

SCHEDULE 10

Articles 7, 11, 13, 15, 17, 19 and 21

The text of immigration legislation as extended to the Isle of Man

Article 7

**PART 1**

**The Immigration Act 1971**

**“PART 1 – Regulation of entry into and stay in the Isle of Man**

**1 General principles**

(1) All those who are in this Act expressed to have the right of abode in the Isle of Man shall be free to live in, and to come and go into and from, the Isle of Man without let or hindrance except such as may be required under and in accordance with this Act to enable their right to be established or as may be otherwise lawfully imposed on any person.

(2) Those not having that right may live, work and settle in the Isle of Man by permission and subject to such regulation and control of their entry into, stay in and departure from the Isle of Man as is imposed by this Act; and indefinite leave to enter or remain in the Isle of Man shall, by virtue of this provision be treated as having been given under this Act to those in the Isle of Man at its coming into force, if they are then settled there (and not exempt under this Act from the provisions relating to leave to enter or remain).

(3) Arrival in and departure from the Isle of Man on a local journey from or to the United Kingdom, the Channel Islands or the Republic of Ireland shall not be subject to control under this Act, nor shall a person require leave to enter the Isle of Man on so arriving, except in so far as any of those places is for any purpose excluded from this subsection under the powers conferred by this Act; and in this Act the Isle of Man and those places, or such of them as are not so excluded, are collectively referred to as “the common travel area”.

(4) The rules laid down by the Council of Ministers as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the Isle of Man of persons not having the right of abode shall include provision for admitting (in such cases and subject to such restrictions as may be provided by the rules, and subject or not to conditions as to length of stay or otherwise) persons coming for the purpose of taking employment, or for purposes of study, or as visitors, or as dependants of persons lawfully in or entering the Isle of Man.

**2 Statement of right of abode in the Isle of Man**

(1) A person is under this Act to have the right of abode in the Isle of Man if—

(a) he is a British citizen; or

(b) he is a Commonwealth citizen who—

(i) immediately before the extension of section 39(2) of the British Nationality Act 1981 to the Isle of Man was a Commonwealth citizen having the right of abode in the Isle of Man by virtue of section 2(1)(d) or section 2(2) of this Act as then in force in the Isle of Man; and

(ii) has not ceased to be a Commonwealth citizen in the meanwhile.

(2) In relation to Commonwealth citizens who have the right of abode in the Isle of Man by virtue of subsection (1)(b) above, this Act, except this section and section 5(2), shall apply

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as if they were British citizens; and in this Act (except as aforesaid) “British citizen” shall be construed accordingly.

## **2A Deprivation of right of abode**

(1) The Governor may by order remove from a specified person a right of abode in the Isle of Man which he has under section 2(1)(b).

(2) The Governor may make an order under subsection (1) in respect of a person only if the Governor thinks that it would be conducive to the public good for the person to be excluded or removed from the Isle of Man.

(3) An order under subsection (1) may be revoked by order of the Governor.

(4) While an order under subsection (1) has effect in relation to a person—

(a) section 2(2) shall not apply to him, and

(b) any certificate of entitlement granted to him shall have no effect.

## **3 General provisions for regulation and control**

(1) Except as otherwise provided by or under this Act, where a person is not a British citizen—

(a) he shall not enter the Isle of Man unless given leave to do so in accordance the provisions of, or made under, with this Act;

(b) he may be given leave to enter the Isle of Man (or, when already there, leave to remain in the Isle of Man) either for a limited or for an indefinite period;

(c) if he is given limited leave to enter or remain in the Isle of Man, it may be given subject to all or any of the following conditions, namely—

(i) a condition restricting his employment or occupation in the Isle of Man;

(ii) a condition requiring him to maintain and accommodate himself, and any dependants of his, without recourse to public funds; and

(iii) a condition requiring him to register with the police.

(2) The Council of Ministers shall from time to time (and as soon as may be) lay before Tynwald statements of the rules, or of any changes in the rules, laid down by it as to the practice to be followed in the administration of this Act for regulating the entry into and stay in the Isle of Man of persons required by this Act to have leave to enter, including any rules as to the period for which leave is to be given and the conditions to be attached in different circumstances; and section 1(4) above shall not be taken to require uniform provision to be made by the rules as regards admission of persons for a purpose or in a capacity specified in section 1(4) (and in particular, for this as well as other purposes of this Act, account may be taken of citizenship or nationality).

If a statement laid before Tynwald under this subsection is disapproved by resolution passed at the sitting before which it is so laid or at the next following sitting of Tynwald then the Council of Ministers shall make changes or further changes in the rules as appear to it to be required in the circumstances and the statement of those changes shall be laid before Tynwald as soon as practicable after the said resolution was passed.

(3) In the case of a limited leave to enter or remain in the Isle of Man—

(a) a person’s leave may be varied, whether by restricting, enlarging or removing the limit on its duration, or by adding, varying or revoking conditions, but if the limit on its duration is removed, any conditions attached to the leave shall cease to apply; and

- (b) the limitation on and any conditions attached to a person's leave (whether imposed originally or on a variation) shall, if not superseded, apply also to any subsequent leave he may obtain after an absence from the Isle of Man within the period limited for the duration of the earlier leave.

(4) A person's leave to enter or remain in the Isle of Man shall lapse on his going to a country or territory outside the common travel area (whether or not he lands there), unless within the period for which he had leave he returns to the Isle of Man in circumstances in which he is not required to obtain leave to enter; but, if he does so return, his previous leave (and any limitation on it or conditions attached to it) shall continue to apply.

(5) A person who is not a British citizen is liable to deportation from the Isle of Man if—

- (a) the Governor deems his deportation to be conducive to the public good; or
- (b) another person to whose family he belongs is or has been ordered to be deported.

(6) Without prejudice to the operation of subsection (5) above, a person who is not a British citizen shall also be liable to deportation from the Isle of Man if, after he has attained the age of seventeen, he is convicted of an offence for which he is punishable with custody and on his conviction is recommended for deportation by a court empowered by this Act to do so.

(7) Any Order in Council made by Her Majesty under this subsection as it has effect in the United Kingdom shall have effect in the Isle of Man.

(8) When any question arises under this Act whether or not a person is a British citizen, or is entitled to any exemption under this Act, it shall lie on the person asserting it to prove that he is.

(9) A person seeking to enter the Isle of Man and claiming to have the right of abode there shall prove it by means of—

- (a) a United Kingdom passport describing him as a British citizen,
- (b) a United Kingdom passport describing him as a British subject with the right of abode in the United Kingdom,
- (c) an ID card issued under the Identity Cards Act 2006 describing him as a British citizen,
- (d) an ID card issued under that Act describing him as a British subject with the right of abode in the United Kingdom, or
- (e) a certificate of entitlement.

### **3A Further provision as to leave to enter**

(1) The Governor may by order make further provision with respect to the giving, refusing or varying of leave to enter the Isle of Man.

(2) An order under subsection (1) may, in particular, provide for—

- (a) leave to be given or refused before the person concerned arrives in the Isle of Man;
- (b) the form or manner in which leave may be given, refused or varied;
- (c) the imposition of conditions;
- (d) a person's leave to enter not to lapse on his leaving the common travel area.

(3) The Governor may by order provide that, in such circumstances as may be prescribed—

- (a) an entry visa, or
- (b) such other form of entry clearance as may be prescribed,

is to have effect as leave to enter the Isle of Man.

(4) An order under subsection (3) may, in particular—

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- (a) provide for a clearance to have effect as leave to enter—
    - (i) on a prescribed number of occasions during the period for which the clearance has effect;
    - (ii) on an unlimited number of occasions during that period;
    - (iii) subject to prescribed conditions; and
  - (b) provide for a clearance which has the effect referred to in paragraph (a)(i) or (ii) to be varied by the Governor or an immigration officer so that it ceases to have that effect.
- (5) Only conditions of a kind that could be imposed on leave to enter given under section 3 may be prescribed.
- (6) In subsections (3), (4) and (5) “prescribed” means prescribed in an order made under subsection (3).
- (7) The Governor may, in such circumstances as may be prescribed in an order made by him, give or refuse leave to enter the Isle of Man.
- (8) An order under subsection (7) may provide that, in such circumstances as may be prescribed by the order, paragraphs 2, 4, 6, 7, 8, 9 and 21 of Part 1 of Schedule 2 to this Act are to be read, in relation to the exercise by the Governor of functions which he has as a result of the order, as if references to an immigration officer included references to the Governor.
- (9) Subsection (8) is not to be read as affecting any power conferred by subsection (10).
- (10) An order under this section may—
  - (a) contain such incidental, supplemental, consequential and transitional provision as the Governor considers appropriate; and
  - (b) make different provision for different cases; and
  - (c) make provision with respect to leave given before such an order comes into force.
- (11) This Act and any provision made under it has effect subject to any order made under this section.

### **3B Further provision as to leave to remain**

- (1) The Governor may by order make provision as to further provision with respect to the giving, refusing or varying of leave to remain in the Isle of Man.
- (2) An order under subsection (1) may, in particular, provide for—
  - (a) the form or manner in which leave may be given, refused or varied;
  - (b) the imposition of conditions;
  - (c) a person’s leave to remain in the Isle of Man not to lapse on his leaving the common travel area.
- (3) An order under this section may—
  - (a) contain such incidental, supplemental, consequential and transitional provision as the Governor considers appropriate; and
  - (b) make different provision for different cases; and
  - (c) make provision with respect to leave given before such an order comes into force.
- (4) This Act and any provision made under it has effect subject to any order made under this section.

### **3C Continuation of leave pending variation decision**

- (1) This section applies if—
  - (a) a person who has limited leave to enter or remain in the Isle of Man applies to the Governor for variation of the leave,
  - (b) the application for variation is made before the leave expires, and
  - (c) the leave expires without the application for variation having been decided.
- (2) The leave is extended by virtue of this section during any period when—
  - (a) the application for variation is neither decided nor withdrawn,
  - (b) an appeal under section 82(1) of the Nationality, Asylum and Immigration Act 2002 could be brought, while the appellant is in the Isle of Man against the decision on the application for variation (ignoring any possibility of an appeal out of time with permission), or
  - (c) an appeal under that section against that decision, brought while the appellant is in the Isle of Man, is pending (within the meaning of section 104 of that Act).
- (3) Leave extended by virtue of this section shall lapse if the applicant leaves the Isle of Man.
- (4) A person may not make an application for variation of his leave to enter or remain in the Isle of Man while that leave is extended by virtue of this section.
- (5) But subsection (4) does not prevent the variation of the application mentioned in subsection (1)(a).
- (6) The Governor may make regulations determining when an application is decided for the purposes of this section; and the regulations—
  - (a) may make provision by reference to receipt of a notice,
  - (b) may provide for a notice to be treated as having been received in specified circumstances,
  - (c) may make different provision for different purposes or circumstances.

### **3D Continuation of leave following revocation**

- (1) This section applies if a person's leave to enter or remain in the Isle of Man—
  - (a) is varied with the result that he has no leave to enter or remain in the Isle of Man, or
  - (b) is revoked.
- (2) The person's leave is extended by virtue of this section during any period when—
  - (a) an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 could be brought, while the person is in the Isle of Man, against the variation or revocation (ignoring any possibility of an appeal out of time with permission), or
  - (b) an appeal under that section against the variation or revocation, brought while the appellant is in the Isle of Man, is pending (within the meaning of section 104 of that Act).
- (3) A person's leave as extended by virtue of this section shall lapse if he leaves the Isle of Man.
- (4) A person may not make an application for variation of his leave to enter or remain in the Isle of Man while that leave is extended by virtue of this section.

