

1. Control of Employment Bill 2013 – Third Reading approved

Mr Wild to move:

That the Control of Employment Bill 2013 be read a third time and do pass.

The President: We move to Item 1, which is the Control of Employment Bill 2013 for Third Reading.

I call on the Hon. Member, Mr Wild.

Mr Wild: Thank you, Madam President.

Hon. colleagues will be pleased to see I have got my spectacles this week!

I am pleased with the progress of the Control of Employment Bill so far, and I would thank Hon. Members for conferring their support on this important piece of legislation.

I am particularly pleased that, in addition to the amendments tabled by the Department, some Members were able to suggest improvements to schedule 1 of the Bill and that all of these were accepted. In my view, the Bill which will go back to another place will be all the better for those amendments, and in particular the exemption of chief officers of Departments and Statutory Boards will be in the Island's best interests.

I am also grateful to Mr Turner for giving this Hon. Chamber the opportunity to debate the very first principles of this legislation and to ask the question as to whether or not it is still desirable to maintain a work permit system. While I am confident that there is a majority support for retention of work permits both here and in another place, as well as with the general public at large, it is clear from the consultation process that many employers would go along with some or all of Mr Turner's views. It is therefore important that the Department continues to listen to what employers have to say and to take steps to deal with any shortcomings and consequently improve the whole system.

While all of the clauses now stand part of the Bill, it would probably be fair to say that some Members had reservations about some of the provisions, and of course Mr Turner is of the view that the whole work permit system should be scrapped altogether.

There are two factors why particular clauses may not be to everybody's liking. Firstly, the Bill is the product of many different points of view, some of which are difficult to reconcile. Secondly, the Department has attempted to future-proof the Bill to some extent through the provision of some general enabling powers, which may raise some suspicions in some quarters as to the Department's intentions. I will say a little bit more about each of these factors in turn.

If we turn to the first factor – that the Bill is a product of many different points of view, some of which are very difficult to reconcile – I would urge Members to reflect on the difficulty facing the Department in bringing forward the legislation. Work permits is one of the most divisive issues and a subject on which many people have a very strong and vastly different opinion. If I were to come up with a wish list of what people want out of the system, it might be a Bill which (1) protects Isle of Man workers, but does not harm the economy; (2) is not bureaucratic, but requires rigorous checks on people who want to work and live here; (3) keeps local jobs for local workers, but allows employers to appoint the best person for the job; (4) gives priority to our unemployed over people who are not Isle of Man workers, but does not prevent employers from being able to recruit the workers they need; and (5) keeps out some of the people with criminal backgrounds or who would be a drain on Government finances, but is not intrusive.

The problem with this list of wishes is that it is, of course, exceedingly difficult to reconcile all of the wishes, and a number of them are almost certainly incompatible. So hard choices need to be made, and yet there is very little consensus as to which are the most important wishes to take into consideration. Neither Department Members nor Ministers will be likely to completely agree

on any particular measure. Some will see any measures taken to liberalise the system as opening up the floodgates and harming the interests of Isle of Man workers; while equally, any measures proposed to tighten up the system will be rejected by those who see work permits as damaging to the economy and consider that it should be no business of Government who employers choose to employ. Further incompatible views may even come from the same person.

Let me illustrate by giving some examples of the difficulties in obtaining any consensus.

One, the Department proposed to grant itself powers to make an exemption in the national interest using Ministers' powers so it could deal with any special cases speedily and efficiently. However, this immediately raised suspicions that the power would be abused, which led to the Bill being amended in another place so that the Department must now report any exemptions in the national interest to Tynwald.

Two, more recently an amendment was moved in another place which would have required the Department to maintain a public register of work permits. The Department was unhappy with certain aspects of the amendment, yet wishing to meet the Member halfway put forward its own provision in this Hon. Chamber which would meet the concerns. Again, the revised amendment, which was intended to provide flexible enabling powers, was met with extreme suspicion by some Members in this Chamber.

Three, another example is the inclusion of fixed penalties in the Bill, which the Department considered would allow a more flexible range of enforcement possibilities, particularly as the Attorney General's Chambers may not always support a prosecution. The amendment was opposed by one Member in another place on the grounds that a breach of the legislation was too serious a matter to be dealt with by way of a fixed penalty, but also by a Member in this Chamber on the opposite ground that any new enforcement powers were unwarranted and should be resisted.

In the end, the Bill has been a compromise. There will be no political consensus to abolish work permits, as Mr Turner would have liked; but equally there would have been no consensus to turn the Isle of Man into a fortress manned by Isle of Man workers, and it would have been economic suicide to have done so.

At the same time, the Department had to take steps to modernise an Act passed in 1975 which was in urgent need of overhaul and which had last been amended by way of a specific amendment Bill in 1990.

Ultimately, the Bill is evolutionary in approach and attempts to balance the interests of all stakeholders – namely Isle of Man workers, employers, prospective workers and their families, and the Government itself. Its main achievements are as follows.

