

# CONTROL OF EMPLOYMENT ACT 1975

(Chapter 25)

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Received Royal Assent: 19 December 1975

Passed: 20 January 1976

**GENERAL NOTE:** The maximum fines in this Act are as increased by the Fines Act 1986 and by the Criminal Justice (Penalties, Etc.) Act 1993 s 1.

## AN ACT

**to control employment in the Island by making provision restricting the employment (including self-employment) in the Island of persons other than Isle of Man workers; to amend the Employment Acts 1954 to 1965 and certain other enactments; to repeal certain obsolete provisions; and for connected purposes.**

### **1 Persons who are Isle of Man workers for the purposes of this Act**

(1) For the purposes of this Act, a person shall be taken to be an Isle of Man worker if that person-

- (a) was born in the Island; or
  - (b) has, at any time, been ordinarily resident in the Island for a period of not less than 10 consecutive years; or
  - (c) has been ordinarily resident in the Island for any continuous period of 5 years commencing on or after the 1st June 1963, but that person shall cease to be
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qualified as an Isle of Man worker under this paragraph if, within the 5 years immediately following the completion of such period of residence, he ceases to be ordinarily resident in the Island and does not resume such residence within 15 years of ceasing to be so resident: Provided that, if a person does resume such residence within the said period and, in the 5 years immediately following such resumption, he again ceases to be ordinarily resident in the Island, he shall thereupon cease to be qualified as an Isle of Man worker under this paragraph; or

**[Para (c) substituted by Statute Law Revision Act 1983 Sch 1 para 23(1).]**

**[Para 23(2) which relates to the operative date of the substitution is set out below:**

**'(2) Paragraph (1) shall be deemed to have come into operation on the same date as the Control of Employment (Amendment) Act 1983, and accordingly the amendment to section 1(1)(c) of the Control of Employment Act 1975 effected by section 1 of the said Act of 1983 shall be deemed never to have had effect.'**

- (d) is married to a person who is qualified as an Isle of Man worker; or
- (e) in this paragraph referred to as 'the first-mentioned person', was formerly married to a person who was qualified as an Isle of Man worker but only where the first-mentioned person-
  - (i) had been ordinarily resident in the Island for a period of not less than three years immediately before the termination (whether by death or dissolution) of the marriage; and
  - (ii) continues to be so resident in the Island;
- (f) in this paragraph referred to as 'the first-mentioned person', is the child of a person who-
  - (i) is qualified as an Isle of Man worker by virtue of any paragraph in this subsection except this paragraph; and
  - (ii) at the time of the birth of the first-mentioned person, was serving or was married to a person who was serving in the armed forces of the Crown or in any of the capacities mentioned in Schedule 1 to the Disabled Persons (Employment) Act 1946 and was either born in the Island or such service immediately followed a period of residence in the Island of not less than 3 years; or
- (g) is a person, one of whose parents-
  - (i) was born in the Island; and
  - (ii) was ordinarily resident in the Island for the 5 consecutive years immediately following his birth in the Island; or
- (h) has, during a period in which he was ordinarily resident in the Island, been receiving full-time education, whether in the Island or elsewhere, but that person shall cease to be qualified as an Isle of Man worker under this paragraph if he ceases to be ordinarily resident in the Island.

**[Subs (1) substituted with savings by Control of Employment (Amendment) Act 1983 s 1.]**

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(2) For the purpose of subsection (1)(b) above, any period during which a person has served (whether in the Island or elsewhere) in the armed forces of the Crown or in any of the capacities mentioned in Schedule 1 to the Disabled Persons (Employment) Act 1946, immediately following a period of residence in the Island of not less than three years, shall be reckoned as a period during which that person resided in the Island.

**[Subs (2) amended by Control of Employment (Amendment) Act 1983 s 1.]**

(3) In this section-

'child' includes a step-child and an adopted child;

'parent' includes a step-parent and an adoptive parent.

**[Subs (3) added by Control of Employment (Amendment) Act 1983 s 1.]**

(4) For the purposes of subsection (1), where any person serves a consecutive period of imprisonment of more than 6 months (whether in respect of one or more offences), that person-

(a) shall not be treated as ordinarily resident in the Island during such part of the period of imprisonment as exceeds 6 months; and

(b) shall be treated as having ceased to reside in the Island during that part.