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#### **4 Administration of control**

(1) The following powers under this Act shall be exercised as hereinafter provided, that is to say—

- (a) the power to give or refuse leave to enter the Isle of Man shall be exercised by immigration officers,
- (b) the power to give leave to remain in the Isle of Man, and the power under section 3(3)(a) to vary any leave as regards duration, shall be exercised by the Governor, and
- (c) the power under section 3(3)(a) to vary any leave otherwise than as regards duration shall be exercised by the Council of Ministers,

and unless otherwise allowed by or under this Act, those powers should be exercised by notice in writing given to the person affected, except that the powers under section 3(3)(a) may be exercised generally in respect of any class of persons by order.

(2) The provisions of Schedule 2 to this Act shall have effect with respect to—

- (a) the appointment and powers of immigration officers and medical inspectors for purposes of this Act;
- (b) the examination of persons arriving in or leaving the Isle of Man by ship or aircraft, and the special powers exercisable in the case of those who arrive as, or with a view to becoming, members of the crews of ships and aircraft; and
- (c) the exercise by immigration officers of their powers in relation to entry into the Isle of Man, and the removal from the Isle of Man of persons refused leave to enter or entering or remaining unlawfully; and
- (d) the detention of persons pending examination or pending removal from the Isle of Man;

and for other purposes supplementary to the foregoing provisions of this Act.

(3) The Governor may by regulations make provision as to the effect of a condition under this Act requiring a person to register with the police; and the regulations may include provision—

- (a) as to the officers of police by whom registers are to be maintained, and as to the form and content of the registers;
- (b) as to the place and manner in which anyone is to register and as to the documents and information to be furnished by him, whether on registration or on any change of circumstances;
- (c) as to the issue of certificates of registration and as to the payment of fees for certificates of registration;

and the regulations may require anyone who is for the time being subject to such a condition to produce a certificate of registration to such persons and in such circumstances as may be prescribed by the regulations.

(4) The Governor may by order make such provision as appears to him to be expedient in connection with this Act for records to be made and kept of persons staying at hotels and other premises where lodging or sleeping accommodation is provided, and for persons (whether British citizens or not) who stay at any such premises to supply the necessary information.

#### **5 Procedure for, and further provisions as to, deportation**

(1) Where a person is under section 3(5) or (6) above liable to deportation, then subject to the following provisions of this Act the Governor may make a deportation order against him, that is to say an order requiring him to leave and prohibiting him from entering the Isle of Man;

and a deportation order against a person shall invalidate any leave to enter or remain in the Isle of Man given him before the order is made or while it is in force.

(2) A deportation order against a person may at any time be revoked by a further order of the Governor, and shall cease to have effect if he becomes a British citizen.

(3) A deportation order shall not be made against a person as belonging to the family of another person if more than eight weeks have elapsed since the other person left the Isle of Man after the making of the deportation order against him; and a deportation order made against a person on that ground shall cease to have effect if he ceases to belong to the family of the other person, or if the deportation order made against the other person ceases to have effect.

(4) For purposes of deportation the following shall be those who are regarded as belonging to another person's family—

(a) where that other person is a man, his wife and his or her children under the age of eighteen; and

(b) where that other person is a woman, her husband and her or his children under the age of eighteen;

and for purposes of this subsection an adopted child, whether legally adopted or not, may be treated as the child of the adopter and, if legally adopted, shall be regarded as the child only of the adopter; an illegitimate child (subject to the foregoing rule as to adoptions) shall be regarded as the child of the mother; and "wife" includes each of two or more wives.

(5) The provisions of Schedule 3 to this Act shall have effect with respect to the removal from the Isle of Man of persons against whom deportation orders are in force and with respect to the detention or control of persons in connection with deportation.

(6) Where a person is liable to deportation under section 3(5) or (6) above but, without a deportation order being made against him, leaves the Isle of Man to live permanently abroad, the Governor may make payments of such amounts as he may determine to meet that person's expenses in so leaving the Isle of Man, including travelling expenses for members of his family or household.

## **6 Recommendations by court for deportation**

(1) Where under section 3(6) above a person convicted of an offence is liable to deportation on the recommendation of a court, he may be recommended for deportation by any court having power to sentence him for the offence unless the court commits him to be sentenced or further dealt with for that offence by another court.

(2) A court shall not recommend a person for deportation unless he has been given not less than seven days notice in writing stating that a person is not liable to deportation if he is a British citizen, describing the persons who are British citizens and stating (so far as material) the effect of section 3(8) above and section 7 below; but the powers of adjournment conferred by section 9 of the Summary Jurisdiction Act 1989 (an Act of Tynwald) shall include power to adjourn, after convicting an offender, for the purpose of enabling a notice to be given to him under this subsection or, if a notice was so given to him less than seven days previously, for the purpose of enabling the necessary seven days to elapse.

(3) For purposes of section 3(6) above—

(a) a person shall be deemed to have attained the age of seventeen at the time of his conviction if, on consideration of any available evidence, he appears to have done so to the court making or considering a recommendation for deportation; and

(b) the question whether an offence is one for which a person is punishable with custody shall be determined without regard to any enactment restricting the custody of young offenders or persons who have not previously been sentenced to custody;

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and for purposes of deportation a person who on being charged with an offence is found to have committed it shall, notwithstanding any enactment to the contrary and notwithstanding that the court does not proceed to conviction, be regarded as a person convicted of the offence, and references to conviction shall be construed accordingly.

(4) Notwithstanding any rule of practice restricting the matters which ought to be taken into account in dealing with an offender who is sentenced to custody, a recommendation for deportation may be made in respect of an offender who is sentenced to custody for life.

(5) Where a court recommends or purports to recommend a person for deportation, the validity of the recommendation shall not be called in question except on an appeal against the recommendation or against the conviction on which it is made; but the recommendation shall be treated as a sentence for the purpose of any enactment providing an appeal against sentence.

(6) A deportation order shall not be made on the recommendation of a court so long as an appeal or further appeal is pending against the recommendation or against the conviction on which it was made; and for this purpose an appeal or further appeal shall be treated as pending (where one is competent but has not been brought) until the expiration of the time for bringing that appeal.

## **7 Exemption from deportation for certain existing residents**

(1) Notwithstanding anything in section 3(5) or (6) above but subject to the provisions of this section, a Commonwealth citizen or citizen of the Republic of Ireland who was such a citizen at the coming into force of this Act and was then ordinarily resident in the Isle of Man—

- (b) shall not be liable to deportation under section 3(5) if at the time of the Governor's decision he had for the last five years been ordinarily resident in the United Kingdom and Islands; and
- (c) shall not on conviction of an offence be recommended for deportation under section 3(6) if at the time of the conviction he had for the last five years been ordinarily resident in the United Kingdom and Islands.

(2) A person who has at any time become ordinarily resident in the United Kingdom or in any of the Islands shall not be treated for the purposes of this section as having ceased to be so by reason only of his having remained there in breach of the immigration laws.

(3) The "last five years" before the material time under subsection (1)(b) or (c) above is to be taken as a period amounting in total to five years exclusive of any time during which the person claiming exemption under this section was undergoing custody or detention by virtue of a sentence passed for an offence on a conviction in the United Kingdom and Islands, and the period for which he was imprisoned or detained by virtue of the sentence amounted to six months or more.

(4) For purposes of subsection (3) above—

- (a) "sentence" includes any order made on conviction of an offence; and
- (b) two or more sentences for consecutive (or partly consecutive) terms shall be treated as a single sentence; and
- (c) a person shall be deemed to be detained by virtue of a sentence—
  - (i) at any time when he is liable to custody or detention by virtue of the sentence, but is unlawfully at large; and
  - (ii) (unless the sentence is passed after the material time) during any period of custody by which under any relevant enactment the term to be served under the sentence is reduced.



In paragraph (c)(ii) above “relevant enactment” means section 6 of the Custody Act 1995 (an Act of Tynwald) and any similar enactment which is for the time being or has (before or after the passing of this Act) been in force in any part of the United Kingdom and Islands.

(5) Nothing in this section shall be taken to exclude the operation of section 3(8) above in relation to an exemption under this section.

## **8 Exceptions for seamen, aircrews and other special cases**

(1) Where a person arrives at a place in the Isle of Man as a member of the crew of a ship or aircraft under an engagement requiring him to leave on that ship as a member of the crew, or to leave within seven days on that or another aircraft as a member of its crew, then unless either—

- (a) there is in force a deportation order made against him; or
- (b) he has at any time been refused leave to enter the Isle of Man and has not since then been given leave to enter or remain in the Isle of Man; or
- (c) an immigration officer requires him to submit to examination in accordance with Schedule 2 to this Act;

he may without leave enter the Isle of Man at that place and remain until the departure of the ship or aircraft on which he is required by his engagement to leave.

(2) The Governor may by order exempt any person or class of persons, either unconditionally or subject to such conditions as may be imposed by or under the order, from all or any of the provisions of this Act relating to those who are not British citizens.

Section 166(4) of the Immigration and Asylum Act 1999 (Tynwald procedure) does not apply to an order under this subsection, except one made with respect to a class of persons.

(3) Subject to subsection (3A) below, the provisions of this Act relating to those who are not British citizens shall not apply to any person so long as he is a member of a mission (within the meaning of the Diplomatic Privileges Act 1964), a person who is a member of the family and forms part of the household of such a member, or a person otherwise entitled within the United Kingdom to the like immunity from jurisdiction as is conferred by that Act on a diplomatic agent.

(3A) For the purposes of subsection (3), a member of a mission other than a diplomatic agent (as defined by the 1964 Act) is not to count as a member of a mission unless—

- (a) he was resident outside the Isle of Man, and was not in the Isle of Man, when he was offered a post as such a member; and
- (b) he has not ceased to be such a member after having taken up the post.

(4) The provisions of this Act relating to those who are not British citizens, other than the provisions relating to deportation, shall also not apply to any person so long as either—

- (a) he is subject, as a member of the home forces, to service law; or
- (b) being a member of a Commonwealth force or of a force raised under the law of any colony, protectorate or protected state, is undergoing or about to undergo training in the Isle of Man with any body, contingent or detachment of the home forces; or
- (c) he is serving or posted for service in the Isle of Man as a member of a visiting force or of any force raised as aforesaid or as a member of an international headquarters or defence organisation designated for the time being by an Order in Council under section 1 of the International Headquarters and Defence Organisations Act 1964.

(5) Where a person having a limited leave to enter or remain in the Isle of Man becomes entitled to an exemption under this section, that leave shall continue to apply after he ceases to be entitled to the exemption, unless it has by then expired; and a person is not to be regarded for purposes of this Act as having been settled in the Isle of Man at any time when he was

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entitled under the former immigration laws to any exemption corresponding to any of those afforded by subsection (3) or (4)(b) or (c) above or by any order under subsection (2) above.

