. 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. Details at the bottom of the page.

*Please note, from July 9th 2010 there will be some major changes to how you currently obtain the necessary work permit, in replacement of the Overseas Labour Scheme.*

Following proposals approved by Tynwald in April 2009, the Isle of Man is introducing its own Manx Points Based System (PBS) for migrant workers and students. This will be in line with legislation which is already in place in the United Kingdom.

The Points Based System will not apply to applications for work permits for people from within the EEA or Switzerland and these will continue to be dealt with under the Control of Employment Act. Full and detailed guidance on the PBS is available below:

PBS - Migrants Policy Guidance <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/manxpbsmigrantspolicyguidance.pdf">http://www.gov.im/lib/docs/ded/employmentRights/DED/manxpbsmigrantspolicyguidance.pdf</a>
PBS - Sponsors Guidance <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/manxpbssponsorsguidance.pdf">http://www.gov.im/lib/docs/ded/employmentRights/DED/manxpbssponsorsguidance.pdf</a>
PBS - Questions & Answers <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/manxpointsbasedsystemquestionsa.pdf">http://www.gov.im/lib/docs/ded/employmentRights/DED/manxpointsbasedsystemquestionsa.pdf</a>
PBS - Sponsor Application (Employers) <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/pbssponsorapplicationemployers.doc">http://www.gov.im/lib/docs/ded/employmentRights/DED/pbssponsorapplicationemployers.doc</a>
PBS Sponsor Guidance - Appendix A <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/pbssponsorguidanceappendixa.pdf">http://www.gov.im/lib/docs/ded/employmentRights/DED/pbssponsorguidanceappendixa.pdf</a>
PBS Sponsor Guidance - Appendix B <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/pbssponsorguidanceappendixb.pdf">http://www.gov.im/lib/docs/ded/employmentRights/DED/pbssponsorguidanceappendixb.pdf</a>
PBS Sponsor Guidance - Appendix C <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/pbssponsorguidanceappendixc.pdf">http://www.gov.im/lib/docs/ded/employmentRights/DED/pbssponsorguidanceappendixc.pdf</a>
PBS Sponsor Guidance - Appendix D <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/pbssponsorguidanceappendixd.pdf">http://www.gov.im/lib/docs/ded/employmentRights/DED/pbssponsorguidanceappendixd.pdf</a>
PBS - Government-approved Shortage Occupation List A brief presentation has been produced to help employers <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/shortageoccupationlist.pdf">http://www.gov.im/lib/docs/ded/employmentRights/DED/shortageoccupationlist.pdf</a>
Manx Points Based System Presentation <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/manxpointsbasedsystempresentation.ppt">http://www.gov.im/lib/docs/ded/employmentRights/DED/manxpointsbasedsystempresentation.ppt</a>
Guidance and Contacts "A Guide to Work Permits" can be downloaded here <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/guidetoworkpermits.pdf">http://www.gov.im/lib/docs/ded/employmentRights/DED/guidetoworkpermits.pdf</a>
Please note that there is further guidance on the Appeal procedure here <a href="http://www.gov.im/lib/docs/ded/employmentRights/DED/notesontheappealproceduremay2010.pdf">http://www.gov.im/lib/docs/ded/employmentRights/DED/notesontheappealproceduremay2010.pdf</a>
Contact information For work permit general enquiries: Telephone +44 (0)1624 682393 or email to: <a href="mailto:workpermits@gov.im">workpermits@gov.im</a>

## **Application Forms**

The following application forms can be downloaded at the bottom of this page:

- Employed – this form is for employers who need to employ persons who are not Isle of Man Workers; it is to be completed by both the employer and potential employee.
- Self-Employed – this form is for persons who are not Isle of Man Workers who wish to commence self-employment in the Isle of Man
- Overseas Students Scheme – this form is for individuals from outside the EEA who have been granted leave to enter the Isle of Man as students. This permit allows such students to work up to 20 hours per week during term time.

Please contact +44 (0)1624 682390 if you require an application form for the Overseas Labour Scheme. This form is for employers who need to employ individuals from outside the EEA in the Isle of Man. Please ensure that any application is completed in full, as failure to do so may result in processing delays.

## **Meetings of the Work Permit Committee**

The Minister for Economic Development 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 next meetings of the Work Permit Committee are scheduled to be: Monday 14th June and Tuesday 29th June.

If a work permit application is referred to the Committee for consideration, an advisory e mail will be sent (subject to an email address being supplied) to the applicant.

