



**STATEMENT OF
CHANGES IN
IMMIGRATION RULES**

Laid before Tynwald on 21st March 2017 under section 3(2) of the Immigration Act 1971 (an Act of Parliament as extended to the Isle of Man by the Immigration (Isle of Man) Order 2008 (SI 2008/680)) (as amended).

The Council of Ministers has made the following changes to the Immigration Rules laid down by it as to the practice to be followed in the administration of the Immigration Act 1971¹ (of Parliament) as it has effect in the Isle of Man² for regulating entry into and the stay of persons in the Isle of Man and contained in the Statement laid before Tynwald on 17th May 2005³.

The changes set out in the following paragraphs shall take effect on 6 April 2017 but shall only apply to applications made on or after 6 April 2017: paragraphs Intro2, Intro3, Intro5 to Intro14 of the Introduction; paragraphs 6A.3 and 6A.6 of Part 6A; paragraphs A1, A2, and A5 to A7 of Appendix A, and paragraph K1 of Appendix K.

All other changes set out in this statement shall take effect on 16 February 2017. If an application has been validly made for entry clearance, leave to enter or leave to remain before 16 February 2017, the application shall be decided in accordance with the Immigration Rules in force on 15 February 2017.

Changes to the Introduction

Intro1. For the paragraph below the heading “**Introduction**” substitute:

“The Council of Ministers has made changes in the Rules as to the practice to be followed in the administration of the Immigration Act 1971 as extended to the Isle of Man⁴ for regulating the entry into and the stay of persons in the Isle of Man and contained in the statement laid before Tynwald on 17th May 2005 (SD 62/05)⁵. This statement contains the Rules as changed and replaces the provisions of SD 62/05.”

Intro2. For paragraph 5A(IOM) substitute:

“5A(IOM).

With effect from 6 April 2017, the Points Based System Sponsorship functions carried out by the Department of Economic Development are

¹ 1971 c. 77

² See the Immigration (Isle of Man) Order 2008 (S.I. 2008 No 680)

³ S.D. 62/05 amended by S.D.692/05, S.D. 442/06, S.D. 547/06, S.D. 781/06, S.D. 871/06, S.D. 124/07, S.D. 303/07, S.D. 534/07, S.D. 02/08, S.D. 500/08, GC 32/09, GC 35/09, GC 14/10, GC 26/10, GC 02/11, SD 518/11, SD 40/12, SD 0288/12, SD 0625/12, SD 0657/12, SD250/13, SD 302/13, SD 345/13, SD 2014/0004, SD 2014/0082, SD 2014/241, 2014/314, 2014/324 and 2015/0265.

⁴ See the Immigration (Isle of Man) Order 2008 (SI 2008/680) as amended.

⁵ SD 62/05 (see Appendix IOM1 as to the Schedule of Amendments to SD 62/05).

transferred to the Lieutenant Governor and shall be carried out by Immigration Officers.”

Intro3. After paragraph 5A(IOM) insert:

“5AA(IOM)

Consequential and transitional arrangements

A reference in these Rules to the Department of Economic Development in connection with any Point Based System Sponsorship Functions shall be taken as a reference to the Lieutenant Governor and Immigration Officers acting on his behalf.

Any references to the Department of Economic Development, in so far as they relate to the transferred functions and not otherwise, in any instrument, contract or proceedings made or begun before the coming into operation of these Rules shall be substituted by a reference to the Lieutenant Governor.

Anything begun by or under the Department of Economic Development so far as it relates to any of the transferred functions may be continued and completed by or under the Lieutenant Governor and Immigration Officers acting on his behalf.”

Intro4. In paragraph 6 for the definition of “Immigration Acts” substitute:

“**Immigration Acts**” means such of the Immigration Acts (of Parliament) (as defined in section 61(2) UK Borders Act 2007) as apply to the Island from time to time subject to the modifications contained in the relevant Order in Council.

Intro5. In paragraph 6 in the definition of “A-rated Sponsor” for “the Department of Economic Development” substitute “Immigration Officers”

Intro6. In paragraph 6 in the definition of “B-rated Sponsor” for “the Department of Economic Development” substitute “Immigration Officers”

Intro7. In paragraph 6 for the definition of “Certificate of Sponsorship” substitute:

“Certificate of Sponsorship” means an authorisation issued by the Lieutenant Governor to a Sponsor in respect of one or more applications, or potential applications, for entry clearance, leave to enter or leave to remain as a Tier 2 Migrant or a Tier 5 Migrant in accordance with these Rules and includes a certificate of sponsorship issued under the Deemed sponsorship status provisions in relation to Tier 5 (Youth Mobility) Temporary Migrants and a certificate of sponsorship issued under the Government Authorised Exchange Scheme provisions in relation to Tier 5 (Temporary Worker) Migrants.