(5A) An order under subsection (2) above may, as regards any person or class of persons to whom it applies, provide for that person or class to be in specified circumstances regarded (notwithstanding the order) as settled in the Isle of Man for the purposes of section 1(1) of the British Nationality Act 1981.

(6) In this section “the home forces” means any of Her Majesty’s forces other than a Commonwealth force or a force raised under the law of any associated state, colony, protectorate or protected state; “Commonwealth force” means a force of any country to which provisions of the Visiting Forces Act 1952 apply without an Order in Council under section 1 of the Act; and “visiting force” means a body, contingent or detachment of the forces of a country to which any of those provisions apply, being a body, contingent or detachment for the time being present in the Isle of Man on the invitation of Her Majesty’s Government in the United Kingdom.

#### **8A Persons ceasing to be exempt**

(1) A person is exempt for the purposes of this section if he is exempt from provisions of this Act as a result of section 8(2) or (3).

(2) If a person who is exempt—

(a) ceases to be exempt, and

(b) requires leave to enter or remain in the Isle of Man as a result,

he is to be treated as if he had been given leave to remain in the Isle of Man for a period of 90 days beginning on the day on which he ceased to be exempt.

(3) If—

(a) a person who is exempt ceases to be exempt, and

(b) there is in force in respect of him leave for him to enter or remain in the Isle of Man which expires before the end of the period mentioned in subsection (2),

his leave is to be treated as expiring at the end of that period.

#### **8B Persons excluded from the Isle of Man under international obligations**

(1) An excluded person must be refused—

(a) leave to enter the Isle of Man;

(b) leave to remain in the Isle of Man.

(2) A person’s leave to enter or remain in the Isle of Man is cancelled on his becoming an excluded person.

(3) A person’s exemption from the provisions of this Act as a result of section 8(1), (2) or (3) ceases on his becoming an excluded person.

(4) “Excluded person” means a person—

(a) named by or under, or

(b) of a description specified in,

a designated instrument.

(5) The Council of Ministers may by order designate an instrument if it is a resolution of the Security Council of the United Nations or an instrument made by the Council of the European Union and it—

- (a) requires that a person is not to be admitted to the Isle of Man (however that requirement is expressed); or
  - (b) recommends that a person should not be admitted to the Isle of Man (however that recommendation is expressed).
- (6) Subsections (1) to (3) are subject to such exceptions (if any) as may specified in the order designating the instrument in question.

## **9 Further provisions as to common travel area**

(1) The provisions of Schedule 4 to this Act shall have effect for the purpose of taking account in the Isle of Man of the operation in the United Kingdom or any of the Channel Islands of the immigration laws there.

(2) Persons who lawfully enter the Isle of Man on a local journey from a place in the common travel area after having either—

- (a) entered the United Kingdom, any of the Channel Islands or the Republic of Ireland on coming from a place outside the common travel area; or
- (b) left the Isle of Man while having a limited leave to enter or remain which has since expired;

if they are not British citizens (and are not to be regarded under Schedule 4 to this Act as having leave to enter the Isle of Man), shall be subject in the Isle of Man to such restrictions on the period for which they may remain, and such conditions restricting their employment or occupation or requiring them to register with the police or both, as may be imposed by an order of the Governor and may be applicable to them.

(3) Any provision of this Act applying to a limited leave or to conditions attached to a limited leave shall, unless otherwise provided, have effect in relation to a person subject to any restriction or condition by virtue of an order under subsection (2) above as if the provisions of the order applicable to him were terms on which he had been given leave under this Act to enter the Isle of Man.

(4) Section 1(3) above shall not be taken to affect the operation of a deportation order; and, subject to Schedule 4 to this Act, a person who is not a British citizen may not by virtue of section 1(3) enter the Isle of Man without leave on a local journey from a place in the common travel area if either—

- (a) he is on arrival in the Isle of Man given written notice by an immigration officer stating that, the Governor having issued directions for him not to be given entry to the Isle of Man on the ground that his exclusion is conducive to the public good as being in the interests of national security, he is accordingly refused leave to enter the Isle of Man; or
- (b) he has at any time been refused leave to enter the Isle of Man and has not since then been given leave to enter or remain in the Isle of Man.

## **11 Construction of references to entry, and other phrases relating to travel**

(1) A person arriving in the Isle of Man by ship or aircraft shall for purposes of this Act be deemed not to enter the Isle of Man unless and until he disembarks, and on disembarkation at a port shall further be deemed not to enter the Isle of Man so long as he remains in such area (if any) at the port as may be approved for this purpose by an immigration officer; and a person who has not otherwise entered the Isle of Man shall be deemed not to do so as long as he is detained, or temporarily admitted or released while liable to detention, under the powers conferred by Schedule 2 to this Act or section 62 of the Nationality, Immigration and Asylum Act 2002.

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(2) In this Act “disembark” means disembark from a ship or aircraft, and “embark” means embark in a ship or aircraft; and, except in subsection (1) above—

- (a) references to disembarking in the Isle of Man do not apply to disembarking after a local journey from a place in the Isle of Man or elsewhere in the common travel area; and
- (b) references to embarking in the Isle of Man do not apply to embarking for a local journey to a place in the Isle of Man or elsewhere in the common travel area.

(3) Except in so far as the context otherwise requires, references in this Act to arriving in the Isle of Man by ship shall extend to arrival by any floating structure, and “disembark” shall be construed accordingly; but the provisions of this Act specially relating to members of the crew of a ship shall not by virtue of this provision apply in relation to any floating structure not being a ship.

(4) For purposes of this Act “common travel area” has the meaning given by section 1(3), and a journey is, in relation to the common travel area, a local journey if but only if it begins and ends in the common travel area and is not made by a ship or aircraft which—

- (a) in the case of a journey to a place in the Isle of Man, began its voyage from, or has during its voyage called at, a place not in the common travel area; or
- (b) in the case of a journey from a place in the Isle of Man, is due to end its voyage in, or call in the course of its voyage at, a place not in the common travel area.

(5) A person who enters the Isle of Man lawfully by virtue of section 8(1) above, and seeks to remain beyond the time limited by section 8(1), shall be treated for purposes of this Act as seeking to enter the Isle of Man.

## PART 3 - Criminal Proceedings

### **24 Illegal entry and similar offences**

(1) A person who is not a British citizen shall be guilty of an offence punishable on summary conviction with a fine of not more than level 5 on the standard scale or with custody for not more than six months, or with both, in any of the following cases—

- (a) if contrary to this Act he knowingly enters the Isle of Man in breach of a deportation order or without leave;
- (b) if, having only a limited leave to enter or remain in the Isle of Man, he knowingly either—
  - (i) remains beyond the time limited by the leave; or
  - (ii) fails to observe a condition of the leave;
- (c) if, having lawfully entered the Isle of Man without leave by virtue of section 8(1) above, he remains without leave beyond the time allowed by section 8(1);
- (d) if, without reasonable excuse, he fails to comply with any requirement imposed on him under Schedule 2 to this Act to report to, or to attend, or submit to a test or examination, as required by, a director of public health or deputy director of public health;
- (e) if, without reasonable excuse, he fails to observe any restriction imposed on him under Schedule 2 or 3 to this Act as to residence, as to his employment or occupation or as to reporting to the police or to an immigration officer;
- (f) if he disembarks in the Isle of Man from a ship or aircraft after being placed on board under Schedule 2 or 3 to this Act with a view to his removal from the Isle of Man;

(g) if he embarks in contravention of a restriction imposed by or under an Order in Council under section 3(7) of this Act as it has effect in the United Kingdom.

(1A) A person commits an offence under subsection (1)(b)(i) above on the day when he first knows that the time limited by his leave has expired and continues to commit it throughout any period during which he is in the Isle of Man thereafter; but a person shall not be prosecuted under that provision more than once in respect of the same limited leave.

(3) The extended time limit for prosecutions which is provided for by section 28 below shall apply to offences under subsection (1)(a) and (c) above.

(4) In proceedings for an offence against subsection (1)(a) above of entering the Isle of Man without leave—

- (a) any stamp purporting to have been imprinted on a passport or other travel document by an immigration officer on a particular date for the purpose of giving leave shall be presumed to have been duly so imprinted, unless the contrary is proved;
- (b) proof that a person had leave to enter the Isle of Man shall lie on the defence if, but only if, he is shown to have entered within six months before the date when the proceedings were commenced.

#### **24A Deception**

(1) A person who is not a British citizen is guilty of an offence if, by means which include deception by him—

- (a) he obtains or seeks to obtain leave to enter or remain in the Isle of Man; or
- (b) he secures or seeks to secure the avoidance, postponement or revocation of enforcement action against him.

(2) “Enforcement action”, in relation to a person, means—

- (a) the giving of directions for his removal from the Isle of Man (“directions”) under Schedule 2 to this Act or section 10 of the Immigration and Asylum Act 1999;
- (b) the making of a deportation order against him under section 5 of this Act; or
- (c) his removal from the Isle of Man in consequence of directions or a deportation order.

(3) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to custody for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or
- (b) on conviction on information, to custody for a term not exceeding two years or to a fine, or to both.

#### **25 Assisting unlawful immigration to member State**

(1) A person commits an offence if he—

- (a) does an act which facilitates the commission of a breach of immigration law by an individual who is not a citizen of the European Union,
- (b) knows or has reasonable cause for believing that the act facilitates the commission of a breach of immigration law by the individual, and
- (c) knows or has reasonable cause for believing that the individual is not a citizen of the European Union.

(2) In subsection (1) “immigration law” means a law which has effect in a member State and which controls, in respect of some or all persons who are not nationals of the State, entitlement to—

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- (a) enter the State,
  - (b) transit across the State, or
  - (c) be in the State.
- (3) A document issued by the government of a member State certifying a matter of law in that State—
- (a) shall be admissible in proceedings for an offence under this section, and
  - (b) shall be conclusive as to the matter certified.
- (4) Subsection (1) applies to anything done—
- (a) in the Isle of Man,
  - (b) outside the Isle of Man by an individual to whom subsection (5) applies, or
  - (c) outside the Isle of Man by a body incorporated under the law of the Isle of Man.
- (5) This subsection applies to—
- (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas),
  - (d) a British Overseas citizen,
  - (e) a person who is a British subject under the British Nationality Act 1981, and
  - (f) a British protected person within the meaning of that Act.
- (6) A person guilty of an offence under this section shall be liable—
- (a) on conviction on information, to custody for a term not exceeding 14 years, to a fine or to both, or
  - (b) on summary conviction, to custody for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
- (7) In this section—
- (a) a reference to a member State includes a reference to a State on a list prescribed for the purposes of this section as it has effect in the United Kingdom by order of the Secretary of State (to be known as the “Section 25 List of Schengen Acquis States”), and
  - (b) a reference to a citizen of the European Union includes a reference to a person who is a national of a State on that list.

## **25A Helping asylum-seeker to enter Isle of Man**

- (1) A person commits an offence if—
- (a) he knowingly and for gain facilitates the arrival in the Isle of Man of an individual, and
  - (b) he knows or has reasonable cause to believe that the individual is an asylum-seeker.
- (2) In this section “asylum-seeker” means a person who intends to claim that to remove him from or require him to leave the Isle of Man would be contrary to the United Kingdom’s obligations under—
- (a) the Convention relating to the Status of Refugees done at Geneva on 28 July 1951 and the Protocol to the Convention, or
  - (b) the Human Rights Convention (as defined in section 167(1) of the Immigration and Asylum Act 1999).