## **Isle of Man Employment Law**

Isle of Man employment law applies to employees on work permits. Applicable rights including entitlement to the minimum wage and paid holidays, maternity and paternity leave, and the right to a written statement of terms and conditions of employment. For further information go to <http://www.emplaw.gov.im>

### Downloadable Documents

Guide to Work Permits

<http://www.gov.im/lib/docs/ded/employmentRights/DED/guidetoworkpermits.pdf>

Notes On The Appeal Procedure May 2010

<http://www.gov.im/lib/docs/ded/employmentRights/DED/notesontheappealproceduremay2010.pdf>

Application Form for a Work Permit - Employed

<http://www.gov.im/lib/docs/ded/WorkPermits2010/frm20120518cea5workpermitempl oym.pdf>

Application Form for a Work Permit - Self-employed

<http://www.gov.im/lib/docs/ded/WorkPermits2010/frm20100518cea4workpermitsel f m.pdf>

Work Permit Fees Order 2010

<http://www.gov.im/lib/docs/ded/employmentRights/workpermitfeesorder2010.pdf>

Tynwald Approval of Work Permit Order

<http://www.gov.im/lib/docs/ded/employmentRights/DED/tynwaldapprovalofworkper mitorde.pdf>

Control of Employment (Exemptions) Order 2009

<http://www.gov.im/lib/docs/ded/employmentRights/orders/ceaexemptionsorder2009fi nalorde.pdf>

Control of Employment Act 1975 (as amended)

<http://www.gov.im/lib/docs/ded/employmentRights/DED/controlofemploymentact197 5asa.pdf>

Control of Employment (Amendment) Regulations 1995

<http://www.gov.im/lib/docs/ded/employmentRights/DED/controlofemploymentamend mentre.pdf>

Control of Employment (Court Officers) (Exemption) Order

<http://www.gov.im/lib/docs/ded/employmentRights/DED/controlofemploymentcourto fficer.pdf>

Control of Employment (Non-Resident Directors)(Exemption) Order

<http://www.gov.im/lib/docs/ded/employmentRights/DED/controlofemploymentnonres ident.pdf>

Control of Employment Regulations 1993

<http://www.gov.im/lib/docs/ded/employmentRights/DED/controlofemploymentregulat ions19.pdf>

Overseas Students Work Permit Scheme 2006, Policy

<http://www.gov.im/lib/docs/ded/employmentRights/DED/overseasstudentworkpermits cheme.pdf>

Overseas Students Work Permit Application Form

<http://www.gov.im/lib/docs/ded/employmentRights/DED/overseasstudentworkpermita pplica.pdf>

Request form for Isle of Man Worker Status

<http://www.gov.im/lib/docs/ded/employmentRights/frmrqissue11.pdf>

DTI further increases scrutiny of Work Permits in changing Labour Market

<http://www.gov.im/lib/docs/ded/med20090306workpermitsscrutiny.pdf>

STATES OF GUERNSEY  
GOVERNMENT WEBSITE

**Right to Work  
Guidance Notes for Employers**

Right to Work Documents

What records should be kept by an employer?

Housing Licences

Application Procedure

Further Information

**Right to Work Documents**

1. Every new employee has to hold a Right to Work document.
2. You may lawfully employ a person who holds any one of the following documents provided the holder is meeting the conditions on the document and it has not expired a:
  - Status Declaration
  - Declaration of Lawful Residence
  - Temporary Exemption Certificate
  - Housing Licence without any employment conditions (sometimes known as a “compassionate licence”)
  - Housing Licence with a condition that it is valid while the person is employed in a specific job *in your employment*.
3. Status Declarations are permanent documents indicating that the person is a qualified resident i.e. a “local person”. There are no restrictions on the employment of persons holding Status Declarations.
4. All the other documents mentioned above are “temporary” documents i.e. they are only valid for a specified period and include an expiry date. You should not employ (or continue to employ) a person after the expiry date of their Right to Work document unless they obtain a replacement document. Declarations of Lawful Residence and Housing licences can also become invalid if the employee ceases to reside at the address or in the circumstances specified on the document. Again, a new document must be obtained if you wish to continue to employ that person.
5. If the person holds a licence with a condition that it is valid for a different employer it will not be valid for full-time employment with you. However, it is usually valid for part-time employment provided that the person continues to be employed on a full-time basis for the employer specified on the licence. (Staff of the Housing Control section can clarify the situation in individual cases.)

6. If the person holds a Declaration of Lawful Residence which indicates that he or she is resident and employed in a Hotel it is unlikely that it would be valid for any other employment and you are advised to check with the Housing Department's Housing Control section.
7. The Right to Work Law allows some people to be exempt from the need of a Right to Work document. These are:
  - i. Persons visiting the Island for not more than 15 hours;
  - ii.
    - a. Employed persons whose employer is based outside the Island; and
    - b. Self-employed persons from outside the Island;

In both cases provided that their employment in Guernsey does not exceed 10 days in a 30-day period and an aggregate of 90 days in 12 months;

  - iii. Persons appointed by the Crown.