**[Subs (4) added by Control of Employment (Amendment) Act 1990 s 1.]**

**[S 1 excluded by Control of Employment (Amendment) Act 1983 s 1(4).]**

## **2 Restrictions on employment**

(1) Subject to subsections (2) and (3) below, a person shall not-

(a) undertake, or become or be engaged in, any employment in the Island unless he is an Isle of Man worker; or

(b) employ any person in any employment in the Island unless the person employed is an Isle of Man worker,

except under and in accordance with the terms and conditions of a permit granted by the Department of Trade and Industry (in this Act referred to as 'the Department') under section 3 of this Act.

**[Subs (1) amended by Health and Social Security Act 1986 Sch 2, by GC141/90 and by SD321/96.]**

(2) A person shall not be convicted of an offence under subsection (1)(b) above if he satisfies the court that he believed that the person he employed was an Isle of Man worker and that he took all reasonable steps to verify the accuracy of his belief.

(3) Nothing in this section shall apply to or affect-

(a) the employment of any person in any of the employments specified in Schedule 1 to the Act or, so long as the order continues in force, in any employment exempted from the operation of this Act by an order under section 4 of this Act; or

(b) a person who is subject to any condition or restriction relating to employment imposed upon him under or by virtue of the Immigration Act 1971 (an Act of

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Parliament) as extended to the Island by the Immigration (Isle of Man) Order 1972 or of any Act of Parliament amending that Act and extended to the Island by Order-in-Council.

### **3 Permits**

(1) For the purposes of section 2 of this Act, the Department may, subject to and in accordance with the provisions of this section, grant a permit in such form as it thinks proper and for such period as it may specify in the form.

**[Subs (1) amended by Health and Social Security Act 1986 Sch 2.]**

(2) A permit granted under this section may authorise the employment of the person named therein in the capacity specified therein and may authorise the employment of that person in that capacity-

- (a) in the case of the employment of a person other than a self-employed person, either generally or by a specified employer, or at a specified place, or by a specified employer at a specified place;
- (b) in the case of a self-employed person, either generally or at a specified place.

(3) A permit granted under this section may be renewed for such period as the Department thinks fit.

**[Subs (3) amended by Health and Social Security Act 1986 Sch 2.]**

(4) A permit granted or renewed under this section may be revoked by the Department whenever the Department considers that the circumstances that justified the grant or renewal of the permit have changed.

**[Subs (4) amended by Health and Social Security Act 1986 Sch 2.]**

### **3A Permits: further provisions**

(1) Notwithstanding anything contained in this Act relating to the grant of permits and subject to the provisions of this section, the Department shall, upon receipt of an application in the prescribed form, grant a permit under section 3 of this Act in respect of any person to whom this section applies.

**[Subs (1) amended by Health and Social Security Act 1986 Sch 2.]**

(2) A permit granted by virtue of subsection (1) above, shall be valid for one year and shall be renewable annually if the person in respect of whom the permit was granted continues to be a person to whom this section applies.

(3) This section shall apply to any person who, on the date on which application is made to the Department for the grant or renewal of a permit, is married to a person-

- (a) in respect of whom a permit granted under section 3 of this Act is in force; provided that such permit was granted otherwise than by virtue of subsection (1) above; or
  - (b) who is employed in any of the employments specified in Schedule 1 to this Act other than the employments specified in paragraphs 8, 9 and 9A of that Schedule (temporary employment).
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[S 3A inserted by Control of Employment (Amendment) Act 1983 s 2. Subs (3) amended by Health and Social Security Act 1986 Sch 2.]

#### **4 Power of Department to exempt other employments**

(1) In addition to the employments specified in Schedule 1 to this Act, the Department may, from time to time by order, exempt from the operation of this Act such other employments as the Department may think proper, either conditionally or subject to such conditions relating to the terms of employment as may be specified in the order.

[Subs (1) amended by Health and Social Security Act 1986 Sch 2 and by Statute Law Revision Act 1989 s 6.]

(2) An order under subsection (1) above shall not have effect until it has been approved by Tynwald.

