



CONTROL OF EMPLOYMENT BILL 2013

EXPLANATORY NOTES

These notes are circulated for the information of Members with the approval of the Member in charge of the Bill.

INTRODUCTION

These explanatory notes relate to the Control of Employment Bill 2013. They have been prepared by the Department of Economic Development in order to assist readers of the Bill. They do not form part of the Bill.

The notes need to be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill.

Abbreviations

the Department the Department of Economic Development

the Tribunal the Work Permit Appeal Tribunal

Existing legislation

CEA the Control of Employment Act 1975

The 1993 Regulations the Control of Employment Regulations 1993

The 2009 Order the Control of Employment (Exemptions) Order
2009

CLAUSE 1

This clause gives the Act its title.

CLAUSE 2

This clause provides for the commencement of the Act.

Sub-section (1) provides that the Act is to come into force on an appointed day or days. [Note that an appointed-day order is to be laid before Tynwald].

Sub-section (2) provides that such an order may contain incidental and transitional provisions.

CLAUSE 3

This clause provides for the interpretation of the Bill. It should be noted that the definitions of 'employment', is wider than in CEA.

CLAUSE 4

This clause sets out who is an Isle of Man worker for the purposes of the Bill. There are eight main categories. (Note that "lived in the Island" in these notes means ordinarily resident in the Island.)

Sub-section (1) is introductory.

Sub-section (2) provides that a person is an Isle of Man worker if he or she was born in the Island.

Sub-section (3) provides that a person is an Isle of Man worker if he or she has at any time lived in the Island for an unbroken period of at least 5 years.

Significant changes to CEA:

The new provision constitutes a simpler, less onerous route to becoming an IOM worker than the two following routes in the CEA which it replaces:

- if one has lived in the Island for at least 10 consecutive years (CEA s.1(1)(b)); or

- if one has lived in the Isle of Man for 5 consecutive years; but one ceases to be an Isle of Man worker (a) if one ceases to live in the Island within the next 5 years and does not again live in the Island in the following 15 years; or (b) if one ceases to live in the Island within the next 5 years, again lives in the Island in the following 15 years, and then again ceases to live in the Island in the next 5 years (CEA s.1(1)(c)).

Note the transitional provisions in Schedule 3, which provide that the change is not retrospective whilst at the same time ensuring that the position of existing workers is not adversely affected.

Sub-section (4) provides that a person is an Isle of Man worker if he or she is the spouse or civil partner of an Isle of Man worker and is entitled to remain in the Island under immigration law.

Significant change to CEA:

The immigration conditions are new, and are intended to ensure that a person's spouse or civil partner who has no right to live in the Island cannot be an Isle of Man worker.

Sub-section (5) provides that a person is an Isle of Man worker if he or she had been married to or the civil partner of an Isle of Man worker, was living in the Island immediately before the death of the former partner and has lived in the Island ever since.

Significant change to CEA:

The existing requirement that the person must have lived in the Island for 3 years before being widowed has been removed.

Sub-section (6) provides that a person is an Isle of Man worker if he or she had been the spouse or civil partner of an Isle of Man worker, had lived in the Isle of Man for an unbroken period of at least 3 years

immediately before becoming divorced and has lived in the Island ever since.

Sub-section (7) provides that a person is an Isle of Man worker if his or her parent is (or was immediately before death) an Isle of Man worker and at the time of the child's birth the parent, or the parent's spouse or civil partner, was serving in the armed forces.

Significant change to CEA:

This is a simplified version of CEA s.1(1)(f).

Sub-section (8) provides that a person is an Isle of Man worker if he or she is the child of a person who was both born in the Island and lived in the Island for their first 5 years.

Sub-section (9) provides that a person is an Isle of Man worker if he or she (a) was for an unbroken period of at least a year (i) under 23 years old, (ii) ordinarily resident in the Island and (iii) in full-time education, and (b) has since the end of that period remained resident, and (c) is the child of a person who during that period was (i) an Isle of Man worker, or (ii) an exempt person in regular full-time employment, or (iii) the holder of a work permit.

Significant change to CEA:

CEA specifies no minimum period during which a person must be in full-time education while, in addition, the other conditions are new. The new provision thus closes a loophole in CEA.

Sub-section (10) excludes certain temporary exemptions in Schedule 1 from counting as regular full-time employment for the purposes of sub-section (9)(c)(ii).