#### **What records should be kept by an employer?**

From 1 December 1990, it became a requirement for all employers to keep records of all their employees.

All employee records must be updated as necessary and kept for 3 years after they leave the job to which the records apply.

All records must be kept at the employer's place of business.

If the employer carries on business at more than one permanent establishment and employs more than five people at the establishment then records must be kept there and a copy kept at the employer's principal place of business. (The Department is allowed to exempt an employer from this requirement on application being made).

Each record must list the following details:

- Place of work
- Full name of employer
- Job title of employee
- Full name of employee
- Employee's previous name if changed since taking up employment
- Date of birth of employee
- Social Security number of employee
- Date employment ceased

The Department's Housing Control Inspector has the power to call at places of work to inspect the records that employers are required to keep.

## Housing Licences

8. If you wish to employ someone who does not have a Right to Work document it is likely that they could only be employed by you if a Housing Licence is issued specifically tied to their employment by you.
9. There are three types of “employment related” Housing Licences:
  - i. A short-term licence valid for up to 9 months for temporary or seasonal work;
  - ii. A short-term licence valid for up to 3 years for work which is not regarded as fully essential by the Housing Department; and
  - iii. An “essential” housing licence.
10. The main differences between short-term and “essential” licences can be summarised as follows:
  - Short-term licences are issued because it is recognised that there is a shortage of local manpower for that type of work regardless of whether the work is unskilled, semi-skilled or skilled. They are typically issued for periods of up to 9 months or 3 years;
  - “Essential” licences recognise that the work requires someone with qualifications, skills or experience, which the employer has been unable to recruit locally. They may vary in length up to 15 years, as explained further below.
11. Limitations apply to short-term licences as follows:
  - Generally, 9 month short-term licences will only be issued to people who have lived outside Guernsey for all of the preceding 3 months;
  - Generally, 3 year short-term licences will only be issued to people who have lived outside Guernsey for all of the preceding 3 years - one exception to this is that a nine-month licence might be converted to a three-year period;
  - All short-term licences are intended for single or unaccompanied people - they do not allow the person to accommodate other family members;
  - Short-term licences are restricted to accommodation in staff quarters, in lodgings or in existing households (i.e. “en famille”).
12. “Essential” licences can be issued for varied periods. Often “five year licences” are issued (to assist in meeting the Population Objective in the States Strategic and Corporate Plan). In rare cases licences will be issued for, or extended to, 15 years.
13. The words “five year licences” may be misleading and thus misinterpreted. The important point to note is that the licence generally restricts the licence holder’s consecutive period of residence in the Island to five years. For example, if a person has already lived in Guernsey for the past two years and he obtained a licence to move to a different employer it would only be valid for a further three years’ residence.



14. An essential licence holder can accommodate his family. (See paragraph 30 below.)
15. A person who holds an “essential” licence, or a series of “essential” licences, for 15 consecutive years will become a qualified resident. The licence holder’s spouse and children can also qualify. The policy of “five year” licences is, therefore, intended to prevent the majority of holders from gaining residential qualifications, becoming permanent residents and thereby contributing to population growth.
16. Long-term “essential” licences, for example those that are valid for 15 years, are therefore generally restricted to those posts where the Department is satisfied either: - that long term continuity in the job is essential to the community; or - that the qualifications, skills or experience required for the post are scarce on a national or international basis so that recruitment is exceptionally difficult.

### ***Application Procedure***

#### **Short-term licences**

17. If you wish to employ someone on a short-term licence basis you are advised to apply on a short-term licence application form (click here to download a form) <http://www.gov.gg/ccm/navigation/housing/right-to-work/application-forms> . If you have been given a prior indication that short-term licences are readily available for your industry, no accompanying letter is necessary. However, if you are aware that short-term licences are not common in your industry, it would be helpful to enclose a brief accompanying letter indicating how you have advertised and what local response, if any, there has been.
18. Applications for the extension of short-term licences beyond three years will not be approved. The holder must break residence for at least three months before becoming eligible for a new 9-month licence. An absence of three years is necessary before a new three-year licence will be granted.

