



Isle of Man
Government

Reillys Ellan Vannin



The Control of Employment Act 2014 Proposals for New Secondary Legislation

A Consultation Document

**Department of Economic Development
July 2017**

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Foreword by the Minister for Economic Development

The Control of Employment Act 2014 (CEA) requires that all persons who are not Isle of Man Workers be in possession of a work permit prior to commencing employment, other than those who are in exempt employments.

This system of controls has often faced criticisms, both from employers (desiring an ability to appoint the best candidate for a role quickly to secure their commitment) and from those representing workers (concerned that any relaxations of the system could jeopardise future employment opportunities of the established population).

Globally there is a worldwide shortage of key professional skills and strong competition for the most talented workers. The Island itself is facing significant labour shortages across all sectors of the economy and there are very high numbers of vacancies. Further, the 2016 census indicates there has been a reduction in the economically active population and that the dependency ratio is worsening.

For these reasons the Department considers that there is a compelling case to make additional changes to work permit controls at this time. All of the proposed changes can be achieved through new secondary legislation and administrative changes.

Some of the proposals in this document are intended to make important changes to the operation of the system to ensure that employers can act swiftly when recruiting to roles where they have not been able to find suitable, available Isle of Man workers. The intention is to simplify the existing process so that the great majority of applicants receive a decision within one working day provided that the employer has attempted to find a suitable Isle of Man worker but has been unable to do so.

Importantly this reformed system would continue to protect the interests of Isle of Man workers.

Other proposals include facilitating the granting of longer work permits so that employers and prospective workers have more certainty and assisting cohabiting partners of Isle of Man workers, work permit holders and exempt persons through the grant of automatic permits.

This consultation document also invites consultees to give their views on a radical and largely separate idea of “flipping” the present system of controls so that rather than requiring everybody who is not an Isle of Man worker to obtain a permit, unless the employment is exempt, the only people who would need a permit would be those proposing to undertake designated employments and persons of a particular description (e.g. those with unspent criminal convictions which had led to custodial sentences). The Department is open-minded about this idea but will carefully consider consultees’ comments.

The Department will review the effects of any changes which are implemented one year after they come into operation.

Hon Laurence Skelly MHK
Minister for Economic Development

Executive summary

The rationale

The Island is facing significant labour shortages across many sectors of the economy and there are very high numbers of vacancies. Further, the 2016 census indicates there has been a reduction in the economically active population and that the dependency ratio is worsening. Globally there is a worldwide shortage of key professional skills and strong competition for the most talented workers.

A membership survey conducted by the Chamber of Commerce in 2016 indicates that work permit legislation is generally unhelpful to the Government's efforts to expand the economically active population.

For these reasons the Department considers that while not wishing to abolish work permit controls, there is a compelling case to make some additional reforms at this time.

All of the proposed changes can be achieved through new secondary legislation and administrative changes.

A reformed system would continue to protect the interests of Isle of Man workers.

The seven proposals

The principal reforms proposed are -

1. Replacing the present application form which is completed jointly by the employer and prospective worker with a simplified employer only application form and streamlining the Department's internal application handling and decision making processes.
2. Simplifying the list of matters which the Department may take into consideration when deciding whether or not to grant a work permit by focusing attention on matters which are directly relevant to the employment sought and not matters of a socio-economic or quasi-residential nature.

Taken together, these measures are intended to greatly simplify the application process and enable the Department to make a decision on the great majority of applications within 1 working day of receipt, provided that the employer has first attempted to find a suitable Isle of Man worker but been unable to do so.

Further reforms proposed include -

3. Simplifying the existing system of work permit application fees in order to encourage multi-year applications. This will facilitate applicants applying for longer permits thus giving much greater certainty to workers moving to the Island and their employers, and reducing bureaucracy.
4. Giving defined cohabiting partners of Isle of Man workers the right to a 1 year automatic permit, renewable annually, which can be used in respect of any employment.
5. Extending the present right of the spouses and civil partners of work permit holders and exempt persons to a 1 year automatic permit, renewable annually, which can be

used in respect of any employment, to defined cohabiting partners of work permit holders and exempt persons.

6. Establishing a register of exempt persons to provide greater information about persons in exempt employment.
7. Removing the additional requirement for a work permit presently imposed on some persons from outside the European Economic Area who have a visa issued by the Immigration Office enabling them to invest, study or work in the Island under Tier 1, 4 or 5 of the Points Based system.

"Flipping the system"

The Department is also seeking comments on the idea of "flipping" the current system so that rather than everybody who is not an Isle of Man worker requiring a permit, unless the employment is exempt, there would be no requirement for permits other than in the cases of a minority of designated employments and persons of a particular description (e.g. persons previously sentenced to a term of custody).

In contrast to the seven foregoing proposals the Department has an open mind about this radical idea.

1. The Consultation Process

1.1 Any comments or questions should be submitted in writing to:

Mr Andrew Stewart
Group Manager
Employment and Skills Group
Nivison House
31 Prospect Hill
Douglas
Isle of Man
IM1 1ET

or by email to wpconsultation@gov.im

1.2 If by reason of a disability you are unable to respond or get in touch in writing please telephone 687151.

1.3 The closing date for the receipt of responses is **31st August 2017**.

1.4 When submitting your response please indicate if you are responding on behalf of an organisation.

1.5 To ensure that the process is transparent and consistent with the Government's Code of Conduct on Consultation¹ responses can only be accepted if you provide your name with your response.

1.6 The purpose of consultation is not to be a referendum but an information, views and evidence gathering exercise from which to take an informed decision. In any consultation exercise the responses received do not guarantee changes will be made to what has been proposed.

1.7 A summary of the responses will be published after the consultation has closed.

1.8 Unless specifically requested otherwise, any responses received may be published either in part or in their entirety along with the name of the person or body that has submitted the response. Please mark your response clearly if you wish your response and/or name to be kept confidential. Confidential responses will be included in any statistical summary and numbers of comments received.