CLAUSE 5:

This clause sets out supplementary information as to Isle of Man workers.

Sub-section (1) provides that where a person has been in prison for over 6 months, that person is not to be treated as living in the Island for the purposes of clause 4 after the 6 months expired.

Example 1

X has been resident in the Island for 3 years. He then serves 4 months in the Isle of Man Prison. On his release he continues to live in the Island for another 2 years. He has been resident in the Island for 5 years 4 months, and is therefore an Isle of Man worker under clause 4(3).

Example 2

Y has been resident in the Island for 3 years. He then serves 8 months in the Isle of Man Prison. On his release he continues to live in the Island for another 2 years. Under clause 5(1), for the final 2 months of his sentence he is not treated as ordinarily resident in the Island. He has therefore been resident for one period of 3 years 6 months and another period of 2 years, with a gap of 2 months in between. He is therefore not an Isle of Man worker under clause 4(3).

Sub-section (2) provides that where a person has lived in the Island for an unbroken period of at least 3 years before serving in the armed forces, he or she is to be treated for the purpose of clause 4(3) as living in the Island during that period of service.

Sub-section (3) defines references to relationships in clause 4 as including adoptive and step relationships.

Sub-section (4) provides that the rules in clause 4 are subject to the transitional provisions in Schedule 3.

CLAUSE 6

This clause provides that, except in accordance with the Bill, a person must not undertake any employment in the Island unless he or she is an Isle of

Man worker; and that an employer must not employ a person unless he or she is an Isle of Man worker. For the penalty for doing so, see clause 15(1).

CLAUSE 7

This clause provides for a number of exemptions to the restrictions imposed by clause 6.

Sub-section (1) disapples the Act to the list of exempted employments contained at SCHEDULE 1.

Significant changes to CEA:

The ability to exempt descriptions of persons, as well as employments, is new.

Significant changes to Schedule 1 in the CEA and the exemptions contained in Orders made under the Act are as follows:

1. The new Schedule consolidates the exemptions in CEA as well as those made under the following secondary legislation:
 - The Control of Employment (Non-Resident Directors) Exemption Order 1988;
 - The Control of Employment (Court Officers) Exemption Order 1989;
 - The Control of Employment (Exemptions) Order 2009;
 - The Control of Employment (Secondary School Teachers) Order 2013.
2. The exemption in CEA for employment in the police is restricted to employment as the Chief Constable only.
3. "Employment as an acting Deemster" in the 1989 order is widened to "Employment as a Deemster or Judicial Officer" in order to permit the appointment of an additional Deemster

or additional Judicial Officer to deal with a particular case or for a temporary period. "Judicial Officer" is the term for a second-tier judge (High Bailiff or deputy High Bailiff) under the Administration of Justice Act 2008.

4. New provision is made for the exemption of a person conducting an inspection or investigation by the Financial Supervision Commission, Insurance and Pensions Authority or prescribed body.
5. The existing 30 day exemption for performers etc. in connection with any theatrical or musical performance in the Island is extended to 48 days.
6. Under the 2009 order a company in an international group can bring in workers for up to 48 days a year. The Group must consist of at least one company incorporated in the Island and at least one company incorporated in a country or territory outside the Island. The corresponding provision has been tightened up so that a company *incorporated in the Island* which is a member of an international group can bring in workers *employed by a member of the group* for up to 48 days a year. In addition the definition of "international group" has now been amended so that it must consist of at least one company incorporated in the Island and at least one company incorporated, *and bona fide carrying on business*, in a country or territory outside the Island.
7. The exemption in CEA for "*Employment of a temporary nature for a period not exceeding 3 days or such other period as may be prescribed*" is omitted, as this was superseded by a longer 10 day exemption (subject to 3 exceptions) which was included in the Control of Employment (Exemptions) Order 2009. The 10 day exemption is now consolidated within Schedule 1.

8. Note that clause 7(5)(b) has replaced the following exemption in CEA: : "*Employment of a temporary nature for a period exceeding that referred to in paragraph 9, if the Department has authorised such employment in writing on being satisfied that there are good grounds for doing so. Any decision of the Department under this paragraph shall be final*". (See the note to sub-section 7(5)(b) below).

Sub-section (2) provides that where a condition applies to an exemption in Part 1 of Schedule 1, the exemption does not apply unless the condition is complied with.