(3) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which—

- (a) aims to assist asylum-seekers, and
- (b) does not charge for its services.

(4) Subsections (4) to (6) of section 25 apply for the purpose of the offence in subsection (1) of this section as they apply for the purpose of the offence in subsection (1) of that section.

### **25B Assisting entry to Isle of Man in breach of deportation or exclusion order**

(1) A person commits an offence if he—

- (a) does an act which facilitates a breach of a deportation order in force against an individual who is a citizen of the European Union, and
- (b) knows or has reasonable cause for believing that the act facilitates a breach of the deportation order.

(2) Subsection (3) applies where the Governor personally directs that the exclusion from the Isle of Man of an individual who is a citizen of the European Union is conducive to the public good.

(3) A person commits an offence if he—

- (a) does an act which assists the individual to arrive in, enter or remain in the Isle of Man,
- (b) knows or has reasonable cause for believing that the act assists the individual to arrive in, enter or remain in the Isle of Man, and
- (c) knows or has reasonable cause for believing that the Governor has personally directed that the individual's exclusion from the Isle of Man is conducive to the public good.

(4) Subsections (4) to (6) of section 25 apply for the purpose of an offence under this section as they apply for the purpose of an offence under that section.

### **25C Forfeiture of vehicle, ship or aircraft**

(1) This section applies where a person is convicted on information of an offence under section 25, 25A or 25B.

(2) The court may order the forfeiture of a vehicle used or intended to be used in connection with the offence if the convicted person—

- (a) owned the vehicle at the time the offence was committed,
- (b) was at that time a director, secretary or manager of a company which owned the vehicle,
- (c) was at that time in possession of the vehicle under a hire-purchase agreement,
- (d) was at that time a director, secretary or manager of a company which was in possession of the vehicle under a hire-purchase agreement, or
- (e) was driving the vehicle in the course of the commission of the offence.

(3) The court may order the forfeiture of a ship or aircraft used or intended to be used in connection with the offence if the convicted person—

- (a) owned the ship or aircraft at the time the offence was committed,
- (b) was at that time a director, secretary or manager of a company which owned the ship or aircraft,
- (c) was at that time in possession of the ship or aircraft under a hire-purchase agreement,

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- (d) was at that time a director, secretary or manager of a company which was in possession of the ship or aircraft under a hire-purchase agreement,
  - (e) was at that time a charterer of the ship or aircraft, or
  - (f) committed the offence while acting as captain of the ship or aircraft.
- (4) But in a case to which subsection (3)(a) or (b) does not apply, forfeiture may be ordered only—
- (a) in the case of a ship, if subsection (5) or (6) applies;
  - (b) in the case of an aircraft, if subsection (5) or (7) applies.
- (5) This subsection applies where—
- (a) in the course of the commission of the offence, the ship or aircraft carried more than 20 illegal entrants, and
  - (b) a person who, at the time the offence was committed, owned the ship or aircraft or was a director, secretary or manager of a company which owned it, knew or ought to have known of the intention to use it in the course of the commission of an offence under section 25, 25A or 25B.
- (6) This subsection applies where a ship's gross tonnage is less than 500 tons.
- (7) This subsection applies where the maximum weight at which an aircraft (which is not a hovercraft) may take off in accordance with its certificate of airworthiness is less than 5,700 kilogrammes.
- (8) Where a person who claims to have an interest in a vehicle, ship or aircraft applies to a court to make representations on the question of forfeiture, the court may not make an order under this section in respect of the ship, aircraft or vehicle unless the person has been given an opportunity to make representations.
- (9) In the case of an offence under section 25, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—
- (a) an individual who seeks to enter a member State in breach of immigration law (for which purpose "member State" and "immigration law" have the meanings given by section 25(2) and (7)), and
  - (b) an individual who is a passenger for the purpose of section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution) or section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (trafficking people for exploitation).
- (10) In the case of an offence under section 25A, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to—
- (a) an asylum-seeker (within the meaning of that section), and
  - (b) an individual who is a passenger for the purpose of section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution) or section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (trafficking people for exploitation).
- (11) In the case of an offence under section 25B, the reference in subsection (5)(a) to an illegal entrant shall be taken to include a reference to an individual who is a passenger for the purpose of section 145 of the Nationality, Immigration and Asylum Act 2002 (traffic in prostitution) or section 4 of the Asylum and Immigration (Treatment of Claimants, etc) Act 2004 (trafficking people for exploitation).



## **25D Detention of ship, aircraft or vehicle**

(1) If a person has been arrested for an offence under section 25, 25A or 25B, a senior officer or a constable may detain a relevant ship, aircraft or vehicle—

- (a) until a decision is taken as to whether or not to charge the arrested person with that offence; or
- (b) if the arrested person has been charged—
  - (i) until he is acquitted, the charge against him is dismissed or the proceedings are discontinued; or
  - (ii) if he has been convicted, until the court decides whether or not to order forfeiture of the ship, aircraft or vehicle.

(2) A ship, aircraft or vehicle is a relevant ship, aircraft or vehicle, in relation to an arrested person, if it is one which the officer or constable concerned has reasonable grounds for believing could, on conviction of the arrested person for the offence for which he was arrested, be the subject of an order for forfeiture made under section 25C.

(3) A person (other than the arrested person) may apply to the court for the release of a ship, aircraft or vehicle on the grounds that—

- (a) he owns the ship, aircraft or vehicle,
- (b) he was, immediately before the detention of the ship, aircraft or vehicle, in possession of it under a hire-purchase agreement, or
- (c) he is a charterer of the ship or aircraft.

(4) The court to which an application is made under subsection (3) may, on such security or surety being tendered as it considers satisfactory, release the ship, aircraft or vehicle on condition that it is made available to the court if—

- (a) the arrested person is convicted; and
- (b) an order for its forfeiture is made under section 25C.

(6) “Court” means—

- (a) if the arrested person has not been charged, or if he has been charged but proceedings for the offence have not begun to be heard, a court of summary jurisdiction;
- (b) if he has been charged and proceedings for the offence are being heard, the court hearing the proceedings.

(8) “Senior officer” means an immigration officer not below the rank of chief immigration officer.

## **26 General offences in connection with administration of Act**

(1) A person shall be guilty of an offence punishable on summary conviction with a fine of not more than level 5 on the standard scale or with custody for not more than six months, or with both, in any of the following cases—

- (a) if, without reasonable excuse, he refuses or fails to submit to examination under Schedule 2 to this Act;
- (b) if, without reasonable excuse, he refuses or fails to furnish or produce any information in his possession, or any documents in his possession or control, which he is on an examination under that Schedule required to furnish or produce;
- (c) if on any such examination or otherwise he makes or causes to be made to an immigration officer or other person lawfully acting in the execution of a relevant

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enactment a return, statement or representation which he knows to be false or does not believe to be true;

- (d) if, without lawful authority, he alters any certificate of entitlement, entry clearance, work permit or other document issued or made under or for the purposes of this Act, or uses for the purposes of this Act, or has in his possession for such use, any passport, certificate of entitlement, entry clearance, work permit or other document which he knows or has reasonable cause to believe to be false;
- (e) if, without reasonable excuse, he fails to complete and produce a landing or embarkation card in accordance with any order under Schedule 2 to this Act;
- (f) if, without reasonable excuse, he fails to comply with any requirement or regulations under section 4(3) or of an order under section 4(4) above;
- (g) if, without reasonable excuse, he obstructs an immigration officer or other person lawfully acting in the execution of this Act.

(2) The extended time limit for prosecutions which is provided for by section 28 below shall apply to offences under subsection (1)(c) and (d) above.

(3) “Relevant enactment” means—

- (a) this Act;
- (b) the Immigration Act 1988;
- (d) the Immigration and Asylum Act 1999 (apart from Part 6); or
- (e) the Nationality, Immigration and Asylum Act 2002 (apart from Part 5).

## **26A Registration card**

(1) In this section “registration card” means a document which—

- (a) carries information about a person (whether or not wholly or partly electronically), and
- (b) is issued by the Secretary of State under this Act as it has effect in the United Kingdom to the person wholly or partly in connection with a claim for asylum (whether or not made by that person).

(2) In subsection (1) “claim for asylum” has the meaning given by section 18 of the Nationality, Immigration and Asylum Act 2002, as that Act has effect in the United Kingdom.

(3) A person commits an offence if he—

- (a) makes a false registration card,
- (b) alters a registration card with intent to deceive or to enable another to deceive,
- (c) has a false or altered registration card in his possession without reasonable excuse,
- (d) uses or attempts to use a false registration card for a purpose for which a registration card is issued,
- (e) uses or attempts to use an altered registration card with intent to deceive,
- (f) makes an article designed to be used in making a false registration card,
- (g) makes an article designed to be used in altering a registration card with intent to deceive or to enable another to deceive, or
- (h) has an article within paragraph (f) or (g) in his possession without reasonable excuse.

(4) In subsection (3) “false registration card” means a document which is designed to appear to be a registration card.

(5) A person who is guilty of an offence under subsection (3)(a), (b), (d), (e), (f) or (g) shall be liable—

- (a) on conviction on information, to custody for a term not exceeding ten years, to a fine or to both, or
- (b) on summary conviction, to custody for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

(6) A person who is guilty of an offence under subsection (3)(c) or (h) shall be liable—

- (a) on conviction on information, to custody for a term not exceeding two years, to a fine or to both, or
- (b) on summary conviction, to custody for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

(7) The Secretary of State may by order—

- (a) amend the definition of “registration card” in subsection (1);
- (b) make consequential amendment of this section.

(7A) An order made by the Secretary of State under subsection (7) shall have effect in the Isle of Man as it has effect in the United Kingdom.

## **26B Possession of immigration stamp**

(1) A person commits an offence if he has an immigration stamp in his possession without reasonable excuse.

(2) A person commits an offence if he has a replica immigration stamp in his possession without reasonable excuse.

(3) In this section—

- (a) “immigration stamp” means a device which is designed for the purpose of stamping documents in the exercise of an immigration function,
- (b) “replica immigration stamp” means a device which is designed for the purpose of stamping a document so that it appears to have been stamped in the exercise of an immigration function, and
- (c) “immigration function” means a function of an immigration officer or the Governor under the Immigration Acts.

(4) A person who is guilty of an offence under this section shall be liable—

- (a) on conviction on information, to custody for a term not exceeding two years, to a fine or to both, or
- (b) on summary conviction, to custody for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

## **27 Offences by persons connected with ships or aircraft or with ports**

**27** A person shall be guilty of an offence punishable on summary conviction with a fine of not more than level 5 on the standard scale or with custody for not more than six months, or with both, in any of the following cases—

- (a) if, being the captain of a ship or aircraft—
  - (i) he knowingly permits a person to disembark in the Isle of Man when required under Schedule 2 or 3 to this Act to prevent it, or fails without reasonable excuse to take any steps he is required by or under Schedule 2 to take

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- in connection with the disembarkation or examination of passengers or for furnishing a passenger list or particulars of members of the crew; or
- (ii) he fails, without reasonable excuse, to comply with any directions given him under Schedule 2 or 3 or under the Immigration and Asylum Act 1999 with respect to the removal of a person from the Isle of Man;
- (b) if, as owner or agent of a ship or aircraft—
- (i) he arranges, or is knowingly concerned in any arrangements, for the ship or aircraft to call at a port other than a port of entry contrary to any provision of Schedule 2 to this Act; or
  - (ii) he fails, without reasonable excuse, to take any steps required by an order under Schedule 2 for the supply to passengers of landing or embarkation cards; or
  - (iii) he fails, without reasonable excuse, to make arrangements for or in connection with the removal of a person from the Isle of Man when required to do so by directions given under Schedule 2 or 3 to this Act or under the Immigration and Asylum Act 1999; or
  - (iv) he fails, without reasonable excuse, to comply with the requirements of paragraph 27B or 27C of Schedule 2;
- (c) if, as owner or agent of a ship or aircraft or as a person concerned in the management of a port, he fails, without reasonable excuse, to take any steps required by Schedule 2 in relation to the embarkation or disembarkation of passengers where a control area is designated.