Intro8. In paragraph 6 for the definition of “Visa Letter” substitute:

“Under Part 6A and Appendix A of these Rules, **“Confirmation of Acceptance for Studies”** or **“Visa Letter”** means a letter containing a unique reference number issued by a Sponsor to an applicant for entry clearance, leave to enter or leave to remain as a Tier 4 Migrant in accordance with these Rules.”

Intro9. In paragraph 6 for the definition of “Certificate of Sponsorship Checking Service” substitute:

“Under Part 6A of these Rules, **“Certificate of Sponsorship Checking Service”** means the assessment by an Immigration Officer or entry clearance officer on behalf of the Lieutenant Governor of a migrant’s Certificate of Sponsorship including details of the migrant’s sponsor, job details, course of study and other details associated with the circumstances in which the Certificate of Sponsorship was issued in relation to the migrant’s application for entry clearance, leave to enter or leave to remain.”

Intro10. In paragraph 6 after the definition of “Certificate of Sponsorship Checking Service” insert:

“Under Part 6A of these Rules, **Confirmation of Acceptance for Studies Checking Service** means the assessment by an Immigration Officer or entry clearance officer on behalf of the Lieutenant Governor of a migrant’s Confirmation of Acceptance for Studies (or Visa Letter) including details of the migrant’s Sponsor, together with details of the course of study and other details associated with the circumstances in which the Confirmation

of Acceptance for Studies was issued in relation to the migrant's application for entry clearance, leave to enter or leave to remain.”

Intro11. In paragraph 6 after the definition of “a parent” insert:

“**Points Based System Sponsorship Functions**” means all functions in connection with:

- (i) granting Sponsor licences to Sponsors of Tier 2 Migrants, Tier 4 Migrants and Tier 5 Migrants;
- (ii) authorising the issue of Certificates of Sponsorship to Tier 2 Migrants and Tier 5 Migrants; and
- (ii) carrying out the Certificate of Sponsorship Checking Service, under Part 6A of these Rules.

For the avoidance of doubt, Immigration Officers acting on behalf of the Lieutenant Governor shall continue to carry out functions in connection with:

- (i) granting Sponsor licences to Sponsors of Tier 4 Migrants;
- (ii) authorising the issue of Confirmation of Acceptance for Studies to Tier 4 Migrants; and
- (iii) carrying out the Confirmation of Acceptance for Studies Checking Service, under Part 6A of the Rules.

When exercising their functions, Immigration Officers shall act in accordance with any directions issued by the Council of Ministers and the Lieutenant Governor as to the practice to be followed in the granting of Sponsor Licences and the authorisation of Certificates of Sponsorship or Confirmation of Acceptance for Studies under these Rules.”

Intro12. In paragraph 6 for the definition of “Sponsor” substitute:

“Under Part 6A of these Rules, “**Sponsor**” means the person or Government who is recorded as being the Sponsor for a migrant by the

Certificate of Sponsorship Checking Service (for Tier 2 Migrants, Tier 5 Migrants) or the Confirmation of Acceptance for Studies Checking Service (for Tier 4 Migrants).”

Intro13. In paragraph 6 for the definition of “Sponsor Licence” substitute:

“Under Part 6A of these Rules, a reference to a **Sponsor licence** means a licence granted by the Lieutenant Governor to a person, who by virtue of such a grant is licensed as a Sponsor under Tiers 2, 4 or 5 of the Points Based System.”

Intro14. In paragraph 6 for the definition of “Work Permit” substitute:

“a “**work permit**” means a permit issued under the provisions of the Overseas Labour Scheme as the scheme had effect in the Isle of Man.”

Changes to Part 6A

6A.1. For paragraph 245HB(1) substitute:

“(1) If the Sponsor is a legal entity (whether or not with separate legal personality), the applicant must not own directly or indirectly, legally or beneficially more than 10% of the shares, interests, ownership, membership or voting rights, actual or contingent, in the Sponsor or a parent or subsidiary of the Sponsor, unless the gross annual salary (as recorded by the Certificate of Sponsorship Checking Service entry, and including such allowances as are specified for this purpose in paragraph 79 of Appendix A) is £155,300 per year or higher.