1.9 If you would like further information or clarification about any of the proposals please contact the Department (contact details as above).

¹ <https://www.gov.im/lib/docs/co/consultations/codeofpracticeonconsultation2008.pdf>

2. Background and rationale

Recent legislative changes

- 2.1 In recent years the Department has modernised Control of Employment legislation. The current legislative framework consists of -
- [The Control of Employment Act 2014](#) ("the 2014 Act")
 - [Control of Employment Regulations 2015 \(Consolidated version\) \(includes amendments made by the CE \(Amendment of Schedule 1\) Regulations 2016\)](#)
 - [Control of Employment Regulations 1993 - provision still in force](#)
 - [The Work Permit \(Fees\) Order 2015 \(made under the Fees and Duties Act 1989\)](#)
- 2.2 The new Act and Regulations retained the general framework of the earlier Control of Employment Act 1975 and Control of Employment Regulations 1993 but updated it in a number of important respects. These are summarised at **Appendix 4**.
- 2.3 Since the 2014 Act came into force the Department has submitted two orders to Tynwald exempting additional employments to those contained in Schedule 1 to the Act. These exemptions cover nurses and social workers and employment in ICT and e-business.
- 2.4 The Equality Act 2017 contains a number of both Government sponsored and private member amendments to the 2014 Act. These include -
- a power to confer rights on the cohabiting partners of Isle of Man workers;
 - the addition of more flexible enabling powers to make exemptions;
 - a new power to "flip" the entire system of work permit controls (see further at 8).
- 2.5 Despite the extensive changes made by the 2014 Act and secondary legislation, the Department considers that for the reasons given at 2.7 to 2.9 below there is a compelling case for further reform of the work permit system.
- 2.6 The new Act, as amended by the Equality Act 2017, provides the Department with the requisite powers to make the proposed changes by secondary legislation.

Existing labour market conditions

- 2.7 Current labour market conditions are particularly challenging for employers -
- Just 1% of economically active population were registered as unemployed at the end of June 2017². (If the International Labour Organisation definition of unemployment is taken which includes not only those who are registered as unemployed (such as claiming Jobseekers Allowance) but also those who are not registered but may still be looking for work the rate is still only 2 %);
 - There are very high levels of vacancies. During June 899 job vacancies were notified to the Job Centre. At the end of the month, 579 remained. 73% (422) were full time positions and 27% (157) were part time.

² See monthly Isle of Man Labour Market Statistics Reports <https://www.gov.im/categories/working-in-the-isle-of-man/unemployment/> and Isle of Man Quarterly Reports on the Economy at <https://www.gov.im/about-the-government/government/the-council-of-ministers/comin-reports/> compiled by Economic Affairs, Cabinet Office.

Changes in the economically active population

- 2.8 The 2016 census revealed that there has been a decrease in the economically active population. In February 2017 this stood at 42,777 in line with the 2016 Isle of Man Census whereas the previous economically active population in the 2011 census was 44,609³. As the population as a whole continues to age, the decline in the number of economically active people means that, if this trend is not reversed, the dependency ratio⁴ will continue to worsen and there will be an increasing imbalance between Government income from economically active individuals and expenditure on an aging population (the cost of state pensions, additional health care costs etc.).

The Chamber of Commerce 2016 survey

- 2.9 The Chamber of Commerce conducted a survey of its members in 2016. Key findings from the 92 responses which were received were as follows -

- 47 members (52.22%) felt that the work permit system prevented their business from effective recruitment;
- 61 members (66.30%) believed that the current work permit system hinders the wider Island economy;
- 26 members (28.57%) indicated that the work permit system had forced the business to consider alternatives such as expansion off-island;
- 46 members (52.27%) felt that the work permit system should remain in place (albeit most commenters felt that changes were required to the current system);
- of those members that did not want the current work permit system to remain in place, 21 members (43.75%) wanted it discontinued in its entirety and 27 members (52.25%) did not want it to be discontinued permanently;
- 61 members (66.30%) were supportive of the entire system being suspended for a temporary amount of time to assess economic impact;⁵
- 61 members (66.30%) were supportive of further sectors being exempted from the requirement to obtain a work permit due to economic need;
- 57 members (61.9%) were supportive of further specific roles being exempted from the requirement to obtain a work permit due to economic need;
- the majority of members felt that self-certification was not an appropriate way forward (although 40 members out of the 92 surveyed indicated that they would be in favour of a self-certification system).⁶

The survey indicates that the legislation is generally unhelpful to the Government's efforts to expand the economically active population and would support the case for undertaking further reforms of the existing system.

³ See <https://www.gov.im/categories/home-and-neighbourhood/census/>

⁴ The following definition was used in the Island's most recent census: 'The dependency ratio is the number of people under 16 years old and the number of people above retirement age as a percentage of the working age population. Those of retirement age are taken to be all women 63 years and older and all men 65 years and older in line with the current State Pension Age. (Previous dependency ratios will have used 60 as the age of retirement for women).' The ratio is used to measure the pressure on the productive population.

⁵ In actual fact there are no powers in the Control of Employment Act 2014 to suspend operation of the legislation.

⁶ See further at <http://www.iomchamber.org.im/public/latest-news/results-of-chambers-work-permit-survey-of-members.aspx> and <http://www.iomchamber.org.im/public/latest-news/chambers-stance-on-work-permits.aspx>

Recent statistics on work permits

- 2.10 The table below provides key statistical information in relation to work permit applications since the introduction of the current legislation in October 2015 –

<u>Work Permits applications</u>	5785
of which new	3286
of which renewals	2413
<u>Refusals</u>	86 (1.5%)
<u>Top 3 Sectors</u>	
Catering, Entertainment and Tourist Accommodation	1077
Construction	761
Medical & Health	638
<u>Top 3 occupations</u>	
Hotel / Caterer / Bar work	1104
Healthcare	855
Management	627

- 2.11 The very low number and percentage of refusals may beg the question as to whether the present controls are warranted when balanced against the inconvenience and deterrent effect of the system on employment as a whole.

