

## **Explanatory Memorandum for Tynwald Members**

Issued by the Cabinet Office

**To the Hon Clare Christian, President of Tynwald, and the Hon. Council and Keys in Tynwald assembled**

**Tynwald – July 2016**

### **1. Title of measures**

**Immigration (Designation of Travel Bans) (Revocation) Order 2016 (SD 2016/184)**

### **2. Changes in policy**

None.

### **3. Effects of the measures**

This Order revokes the Immigration (Designation of Travel Bans) Order 2016.

### **4. Reasons for the measures**

On 12 May 2016 the Immigration Act 2016 (of Parliament) (the "2016 Act") received Royal Assent. Section 76 of the 2016 Act amends Sections 8, 8A and 8B of the Immigration Act 1971 ("the 1971 Act"). These sections of the 1971 Act were most recently extended to the Island (with certain modifications) by the Immigration (Isle of Man) Order 2008 (SI 2008/680).

Section 8B(4) of the 1971 Act sets out a definition of "excluded person" which, following amendment by the 2016 Act, will (from 12 July in the UK) automatically include persons who are listed by either the EU or UN as being subject to a travel ban. Prior to this each time the Security Council of the United Nations (the "UN") or the Council of the European Union (the "EU") listed persons as being subject to a travel ban, the UK had to making an amending designation of travel bans order.

The effect of the amendments made by Section 76 of the 2016 Act will be that as soon as a "travel ban" is made by the relevant international body it will be immediately effective under UK law without the need for further domestic secondary legislation. This reduces the risk that an "excluded person" may seek to enter the UK in the period between a travel ban being made and its implementation into domestic legislation.

Under the present legislation when the UK has amended its designation of travel bans order the Council of Ministers has followed suit and made a new Immigration (Designation of Travel Bans) Order under section 8B(5) and (6) of the 1971 Act as it has effect in the Island.

In future there will be no UK designation of travel bans orders for the Island to follow; and it is also desirable, as in the UK, for there to be no delay between an international body subjecting persons to a travel ban and the implementation of those measures in the law of the Island. The Council of Ministers therefore agreed that the amendments to the law in this area should be extended to the Island using the permissive extent power in the 1971 Act (as extended by the 2016 Act). The Immigration (Isle of Man) (Amendment) (No. 2) Order 2016 is due to be made by the Privy Council on 13 July

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and the version of that Order in Council as submitted to the Privy Council is attached to this memorandum for information.

This Order revokes the Immigration (Designation of Travel Bans) Order 2016 (SD 2016/0048) to remove it from the Island's statute book as it will become redundant upon the coming into force of the Order in Council.

### **5. Resource implications**

Removing the need to make designation of travel bans orders will result in a small saving of administrative and legislative resources.

### **6. Tynwald procedure**

This Order is made under section 8B(5) of the 1971 Act as that Act has effect in the Island. Section 166(4) of the Immigration and Asylum Act 1999 sets out the following parliamentary procedure for subordinate legislation under the extended Immigration Acts:

"166 Regulations and orders

- (4) Rules, regulations and orders made under the Immigration Acts by the Governor, the Council of Ministers, the Deemsters, the Clerk of the Rolls or any Department of the Isle of Man Government shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which they are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect."

The Order is therefore subject to the **negative resolution** procedure.

**2016 No. 0000**

**IMMIGRATION**

**The Immigration (Isle of Man) (Amendment) (No. 2) Order 2016**

*Made* - - - - - *13th July 2016*

*Coming into force in accordance with article 1(2)*

At the Court at Buckingham Palace, the 13th day of July 2016

Present,

The Queen's Most Excellent Majesty in Council

Her Majesty, in exercise of the powers conferred upon Her by section 36 of the Immigration Act 1971<sup>(1)</sup> and section 95(5) to (7) of the Immigration Act 2016<sup>(2)</sup>, is pleased, by and with the advice of Her Privy Council, to order as follows:

**Citation and commencement**

- 1.—(1) This Order may be cited as the Immigration (Isle of Man) (Amendment) (No. 2) Order 2016.
- (2) This Order shall come into force on the day after the day on which it is made.