Significant change to CEA:

The ability to make an exemption subject to compliance with a condition is new.

Sub-section (3) provides that Part 2 of Schedule 2 applies for the interpretation of certain terms used in Part 1 of the Schedule.

Sub-section (4) exempts a person who is the holder of an 'immigration employment document' which permits him or her to undertake employment from the Act (in order to prevent a double requirement). The term 'immigration employment document' will be defined in regulations by reference to the immigration rules in force from time to time (see clauses 2 and 23(1)).

Sub-section (5) authorises the Department to exempt, subject to any conditions, (a) a person working in a specified capacity if it considers the employment of that person to be in the national interest; or (b) a specified employment of a temporary or intermittent nature.

Significant changes to CEA:

The *national interest* criterion is new, as is the ability to exempt *intermittent* as well as *temporary* employment.

Sub-section (6) authorises the Department to amend the Schedule by order. An order must be approved by Tynwald (see clause 22(4)).

Significant change to CEA:

Although additional exemptions can be made by Order, the exemptions in the Schedule to CEA can only be altered by an Act of Tynwald.

Sub-section (7) provides that an order to amend Schedule 1 may have effect indefinitely or for a period specified in the order.

Sub-section (8) provides for the continued exemption of a person currently employed who would otherwise cease to be exempt because of an order under sub-section (6).

CLAUSE 8

This clause provides for the Department to operate a system of work permits.

Sub-section (1) disapplies the prohibition on employing non-Isle of Man workers where persons are working in accordance with a permit issued by the Department.

Sub-section (2) provides for a work permit to authorise the employment of a named person in a specified capacity. The permit may also be limited to employment by a specified employer or at a specified place or both, and may be issued subject to specified conditions.

Sub-section (3) deals with the special case of a work permit holder who is suspended from work on maternity grounds. In that case the person may be employed by the same employer in suitable alternative work without the need to apply for a new permit.

Significant change to CEA:

This is a new provision.

Sub-section (4) deals with the special case of a work permit holder whose employment is terminated by the employer but who before the termination agrees to transfer over to a successor or associated

employer. In that case the successor or associated employer may continue to employ the holder in the same capacity without the need to apply for a new permit.

Significant change to CEA:

This is a new provision.

Sub-section (5) provides that subject to exceptions a work permit remains in force for the period which the Department considers appropriate and is specified in the permit.

Sub-section (6) provides that a work permit is to be in such form as the Department considers appropriate.

CLAUSE 9

This clause provides for a spouse or civil partner of a work permit holder or exempt person to be entitled to a work permit.

Sub-section (1) provides that, subject to prescribed exceptions and refusal in certain cases of criminality etc., where a work permit holder or exempt person is engaged in regular full-time employment ("the primary employment"), his or her spouse or civil partner is entitled to a work permit.

Significant changes to CEA:

A spouse or civil partner of a person is not entitled to a work permit unless that person is in full-time employment. There is also no entitlement if the spouse or civil partner has certain criminal convictions (set out at clause 10). (But in either case the spouse or civil partner may still apply for a permit under clause 8).

Sub-section (2) provides that a work permit granted or renewed under sub-section (1) remains in force for (a) a year beginning with the date on which it is granted or renewed, or (b) for 6 months beginning with

the date on which the primary employment ceases, whichever is the sooner.

Significant change to CEA:

Under CEA the permit is renewable for 1 year provided that the primary permit-holder is still working on a permit or remains an exempt person and the couple are still married or in a civil partnership.

Sub-section (3) provides that such a permit authorises the employment of the person named in it generally in any capacity, subject to any conditions specified in the permit.

Significant change to CEA:

This provision is new. Note too that under the 2013 Regulations an application for a permit under this clause is to be made by the spouse or civil partner of the permit holder, not by the prospective employer, as under the 1993 Regulations.

Sub-section (4) applies the rule in clause 4(10) so as to exclude entitlement to a permit in the case where the person in primary employment is working by virtue of a temporary exemption which is limited to a maximum number of days.

Sub-section (5) enables the Department to make regulations treating (a) a man and a woman who are not married to each other but are living together as husband and wife, or (b) two men, or two women, who are not civil partners of each other but are living together as civil partners, as though they were spouses or civil partners for the purpose of this clause.