Work permit processing times

- 2.12 Work permit processing time are as follows -

Year	Mean processing time (working days)	Median processing time (working days)
2014	6.25	3
2015	8.11	6
2016	6.82	3

- 2.13 As would be expected median processing times are shorter than mean times. That is because, while the majority of cases are dealt with relatively swiftly, a minority of cases are problematic in some respect, while, in addition, a small minority of cases (approximately 3.2% of new applications) are determined by the Work Permit Committee.⁷

The Department's vision for the work permit system

- 2.14 Many employers assert that the added time to seek a work permit leads to the loss of key candidates in an increasingly competitive labour market, as the process of obtaining a work permit leads to delays.
- 2.15 The Department would like to be able to move towards a work permit system where in the great majority of cases it can make a decision on an application and issue a

⁷ The Work Permit Committee operates under delegated powers of the Minister. The delegation sets out a limited number of circumstances where the Committee, rather than an officer of the Department, is to determine the application.

permit to an employer within 1 working day of receiving an application provided that the employer has attempted to find a suitable Isle of Man worker but has been unable to do so. To this end the Department is seeking to introduce a revised and streamlined application and approval process.

- 2.16 Connected to this, the Department proposes to replace the existing fee system which is based on the duration of the work permit sought with a system which does not differentiate according to the duration. This will facilitate applicants applying for longer permits, remove the need for most renewals, and give much greater certainty to workers moving to the Island and their employers.
- 2.17 An alternative approach to simplifying and speeding up the application process is to extend the number of exempt employments. A disadvantage of exemptions is that they are “beneath the radar” of Government. With some exceptions, no official paper work is issued confirming whether a particular employment or person is exempt and, in most cases the Government has no information as to the number of people in exempt employment or those accompanying them to the Island.⁸ To date, exemptions have only been used in a minority of employments so that changes to the application process are likely to have a greater effect than creating further categories of exemptions unless a very large number of employments are to be exempted. The Department does not, however, rule out such a radical approach (see further at 7 below).

⁸ However, these potential weaknesses could be mitigated – see further at section 6.

3. Reforms to the application process

- 3.1 The Department proposes to make a series of changes to the current application process. These are as follows -
- 3.2 Replacing the present application form which is completed jointly by the employer and prospective worker with a simplified employer only application form and streamlining the Department's internal application handling and decision making processes.**
- 3.3 Simplifying the list of matters which the Department may take into consideration when deciding whether or not to grant a work permit by focusing consideration on matters which are directly relevant to the employment sought and not matters of a socioeconomic or quasi-residential nature.**
- 3.4 Taken together, these measures are intended to greatly simplify the application process and enable the Department to make a decision on an application within 1 working day of receipt in the great majority of cases provided that the employer has first attempted to find a suitable Isle of Man worker but been unable to do so.

A simplified employer only application form and associated administrative changes

- 3.5 The Department is aware that delays are often encountered in the completion of applications prior to their being submitted. In part, this may be attributed to the current process whereby the employer and the person in respect of whom the application is sought complete separate sections of the application.
- 3.6 The Department proposes to move to a simplified employer only application form.
- 3.7 The intention is to considerably shorten the existing form, a task which will be facilitated by removal of some of the socioeconomic and other criteria, which are discussed below.
- 3.8 There will be a greater willingness of the Department to accept self-certification and declaration by employers rather than requiring extensive evidence and proof to accompany the completed application form. This will bring the Department more into line with the way other Government business transactions are conducted (for instance Income Tax).
- 3.9 The Control of Employment Act 2014 provides powers to prosecute employers and individuals who make false statements while in addition the Department has extensive grounds to revoke permits.⁹ While the application process will be more streamlined, as outlined above, the Department will, continue to carry out sample checks, including checks after permits have been granted, to ensure that there is no abuse of the new simplified procedure.

⁹ Schedule 3 of the Regulations contains, inter alia, the following ground for revocation - "The fact that the application for the work 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 work permit, as the case may be."

The list of matters to which regard may be had

- 3.10 [The Control of Employment Regulations 2015](#) require the Department to give consideration to a range of matters in deciding whether or not to approve an application. There are 8 matters to which regard 'shall' be had and a further 20 to which regard 'may' be had. These matters are to be found at Schedule 2 to the Regulations.
- 3.11 A number of these matters are not directly relevant to the potential employment, but rather relate to wider socio-economic matters such as whether the person in respect of whom a permit is sought or a 'relevant person'¹⁰ is likely to require access to Government services and if so to what extent.
- 3.12 Use of some of these socioeconomic criteria is perhaps anomalous for the following reasons -
- the criteria may be completely irrelevant to whether there are any suitable Isle of Man workers who are available and to whether the person in respect of whom a permit is sought can do the job;
 - the logic of imposing quasi-residential criteria on prospective workers, the great majority of whom will be net contributors to public services through their economic contribution, but not on exempt persons or people moving to the Island who are not seeking work (such as retired people), who may have a far bigger impact on public services, is questionable.
- 3.13 While removal of some of these matters may be controversial in some quarters the reality is that permits are very seldom declined on any of these grounds. Since the introduction of the current legislation in October 2015, only 9 applications have been refused on these wider socio-economic grounds. Yet the existence of the matters necessitates the completion of a long and complicated application form by the employer and prospective worker and lengthy consideration by an officer of the Department (or in a minority of cases by the Work Permit Committee).
- 3.14 The Department considers that bearing in mind existing labour market conditions and the accepted, pressing need to grow the economically active population, the list of matters to which regard may be had should be reduced in number. This will in turn permit the existing application form to be shortened and processing times to be speeded up.
- 3.15 The Department proposes to remove the following matters to which regard may be had –
- *The employment history of the person concerned.*
 - *The failure of the person concerned to pay his or her income tax or contributions under any statutory provision relating to social security.*
 - *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.*
 - *The employment history of a relevant person, being the spouse or civil partner of the person concerned.*
 - *Whether a relevant person, being the spouse or civil partner of the person concerned, has an immigration employment document.*

¹⁰ Any person living with, or likely to live with the person in respect of whom a permit is sought as a member of his or her household.