## **28 Proceedings**

(1) Where the offence is one to which, under section 24 or 26 above, an extended time limit for prosecution is to apply, then a complaint relating to the offence may be tried by a court of summary jurisdiction—

- (a) if it is made within six months after the commission of the offence, or
- (b) if it is made—
  - (i) within three years after the commission of the offence, and
  - (ii) not more than two months after the date certified by the chief constable to be the date on which evidence sufficient to justify proceedings came to the notice of a constable.

(3) For the purposes of the trial of a person for an offence under this Part of this Act, the offence shall be deemed to have been committed either at the place at which it actually was committed or at any place at which he may be.

(4) Any powers exercisable under this Act in the case of any person may be exercised notwithstanding that proceedings for an offence under this Part of this Act have been taken against him.

## **28A Arrest without warrant**

- (1) A constable or immigration officer may arrest without warrant a person—
- (a) who has committed or attempted to commit an offence under section 24 or 24A; or
  - (b) whom he has reasonable grounds for suspecting has committed or attempted to commit such an offence.
- (2) But subsection (1) does not apply in relation to an offence under section 24(1)(d).

- (3) An immigration officer may arrest without warrant a person—
- (a) who has committed an offence under section 25, 25A or 25B; or
  - (b) whom he has reasonable grounds for suspecting has committed that offence.
- (5) An immigration officer may arrest without warrant a person (“the suspect”) who, or whom he has reasonable grounds for suspecting—
- (a) has committed or attempted to commit an offence under section 26(1)(g); or
  - (b) is committing or attempting to commit that offence.
- (6) The power conferred by subsection (5) is exercisable only if either the first or the second condition is satisfied.
- (7) The first condition is that it appears to the officer that service of a summons is impracticable or inappropriate because—
- (a) he does not know, and cannot readily discover, the suspect’s name;
  - (b) he has reasonable grounds for doubting whether a name given by the suspect as his name is his real name;
  - (c) the suspect has failed to give him a satisfactory address for service; or
  - (d) he has reasonable grounds for doubting whether an address given by the suspect is a satisfactory address for service.
- (8) The second condition is that the officer has reasonable grounds for believing that arrest is necessary to prevent the suspect—
- (a) causing physical injury to himself or another person;
  - (b) suffering physical injury; or
  - (c) causing loss of or damage to property.
- (9) For the purposes of subsection (7), an address is a satisfactory address for service if it appears to the officer—
- (a) that the suspect will be at that address for a sufficiently long period for it to be possible to serve him with a summons; or
  - (b) that some other person specified by the suspect will accept service of a summons for the suspect at that address.
- (9A) A constable or immigration officer may arrest without warrant a person—
- (a) who has committed an offence under section 26A or 26B; or
  - (b) whom he has reasonable grounds for suspecting has committed an offence under section 26A or 26B.
- (10) In relation to the exercise of the powers conferred by subsections (3)(b) and (5), it is immaterial that no offence has been committed.

### **28AA Arrest with warrant**

- (1) This section applies if on an application by an immigration officer a justice of the peace is satisfied that there are reasonable grounds for suspecting that a person has committed an offence under—
- (a) section 24(1)(d), or
  - (b) section 8 of the Asylum and Immigration Act 1996 (employment: offence).
- (2) The justice of the peace may grant a warrant authorising any immigration officer to arrest the person.

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## **28B Search and arrest by warrant**

(1) Subsection (2) applies if a justice of the peace is, by written information on oath, satisfied that there are reasonable grounds for suspecting that a person (“the suspect”) who is liable to be arrested for a relevant offence is to be found on any premises.

(2) The justice may grant a warrant authorising any immigration officer or constable to enter, if need be by force, the premises named in the warrant for the purpose of searching for and arresting the suspect.

(5) “Relevant offence” means an offence under section 24(1)(a), (b), (c), (d), (e) or (f), 24A, 26A or 26B.

## **28C Search and arrest without warrant**

(1) An immigration officer may enter and search any premises for the purpose of arresting a person for an offence under section 25, 25A or 25B.

(2) The power may be exercised—

- (a) only to the extent that it is reasonably required for that purpose; and
- (b) only if the officer has reasonable grounds for believing that the person whom he is seeking is on the premises.

(3) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching—

- (a) any parts of the premises which the occupiers of any dwelling comprised in the premises use in common with the occupiers of any such other dwelling; and
- (b) any such dwelling in which the officer has reasonable grounds for believing that the person whom he is seeking may be.

(4) The power may be exercised only if the officer produces identification showing that he is an immigration officer (whether or not he is asked to do so).

## **28CA Business premises: entry to arrest**

(1) A constable or immigration officer may enter and search any business premises for the purpose of arresting a person—

- (a) for an offence under section 24,
- (b) for an offence under section 24A, or
- (c) under paragraph 17 of Schedule 2.

(2) The power under subsection (1) may be exercised only—

- (a) to the extent that it is reasonably required for a purpose specified in subsection (1),
- (b) if the constable or immigration officer has reasonable grounds for believing that the person whom he is seeking is on the premises,
- (c) with the authority of the Governor (in the case of an immigration officer) or the Chief Constable or Deputy Chief Constable (in the case of a constable), and
- (d) if the constable or immigration officer produces identification showing his status.

(3) Authority for the purposes of subsection (2)(c)—

- (a) may be given on behalf of the Governor only by a civil servant of the rank of at least Senior Executive Officer, and
- (b) shall expire at the end of the period of seven days beginning with the day on which it is given.

- (4) Subsection (2)(d) applies—
  - (a) whether or not a constable or immigration officer is asked to produce identification, but
  - (b) only where premises are occupied.
- (5) Subsection (6) applies where a constable or immigration officer—
  - (a) enters premises in reliance on this section, and
  - (b) detains a person on the premises.

### **28D Entry and search of premises**

(1) If, on an application made by an immigration officer, a justice of the peace is satisfied that there are reasonable grounds for believing that—

- (a) a relevant offence has been committed,
- (b) there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence,
- (c) the material is likely to be relevant evidence,
- (d) the material does not consist of or include items subject to legal privilege, excluded material or special procedure material, and
- (e) any of the conditions specified in subsection (2) applies,

he may issue a warrant authorising an immigration officer to enter and search the premises.

(2) The conditions are that—

- (a) it is not practicable to communicate with any person entitled to grant entry to the premises;
- (b) it is practicable to communicate with a person entitled to grant entry to the premises but it is not practicable to communicate with any person entitled to grant access to the evidence;
- (c) entry to the premises will not be granted unless a warrant is produced;
- (d) the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry to them.

(3) An immigration officer may seize and retain anything for which a search has been authorised under subsection (1).

(4) “Relevant offence” means an offence under section 24(1)(a), (b), (c), (d), (e) or (f), 24A, 25, 25A, 25B, 26A or 26B.

(5) Expressions which are given a meaning by the Police Powers and Procedures Act 1998 (an Act of Tynwald) have the same meaning when used in this section.

### **28E Entry and search of premises following arrest**

(1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.

(2) An immigration officer may enter and search any premises—

- (a) in which the person was when arrested, or
- (b) in which he was immediately before he was arrested,

for evidence relating to the offence for which the arrest was made (“relevant evidence”).

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- (3) The power may be exercised—
  - (a) only if the officer has reasonable grounds for believing that there is relevant evidence on the premises; and
  - (b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence.
- (4) In relation to premises consisting of two or more separate dwellings, the power is limited to entering and searching—
  - (a) any dwelling in which the arrest took place or in which the arrested person was immediately before his arrest; and
  - (b) any parts of the premises which the occupier of any such dwelling uses in common with the occupiers of any other dwellings comprised in the premises.
- (5) An officer searching premises under subsection (2) may seize and retain anything he finds which he has reasonable grounds for believing is relevant evidence.
- (6) Subsection (5) does not apply to items which the officer has reasonable grounds for believing are items subject to legal privilege.

**28F Entry and search of premises following arrest under section 25, 25A or 25B**

- (1) An immigration officer may enter and search any premises occupied or controlled by a person arrested for an offence under section 25, 25A, 25B.
- (2) The power may be exercised—
  - (a) only if the officer has reasonable grounds for suspecting that there is relevant evidence on the premises;
  - (b) only to the extent that it is reasonably required for the purpose of discovering relevant evidence; and
  - (c) subject to subsection (3), only if a senior officer has authorised it in writing.
- (3) The power may be exercised—
  - (a) before taking the arrested person to a place where he is to be detained; and
  - (b) without obtaining an authorisation under subsection (2)(c),if the presence of that person at a place other than one where he is to be detained is necessary for the effective investigation of the offence.
- (4) An officer who has relied on subsection (3) must inform a senior officer as soon as is practicable.
- (5) The officer authorising a search, or who is informed of one under subsection (4), must make a record in writing of—
  - (a) the grounds for the search; and
  - (b) the nature of the evidence that was sought.
- (6) An officer searching premises under this section may seize and retain anything he finds which he has reasonable grounds for suspecting is relevant evidence.
- (7) “Relevant evidence” means evidence, other than items subject to legal privilege, that relates to the offence in question.
- (8) “Senior officer” means an immigration officer not below the rank of chief immigration officer.



## **28FA Search for personnel records: warrant unnecessary**

- (1) This section applies where—
  - (a) a person has been arrested for an offence under section 24(1) or 24A(1),
  - (b) a person has been arrested under paragraph 17 of Schedule 2,
  - (c) a constable or immigration officer reasonably believes that a person is liable to arrest for an offence under section 24(1) or 24A(1), or
  - (d) a constable or immigration officer reasonably believes that a person is liable to arrest under paragraph 17 of Schedule 2.
- (2) A constable or immigration officer may search business premises where the arrest was made or where the person liable to arrest is if the constable or immigration officer reasonably believes—
  - (a) that a person has committed an immigration employment offence in relation to the person arrested or liable to arrest, and
  - (b) that employee records, other than items subject to legal privilege, will be found on the premises and will be of substantial value (whether on their own or together with other material) in the investigation of the immigration employment offence.
- (3) A constable or officer searching premises under subsection (2) may seize and retain employee records, other than items subject to legal privilege, which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of an immigration employment offence
- (4) The power under subsection (2) may be exercised only—
  - (a) to the extent that it is reasonably required for the purpose of discovering employee records other than items subject to legal privilege,
  - (b) if the constable or immigration officer produces identification showing his status, and
  - (c) if the constable or immigration officer reasonably believes that at least one of the conditions in subsection (5) applies.
- (5) Those conditions are—
  - (a) that it is not practicable to communicate with a person entitled to grant access to the records,
  - (b) that permission to search has been refused,
  - (c) that permission to search would be refused if requested, and
  - (d) that the purpose of a search may be frustrated or seriously prejudiced if it is not carried out in reliance on subsection (2).
- (6) Subsection (4)(b) applies—
  - (a) whether or not a constable or immigration officer is asked to produce identification, but
  - (b) only where premises are occupied.
- (7) In this section “immigration employment offence” means an offence under section 8 of the Asylum and Immigration Act 1996 (employment).