#### **Essential licences**

##### *“Approvals in Principle”*

19. If you need an essential licence for a particular post, the Department strongly recommends that you make application, by letter, before you seek to engage a non-local person. The application should include an indication of the duration of licence requested e.g. 3 or 5 years. The Department will respond to that application by deciding, in principle, whether a licence will be granted once a suitable candidate has been recruited.
20. The application should provide the Department with a detailed description of the post’s duties, together with the qualifications, skills and experience required; whether the post is a new one and if it is not, how it has been filled in the past. You should also indicate why you need the licence for the period requested and why you consider the post is essential to the community - will it provide some essential service to the community; will it directly improve the company’s contribution to the exchequer by way of taxes; will it bring some

other benefit to the community? It would also assist the Department if you can indicate whether during the licence period you intend to train a ‘local’ replacement.

21. If you have advertised the post locally and not had any suitable local applicants you should provide these details when making application for a licence in principle.
22. It is advisable to copy the letter of application to the States’ Department or Regulatory Body responsible for your industry, as the Department is likely to seek advice on such applications before reaching a decision. For example, the Department will usually seek advice from the Guernsey Financial Services Commission on posts in the finance industry, the Commerce and Employment Department in other commercial posts, and the Health and Social Services Department on the appointment of health professionals etc.

*Applications for the issue of an “essential” licence*

23. When the Department has agreed in principle to grant a licence, and you subsequently submit an application for a named person to hold the licence, you will generally be expected to provide details of your attempts to recruit a local person (including the results of local advertising and the reasons why any local applicants were unsuitable).
24. Such applications should be made on the standard licence application form (download form here) <http://www.gov.gg/ccm/navigation/housing/right-to-work/application-forms> and be accompanied by a brief letter indicating that the application relates to the “Approval in Principle” and providing the details referred to in the previous paragraph.

(Note - Once the Department has granted an approval in principle, it is not usually necessary to seek the advice of another States’ Department or the appropriate Regulatory Body when the application is made for a named person to take up that “Approval in Principle”.)

*Accommodation options for holders of “essential” licences*

25. If an “essential” licence is granted it will usually allow the licence holder:
  - To occupy a specific self-contained dwelling (whether he purchases or rents it, or whether it is provided by the employer); and
  - To accommodate his spouse and children.
26. However, the Department will usually set out options for the type of accommodation that the licence holder may occupy, based on the licence holder’s income including salary (with overtime if applicable), bonuses, profit shares and other “perks”.

### **Expiry of licences**

27. If the licence is granted on a “five year” basis the holder is generally expected to leave the Island on its expiry, although the person could freely take up occupation of a Part A Open Market dwelling in order to extend his period of residence (*see 32 below*).
28. In rare cases the licence may be extended, but generally only where the Department is satisfied that long-term continuity provided by that employee has become essential or where the qualifications etc required for the post are scarce so that recruitment is exceptionally difficult.

### **General Comments on Essential Housing Licences**

29. Generally, only one member of the household needs to hold a housing licence. The Housing Control Law enables members of the essential licence holder’s direct family to live with him or her without the need for further licences. These family members will be eligible for “Declarations of Lawful Residence” as their Right to Work Document.

[In the current Law, “direct family” is restricted to spouse or child (including adopted or step-child), father, mother (and father- and mother-in-law) and grandchild.]

30. However, a partner / common law spouse is not covered by the householder’s licence and will require a separate licence. (These licences are issued where the Department is satisfied that the couple are genuine companions.)

### **Open Market Accommodation**

31. If the Department is not prepared to extend an essential licence and the employer (and employee) wishes to continue the employment, this could be achieved by rehousing the employee in an Open Market Part A property. There is no time limit on occupation of such a dwelling and it carries an automatic Right to Work. However, occupation of an Open Market dwelling would not count towards residential qualifications in those circumstances.
32. An employee who holds a 15-year licence can also opt to reside in an Open Market Part A property. In these circumstances, he would be treated as if he were resident under licence for so long as he remained employed in the post for which the licence had been agreed and on completion of 15 years’ service would become a qualified resident.

### **Other “Open Market” accommodation**

33. Although persons living in Open Market properties inscribed in Part A of the Housing Register (i.e. private houses) do not need housing licences and have an automatic Right to Work, the same is not true of other “Open Market” accommodation. For example, many hotels are inscribed in Part B of the Housing Register, but only the owner and manager (and members of their direct families); staff employed on a full-time basis in the hotel; and bona fide tourists can live in Part B hotels without the need of a housing licence. If a potential employee claims to be resident in an Open Market hotel you should

ask to see their housing licence and check with the Housing Control Department that it is a valid Right to Work document.

34. Similarly, some Open Market properties are inscribed in Part D because they are in use as lodging houses. The owner and his direct family members are exempt from the need of a housing licence (and have an automatic entitlement to a Right to Work document), but all other occupants, except qualified residents, need housing licences. Again, it is recommended that any person who claims to be living in a Part D Open Market property should be asked to produce their housing licence.