



Isle of Man

Ellan Vannin

AT 11 of 2014

CONTROL OF EMPLOYMENT ACT 2014



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**Isle of Man***Ellan Vannin*

CONTROL OF EMPLOYMENT ACT 2014

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AN ACT 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:—

1 Short title

The short title of this Act is the Control of Employment Act 2014.

2 Commencement

- (1) This Act, other than section 1 and this section, comes into operation on such day or days as the Department may by order appoint.
- (2) An order under subsection (1) may include such incidental and transitional provision as appears to the Department to be appropriate.

3 Interpretation

In this Act —

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

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

“contravention” includes a failure to comply;

“the Department” means the Department of Economic Development;

“employment” includes —

- (a) employment under a contract of service or apprenticeship;

- (b) without prejudice to paragraph (a), employment whereby an individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual;
- (c) employment by any public or local authority;
- (d) employment as a director (including employment as a managing director, by whatever name called) of a body corporate;
- (e) employment in a public office;
- (f) self-employment,

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

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

“**information**” includes evidence;

“**inspector**” means a person authorised by the Department to exercise the powers conferred by sections 17(1) and 19(2);

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

“**the person concerned**”, in relation to any employment, means the person who undertakes or may undertake, or is or may be engaged in, that employment;

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

“**regulations**” means regulations made by the Department under section 9(5) or 24(1);

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

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

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

“**the Tribunal**” means the Work Permit Appeal Tribunal constituted by section 13;

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

Isle of Man workers

4 Isle of Man workers

- (1) Subject to section 5, this section has effect for determining whether a person is an Isle of Man worker for the purpose of this Act.
- (2) A person is an Isle of Man worker if he or she was born in the Island.

- (3) A person is an Isle of Man worker if he or she has, at any time, been ordinarily resident in the Island for an unbroken period of at least 5 years.
- (4) A person is an Isle of Man worker if he or she —
- (a) is the spouse or civil partner of an Isle of Man worker, and
 - (b) has either —
 - (i) the right of abode in the Island under the Immigration Act 1971 (an Act of Parliament), as it has effect in the Island¹,
 - (ii) indefinite leave to enter or remain in the Island under that Act, or
 - (iii) the right to reside in the Isle of Man by virtue of any EU obligation (within the meaning of the *European Communities (Isle of Man) Act 1973*).
- (5) A person is an Isle of Man worker if —
- (a) he or she was formerly the spouse or civil partner of a person (“the former partner”) who was during the marriage or civil partnership an Isle of Man worker;
 - (b) the marriage or civil partnership was terminated by the death of the former partner;
 - (c) he or she was, immediately before the death of the former partner, ordinarily resident in the Island; and
 - (d) he or she has been, since the death of the former partner, ordinarily resident in the Island.
- (6) A person is an Isle of Man worker if —
- (a) he or she was formerly the spouse or civil partner of a person (“the former partner”) who was during the marriage or civil partnership an Isle of Man worker;
 - (b) he or she and the former partner lived together for an unbroken period of 3 years after the marriage or the formation of the civil partnership, as the case may be;
 - (c) the marriage or civil partnership was terminated by divorce, dissolution or annulment;
 - (d) he or she was immediately before the termination ordinarily resident in the Island; and
 - (e) he or she has since the termination been ordinarily resident in the Island.
- (7) A person is an Isle of Man worker if he or she is the child of a person who —

¹ By virtue of SI 2008/680.

- (a) is, or was immediately before his or her death, an Isle of Man worker (otherwise than by virtue of this subsection), and
 - (b) at the time of the child's birth was either serving, or married to or a civil partner of a person serving, in the armed forces of the Crown.
- (8) A person is an Isle of Man worker if he or she is the child of a person who —
- (a) was born in the Island, and
 - (b) was ordinarily resident in the Island for an unbroken period of at least 5 years immediately following the birth.
- (9) A person is an Isle of Man worker if he or she —
- (a) was for an unbroken period of at least 12 months —
 - (i) under 23 years of age,
 - (ii) ordinarily resident in the Island, and
 - (iii) receiving full-time education (disregarding ordinary school or college holidays and absences because of sickness), whether in the Island or elsewhere;
 - (b) has since the end of that period been ordinarily resident in the Island; and
 - (c) is the child of a person who during the whole of that period was —
 - (i) an Isle of Man worker,
 - (ii) engaged otherwise than temporarily in regular full-time employment to which section 6 did not apply by virtue of section 7(1), or
 - (iii) the holder of a work permit.
- (10) Employment to which section 6 does not apply by virtue of any provision of Schedule 1 limiting the employment to a maximum number of days in any period shall not be treated as regular full-time employment for the purpose of subsection (9)(c)(ii).