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### **28FB Search for personnel records: with warrant**

(1) This section applies where on an application made by an immigration officer in respect of business premises a justice of the peace is satisfied that there are reasonable grounds for believing—

- (a) that an employer has provided inaccurate or incomplete information under section 134 of the Nationality, Immigration and Asylum Act 2002 (compulsory disclosure by employer),
- (b) that employee records, other than items subject to legal privilege, will be found on the premises and will enable deduction of some or all of the information which the employer was required to provide, and
- (c) that at least one of the conditions in subsection (2) is satisfied.

(2) Those conditions are—

- (a) that it is not practicable to communicate with a person entitled to grant access to the premises,
- (b) that it is not practicable to communicate with a person entitled to grant access to the records,
- (c) that entry to the premises or access to the records will not be granted unless a warrant is produced, and
- (d) that the purpose of a search may be frustrated or seriously prejudiced unless an immigration officer arriving at the premises can secure immediate entry.

(3) The justice of the peace may issue a warrant authorising an immigration officer to enter and search the premises.

(4) Subsection (7)(a) of section 28D shall have effect for the purposes of this section as it has effect for the purposes of that section.

(5) An immigration officer searching premises under a warrant issued under this section may seize and retain employee records, other than items subject to legal privilege, which he reasonably suspects will be of substantial value (whether on their own or together with other material) in the investigation of an offence under section 137 of the Nationality, Immigration and Asylum Act 2002 (disclosure of information: offences) in respect of a requirement under section 134 of that Act.

### **28G Searching arrested persons**

(1) This section applies if a person is arrested for an offence under this Part at a place other than a police station.

(2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.

(3) The officer may search the arrested person for—

- (a) anything which he might use to assist his escape from lawful custody; or
- (b) anything which might be evidence relating to the offence for which he has been arrested.

(4) The power conferred by subsection (3) may be exercised—

- (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that subsection; and
- (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.

(5) A power conferred by this section to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person's mouth.

(6) An officer searching a person under subsection (2) may seize and retain anything he finds, if he has reasonable grounds for believing that that person might use it to cause physical injury to himself or to another person.

(7) An officer searching a person under subsection (3) may seize and retain anything he finds, if he has reasonable grounds for believing—

- (a) that that person might use it to assist his escape from lawful custody; or
- (b) that it is evidence which relates to the offence in question.

(8) Subsection (7)(b) does not apply to an item subject to legal privilege.

## **28H Searching persons in police custody**

(1) This section applies if a person—

- (a) has been arrested for an offence under this Part; and
- (b) is in custody at a police station or in police detention at a place other than a police station.

(2) An immigration officer may, at any time, search the arrested person in order to see whether he has with him anything—

- (a) which he might use to—
  - (i) cause physical injury to himself or others;
  - (ii) damage property;
  - (iii) interfere with evidence; or
  - (iv) assist his escape; or
- (b) which the officer has reasonable grounds for believing is evidence relating to the offence in question.

(3) The power may be exercised only to the extent that the custody officer concerned considers it to be necessary for the purpose of discovering anything of a kind mentioned in subsection (2).

(4) An officer searching a person under this section may seize anything he finds, if he has reasonable grounds for believing that—

- (a) that person might use it for one or more of the purposes mentioned in subsection (2)(a); or
- (b) it is evidence relating to the offence in question.

(5) Anything seized under subsection (4)(a) may be retained by the police.

(6) Anything seized under subsection (4)(b) may be retained by an immigration officer.

(7) The person from whom something is seized must be told the reason for the seizure unless he is—

- (a) violent or appears likely to become violent; or
- (b) incapable of understanding what is said to him.

(8) An intimate search may not be conducted under this section.

(9) The person carrying out a search under this section must be of the same sex as the person searched.

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(10) “Custody officer” has the same meaning as in the Police Powers and Procedures Act 1998 (an Act of Tynwald).

(11) “Intimate search” has the meaning given by section 69 of that Act of Tynwald.

(12) “Police detention” has the meaning given by section 81(2) of that Act.

## **28I Seized material: access and copying**

(1) If a person showing himself—

(a) to be the occupier of the premises on which seized material was seized, or

(b) to have had custody or control of the material immediately before it was seized,

asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.

(2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for him to have access to the material under the supervision—

(a) in the case of seized material within subsection (8)(a), of an immigration officer;

(b) in the case of seized material within subsection (8)(b), of a constable.

(3) An immigration officer may photograph or copy, or have photographed or copied, seized material.

(4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—

(a) that person to have access to the material for the purpose of photographing or copying it under the supervision—

(i) in the case of seized material within subsection (8)(a), of an immigration officer;

(ii) in the case of seized material within subsection (8)(b), of a constable; or

(b) the material to be photographed or copied.

(5) A photograph or copy made under subsection (4)(b) must be supplied within a reasonable time.

(6) There is no duty under this section to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—

(a) the exercise of any functions in connection with which the material was seized; or

(b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.

(7) “Relevant person” means—

(a) a person who had custody or control of seized material immediately before it was seized, or

(b) someone acting on behalf of such a person.

(8) “Seized material” means anything—

(a) seized and retained by an immigration officer, or

(b) seized by an immigration officer and retained by the police,

under this Part.

## **28J Search warrants: safeguards**

(1) The entry or search of premises under a warrant is unlawful unless it complies with this section and section 28K.

(2) If an immigration officer applies for a warrant, he must—

- (a) state the ground on which he makes the application and the provision of this Act under which the warrant would be issued;
- (b) specify the premises which it is desired to enter and search; and
- (c) identify, so far as is practicable, the persons or articles to be sought.

(3) An application for a warrant is to be supported by a complaint in writing and substantiated on oath

(5) The officer must answer on oath any question that the justice of the peace hearing the application asks him.

(6) A warrant shall authorise an entry on one occasion only.

(7) A warrant must specify—

- (a) the name of the person applying for it;
- (b) the date on which it is issued;
- (c) the premises to be searched; and
- (d) the provision of this Act under which it is issued.

(8) A warrant must identify, so far as is practicable, the persons or articles to be sought.

(9) Two copies of a warrant must be made.

(10) The copies must be clearly certified as copies.

(11) “Warrant” means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) of Schedule 2.

## **28K Execution of warrants**

(1) A warrant may be executed by any immigration officer.

(2) A warrant may authorise persons to accompany the officer executing it.

(3) Entry and search under a warrant must be—

- (a) within one month from the date of its issue; and
- (b) at a reasonable hour, unless it appears to the officer executing it that the purpose of a search might be frustrated.

(4) If the occupier of premises which are to be entered and searched is present at the time when an immigration officer seeks to execute a warrant, the officer must—

- (a) identify himself to the occupier and produce identification showing that he is an immigration officer;
- (b) show the occupier the warrant; and
- (c) supply him with a copy of it.

(5) If—

- (a) the occupier is not present, but
- (b) some other person who appears to the officer to be in charge of the premises is present,

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subsection (4) has effect as if each reference to the occupier were a reference to that other person.

(6) If there is no person present who appears to the officer to be in charge of the premises, the officer must leave a copy of the warrant in a prominent place on the premises.

(7) A search under a warrant may only be a search to the extent required for the purpose for which the warrant was issued.

(8) An officer executing a warrant must make an endorsement on it stating—

(a) whether the persons or articles sought were found; and

(b) whether any articles, other than articles which were sought, were seized.

(9) A warrant which has been executed, or has not been executed within the time authorised for its execution, must be returned to the Chief Registrar.

(10) A warrant returned under subsection (9) must be retained for 12 months by the Chief Registrar

(13) If during that 12 month period the occupier of the premises to which it relates asks to inspect it, he must be allowed to do so.

(14) “Warrant” means a warrant to enter and search premises issued to an immigration officer under this Part or under paragraph 17(2) of Schedule 2.

### **28L Interpretation of Part 3**

(1) In this Part, “premises” and “items subject to legal privilege” have the same meaning as in the Police Powers and Procedures Act 1998 (an Act of Tynwald).

(2) In this Part “business premises” means premises (or any part of premises) not used as a dwelling.

(3) In this Part “employee records” means records which show an employee’s—

(a) name,

(b) date of birth,

(c) address,

(d) length of service,

(e) rate of pay, or

(f) nationality or citizenship.

(4) The Governor may by order amend section 28CA(3)(a) to reflect a change in nomenclature.

## **PART 4 – Supplementary**

### **31 Expenses**

**31** There shall be defrayed out of moneys provided by Tynwald any expenses incurred by the Governor under or by virtue of this Act—

(a) by way of administrative expenses; or

(b) in connection with the removal of any person from the Isle of Man under Schedule 2 or 3 to this Act or the departure with him of his dependants, or his or their maintenance pending departure;

### **31A Procedural requirements as to applications**

(1) If a form is prescribed for a particular kind of application under this Act, any application of that kind must be made in the prescribed form.

(2) If procedural or other steps are prescribed in relation to a particular kind of application under this Act, those steps must be taken in respect of any application of that kind.

(3) “Prescribed” means prescribed in regulations made by the Governor.

(3A) Regulations under this section may provide that a failure to comply with a specified requirement of the regulations—

- (a) invalidates an application,
- (b) does not invalidate an application, or
- (c) invalidates an application in specified circumstances (which may be described wholly or partly by reference to action by the applicant, the Governor, an immigration officer or another person).

(4) Regulations under this section may prescribe for the purpose of subsection (1) a form specified in regulations made under this section as it has effect in the United Kingdom, subject to such modifications as may be prescribed.

### **32 General provisions as to orders, etc**

(1) Any power conferred by Part 1 of this Act to make an order (other than a deportation order) or to give any directions includes power to revoke or vary the order or directions.

(2) Any document purporting to be an order, notice or direction made or given by the Governor for the purposes of the Immigration Acts and to be signed by him or on his behalf, and any document purporting to be a certificate of the Governor so given and to be signed by him or on his behalf, shall be received in evidence, and shall, until the contrary is proved, be deemed to be made or issued by him.

(3) Prima facie evidence of any such order, notice, direction or certificate as aforesaid may, in any legal proceedings or other proceedings under the Immigration Acts, be given by the production of a document bearing a certificate purporting to be signed by or on behalf of the Governor and stating that the document is a true copy of the order, notice, direction or certificate.

(4) Where an order under section 8(2) above applies to persons specified in a schedule to the order, or any directions of the Governor given for the purposes of the Immigration Acts apply to persons specified in a schedule to the directions, prima facie evidence of the provisions of the order or directions other than the prima facie evidence of the provisions of the order or directions other than the schedule and of any entry contained in the schedule may, in any legal proceedings or other proceedings under the Immigration Acts, be given by the production of a document purporting to be signed by or on behalf of the Governor and stating that the document is a true copy of the said provisions and of the relevant entry.

