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## CONTROL OF EMPLOYMENT BILL 2013

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### Explanatory Memorandum

1. This Bill is promoted by Mr Shimmin on behalf of the Council of Ministers.
2. This Bill will re-enact the Control of Employment Act 1975 with amendments. It also reflects provision made in subordinate legislation.
3. *Clause 1* gives the Act its title.
4. *Clause 2* provides for the commencement of the Act. An appointed day order may include incidental and transitional provisions.
5. *Clause 3* provides for the interpretation of the Bill. It should be noted that the definition of “employment” is wider than in the 1975 Act.
6. *Clause 4* sets out who is an Isle of Man worker for the purposes of the Bill.
7. *Clause 5* sets out supplementary provisions about Isle of Man workers.
8. *Clause 6* 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.
9. *Clause 7* provides for a number of exemptions from the restrictions imposed by clause 6 and introduces Schedule 1.
10. *Clause 8* provides for the Department to operate a system of work permits.
11. *Clause 9* provides that, if a work permit holder or exempt person is engaged, otherwise than temporarily, in regular full-time employment, his or her spouse or civil partner is entitled to a work permit, subject to clause 10.
12. *Clause 10* 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.
13. *Clause 11* empowers the Department to revoke a work permit in certain circumstances.
14. *Clause 12* provides for the Department to have regard to certain criteria when making a decision to grant or renew a work permit.
15. Clause 13 deals with the constitution of the Work Permit Appeal Tribunal.
16. Clause 14 provides for appeals against decisions of the Department to the Tribunal and the High Court. The classes of person who may appeal are narrower than under the existing legislation.

17. *Clause 15* specifies offences under the Act and the penalties for them.
18. *Clause 16* makes provision about offences. Proceedings for an offence may only be instituted by the Attorney General. If a body corporate has committed an offence and its commission is attributable to an act or omission of an officer of the body, the officer also commits an offence. The clause also provides the time-limits for the institution of proceedings for an offence.
19. *Clause 17* enables the Department, as an alternative to prosecution, to issue a fixed penalty notice to an alleged offender in respect of offences under the Act or regulations made under it.
20. *Clause 18* deals with evidence in relation to offences.
21. *Clause 19* sets out the powers of inspectors to enforce the Bill. (“Inspectors” are defined by clause 3 as persons authorised by the Department to exercise those powers).
22. *Clause 20* applies the provisions in the Bill to the Government.
23. *Clause 21* enables the Bill to be applied to employment in territorial waters.
24. *Clause 22* allows the sharing of information relating to employment between various bodies for specified purposes.
25. *Clause 23* deals with regulations and orders under the Bill.
26. *Clause 24* introduces Schedules 2, 3 and 4.
27. *Schedule 1* sets out those employments which are exempt under the Bill.
28. *Schedule 2* amends enactments as a consequence of the replacement of the 1975 Act by this Bill. It also amends section 21 of the Employment Act 2006 to make it illegal for an employer to receive from a worker, or deduct from his or her wages, a fee for a work permit under this Bill.
29. *Schedule 3* makes transitional provisions, mainly to protect the position of persons who have rights under existing control of employment legislation at commencement.
30. *Schedule 4* repeals provisions replaced or superseded by this Bill.
31. An impact assessment has been prepared and any increase in expenditure incurred by Government is expected to be minimal. No increase in Government manpower is expected to result.
32. In the opinion of the member moving the Bill its provisions are compatible with the Convention rights within the meaning of the Human Rights Act 2001.



*Ellan Vannin*

## CONTROL OF EMPLOYMENT BILL 2013

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**Isle of Man**

*Ellan Vannin*

## **CONTROL OF EMPLOYMENT BILL 2013**





*Ellan Vannin*

## CONTROL OF EMPLOYMENT BILL 2013

1 **A BILL** to re-enact with amendments the Control of Employment Act 1975.

**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:—

2 **1 Short title**

3 The short title of this Act is the Control of Employment Act 2013.

4 **2 Commencement**

5 (1) This Act, other than section 1 and this section, comes into operation on  
6 such day or days as the Department may by order appoint.

7 (2) An order under subsection (1) may include such incidental and  
8 transitional provision as appears to the Department to be appropriate.

9 **3 Interpretation**

10 In this Act —

11 “**contract of service or apprenticeship**” includes any such contract —

- 12 (a) wherever made;
- 13 (b) whenever made;
- 14 (c) whether express or implied; and
- 15 (d) whether oral or in writing;

16 “**contravention**” includes a failure to comply;

17 “**the Department**” means the Department of Economic Development;

18 “**employment**” includes —

- 19 (a) employment under a contract of service or apprenticeship;
- 20 (b) without prejudice to paragraph (a), employment whereby an  
21 individual undertakes to do or perform personally any work or  
22 services for another party to the contract whose status is not by  
23 virtue of the contract that of a client or customer of any profession  
24 or business undertaking carried on by the individual;

- 1 (c) employment by any public or local authority;
- 2 (d) employment as a director (including employment as a managing
- 3 director, by whatever name called) of a body corporate;
- 4 (e) employment in a public office;
- 5 (f) self-employment,

6 and “**employ**” and “**employed**” are to be construed accordingly;

7 “**immigration employment document**” has such meaning as is prescribed;

8 “**inspector**” means a person authorised by the Department to exercise the

9 powers conferred by sections 17(1) and 19(2);

10 “**Isle of Man worker**” has the meaning given by section 4;

11 “**the person concerned**”, in relation to any employment, means the person who

12 undertakes or may undertake, or is or may be engaged in, that

13 employment;

14 “**prescribed**” means prescribed by regulations;

15 “**regulations**” means regulations made by the Department under section 9(5) or

16 23(1);

17 “**self-employed**” includes being employed in —

- 18 (a) a gainful employment on one’s own account;
- 19 (b) employment as a member of a partnership (including the category
- 20 of Chinese firm commonly known as a kongsi);

21 and “**self-employment**” is to be construed accordingly;

22 “**the Tribunal**” means the Work Permit Appeal Tribunal constituted by section

23 13;

24 “**work permit**” means a permit granted under section 8.