Significant change to CEA:

This provision is new.

Sub-section (6) empowers the Department to make any consequential or transitional provisions as are necessary or expedient in any regulations made under sub-section (5).

CLAUSE 10

This clause disapplies clause 7 (exemptions) and clause 9 (spouse or civil partner permit) in any case where a person has been convicted of an offence and sentenced (anywhere in the world) to a term of custody, where the conviction is not spent, or is otherwise required to be disclosed, under the Rehabilitation of Offenders Act 2001.

Significant change to CEA:

This is a new clause.

CLAUSE 11

This clause empowers the Department to revoke a work permit in certain circumstances.

Sub-section (1) provides that the Department may revoke a work permit if it considers that the circumstances that justified the grant or renewal of the permit have changed. The circumstances for revocation are to be subject to regulations (see clause 23).

Sub-section (2) provides that the Department may revoke a work permit held by a person referred to in clause 10 where (a) the sentence in question was passed since the permit was granted or was last renewed; or (b) the Department was unaware of the sentence when the permit was granted or was last renewed.

Significant changes to CEA:

Sub-section (2) is a new provision.

CLAUSE 12

This clause provides for the Department to have regard to certain criteria when making a decision to grant or renew a work permit.

Sub-section (1) provides that the Department may refuse to grant or renew a work permit held by a person referred to in clause 10.

Sub-section (2) provides that when considering whether to grant, renew or revoke a work permit or impose a condition in a permit the Department must have regard to certain matters, and may have regard to certain other matters, to be prescribed by regulations (see clause 23).

Sub-section (3) contains a list of matters which may be prescribed by regulations for the purpose of sub-section 2.

Sub-section (4) defines 'relevant person'.

Significant changes to CEA:

This clause specifies in detail the matters which may be prescribed as relevant to decisions on work permits. The powers are wider than in CEA and, in particular, explicitly include some matters which are concerned with the wider social considerations of the decision as to whether or not a permit should be granted (e.g. "*the ability of the person concerned and any relevant person to speak English*") and which might be considered as not directly relevant to employment issues. There are also explicit powers to take into account any "relevant person", that is a person other than the person in respect of whom a permit is sought. The term is defined as meaning "*any person living with, or likely to live with the person concerned as a member of his or her family or household.*"

CLAUSE 13

This clause deals with the constitution of the Work Permit Appeal Tribunal.

Sub-section (1) provides for the continuation of the Tribunal.

Sub-section (2) specifies the constitution of the Tribunal. It is to consist of a chairman and two other members, one of whom is to be drawn

from a panel of persons representing employers and self-employed persons, and the other from a panel representing employees, in accordance with the Tribunals Act 2006. Provision is also made for a panel of deputy chairmen.

Significant change to CEA:

The provision for a panel of deputy chairmen is new.

Sub-section (3) specifies that where the chairman is absent or unable to act his or her place is to be taken by a deputy chairman drawn from the panel of deputy chairmen in accordance with regulations made under the Tribunals Act 2006.

Sub-section (4) specifies that one member is to be drawn from each of the panels referred to in sub-section 2 in accordance with regulations made under the Tribunals Act 2006.

CLAUSE 14

This clause provides for appeals against decisions to the Work Permit Appeal Tribunal and the High Court.

Sub-section (1) specifies the decisions against which an appeal may be brought under this clause, viz. to grant, refuse or revoke a work permit; or to include a condition in a work permit.

Sub-section (2) provides a right of appeal to the Tribunal against a decision specified in sub-section (1) by a person specified in sub-section (3).

Sub-section (3) defines the persons that have a right of appeal. They are:

- (a) where a permit is granted, any person who applied for the employment (but see sub-section (4));
- (b) where a permit is refused or revoked, or is granted subject to a condition, the applicant or holder, and their employer or prospective employer.

Significant change to CEA:

The persons who may bring an appeal are specified (under CEA any person 'aggrieved' by the decision may appeal).

Sub-section (4) deals with the case of a person who did not apply for employment because it was insufficiently advertised. Where the Tribunal considers that a person would have had a reasonable expectation of obtaining the employment, it may treat that person as having applied for the employment.

Sub-section (5) provides that where an appeal is made, the Tribunal must either allow or dismiss the appeal. It must allow the appeal where it considers that the Department in reaching the decision (i) made a mistake in law; or (ii) based its decision on any incorrect material fact; or (iii) exercised its discretion in an unreasonable manner.

