

WORK PERMITS IN THE ISLE OF MAN

Introduction

Work permits were introduced some 40 years ago and at first applied to only to manual workers. The present system is governed by the Control of Employment Act 1975 as amended and the Control of Employment Regulations 1993 and applies to almost everyone who comes to the Island to take up employment including self employment. Work permits are seen as a means of protecting employment opportunities for local workers. They are not intended to act as a restraint of trade. The system applies only to work carried out in the Isle of Man and is not the same as that for overseas workers to whom immigration restrictions apply as in the United Kingdom.

In general terms Control of Employment legislation applies to British and European passport holders. Persons who are overseas nationals are likely to be subject to control under the U.K. Immigration Act and need to seek advices of the Overseas Labour Section at the address given below.

This leaflet is intended as a general guide and should not be seen as a complete authoritative statement of the law.

For further information or advice please contact:

The Secretary to the Work Permit Committee

Department of Trade & Industry
Employment Services
Hamilton House
Peel Road
Douglas
Isle of Man
IM1 5EP

Phone: (01624) 682393

Fax: (01624)682388

Overseas Labour Section

Department of Trade & Industry
Employment Services
Hamilton House
Peel Road
Douglas
Isle of Man
IM1 5EP

Phone: (01624)682390

Fax: (01624) 682388

The requirement for a work permit issued under the Control of Employment Act

Persons who require permits

Except in the case of a small number of occupations anyone who is not defined as an Isle of Man worker requires a permit to take up employment, including self-employment in the Isle of Man.

Employment for which permits are not required

- Employment as the Chief Constable or a member of the Isle of Man Constabulary;
- Employment in the service of the Crown;
- Employment in a diplomatic or consular capacity;
- Employment as a Minister of Religion;
- Employment as a registered dentist;
- Employment as a registered doctor;
- Employment in a vessel or aircraft;
- Employment as a commercial traveler for a non-island trader provided that it is for not more than 2 weeks at a time;
- Temporary employment for not more than 3 days. This is meant to cover the situation where someone comes to the Island, carries out a specific job and goes away not to return. Someone who makes a repeated short term visit to the Island is counted as having built up a pattern of employment in the Island and requires a permit;
- Temporary employment for more than 3 days where the Department is satisfied that there are good reasons to grant an exemption. This applies, for example, to persons directly involved in the TT races or other large and specialised events where it is obvious that there are no locals available;
- Self-employment of a purely cultural nature.
- In addition special exceptions are made by Order to cover two situations
- Persons in temporary employment mainly in relation to criminal investigation or similar e.g. in connection with court proceedings;
- Non-resident, non-executive directors who visit the Island for not more than 3 days in any calendar month. The intention of this is that they can come to the Island to attend board meetings.

Isle of Man workers

To qualify as an Isle of Man worker a person must satisfy one of the following conditions

- Have been born in the Isle of Man;
- Have lived in the Isle of Man for at least 10 consecutive years;
- Have lived in the Isle of Man for at least 5 consecutive years and not lived elsewhere more than once in the following 15 years (Residence in the Island before 1963 does not count);
- Be married to an Isle of Man worker;
- Have been married to an Isle of Man worker, have lived in the Island for at least 3 years immediately before becoming widowed or divorced and continue to live in the Island thereafter;
- Be the child of an Isle of Man worker who was serving in the armed forces at the time of birth;
- Be a child of a parent who was born in the Island, provided that the parent lived in the Island for their first 5 years;
- Have received full time education, either in the Island or elsewhere, whilst normally living in the Island and continue to live in the Island thereafter.

Residence in the Isle of Man

It is usually clear if a person is living in the Island and therefore able to count his residence towards qualifying as an Isle of Man worker. For instance someone who leaves the Island on holiday or to undergo full time education would continue to be ordinarily resident in the Island. On the other hand if he goes to work in the United Kingdom or registers for employment there he would normally be treated as no longer living in the Island. There can be certain exceptions to this and if in doubt information should be obtained from the Work Permit Office.