25 *Isle of Man workers*

26 **4 Isle of Man workers**

- 27 (1) Subject to section 5, this section has effect for determining whether a
- 28 person is an Isle of Man worker for the purpose of this Act.
- 29 (2) A person is an Isle of Man worker if he or she was born in the Island.
- 30 (3) A person is an Isle of Man worker if he or she has, at any time, been
- 31 ordinarily resident in the Island for an unbroken period of at least 5
- 32 years.
- 33 (4) A person is an Isle of Man worker if he or she —
- 34 (a) is the spouse or civil partner of an Isle of Man worker, and
- 35 (b) has either —



- 1 (i) the right of abode in the Island under the Immigration Act  
2 1971 (an Act of Parliament), as it has effect in the Island<sup>1</sup>,
- 3 (ii) indefinite leave to enter or remain in the Island under that  
4 Act, or
- 5 (iii) the right to reside in the Isle of Man by virtue of any EU  
6 obligation (within the meaning of the *European*  
7 *Communities (Isle of Man) Act 1973*).
- 8 (5) A person is an Isle of Man worker if –
- 9 (a) he or she was formerly the spouse or civil partner of a person  
10 (“the former partner”) who was during the marriage or civil  
11 partnership an Isle of Man worker;
- 12 (b) the marriage or civil partnership was terminated by the death of  
13 the former partner;
- 14 (c) he or she was, immediately before the death of the former partner,  
15 ordinarily resident in the Island; and
- 16 (d) he or she has been, since the death of the former partner,  
17 ordinarily resident in the Island.
- 18 (6) A person is an Isle of Man worker if –
- 19 (a) he or she was formerly the spouse or civil partner of a person  
20 (“the former partner”) who was during the marriage or civil  
21 partnership an Isle of Man worker;
- 22 (b) he or she and the former partner lived together for an unbroken  
23 period of 3 years after the marriage or the formation of the civil  
24 partnership, as the case may be;
- 25 (c) the marriage or civil partnership was terminated by divorce,  
26 dissolution or annulment;
- 27 (d) he or she was immediately before the termination ordinarily  
28 resident in the Island; and
- 29 (e) he or she has since the termination been ordinarily resident in the  
30 Island.
- 31 (7) A person is an Isle of Man worker if he or she is the child of a person  
32 who –
- 33 (a) is, or was immediately before his or her death, an Isle of Man  
34 worker (otherwise than by virtue of this subsection), and
- 35 (b) at the time of the child’s birth was either serving, or married to or  
36 a civil partner of a person serving, in the armed forces of the  
37 Crown.
- 38 (8) A person is an Isle of Man worker if he or she is the child of a person  
39 who –

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<sup>1</sup> By virtue of SI 2008/680.

- 1 (a) was born in the Island, and
- 2 (b) was ordinarily resident in the Island for an unbroken period of at
- 3 least 5 years immediately following the birth.
- 4 (9) A person is an Isle of Man worker if he or she —
- 5 (a) was for an unbroken period of at least 12 months —
- 6 (i) under 23 years of age,
- 7 (ii) ordinarily resident in the Island, and
- 8 (iii) receiving full-time education (disregarding ordinary school
- 9 or college holidays and absences because of sickness),
- 10 whether in the Island or elsewhere;
- 11 (b) has since the end of that period been ordinarily resident in the
- 12 Island; and
- 13 (c) is the child of a person who during the whole of that period
- 14 was —
- 15 (i) an Isle of Man worker,
- 16 (ii) engaged otherwise than temporarily in regular full-time
- 17 employment to which section 6 did not apply by virtue of
- 18 section 7(1), or
- 19 (iii) the holder of a work permit.
- 20 (10) Employment to which section 6 does not apply by virtue of any
- 21 provision of Schedule 1 limiting the employment to a maximum number
- 22 of days in any period shall not be treated as regular full-time
- 23 employment for the purpose of subsection (9)(c)(ii).

## 24 5 Isle of Man workers: supplemental

- 25 (1) Where a person —
- 26 (a) is sentenced to custody for one or more offences, and
- 27 (b) is detained pursuant to that sentence or those sentences for an
- 28 unbroken period exceeding 6 months (disregarding any time
- 29 during which he or she is unlawfully at large or released under
- 30 section 21 or 22 of the *Custody Act 1995*),
- 31 that person is not to be treated for the purpose of section 4 as being
- 32 ordinarily resident in the Island while so detained at any time after the
- 33 expiration of the first 6 months of that period.
- 34 (2) Where a person was ordinarily resident in the Island for an unbroken
- 35 period of at least 3 years immediately before a period of service in the
- 36 armed forces of the Crown (whether in the Island or elsewhere), he or
- 37 she is to be treated for the purpose of section 4(3) as ordinarily resident
- 38 in the Island during that period of service.
- 39 (3) For the purpose of section 4 —

- 1 (a) “child” includes an adopted child and a step-child;  
 2 (b) “parent” includes an adoptive parent and a step parent.  
 3 (4) Section 4 is subject to paragraphs 1, 2, 4 and 5 of Schedule 3.

4 *Restrictions on employment*

5 **6 Restrictions on employment**

6 Except as provided by the following provisions of this Act —

- 7 (a) a person must not undertake, or become or be engaged in, any  
 8 employment in the Island unless he or she is an Isle of Man  
 9 worker; and  
 10 (b) a person must not employ any other person in any employment in  
 11 the Island unless the person employed is an Isle of Man worker.

12 **7 Exemptions**

- 13 (1) Subject to subsection (2), section 6 does not apply to employment —  
 14 (a) in a capacity, or  
 15 (b) of a person of a description,  
 16 specified in Schedule 1.  
 17 (2) Where a condition is specified in Part 1 of Schedule 1 in relation to  
 18 employment in any capacity, or employment of a person of any  
 19 description, subsection (1) does not apply to that employment unless the  
 20 condition is complied with.  
 21 (3) Part 2 of Schedule 1 has effect for the interpretation of Part 1 of that  
 22 Schedule.  
 23 (4) Section 6 does not apply to the employment of a person who is the  
 24 holder of an immigration employment document permitting him or her  
 25 to undertake that employment.  
 26 (5) The Department may in writing authorise —  
 27 (a) the employment of a person named in the authorisation in a  
 28 capacity specified in it, subject to compliance with any condition  
 29 so specified, if the Department is satisfied that the employment is  
 30 necessary in the national interest; or  
 31 (b) an employment of a temporary or intermittent nature in a  
 32 capacity specified in the authorisation, of a duration or aggregate  
 33 duration not exceeding a period so specified and subject to  
 34 compliance with any condition so specified, if it is satisfied that  
 35 there are good grounds for doing so;  
 36 and section 6 does not apply to employment in accordance with the  
 37 authorisation so long as it remains in force.

- 1 (6) The Department may by order amend Schedule 1.
- 2 (7) A provision of an order under subsection (6) may be made to have effect  
3 indefinitely or for such period as may be specified in the order.
- 4 (8) Where a person is, otherwise than in contravention of section 6,  
5 undertaking or engaged in an employment immediately before section 6  
6 would (apart from this subsection) have applied to that employment by  
7 virtue of —
- 8 (a) a provision of an order under subsection (6), or  
9 (b) the revocation or expiry of such a provision,
- 10 section 6 does not apply to that employment in relation to that person so  
11 long as he or she continues to undertake or be engaged in that  
12 employment.