5 Isle of Man workers: supplemental

- (1) Where a person —
- (a) is sentenced to custody for one or more offences, and
 - (b) is detained pursuant to that sentence or those sentences for an unbroken period exceeding 6 months (disregarding any time during which he or she is unlawfully at large or released under section 21 or 22 of the *Custody Act 1995*),

that person is not to be treated for the purpose of section 4 as being ordinarily resident in the Island while so detained at any time after the expiration of the first 6 months of that period.

- (2) Where a person was ordinarily resident in the Island for an unbroken period of at least 3 years immediately before a period of service in the armed forces of the Crown (whether in the Island or elsewhere), he or she is to be treated for the purpose of section 4 as ordinarily resident in the Island during that period of service.
- (3) For the purpose of section 4 —
 - (a) “child” includes an adopted child and a step-child;
 - (b) “parent” includes an adoptive parent and a step parent.
- (4) Section 4 is subject to paragraphs 1, 2, 4 and 5 of Schedule 3.

Restrictions on employment

6 Restrictions on employment

Except as provided by the following provisions of this Act —

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

7 Exemptions

- (1) Subject to subsection (2), section 6 does not apply to employment —
 - (a) in a capacity, or
 - (b) of a person of a description, specified in Schedule 1.
- (2) Where a condition is specified in Part 1 of Schedule 1 in relation to employment in any capacity, or employment of a person of any description, subsection (1) does not apply to that employment unless the condition is complied with.
- (3) Part 2 of Schedule 1 has effect for the interpretation of Part 1 of that Schedule.
- (4) Section 6 does not apply to the employment of a person who is the holder of an immigration employment document permitting him or her to undertake that employment.
- (5) The Department may in writing authorise —

- (a) the employment of a person named in the authorisation in a capacity specified in it, subject to compliance with any condition so specified, if the Department is satisfied that the employment is necessary in the national interest; or
- (b) an employment of a temporary or intermittent nature in a capacity specified in the authorisation, of a duration or aggregate duration not exceeding a period so specified and subject to compliance with any condition so specified, if it is satisfied that there are good grounds for doing so;

and section 6 does not apply to employment in accordance with the authorisation so long as it remains in force.

- (6) The Department may by order amend Schedule 1.
- (7) A provision of an order under subsection (6) may be made to have effect indefinitely or for such period as may be specified in the order.
- (8) Where a person is, otherwise than in contravention of section 6, undertaking or engaged in an employment immediately before section 6 would (apart from this subsection) have applied to that employment by virtue of —
 - (a) a provision of an order under subsection (6), or
 - (b) the revocation or expiry of such a provision,section 6 does not apply to that employment in relation to that person so long as he or she continues to undertake or be engaged in that employment.
- (9) If in any year ending on 31 March the Department gives an authorisation under subsection (5)(a), it shall include in the annual report under section 6(1) of the *Enterprise Act 2008* relating to that year a statement specifying —
 - (a) the number of such authorisations in that year; and
 - (b) the reasons for them.

8 Work permits

- (1) Section 6 does not apply to employment in accordance with a permit (a “**work permit**”) granted or renewed by the Department on an application made to it.
- (2) Subject to sections 9(3) and 11, a work permit authorises the employment of the person named in it in the capacity specified in it —
 - (a) in the case of self-employment, either generally or at a specified place;
 - (b) in any other case, either —
 - (i) generally,

- (ii) by a specified employer,
- (iii) at a specified place, or
- (iv) by a specified employer at a specified place;

subject to such conditions as (subject to regulations) are specified in the permit.

- (3) If the person named in a work permit is suspended from work in the capacity specified in it on maternity grounds (within the meaning of section 74 of the *Employment Act 2006*), the work permit authorises the employment of that person by the same employer in suitable alternative work (within the meaning of section 75 of that Act) for a period or periods not exceeding 2 years in the aggregate.
- (4) Where —
 - (a) a work permit authorises employment by a specified employer,
 - (b) the employment is terminated by the employer, and
 - (c) before the termination of the employment the person named in the permit accepts an offer by a successor or associated employer to employ him or her, with effect from the termination, in the capacity specified in the permit,

the permit shall have effect with the substitution of the successor or associated employer for the employer specified in the permit.

In this subsection “successor” and “associated employer” have the meanings given by section 173(5) to (7) of the *Employment Act 2006*.

- (5) Subject to sections 9(2) and 11, a work permit remains in force for such period as the Department thinks appropriate and is specified in it.
- (6) A work permit shall be in such form as the Department thinks appropriate.