The term “legal entity” includes but is not limited to a company, body corporate, firm, trust, partnership, foundation, limited liability company, PCC whether incorporated and formed in the Isle of Man or elsewhere. The applicant must not exercise significant influence or control over the legal entity including the right to appoint or direct the directors or trustees or officers of the legal entity or to direct the activities of the legal entity. The Entry Clearance Officer must be genuinely satisfied that this rule has been met and that the applicant is not using a corporate structure, a related party or other means to circumvent the rule against self employment by Tier 2 Migrants except in the circumstances specified above relating to a gross annual salary of £155,300 per annum.

To support the assessment in paragraph 245HB(l) the Entry Clearance Officer may:

- (i) request additional information and evidence, and refuse the application if the information or evidence is not provided. Any requested documents must be received at the address specified in the request within 28 calendar days of the date the request is sent; and
- (ii) request the applicant attends an interview, and refuse the application if the applicant fails to comply with any such request without providing a reasonable explanation.

If the Entry Clearance Officer is not satisfied with the assessment in paragraph 245HB(l) no points will be awarded under paragraphs 76 to 84A of Appendix A.

The Entry Clearance may decide not to carry out the assessment in paragraph 245HD if the applicant already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.”

6A.2. for paragraph 245HD(o) substitute:

“(o) If the Sponsor is a legal entity (whether or not with separate legal personality), the applicant must not own directly or indirectly, legally or beneficially more than 10% of the shares, interests, ownership, membership or voting rights, actual or contingent, in the Sponsor or a parent or subsidiary of the Sponsor, unless the gross annual salary (as recorded by the Certificate of Sponsorship Checking Service entry, and including such allowances as are specified for this purpose in paragraph 79 of Appendix A) is £155,300 per year or higher.

The term “legal entity” includes but is not limited to a company, body corporate, firm, trust, partnership, foundation, limited liability company, PCC whether incorporated and formed in the Isle of Man or elsewhere. The applicant must not exercise significant influence or control over the legal entity including the right to appoint or direct the directors or trustees or officers of the legal entity or to direct the activities of the legal entity. The Lieutenant Governor must be genuinely satisfied

that this rule has been met and that the applicant is not using a corporate structure, a related party or other means to circumvent the rule against self employment by Tier 2 Migrants except in the circumstances specified above relating to a gross annual salary of £155,300 per annum.

To support the assessment in paragraph 245HD(o) the Lieutenant Governor may:

- (i) request additional information and evidence, and refuse the application if the information or evidence is not provided. Any requested documents must be received at the address specified in the request within 28 calendar days of the date the request is sent; and
- (ii) request the applicant attends an interview, and refuse the application if the applicant fails to comply with any such request without providing a reasonable explanation.

If the Lieutenant Governor is not satisfied following the assessment in paragraph 245HD(o), no points will be awarded under paragraphs 76 to 79D of Appendix A.

The Lieutenant Governor may decide not to carry out the assessment in paragraph 245HD if the applicant already falls for refusal on other grounds, but reserves the right to carry out this assessment in any reconsideration of the decision.”

6A.3. In paragraph 245HF(c)(i) for “the Department of Economic Development” substitute “Immigration Officers”

6A.4. After paragraph 245HF(c)(ii)(4) insert:

“(5) That the applicant does not own directly or indirectly, legally or beneficially more than 10% of the shares, interests, ownership, membership or voting rights, actual or contingent in the Sponsor or a parent or subsidiary of the Sponsor unless the gross annual salary (as recorded by the Certificate of Sponsorship Checking Service entry, and including such allowances as are specified for this purpose in paragraph 79 of Appendix A) is £155,300 or higher.

The term “legal entity” includes but is not limited to a company, body corporate, firm, trust, partnership, foundation, limited liability company, PCC whether incorporated and formed in the Isle of Man or elsewhere. The applicant must not exercise significant influence or control over the legal entity including the right to appoint or direct the directors or trustees or officers of the legal entity or to direct the activities of the legal entity. The Entry Clearance Officer must be genuinely satisfied that this rule has been met and that the applicant is not using a corporate structure, a related party or other means to circumvent the rule against self employment by Tier 2 Migrants except in the circumstances specified above relating to a gross annual salary of £155,300 per annum.”