## 13 8 Work permits

- 14 (1) Section 6 does not apply to employment in accordance with a permit (a  
15 “**work permit**”) granted or renewed by the Department on an  
16 application made to it.
- 17 (2) Subject to sections 9(3) and 11, a work permit authorises the employment  
18 of the person named in it in the capacity specified in it —
- 19 (a) in the case of self-employment, either generally or at a specified  
20 place;
- 21 (b) in any other case, either —
- 22 (i) generally,  
23 (ii) by a specified employer,  
24 (iii) at a specified place, or  
25 (iv) by a specified employer at a specified place;
- 26 subject to such conditions as (subject to regulations) are specified in the  
27 permit.
- 28 (3) If the person named in a work permit is suspended from work in the  
29 capacity specified in it on maternity grounds (within the meaning of  
30 section 74 of the *Employment Act 2006*), the work permit authorises the  
31 employment of that person by the same employer in suitable alternative  
32 work (within the meaning of section 75 of that Act) for a period or  
33 periods not exceeding 2 years in the aggregate.
- 34 (4) Where —
- 35 (a) a work permit authorises employment by a specified employer,  
36 (b) the employment is terminated by the employer, and  
37 (c) before the termination of the employment the person named in  
38 the permit accepts an offer by a successor or associated employer

- 1 to employ him or her, with effect from the termination, in the  
2 capacity specified in the permit,
- 3 the permit shall have effect with the substitution of the successor or  
4 associated employer for the employer specified in the permit.
- 5 In this subsection “successor” and “associated employer” have the  
6 meanings given by section 173(5) to (7) of the *Employment Act 2006*.
- 7 (5) Subject to sections 9(2) and 11, a work permit remains in force for such  
8 period as the Department thinks appropriate and is specified in it.
- 9 (6) A work permit shall be in such form as the Department thinks  
10 appropriate.

## 11 **9 Spouse or civil partner of permit holder etc**

- 12 (1) Except in prescribed cases, and subject to section 12(1), the Department  
13 must not refuse to grant or renew a work permit for the employment of  
14 the spouse or civil partner of a person who is engaged otherwise than  
15 temporarily in regular full-time employment (“the primary  
16 employment”) —
- 17 (a) which is authorised by a work permit granted or renewed  
18 otherwise than under this subsection, or
- 19 (b) to which section 6 does not or did not apply by virtue of section  
20 7(1) or (5)(a).
- 21 (2) A work permit granted or renewed under subsection (1) remains in force  
22 until the expiration of —
- 23 (a) 12 months beginning with the date on which it is granted or  
24 renewed, or
- 25 (b) 6 months beginning with the date on which the primary  
26 employment ceases,
- 27 whichever is the sooner.
- 28 (3) A work permit granted or renewed under subsection (1) authorises the  
29 employment of the person named in it generally in any capacity, subject  
30 to such conditions as (subject to regulations) are specified in the permit.
- 31 (4) Section 4(10) applies for the purposes of subsection (1)(b) as it applies for  
32 the purposes of section 4(9)(c)(ii).
- 33 (5) Regulations may provide that, in such circumstances and subject to such  
34 conditions as are prescribed —
- 35 (a) a man and a woman who are not married to each other but are  
36 living together as husband and wife, or
- 37 (b) two men, or two women, who are not civil partners of each other  
38 but are living together as civil partners,

1 shall be treated for the purpose of subsection (1) as spouses or as civil  
2 partners, as the case may be.

- 3 (6) Regulations under subsection (5) may make such consequential or  
4 transitional provisions (including provision amending regulations under  
5 any other provision of this Act) as appear to the Department to be  
6 necessary or expedient for the purpose of the regulations.

## 7 **10 Criminal records**

8 Nothing in section 7 or 9 applies to the employment of a person who has been  
9 convicted of an offence and sentenced (anywhere in the world) to a term of  
10 custody, whether or not suspended, where —

- 11 (a) the sentence is excluded from rehabilitation by section 2 of the  
12 *Rehabilitation of Offenders Act 2001*;
- 13 (b) the conviction is not a spent conviction for the purposes of that  
14 Act; or
- 15 (c) by virtue of an order under section 10 of that Act, any of the  
16 provisions of section 4 of that Act do not apply in relation to —
- 17 (i) the employment in question, or  
18 (ii) a question asked in order to assess the suitability of that  
19 person for the employment in question.

## 20 **11 Revocation of work permit**

- 21 (1) The Department may revoke a work permit if (subject to regulations) it  
22 considers that the circumstances that justified the grant or renewal of the  
23 permit have changed.
- 24 (2) The Department may revoke a work permit held by a person referred to  
25 in section 10 in the circumstances specified in that section —
- 26 (a) where the sentence in question was passed since the permit was  
27 granted or was last renewed; or
- 28 (b) where the Department was unaware of the sentence when the  
29 permit was granted or was last renewed.

## 30 **12 Criteria for grant or renewal of permit**

- 31 (1) The Department may refuse —
- 32 (a) to grant a work permit to, or  
33 (b) to renew a work permit held by,  
34 a person referred to in section 10 in the circumstances specified in that  
35 section.

- 1 (2) Without prejudice to subsection (1) but subject to section 9(1), in  
2 determining whether to grant or renew a work permit, or to specify a  
3 condition in a work permit, the Department —
- 4 (a) must have regard to such matters as are prescribed for the  
5 purpose of this paragraph, and
- 6 (b) may have regard to such other matters as are prescribed for the  
7 purpose of this paragraph.
- 8 (3) The matters which may be prescribed for the purpose of subsection (2)(a)  
9 or (b) include —
- 10 (a) the economic situation of the Island;
- 11 (b) the availability of suitable Isle of Man workers for the  
12 employment concerned;
- 13 (c) whether the person concerned holds a qualification required in  
14 order to undertake or be engaged in the employment concerned;
- 15 (d) any special economic benefit which the employment of the person  
16 concerned may bring to the Island;
- 17 (e) any previous or current employment of the person concerned and  
18 of any relevant person (being the spouse or civil partner of the  
19 person concerned);
- 20 (f) the reasons for wishing to employ the person concerned;
- 21 (g) the process by which the person concerned was selected for  
22 employment;
- 23 (h) the nature and conditions of the employment concerned;
- 24 (i) whether the person concerned is indebted to any Department in  
25 respect of —
- 26 (i) income tax, or
- 27 (ii) contributions under any statutory provision relating to  
28 social security;
- 29 (j) the status of the person concerned under the law relating to  
30 nationality and immigration;
- 31 (k) the family circumstances of the person concerned;
- 32 (l) any hardship which may be caused if the work permit is not  
33 granted or renewed or is revoked;
- 34 (m) without prejudice to subsection (1), the criminal record (if any) of  
35 the person concerned and any relevant person;
- 36 (n) the state of health of the person concerned and any relevant  
37 person;
- 38 (o) the likely demand by the person concerned and any relevant  
39 person for public services of any description in the Island;
- 40 (p) the ability of the person concerned and any relevant person to  
41 speak English;

(q) any other circumstance which, in the Department's opinion, ought in the public interest to be taken into account.

(4) In this section "relevant person" means any person living with, or likely to live with, the person concerned as a member of his or her family or household.

### *Appeals*

## **13 Work Permit Appeal Tribunal**

(1) There shall continue to be a Work Permit Appeal Tribunal, consisting of a chairman and 2 other members.

(2) There shall be appointed in accordance with the *Tribunals Act 2006* —

(a) the chairman of the Tribunal;

(b) a panel of persons to act as deputy chairmen of the Tribunal;

(c) 2 panels of persons to act as members of the Tribunal —

(i) one panel consisting of persons appointed after consultation with such organisation or organisations as appear to the Appointments Commission to be representative of employers, and

(ii) the other panel consisting of persons appointed after consultation with such organisation or organisations as appear to the Appointments Commission to be representative of employees.