- *The status of any relevant person under the Immigration Act, and whether he or she has leave to enter and remain in the Island as defined within that Act.*
 - *Whether a relevant person is likely to a significant degree to require education at the public expense while residing in the Island.*
 - *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.*
 - *The criminal record (if any) of the person concerned (except as provided by paragraph 7 of Part 1¹¹).*
 - *Whether a relevant person is likely to a significant degree to receive non-contributory social security benefits while residing in the Island.*
 - *The criminal record (if any) of any relevant person.*
 - *The ability of any relevant person to speak English.*
- 3.16 It is to be noted that the Department intends to retain existing matters which are concerned with serious criminality of the person in respect of whom a permit is sought as well as his or her English language ability. Further the revised list does not diminish the requirement on the employer to have advertised a job and to have considered any suitable, available Isle of Man workers.
- 3.17 Removal of some of the matters would not alter existing rules regarding entitlement to social security benefits or to Government services. Access to education and health entitlements is obtainable upon relocation but assistance with housing costs or benefits for children (other than child benefit) is not normally available until a person has lived in the Island for at least 5 years.
- 3.18 It is to be noted that the Department has received legal advice to the effect that were some of these matters to be retained it would not be possible to move to an employer only application form. That is because, if, as a condition of obtaining employment, a person were to be required to disclose to his or her *employer* sensitive personal information, in particular about a family member, there might well be a breach of Article 8 of the European Convention on Human Rights (the right to respect for private and family life)¹². Whereas the permitted qualifications to the Article such as for "the economic well-being of the country" in Article 8(2) may cover disclosure to the Department they would not cover disclosure to an employer.
- 3.19 If the Department were to be precluded by public or political opinion from re-engineering the work permit application process its only other option to mitigate employers' present recruitment difficulties caused by work permit controls would be to exempt further employments. Yet persons using exempt employments and any persons accompanying them to the Island are not subject to *any* consideration by the

¹¹ Paragraph 7 requires the Department to consider "Any conviction of the person concerned falling within section 10 of the Act." That section deals with criminal convictions which have led to custodial sentences and which are unspent. The Department would continue to have regard to such convictions.

¹² The text of Article 8 is as follows-

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Department (though a person with an unspent etc. criminal conviction which had led to a custodial sentence cannot be exempt).

How would the proposals be implemented?

- 3.20 The proposal would be implemented by -
- making revisions to the Control of Employment Regulations 2015, which are subject to the annulment procedure¹³;
 - revising current application forms; and
 - revising current administrative processes.

Questions for consultees

- Q1. Do you support the proposal to replace the present application form, which is completed jointly by the employer and prospective worker, with a simplified employer only application form and to streamline the way the Department handles applications and its decision making processes?**
- Q2. Do you support the proposal to simplify the list of matters which the Department may take into consideration when deciding whether or not to grant a work permit by focusing attention on matters which are directly relevant to the employment sought and not matters of a socio-economic or quasi-residential nature?**

¹³ This requires that the Regulations must be laid before Tynwald as soon as possible after they are made, and if Tynwald, at the sitting at which they are laid or the next following sitting, decides that the Regulations should be annulled, they will cease to have effect.

4. Reforms to work permit application fees

4.1 The Department proposes to simplify the existing system of work permit application fees in order to encourage multi-year applications. This will facilitate applicants applying for longer permits thus giving much greater certainty to workers moving to the Island and their employers, and reduce bureaucracy.

4.2 The Control of Employment Regulations 1993 (now revoked) contained a matter to which the Department had to have regard when considering a work permit application, namely *"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."*

4.3 A consequence of this matter was that before October 2015, when new Regulations came into operation, the Department’s practice was to grant the great majority of permits for no longer than a year and to renew the permit each year (though applications for renewal were rarely if ever scrutinised but granted on an automatic basis).

4.4 After the Regulations were changed the Department brought the following fee system into operation -

- An initial application for the grant or renewal of a work permit must be accompanied by a fee of £60. This fee is not refundable if the application is refused.
- If the application is for a work permit for a period more than 1 year, an additional fee is payable, as follows.

Period for which work permit is applied for	Additional fee
more than 1 year and up to 2 years	£60
more than 2 years and up to 3 years	£120
more than 3 years and up to 4 years	£180
more than 4 years and up to 5 years	£240

- If the application is refused, the additional fee will be refunded. If a work permit is granted or renewed for a period less than that applied for, the additional fee or a proportion of it, as appropriate, will be refunded.

4.5 Despite the change to the Regulations and the resultant willingness of the Department to grant permits for longer periods (up to 5 years, which normally secures Isle of Man worker status if the worker resides in the Island for that period) the great majority of work permit applications received have been for shorter periods. The number and duration of permits sought¹⁴ since October 2015 is as follows:

¹⁴ Figures exclude applications which were refused.

