



DRAFT CONTROL OF EMPLOYMENT REGULATIONS 2014

SUMMARY OF MAIN POINTS

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

INTRODUCTION

These explanatory notes relate to the draft Control of Employment Regulations Bill 2014 which would be laid before Tynwald, subject to the annulment procedure, once the Control of Employment Bill has received Royal Assent. They have been prepared by the Department of Economic Development in order to assist readers of the Control of Employment Bill see how the Bill and Regulations fit together and to have a better understanding of the Regulations. The notes do not form part of the Regulations.

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

Abbreviations

the Department the Department of Economic Development

Existing legislation

CEA the Control of Employment Act 1975

The 1993 Regulations the Control of Employment Regulations 1993

REGULATION 1

This regulation gives the Regulations their title.

REGULATION 2

This regulation provides that the Regulations are to come into force on a specified day.

REGULATION 3

This regulation provides for the interpretation of the Regulations.

REGULATION 4

This regulation sets out the procedure for applying for the granting of a permit.

Paragraph (3) prescribes the information to be specified in an application for (a) an employed person (b) a self employed person and (c) a permit for the spouse or civil partner of a permit holder. The information required in each case is specified at **Schedule 1 Part 1, Part 2 and Part 3**.

Significant change to the 1993 Regulations:

This regulation makes new provision for the spouse or civil partner of a permit holder to apply to the Department for a permit whereas under the 1993 Regulations the prospective employer makes the application. This is consequential on clause 9(3), which provides that the permit authorises the employment of the spouse of civil partner generally in any capacity, subject to any conditions specified in the permit, whereas under CEA the permit is for a specified employment.

REGULATION 5

This regulation provides that, in determining whether to grant or renew a permit, or to specify a condition in a permit, the matters to which regard *shall* be had are those specified in **Part 1 of Schedule 2**, and the matters to which regard *may* be had are those specified in **Part 2 of Schedule 2**.

Significant change to the 1993 Regulations:

Under the 1993 Regulations the Department **must** take the following 5 matters into consideration in determining whether or not to grant an application for a permit.

- 1. The likelihood of there being suitable Isle of Man workers available in the trade, industry or profession in respect of which the application is made.*
- 2. The likelihood of there being suitable Isle of Man workers becoming available within a period of 12 months, taking into account the future prospects of the trade, industry or profession in respect of which the application is made.*
- 3. Where the relevant person has, within a reasonable time before the making of the application, worked in the Island for a continuous period of 2 years or more by virtue of a permit, his family circumstances (including whether his family are living in the Island).*
- 4. Any conviction of the relevant person of a criminal offence (in the Island or elsewhere).*
- 5. If the relevant person engages or intends to engage in a trade to which the Scheme for Certification of Craftsman 1990 applies, whether he is registered in respect of that trade under that Scheme.*

Under the existing Regulations the Department **may** take any of the following 11 further matters into consideration (numbered consecutively with the 5 matters that must be taken into consideration):

- 6. The status of the relevant person under the Immigration Act 1971 (an Act of Parliament), as it has effect in the island (via SI 1991/2630).*

7. *The number of persons in the family of the relevant person, the number of additional relatives coming to live in the Island and the likelihood of the numbers involved causing a problem to the Island.*
8. *The character of the relevant person and of the members of his family (including any conviction of a member of his family of a criminal offence in the Island or elsewhere).*
9. *The medical history of the relevant person and of the members of his family.*
10. *The employment history of the relevant person and his spouse.*
11. *The number of Isle of Man workers employed by the applicant as a percentage of the total number of persons employed by him.*
12. *Whether the wages and conditions offered are less favourable than those normally applying in the particular industry in the Isle of Man.*
13. *The failure of the applicant or the relevant person to pay his National Insurance contributions.*
14. *A change in industrial conditions whereby a number of Isle of Man workers have become available and suitable for the employment.*
15. *Whether a refusal to grant or renew a permit will be harsh or oppressive in relation to the relevant person.*
16. *Whether the availability of the employment has been made known to Isle of Man workers.*

Under the 2014 Regulations the Department must take the following 9 matters (now grouped into sub-headings) into consideration in determining whether or not to grant an application for a permit:

Economic circumstances

1. *Whether there are any suitable Isle of Man workers available in the trade, occupation or profession in respect of which the application is made, having regard to —*

(a) any skills, qualifications, knowledge, or experience required for the position; and

(b) the importance of the position to the applicant's undertaking.

2. The level of unemployment in the Island in the trade, occupation or profession in respect of which the application is made.

3. Any likely economic or social consequences of granting or declining the application.

The process

4. Whether and how the availability of the employment has been publicised in the Island.

5. The process whereby the applicant has selected the person concerned.

6. The grounds on which the person concerned was selected.

Personal circumstances of the person concerned

7. Any conviction of the person concerned falling within section 10 of the Act.

8. Where the person concerned has, within a reasonable time before the making of the application, worked in the Island for a continuous period of 2 years or more by virtue of a permit, his or her family circumstances (including whether his or her family are living in the Island).

