



COUNCIL OF MINISTERS

Confirmation of Employment Policy

Laid before Tynwald: 22 November 2018

1. The policy set out in this document is issued by the Council of Ministers and may be cited as the "Confirmation of Employment Policy".
2. Terms defined in the Immigration Act 1971 (of Parliament) or the Immigration Rules have the same meaning in this document as they have in those enactments.
3. This policy is made to set out the conditions that must be met, if a change in employment circumstances for a Worker Migrant or Worker (Intra Company Transfer) Migrant are to be allowed via the issuance of a new Confirmation of Employment document.
4. The Confirmation of Employment Policy (GC 2018/0005) applies to all applications for a Confirmation of Employment document made on or after 6 April 2018.

Will Greenhow
CHIEF SECRETARY
November 2018



Confirmation of Employment

Introduction

Context

As of 6th April 2018 the Isle of Man operates two worker routes which allow non-EEA nationals to enter the Isle of Man in order to occupy full-time employment positions.

The Worker Migrant route enables non EEA-nationals to fill employment vacancies in the Isle of Man that cannot be filled by settled workers; and

The Worker (Intra-Company Transfer) Migrant route which allows existing employees of multi-national companies to be transferred to their Isle of Man branch for training purposes or to fill a specific vacancy.

Migrants under either route must always hold a valid Confirmation of Employment (CoE) in support of their visa. A Confirmation of Employment (CoE) is a document that must be applied for by any Isle of Man employer who is seeking to hire or retain a non-EEA national as an employee.

The CoE states the conditions of the employment, and serves as the permission for that migrant to undertake the specified employment. A migrant worker may not undertake their employment if the conditions are not the same as those recorded by their CoE. A migrant is not permitted to undertake any employment that falls outside of the employment conditions stated on their CoE (unless this is voluntary or supplementary employment as specified under the Interpretation of the Rules).

Requirements to be met for the issuance of a Confirmation of Employment

A CoE is a document issued only where the following have been met:

- the Employer is an Isle of Man Employer as prescribed under paragraph 6.1(1) of Appendix W;
- the Migrant to be employed will be paid the appropriate rate;
- the employer has carried out a Resident Labour Market Test as set out in paragraph 6.3 of Appendix W (unless an exemption applies under paragraph 6.3);
- The migrant is appropriately qualified or registered to undertake the employment in question, or can reasonably be expected to obtain appropriate qualifications or registrations by the time the migrant begins that employment; and
- that the employment the migrant is being hired to do does not amount to
 - o the hire of the migrant to a third party; or
 - o contract work to undertake ongoing routine employment or service for a third party.

Purpose of a Confirmation of Employment

The CoE states the Migrant's;

- Employer and Employer's contact details;
- the Migrant's full name, Nationality, date of birth and immigration status;
- job role; evidenced by the Standard Occupation Code (SoC) Code;
- gross annual salary;
- start date; and
- term (duration) of employment.

The CoE is therefore issued for a specific role, salary rate and term of employment. The Migrant submits the CoE in support of their visa application.

Purpose of the prohibited changes

Certain changes to employment are prohibited to protect settled workers and to ensure migrants are paid an appropriate rate for the role in order that they can support themselves and family members adequately without recourse to public funds.

The prohibited changes to a CoE are set out in Part 5 of Appendix W to the Immigration Rules.

Prohibited Changes

Where an Employer or migrant wishes to make changes to the terms for which the CoE was issued, (such as change the Employer, specific role (SoC Code), salary rate or term of employment) the Employer must apply for a new CoE.

Where a change is permitted, a new CoE may be issued to the Employer.

Where a change is not permitted a CoE will not be issued.

Should a Migrant undertake employment other than that specified on the CoE (other than supplementary employment) that Migrant will be in breach of the Immigration Rules, and may have their leave curtailed.

Changing the conditions of a Confirmation of Employment

Changes where a new CoE will not be issued

A new CoE application will be rejected if one of the below criteria applies:

1. The gross annual salary (including such allowances as are specified as acceptable) reduces below:
 - a. Any minimum salary threshold than that relied upon in the application for the Migrant's previous CoE;
 - b. The appropriate salary rate for the employment specified in Part 7 of Appendix W; or
 - c. Where there is no applicable salary rate in Part 7 of Appendix W, the salary recorded by the CoE that led to the Migrant's current grant of leave.
2. The intended job period recorded on the CoE is for a period which is longer than the duration of the migrant's current visa. In this circumstance the new CoE may be issued provided that the migrant also makes a new visa application in order to extend their valid leave in line with the proposed job period recorded on the new CoE.

Changes where a CoE may be issued

A new CoE application may be issued if the desired change is in line with any of the below criteria:

1. An absence from work without pay for a period of 4 weeks or more in total during any calendar year. Unless this absence is due solely to:
 - Maternity leave,
 - paternity leave,
 - adoption leave, or
 - long term sick leave of one calendar month or more during any one period;
2. The employment changes such that the migrant is working for a different employer;
3. The migrants' Employer transfers the trade, business or undertaking for which the migrant works to another Employer (the "Transferee") and the Migrant continues to work in the same employment.

In this circumstance the migrant must be issued with a valid Confirmation of Employment by the Transferee within 28 days of the business being transferred;

4. The employment changes to employment in a different Standard Occupational Classification (SoC) code to that recorded by the Confirmation of Employment (even if this new SoC code is listed under a different job sector).

5. A switch from the Worker (ICT) Migrant route to the Worker Migrant Route - provided that the migrant meets all of the criteria for this route. (See Appendix W Part 2.3). Applicants should note that time spent in the Isle of Man as a Worker ICT Migrant does **not** count towards Indefinite Leave to Remain, therefore for ILR purposes – permitted time towards ILR will begin at the date a Worker Migrant visa is granted.

Resident Labour Market Test

A Resident Labour Market Test (RLMT) will be required for all new CoE's that are applied for in the following circumstances:

- A migrant is switching to a new employer (and this new employment is not listed as a Key Employment SoC Code); or
- The duties of the migrant change, such that they must be listed under a different SoC Code that is not listed as Key Employment (even if this is with the same employer).

What to do when a new CoE is issued

Under most circumstances where a new CoE is issued, a subsequent visa application is not required to be made by the migrant.

The only exception is where the new CoE is issued for duration greater than that of the current visa held by the Migrant. Under these circumstances a Migrant must make a new visa application to extend the duration of their visa in line with the CoE.

Responsibilities

It is the responsibility of the Migrant and the employer both to ensure that the CoE conforms to the Rules.

Related documents

Appendix W of the Immigration Rules set out the requirements and validity of the CoE.

<https://www.gov.im/categories/travel-traffic-and-motoring/immigration/immigration-rules/>