Significant change to CEA:

The grounds on which a decision may be overturned or varied are specified, following the judgment in *Department of Education v. Hedges* (2007).

Sub-section (6) provides that where the Tribunal allows an appeal, it is to remit the application to the Department, with its reasons for the decision, and the Department must reconsider the application.

Significant change to CEA:

This provision is new.

Sub-section (7) provides that, except as provided in sub-section (8) the decision of the Tribunal on an appeal is final.

Sub-section (8) allows an appeal to the High Court from a decision of the Tribunal on a point of law only.

Sub-section (9) provides that Rules made under the Tribunals Act 2006 may (a) require an appellant to pay a fee to make an appeal and (b)

provide for some or all of the fee to be refunded in specified circumstances.

Significant change to CEA:

This provision is new.

CLAUSE 15

This clause sets out various offences and the penalties for commission of such offences.

Sub-section (1) makes it an offence to be employed, or to employ a person, in breach of clause 6 (restrictions on employment). The offence carries a maximum of 3 months' custody or a fine of £5,000, or both.

Significant change to CEA:

The present maximum fine is £2,500.

Sub-section (2) provides an exception to sub-section (1): where the accused believed that the 'person concerned' (i.e. the person employed) was an Isle of Man worker, and took all reasonable steps to verify the accuracy of that belief.

Sub-section (3) makes it an offence to fail to comply with a condition attached to an exemption or to a work permit. The offence carries a maximum fine of £1,000.

Significant change to CEA:

This is a new provision.

Sub-section (4) provides that it is an offence to lie or deceive a person in the circumstances specified in sub-section (5), or to pretend to be the person named in a work permit, or to tell an employer falsely that a work permit is in force or unnecessary for the employment concerned. The offence carries a maximum of 6 months' custody or a fine of £7,500, or both.

Significant change to CEA:

The present maximum fine is £5,000.

Sub-section (5) specifies the two circumstances referred to in sub-section (4)(a), viz. for the purpose of obtaining a work permit, or in response to a question as to one's work permit status (see clause 17(1)).

Sub-section (6) makes it an offence to intentionally delay or obstruct an inspector (see clause 19) in the course of his or her duties, or to withhold information when required to provide it. The offence carries a maximum fine of £7,500.

Significant change to CEA:

The present maximum fine is £5,000.

Sub-section (7) (a) enables regulations (see clause 23) which impose an obligation, to make contravention of the obligation an offence, with a maximum fine of £1,000. Provision is also made for a fixed penalty to be imposed for any such contravention (see further at clause 17).

Significant changes to CEA:

This is a new provision.

CLAUSE 16

This clause contains further provisions concerning offences.

Sub-section (1) provides that where an offence has been committed by a body corporate, a director, manager, secretary or other officer who is responsible for it shall be treated as having committed that offence and liable to be punished.

Sub-section (2) provides that proceedings for an offence under clause 15(1) may only be brought by or with the consent of the Attorney General.

Sub-section (3) provides that criminal proceedings may be brought within 3 months of the date on which the Attorney General had

sufficient evidence to warrant proceedings, but subject to an overall limit of 12 months after the offence was committed.

CLAUSE 17

This clause enables a fixed penalty to be imposed for an offence of working, or employing a person, without a work permit, or failing to comply with a condition of a work permit or exemption, as an alternative to prosecution.

Sub-section (1) enables an inspector (see clause 18(2)) to serve a fixed penalty notice on a person believed to be committing an offence under clause 15(1) or (3) or, where applicable, regulations.

Sub-section (2) provides that a person who pays the fixed penalty within 14 days of being given the notice cannot then be prosecuted for the offence.

Sub-section (3) prevents any charge being brought for the offence during that period of 14 days.

Sub-section (4) provides for the amount of a fixed penalty to be specified in regulations (see clause 23(1)), subject to a maximum of £1,000 for an offence under clause 15(1) or £200 for an offence under clause 15(3) or regulations.

Sub-section (5) provides for a fixed penalty to be paid to the Chief Registrar, who is to deal with in the same way as a fine (i.e. pay it to the Treasury for the General Revenue).

Sub-section (6) enables a fixed penalty to be paid by post.

Sub-section (7) defines "properly addressed" for this purpose.