9 Spouse or civil partner of permit holder etc

- (1) Except in prescribed cases, and subject to section 12(1), the Department must not refuse to grant or renew a work permit for the employment of the spouse or civil partner of a person who is engaged otherwise than temporarily in regular full-time employment (“the primary employment”) —
 - (a) which is authorised by a work permit granted or renewed otherwise than under this subsection, or
 - (b) to which section 6 does not or did not apply by virtue of section 7(1) or (5)(a).
- (2) A work permit granted or renewed under subsection (1) remains in force until the expiration of —

- (a) 12 months beginning with the date on which it is granted or renewed, or
 - (b) 6 months beginning with the date on which the primary employment ceases,
- whichever is the sooner.
- (3) A work permit granted or renewed under subsection (1) authorises the employment of the person named in it generally in any capacity, subject to such conditions as (subject to regulations) are specified in the permit.
 - (4) Section 4(10) applies for the purposes of subsection (1)(b) as it applies for the purposes of section 4(9)(c)(ii).
 - (5) Regulations may provide that, in such circumstances and subject to such conditions as are prescribed —
 - (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,shall be treated for the purpose of subsection (1) as spouses or as civil partners, as the case may be.
 - (6) Regulations under subsection (5) may make such consequential or transitional provisions (including provision amending regulations under any other provision of this Act) as appear to the Department to be necessary or expedient for the purpose of the regulations.

10 Criminal records

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

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

11 Revocation of work permit

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

12 Criteria for grant or renewal of permit

- (1) The Department may refuse —
 - (a) to grant a work permit to, or
 - (b) to renew a work permit held by,a person referred to in section 10 in the circumstances specified in that section.
- (2) Without prejudice to subsection (1) but subject to section 9(1), in determining whether to grant or renew a work permit, or to specify a condition in a work permit, the Department —
 - (a) must have regard to such matters as are prescribed for the purpose of this paragraph, and
 - (b) may have regard to such other matters as are prescribed for the purpose of this paragraph.
- (3) The matters which may be prescribed for the purpose of subsection (2)(a) or (b) include —
 - (a) the economic situation of the Island;
 - (b) the availability of suitable Isle of Man workers for the employment concerned;
 - (c) whether the person concerned holds a qualification required in order to undertake or be engaged in the employment concerned;
 - (d) any special economic benefit which the employment of the person concerned may bring to the Island;
 - (e) any previous or current employment of the person concerned and of any relevant person (being the spouse or civil partner of the person concerned);
 - (f) the reasons for wishing to employ the person concerned;
 - (g) the process by which the person concerned was selected for employment;
 - (h) the nature and conditions of the employment concerned;

- (i) whether the person concerned is indebted to any Department in respect of –
 - (i) income tax, or
 - (ii) contributions under any statutory provision relating to social security;
 - (j) the status of the person concerned under the law relating to nationality and immigration;
 - (k) the family circumstances of the person concerned;
 - (l) any hardship which may be caused if the work permit is not granted or renewed or is revoked;
 - (m) without prejudice to subsection (1), the criminal record (if any) of the person concerned and any relevant person;
 - (n) the state of health of the person concerned and any relevant person;
 - (o) the likely demand by the person concerned and any relevant person for public services of any description in the Island;
 - (p) the ability of the person concerned and any relevant person to speak English;
 - (q) any other circumstance which, in the Department's opinion, ought in the public interest to be taken into account.
- (4) For the purposes of any requirement imposed under subsection (3)(p) the Department may –
- (a) prescribe the information that the applicant must provide in order to satisfy the requirement;
 - (b) make arrangements for the person concerned and any relevant person to be examined as to that person's ability to speak English; and
 - (c) prescribe a fee to be paid by a person examined under arrangements made by virtue of paragraph (b).
- Nothing in this subsection limits the Department's powers under section 24(1).
- (5) 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 —
 - (a) in the case of the grant of a work permit, any person who applied for the employment concerned;
 - (b) in the case of the refusal or revocation of a work permit, or the inclusion of a condition in a work permit —
 - (i) the person concerned;
 - (ii) the employer or prospective employer of the person concerned.
- (4) If it appears to the Tribunal that —
 - (a) reasonable publicity for the employment concerned was not given, and
 - (b) a person —

- (i) for that reason did not apply for the employment, and
- (ii) would, if he or she had applied, have had a reasonable expectation of obtaining the employment (having regard to the restrictions imposed by this Act),

the Tribunal may direct that, for the purpose of subsection (3)(a), that person shall be treated as having applied for the employment.

