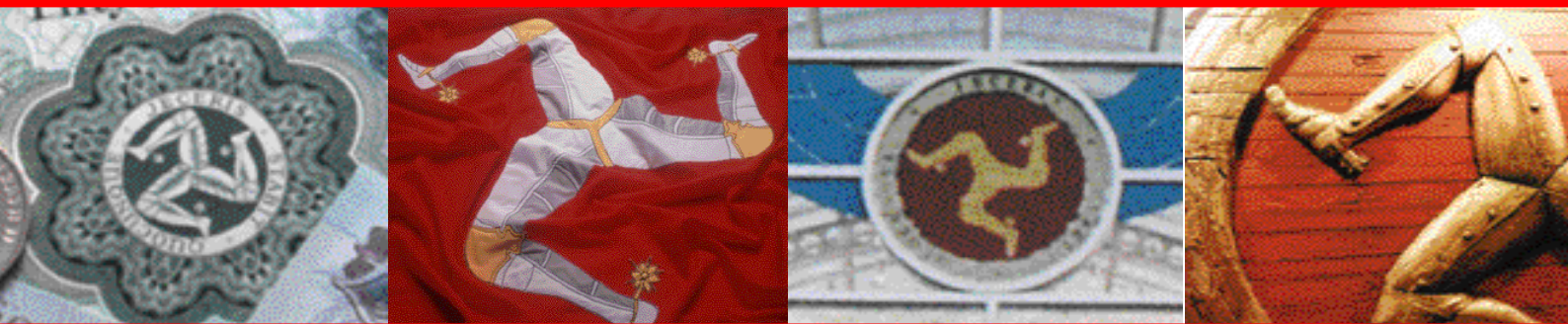




Isle of Man
Government

Reilrys Ellan Vannin



The Control of Employment Act 2014 – Proposals for new Secondary legislation

Summary of consultees' comments and Department response

Department of Economic Development

October 2017

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1. Foreword

This summer the Department of Economic Development consulted on proposed reforms to the Control of Employment secondary legislation. The consultation closed on the 31st August and received over 150 responses with the overwhelming majority of respondents supporting the Department's proposals.

The outcome of the consultation has been clear, with a broad section of consultees expressing their views on the proposed reforms and supporting the Department's proposals. We have carefully considered the responses and will be taking the necessary legislation to implement the reforms to Tynwald this month.

The proposals are intended to support the Government's objective to develop an Island of Enterprise and Opportunity. The proposals will give our employers access to the skilled people they need to grow and also remove barriers for people returning to the Isle of Man to work.

As part of the reforms we will also be looking to further promote the opportunities here on our Island and get the message out to employers that work permits should not be an obstacle where there are no suitable Isle of Man workers available.

I would like to thank all those who participated in the Consultation and gave their views

A handwritten signature in black ink, appearing to read 'Laurence Skelly', written in a cursive style.

Laurence Skelly MHK

Minister for Economic Development.

2. Executive Summary

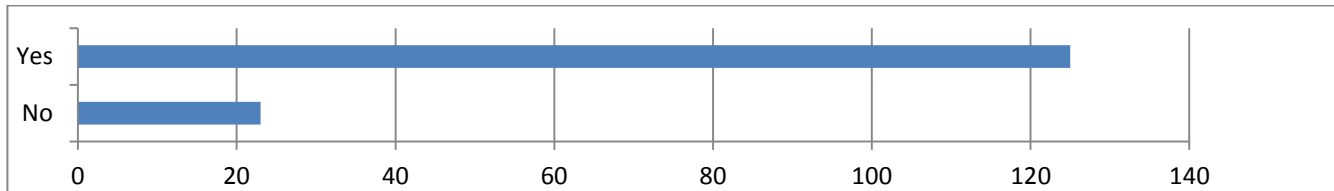
- 2.1. Over 150 responses were received from individuals, trade bodies, political organisations, trade unions and private and public sector employers from a wide range of sectors.
- 2.2. The table below summarises the responses to the specific questions asked in the consultation. The questions are summarised for brevity, full details are available later in this document:

Question	Yes	No
1. Simplified employer only application form.	83.80%	16.20%
2. Simplified list of matters to be taken into consideration by the Department.	78.17%	21.83%
3. Simplified fees to encourage multi-year permits	90.14%	9.86%
4. Automatic 1 year permit for cohabiting partners of IoM Workers upon application.	84.51%	15.49%
5. Automatic 1 year permit for cohabiting partners of work permit holders and exempt persons upon application.	84.51%	15.49%
6. Introduction of a register of exempt persons.	87.32%	12.68%
7. No requirement for visa holders with permission to enter the Island under Tiers 1, 4 and 5 of the Points Based System to obtain an additional CEA permit.	80.28%	19.72%
8. 'Flipping' the system.	66.90%	33.10%