**Interpretation**

2. In this Order “the principal Order” means the Immigration (Isle of Man) Order 2008<sup>(3)</sup>.

**Amendment of the principal Order**

3. The principal Order is amended in accordance with articles 4 and 5.

**Amendment of Schedule 3**

- 4.—(1) Schedule 3 (the Immigration Act 1971) is amended as follows.
  - (2) In paragraph 13, after sub-paragraph (4) insert—

“(4A) In subsection (5) after “expired” insert “or otherwise ceased to be in force”.”.
  - (3) In paragraph 14, after sub-paragraph (2) insert—

“(3) After subsection (3) insert—  
“(4) References in this section to a person who ceases to be exempt do not include a person who ceases to be exempt by virtue of section 8B(3).”.”.
  - (4) In paragraph 15—
    - (a) in sub-paragraph (2) for “subsections (1), (2) and (5)” substitute “subsections (1) and (2)”;

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<sup>(1)</sup> 1971 c. 77.

<sup>(2)</sup> 2016 c. 19.

<sup>(3)</sup> S.I. 2008/680, which was amended by S.I. 2011/1158, S.I. 2011/1408, S.I. 2015/1765 and S.I. 2016/156.

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(b) after sub-paragraph (2) insert—

“(2A) In subsection (1) after paragraph (b) insert—

“(and any leave given to a person who is an excluded person is invalid)”.

(2B) For subsection (3) substitute—

“(3) Any exemption of a person from the provisions of this Act under section 8(1), (2) or (3) does not apply while the person is an excluded person.”.

(2C) In subsection (4) for “a designated instrument” substitute “an instrument falling within subsection (5)”.

(c) for sub-paragraph (3) substitute—

“(3) In subsection (5) for “The Secretary of State may by order designate an instrument” substitute “An instrument falls within this subsection”.

(d) after sub-paragraph (3) insert—

“(3A) After subsection (5) insert—

“(5A) Subsection (1), (2) or (3) does not apply to a person if—

(a) the application of that subsection to that person would be contrary to the Isle of Man’s obligations under—

(i) the Human Rights Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999), or

(ii) the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention as it has effect for the time being in relation to the Isle of Man, or

(b) the person has been exempted from the application of that subsection under a process applying by virtue of the instrument falling within subsection (5).”.

(e) in sub-paragraph (4) after “subsections” insert “(6)”.

### Amendment of Schedule 10

5.—(1) Schedule 10 (the text of immigration legislation as extended to the Isle of Man) is amended as follows.

(2) In Part 1 (the Immigration Act 1971) sections 8, 8A and 8B are substituted as follows—

#### “8 Exceptions for seamen, aircrews and other special cases

(1) Where a person arrives at a place in the Isle of Man as a member of the crew of a ship or aircraft under an engagement requiring him to leave on that ship as a member of the crew, or to leave within seven days on that or another aircraft as a member of its crew, then unless either—

(a) there is in force a deportation order made against him; or

(b) he has at any time been refused leave to enter the Isle of Man and has not since then been given leave to enter or remain in the Isle of Man; or

(c) an immigration officer requires him to submit to examination in accordance with Schedule 2 to this Act;

he may without leave enter the Isle of Man at that place and remain until the departure of the ship or aircraft on which he is required by his engagement to leave.

(2) The Governor may by order exempt any person or class of persons, either unconditionally or subject to such conditions as may be imposed by or under the order, from all or any of the provisions of this Act relating to those who are not British citizens.

Section 166(4) of the Immigration and Asylum Act 1999 (Tynwald procedure) does not apply to an order under this subsection, except one made with respect to a class of persons.

(3) Subject to subsection (3A) below, the provisions of this Act relating to those who are not British citizens shall not apply to any person so long as he is a member of a mission (within the meaning of the Diplomatic Privileges Act 1964), a person who is a member of the family and forms

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part of the household of such a member, or a person otherwise entitled within the United Kingdom to the like immunity from jurisdiction as is conferred by that Act on a diplomatic agent.

(3A) For the purposes of subsection (3), a member of a mission other than a diplomatic agent (as defined by the 1964 Act) is not to count as a member of a mission unless—

- (a) he was resident outside the Isle of Man, and was not in the Isle of Man, when he was offered a post as such a member; and
- (b) he has not ceased to be such a member after having taken up the post.

(4) The provisions of this Act relating to those who are not British citizens, other than the provisions relating to deportation, shall also not apply to any person so long as either—

- (a) he is subject, as a member of the home forces, to service law; or
- (b) being a member of a Commonwealth force or of a force raised under the law of any colony, protectorate or protected state, is undergoing or about to undergo training in the Isle of Man with any body, contingent or detachment of the home forces; or
- (c) he is serving or posted for service in the Isle of Man as a member of a visiting force or of any force raised as aforesaid or as a member of an international headquarters or defence organisation designated for the time being by an Order in Council under section 1 of the International Headquarters and Defence Organisations Act 1964.