- (5) On an appeal under subsection (2) the Tribunal shall either —
 - (a) allow the appeal if, and to the extent that, it considers that the Department in reaching the decision —
 - (i) erred in law; or
 - (ii) based the decision on any incorrect material fact; or
 - (iii) exercised its discretion in an unreasonable manner; or
 - (b) dismiss the appeal.
- (6) Where the Tribunal allows an appeal, it shall remit the application, with its reasons for its decision, to the Department for reconsideration.
- (7) Subject to subsection (8), the decision of the Tribunal on an appeal under subsection (2) is final.
- (8) An appeal lies to the High Court from a decision of the Tribunal on a point of law.
- (9) Rules under section 8 of the *Tribunals Act 2006* may —
 - (a) require an appellant to pay a fee on the making of an appeal under subsection (2);
 - (b) provide for the refunding of the whole or part of the fee, in such circumstances as may be specified in the rules.

Enforcement

15 Offences

- (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.
- (2) A person may not be convicted of an offence under subsection (1) if he or she satisfies the court that —
 - (a) he or she believed that the person concerned was an Isle of Man worker, and
 - (b) he or she took all reasonable steps to verify the accuracy of that belief.
- (3) Any person who fails to comply with a requirement imposed on him or her by —

- (a) a condition specified in Part 1 of Schedule 1, or
 - (b) a condition under section 7(5)(a) or (b), 8(2) or 9(3),
- is guilty of an offence and liable on summary conviction to a fine not exceeding £1,000.
- (4) Any person who —
- (a) in circumstances specified in subsection (5) —
 - (i) makes a statement which he or she knows to be false in a material particular; or
 - (ii) recklessly makes a statement which is false in a material particular; or
 - (b) falsely personates a person named in a work permit; or
 - (c) intentionally misrepresents to any employer that he or she is a person in respect of the employment of whom —
 - (i) a work permit has been granted or renewed, or
 - (ii) no work permit is required,
- 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.
- (5) The circumstances referred to in subsection (4)(a) are —
- (a) for the purpose of obtaining, or assisting another person to obtain, a work permit, or
 - (b) in response to a notice under section 18(1).
- (6) A person who —
- (a) intentionally delays or obstructs an inspector in the exercise of any power under section 17(1) or 19(2), or
 - (b) refuses or fails to answer any question, to furnish any information or to produce any document or record when required to do so under section 19(2),
- is guilty of an offence and liable on summary conviction to a fine not exceeding £7,500.
- (7) Regulations may —
- (a) provide that a contravention of them is an offence punishable on summary conviction with a fine not exceeding such amount (which may not exceed £1,000) as is specified in them; and
 - (b) apply section 17 to such an offence.

16 Offences: supplemental

- (1) Where an offence under this Act has been committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any neglect on the part of, any

director, manager, secretary or other officer of that body corporate, that director, manager, secretary or other officer shall be treated as having committed that offence, and shall be liable to be proceeded against and punished accordingly.

- (2) Proceedings for an offence under this Act may only be instituted by or with the consent of the Attorney General.
- (3) Proceedings for an offence under this Act may be brought at any time within a period of 3 months from the date on which evidence sufficient in the opinion of the Attorney General to warrant the proceedings came to his or her knowledge; but no such proceedings may be brought more than 12 months after the commission of the offence.

17 Fixed penalties

- (1) Where an inspector has reasonable cause to believe that a person has committed or is committing an offence under —
 - (a) section 15(1) or (3), or
 - (b) regulations (if this section applies to the offence in accordance with section 15(7)(b)),

the inspector may give that person a notice in writing in the prescribed form (a “fixed penalty notice”) offering the opportunity of discharging any liability to be convicted of that offence by payment of a fixed penalty under this section.

- (2) A person to whom a fixed penalty notice is given in respect of an offence shall not be liable to be convicted of that offence if the fixed penalty is paid in accordance with this section before the expiration of 14 days following the date of the notice or such longer period (if any) as may be specified in the notice.
- (3) Where a person is given a fixed penalty notice in respect of an offence, criminal proceedings shall not be taken against any person for the act constituting that offence before the expiration of 14 days following the date of notice, or such longer period (if any) as may be specified in the notice.
- (4) The amount of a fixed penalty under this section shall be such amount as may be prescribed, not exceeding —
 - (a) £1,000, in the case of an offence under section 15(1); and
 - (b) £200, in the case of an offence under section 15(3) or under regulations.
- (5) Payment of a fixed penalty under this section shall be made to the Chief Registrar, and sums payable by way of fixed penalty for an offence shall be treated for the purposes of the *Collection of Fines etc. Act 1985* as fines adjudged to be paid by a conviction of a criminal court.

- (6) Without prejudice to payment by any other method, payment of a fixed penalty under this section may be made by properly addressing, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise) and, unless the contrary is proved, shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.
- (7) A letter is properly addressed for the purposes of subsection (6) if it is addressed to the Chief Registrar at the address specified in the fixed penalty notice as the address at which the fixed penalty may be paid.