- 2.3. With over three quarters of responses fully supportive of the proposed reforms, it is intended to progress proposals 1-7.
- 2.4. Whilst the Department also consulted on the idea of 'flipping' the system it does not intend to progress this idea at this stage. This proposal received less support through the consultation and would require detailed work in identifying prescribed employments (or employment sectors) potentially delaying reform.
- 2.5. Subject to Tynwald approval, the implementation date for proposals 3, 4, 5 and 7 will be 1st November 2017. Proposals 1, 2 and 6 will take longer to implement and will be reliant on the development of new IT systems. The planned implementation date for these measures is January 2018.

3. Proposal 1

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?



3.1. A significant majority of respondents supported this proposal.

3.2. Qualifying comments in support of their choice were also received from respondents. In relation to the application form a number of comments cited the lengthy application form and '*protracted application submission*' and that the present form was '*unnecessarily cumbersome and repetitive*'.

3.3. Respondents also commented that the current employee part of the form '*feels bureaucratic and repeats information already provided to the prospective employer...*'

3.4. Some responses received commented that the employee, as opposed to the employer, could complete the application form. However, the Department view is that this would move away from the principle of the employer demonstrating that there were no suitable or available Isle of Man workers. This is a key matter to which the Department shall have regard to in an application.

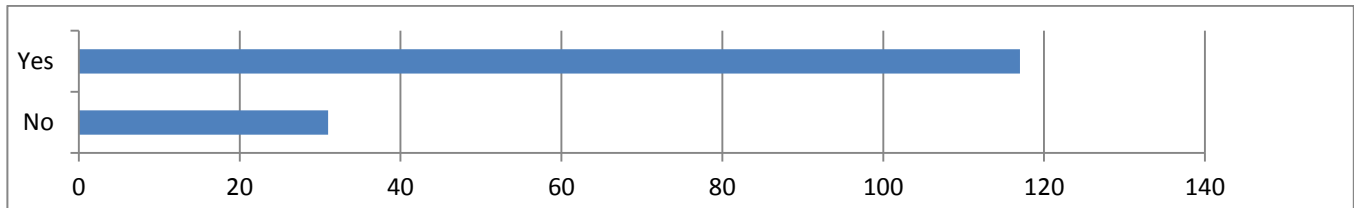
3.5. A number of responses referenced the importance of maintaining checks on criminality and the ability of potential worker to speak English. The Department has carefully considered these matters during the drafting of the necessary regulations. There will be a requirement of the employer to ascertain and / or ask the potential employee for this information and to make the relevant declaration as part of the work permit application.

3.6. Comments were also received regarding the implications of data protection legislation with regard to the collection and transmission of personal information. Legal advice was sought on this subject and the Department is satisfied that the final proposals and administrative processes will be compliant. Further clarity will be provided for employers and potential workers through the Department's guidance on work permits.

3.7. It should also be noted that a number of the 'No' responses to this question were because respondents did not feel that the proposal went far enough.

4. Proposal 2

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?



4.1. A significant majority of respondents supported this proposal.

4.2. A number of respondents, in their qualifying comments, indicated that the primary focus of the work permit system should be connected with the availability of skills, as opposed to wider considerations.

4.3. The Department was clear in the consultation document that this should be the focus of a work permit system which balances the protection of Isle of Man workers with the ability of businesses to access alternative sources of labour when required.

4.4. Comments were also received in relation to the need to ensure that criminality and potential reliance on Government financial support should be taken into consideration.

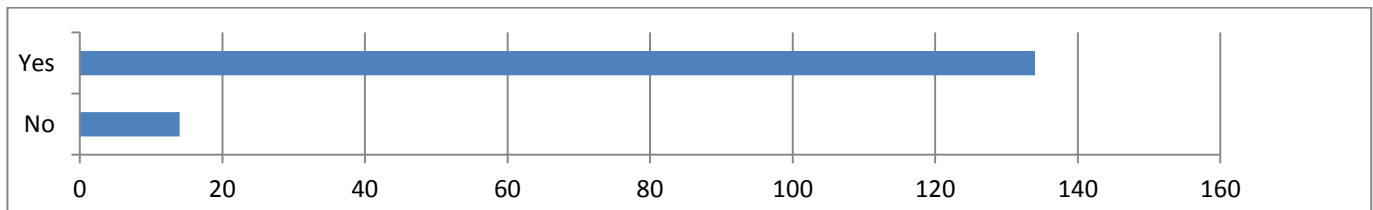
4.5. As previously stated, employers will be obliged to make a declaration on behalf of the potential employee as regards unspent criminal convictions.