Duration sought	Number / % of total permits
1 year or less	5283 (92.7%)
More than 1 year to 2 years	166 (2.9%)
More than 2 years to 3 years	104 (1.8%)
More than 3 years to 4 years	59 (1%)
More than 4 years to 5 years	87 (1.5%)

- 4.6 Possible reasons for applicants not seeking permits for longer periods are as follows -
- the additional cost of obtaining a longer permit coupled with employer reluctance to pay a greater fee in case the candidate leaves their employment; and
 - applicants' lack of understanding as to the changes in legislation and policy since October 2015 coupled with the erroneous assumption that the Department may be more likely to grant permit applications for a shorter duration.
- 4.7 Feedback to the Department suggests that shorter period work permits make it harder for individuals to settle in the Island, obtain longer term leases or mortgages and, in general, prevents incoming workers from feeling settled in the Island.
- 4.8 Issuing a 1 year permit and dealing with perhaps 4 subsequent applications for renewal of a permit also imposes additional bureaucracy on both the employer and the Department.
- 4.9 As the administrative costs for processing an application for a longer permit are no greater for the Department than for a shorter permit, it is proposed to simplify the existing system of fees in order to encourage multi-year applications.
- How would the proposal be implemented?**
- 4.10 A change to the existing fee system would require Tynwald approval for a new fees order under the Fees and Duties Act 1989.

Question for consultees

Q.3. Do you support the introduction of a simplified fee system which encourages multi-year applications?

5. Assisting cohabiting partners of Isle of Man workers, work permit holders and exempt persons

5.1 The Department proposes to take the following steps to make it easier for defined cohabiting partners of Isle of Man workers, work permit holders and exempt persons to work on the Island -

5.2. Giving defined cohabiting partners of Isle of Man workers the right to a 1 year automatic permit, renewable annually, which can be used in respect of any employment.

5.3 Extending the present right of spouses and civil partners of work permit holders and exempt persons to a 1 year automatic permit, renewable annually, which can be used in respect of any employment, to defined cohabiting partners of work permit holders and exempt persons.

5.4 The Control of Employment Act 2014 attempts to remove any disincentive to spouses and civil partners of Isle of Man workers, work permit holders and exempt persons coming to work in the Island by permitting them to work. However, cohabiting partners of Isle of Man workers, work permit holders and exempt persons have no such rights, which may disincentivise some couples coming to the Island to live and work. There has been significant industry representation that this is the case and that, in particular, the present law may dissuade some graduates from returning to the Island with their partners.

Cohabiting partners of Isle of Man workers

5.5 Under section 1(4) of the Control of Employment Act 2014 a person is automatically an Isle of Man worker if he or she is the spouse or civil partner of an Isle of Man worker.¹⁵

5.6 The Act does not make any special provision for cohabiting partners of Isle of Man workers nor does it contain any enabling powers to do so. (In contrast, section 9 of the Act provides enabling powers to extend the rights of spouses and civil partners of work permit holders and persons in exempt employment to cohabiting partners).

5.7 The Department decided to use the Equality Act 2017 as a vehicle to confer rights on the cohabiting partners of Isle of Man workers. Consequently, the Act amends section 24 of the Control of Employment Act 2014 Act by inserting the following two subsections —

(3A) The Department may by order amend this Act in respect of cases in which two persons are living together as if they were spouses, one of whom is an Isle of Man worker and the other is not, to confer on the latter such rights as the Department considers appropriate.

(3B) An order under subsection (3A) may —

(a) make such consequential amendments to other Acts, and to statutory documents made under this Act, and

(b) contain such transitional provisions,

as appear to the Department to be necessary or expedient.

¹⁵ This is subject to the spouse or civil partner having either (i) the right of abode in the Island under the Immigration Act 1971 (an Act of Parliament), as it has effect in the Island, (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).

- 5.8 The effect of the amendment is to allow the Department to confer on cohabiting partners of Isle of Man workers such rights as the Department considers appropriate. The Department proposes to use the power to allow defined cohabiting partners of Isle of Man workers to apply to the Department for a 1 year permit, not limited to any employment, in the same way as the Department treats spouses and civil partners of work permit holders and exempt persons under section 9 of the Act (see 5.11 to 5.12 below). The permit would be renewable annually provided that the cohabiting partner continues to live with the Isle of Man worker.
- 5.9 In order to qualify for a 1 year permit a cohabiting partner would be required to submit evidence of having cohabited with the Isle of Man worker prior to an application. Evidence might include documents showing a joint mortgage, joint bank account, utility bills etc. Both cohabitees would also be required to make a declaration and to inform the Department if they were no longer cohabiting.

How would the proposal be implemented?

- 5.10 The Department would bring forward an order which would require the approval of Tynwald.

Cohabiting partners of work permit holders and exempt persons

- 5.11 Where a work permit holder or exempt person is engaged in permanent, regular full-time employment, ("the primary employment"), his or her spouse or civil partner is, upon application, entitled to a work permit (referred to as "a spouse/civil partner permit"). A spouse/civil partner permit is granted for a year at a time, beginning with the date on which it is granted or renewed and it can be used against any employment. The permit will expire 6 months after the primary employment ceases or 12 months after it is granted or renewed, whichever is sooner. An application for a spouse/civil partner permit is made directly to the Department by the spouse or civil partner of the permit holder, rather than by any prospective employer.
- 5.12 Under section 9 of the Control of Employment Act 2014, the Department already has powers to make regulations to grant such permits to the cohabiting partners of work permit holders and persons who are exempt but to date no regulations have been made.
- 5.13 The Department now proposes to make Regulations providing for defined cohabiting partners of work permit holders and exempt persons to be granted a 1 year automatic permit just as though they were the spouse or civil partner of a work permit holder or exempt person.
- 5.14 Evidence of cohabitation would be required as in 5.9 above.

How would the proposal be implemented?

- 5.15 The Department would make revisions to the Control of Employment Regulations 2015. The regulations are subject to annulment by Tynwald.

Questions for consultees

- Q.4. Do you support giving defined cohabiting partners of Isle of Man workers the right to a 1 year automatic permit which can be used in respect of any employment?**
- Q.5 Do you support extending the present right of spouses and civil partners of work permit holders and exempt persons to a 1 year automatic permit to defined cohabiting partners of work permit holders and exempt persons?**

6. Registration requirements for workers in exempt employments

6.1 The Department proposes to establish a register of exempt persons to provide greater information about persons in exempt employment.