#### **5 Delegation of certain powers of Department, etc**

(1) to (4) .....

[Subss (1) to (4) repealed by Government Departments Act 1987 Sch 4.]

(5) Any person aggrieved by any decision of the Department may appeal therefrom, in accordance with regulations made under section 10 of this Act, to a tribunal constituted in accordance with subsection (5A) below (in this Act referred to as 'the Tribunal') and the decision of the Tribunal on any such appeal shall, subject to subsection (6) below, be final, but the Tribunal shall, if so required by the person aggrieved, state in writing the reasons for its decision.

[Subs (5) amended by Control of Employment (Amendment) Act 1978 s 2 and by Government Departments Act 1987 Sch 3.]

(5A) The Tribunal shall consist of-

- (a) one member drawn, in accordance with regulations under section 10, from a panel composed, in accordance with those regulations, of persons representing employers and self-employed persons;
- (b) one member drawn, in accordance with those regulations, from a panel composed, in accordance with those regulations, of persons representing employed persons other than self-employed persons; and
- (c) an advocate of not less than ten years standing appointed by the Department to act as chairman.

[Subs (5A) inserted by Control of Employment (Amendment) Act 1978 s 2. Para (c) amended by Health and Social Security Act 1986 Sch 2.]

(6) An appeal shall lie, in accordance with rules of court, to the Staff of Government Division from a decision of the Tribunal on an appeal mentioned in subsection (5) above where that decision involves a question of law.

[Subs (6) amended by Control of Employment (Amendment) Act 1978 s 2.]

(7) .....

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[Sub (7) repealed by Government Departments Act 1987 Sch 4.]

6 .....

[S 6 repealed by Government Departments Act 1987 Sch 4.]

## 7 Offences

(1) Any person who contravenes or fails to comply with the provisions of section 2 of this Act, shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding £2,500, or to both.

(2) Any person who-

(a) for the purpose of obtaining any permit from the Department under this Act-

- (i) makes a statement which he knows to be false in a material particular; or
- (ii) recklessly makes a statement which is false in a material particular; or

[Para (a) amended by Health and Social Security Act 1986 Sch 2.]

(b) falsely personates any person named in any permit granted under this Act; or

(c) wilfully misrepresents to any employer that he is a person in respect of whom a permit has been granted under this Act or in respect of whom no such permit is required to be granted under this Act,

shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding £5,000 or to both.

(3) Where an offence under this section has been committed by a body corporate and is proved to have been so committed with the consent or approval of, or to have been facilitated by any neglect on the part of, any director, manager, secretary or other officer of that body corporate, that director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(4) Proceedings for an offence under this section shall not be instituted except by or with the consent of the Attorney General.

(5) Proceedings for an offence under this Act may be brought at any time within a period of 3 months from the date on which evidence sufficient in the opinion of the prosecutor to warrant the proceedings came to his knowledge but no such proceedings shall be brought more than 12 months after the commission of the offence.

[Subs (5) added by Statute Law Revision Act 1986 Sch 1.]

(6) For the purpose of subsection (5) a certificate signed by or on behalf of the prosecutor and stating the date on which such evidence as aforesaid came to his knowledge shall be conclusive evidence of that fact; and a certificate stating that matter and purporting to be so signed shall be deemed to be so signed unless the contrary is proved.

[Sub (6) added by Statute Law Revision Act 1986 Sch 1.]

(7) Subsection (5) shall not apply in respect of any offence committed before the commencement of the Statute Law Revision Act 1986.

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[Subs (7) added by Statute Law Revision Act 1986 Sch 1.]

## **8 Evidence**

(1) Where the Department, after investigation, has reasonable cause to believe that a person is not an Isle of Man worker and that he has undertaken or is engaged in employment contrary to the provisions of section 2 of this Act, the Department may serve notice on that person informing him of that belief and requiring him within forty days from the date of the service of the notice to satisfy the Department that he is an Isle of Man worker.

[Subs (1) amended by Health and Social Security Act 1986 Sch 2.]