Significant changes to CEA:

This is a new clause.

CLAUSE 18

This clause deals with evidence in relation to offences.

Sub-section (1) gives the Department power to serve a written notice on a person suspected of working in contravention of clause 6 requiring him or her within 14 days to satisfy the Department that he or she is an Isle of Man worker.

Significant change to CEA:

The corresponding period in the 1975 Act is 40 days.

Sub-section (2) provides that where a person who has been served a notice under sub-section (1) fails to satisfy the Department within 14 days that he or she is an Isle of Man worker the Department may issue a certificate which is to be taken as evidence that the person is not an Isle of Man worker until the contrary is proved.

Sub-section (3) provides that where a person or his or her employer is prosecuted for an offence under clause 15(1), evidence of payment of social security contributions, or of conviction for non-payment, in respect of any employment is admissible to show that that person was engaged in that employment.

Sub-section (4) provides that, for the purpose of clause 16(3), a certificate signed by or on behalf of the prosecutor and stating the date on which the relevant evidence came to his or her knowledge is to be taken as conclusive.

Sub-section (5) provides that a certificate of the Chief Registrar as to payment or non-payment of a fixed penalty is evidence of whether or not it was paid.

Sub-section (6) provides that the signature of a certificate under sub-section (2), (4) or (5) does not have to be specifically proved.

CLAUSE 19

This clause sets out the powers of inspectors to enforce the Bill. (“Inspectors” are defined by clause 2 as persons authorised by the Department to exercise those powers.)

Sub-section (1) provides for the powers in this clause to be exercised for the purpose of ascertaining whether there has been a contravention of the provisions listed.

Sub-section (2) gives an inspector powers of entry, and power to require the production of documents (including those kept on computer) and to ask questions. (Obstruction or refusal to answer is an offence under clause 15(6)).

Sub-section (3) places an obligation on a person who is required by an inspector to produce documents or to answer questions to provide information and produce the documents (non-compliance is an offence under clause 15(6)).

Sub-section (4) provides that a person cannot be required to incriminate himself or herself or his or her spouse or civil partner.

Sub-section (5) requires an inspector exercising any power to produce evidence of his or her authority to do so if required.

CLAUSE 20

This clause applies the provisions in the Bill to the Government.

Sub-section (1) applies the Bill to the Government as if they were private persons.

Sub-section (2) provides that the Government cannot be guilty of an offence under the Act.

CLAUSE 21

This clause enables the Bill to be applied to employment in territorial waters.

Sub-section (1) enables the Council of Ministers to make an order applying the Bill, for specified purpose and with or without modifications, to employment in territorial waters (e.g. on oil rigs). Such an order requires Tynwald approval (see clause 23(4)).

Sub-section (2) enables such an order to deal with the jurisdiction of courts or the Tribunal in relation to employment in such waters.

Significant changes to CEA:

This is a new clause.

CLAUSE 22

This clause allows the sharing of information relating to employment between various bodies for specified purposes.

Sub-section (1) limits the clause to information relating to persons undertaking or engaged in, or intending to undertake or be engaged in, employment in the Island.

Sub-section (2) enables (a) the Governor (in so far as he has functions under the Immigration Acts); (b) the Chief Constable; (c) the Treasury; (d) the Assessor of Income Tax; and (e) the Department of Social Care, to share with the Department information which is likely to be of use for control of employment purposes.

Sub-section (3) provides that the Department may share with an authority mentioned in sub-section (2) information relating to control of employment purposes if it is likely to be of use to the particular authority to carry out its particular functions.

Sub-section (4) provides that the Isle of Man Office of Fair Trading may supply to the Department information concerning complaints received by that Office as to commercial activities in the Island which relate to the supply of goods and services to consumers in the Island if the information is likely to be of use for control of employment purposes.

Sub-section (5) defines various terms used in this clause.

Sub-section (6) overrides any restriction there may be on the purposes for which information may be disclosed or used.

Significant changes to CEA:

This is a new clause.

CLAUSE 23

This clause deals with regulations and orders under the Bill.

Sub-section (1) provides the Department with power to make regulations prescribing anything which may be prescribed under the Bill, and in relation to the procedural and other matters listed.

