



Statutory Document No. 186/08

ASYLUM AND IMMIGRATION ACT 1996

IMMIGRATION (RESTRICTIONS ON EMPLOYMENT) ORDER 2008

Laid before Tynwald

15th April 2008

Coming into operation

1st May 2008

In exercise of the powers conferred on the Department of Trade and Industry by section 8(1) of the Asylum and Immigration Act 1996 (an Act of Parliament)¹, as it has effect in the Isle of Man², the following Order is hereby made:—

1. Citation and commencement

This Order may be cited as the Immigration (Restrictions on Employment) Order 2008 and shall come into operation on the 1st May 2008.

2. Interpretation

(1) In this Order —

"the 1971 Act" means the Immigration Act 1971 (an Act of Parliament)³;

"the 1996 Act" means the Asylum and Immigration Act 1996 (an Act of Parliament);

"the Immigration Rules" has the meaning given in section 33(1) of the 1971 Act;

"immigration status document" means a document issued by the Governor containing an endorsement, which confirms that the holder has been granted indefinite or limited leave to enter or remain in the Isle of Man; and

"registration card" has the meaning given in section 26A(1) of the 1971 Act.

(2) In this Order any reference to an Act of Parliament, or a provision of an Act of Parliament, which extends to the Isle of Man is a reference to that Act or provision as it has effect in the Isle of Man.

¹ 1996 c.49

² SI 2008/680

³ 1971 c.77

Price £1.00

3. Conditions specified under section 8(1) of the 1996 Act

(1) The set of conditions in paragraph (2) and the condition in paragraph (3) are the conditions specified under section 8(1) of the 1996 Act (no offence committed in employing a person who satisfies such conditions).

(2) The set of conditions is that —

- (a) the employee had limited leave to enter or remain in the Isle of Man which did not preclude his taking the employment in question;
- (b) the employee applied to the Governor for variation of that leave; and
- (c) the employee is within the period during which an appeal could be brought against refusal of that application.

(3) The employee is permitted to work under the Immigration Rules.

4. Requirements for the purposes of section 8(2) of the 1996 Act

(1) The requirements referred to in paragraphs (2) to (5) are requirements for the purposes of section 8(2) of the 1996 Act (defence for a person charged with an offence under section 8 to prove that before the employment began any such requirement was complied with).

(2) There must have been produced to the employer either -

- (a) a document of a description specified in Part 1 of the Schedule, or
- (b) one document of a description specified in –
 - (i) each of sub-paragraphs (a) and (b) of paragraph 1 of Part 2 of the Schedule; or
 - (ii) each of sub-paragraphs (a) and (b) of paragraph 2 of that Part.

(3) The employer must have taken the steps specified in Part 3 of the Schedule to copy or record the content of any document produced to him in accordance with paragraph (2).

(4) The employer must satisfy himself that each document produced in accordance with paragraph (2), appears to relate to the employee in question; in particular —

- (a) if a document contains a photograph, the employer must satisfy himself that the person photographed is the employee in question, and
- (b) if a document contains a date of birth, the employer must satisfy himself that the date of birth is consistent with the appearance of the employee.

(5) If either —

- (a) the name on a document produced under paragraph 1(a) of Part 2 of the Schedule differs from the name on a document produced under paragraph 1(b) of that Part; or
- (b) the name on a document produced under paragraph 2(a) of Part 2 of the Schedule differs from the name on a document produced under paragraph 2(b) of that Part,

a document must have been produced to the employer explaining the difference.

SCHEDULE

PART 1

DESCRIPTIONS OF DOCUMENTS FOR THE PURPOSES OF ARTICLE 4(2)(a)