4.6. With regard to financial support from Government, new residents are not automatically entitled to the majority of social security benefits. Out of work benefits, such as Income Support and Jobseeker's allowance are only applicable after 5 years residence in the Island. As such, those migrating to the Island will need to work to support themselves and their families.

4.7. The Department is satisfied, therefore, that the primary focus of the work permit system, should be to consider whether there are any suitable, available Isle of Man workers for the employment in question.

5. Proposal 3

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



5.1. An overwhelming majority of respondents supported this proposal.

5.2. Many of the comments received cited the uncertainty created by permits issued for shorter durations and that longer permits would potentially enhance the attractiveness of job offers in the Island and lead to a greater ability and willingness of those coming to the Island to commit, buy property and establish their home in the Island.

5.3. Although the Department has had the ability to issue multi-year permits for some time, owing to previous changes to work permit legislation in 2015, it appears that this has not achieved the desired outcome.

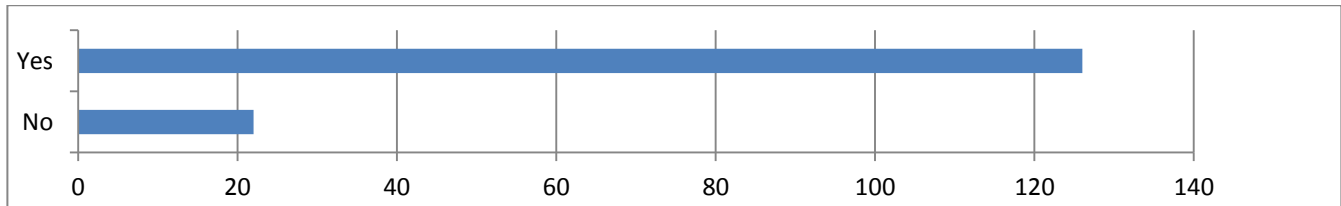
5.4. Some respondents also pointed out that fees associated with multi-year permits should reflect the similar level of administration involved with processing applications for permits of shorter durations.

5.5. The Department has considered the positive support for this proposal and the additional comments received and is cognisant of the concerns in relation to the additional cost and bureaucracy placed on employers through raised fees, or regular renewal applications.

6. Proposals 4 & 5

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?

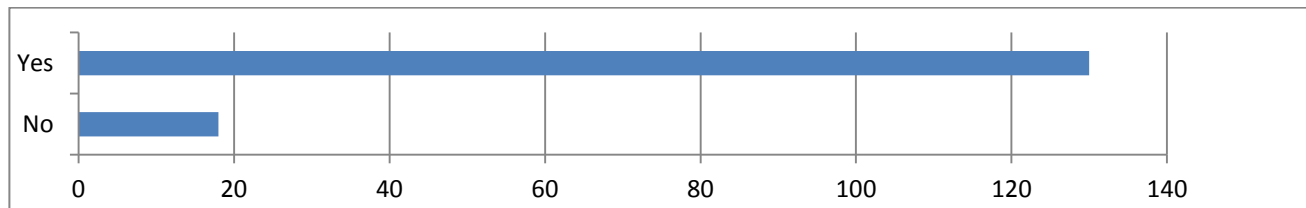
Do you support extending the present right of spouses and civil partners of work permit holders and exempt persons to a 1 year automatic permit to defined cohabiting partners of work permit holders and exempt persons?



- 6.1. A significant majority of respondents supported these proposals, with both questions receiving equal support
- 6.2. A number of comments made in response to this proposal queried the evidence requirements and checks that would be made on applicants. In respect of criminality, anyone with serious criminal convictions (those leading to a custodial sentence) which are unspent will not be eligible to obtain a cohabiting partner permit, (as is already the case with spouse / civil partner permits).
- 6.3. The Department recognises the need to ensure that such a process is significantly robust, whilst enabling potential workers who are in a cohabiting relationship to relocate to the Island for employment.
- 6.4. Several respondents challenged the limitation of the proposals in respect of the 1 year period for which such permits would be issued.
- 6.5. The Department recognises this point, however, in the case of cohabiting partners of work permit holders and exempt persons such a limitation is imposed by the Control of Employment Act. As this is primary legislation, effecting changes to this would take considerable time to progress through the legislative process.
- 6.6. The Department is sympathetic to these concerns however, and will review the impact of this measure, along with other reforms and will consider if further changes may be required in the future

7. Proposal 6

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



7.1. A significant majority of respondents supported this proposal.

7.2. Many additional comments received in relation to this proposal recognised the benefits of the introduction of such a registration process.

7.3. For employers, the ability to follow a simple process, ideally online, which would enable them to understand if an employment was exempt was paramount, as was receiving formal confirmation of the same.