(3) If the chairman of the Tribunal is absent or unable to act, his or her place shall be taken, and any of his or her functions may be exercised, by a deputy chairman drawn, in accordance with regulations under section 9 of the *Tribunals Act 2006*, from the panel referred to in subsection (2)(b).

(4) Of the other members of the Tribunal one shall be drawn, in accordance with those regulations, from each of the panels referred to in subsection (2)(c).

## **14 Appeals to Tribunal**

(1) This section applies to the following decisions by the Department —

(a) a decision to grant, refuse or revoke a work permit; or

(b) a decision to include a condition in a work permit.

(2) A person specified in subsection (3) who is aggrieved by a decision to which this section applies may appeal to the Tribunal against the decision in accordance with rules under section 8 of the *Tribunals Act 2006*.

(3) The persons referred to in subsection (2) are the following —



- 1 (a) in the case of the grant of a work permit, any person who applied  
2 for the employment concerned;
- 3 (b) in the case of the refusal or revocation of a work permit, or the  
4 inclusion of a condition in a work permit —
- 5 (i) the person concerned;
- 6 (ii) the employer or prospective employer of the person  
7 concerned.
- 8 (4) If it appears to the Tribunal that —
- 9 (a) reasonable publicity for the employment concerned was not  
10 given, and
- 11 (b) a person —
- 12 (i) for that reason did not apply for the employment, and
- 13 (ii) would, if he or she had applied, have had a reasonable  
14 expectation of obtaining the employment (having regard to  
15 the restrictions imposed by this Act),
- 16 the Tribunal may direct that, for the purpose of subsection (3)(a), that  
17 person shall be treated as having applied for the employment.
- 18 (5) On an appeal under subsection (2) the Tribunal shall either —
- 19 (a) allow the appeal if, and to the extent that, it considers that the  
20 Department in reaching the decision —
- 21 (i) erred in law; or
- 22 (ii) based the decision on any incorrect material fact; or
- 23 (iii) exercised its discretion in an unreasonable manner; or
- 24 (b) dismiss the appeal.
- 25 (6) Where the Tribunal allows an appeal, it shall remit the application, with  
26 its reasons for its decision, to the Department for reconsideration.
- 27 (7) Subject to subsection (8), the decision of the Tribunal on an appeal under  
28 subsection (2) is final.
- 29 (8) An appeal lies to the High Court from a decision of the Tribunal on a  
30 point of law.
- 31 (9) Rules under section 8 of the *Tribunals Act 2006* may —
- 32 (a) require an appellant to pay a fee on the making of an appeal  
33 under subsection (2);
- 34 (b) provide for the refunding of the whole or part of the fee, in such  
35 circumstances as may be specified in the rules.

*Enforcement*

1

2

**15 Offences**

3

(1) Any person who contravenes section 6 is guilty of an offence and liable on summary conviction to custody for a term not exceeding 3 months or to a fine not exceeding £5,000, or to both.

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5

6

(2) A person may not be convicted of an offence under subsection (1) if he or she satisfies the court that —

7

8

(a) he or she believed that the person concerned was an Isle of Man worker, and

9

10

(b) he or she took all reasonable steps to verify the accuracy of that belief.

11

12

(3) Any person who fails to comply with a requirement imposed on him or her by —

13

14

(a) a condition specified in Part 1 of Schedule 1, or

15

(b) a condition under section 7(5)(a) or (b), 8(2) or 9(3),

16

is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.

17

18

(4) Any person who —

19

(a) in circumstances specified in subsection (5) —

20

(i) makes a statement which he or she knows to be false in a material particular; or

21

22

(ii) recklessly makes a statement which is false in a material particular; or

23

24

(b) falsely personates a person named in a work permit; or

25

(c) intentionally misrepresents to any employer that he or she is a person in respect of the employment of whom —

26

27

(i) a work permit has been granted or renewed, or

28

(ii) no work permit is required,

29

is guilty of an offence and liable on summary conviction to custody for a term not exceeding 6 months or to a fine not exceeding £7,500 or to both.

30

31

(5) The circumstances referred to in subsection (4)(a) are —

32

(a) for the purpose of obtaining, or assisting another person to obtain, a work permit, or

33

34

(b) in response to a notice under section 18(1).

35

(6) A person who —

36

(a) intentionally delays or obstructs an inspector in the exercise of any power under section 17(1) or 19(2), or

37

- 1 (b) refuses or fails to answer any question, to furnish any information  
2 or to produce any document or record when required to do so  
3 under section 19(2),  
4 is guilty of an offence and liable on summary conviction to a fine not  
5 exceeding £7,500.
- 6 (7) Regulations may —  
7 (a) provide that a contravention of them is an offence punishable on  
8 summary conviction with a fine not exceeding such amount  
9 (which may not exceed £1,000) as is specified in them; and  
10 (b) apply section 17 to such an offence.

## 11 **16 Offences: supplemental**

- 12 (1) Where an offence under this Act has been committed by a body  
13 corporate and is proved to have been so committed with the consent or  
14 approval of, or to have been facilitated by any neglect on the part of, any  
15 director, manager, secretary or other officer of that body corporate, that  
16 director, manager, secretary or other officer shall be treated as having  
17 committed that offence, and shall be liable to be proceeded against and  
18 punished accordingly.
- 19 (2) Proceedings for an offence under this Act may only be instituted by or  
20 with the consent of the Attorney General.
- 21 (3) Proceedings for an offence under this Act may be brought at any time  
22 within a period of 3 months from the date on which evidence sufficient  
23 in the opinion of the Attorney General to warrant the proceedings came  
24 to his or her knowledge; but no such proceedings may be brought more  
25 than 12 months after the commission of the offence.

## 26 **17 Fixed penalties**

- 27 (1) Where an inspector has reasonable cause to believe that a person has  
28 committed or is committing an offence under —  
29 (a) section 15(1) or (3), or  
30 (b) regulations (if this section applies to the offence in accordance  
31 with section 15(7)(b)),  
32 the inspector may give that person a notice in writing in the prescribed  
33 form (a “fixed penalty notice”) offering the opportunity of discharging  
34 any liability to be convicted of that offence by payment of a fixed penalty  
35 under this section.
- 36 (2) A person to whom a fixed penalty notice is given in respect of an offence  
37 shall not be liable to be convicted of that offence if the fixed penalty is  
38 paid in accordance with this section before the expiration of 14 days

1 following the date of the notice or such longer period (if any) as may be  
2 specified in the notice.

3 (3) Where a person is given a fixed penalty notice in respect of an offence,  
4 criminal proceedings shall not be taken against any person for the act  
5 constituting that offence before the expiration of 14 days following the  
6 date of notice, or such longer period (if any) as may be specified in the  
7 notice.

8 (4) The amount of a fixed penalty under this section shall be such amount as  
9 may be prescribed, not exceeding —

10 (a) £1,000, in the case of an offence under section 15(1); and

11 (b) £200, in the case of an offence under section 15(3) or under  
12 regulations.

13 (5) Payment of a fixed penalty under this section shall be made to the Chief  
14 Registrar, and sums payable by way of fixed penalty for an offence shall  
15 be treated for the purposes of the *Collection of Fines etc. Act 1985* as fines  
16 adjudged to be paid by a conviction of a criminal court.