Special provision is made in two cases

- A period of service in the armed forces counts towards the 10 year residential qualification provided that is immediately followed by at least 3 years' residence in the Island;
- When a person serves a term of imprisonment in the Island or elsewhere he is taken as having given up his residence in the Island if and when he completes 6 months in prison.

Work Permit applications

How to apply for a permit

Application forms are obtained from

The Secretary to the Work Permit Committee

Department of Trade & Industry

Employment Services

Hamilton House

Peel Road

Douglas

Isle of Man

IM1 5EP

Phone: (01624)682393

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The employer is responsible for applying for the permit but part of the application has to be completed by the employee. There is a slightly different form for self-employment. In both cases the questions to be answered are as required by the work permit regulations and are designed to obtain enough information about the proposed employment and the person concerned to enable a proper decision to be made. If any doubt remains, the Department is entitled to ask for further details in support of the application.

As it is an offence for a person who requires a permit to start work without one. The application for a permit should be made up to a month in advance of the proposed starting date. The employer is expected to advertise the employment concerned so that Isle of Man workers have the chance to apply, or show why the employment could not be done by an Isle of Man worker.

Application for the renewal of a permit is made by completing a tear-off portion of the previous permit and submitting it to Employment Services up to a month before the expiry date with the appropriate fee.

Permit Application decisions

The administration of the work permit system is dealt with by the Department of Trade & Industry, the Minister for Trade & Industry being ultimately responsible. Each application must be decided on its merits and to this the Minister has appointed the Work Permit Committee whose Chairman and two members have a wide knowledge of employment matters. Because of the large volume of applications it is impracticable for the Committee to consider every case and the straightforward decisions are made on behalf of the Committee by its Secretary.

Provided that the application form is properly completed it is usual for a decision to be made and the applicant notified within five working days.

Matters taken into account

In deciding whether or not to grant a permit there are certain things which must be considered and others which may be considered.

The following 5 points must be taken into account

The likelihood of there being suitable Isle of Man workers available for the employment concerned.

It is sometimes difficult to judge who is 'suitable' but in general terms it is taken to be someone who is capable of doing the job to the required standard, not necessarily the best person for the job. An Isle of Man worker does not have to be unemployed to be 'available'. He may be someone who wishes to change employment or he may already be working for the employer and capable of being transferred or promoted. Where Isle of Man workers have applied for an advertised position, the employer is asked to provide brief details why those applicants are considered unsuitable. If that information is considered insufficient, the employer may be asked to provide fuller details including C.V.s and interview appraisal to demonstrate the unsuitability of Isle of Man worker applicants. For self-employment the Committee looks to see if there is a demand for the proposed service and if so whether there are Isle of Man workers or existing businesses capable of providing it.

The likelihood of suitable Isle of Man workers becoming available within 12 months, bearing in mind general employment prospects.

This covers cases where it is thought, for example, that there may be a downturn in trade which will result in Isle of Man workers being made redundant. In these circumstances a permit may be refused or its length restricted.

The family circumstances of the person concerned, provided that he has been working in the Island on a permit for at least two years.

A permit is less likely to be refused if the person concerned shows that he has some sort of commitment to the Island e.g. he may have Manx born children, or other family in the Island. He may have been in steady employment or he may have bought a home.

Criminal convictions, on or off the Island, of the person concerned.

The fact that someone has a criminal conviction does not necessarily mean that a permit will be refused, that depends on the nature of the offence and when it occurred.

A conviction which is treated as "spent" under the provisions of the Island's Rehabilitation of Offenders Act 2001 need not be disclosed. If you require further information please contact the address given on the first page.

In the case of a craftsman in the building trade whether he is registered under the scheme for the Certification of Craftsmen 1990.

The Scheme is designed to ensure that craftsmen are suitably qualified to carry out work in their trade. For them to register under the Scheme they must produce evidence of their training and competence. (Details of the Scheme's requirements can be obtained from the Training Division, Hills Meadow, Douglas). If a craftsman is not registered a permit is normally refused.

There are a further 11 matters which may be taken into account but they do not have to be and in practice the following points are the ones which are usually considered:

The percentage of Isle of Man workers already working for the employer concerned

In broad terms, if an employer shows that most of his work-force is made up of Isle of Man workers he has a better chance of being granted a permit.