- 6.2 Schedule 1 to the Control of Employment Act 2014 contains a large number of permanent and temporary exemptions. Whereas some of these exemptions are conditional upon the employer providing an annual return to the Department, the majority of exempt employments are not subject to any such condition.
- 6.3 Whereas the Department has plentiful information about work permit holders the same cannot be said of persons in exempt employment. The Government is largely blind as to this important group of non-Isle of Man workers and must depend on other sources such as GP registrations to track their effect on the population.
- 6.4 Against a clear need to grow the economically active population the Department feels it would be beneficial for the Government to have better information regarding people in exempt employments, as well as some basic statistical information about persons who may accompany them to the Island.
- 6.5 In particular the Department is seeking to understand the current labour market in its entirety through multiple sources (census data, vacancies, work permits issued etc.) and to establish real time information as to particular skill shortages so that training resources can be focused in those areas. Better information on the number of persons in exempt employment and the types of employment they are undertaking would be likely to greatly assist the Department in this respect.
- 6.6 Information about exempt persons and those accompanying them would also be helpful for planning purposes for centrally provided Government services.
- 6.7 Section 22 of the Control of Employment Act 2014 already contains enabling powers to set up registers of exempt persons (as well as of Isle of Man and work permit-holders). The Department is proposing to use these existing powers to establish a register of exempt persons.
- 6.8 The register would contain key information about the exempt persons, their sector, occupation, the number of relevant persons accompanying them to the Island etc.
- 6.9 The Department propose to limit the register to those in permanent employment (for example registered medical practitioners, secondary school teachers and certain persons employed in ICT and e-business). Whereas additional information on persons in temporary employments might be useful it is considered that the imposition of a registration requirement in respect of temporary workers could be seen as overly bureaucratic.
- 6.10 Key statistical information would be published on a quarterly basis as part of the Council of Ministers' Quarterly Report on the Economy.
- 6.11 Employers and self-employed workers would submit the information on an online application form.
- 6.12 At present no official documentation is issued by the Department stating whether or not an employee or self-employed person is actually covered by an exemption. Feedback from industry suggests that the lack of a formal process can be confusing and unsettling to both employers and prospective workers The Department plans to use the registration process to give its opinion as to whether or not a person in a particular employment is or is not exempt thus providing greater certainty to employers and workers alike.

How would the proposal be implemented?

6.13 The Department would make revisions to the Control of Employment Regulations 2015. The regulations are subject to annulment by Tynwald.

Q.6 Do you support the principle of introducing a register of exempt persons?

7. Persons from outside the EEA under Tiers 1, 4 and 5 of the Points Based system¹⁶

7.1 The Department proposes to remove the additional requirement for a work permit presently imposed on some persons from outside the European Economic Area¹⁷ who have a visa issued by the Immigration Office enabling them to invest, study or work in the Island.

7.2 Section 7 (4) of the Control of Employment Act 2014 exempts a person who is the holder of an 'immigration employment document' which permits him or her to undertake employment, from also requiring a permit under the Control of Employment Act 2014. The term 'immigration employment document' is defined in the Control Employment Regulations 2015 as follows –

"For the purposes of the Act "immigration employment document" means a certificate of sponsorship validly issued by a sponsor indicating, in accordance with the Immigration Act, that a person named in it is eligible for leave to enter or remain in the Island for the purpose of taking up or continuing a specified employment in the Island with the sponsor in accordance with that certificate's terms."

7.3 The definition of 'immigration employment document' covers persons working in the Island under Tier 2 (Skilled workers with a job offer etc.) and Tier 5 (most temporary workers) of the Points Based System. In each case the person will have a certificate of sponsorship.

7.4 Persons under Tier 1 (entrepreneurs and investors), Tier 4 (students)¹⁸ and Tier 5 (Youth Mobility Scheme¹⁹) do not require a certificate of sponsorship and hence require an additional Control of Employment Act permit.

7.5 The Department considers that in these cases there should be no additional requirement to obtain a work permit under the Control of Employment Act 2014.

7.6 In the case of an investor permitted to come to the Island under Tier 1 the present requirement that he or she obtain a permit under the Control of Employment Act 2014 to work in the business in which he or she is investing would appear to be overly bureaucratic especially when the visa issued by the Immigration Office limits the person to working in that business in any case.

¹⁶ It should be noted that the Passport, Immigration and Nationality Office has a separate consultation "Isle of Man Immigration Points Based System Consultation" which runs until 18th August 2017. See further at www.gov.im/ConsultationDetail.gov?id=628.

¹⁷ The European Economic Area (EEA) states are the 28 member states of the European Union (Austria, Belgium, Bulgaria, Croatia, Republic of Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom) and also Iceland, Liechtenstein and Norway.

¹⁸ At present DED regulates the employment of a very small number of students from outside the European Economic Area through the [Overseas Students Scheme](#). The Scheme specifies the type and amount of work students can undertake while they are studying in the Island.

¹⁹ The Youth Mobility Scheme is a scheme for young people from Australia, Canada, Japan, New Zealand, Monaco, South Korea, Hong Kong and Taiwan or those who are British Overseas Citizens, British Overseas Territories Citizens or British Nationals (Overseas), as defined by the British Nationality Act 1981 (of Parliament), who wish to live and work temporarily in the Island. Under the Scheme, young people over 18 and under 31 years of age, can live and work, subject to certain restrictions, in the UK and the Island for a maximum of 24 months. Applicants must be able to support themselves and do not have access to public funds.