17 (6) Without prejudice to payment by any other method, payment of a fixed  
18 penalty under this section may be made by properly addressing, pre-  
19 paying and posting a letter containing the amount of the penalty (in cash  
20 or otherwise) and, unless the contrary is proved, shall be regarded as  
21 having been made at the time at which that letter would be delivered in  
22 the ordinary course of post.

23 (7) A letter is properly addressed for the purposes of subsection (6) if it is  
24 addressed to the Chief Registrar at the address specified in the fixed  
25 penalty notice as the address at which the fixed penalty may be paid.

## 26 18 Evidence

27 (1) Where the Department, after investigation, has reasonable cause to  
28 believe that a person —

29 (a) is not an Isle of Man worker, and

30 (b) is undertaking, has undertaken or is or has been engaged in  
31 employment contrary to section 6,

32 the Department may serve a notice in writing on that person requiring  
33 him or her within 14 days from the date of service of the notice to satisfy  
34 the Department that he or she is an Isle of Man worker.

35 (2) If a person on whom a notice under subsection (1) has been served fails  
36 within that period of 14 days to satisfy the Department that he or she is  
37 an Isle of Man worker, a certificate to that effect signed on behalf of the  
38 Department is, until the contrary is proved, sufficient evidence that that  
39 person is not an Isle of Man worker.

- 1 (3) On any prosecution for an offence under section 15(1), evidence that a  
2 person or his or her employer —  
3 (a) has paid in respect of that person any contribution payable under  
4 or by virtue of any statutory provision relating to social security  
5 in respect of the employment to which the prosecution relates, or  
6 (b) has been found guilty of failing to pay any such contribution,  
7 is admissible to show that that person was engaged in that employment.
- 8 (4) For the purpose of section 16(3) a certificate signed by or on behalf of the  
9 prosecutor and stating the date on which such evidence as is mentioned  
10 in that subsection came to his or her knowledge is conclusive evidence of  
11 that fact.
- 12 (5) In any proceedings a certificate signed by or on behalf of the Chief  
13 Registrar that payment of a fixed penalty under section 17 was or was  
14 not made in accordance with section 17(6) by a date specified in the  
15 certificate shall be evidence of the fact stated.
- 16 (6) A certificate stating a matter referred to in subsection (2), (4) or (5) and  
17 purporting to be signed as mentioned in that subsection shall be deemed  
18 to be so signed unless the contrary is proved.

## 19 Powers of inspectors

- 20 (1) The powers conferred by subsection (2) may be exercised for the purpose  
21 of ascertaining whether there is or has been a contravention of —  
22 (a) section 6,  
23 (b) regulations,  
24 (c) the conditions of any work permit,  
25 (d) a condition specified in Part 1 of Schedule 1, or  
26 (e) a condition under section 7(5)(a) or (b), 8(2) or 9(3).
- 27 (2) An inspector may —  
28 (a) enter at all reasonable times any land, vehicle or vessel;  
29 (b) require a person carrying on or employed in a business or activity  
30 to produce any document or record relating to employment in the  
31 business or activity, and take copies of it or any entry in it;  
32 (c) require such a person to produce in a visible and legible form any  
33 information relating to such employment which is contained in or  
34 accessible by means of a computer, and take copies of it; and  
35 (d) examine, either alone or in the presence of any other person, any  
36 person whom the inspector has reasonable cause to believe to  
37 have any such information.
- 38 (3) Every person on whom a requirement under subsection (2)(b) or (c) is  
39 imposed or who is examined under subsection (2)(d) must —

- 1 (a) furnish to an inspector all such information, and  
2 (b) produce for his or her inspection all such documents and records,  
3 as the inspector may reasonably require.
- 4 (4) No person may be required under subsection (2) to answer any questions  
5 or to give any evidence tending to incriminate himself or herself or his or  
6 her spouse or civil partner.
- 7 (5) An inspector exercising or intending to exercise any power conferred by  
8 section 17(1) or subsection (2) must, if so required, produce evidence of  
9 his or her authority to do so.

10 *Supplemental*

11 **20 Application to Government**

- 12 (1) Except as otherwise provided by or under this Act, this Act applies to —  
13 (a) members of the Isle of Man Civil Service, and  
14 (b) persons employed by any Department or any Board (within the  
15 meaning of the *Civil Service Act 1990*),  
16 as if the Civil Service Commission or that Department or Board were  
17 private persons.
- 18 (2) Nothing in this Act makes the Civil Service Commission or any  
19 Department or Board guilty of an offence under this Act.

20 **21 Application to territorial waters**

- 21 (1) The Council of Ministers may by order provide that the provisions of this  
22 Act shall, to such extent and for such purposes as may be specified in the  
23 order, apply (with or without modification) to or in relation to  
24 employment for the purposes of any activities in the territorial waters of  
25 the Island.
- 26 (2) An order under subsection (1) may make provision for conferring  
27 jurisdiction on any court specified in the order, or on the Tribunal, in  
28 respect of offences, causes of action or other matters arising in connection  
29 with employment referred to in that subsection; but any such jurisdiction  
30 shall be without prejudice to the jurisdiction exercisable apart from this  
31 section by that or any other court or tribunal.

32 **22 Sharing of information**

- 33 (1) This section applies to information relating to persons undertaking or  
34 engaged in, or intending to undertake or be engaged in, employment in  
35 the Island.
- 36 (2) Any of the following —

- 1 (a) the Governor;
- 2 (b) the Chief Constable;
- 3 (c) the Treasury;
- 4 (d) the Assessor of Income Tax; and
- 5 (e) the Department of Social Care;
- 6 may share with the Department information to which this section applies
- 7 and which is obtained or held by them for immigration purposes, police
- 8 purposes, contribution purposes, income tax purposes or benefit
- 9 purposes, as the case may be, (except information obtained under this
- 10 section) to the extent that the information is likely to be of use for control
- 11 of employment purposes.
- 12 (3) The Department may share with an authority mentioned in subsection
- 13 (2)(a), (b), (c), (d) or (e) information to which this section applies and
- 14 which is obtained or held by it for control of employment purposes
- 15 (except information obtained under this section), to the extent that the
- 16 information is likely to be of use for immigration purposes, police
- 17 purposes, contribution purposes, income tax purposes or benefit
- 18 purposes, as the case may be.
- 19 (4) The Isle of Man Office of Fair Trading may supply to the Department
- 20 information to which this section applies concerning complaints received
- 21 by that Office as to commercial activities in the Island which relate to –
- 22 (a) goods supplied to consumers in the Island or produced with a
- 23 view to their being so supplied, or
- 24 (b) services supplied for consumers in the Island,
- 25 to the extent that the information is likely to be of use for control of
- 26 employment purposes.
- 27 (5) In this section –
- 28 “benefit purposes” means –
- 29 (a) the determination of entitlement to benefits, and
- 30 (b) the calculation and payment of benefits,
- 31 under any statutory provision relating to social security;
- 32 “contribution purposes” means the calculation and collection of contributions
- 33 under any such provision;
- 34 “control of employment purposes” means applying or enforcing the restrictions
- 35 on employment imposed by this Act;
- 36 “the Immigration Acts” has the meaning given by section 64(2) of the
- 37 Immigration, Asylum and Nationality Act 2006 (an Act of
- 38 Parliament)[c.13];
- 39 “immigration purposes” means any of the following –

- 1 (a) the administration of immigration control under the Immigration  
2 Acts, or  
3 (b) the prevention, detection, investigation or prosecution of criminal  
4 offences under those Acts;

5 “income tax purposes” means the assessment and collection of income tax;

6 “police purposes” means —

- 7 (a) the prevention, detection, investigation or prosecution of criminal  
8 offences; or  
9 (b) safeguarding national security;

10 (6) Expressions in subsection (4) have the same meanings as in section 20 of  
11 the *Fair Trading Act 1996*.