### **33 Interpretation**

(1) For purposes of this Act, except in so far as the context otherwise requires—

“aircraft” includes hovercraft, “airport” includes hoverport and “port” includes airport;

“captain” means master (of a ship) or commander (of an aircraft);

“certificate of entitlement” means a certificate under section 10 of the Nationality, Immigration and Asylum Act 2002 that a person has the right of abode in the United Kingdom;

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“constable” means any officer or member of the Isle of Man Constabulary, and “chief constable” shall be construed accordingly;

“Convention adoption” has the same meaning as in the Adoption Act 1984 (an Act of Tynwald);

“Council of Ministers” means the Council of Ministers of the Isle of Man;

“crew”, in relation to a ship or aircraft, means all persons actually employed in the working or service of the ship or aircraft, including the captain, and “member of the crew” shall be construed accordingly;

“entrant” means a person entering or seeking to enter the Isle of Man and “illegal entrant” means a person—

(a) unlawfully entering or seeking to enter in breach of a deportation order or of the immigration laws, or

(b) entering or seeking to enter by means which include deception by another person, and includes also a person who has entered as mentioned in paragraph (a) or (b) above;

“entry clearance” means a visa, entry certificate or other document which, in accordance with the immigration rules, is to be taken as evidence or the requisite evidence of a person’s eligibility, though not a British citizen, for entry into the United Kingdom (but does not include a work permit);

“immigration laws” means this Act and any law for purposes similar to this Act which is for the time being or has (before or after the passing of this Act) been in force in any part of the United Kingdom and Islands;

“immigration rules” means the rules for the time being laid down as mentioned in section 3(2) above;

“the Islands” means the Channel Islands and the Isle of Man, and “the United Kingdom and Islands” means the United Kingdom and the Islands taken together;

“legally adopted” means adopted in pursuance of an order made by any court in the United Kingdom and the Islands, under a Convention adoption or by any adoption specified as an overseas adoption by order of the Governor under section 58(2) of the Adoption Act 1984 (an Act of Tynwald);

“limited leave” and “indefinite leave” mean respectively leave under this Act to enter or remain in the United Kingdom which is, and one which is not, limited as to duration;

“prison officer” means an officer of an institution (within the meaning of the Custody Act 1995 (an Act of Tynwald));

“settled” shall be construed in accordance with subsection (2A) below;

“ship” includes every description of vessel used in navigation;

“United Kingdom passport” means a current passport issued by the Government of the United Kingdom, or by the Lieutenant-Governor of any of the Islands or by the Government of any territory which is for the time being a British overseas territory within the meaning of the British Nationality Act 1981;

“work permit” means a permit indicating, in accordance with the immigration rules, that a person named in it is eligible, though not a British citizen, for entry into the United Kingdom for the purpose of taking employment.

(1A) A reference to being an owner of a vehicle, ship or aircraft includes a reference to being any of a number of persons who jointly own it.



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(2) It is hereby declared that, except as otherwise provided in this Act, a person is not to be treated for the purposes of any provision of this Act as ordinarily resident in the United Kingdom or in any of the Islands at a time when he is there in breach of the immigration laws.

(2A) Subject to section 8(5) above, references to a person being settled in the Isle of Man are references to his being ordinarily resident there without being subject under the immigration laws to any restriction on the period for which he may remain.

(3) The ports of entry for purposes of this Act, and the ports of exit for purposes of any Order in Council under section 3(7) above, shall be such ports as may from time to time be designated for the purpose by order of the Governor.

(4) For the purposes of this Act, the question of whether an appeal is pending shall be determined in accordance with section 104 of the Nationality, Immigration and Asylum Act 2002 (pending appeals).

(5) This Act shall not be taken to supersede or impair any power exercisable by Her Majesty in relation to aliens by virtue of Her prerogative.

### **37 Short title and extent**

(1) This Act may be cited as the Immigration Act 1971.

## SCHEDULE 2 – Administrative provisions as to control on entry, etc.

### PART 1 – General provisions

#### *Immigration officers and medical inspectors*

(1) Immigration officers for the purposes of this Act shall be appointed by the Governor.

(2) Medical inspectors for the purposes of this Act may be appointed by the Department of Health and Social Security in pursuance of arrangements made between that Department and the Governor, and shall be fully qualified medical practitioners.

(3) In the exercise of their functions under this Act, immigration officers shall act in accordance with such directions as may be given them—

(a) by the Governor, as respects the entry of persons into the Isle of Man and the period for which such persons may remain;

(b) by the Council of Ministers, as respects any other matters,

and medical officers shall act in accordance with such instructions as may be given them by the Department of Health and Social Security.

(4) An immigration officer or medical inspector may board any ship or aircraft for the purpose of exercising his functions under this Act.

(5) An immigration officer, for the purpose of satisfying himself whether there are persons he may wish to examine under paragraph 2 below, may search any ship or aircraft and anything on board it, or any vehicle taken off a ship or aircraft in which it has been brought to the Isle of Man.

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*Examination by immigration officers, and medical examination*

(1) An immigration officer may examine any persons who have arrived in the Isle of Man by ship or aircraft (including transit passengers, members of the crew and others not seeking to enter the Isle of Man) for the purpose of determining—

- (a) whether any of them is or is not a British citizen; and
- (b) whether, if he is not, he may or may not enter the Isle of Man without leave; and
- (c) whether, if he may not—
  - (i) he has been given leave which is still in force,
  - (ii) he should be given leave and for what period or on what conditions (if any), or
  - (iii) he should be refused leave.

(2) Any such person, if he is seeking to enter the Isle of Man, may be examined also by a medical inspector or by any qualified person carrying out a test or examination required by a medical inspector.

(3) A person, on being examined under this paragraph by an immigration officer or medical inspector, may be required in writing by him to submit to further examination; but a requirement under this sub-paragraph shall not prevent a person who arrives as a transit passenger, or as a member of the crew of a ship or aircraft, or for the purpose of joining a ship or aircraft as a member of the crew, from leaving by his intended ship or aircraft.

*Examination of persons who arrive with continuing leave*

(1) This paragraph applies to a person who has arrived in the Isle of Man with leave to enter which is in force but which was given to him before his arrival.

- (2) He may be examined by an immigration officer for the purpose of establishing—
- (a) whether there has been such a change in the circumstances of his case, since that leave was given, that it should be cancelled;
  - (b) whether that leave was obtained as a result of false information given by him or his failure to disclose material facts; or
  - (c) whether there are medical grounds on which that leave should be cancelled.

(2A) Where the person's leave to enter derives, by virtue of section 3A(3), from an entry clearance, he may also be examined by an immigration officer for the purpose of establishing whether the leave should be cancelled on the grounds that the person's purpose in arriving in the Isle of Man is different from the purpose specified in the entry clearance.

(3) He may also be examined by an immigration officer for the purpose of determining whether it would be conducive to the public good for that leave to be cancelled.

(4) He may also be examined by a medical inspector or by any qualified person carrying out a test or examination required by a medical inspector.

(5) A person examined under this paragraph may be required by the officer or inspector to submit to further examination.

- (6) A requirement under sub-paragraph (5) does not prevent a person who arrives—
- (a) as a transit passenger,
  - (b) as a member of the crew of a ship or aircraft, or
  - (c) for the purpose of joining a ship or aircraft as a member of the crew,
- from leaving by his intended ship or aircraft.

(7) An immigration officer examining a person under this paragraph may by notice suspend his leave to enter until the examination is completed.

(8) An immigration officer may, on the completion of any examination of a person under this paragraph, cancel his leave to enter.

(9) Cancellation of a person's leave under sub-paragraph (8) is to be treated for the purposes of this Act and Part 5 of the Nationality, Immigration and Asylum Act 2002 (immigration appeals) as if he had been refused leave to enter at a time when he had a current entry clearance.

(10) A requirement imposed under sub-paragraph (5) and a notice given under sub-paragraph (7) must be in writing.

(1) An immigration officer may examine any person who is embarking or seeking to embark in the Isle of Man for the purpose of determining whether he is a British citizen and, if he is not a British citizen, for the purpose of establishing—

- (a) his identity;
- (b) whether he entered the Isle of Man lawfully;
- (c) whether he has complied with any conditions of leave to enter or remain in the Isle of Man;
- (d) whether his return to the Isle of Man is prohibited or restricted.

(1A) An immigration officer who examines a person under sub-paragraph (1) may require him, by notice in writing, to submit to further examination for a purpose specified in that sub-paragraph.

(2) So long as any Order in Council is in force under section 3(7) of this Act, an immigration officer may examine any person who is embarking or seeking to embark in the Isle of Man for the purpose of determining—

- (a) whether any of the provisions of the Order apply to him; and
- (b) whether, if so, any power conferred by the Order should be exercised in relation to him and in what way.

#### *Information and documents*

(1) It shall be the duty of any person examined under paragraph 2, 2A or 3 above to furnish to the person carrying out the examination all such information in his possession as that person may require for the purpose of his functions under that paragraph.

(2) A person on his examination under paragraph 2, 2A or 3 above by an immigration officer shall, if so required by the immigration officer—

- (a) produce either a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship; and
- (b) declare whether or not he is carrying or conveying, or has carried or conveyed, documents of any relevant description specified by the immigration officer, and produce any documents of that description which he is carrying or conveying.

In paragraph (b), "relevant description" means any description appearing to the immigration officer to be relevant for the purposes of the examination.

(3) Where under sub-paragraph (2)(b) above a person has been required to declare whether or not he is carrying or conveying, or has carried or conveyed, documents of any description—

- (a) he and any baggage or vehicle belonging to him or under his control; and
- (b) any ship, aircraft or vehicle in which he arrived in the Isle of Man,

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may be searched with a view to ascertaining whether he is doing or, as the case may be, has done so by the immigration officer or a person acting under the directions of that officer:

Provided that no woman or girl shall be searched except by a woman.

(4) Where a passport or other document is produced or found in accordance with this paragraph an immigration officer may examine it and detain it—

- (a) for the purpose of examining it, for a period not exceeding 7 days;
- (b) for any purpose, until the person to whom the document relates is given leave to enter the Isle of Man or is about to depart or be removed following refusal of leave or until it is decided that the person does not require leave to enter;
- (c) after a time described in paragraph (b), while the immigration officer thinks that the document may be required in connection with proceedings in respect of an appeal under the Immigration Acts or in respect of an offence.

(5) For the purpose of ascertaining that a passport or other document produced or found in accordance with this paragraph relates to a person examined under paragraph 2, 2A or 3 above, the person carrying out the examination may require the person being examined to provide information (whether or not by submitting to a process by means of which information is obtained or recorded) about his external physical characteristics (which may include, in particular, fingerprints or features of the iris or any other part of the eye).

(1) The Governor may by order make provision for requiring passengers disembarking or embarking in the Isle of Man, or any class of such passengers, to produce to an immigration officer, if so required, landing or embarkation cards in such form as the Governor may direct, and for requiring the owners or agents of ships and aircraft to supply such cards to those passengers.