9. Whether a refusal to grant or renew a permit would cause substantial hardship to the person concerned.

Under the 2014 Regulations the Department may also take any of the following 17 matters into consideration (numbered consecutively with the 9 matters that must be taken into consideration):

Economic circumstances

10. *In the case of a self-employed person, the number of individuals already engaged in the employment in question in the Island.*

Personal circumstances of the person concerned

11. *The employment history of the person concerned.*

Additional considerations regarding the employer

12. *The number of Isle of Man workers employed by the applicant as a percentage of the total number of persons employed by him or her.*

13. *Whether the wages and conditions offered are less favourable than those normally applying in the particular trade or occupation in the Isle of Man.*

14. *Any career development policy or rotation policy of the applicant.*

Additional considerations regarding the person concerned

15. *The status of the person concerned under the Immigration Act 1971 (an Act of Parliament), as it has effect in the Island.*

16. *If the person concerned engages or intends to engage in a construction trade, whether he or she is suitably qualified to do so and holds a relevant "Skills Card" issued by a recognised organisation.*

17. *The failure of the applicant or the person concerned to pay his or her income tax or contributions under any statutory provision relating to social security.*

18. *Whether the person concerned is likely to a significant degree to require health services or social services at the public expense while residing in the Island.*

19. *The criminal record (if any) of the person concerned (except as provided by paragraph 7 of Part 1).*

20. *The ability of the person concerned to speak English.*

Considerations regarding relevant persons

21. *The employment history of a relevant person, being the spouse or civil partner of the person concerned.*

22. *Whether a relevant person is likely to a significant degree to require education at the public expense while residing in the Island.*

23. *Whether a relevant person is likely to a significant degree to require health services or social services at the public expense while residing in the Island.*

24. *Whether a relevant person is likely to a significant degree to receive non-contributory social security benefits while residing in the Island.*

25. *The criminal record (if any) of any relevant person.*

26. *The ability of any relevant person to speak English.*

REGULATION 6

This regulation provides for the consolidation and staying of applications

Paragraph (1) provides that where 2 or more applications for the grant of a permit relate to the same employment, the Department may consider and determine the applications together.

Paragraph (2) provides that the Department may consider applications of spouses (or civil partners) at the same time where both a "primary" permit within the meaning of clause 9(1) of the Bill, and a spouse or civil partner permit under section 9(1) of the Act are sought. (But under Paragraph 2 the person who has the spouse or civil partner permit may not start work until the employment of the primary permit holder has commenced).

Paragraph (4) provides that where an appeal has been made in relation to an application for the grant of a permit, the Department may postpone, until the appeal is determined or withdrawn, consideration of any other application for the grant of a permit in respect of the same employment.

Paragraph (5) provides that where an appeal has been made in relation to an application for the grant of a permit, the Department may postpone, for up to 3 months after the determination or withdrawal of the appeal, consideration of another application for the grant of a permit in respect of the same person and the same employment.

Paragraph (6) requires the Department to notify the applicant and the person concerned (if different) of any decision to deal with an application in accordance with paragraph (1), (2) (4) or (5).

Significant change to the 1993 Regulations:

This Regulation is new.

REGULATION 7

This regulation provides for **Schedule 3** to set out the circumstances which justify revocation of a permit. These are

1. *The fact that, since the granting of the permit, the holder or a relevant person has been convicted of a criminal offence.*
2. *The fact that the application for the permit includes a statement (whether relating to the holder, to his or her employer, to a relevant person or to any other person) which is false in a material particular, or omits to disclose a material particular, such that a true and complete statement would have caused the Department to refuse to grant or to renew the permit, as the case may be.*
3. *The failure of the holder or his or her employer to comply with any condition subject to which the permit was granted.*
4. *The failure of the holder to pay his or her income tax or contributions under any statutory provision relating to social security.*
5. *A significant number of complaints referred to in section 20(4) of the Act against the holder, tending to show that he or she is not a fit and proper person to undertake or be engaged in the employment in question.*

Significant change to the 1993 Regulations:

The second ground for revocation is new. The failure of the holder to pay his or her income tax, part of the third ground for revocation, is new. The fourth ground for revocation is also new; under clause 22(4) of the Bill the IOM Office of Fair Trading is empowered to pass complaints received by the Office to the Department.

REGULATION 8

This regulation requires the Department to give a decision on a work permit application in writing. Where a decision to refuse to grant or renew a permit, to grant or renew a permit for a period less than that applied for, or to include a condition in a permit, the Department is required to include a statement of the reasons for the decision, and information as to how an appeal can be made to the Work Permit Appeal Tribunal.

REGULATION 9

This regulation requires the employer to notify the Department when a permit holder ceases to work for that employer. Failure to comply with the requirement is an offence with a maximum penalty of a £1,000 fine or a fixed penalty of £100.

Significant change to the 1993 Regulations:

This is a new provision.

REGULATION 10

This regulation requires the holder of a spouse / civil partner permit to notify the Department when he or she commences or ceases to work for an employer. The holder is also obliged to notify the Department if his or her marriage or civil partnership is terminated by divorce, dissolution or annulment (as the case may be). Failure to comply with the requirement is an offence with a maximum penalty of a £1,000 fine or a fixed penalty of £100.

Significant change to the 1993 Regulations:

This is a new provision.

REGULATION 11

This regulation defines the term "immigration employment document" (used in clause 7(4) of the Bill).

REGULATION 12

This regulation revokes the 1993 Regulations subject to certain transitional arrangements.

REGULATION 13

This regulation states that the Regulations do not apply to an application for the grant or renewal of a permit received by the Department before the commencement of the Regulations, which will be dealt with in accordance with the 1993 Regulations.