12 (7) This section has effect despite any restriction on the purposes for which  
13 information may be disclosed or used.

## 14 23 Regulations etc

15 (1) The Department may make regulations —

- 16 (a) prescribing anything which may be prescribed under this Act;  
17 (b) laying down the procedure for —  
18 (i) applications;  
19 (ii) the making and notification of a decision on an application;  
20 and  
21 (iii) revoking a work permit;  
22 (c) specifying the information which an applicant for the grant or  
23 renewal of a work permit must provide;  
24 (d) enabling 2 or more applications relating to the same employment  
25 to be considered and determined together;  
26 (e) enabling consideration of an application to be postponed pending  
27 the determination or withdrawal of an appeal relating to another  
28 application in respect of the same employment;  
29 (f) enabling consideration of an application to be postponed for a  
30 prescribed period after the determination or withdrawal of an  
31 appeal relating to an application in respect of the same person and  
32 the same employment;  
33 (g) specifying conditions which must or may be specified in a work  
34 permit;  
35 (h) providing for the keeping and inspection of registers of work  
36 permits;  
37 (i) enabling a work permit, in prescribed circumstances, to be  
38 amended by varying the capacity in which, or the place at which,  
39 the holder may be employed;



- 1 (j) specifying changes of circumstances which may justify the  
2 revocation of a work permit;
- 3 (k) requiring employers and the holders of work permits to notify the  
4 Department of the happening of prescribed events.
- 5 (2) In subsection (1) “application” means an application for the grant or  
6 renewal of a work permit.
- 7 (3) The Department may by order amend any provision of this Act referring  
8 to immigration for the purpose of making provision consequential on  
9 any Act of Parliament or instrument made under an Act of Parliament  
10 which amends the law of the Island relating to nationality or  
11 immigration.
- 12 (4) The following instruments —
- 13 (a) orders under sections 7(6) and 21(1), and  
14 (b) orders under subsection (3),  
15 shall not have effect unless they are approved by Tynwald.
- 16 (5) Regulations shall be laid before Tynwald as soon as may be after they are  
17 made, and if Tynwald, at the sitting at which they are laid or the next  
18 following sitting, resolves that they be annulled, they shall cease to have  
19 effect.
- 20 (6) Orders under section 7(6) and regulations —
- 21 (a) may confer a discretion on the Department, and  
22 (b) may apply section 14, with or without modifications, to the  
23 exercise of any such discretion, but  
24 (c) may not make any provision which discriminates between male  
25 persons and female persons.

26 **24 Amendments, transitional provisions and repeals**

- 27 (1) The enactments specified in Schedule 2 are amended in accordance with  
28 that Schedule.
- 29 (2) The transitional provisions in Schedule 3 have effect.
- 30 (3) The enactments specified in Schedule 4 are repealed to the extent  
31 specified in column 2 of that Schedule.



1

**SCHEDULE 1**

2

[Section 7]

3

**EXEMPTIONS**

4

**PART 1**

5

**1 Crown employments**

6

Employment in the service of the Crown in right of the Government of the United Kingdom, including in any office the holder of which is appointed by Her Majesty and is paid out of money provided by Tynwald.

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9

**2 Diplomatic employment**

10

Employment by virtue of which the employed person is entitled to any diplomatic or consular privilege.

11

12

**3 Police and related employments**

13

(1) Employment as the Chief Constable.

14

(2) Employment as an inspector under any enactment to investigate and report on the affairs of any person.

15

16

(3) Employment in any capacity to assist, or to provide services for, the Attorney General or the Isle of Man Constabulary in relation to the investigation of fraud or any other crime.

17

18

19

**4 Judicial, court and tribunal employments**

20

(1) Employment as a Deemster or Judicial Officer.

21

(2) Employment as a chairman or member of any commission, tribunal or inquiry established under any statutory provision or resolution of Tynwald.

22

23

24

(3) Employment as an arbitrator in any specific arbitration proceedings which have been or may be commenced in the Island.

25

26

(4) Employment of any person who is not ordinarily resident in the Island, as counsel or as a solicitor by or for any person who is a party to or may be directly affected by any specific proceedings which have been or may be commenced before a court, tribunal or arbitrator in the Island.

27

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(5) Employment of any person in any capacity in relation to proceedings which have been or may be commenced before a court, tribunal or arbitrator in the Island, in respect of which the person is paid out of money provided by Tynwald.

31

32

33

- 1 (6) Employment of a temporary nature of any person who is not ordinarily  
2 resident in the Island, in relation to any specific proceedings which have  
3 been or may be commenced before a court, tribunal or arbitrator in the  
4 Island.

5 **5 Professions**

- 6 (1) Employment as a minister of religion.  
7 (2) Employment as a qualified medical practitioner.  
8 (3) Employment as a registered dentist.  
9 (4) Employment as a teacher in a secondary school.

10 **6 Temporary employments**

- 11 (1) Employment of a temporary nature for a period or periods not exceeding  
12 10 days in the aggregate in any year, but excluding employment —  
13 (a) in the supply, in the course of a business, of food or drink from a  
14 vehicle, tent or temporary structure;  
15 (b) in the sale by retail of goods otherwise than from a permanent  
16 place of business in the Island, whether at a fixed location or from  
17 door to door; or  
18 (c) in or in connection with construction operations.  
19 (2) Employment in any capacity for a period or periods not exceeding 48  
20 days in the aggregate in any year by a company incorporated in the  
21 Island which is a member of an international group, where the person  
22 concerned is mainly employed outside the Island by a member of the  
23 group, but excluding employment —  
24 (a) in the supply, in the course of a business, of food or drink;  
25 (b) in the sale by retail of goods otherwise than from a permanent  
26 place of business in the Island, whether at a fixed location or from  
27 door to door;  
28 (c) in construction operations;  
29 (d) in shop work;  
30 (e) in tourist premises;  
31 (f) in licensed premises;  
32 (g) in the provision of personal care;  
33 (h) in clerical work;  
34 (i) in horticulture;  
35 (j) in cleaning work.