18 Evidence

- (1) Where the Department, after investigation, has reasonable cause to believe that a person —
 - (a) is not an Isle of Man worker, and
 - (b) is undertaking, has undertaken or is or has been engaged in employment contrary to section 6,the Department may serve a notice in writing on that person requiring him or her within 14 days from the date of service of the notice to satisfy the Department that he or she is an Isle of Man worker.
- (2) If a person on whom a notice under subsection (1) has been served fails within that period of 14 days to satisfy the Department that he or she is an Isle of Man worker, a certificate to that effect signed on behalf of the Department is, until the contrary is proved, sufficient evidence that that person is not an Isle of Man worker.
- (3) On any prosecution for an offence under section 15(1), evidence that a person or his or her employer —
 - (a) has paid in respect of that person any contribution payable under or by virtue of any statutory provision relating to social security in respect of the employment to which the prosecution relates, or
 - (b) has been found guilty of failing to pay any such contribution,is admissible to show that that person was engaged in that employment.
- (4) For the purpose of section 16(3) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as is mentioned in that subsection came to his or her knowledge is conclusive evidence of that fact.
- (5) In any proceedings a certificate signed by or on behalf of the Chief Registrar that payment of a fixed penalty under section 17 was or was not made in accordance with section 17(6) by a date specified in the certificate shall be evidence of the fact stated.

- (6) A certificate stating a matter referred to in subsection (2), (4) or (5) and purporting to be signed as mentioned in that subsection shall be deemed to be so signed unless the contrary is proved.

19 Powers of inspectors

- (1) The powers conferred by subsection (2) may be exercised for the purpose of ascertaining whether there is or has been a contravention of —
- (a) section 6,
 - (b) regulations,
 - (c) the conditions of any work permit,
 - (d) a condition specified in Part 1 of Schedule 1, or
 - (e) a condition under section 7(5)(a) or (b), 8(2) or 9(3).
- (2) An inspector may —
- (a) enter at all reasonable times any land, vehicle or vessel;
 - (b) require a person carrying on or employed in a business or activity to produce any document or record relating to employment in the business or activity, and take copies of it or any entry in it;
 - (c) require such a person to produce in a visible and legible form any information relating to such employment which is contained in or accessible by means of a computer, and take copies of it; and
 - (d) examine, either alone or in the presence of any other person, any person whom the inspector has reasonable cause to believe to have any such information.
- (3) Every person on whom a requirement under subsection (2)(b) or (c) is imposed or who is examined under subsection (2)(d) must —
- (a) furnish to an inspector all such information, and
 - (b) produce for his or her inspection all such documents and records, as the inspector may reasonably require.
- (4) No person may be required under subsection (2) to answer any questions or to give any evidence tending to incriminate himself or herself or his or her spouse or civil partner.
- (5) An inspector exercising or intending to exercise any power conferred by section 17(1) or subsection (2) must, if so required, produce evidence of his or her authority to do so.

Supplemental

20 Application to Government

- (1) Except as otherwise provided by or under this Act, this Act applies to —

- (a) members of the Isle of Man Civil Service, and
 - (b) persons employed by any Department or any Board (within the meaning of the *Civil Service Act 1990*),
- as if the Civil Service Commission or that Department or Board were private persons.
- (2) Nothing in this Act makes the Civil Service Commission or any Department or Board guilty of an offence under this Act.

21 Application to territorial waters

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

22 Registers

- (1) The Department may maintain registers of —
 - (a) Isle of Man workers;
 - (b) holders of work permits; or
 - (c) exempt persons.
- (2) A register maintained under this section —
 - (a) must contain such particulars about a person whose name is entered in the register as may be prescribed;
 - (b) may, if the Department considers it appropriate, be made available for inspection by the public; and
 - (c) may be kept otherwise than in documentary form, subject to the following qualification.

If a register is kept as mentioned in paragraph (c), and the Department makes the register available for inspection under paragraph (b), the Department must make the information it contains available for inspection in visible and legible form.

23 Sharing of information

- (1) This section applies to information relating to persons undertaking or engaged in, or intending to undertake or be engaged in, employment in the Island.
- (2) Any of the following —
 - (a) the Governor;
 - (b) the Chief Constable;
 - (c) the Treasury; and
 - (d) the Assessor of Income Tax;

may share with the Department information to which this section applies and which is obtained or held by them for immigration purposes, police purposes, contribution purposes, income tax purposes or benefit purposes, as the case may be, (except information obtained under this section) to the extent that the information is likely to be of use for control of employment purposes.

- (3) The Department may share with an authority mentioned in subsection (2)(a), (b), (c) or (d) information to which this section applies and which is obtained or held by it for control of employment purposes (except information obtained under this section), to the extent that the information is likely to be of use for immigration purposes, police purposes, contribution purposes, income tax purposes or benefit purposes, as the case may be.
- (4) The Isle of Man Office of Fair Trading may supply to the Department information to which this section applies concerning complaints received by that Office as to commercial activities in the Island which relate to —
 - (a) goods supplied to consumers in the Island or produced with a view to their being so supplied, or
 - (b) services supplied for consumers in the Island,

to the extent that the information is likely to be of use for control of employment purposes.