- 7.7 In the case of students wishing to undertake a small amount of work alongside their studies the limitations on their work are already contained within the Immigration Rules and therefore in their visa. (i.e. 20 hours per week during term time etc.). It is considered that this is sufficient rather than requiring the student to obtain a separate permit from the Department of Economic Development.
- 7.8 Similarly the Department considers there should be no need for a young person with a visa from the Immigration Office permitting that person to work temporarily in the Island under the Youth Mobility Scheme to also require a permit under the Control of Employment Act 2014.
- 7.9 One advantage of removing the requirement for a Control of Employment Act work permit or Overseas Students Scheme permit in these cases is that persons under these tiers would need to deal with only one Government Department rather than two. Further, since the transfer of administrative functions earlier this year relating to Tiers 2 and 5 of the Points Based System from the Department of Economic Development to Immigration²⁰, previous shared responsibility for managing workers from outside the European Economic Area who are in the Island under the Points Based System has almost entirely passed to Immigration.²¹
- 7.10 The numbers of persons coming into the Island under Tier 1, Tier 4 or Tier 5 (Youth Mobility Scheme) are very small. The Annual Report of the Crown and External Relations Passport, Immigration and Nationality Services (April 2015 - March 2016)²² shows that in 2015-16 entry clearance was granted to 3 people through the Tier 1 route, 10 people through Tier 4 and nobody through Tier 5.

How would the proposals be implemented?

- 7.11 The proposal would be implemented by -
- broadening the definition of 'immigration employment document' in the Control of Employment Regulations 2015 so that it covers not only persons working in the Island under Tier 2 of the Points Based System as at present but also persons under immigration control who invest, study or work in the Island under Tier 1, 4 or 5 of the Points Based System; and
 - making some minor changes to the Isle of Man Immigration Rules.

Questions for consultees

- Q.7 Do you support the proposal to remove the present requirement to obtain an additional work permit under the Control of Employment Act 2014 imposed on persons from outside the European Economic Area (EEA) who hold a valid visa under the Isle of Man Immigration Rules to invest, study or work in the Island under Tier 1, 4 or 5 of the Points Based system?**

²⁰ See <https://www.gov.im/categories/travel-traffic-and-motoring/immigration/sponsor-certificates-and-licences/>

²¹ It is to be noted, however, that the spouses and civil partners of persons who are the holders of an immigration employment document will have an interaction with DED. Section 9 of the Control of Employment Act 2014, as amended by the Equality Act 2017, entitles such spouses and civil partners to a 1 year automatic permit, upon application, (referred to as "a spouse/civil partner permit"). A spouse/civil partner permit is granted for a year at a time, beginning with the date on which it is granted or renewed and it can be used against any employment. Dependants of persons who are the holders of an immigration employment document will also continue to require Control of Employment Act permits unless they are Isle of Man workers or in exempt employment.

²² See further at <https://www.gov.im/media/1356753/pin-annual-report-2015-2016.pdf>

8 The idea of “flipping” the work permit system

- 8.1 Unlike sections 3 to 7 above, which concern a series of proposals that the Department is contemplating implementing, the following section concerns a radical idea in respect of which the Department has an open mind.
- 8.2 The Department wishes to consult on the principle of “flipping” the current system of work permit controls so that rather than everybody who is not an Isle of Man worker requiring a permit, unless the employment is exempt, the only people who would need a permit would be those proposing to undertake designated employments and persons of a particular description (e.g. those with criminal convictions which had led to custodial sentences).

Background

- 8.3 When the then Equality Bill 2016 (now Equality Act 2017) was in the House of Keys Mr Lawrie Hooper MHK tabled an amendment to section 6 of the Control of Employment Act 2014 which provides enabling powers for the “flipping” the current system. The effect of this would be that rather than everybody who is not an Isle of Man worker requiring a permit, unless the employment is exempt, nobody would require a permit other than in the cases of a minority of designated employments and persons of a particular description (e.g. those with criminal convictions which had led to custodial sentences²³).
- 8.4 Because Mr Hooper was (and remains) a Member of the Department of Economic Development he first sought permission from the Minister of the Department before moving the amendment. The Minister was supportive of the amendment.
- 8.5 The amendment received a great deal of support in both the House of Keys and the Legislative Council.
- 8.6 Section 6 of the Control of Employment Act 2014, as amended, is as follows, **with the new text shown in red**:

6. Restrictions on employment

(1) 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.*

(2) The Department may by order amend or replace subsection (1) so as to restrict the application of this Act, or any provision of it —

- (a) to particular kinds of employment;*
- (b) to particular industries or occupations, or particular sectors of the economy of the Island; or*
- (c) to the employment of particular descriptions of persons (for example, those who have previous convictions or who are required to have an immigration employment document before taking up employment).*

²³ But subject, of course to the Rehabilitation of Offenders Act 2001, which provides that after a period of good behaviour (‘rehabilitation period’) certain convictions are spent, that is treated as if they had never occurred, depending upon the sentence imposed.

(3) An order under subsection (2) may include such consequential incidental, supplemental, and transitional provision, including provision modifying, amending or repealing any provision of this Act other than this section, as the Department considers appropriate.

- 8.7 Although there has been much talk about suspending the work permit system in times of full employment or even abolishing work permit controls, a flipped system would be potentially more advantageous and more acceptable because it would enable the Department to continue to regulate any employments and job applicants where it considered it was desirable to do so.
- 8.8 Flipping the system offers the following specific advantages over abolition or suspension -
- sectors and occupations where there were Isle of Man workers seeking employment could still be subject to permits (and the Department could focus its enforcement resources on those employments);
 - persons with unspent criminal convictions which had led to custodial sentences (as defined under section 10 of the Act [criminal records]) would require a permit under a flipped system;
 - persons coming to the Island under a flipped system could be subject to a registration process, as described at section 6 of this paper.

How would flipping the system be implemented?

- 8.9 This would be accomplished by making an order using the new powers inserted in section 6 of the Control of Employment Act 2014. The Order would need the approval of Tynwald.