6A.5. Delete paragraph 245HF(d)(iv).

6A.6. In paragraph 245HG(c)(i) for “the Department of Economic Development” substitute “Immigration Officers”.

Changes to Part 9

9.1. In paragraph 323C(c) for “the Department of Economic Development” substitute “Immigration Officers”

Changes to Appendix A

A1. For paragraph 74A(e) substitute:

“that reference number must not have been withdrawn or cancelled by the Sponsor or by Immigration Officers since it was assigned, including where it has been cancelled by Immigration Officers due to having been used in a previous application, and”

A2. For paragraph 77C(f) substitute:

“that reference number must not have been withdrawn or cancelled by the sponsor or by Immigration Officers since it was assigned, including where it has been cancelled by Immigration Officers due to having been used in a previous application, and”

A3. After paragraph 77H(c) insert:

“(d) that the applicant is using a legal entity or structure or a third party or other means to circumvent the rule against self-employment by Tier 2 Migrants.”

A4. After paragraph 78D(d) insert:

“(e) the applicant must not own directly or indirectly, legally or beneficially more than 10% of the shares, interests, ownership, membership or voting rights, actual or contingent in the Sponsor or a parent or subsidiary of the Sponsor unless the gross annual salary (as recorded by the Certificate of Sponsorship Checking Service entry, and including such allowances as are specified for this purpose in paragraph 79 of Appendix A) is £155,300 or higher.

The term “legal entity” includes but is not limited to a company, body corporate, firm, trust, partnership, foundation, limited liability company, PCC whether incorporated and formed in the Isle of Man or elsewhere. The applicant must not exercise significant influence or control over the legal entity including the right to appoint or direct the directors or trustees or officers of the legal entity or to direct the activities of the legal entity. Points will only be awarded if the applicant is not using a corporate structure, a related party or other means to circumvent the rule against self employment by Tier 2 Migrants except in the circumstances specified above relating to a gross annual salary of £155,300 per annum.”

A5. In paragraph 90 for “the Department of Economic Development” substitute “Immigration Officers”

A6. In paragraph 98 for “the Department of Economic Development” substitute “Immigration Officers”

A7. In paragraph 109A(c) for “the Department of Economic Development” substitute “Immigration Officers”

Changes to Appendix K

K1. In paragraph 4(a) for “the Department of Economic Development” substitute “Immigration Officers”

Explanatory Memorandum

Statement of Changes In Immigration Rules SD 2017/0066

1. Purpose of this Statement of Changes

1.1. The amendments to the Rules:

- effect the transfer of the administration of Tiers 2 and 5 of the Points Based System in Part 6A of the Rules from the Department of Economic Development to immigration officers; and
- clarify the self-employment and percentage shareholding rules in relation to different types company structures permitted under the Rules.

2. Policy Background

Changes to the administrative functions for issuing Sponsor Licences and Certificates of Sponsorship

2.1. The Rule amendments affect the transfer of administration functions under the Points Based System in Part 6A of the Rules from the Department of Economic Development to Immigration Officers.

2.2. The amendments to various definitions contained in the Rules reflect this transfer. Following the decision of Council, this transfer consolidates all of the licensing functions under the Rules to be carried out by immigration officers to streamline the process for applicants and employers. This will allow a more efficient service to be provided and a single point of contact within Isle of Man Government for enquiries relating to the employment of all persons who require leave under the Rules.

Changes to Tier 2 of the Points Based System in Part 6A of the Rules

2.3. The amendments to the Rules are made to prevent an applicant using a different form of legal entity as a sponsor to circumvent the rule against self employment by Tier 2 Migrants. The purpose of the amendment is to prevent abuse of this route by applicants. An exception to this rule is retained where the Tier 2 Migrant is paid a gross annual salary of £155,300 per annum by the relevant sponsor.

2.4. A change is being made to delete paragraph 245HF(d)(iv) from the Rules. This

provision relates to a UK employee share scheme whereby owner-employees could be exempt from capital gains tax in exchange for giving up UK rights relating to unfair dismissal, redundancy, flexible working etc. The Isle of Man does not have any similar scheme and therefore this rule is not applicable under Isle of Man legislation. Deletion of this Rule also removes any potential for confusion with the 10% ownership rule set out in Rule 245HD and Rule 245HF.