- (5) In this section —

“benefit purposes” means —

- (a) the determination of entitlement to benefits, and
- (b) the calculation and payment of benefits,

under any statutory provision relating to social security;

“contribution purposes” means the calculation and collection of contributions under any such provision;

“control of employment purposes” means applying or enforcing the restrictions on employment imposed by this Act;

“the Immigration Acts” has the meaning given by section 64(2) of the Immigration, Asylum and Nationality Act 2006 (an Act of Parliament)[c.13];

“immigration purposes” means any of the following –

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

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

“police purposes” means –

- (a) the prevention, detection, investigation or prosecution of criminal offences; or
 - (b) safeguarding national security;
- (6) Expressions in subsection (4) have the same meanings as in section 20 of the *Fair Trading Act 1996*.
- (7) This section has effect despite any restriction on the purposes for which information may be disclosed or used.

24 Regulations etc

- (1) The Department may make regulations –
- (a) prescribing anything which may be prescribed under this Act;
 - (b) laying down the procedure for –
 - (i) applications;
 - (ii) the making and notification of a decision on an application; and
 - (iii) revoking a work permit;
 - (c) specifying the information which an applicant for the grant or renewal of a work permit must provide;
 - (d) enabling 2 or more applications relating to the same employment to be considered and determined together;
 - (e) 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;
 - (f) enabling consideration of an application to be postponed for a prescribed period after the determination of an appeal relating to an application in respect of the same person and the same employment;
 - (g) specifying conditions which must or may be specified in a work permit;

- (h) enabling a work permit, in prescribed circumstances, to be amended by varying the capacity in which, or the place at which, the holder may be employed;
 - (i) specifying changes of circumstances which may justify the revocation of a work permit;
 - (j) requiring the provision of prescribed information to the Department by any of the following —
 - (i) employers;
 - (ii) the holders of work permits;
 - (iii) exempt persons; and
 - (iv) Isle of Man workers.
- (2) In subsection (1) “application” means an application for the grant or renewal of a work permit.
- (3) The Department may by order amend any provision of this Act referring to immigration for the purpose of making provision consequential on any Act of Parliament or instrument made under an Act of Parliament which amends the law of the Island relating to nationality or immigration.
- (4) The following instruments —
 - (a) orders under sections 7(6) and 21(1), and
 - (b) orders under subsection (3),shall not have effect unless they are approved by Tynwald.
- (5) Regulations shall be laid before Tynwald as soon as may be after they are made, and if Tynwald, at the sitting at which they are laid or the next following sitting, resolves that they be annulled, they shall cease to have effect.
- (6) Orders under section 7(6) and regulations —
 - (a) may confer a discretion on the Department, and
 - (b) may apply section 14, with or without modifications, to the exercise of any such discretion, but
 - (c) may not make any provision which discriminates between male persons and female persons.

25 Amendments, transitional provisions and repeals

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

SCHEDULE 1

[Section 7]

EXEMPTIONS**PART 1****1 Crown employments**

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.

2 Diplomatic employment

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

3 Police and related employments

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

4 Employment with the Isle of Man Fire and Rescue Service

Employment as the Chief Fire Officer.

5 Judicial, court and tribunal employments

- (1) Employment —
 - (a) as a Deemster, High Bailiff or Judicial Officer; or
 - (b) as a judge of the consistory court of the Diocese of Sodor and Man.
- (2) Employment as a chairman or member of any commission, tribunal or inquiry established under any statutory provision or resolution of Tynwald.
- (3) Employment as an arbitrator in any specific arbitration proceedings which have been or may be commenced in the Island.

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

6 Senior public service appointments

Employment as the Chief Secretary or the chief officer (however described) of a Department or a Statutory Board.

7 Professions

- (1) Employment as a minister of religion or as a lay worker with a religious body.
- (2) Employment as a qualified medical practitioner.
- (3) Employment as a registered dentist.
- (4) Employment as a teacher in a secondary school.

8 Temporary employments

- (1) Employment of a temporary nature for a period or periods not exceeding 10 days in the aggregate in any year, but excluding employment —
 - (a) in the supply, in the course of a business, of food or drink from a vehicle, tent or temporary structure;
 - (b) in the sale by retail of goods otherwise than from a permanent place of business in the Island, whether at a fixed location or from door to door; or
 - (c) in or in connection with construction operations.
- (2) Employment in any capacity for a period or periods not exceeding 48 days in the aggregate in any year —
 - (a) by a company incorporated in the Island which is a member of an international group,
 - (b) by a Class 1, Class 2 or Class 3 licenceholder within the meaning of the Regulated Activities Order 2011,

if the person concerned is mainly employed outside the Island by the licenceholder or a member of the group.