(2) If any person on whom a notice under subsection (1) above fails to satisfy the Department within the said period of forty days, the Department may, on any prosecution brought for an offence under section 7(1) of this Act, certify to the court, under the hand of the Secretary of the Department, that that person has so failed, and the production to the court of that certificate shall, unless and until the contrary is proved, be sufficient evidence to prove that the person to whom it relates is not an Isle of Man worker.

[Subs (2) amended by Health and Social Security Act 1986 Sch 2.]

(3) On any prosecution brought for an offence under section 7(1) of this Act, evidence that that person or his employer has paid in respect of that person any employed person's contribution payable under or by virtue of any enactment relating to national insurance (by whatever name called) or to the National Health Service in respect of the employment to which the prosecution relates, or has been found guilty of failing to pay any such contribution, shall be admissible to prove that that person was employed within the meaning of this Act.

(4) Any notice required or authorised to be served under this section may be served on any person by delivering it to him, or by leaving it at, or sending it by the recorded delivery service to, his usual or last known place of abode.

## **9 Powers of inspection**

(1) The powers conferred by this section may be exercised for the purpose (in this section referred to as 'the specified purpose') of ascertaining whether there is or has been a contravention of, or failure to comply with, this Act or any regulations made, or the terms and conditions of any permit granted, under this Act.

(2) The Department may authorise persons (in this section referred to as 'inspectors') to exercise the powers conferred by this section.

(3) An inspector shall, for the specified purpose, have the following powers-

- (a) to enter at all reasonable times any land, vehicle, boat or vessel;
  - (b) to make such examination and enquiry as may be necessary;
  - (c) to examine, either alone or in the presence of any other person, as he thinks fit, in relation to any matter under this Act on which he may reasonably require information, every person whom he has reasonable cause to believe to have information which would be of material assistance, and to require every such person to be examined;
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(d) to exercise such other powers as may be necessary for carrying this Act into effect.

(4) Every inspector shall be furnished with a certificate of his appointment, and on applying for admission to any land, vehicle, boat or vessel shall, if so required, produce the certificate.

(5) In accordance with this section, persons shall furnish to an inspector all such information, and produce for his inspection all such documents, as he may reasonably require for the specified purpose.

(6) No person shall be required under this section to answer any questions or to give any evidence tending to incriminate himself, or, in the case of a person who is married, his or her spouse.

(7) If a person-

- (a) wilfully delays or obstructs an inspector in the exercise of any power under this section, or
- (b) refuses or neglects to answer any question or to furnish any information or to produce any document when required to do so under this section,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding £5,000.

(8) Where a person is convicted of an offence under subsection (7)(b) and the refusal or neglect is continued by him after his conviction, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £50 for each day on which it is so continued.

[S 9 substituted by Control of Employment (Amendment) Act 1990 s 2.]

## 10 Regulations

(1) The Department may make regulations generally for carrying this Act into effect and, without prejudice to the generality of the foregoing, such regulations may-

- (a) prescribe-
    - (i) anything which is required to be or may be prescribed under this Act;
    - (ii) the matters in respect to which regard may or shall be had when deciding to grant or refuse to grant a permit under section 3 of this Act or the renewal of any such permit;
    - (iii) the change of circumstances which shall justify the revocation of a permit granted or renewed under the said section 3;
    - (iv) the information which an applicant for a permit shall provide;
    - (v) penalties, on summary conviction, not exceeding a fine of £1,000, for the contravention of, or failure to comply with, any regulations made under this section;
    - (vi) .....
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[Subpara (vi) repealed by Payment of Members' Expenses Act 1989 Sch 2.]

- (b) provide for the keeping of registers in respect of employed persons who are not Isle of Man workers;
- (c) make special provision in respect of the application of this Act, and of orders and regulations made thereunder, to summer workers.

[Subs (1) amended by Health and Social Security Act 1986 Sch 2.]

(2) No regulation made under this section shall take effect until it has been approved by Tynwald.

## 10A Sex discrimination

(1) No public document under this Act shall make any provision which discriminates between male persons and female persons.

(2) Where any order under section 4 of this Act (other than an order made before this section comes into operation) exempts from the operation of this Act any employment of male persons only or female persons only, the order shall have effect as if it exempted the like employment of persons of the opposite sex also.