36 **CONDITION** The exemption in this paragraph is subject to the condition  
37 that, not later than 31st January in each year, the employer provides the

- 1 Department with a return in writing giving, in respect of each person  
2 employed as described in this paragraph in the previous year, the  
3 following information -
- 4 (a) the person's name;
- 5 (b) the number of days he or she spent in paid employment in the  
6 Island during that year;
- 7 (c) the nature of his or her work in the Island;
- 8 (d) whether the person is still so employed; and
- 9 (e) to the best of the employer's knowledge, whether the person is  
10 still residing in the Island.
- 11 (3) Employment of a person who is not ordinarily resident in the Island as a  
12 director (other than an executive director) for a period or periods not  
13 exceeding 3 days in the aggregate in any month.
- 14 (4) Employment in any capacity for a period or periods not exceeding 48  
15 days in the aggregate in any year, where the work done in the Island  
16 consists only of undergoing instruction or training for purposes of a  
17 business.
- 18 (5) Employment of a person in any capacity for a period or periods not  
19 exceeding 48 days in the aggregate in any year in connection with the  
20 supply of goods or services by a business in the Island to that person's  
21 employer or, in the case of a self-employed person, to that person.
- 22 (6) Employment for a period or periods not exceeding 30 days in the  
23 aggregate in any year in connection with the supply, installation,  
24 maintenance and repair of specialist plant, machinery or equipment, or  
25 training in its use, where the necessary expertise or service is not  
26 available in the Island.
- 27 (7) Employment for a period or periods not exceeding 48 days in the  
28 aggregate in any year for the purpose of disaster recovery.
- 29 (8) Employment for a period or periods not exceeding 30 days in the  
30 aggregate in any year as an accredited representative of –
- 31 (a) the publisher of a newspaper or other journal, or
- 32 (b) the provider of a programme service,
- 33 carrying on business outside the Island, for the purpose of reporting on  
34 events of public interest.
- 35 (9) Employment for a period or periods not exceeding 48 days in the  
36 aggregate in any year in carrying from a place outside the Island to a  
37 place of business in the Island goods consigned by a business or  
38 undertaking established outside the Island.
- 39 (10) Employment for a period or periods not exceeding 48 days in the  
40 aggregate in any year as the driver of a passenger vehicle which is –
- 41 (a) registered in a country or territory outside the Island,

- 1 (b) adapted to carry more than 8 passengers in addition to the driver,  
2 and
- 3 (c) being used commercially for the carriage of passengers visiting  
4 the Island (otherwise than by standing or plying for hire).
- 5 (11) Employment for a period or periods not exceeding 48 days in the  
6 aggregate in any year by the Department in connection with the  
7 inspection of aircraft or their equipment for any purpose of an air  
8 navigation order.
- 9 (12) Employment for a period or periods not exceeding 30 days in the  
10 aggregate in any year —
- 11 (a) in organising a conference in the Island, or  
12 (b) where the work done in the Island consists only of attending or  
13 participating in a conference in the Island.
- 14 (13) Employment for a period or periods not exceeding 30 days in the  
15 aggregate in any year as a representative or an official of an international  
16 organisation.
- 17 (14) Employment for a period or periods not exceeding 48 days in the  
18 aggregate in any year as director, producer, actor, singer, dancer,  
19 musician or production crew in connection with any theatrical or musical  
20 performance in the Island.
- 21 (15) Employment of a temporary nature of any person who is not ordinarily  
22 resident in the Island for the purpose of conducting or assisting in an  
23 inspection or investigation by —
- 24 (a) the Financial Supervision Commission;  
25 (b) the Insurance and Pensions Authority; or  
26 (c) any body prescribed for the purpose of this paragraph, being a  
27 body responsible (whether or not by virtue of any statutory  
28 provision) in any part of the British Islands for the regulation or  
29 supervision of a trade or profession.

## 30 7 Miscellaneous employments

- 31 (1) Employment (not being employment described in paragraph 6(2)) in a  
32 business which is in the course of being, or was in the previous 7 years —
- 33 (a) established in the Island as a branch or subsidiary of a business  
34 carried on elsewhere; or  
35 (b) relocated in the Island from elsewhere;
- 36 other than a business so established or relocated before 1st January 2010.
- 37 CONDITIONS The exemption in this paragraph is subject to the  
38 following conditions —

- 1 (a) the exemption may not be claimed for more than the following  
2 number of persons at any one time —  
3 (i) 3 persons, or  
4 (ii) 10 per cent. of the persons employed in the business in the  
5 Island,  
6 whichever is the greater, subject to a maximum of 10 persons;
- 7 (b) the exemption may be claimed only in respect of a person who —  
8 (i) was first employed in the business in the period of 2 years  
9 beginning with the date when it was established or  
10 relocated in the Island, and  
11 (ii) has been continuously employed in the business since he  
12 or she was first so employed;
- 13 (c) the actual turnover of the business in the Island in the previous  
14 year (or, in the case of a business in its first year, the projected  
15 turnover) was (or is) not less than £100,000 for each person  
16 employed in the business in the Island;
- 17 (d) not later than 31st January in each year the person claiming the  
18 exemption provides the Department with a return in writing,  
19 giving in respect of the previous year, the following  
20 information —  
21 (i) the name of each person in respect of whom the exemption  
22 was claimed;  
23 (ii) the number of staff employed in the business in the Island;  
24 and  
25 (iii) accounts or other information verifying that the condition  
26 in (c) was fulfilled.
- 27 (2) Employment as the officer of an international group in charge of the  
28 group's activities in the Island (whether or not holding the title  
29 "managing director" or "chief executive").
- 30 (3) Employment in a vessel used for navigation or in an aircraft.
- 31 (4) Employment of a person who is not resident in the Island as a  
32 commercial traveller or sales representative by or for any person not  
33 resident in the Island for the purpose of selling to or seeking orders for  
34 goods from —  
35 (a) persons who are dealers in such goods and buy to sell again; or  
36 (b) persons who purchase such goods for use (otherwise than for  
37 resale) in their own business.
- 38 (5) Self-employment in work of a purely cultural nature.
- 39 (6) Employment as a voluntary worker.

## PART 2

## 8 Interpretation

(1) In this Schedule —

“**air navigation order**” means an Order in Council made under sections 60 and 61 of the Civil Aviation Act 1982 (an Act of Parliament) [c.16] and having effect in the Island;

“**construction operations**” has the same meaning as in the *Construction Contracts Act 2004*;

“**director**” means a director or similar officer of a body corporate (wherever incorporated);

“**disaster recovery**” means facilities and services to enable a person engaged in a business in the Island or elsewhere to continue to do so in case of an unexpected event beyond his or her control, as a result of which the business would otherwise cease or be seriously prejudiced;

“**doctor**” means a fully registered person within the meaning of the *Medical Act 1985*;

“**executive director**” means a director who is required to devote a substantial part of his or her time to the service of the body corporate concerned in a managerial, administrative or technical capacity;

“**group**” means a holding company and its subsidiaries within the meaning of the *Companies Act 1974*;

“**international group**” means a group comprising 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;

“**international organisation**” means an organisation of which 2 or more governments are members, and includes any committee or other subordinate body of such an organisation;

“**licensed premises**” has the same meaning as in the *Licensing Act 1995*;

“**passenger vehicle**” and “used commercially for the carriage of passengers” shall be construed in accordance with section 4 of the *Road Transport Act 2001*;

“**personal care**” has the same meaning as in the *Nursing and Residential Homes Act 1988*;

“**programme service**” has the same meaning as in Part I of the *Broadcasting Act 1993*;

“**registered dentist**” has the same meaning as in the *Dental Act 1985*;

“**secondary school**” has the same meaning as in the *Education Act 2001*;

“**shop work**” has the same meaning as in the *Shops Act 2000*;



- 1 “**tourist premises**” has the same meaning as in the *Tourist Act 1975*;
- 2 “**voluntary worker**” means a person who satisfies the conditions in subsection  
3 (1) of section 37 of the *Minimum Wage Act 2001*, or is treated under  
4 subsection (2) of that section as satisfying those conditions;
- 5 “**year**” means a year ending on 31st December.
- 6 (2) In paragraph 6(5), “business in the Island” includes the exercise by the  
7 Department of its functions under any statutory provision relating to  
8 shipping or civil aviation.