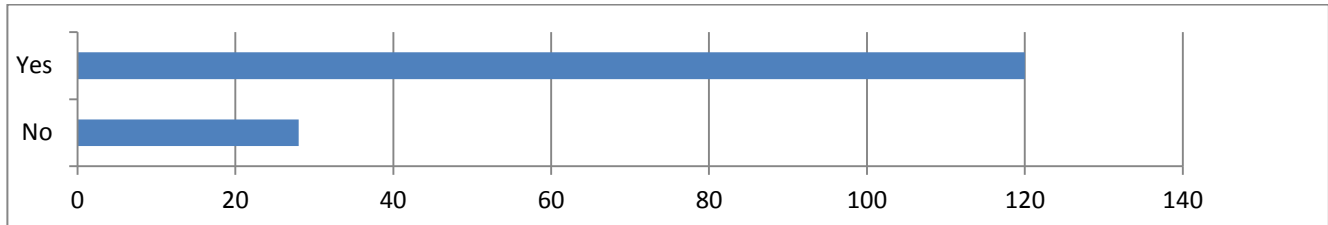
7.4. For Government, respondents recognised that the ability to hold a greater level of labour market and migration intelligence would be beneficial for future planning.

7.5. Some respondents expressed concern over the potential additional administrative burden or cost to such a register.

7.6. The Department has considered all of the comments received and, in taking forward this proposal, will ensure that such a process is as straightforward and efficient as possible.

8. Proposal 7

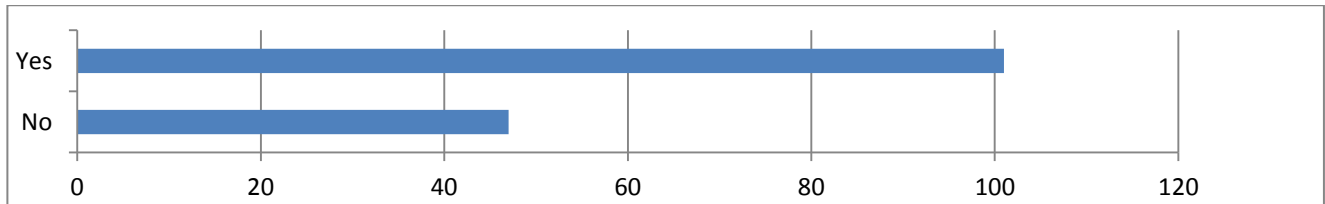
Do you support the proposal to remove the present requirement to obtain an additional work permit under the Control of Employment Act 2014 imposed on persons from outside the European Economic Area (EEA) who hold a valid visa under the Isle of Man Immigration Rules to invest, study or work in the Island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



- 8.1. A significant majority of respondents supported this proposal.
- 8.2. Whilst the proposal was supported by a clear majority of consultees, there were concerns expressed by some respondents fearing a lack of control of wider immigration.
- 8.3. For clarity, the proposal relates to those individuals who have already gained the necessary approval to live and work in the Island.
- 8.4. The proposal would create a clear route for employers or individuals as to which Government agency they would need to communicate with in regards to employment of an individual.
- 8.5. Gaining leave to enter, remain and work in the Island through an Immigration route is a thorough process and the Department believes it is overly burdensome to then subject the employer and potential worker to a further process.
- 8.6. A number of comments referenced the potential impact of BREXIT and classification of EEA workers in the future.
- 8.7. The Department is of course, aware of the potential impact that changes to the EEA may have in future years. However, as this proposal will be implemented with a change to the definition of an 'Immigration Employment Document' in secondary legislation, the definition could be amended in the future if warranted by changing circumstances.

9. Proposal 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)?



9.1. A majority of respondents supported this idea.

9.2. Whilst the previous 7 questions were firm proposals for reform, the Department also consulted on the more radical idea of 'flipping' the current work permit system, so as to exempt a wider range of employments / sectors.

9.3. The idea received support from a majority of respondents, albeit less so than the other proposals

9.4. Additionally, many respondents qualified their answer with additional comments, expressing concern about how the idea would work in practice, or indicating that it would be preferable to assess how the other specific reforms worked first before progressing this idea.

9.5. The Department also recognises that there would be a considerable amount of work required to identify prescribed employment, industrial sectors and other criteria to enable such an idea to be implemented.

9.6. As such, the Department does not intend to progress this idea at this stage but does not rule out returning to the concept in the future.

10. Appendix

10.1. A full copy of the consultation document and the responses received are available via the Consultation hub:

<https://consult.gov.im/economic-development/workpermits2017/>

10.2. Responses were able to be submitted for:

- publishing in full
- publishing anonymously (comments available but personal information redacted); and
- not to be published (responses included in statistical information only)

