

# WORK PERMITS



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'If an employer wishes to employ someone who is not an Isle of Man worker to work in the Island, a Work Permit will be required'

## Getting it right

**SO, you've advertised for a job vacancy, undertaken rigorous selection and identified the best person for the role. Job done, so you might think? Unfortunately not, as all too often there is the all important matter of a Work Permit.**

Making a formal offer of employment invariably involves any employer preparing the usual written terms and conditions, taking up references and negotiating the remuneration package. From an Isle of Man perspective, however, there is also the question of Work Permits for non-Isle of Man workers.

Official figures show that significantly fewer permits have been issued in recent years, reflecting the tougher economic environment and the policy of preserving employment for Manx workers. (Contrast 6,494 new permits issued in 2007 with 1,868 new permits in 2013.)

Evidently it is becoming tougher to obtain Work Permits, more so in some sectors than others, but it is likely to be a particular challenge if a Permit is an afterthought.

Isle of Man Work Permit legislation is set out in the Control of Employment Act 1975 and related regulations. Its broad effect is that if an employer wishes to employ someone who is not an Isle of Man worker to work in the Island, a Work Permit will be required. There are a limited number of exceptions to the requirements for specified types of employment, as well as certain temporary exemptions in respect of short-term working visits.

An Isle of Man worker includes an individual who:

- Was born in the Island.
- Has been ordinarily resident in the Isle of Man for 10 years.
- Has been resident in the Isle of Man for at least five years and has not lived anywhere else more than once within the following 15 years.
- Is married to, or in a civil partnership with, an Isle of Man worker.
- Has a Manx-born parent who spent the first five years of their life in the Isle of Man. • Or whilst ordinarily resident in the Isle of Man, has received full-time education in the Isle of Man or elsewhere and has stayed on afterwards.

If the proposed candidate is not an Isle of Man worker, it will be necessary to apply for a Work Permit to the Department of Economic Development, which administers the system. Decisions are delegated by the Minister for the Department to the Work Permit Committee, which is supported in this process by civil servants within the Department.

The Committee has discretion when it comes to granting work permits, although there is a detailed statutory framework within which that discretion has to be exercised. In this respect, the legislation sets out certain matters to which the Committee must and may have regard in exercising its discretion.

In the first category, a key factor is the likelihood of there being suitable Isle of Man workers available

for the employment concerned. Other factors which the Committee must take into account are the family circumstances of the prospective employee (provided that they have been working in the Island for at least two years) and any criminal convictions.

Factors which the Committee may take into account include the proportion of Isle of Man workers already employed by the employer; whether or not the employer has made Isle of Man workers aware of the vacancy; and whether a refusal to grant a Permit will be harsh or oppressive to the proposed employee in the circumstances.

What practical steps can an employer take to maximise the chances of a Work Permit application being successful?

- When advertising a vacancy, consider the job specification and required qualifications carefully. Be prepared to justify why these are necessary for the role. The stipulated criteria should not be such as to constitute an unjustifiable bar which might deter suitable Isle of Man workers from applying.
- Keep detailed records of the recruitment process and applications, plus interview notes and CVs of applicants for the vacancy. These may be required to justify the proposed employment of a non-Isle of Man worker.
- Double check the individual's employment status and the need for a Work Permit in the particular circumstances: does the employment come within one of the exempted ("shortage") categories? Can an application be made for an 'automatic' spouse's or civil partner's Permit on the basis of the partner's status? (Make job offers "subject to work permit");
- Submit a Work Permit application in good time (an employee cannot start work pending the grant of a permit). In straight forward cases, a decision may be made within a couple of weeks, but the process will take longer if the application is referred to the Committee for consideration;
- Ensure that the application is as complete as possible and that all the relevant evidence is included at the time of submission. The majority of applications are decided on the documents alone and you may not get an opportunity to supply further supporting information. (Note that the possibility of appealing an unfavourable decision is limited).
- Familiarise yourself with the Work Permit requirements and seek legal advice, as necessary. Note also, that the employment of non-EEA workers raises different considerations and entitlement to work is governed by a separate "points based" system.

We would be very happy to provide further advice and information on Work Permits or any other employment related issues.