(5) Where a person having a limited leave to enter or remain in the Isle of Man becomes entitled to an exemption under this section, that leave shall continue to apply after he ceases to be entitled to the exemption, unless it has by then expired or otherwise ceased to be in force; and a person is not to be regarded for purposes of this Act as having been settled in the Isle of Man at any time when he was entitled under the former immigration laws to any exemption corresponding to any of those afforded by subsection (3) or (4)(b) or (c) above or by any order under subsection (2) above.

(5A) An order under subsection (2) above may, as regards any person or class of persons to whom it applies, provide for that person or class to be in specified circumstances regarded (notwithstanding the order) as settled in the Isle of Man for the purposes of section 1(1) of the British Nationality Act 1981.

(6) In this section “the home forces” means any of Her Majesty’s forces other than a Commonwealth force or a force raised under the law of any associated state, colony, protectorate or protected state; “Commonwealth force” means a force of any country to which provisions of the Visiting Forces Act 1952 apply without an Order in Council under section 1 of the Act; and “visiting force” means a body, contingent or detachment of the forces of a country to which any of those provisions apply, being a body, contingent or detachment for the time being present in the Isle of Man on the invitation of Her Majesty’s Government in the United Kingdom.

### **8A Persons ceasing to be exempt**

(1) A person is exempt for the purposes of this section if he is exempt from provisions of this Act as a result of section 8(2) or (3).

(2) If a person who is exempt—

- (a) ceases to be exempt, and
- (b) requires leave to enter or remain in the Isle of Man as a result,

he is to be treated as if he had been given leave to remain in the Isle of Man for a period of 90 days beginning on the day on which he ceased to be exempt.

(3) If—

- (a) a person who is exempt ceases to be exempt, and
- (b) there is in force in respect of him leave for him to enter or remain in the Isle of Man which expires before the end of the period mentioned in subsection (2),

his leave is to be treated as expiring at the end of that period.

(4) References in this section to a person who ceases to be exempt do not include a person who ceases to be exempt by virtue of section 8B(3).

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### **8B Persons excluded from the Isle of Man under international obligations**

(1) An excluded person must be refused—

- (a) leave to enter the Isle of Man;
- (b) leave to remain in the Isle of Man

(and any leave given to a person who is an excluded person is invalid).

(2) A person's leave to enter or remain in the Isle of Man is cancelled on his becoming an excluded person.

(3) Any exemption of a person from the provisions of this Act under section 8(1), (2) or (3) does not apply while the person is an excluded person.

(4) "Excluded person" means a person—

- (a) named by or under, or
- (b) of a description specified in,

an instrument falling within subsection (5).

(5) An instrument falls within this subsection if it is a resolution of the Security Council of the United Nations or an instrument made by the Council of the European Union and it—

- (a) requires that a person is not to be admitted to the United Kingdom (however that requirement is expressed); or
- (b) recommends that a person should not be admitted to the United Kingdom (however that recommendation is expressed).

(5A) Subsection (1), (2) or (3) does not apply to a person if—

- (a) the application of that subsection to that person would be contrary to the Isle of Man's obligations under—
  - (i) the Human Rights Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999), or
  - (ii) the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention as it has effect for the time being in relation to the Isle of Man, or
- (b) the person has been exempted from the application of that subsection under a process applying by virtue of the instrument falling within subsection (5).".

*Richard Tilbrook*  
Clerk of the Privy Council

### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order amends the Immigration (Isle of Man) Order 2008 (S.I. 2008/680) so as to make equivalent amendments to the Immigration Act 1971 (c. 77) as it has effect in the Isle of Man (the "1971 Act") to the amendments made to that Act as it has effect in the United Kingdom by section 76 of the Immigration Act 2016 (c. 19). The effect of these amendments is that once a person is listed by the Security Council of the United Nations or the Council of the European Union as being subject to a travel ban that person becomes an "excluded person" within the meaning of subsection (4) of section 8B of the 1971 Act.

Section 8B(5) of the 1971 Act is amended to reflect that resolutions of the Security Council of the United Nations and instruments made by the Council of the European Union have direct application upon the United Kingdom rather than directly upon the Isle of Man.