1. A United Kingdom passport describing the holder as a British citizen or as a citizen of the United Kingdom and Colonies having the right of abode in the United Kingdom.
2. A passport containing a certificate of entitlement issued by or on behalf of the Government of the United Kingdom, certifying that the holder has the right of abode in the United Kingdom.
3. A passport or national identity card, issued by a State which is a party to the European Economic Area Agreement or any other agreement forming part of the Communities Treaties which confers rights of entry to or residence in the United Kingdom, which describes the holder as a national of a State which is a party to that Agreement.
4. A United Kingdom residence permit issued to a national of a State which is a party to the European Economic Area Agreement or any other agreement forming part of the Communities Treaties which confirms that the holder has rights of entry to or residence in the United Kingdom.
5. A passport or other travel document or a residence document issued by the Home Office which is endorsed to show that the holder has a current right of residence in the United Kingdom as the family member of a named national of a State which is a party to the European Economic Area Agreement or any other agreement forming part of the Communities Treaties which confers rights of entry to or residence in the United Kingdom, and who is resident in the United Kingdom.
6. A passport or other travel document endorsed to show that the holder is exempt from immigration control, has indefinite leave to enter, or remain in, the United Kingdom or has no time limit on his stay.
7. A passport or other travel document endorsed to show that the holder has current leave to enter, or remain, in the United Kingdom and is permitted to take the employment in question, provided that it does not require the issue of a work permit.

PART 2

DESCRIPTIONS OF DOCUMENTS FOR THE PURPOSES OF ARTICLE 4(2)(b)

1. (a) A document issued by a previous employer, the Assessor of Income Tax or an income tax office in the United Kingdom, a Jobcentre in the Isle of Man or the United Kingdom, the Department of Health and Social Security or the United Kingdom Department of Social Security, which contains the National Insurance number of the person named in the document; and
- (b) one or more of the following —
 - (i) a birth certificate issued in the Isle of Man, the United Kingdom, any of the Channel Islands or the Republic of Ireland; or
 - (ii) a certificate of registration or naturalisation as a British citizen; or
 - (iii) a letter issued by the Governor to the holder, which indicates that the person named in it has been granted indefinite leave to enter or remain in the Isle of Man; or
 - (iv) an immigration status document issued by the Governor to the holder, which indicates that the holder has been granted indefinite leave to enter or remain in the Isle of Man; or
 - (v) a letter issued by the Governor to the holder, which indicates that the person named in it has subsisting leave to enter or remain in the Isle of Man and is entitled to take the employment in question in the Isle of Man; or
 - (vi) an immigration status document issued by the Governor, to the holder, which indicates that the holder has been granted limited leave to enter or

remain in the Isle of Man and is entitled to take the employment in question in the Isle of Man.

2. (a) A work permit or other approval to take employment issued by the Department of Trade and Industry; and
- (b) one or more of the following —
 - (i) a passport or other travel document endorsed to show that the holder has current leave to enter, or remain, in the Isle of Man and is permitted to take the work permit employment in question, or
 - (ii) a letter issued by the Governor to the holder, confirming the same.

PART 3

STEPS WHICH MUST BE TAKEN TO COPY OR RECORD THE CONTENT OF A DOCUMENT PRODUCED TO AN EMPLOYER

1. In the case of a passport or other travel document, the following parts must be photocopied or scanned into a database, using the technology known as 'Write Once Read Many' -
 - (a) the front cover; and
 - (b) any page containing;
 - (i) the holder's personal details including nationality;
 - (ii) the holder's photograph and/or signature;
 - (iii) the date of expiry; and
 - (iv) the information referred to in paragraphs 1 (other than citizenship) and 2 of Part 2 and the endorsements referred to in paragraphs 5, 6 and 7 of Part 2 and paragraph 2(b)(i) of Part 3.
2. All other documents must be photocopied or scanned in their entirety into a database, using the technology known as "Write Once Read Many".

MADE 15th March 2008

Deborah Muth

Minister for Trade and Industry

EXPLANATORY NOTE

(This note is not part of the Order.)

Section 8 of the Asylum and Immigration Act 1996 provides that an employer commits an offence if he employs a person subject to immigration control who has attained the age of 16, if the employee has not been granted leave to enter or remain in the Isle of Man, or if his leave is not valid and subsisting or is subject to a condition precluding him from taking up employment. The offence is not committed if the employee satisfies one of the conditions specified in article 3 of this Order. Also, an employer has a defence (unless he knew that an offence would be committed) if he proves that, before the employment began, documents of a description specified in article 4(2) were produced to him, and that he took the steps required by article 4(3) to (5).