[S 10A inserted by Control of Employment (Amendment) Act 1990 s 3.]

## 11 Expenses

Any expense incurred by the Department in the operation of this Act shall be defrayed out of money provided by Tynwald.

[S 11 amended by Health and Social Security Act 1986 Sch 2.]

## 12 Interpretation

In this Act, unless the context otherwise requires-

**'the appointed day'** means the day appointed by order under section 16(3) of this Act;

**'the Board'** .....

[Definition of 'the Board' repealed by GC141/90.]

**'contract of service or apprenticeship'** includes any such contract wherever made, whether expressed or implied, oral or in writing and whether made before or after the appointed day;

**'the Department'** means the Department of Trade and Industry;

[Definition of 'the Department' inserted by GC141/90 and amended by SD321/96.]

**'employment'** includes-

- (a) employment under a contract of service or apprenticeship;
  - (b) employment by any public or local authority;
  - (c) employment as a director (including employment as a managing director, by
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whatever name called) of a body corporate;

[Para (c) substituted by Control of Employment (Amendment) Act 1990 s 4.]

(d) self-employment,

and **'employ'** and **'employed'** shall be construed accordingly;

**'functions'** includes powers and duties;

**'Isle of Man worker'** has the meaning assigned to it by section 1 of this Act;

**'self-employed'** includes being employed in-

(a) a gainful employment on one's own account;

(b) employment as a member of a partnership including the category of Chinese firm commonly known as a kongsi;

(c) .....

[Para (c) repealed by Control of Employment (Amendment) Act 1990 s 4.]

and **'self-employment'** shall be construed accordingly;

**'summer worker'** means a person (other than an Isle of Man worker) employed only for a period between the Monday before Good Friday or

1st April (whichever is the earlier) and the end of October in any year.

[Definition of 'summer worker' substituted by Control of Employment (Amendment) Act 1990 s 4.]

**'the Tribunal'** has the meaning assigned to it by section 5(5);

[Definition of 'the Tribunal' added by Control of Employment (Amendment) Act 1978 s 4.]

**'vessel'** has the same meaning as 'Manx ship' in section 1(2) of the Merchant Shipping Act 1985, and **'boat'** shall be construed accordingly.

[Definition of 'vessel' added by Criminal Justice Act 1990 Sch 2.]

## 13 Transitional provisions

(1) .....

[Subs (1) repealed by Control of Employment (Amendment) Act 1983 s 5.]

(2) Any person, being a person lawfully employed in the Island before the appointed day, who, or on whose behalf, an application for a permit under this Act is made in the prescribed manner before that day or within two months from that day, shall be treated, for the purposes of this Act, as if he had been granted a permit under this Act on that day until either he has been granted a permit under this Act or he has been notified in writing that the application for such a permit has been refused and he has not, within the prescribed time and in the prescribed manner-

(a) appealed against that refusal; or

(b) he has so appealed, and the refusal has been upheld on appeal and no further right

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of appeal remains open to him.

(3) Notwithstanding anything contained in this Act relating to the grant of permits, a permit for an indefinite period shall be granted by the Department under section 3 of this Act to every person to whom subsection (2) above applies unless the Department is satisfied that exceptional circumstances exist, in relation to that person, which render it undesirable for him to be the holder of such a permit and, in that event, the Department may refuse to issue him with a permit.

**[Subs (3) amended by Health and Social Security Act 1986 Sch 2.]**

(4) A permit granted by virtue of subsection (3) above shall not be revoked unless the Department is satisfied that exceptional circumstances exist, in relation to the holder thereof, which render it undesirable for him to hold that permit.

**[Subs (4) amended by Health and Social Security Act 1986 Sch 2.]**

(5) Subsections (3) and (4) above shall apply, with any necessary modifications, to a child of a person to whom subsection (2) above applied if that child-

- (a) was under the age of eighteen years on the appointed day; and
- (b) applies to the Department for a permit under this Act.