Significant changes to CEA:

The matters which may be covered by Regulations are wider than in CEA. New matters include:

- (a) enabling 2 or more applications relating to the same employment or applications by spouses or civil partners, to be considered and determined together;
- (b) enabling consideration of an application to be postponed pending the determination or withdrawal of an appeal relating to another application in respect of the same employment;
- (c) enabling consideration of an application to be postponed for a prescribed period after the determination or withdrawal of an appeal relating to an application in respect of the same person and the same employment;
- (d) specifying conditions which must or may be specified in a work permit;
- (e) enabling a work permit, in circumstances to be specified in Regulations, to be amended by varying the capacity in which, or the place at which, the holder may be employed;
- (f) requiring employers and work permit holders to notify the Department of certain events to be prescribed by regulations.

Sub-section (2) defines the term 'application' used in sub-section (1).

Sub-section (3) enables the Department by order to amend any provision of the Bill concerned with immigration which may be necessary as a result of changes to UK nationality or immigration legislation which are extended to the Island.

Significant change to CEA:

This sub-section confers new powers.

Sub-section (4) provides that: orders made under clauses 7(6) (exemptions) and 21(1) (territorial waters) and under sub-section (3) of this clause require Tynwald approval.

Sub-section (5) provides that regulations are subject to the annulment procedure (i.e. they must be laid before Tynwald as soon as possible after they are made, and if Tynwald, at the sitting at which they are laid or the next following sitting, decides that the Regulations should be annulled, they will cease to have effect).

Significant change to CEA:

Under CEA Regulations have to be approved.

Sub-section (6) provides that regulations or an order made under clause 7(6) may (a) confer a discretion on the Department, (b) may provide a right of appeal under clause 14 but (c) may not discriminate between men and women.

Significant changes to CEA:

(a) and (b) are new.

CLAUSE 24

This clause introduces Schedules 2, 3 and 4.

Sub-section (1) introduces SCHEDULE 2, which makes various amendments of enactments. These are all consequential on the replacement of the CEA by this Bill, with one exception, as follows:

Section 21 of the Employment Act 2006 is amended to makes it illegal for an employer to receive from a worker, or deduct from the employee's wages, a fee for a work permit under this Bill.

Significant change to CEA:

This is a new provision.

Sub-section (2) introduces SCHEDULE 3 which makes transitional provisions, mainly to protect the position of persons who have rights under CEA at commencement, as follows:

1. Living in the Island for 5 years does not confer the status of Isle of Man worker under clause 4(3), if one is not living in the Island at commencement.
2. But living in the Island for 10 years before commencement does confer that status (as under CEA s.1(1)(b)).
3. A person who before commencement lived in the Island for 5 (but less than 10) years, returned within 15 years of leaving and did not again leave within 5 years, is an Isle of Man worker under CEA s.1(1)(c), and retains that status. (A person who has been living in the Island for less than 5 years since last returning would lose that status if he or she left within that period of 5 years, but will not do so under this paragraph.)
4. A person who lived in the Island for 5 (but less than 10) years ending in the 15 years before commencement, and has not yet returned, is an Isle of Man worker, but under CEA s.1(1)(c) would lose that status unless he or she returned within that period of 15 years. Under this paragraph he or she will lose that status if he or she does not return within that period, or within 5 years of commencement if sooner. (A person who does return in that period will retain that

status even if he or she leaves again within 5 years of returning.)

5. If a person is employed at commencement, and his or her employment is lawful under CEA but would cease to be lawful under the Bill, that employment will continue to be lawful (e.g. a member of the Isle of Man Constabulary who is exempt under CEA but not under the Bill).

Under CEA, service in a number of other service-related units is treated in the same way as service in the armed forces. Those units no longer exist, but past service in them will continue to be treated in the same way.

6. In the case of a person who is an Isle of Man worker by virtue of clause 4(9) (education) the criterion at clause 4(9)(c)(ii) that he or she is the child of an exempt person is, in the case of a period before commencement, to be taken as an exempt person under the 1975 Act.
7. An existing authorisation to engage in temporary employment under CEA is treated after commencement as an authorisation under clause 7(5)(b).
8. The existing provisions relating to appeals will continue to apply to proceedings which were started before commencement. Pending the making of new rules, the existing rules will continue to have effect.
9. Paragraph 8 defines terms used in this Schedule.

Sub-section (3) introduces SCHEDULE 4, which repeals provisions replaced or superseded by this Bill.