Question for consultees

- Q.8 Do you support the idea in principle of “flipping” the present requirement that everyone who is not an Isle of Man worker requires a permit, except in the case of exempted employments, to a system where the only people who would need a permit would be those proposing to undertake designated employments and persons of a particular description (e.g. those with criminal convictions which had led to custodial sentences)?**

Summary of questions

- Q1. Do you support the proposal to replace the present application form, which is completed jointly by the prospective employer and worker, with a simplified employer only application form and to streamline the way the Department handles applications and its decision making processes?**
- Q2. Do you support the proposal to simplify the list of matters which the Department may take into consideration when deciding whether or not to grant a work permit by focusing attention on matters which are directly relevant to the employment sought and not matters of a socio-economic or quasi-residential nature?**
- Q.3. Do you support the introduction of a simplified fee system which encourages multi-year applications?**
- Q.4. Do you support giving defined cohabiting partners of Isle of Man workers the right to a 1 year automatic permit which can be used in respect of any employment?**
- Q.5 Do you support extending the present right of spouses and civil partners of work permit holders and exempt persons to a 1 year automatic permit to defined cohabiting partners of work permit holders and exempt persons?**
- Q.6 Do you support the principle of introducing a register of exempt persons?**
- Q.7 Do you support the proposal to remove the present requirement to obtain an additional work permit under the Control of Employment Act 2014 imposed on persons from outside the European Economic Area (EEA) who hold a valid visa under the Isle of Man Immigration Rules to invest, study or work in the Island under Tier 1, 4 or 5 of the Points Based system?**
- Q.8 Do you support the idea in principle of “flipping” the present requirement that everyone who is not an Isle of Man worker requires a permit, except in the case of exempted employments, to a system where the only people who would need a permit would be those proposing to undertake designated employments and persons of a particular description (e.g. those with criminal convictions which had led to custodial sentences)?**

List of direct consultees

Tynwald Members

Clerk of Tynwald

Attorney General

Isle of Man Courts of Justice

Local Authorities

Chief Officers of Government Departments, Boards and Offices

Manx Industrial Relations Service

Appointments Commission

Isle of Man Chamber of Commerce

Isle of Man Trade Union Council

Isle of Man Employers' Federation

Isle of Man Law Society

Liberal Vannin Party

Manx Labour Party

Code of Practice Consultation Criteria

1. Consult widely throughout the process, allowing a minimum of 6 weeks for a minimum of one written consultation at least once during the development of the legislation or policy.
 2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
 3. Ensure your consultation is clear, concise and widely accessible.
 4. Give feedback regarding the responses received and how the consultation process influenced the policy.
 5. Monitor your Department's effectiveness at consultation.
 6. Ensure your consultation follows best practice, including carrying out an Impact Assessment if appropriate.
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Appendix 4

List of main differences between the Control of Employment Act 1975 and the Control of Employment Act 2014²⁴

Previous law (Control of Employment Act 1975)	Change to previous law	What difference did the change make?
10 year qualifying period to become an Isle of Man worker or 5 years subject to complex conditions.	Simple 5 year qualifying period to become an Isle of Man worker. (A 5 year period which ends prior to 1 st October 2015 does not count).	Gave greater certainty to prospective workers and their employers.
Permits granted, typically for 1 year, then renewable annually.	Applicants are, in general, able to elect for permits of up to 5 years. The cost of the permit varies according to its length.	Gave prospective workers and their employers greater certainty. Reduction in bureaucracy.
Spouse or civil partner of permit holder or exempt person entitled to a 1 year permit (a spouse / civil partner permit) but the employer must apply for the permit.	Spouse and civil partner of permit holder or exempt person can apply directly to the Department for a 1 year permit which covers any employment.	Requiring an employer to apply for a spouse / civil partner permit deterred some employers from recruiting spouses and civil partners of permit holders or exempt persons. The change provided greater certainty to married people and civil partners that <u>both</u> spouses /civil partners would be able to work if they came to the Island, making it more likely for them to come.
Department must have regard to an Isle of Man worker who is "suitable" and "available".	While the "suitable" and "available" criteria are maintained, when deciding whether to grant a permit, the Department must now balance these factors with (a) any skills, qualifications, knowledge, or experience required for the position; and (b) the importance of the position to the applicant's undertaking.	Gave greater scope to an employer to argue the case for granting a work permit for the best candidate where this could be justified (particularly more important positions which require very able persons).

²⁴ The table includes differences between the 1993 Regulations and the 2015 Regulations and also between the Work Permit (Fees) Order 2010 and the present 2015 Order.

<p>The Department can exempt "employments" by an Order which requires the approval of Tynwald.</p>	<p>The new Act contains more flexible exemption powers. The Department can, subject to approval of Tynwald, exempt not only "employments" but "persons of a description". There is also an administrative power for the Department to exempt persons in the national interest.</p>	<p>Reduced bureaucracy and enabled the Department to take account of special cases.</p> <p>Made it easier for workers the Island needs and their spouses and civil partners to work in the Island.</p>
<p>Once granted a permit cannot be varied.</p>	<p>The Department may vary a permit in certain circumstances (e.g. place of work, type of employment including the circumstance where a trainee or person undertaking a qualification becomes qualified and would have previously required a new permit).</p>	<p>Enabled the Department to reduce bureaucracy and to take account of special cases.</p>
<p>No bar on unrehabilitated offenders etc. using an exemption or claiming an automatic spouse etc. permit.</p>	<p>Unrehabilitated offenders etc. cannot be exempt or claim an automatic spouse etc. permit (but may still apply for a standard work permit).</p>	<p>Allowed the Department to properly scrutinise unrehabilitated offenders seeking to work in the Island on a case by case basis.</p>



**Isle of Man
Government**

Reiltys Ellan Vannin



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large print on request**

Department of Economic Development
St George's Court
Upper Church Street
Douglas
IM1 1EX