**[Para (b) amended by Health and Social Security Act 1986 Sch 2.]**

(6) Notwithstanding anything contained in this Act, any person who was ordinarily resident in the Isle on the appointed day and-

- (a) who was not required to have a permit under any enactment repealed by this Act shall, so long as he remains so resident in the Island, be taken to be an Isle of Man worker;
- (b) who was required to have a permit under any such enactment, and had such a permit on the appointed day, shall, so long as he remains so resident in the Island, be taken to be an Isle of Man worker when he has been ordinarily resident in the Island for a period of five years if, on the completion of those five years he is the holder of a permit under this Act.

**[Subs (6) added by Control of Employment (Amendment) Act 1978 s 5.]**

## **14** .....

**[S 14 repealed by Control of Employment (Amendment) Act 1983 s 5.]**

## **15 Application to the Government**

Save as otherwise provided by or under this Act, this Act shall apply to members of the Isle of Man Civil Service and to persons employed by any Department or any Board (within the meaning of the Civil Service Act 1990) as if the Civil Service Commission or that Department or Board were private persons; but nothing in this Act shall make the Commission or any Department or Board guilty of an offence under this Act.

**[S 15 substituted by Civil Service Act 1990 Sch 3.]**

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## **16 Short title and commencement**

(1) This Act may be cited as the Control of Employment Act 1975.

(2) This Act shall, subject to subsection (3) below, come into operation when the Royal Assent thereto has been by the Governor announced to Tynwald and a certificate thereof has been signed by the Governor and the Speaker of the House of Keys.

(3) This section shall take effect on the coming into operation of this Act and the other provisions of this Act shall take effect on such day as the Governor may by order appoint.

**[ADO (whole Act): 1/6/1976, GC63/76.]**

### **Schedule 1 Exempted Employments**

1. Employment as the Chief Constable or a member of the Isle of Man Constabulary.
2. Employment in the service of the Crown in right of the Government of the United Kingdom including any appointment made by Her Majesty, the holder of which is paid out of money provided by Tynwald.
3. Employment by virtue of which the employed person is entitled to any diplomatic or consular privilege.
4. Employment as a Minister of Religion.
5. Employment as a dentist, that is to say, a person registered under the Dentists Act 1957 (an Act of Parliament).
6. Employment as a doctor, that is to say, a fully registered person within the meaning of the Medical Act 1985.

**[Para 6 amended by Medical Act 1985 Sch 1.]**

7. Save as otherwise provided by regulations under section 10 of this Act, employment in any vessel or aircraft.
8. (1) Subject to sub-paragraph (2), employment as a commercial traveller or sales representative by or for any person not resident in the Island for the purpose of selling to or seeking orders for goods from-
  - (a) persons who are dealers therein and who buy to sell again; or
  - (b) persons who purchase such goods for use (other than resale) in their own business.

(2) The exemption provided by sub-paragraph (1) shall not apply if such commercial traveller or sales representative is resident in the Island at any one time for more than 2 weeks or such other period as may be prescribed.

**[Para 8 substituted by Control of Employment (Amendment) Act 1983 s 4.]**

9. Employment of a temporary nature for a period not exceeding 3 days or such other period
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as may be prescribed.

**[Para 9 substituted by Control of Employment (Amendment) Act 1983 s 4.]**

9A. Employment of a temporary nature for a period exceeding that referred to in paragraph 9, if the Department has authorised such employment in writing on being satisfied that there are good grounds for doing so. Any decision of the Department under this paragraph shall be final.

**[Para 9A inserted by Control of Employment (Amendment) Act 1983 s 4 and amended by Health and Social Security Act 1986 Sch 2.]**

10. Save as otherwise provided by regulations under section 10 of this Act, self-employment in work of a purely cultural nature.

**[Para 10 amended by Control of Employment (Amendment) Act 1978 s 6.]**

## **Schedule 2**

**[Sch 2 repealed by Control of Employment (Amendment) Act 1983 s 5.]**

## **PENDLEX**

**This Act has been amended by the Residence Act 2001 . The new provisions are reproduced below as they will read once the amending provisions have come into operation.**

### **Section 2(3)(c), (d), (e) and (f)**

- (c) any person who is registered or is qualified to be registered under section 2 of the Residence Act 2001;
  - (d) any person who is registered under section 3 of that Act, but only during the period of such registration;
  - (e) any person who is exempted from that Act;
  - (f) any person who is exempted from registration under that Act.
-