This is subject to the qualifications in sub-paragraphs (3) and (4).

- (3) It is a condition of the exemption that, not later than 31 January in each year, the employer provides the Department with a return in writing giving, in respect of each person employed as mentioned in sub-paragraph (2) in the previous year, the following information –
- (a) the person's name;
 - (b) the number of days he or she spent in paid employment in the Island during that year;
 - (c) the nature of his or her work in the Island;
 - (d) whether the person is still so employed; and
 - (e) to the best of the employer's knowledge, whether the person is still residing in the Island.
- (4) Sub-paragraph (2) does not apply to employment –
- (a) in the supply, in the course of a business, of food and drink;
 - (b) in the sale by retail of goods, otherwise than from a permanent place of business in the Island, whether at a fixed location or from door to door;
 - (c) in construction operations;
 - (d) in shop work;
 - (e) in tourist premises;
 - (f) in licensed premises;
 - (g) in the provision of personal care;
 - (h) in clerical work;
 - (i) in horticulture;
 - (j) in cleaning work.
- (5) Employment of a person who is not ordinarily resident in the Island as a director (other than an executive director) for a period or periods not exceeding 3 days in the aggregate in any month.
- (6) Employment in any capacity for a period or periods not exceeding 48 days in the aggregate in any year, where the work done in the Island consists only of undergoing instruction or training for purposes of a business.
- (7) Employment of a person in any capacity for a period or periods not exceeding 48 days in the aggregate in any year in connection with the supply of goods or services by a business in the Island to that person's employer or, in the case of a self-employed person, to that person.

- (8) Employment for a period or periods not exceeding 30 days in the aggregate in any year in connection with the supply, installation, maintenance and repair of specialist plant, machinery or equipment, or training in its use, where the necessary expertise or service is not available in the Island.
- (9) Employment for a period or periods not exceeding 48 days in the aggregate in any year for the purpose of disaster recovery.
- (10) Employment for a period or periods not exceeding 30 days in the aggregate in any year as an accredited representative of —
 - (a) the publisher of a newspaper or other journal, or
 - (b) the provider of a programme service,carrying on business outside the Island, for the purpose of reporting on events of public interest.
- (11) Employment for a period or periods not exceeding 48 days in the aggregate in any year in carrying from a place outside the Island to a place of business in the Island goods consigned by a business or undertaking established outside the Island.
- (12) Employment for a period or periods not exceeding 48 days in the aggregate in any year as the driver of a passenger vehicle which is —
 - (a) registered in a country or territory outside the Island,
 - (b) adapted to carry more than 8 passengers in addition to the driver, and
 - (c) being used commercially for the carriage of passengers visiting the Island (otherwise than by standing or plying for hire).
- (13) Employment for a period or periods not exceeding 48 days in the aggregate in any year by the Department in connection with the inspection of aircraft or their equipment for any purpose of an air navigation order.
- (14) Employment for a period or periods not exceeding 30 days in the aggregate in any year —
 - (a) in organising a conference in the Island, or
 - (b) where the work done in the Island consists only of attending or participating in a conference in the Island.
- (15) Employment for a period or periods not exceeding 30 days in the aggregate in any year as a representative or an official of an international organisation.
- (16) Employment for a period or periods not exceeding 48 days in the aggregate in any year as director, producer, actor, singer, dancer, musician or production crew in connection with any theatrical or musical performance in the Island.

- (17) Employment of a temporary nature of any person who is not ordinarily resident in the Island for the purpose of conducting or assisting in an inspection or investigation by —
- (a) the Financial Supervision Commission;
 - (b) the Insurance and Pensions Authority; or
 - (c) any body prescribed for the purpose of this paragraph, being a body responsible (whether or not by virtue of any statutory provision) in any part of the British Islands for the regulation or supervision of a trade or profession.

9 Miscellaneous employments

- (1) Employment (not being employment described in paragraph 8(4)) in a business which is in the course of being, or was in the previous 7 years —
- (a) established in the Island as a branch or subsidiary of a business carried on elsewhere; or
 - (b) relocated in the Island from elsewhere;
- other than a business so established or relocated before 1 January 2010.