It continues to require that Isle of Man workers who have the right skills be *considered* for most employments.

The criteria on which the Department bases its decision on whether or not to grant a permit will better balance availability and suitability of Isle of Man workers with employers' needs and the needs of the economy.

The simple five-year qualifying period and the changes regarding spouse permits will make it more attractive for the workers the Island needs to come here, and make it easier for the employers to recruit.

The Department's powers to exempt particular employments are wider and more flexible, and it will be easier to remove any exemptions that are no longer necessary.

A number of loopholes in the existing Act will be removed, which will prevent criminals with unspent convictions from working on the Island without scrutiny.

The enforcement provisions have been strengthened and also made more flexible through the provision of fixed penalties.

In line with the decision by the Council of Ministers, the legislation has retained a layer of quasi-residential controls which will continue to allow the Department to continue to take into

account the costs of prospective workers and those who would accompany them, and refuse a permit in certain cases of criminality etc.

Madam President, the second factor that Members may have had some reservations about is some of the general enabling powers which are intended to future-proof the Bill and, to some extent, which may raise suspicions in some quarters as to the Department's intentions.

An example might be clause 12(3), which deals with criteria the Department may take into consideration when deciding whether or not to grant permits. Paragraph (q) allows the Department to take into consideration any other circumstance which, in the Department's opinion, ought in the public interest to be taken into account. Another example may be the powers in clause 9(5) to extend the right of spouses and civil partners to other persons – perhaps long-term partners who are neither married nor civil partners. In both circumstances, the intention is to build a degree of flexibility into a piece of legislation which, if the past is to be any guide, may not be amended for another 20 years or more. Any regulations which the Department will bring forward after 2014 may well be subject to the consultation and will be subject to the annulment procedure, so that if Tynwald does not like them the Court can throw them out.

Madam President, while some Members may continue to have some reservations about aspects of the Bill, I would in the final analysis say that it will serve the Island a great deal better than the 1975 Act which it will replace. It is intended to be a pragmatic piece of legislation which balances the interests of many parties who, in the end, are unlikely to ever agree on all the contents.

I have nothing further to add at this stage, but now beg to move that the Control of Employment Bill 2013 be read for a third time.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: I beg to second and reserve my remarks, Madam President.

The President: The Hon. Member, Mr Turner.

Mr Turner: Thank you, Madam President.

I will be supporting the Third Reading. As I have said at previous readings, this is a vast improvement on the archaic legislation that is in place.

I would like to thank Hon. Members for the debate we had last week. I think it was a worthy debate. I think the legislation is better for it because at least we have had that discussion, which is one that I think had almost been shied away from as it was deemed a bit too politically sensitive to maybe suggest that we should be scrapping work permits. But I think the fact that we have looked at it and had such a lengthy debate on it means that this can at least go back to the other place having had the full scrutiny that it deserves and that point of view put across and debated. Albeit it was not successful in going through, nevertheless it was important we had it.

I still do not believe that this is the correct instrument for looking after other areas of the services, such as controlling education, health, criminals, immigration and the numerous other things which the Department says that it will assist with. I do not think work permit legislation is the place to deal with that. It has been no secret over the years that the Control of Employment Act has been a *form* of immigration control. I do not think anybody hides away from that and I am sure it has served its purposes.

I am certainly not happy with the provision in there for the Department to maintain a register of Isle of Man workers. I am content that the provisions in there to maintain a register of work permit *holders* may be more appropriate; but as we discussed at the previous reading, 'Isle of Man workers' actually encompasses people who have no connection and are completely exempt from these provisions – people who are born on the Island, have lived on the Island, been schooled and who then go into work – so why they should be on a register... and I know it is only

enabling, but nevertheless, there is a provision there. A register that is open for viewing by the public I think is a step too far and I do intend to refer this matter to one of the Policy Review Committees to see if they would be willing to look at that and investigate it and report accordingly. Again, it will be in that Committee's gift as to whether they wish to investigate, but nevertheless I will be referring it to them.

It is interesting that last week on LBC Radio there was the Farage-Clegg debate, and the discussion came up about work permits in the United Kingdom. So again it is, as you said, something that has cropped up in other jurisdictions. They of course, as part of their European Union membership, are bound by certain rules; but nevertheless it is a debate that is being had across the water.

One further point I would like to make about this is that the annulment process for the regulations I do not think is as robust as the positive resolution, so it is disappointing that these regulations... or some of them are not going to be actually placed on the Tynwald Order Paper for approval, because as we know, the annulment will rely on them being presumably picked up and a Member actually placing them at the next sitting of the Court and saying, 'We should abolish these'; rather than the other way round, which I think... I know it should not do, but I think it gets more scrutiny when it is actually focused on the Order Paper that Members have to positively vote, or indeed they may wish to vote against a regulation. I think that is the best method for something so important.

But as I said, I will be supporting this Bill because it is a vast improvement on what has gone before.

The President: The Hon. Member, Mr Butt.

Mr Butt: Thank you, Madam President.

