

Statutory Document No. 2018/0177



Enterprise Act 2008

ENTERPRISE ACT 2008 (ELIGIBLE BUSINESSES) REGULATIONS 2018

Approved by Tynwald: 18 July 2018
Coming into Operation: 1 October 2018

The Department for Enterprise makes the following Regulations under section 7 of the Enterprise Act 2008.

1 Title

These Regulations are the Enterprise Act 2008 (Eligible Businesses) Regulations 2018.

2 Commencement

If approved by Tynwald¹ these Regulations come into operation on 1 October 2018.

3 Criteria for eligible businesses

An eligible business is one that meets the criteria in the Schedule.

4 Revocation

The Enterprise Act 2008 (Eligible Businesses) Regulations 2014² and the Enterprise Act 2008 (Eligible Businesses) (Amendment) Regulations 2015³ are revoked.

5 Transitional provision

Despite regulation 4, the Enterprise Act 2008 (Eligible Businesses) Regulations 2014 as amended by the Enterprise Act 2008 (Eligible Businesses) (Amendment) Regulations 2015 continue to apply to an application for a grant received by the Department before these Regulations come into operation.

¹ As required by section 8 of the Enterprise Act 2008.

² SD 2014/0332.

³ SD 2015/0328.

MADE 20 JUNE 2018

LAURENCE SKELLY

Minister for Enterprise

SCHEDULE

CRITERIA THAT A BUSINESS MUST SATISFY TO BE AN “ELIGIBLE BUSINESS” UNDER THE ENTERPRISE ACT 2008

1 Interpretation

(1) In this Schedule —

“**the Act**” means the Control of Employment Act 2014;

“**based in the Island**” means a significant number of a business’s transactions are or will be conducted from premises in the Island;

“**contract of employment**” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing;

“**Isle of Man staff**” means a person resident in the Island who —

- (a) is an Isle of Man worker within the meaning of the Act;
- (b) holds a valid Isle of Man work permit under the Act (including a permit under section 8A (cohabiting partner of IOM worker) or 9 (spouse etc. partner of permit holder or exempt person)); or
- (c) is exempt from the Act by virtue of section 7(1), (4) or (5)(a) of the Act (exemptions) (other than persons who are exempt by virtue of section 7(5)(b) or paragraph 8 of Part 1 of Schedule 1 to the Act (temporary etc. employments)).

(2) In this Schedule a person is “involved in controlling the business” if —

- (a) in the case of a business carried on by a company, the person is, or acts as, a director or secretary of the company;
- (b) in the case of a business carried on by a partnership, the person is a partner; or
- (c) in the case of a business carried on by a sole trader, the person is that trader.

2 Criteria for eligible businesses

(1) An eligible business is one that meets the criteria in subparagraphs (2) to (9).

(2) The business must employ or (in the case of an application for retrospective assistance, have employed) at least one member of Isle of Man staff under a contract of employment (other than a person involved in controlling the business).

But this paragraph does not apply to a business which is —

- (a) expected to have a turnover of less than £100,000 within the first 12 months of trading; or
 - (b) within the first 18 months of trading and had a turnover of less than £100,000 in the 12 months immediately before the date of application.
- (3) The business is or will be based in the Island.
- (4) The business can be conducted lawfully in the Island.
- (5) The conduct of the business —
 - (a) is not or would not be detrimental to the environment of the Isle of Man; and
 - (b) will not or would not be likely to bring the Department into disrepute.
- (6) No person involved in controlling the business is disqualified from holding appointment as a director or a company secretary either in or outside the Island at the time of application.
- (7) No person involved in controlling the business may be the subject of outstanding executions in the Island at the time of application.
- (8) Each person involved in controlling the business must —
 - (a) declare to the Department whether or not, at the time of application, the business is in compliance with the law in relation to —
 - (i) income tax;
 - (ii) national insurance;
 - (iii) value added tax;
 - (iv) any other taxes or duties payable in the Island;
 - (v) health and safety;
 - (vi) planning;
 - (vii) employment; and
 - (viii) immigration or work permits;
 - (b) disclose any instances of non-compliance with the law in relation to any matter listed in paragraph (a) occurring in the period of one year ending with the date of application; and
 - (c) disclose the disclosable beneficial owners of the business at the time of application to the Department.
- (9) Each person involved in controlling the business must disclose to the Department any criminal convictions of his or hers at the time of application.

For this purpose —

- (a) it is immaterial where the offence was committed or the conviction was imposed;
 - (b) disregard offences which are spent for the purposes of the Rehabilitation of Offenders Act 2001 (or would be had the convictions occurred in the Island);
 - (c) disregard motoring offences; and
 - (d) disregard offences which –
 - (i) are not punishable with custody; or
 - (ii) would not be so punishable if committed in the Island.
- (10) In subparagraph 8(c) –
- (a) “**beneficial owner**” means a natural person who ultimately owns or controls a business to which these Regulations apply, in whole or part, through direct or indirect ownership or control of shares or voting rights or other ownership interest in that business, or who exercises control via other means, and “beneficial ownership” is to be construed accordingly; and
 - (b) “**disclosable beneficial owner**” means a beneficial owner, or class of beneficial owners, who owns or controls more than 10% of the beneficial ownership of a legal entity to which these Regulations apply.
- (11) For the purposes of subparagraph 8(c) –
- (a) if 2 or more natural persons each own or control an interest in a business to which these Regulations apply, each of them is treated as owning or controlling that interest;
 - (b) beneficial ownership may be traced through any number of persons or arrangements of any description; and
 - (c) in respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each beneficial owner, the details to be disclosed must identify and describe the class of persons who are beneficial owners.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the criteria to be met by a proposed or established business in order to be eligible for assistance under the Enterprise Act 2008.

The Regulations revoke and replace the Enterprise Act 2008 (Eligible Businesses) Regulations 2014 and the Enterprise Act 2008 (Eligible Businesses) (Amendment) Regulations 2015.

The main change is that the turnover limit, below which an eligible business is not required to employ any Isle of Man staff, is increased from £50,000 to £100,000. The Regulations also make additional provision to clarify the requirements concerning disclosure of the beneficial ownership of eligible businesses to the Department.