CONDITIONS The exemption in this paragraph is subject to the following conditions —

- (a) the exemption may not be claimed for more than the following number of persons at any one time —
 - (i) 3 persons, or
 - (ii) 10 per cent. of the persons employed in the business in the Island,whichever is the greater, subject to a maximum of 10 persons;
- (b) the exemption may be claimed only in respect of a person who —
 - (i) was first employed in the business in the period of 2 years beginning with the date when it was established or relocated in the Island, and
 - (ii) has been continuously employed in the business since he or she was first so employed;
- (c) the actual turnover of the business in the Island in the previous year (or, in the case of a business in its first year, the projected turnover) was (or is) not less than £100,000 for each person employed in the business in the Island;
- (d) not later than 31 January in each year the person claiming the exemption provides the Department with a return in writing, giving in respect of the previous year, the following information —
 - (i) the name of each person in respect of whom the exemption was claimed;

- (ii) the number of staff employed in the business in the Island;
and
 - (iii) accounts or other information verifying that the condition in (c) was fulfilled.
- (2) Employment as the officer of an international group in charge of the group's activities in the Island (whether or not holding the title "managing director" or "chief executive").
- (3) Employment in a vessel used for navigation or in an aircraft.
- (4) Employment of a person who is not resident in the Island as a commercial traveller or sales representative by or for any person not resident in the Island for the purpose of selling to or seeking orders for goods from —
 - (a) persons who are dealers in such goods and buy to sell again; or
 - (b) persons who purchase such goods for use (otherwise than for resale) in their own business.
- (5) Self-employment in work of a purely cultural nature.
- (6) Employment as a voluntary worker.

PART 2

10 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*;
- “**tourist premises**” has the same meaning as in the *Tourist Act 1975*;
- “**voluntary worker**” means a person who satisfies the conditions in subsection (1) of section 37 of the *Minimum Wage Act 2001*, or is treated under subsection (2) of that section as satisfying those conditions;
- “**year**” means a year ending on 31 December.
- (2) In paragraph 8(7), “business in the Island” includes the exercise by the Department of its functions under any statutory provision relating to shipping or civil aviation.

SCHEDULE 2

[Section 25(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 2014*”.

2 Non-Resident Traders Act 1983

In section 1(2A), for “1975” substitute “2014”.

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

In section 2(2)(b), for “1975” substitute “2014”.

4 Residence Act 2001

For the Schedule substitute —

“Schedule

AMENDMENTS

Control of Employment Act 2014

In section 7, after subsection (4) insert —

“(4A) Section 6 does not apply to the employment of a person who is —

- (a) registered or qualified to be registered under section 2 of the *Residence Act 2001*;
- (b) registered under section 3 of that Act;
- (c) exempted from that Act; or
- (d) exempted from registration under that Act.”.

5 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 2014* (other than a permit granted or renewed under section 9 of that Act);”.

SCHEDULE 3

[Section 25(2)]

TRANSITIONAL PROVISIONS

1 Qualification as an Isle of Man worker by ordinary residence

- (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.
- (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.
- (3) A person is an Isle of Man worker if he or she —
 - (a) was ordinarily resident in the Island for an unbroken period of at least 5 years, but less than 10 years, which —
 - (i) began on or after 1st June 1963, and
 - (ii) ended before commencement;
 - (b) again became ordinarily resident in the Island —
 - (i) before commencement, and
 - (ii) before the expiry of 15 years beginning with the date when the period mentioned in sub-paragraph (a) ended; and
 - (c) did not cease to be ordinarily resident in the Island —
 - (i) before commencement, and
 - (ii) within 5 years after he or she again became ordinarily resident in the Island.

2 Provisions as to qualification by period of residence

- (1) Subject to sub-paragraph (2), a person is an Isle of Man worker if he or she —
 - (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
 - (b) did not again become ordinarily resident in the Island before commencement.
- (2) Such a person ceases to be an Isle of Man worker by virtue of sub-paragraph (1) on the expiry of —
 - (a) 5 years after commencement, or
 - (b) 15 years beginning with the date when the period first mentioned in sub-paragraph (1)(a) ended,

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

3 Existing employments

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

4 Service in armed forces

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

5 Education

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

6 Temporary employment

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

7 Tribunal proceedings

- (1) Sections 13 and 14 (except section 13(1)) and rules do not apply, and section 5(5) of the 1975 Act and Schedule 4 to the Control of Employment Regulations 1993 [SD529/93] continue to apply, to —
 - (a) any proceedings in the Tribunal which were begun before commencement; and
 - (b) an appeal made after commencement against a decision of the Department under the 1975 Act made before commencement.
- (2) Until the coming into operation of rules, the reference in section 14(2) to such rules shall be taken as a reference to Schedule 4 to the Control of Employment Regulations 1993.

8 Interpretation

In this Schedule —

“**the 1975 Act**” means the *Control of Employment Act 1975*;

“**commencement**” means the commencement of this Act;

“**rules**” means rules under section 8 of the *Tribunals Act 2006* applying to the Tribunal.

SCHEDULE 4

[Section 25(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.