I will be supporting the Third Reading because I think this is a Bill which has become much more flexible and has modernised the current legislation.

I think one of the main original intents of the legislation was to protect manual workers in the days when we had a large influx of workers from off Island at a time when there was a bit of a building boom, and that was the main intent. Of course, things have moved on since those days.

I can remember, in those days when this legislation first came in, that it was not always adhered to by employers as well as it should have been. I can remember a couple of times going to large building sites in pursuit of criminals in criminal inquiries, and as we walked on the site the workers mistook us for DHSS work permit inspectors and they ran to all corners of the building site and over surrounding hedges into the fields and away, and we encountered empty building sites. I think the DHSS inspectors had the same problem as well. But that was 40 years ago and things have changed considerably in terms of our methods of employment.

This Bill has become flexible, it is modernised, and it still protects the manual workers – I think that is still in place – but we now have a Bill which is fit for the future and can be, as we can see from the amendments, modernised to actually cope with changing employment requirements.

I think the most telling part of this debate I noticed was when Mr Coleman talked of his experience of coming over here to try to set up a company and he found the work permit system worked well. So the debate about should we abolish it altogether... I think perhaps his contribution has helped to convince me that we still need, or we can still use, a work permit system for the betterment of the Isle of Man and its workers.

Thank you, Madam President.

The President: The Hon. Member, Mr Downie.

Mr Downie: Thank you, Madam President.

I too will be supporting the Third Reading of the Bill and I concur with the comments made by previous speakers on this.

The top and bottom of it is we cannot afford to let go of the reins and we need to have some control on who comes in and takes a position in the workplace. Alright, the legislation might be a bit of a blunt instrument, but the right of abode is different from the right to work, and if we can strike a balance here we can protect our own jobs market and make sure that local people have a fair crack of the whip at the jobs market.

At the same time, I think we have eased up on the reins in another area to allow more flexibility at the top end, where the Department now has discretions for people who are creative, people who are coming in and making a major contribution to the economy, and we have applied that now to senior civil servants, chief officers, people involved in major positions on Statutory Boards, and of course the Chief Fire Officer.

So I think we have amended the Bill considerably and I just hope that the work that we have gone to and the discussions we have had will stand the Bill in good stead when it goes back to the other place, and that they support the time and effort that has been put in both by the mover and the seconder of the Bill – and the Department; they have been back and revisited this during its passage through here. I think we have finished up with a Bill that is workable and will hopefully stand us in good stead for another 15 or 20 years.

The President: The Hon. Member, Mr Crowe.

Mr Crowe: Thank you, Madam President.

I too will be supporting the Third Reading, but I would just like to respond to Mr Turner's query on the amendment I moved last week.

It seems perfectly logical to keep some information as to some Isle of Man workers. In order to administer work permits, the Department must keep information as to people who are working on the Island and work permits. What then should the Department do at the end of a five-year period when a permit holder becomes an Isle of Man worker? One option would be to shred the record completely. However, were the worker to go away and then return to the Island it would mean that he or she might have to gather information to prove that he or she was an Isle of Man worker, whereas if the work permit office had maintained a record of his or her being an Isle of Man worker on some kind of register, then proving he or she was indeed an Isle of Man worker would be much more straightforward.

I would also add – and I would emphasise this point – that there is no intention to keep a register of all Isle of Man workers, but I really think it would be useful, for example, to keep a record of those workers who have been subject to a permit in the past. I would remind Members that information to be kept about persons on a register would be prescribed in regulations. I hope this will reassure Hon. Members as regards the Department's intention.

Thank you, Madam President.

The President: The mover to reply.

Mr Wild: Thank you, Madam President.

I think this has been a very useful debate and process over the last three weeks. I thank all my hon. colleagues for their contributions and for all the comments of support.

I think, in fairness to my hon. colleague, Mr Turner, it is right to challenge. It is easy enough just to keep legislation in place and tweak it and adapt it and evolve it. I think when you look at strategy you start from the extreme position, and the extreme position is to abolish something altogether. So I and the Department thank him for initiating such a debate, which I think was worthwhile and very useful.

In my own view, if we did not have this legislation it would lead to further unemployment on the Isle of Man. I think it provides a very practical balance, as Mr Downie pointed out, in terms of protecting perhaps Manx workers at the lower end of the job marketplace while giving the flexibility to bring in expertise – particularly in emerging sectors, where sometimes we do need to bring in off-Island skills which are not here at the moment until we can develop the education system further to produce more local engineers or ICT specialists, for example.

Thank you to my hon. colleague, Mr Crowe, for his support and for seconding the motion, and for clarifying the position with the record of work permits. I think, at this stage, there is no intention to keep a record of local workers; but actually, if we were being practical, sometimes that type of information can be very useful in terms of ongoing economic strategic planning. But there is no intention at this stage; it is to do with work permit holders only.

Those are my comments and I beg to move.

The President: The motion is that the Bill be read a third time and do pass. Those in favour, please say aye; against, no. The ayes have it. The ayes have it