The wages and conditions on offer

A permit may well be refused if the wages and conditions are not up to the standard normally expected in the type of employment concerned.

The size of the family of the person requiring the permit

If the size of the family is thought likely to cause a problem to the Island e.g. by the cost of child benefit, education and so on the permit may be refused but this depends also on the security and the wage of the employment concerned. Applications where the number of children exceeds three are likely to be refused.

The character of the person concerned and of members of his family

The question of criminal convictions of the person concerned is one of the things that must be considered. The Committee may go on to consider the criminal convictions of his family.

Whether or not the employer has made Isle of Man workers aware of the vacancy

The employer is expected to give Isle of Man workers the chance of applying for the employment concerned, normally by advertising. The Committee takes into account the extent to which this has been done e.g. in the local press or in trade journals or through the Jobcentre or an employment agency. The response from local workers and the reason for their rejection is noted.

Whether a refusal would be harsh and oppressive to the employee

In addition applications may be refused if an employer has failed to pay National Insurance contributions. In practice the application is sometimes deferred until the contributions are paid.

Applications for a Work Permit and for renewal of a Work Permit are subject to a fee, currently £25.00 per application.

Applications should be submitted at least 7 days prior to the proposed date of commencement of the employment.

No employment is permitted until an application is approved and the permit has been issued.

THE PERMIT

How permits are made out

Permits can be issued in whatever form the Department sees fit and for whatever period. In practice permits are given for specific jobs for a named employer or for self-employment of a particular nature. The length of time for which they are issued may be:

- a) For a 5 year period, in other words until the person concerned becomes an Isle of Man worker. This is an 'indefinite' permit
- b) For 1 year or less. This is where Isle of Man workers are not immediately available but it is considered that they may become so
- c) For the period requested in the application if this is not already covered in the previous alternatives. For instance a permit might be issued for 3 years to allow for a specific fixed term contract

Where a permit is not granted for the period requested section (b) above applies.

In general, the more senior the position the better chance there is of a permit being 'indefinite'. For relatively low paid jobs or where there is a high labour turnover the permit is more likely to be restricted.

When a person wishes to change jobs the new employer must apply for a new permit which must be considered in the normal way. There is nothing to stop a person holding more than one permit at the same time.

Permits for spouses

If a person has a permit in their own right their husband or wife is automatically entitled to a permit which lasts for 1 year and is renewable annually provided that the original permit holder continues in employment.

REVOCATIONS, APPEALS AND OFFENCES

The revocation of permits

Permits can be revoked in 3 circumstances

- Where the person on the permit commits an offence punishable by imprisonment or where the offence makes his employment in the Island undesirable.
- Where it is discovered that a person has made a false statement in order to get his permit.
- Where the permit holder fails to pay National Insurance contributions.

Appeals

Anyone who is dissatisfied by a decision of the Department can appeal to the Control of Employment Appeal Tribunal. The Tribunal is an independent body with a legally qualified Chairman and two members who represent the interests of employers and employees respectively. Written notice of an appeal should be given to the Tribunal Secretary within 7 days of the decision. The address of the Tribunal Secretary is given in the letter which notifies the refusal or revocation of a permit and in which the right of appeal is explained. Usually appeals are made by persons who have been refused permits but they can also be made by Isle of Man workers who can show that they have suffered a definite loss because a permit has been granted. In practice it can be difficult for Isle of Man workers to appeal because they may be unaware of the full facts surrounding a successful permit application.

Offences

It is an offence, punishable by fine and/or imprisonment for anyone who requires a permit to work without one. It is also an offence to make a false statement in order to obtain a permit.

Alleged offences are investigated by Inspectors from the Department. Prosecutions are brought by the Attorney General.

ISLE OF MAN WORKER STATUS

When a person has completed five years residency he / she should apply in writing requesting confirmation of Isle of Man worker status. Once approved a letter exempting the person from the need for further work permits is issued.

Enquiries and applications regarding Isle of Man worker status should be directed to:

The Secretary to the Work Permit Committee
Department of Trade & Industry
Hamilton House
Peel Road
Douglas
Isle of Man
IM1 5EP

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