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## SCHEDULE 2

[Section 24(1)]

### AMENDMENT OF ENACTMENTS

#### 1 Employment Agencies Act 1975

In section 12(1), in the definition of “the Tribunal”, for “section 5(5A) of the Control of Employment Act 1975” substitute “section 13 of the *Control of Employment Act 2013*”.

#### 2 Non-Resident Traders Act 1983

In section 1(2A), for “1975” substitute “2013”.

#### 3 Criminal Justice (Exclusion of Non-Resident Offenders) Act 1998

In section 2(2)(b), for “1975” substitute “2013”.

#### 4 Employment Act 2006

In section 21(1), for “in respect of any employment agency fee” substitute “in respect of —

- (a) any employment agency fee; or
- (b) any fee for a work permit under the *Control of Employment Act 2013* (other than a permit granted or renewed under section 9 of that Act);”.

1

**SCHEDULE 3**

2

[Section 24(2)]

3

**TRANSITIONAL PROVISIONS**

4

**1 Qualification as an Isle of Man worker by ordinary residence**

5

(1) A person is not an Isle of Man worker by virtue of subsection (3) of section 4 if the unbroken period referred to in that subsection ended before commencement.

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(2) A person is an Isle of Man worker if he or she was ordinarily resident in the Island for an unbroken period of at least 10 years which ended before commencement.

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(3) A person is an Isle of Man worker if he or she —

12

(a) was ordinarily resident in the Island for an unbroken period of at least 5 years, but less than 10 years, which —

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14

(i) began on or after 1st June 1963, and

15

(ii) ended before commencement;

16

(b) again became ordinarily resident in the Island —

17

(i) before commencement, and

18

(ii) before the expiry of 15 years beginning with the date when the period mentioned in sub-paragraph (a) ended; and

19

20

(c) did not cease to be ordinarily resident in the Island —

21

(i) before commencement, and

22

(ii) within 5 years after he or she again became ordinarily resident in the Island.

23

24

**2 Provisions as to qualification by period of residence**

25

(1) Subject to sub-paragraph (2), a person is an Isle of Man worker if he or she —

26

27

(a) was ordinarily resident in the Island for an unbroken period of at least 5 years, but less than 10 years, which ended during the period of 15 years expiring on commencement, and

28

29

30

(b) did not again become ordinarily resident in the Island before commencement.

31

32

(2) Such a person ceases to be an Isle of Man worker by virtue of sub-paragraph (1) on the expiry of —

33

34

(a) 5 years after commencement, or

35

(b) 15 years beginning with the date when the period first mentioned in sub-paragraph (1)(a) ended,

36

1                   whichever is the sooner, unless before such expiry he or she becomes  
2                   ordinarily resident in the Island.

### 3           **Existing employments**

4           Where a person is, otherwise than in contravention of section 2(1) of the *1975*  
5           *Act*, undertaking or engaged in an employment immediately before  
6           commencement, section 6 does not apply to that employment in relation to that  
7           person so long as he or she continues to undertake or be engaged in that  
8           employment.

### 9           **4           Service in armed forces**

10           In relation to any period before commencement, any reference in this Act to  
11           service in the armed forces of the Crown includes a reference to service in any of  
12           the capacities mentioned in Schedule 1 to the *Disabled Persons (Employment) Act*  
13           1946.

### 14           **5           Education**

15           In relation to any period before commencement, the reference in section  
16           4(9)(c)(ii) to employment to which section 6 did not apply by virtue of section  
17           7(1) is a reference to employment to which section 2(1) of the 1975 Act did not  
18           apply by virtue of section 2(3)(a) of that Act.

### 19           **6           Temporary employment**

20           An authorisation under paragraph 9A of Schedule 1 to the *1975 Act* relating to  
21           any employment and in force immediately before commencement has effect as  
22           an authorisation under section 7(5)(b) relating to that employment.

### 23           **7           Tribunal proceedings**

24           (1)       Sections 13 and 14 (except section 13(1)) and rules do not apply, and  
25           section 5(5) of the *1975 Act* and Schedule 4 to the Control of Employment  
26           Regulations 1993 [SD529/93] continue to apply, to —

27           (a)       any proceedings in the Tribunal which were begun before  
28           commencement; and

29           (b)       an appeal made after commencement against a decision of the  
30           Department under the *1975 Act* made before commencement.

31           (2)       Until the coming into operation of rules, the reference in section 14(2) to  
32           such rules shall be taken as a reference to Schedule 4 to the Control of  
33           Employment Regulations 1993.

### 34           **8           Interpretation**

35           In this Schedule —

- 1 “**the 1975 Act**” means the *Control of Employment Act 1975*;
- 2 “**commencement**” means the commencement of this Act;
- 3 “**rules**” means rules under section 8 of the *Tribunals Act 2006* applying to the
- 4 Tribunal.

## SCHEDULE 4

[Section 24(3)]

## ENACTMENTS REPEALED

<i>Short title</i>	<i>Extent of repeal</i>
Control of Employment Act 1975	The whole Act.
Control of Employment (Amendment) Act 1978	The whole Act.
Control of Employment (Amendment) Act 1983	The whole Act.
Statute Law Revision Act 1983	In Schedule 1, paragraph 23.
Medical Act 1985	In Schedule 1, paragraph 8.
Statute Law Revision Act 1986	In Schedule 1, paragraph 17.
Statute Law Revision Act 1989	Section 6.
Control of Employment (Amendment) Act 1990	The whole Act.
Civil Service Act 1990	In Schedule 3, paragraph 12.
Control of Employment Regulations 1993 [SD529/93]	Regulation 10A. In Schedule 4, paragraph 7.
Control of Employment (Amendment) Regulations 1995	The whole Regulations.
Tribunals Act 2006	In section 10, in the table, the entry relating to section 5 of the Control of Employment Act 1975.  In Schedule 3, paragraphs 5 and 6.
Civil Partnership Act 2011	In Schedule 14, paragraph 50.



IN THE KEYS

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**CONTROL OF EMPLOYMENT BILL 2013**

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**A BILL** to re-enact with  
amendments the Control of  
Employment Act 1975.

Approved by the Council of Ministers  
for introduction in the House of Keys.

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MR SHIMMIN

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DECEMBER 2013