#### *Notice of leave to enter or of refusal of leave*

(1) Subject to sub-paragraph (3) below, where a person examined by an immigration officer under paragraph 2 above is to be given a limited leave to enter the Isle of Man or is to be refused leave, the notice giving or refusing leave shall be given not later than twenty-four hours after the conclusion of his examination (including any further examination) in pursuance of that paragraph; and if notice giving or refusing leave is not given him before the end of those twenty-four hours, he shall (if not a British citizen) be deemed to have been given leave to enter the Isle of Man for a period of six months subject to a condition prohibiting his taking employment and the immigration officer shall as soon as may be give him written notice of that leave.

(2) Where on a person's examination under paragraph 2 above he is given notice of leave to enter the Isle of Man, then at any time before the end of twenty-four hours from the conclusion of the examination he may be given a further notice in writing by an immigration officer cancelling the earlier notice and refusing him leave to enter.

(3) Where in accordance with this paragraph a person is given notice refusing him leave to enter the Isle of Man, that notice may at any time be cancelled by notice in writing given him by an immigration officer; and where a person is given a notice of cancellation under this sub-paragraph, and the immigration officer does not at the same time give him indefinite or limited leave to enter or require him to submit to further examination, he shall be deemed to have been given leave to enter for a period of six months subject to a condition prohibiting his taking employment and the immigration officer shall as soon as may be give him written notice of that leave.

(4) Where an entrant is a member of a party in charge of a person appearing to the immigration officer to be a responsible person, any notice to be given in relation to that entrant in accordance with this paragraph shall be duly given if delivered to the person in charge of the party.

*Power to require medical examination after entry*

(1) This paragraph applies if an immigration officer examining a person under paragraph 2 decides—

- (a) that he may be given leave to enter the Isle of Man; but
- (b) that a further medical test or examination may be required in the interests of public health.

(2) This paragraph also applies if an immigration officer examining a person under paragraph 2A decides—

- (a) that his leave to enter the Isle of Man should not be cancelled; but
- (b) that a further medical test or examination may be required in the interests of public health.

(3) The immigration officer may give the person concerned notice in writing requiring him—

- (a) to report his arrival to such medical officer as may be specified in the notice; and
- (b) to attend at such place and time and submit to such test or examination (if any), as that medical officer may require.

(4) In reaching a decision under paragraph (b) of sub-paragraph (1) or (2), the immigration officer must act on the advice of—

- (a) a medical inspector; or
- (b) if no medical inspector is available, a fully qualified medical practitioner.

(5) In this paragraph “medical officer” means—

- (a) the director of public health or a deputy director of public health, or
- (b) such other person, being a fully registered person within the meaning of the Medical Act 1985 (an Act of Tynwald), as is appointed for the purposes of this paragraph by the Department of Health and Social Security.

*Removal of persons refused leave to enter and illegal entrants*

(1) Where a person arriving in the Isle of Man is refused leave to enter, an immigration officer may, subject to sub-paragraph (2) below—

- (a) give the captain of the ship or aircraft in which he arrives directions requiring the captain to remove him from the Isle of Man in that ship or aircraft; or
- (b) give the owners or agents of that ship or aircraft directions requiring them to remove him from the Isle of Man in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents; or
- (c) give those owners or agents directions requiring them to make arrangements for his removal from the Isle of Man in any ship or aircraft specified or indicated in the direction to a country or territory so specified being either—
  - (i) a country of which he is a national or citizen; or

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- (ii) a country or territory in which he has obtained a passport or other document of identity; or
- (iii) a country or territory in which he embarked for the Isle of Man; or
- (iv) a country or territory to which there is reason to believe that he will be admitted.

(2) No directions shall be given under this paragraph in respect of anyone after the expiration of two months beginning with the date on which he was refused leave to enter the Isle of Man (ignoring any period during which an appeal by him under the Immigration Acts is pending) except that directions may be given under sub-paragraph (1)(b) or (c) after the end of that period if the immigration officer has within that period given written notice to the owners or agents in question of his intention to give directions to them in respect of that person.

(1) Where an illegal entrant is not given leave to enter or remain in Isle of Man, an immigration officer may give any such directions in respect of him as in a case within paragraph 8 above are authorised by paragraph 8(1).

(2) Any leave to enter the Isle of Man which is obtained by deception shall be disregarded for the purposes of this paragraph.

(1) Where it appears to the Governor either—

- (a) that directions might be given in respect of a person under paragraph 8 or 9 above, but that it is not practicable for them to be given or that, if given, they would be ineffective; or
- (b) that directions might have been given in respect of a person under paragraph 8 above but that the requirements of paragraph 8(2) have not been complied with;

then the Governor may give to the owners or agents of any ship or aircraft any such directions in respect of that person as are authorised by paragraph 8(1)(c).

(2) Where the Governor may give directions for a person's removal in accordance with sub-paragraph (1) above, he may instead give directions for his removal in accordance with arrangements to be made by the Governor to any country or territory to which he could be removed under sub-paragraph (1).

(3) The costs of complying with any directions given under this paragraph shall be defrayed by the Governor.

**10A.** Where directions are given in respect of a person under any of paragraphs 8 to 10 above, directions to the same effect may be given under that paragraph in respect of a member of the person's family.

**11.** A person in respect of whom directions are given under any of paragraphs 8 to 10 above may be placed, under the authority of an immigration officer, on board any ship or aircraft in which he is to be removed in accordance with the directions.

#### *Seamen and aircrews*

(1) If, on a person's examination by an immigration officer under paragraph 2 above, the immigration officer is satisfied that he has come to the Isle of Man for the purpose of joining a ship or aircraft as a member of the crew, then the immigration officer may limit the duration of any leave he gives that person to enter the Isle of Man by requiring him to leave the Isle of Man in a ship or aircraft specified or indicated by the notice giving leave.

(2) Where a person (not being a British citizen) arrives in the Isle of Man for the purpose of joining a ship or aircraft as a member of a crew and, having been given leave to enter as mentioned in sub-paragraph (1) above, remains beyond the time limited by that leave, or is

reasonably suspected by an immigration officer of intending to do so, an immigration officer may—

- (a) give the captain of that ship or aircraft directions requiring the captain to remove him from the Isle of Man in that ship or aircraft; or
- (b) give the owners or agents of that ship or aircraft directions requiring them to remove him from the Isle of Man in any ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents; or
- (c) give those owners or agents directions requiring them to make arrangements for his removal from the Isle of Man in any ship or aircraft specified or indicated in the directions to a country or territory so specified, being either—
  - (i) a country of which he is a national or citizen; or
  - (ii) a country or territory in which he has obtained a passport or other document of identity; or
  - (iii) a country or territory in which he embarked for the Isle of Man; or
  - (iv) a country or territory where he was engaged as a member of the crew of the ship or aircraft which he arrived in the Isle of Man to join; or
  - (v) a country or territory to which there is reason to believe that he will be admitted.

(1) Where a person being a member of the crew of a ship or aircraft is examined by an immigration officer under paragraph 2 above, the immigration officer may limit the duration of any leave he gives that person to enter the Isle of Man—

- (a) in the manner authorised by paragraph 12(1) above; or
- (b) if that person is to be allowed to enter the Isle of Man in order to receive hospital treatment, by requiring him, on completion of that treatment, to leave the Isle of Man in accordance with arrangements to be made for his repatriation; or
- (c) by requiring him to leave the Isle of Man within a specified period in accordance with arrangements to be made for his repatriation.

(2) Where a person (not being a British citizen) arrives in the Isle of Man as a member of the crew of a ship or aircraft, and either—

- (A) having lawfully entered the Isle of Man without leave by virtue of section 8(1) of this Act, he remains without leave beyond the time allowed by section 8(1), or is reasonably suspected by an immigration officer of intending to do so; or
- (B) having been given leave limited as mentioned in sub-paragraph (1) above, he remains beyond the time limited by that leave, or is reasonably suspected by an immigration officer of intending to do so;

an immigration officer may—

- (a) give the captain of the ship or aircraft in which he arrived directions requiring the captain to remove him from the Isle of Man in that ship or aircraft; or
- (b) give the owners or agents of that ship or aircraft directions requiring them to remove him from the Isle of Man, being a ship or aircraft specified or indicated in the directions, being a ship or aircraft of which they are the owners or agents; or
- (c) give those owners or agents directions requiring them to make arrangements for his removal from the Isle of Man in any ship or aircraft specified or indicated in the directions to a country or territory so specified, being either—
  - (i) a country of which he is a national or citizen; or

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- (ii) a country or territory in which he has obtained a passport or other document of identity; or
- (iii) a country in which he embarked for the Isle of Man; or
- (iv) a country or territory in which he was engaged as a member of the crew of the ship or aircraft in which he arrived in the Isle of Man; or
- (v) a country or territory to which there is reason to believe that he will be admitted.

(1) Where it appears to the Governor that directions might be given in respect of a person under paragraph 12 or 13 above, but that it is not practicable for them to be given or that, if given, they would be ineffective, then the Governor may give to the owners or agents of any ship or aircraft any such directions in respect of that person as are authorised by paragraph 12(2)(c) or 13(2)(c).

(2) Where the Governor may give directions for a person's removal in accordance with sub-paragraph (1) above, he may instead give directions for his removal in accordance with arrangements to be made by the Governor to any country or territory to which he could be removed under sub-paragraph (1).

(3) The costs of complying with any directions given under this paragraph shall be defrayed by the Governor.

**15.** A person in respect of whom directions are given under any of paragraphs 12 to 14 above may be placed, under the authority of an immigration officer, on board any ship or aircraft in which he is to be removed in accordance with the directions.

#### *Detention of persons liable to examination or removal*

(1) A person who may be required to submit to examination under paragraph 2 above may be detained under the authority of an immigration officer pending his examination and pending a decision to give or refuse him leave to enter.

(1A) A person whose leave to enter has been suspended under paragraph 2A may be detained under the authority of an immigration officer pending—

- (a) completion of his examination under that paragraph; and
- (b) a decision on whether to cancel his leave to enter.

(1B) A person who has been required to submit to further examination under paragraph 3(1A) may be detained under the authority of an immigration officer, for a period not exceeding 12 hours, pending the completion of the examination.

(2) If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10A or 12 to 14, that person may be detained under the authority of an immigration officer pending—

- (a) a decision whether or not to give such directions;
- (b) his removal in pursuance of such directions.

(3) A person on board a ship or aircraft may, under the authority of an immigration officer, be removed from the ship or aircraft for detention under this paragraph; but if an immigration officer so requires the captain of a ship or aircraft shall prevent from disembarking in the Isle of Man any person who has arrived in the United Kingdom in the ship or aircraft and been refused leave to enter, and the captain may for that purpose detain him in custody on board the ship or aircraft.

(4) The captain of a ship or aircraft, if so required by an immigration officer, shall prevent from disembarking in the Isle of Man or before the directions for his removal have been



fulfilled any person placed on board the ship or aircraft under paragraph 11 or 15 above, and the captain may for that purpose detain him in custody on board the ship or aircraft.

(1) A person liable to be detained under paragraph 16 above may be arrested without warrant by a constable or by an immigration officer.

(2) If—

(a) a justice of the peace is by written information on oath satisfied that there is reasonable ground for suspecting that a person liable to be arrested under this paragraph is to be found on any premises,

he may grant a warrant authorising any immigration officer or constable to enter, if need be by reasonable force, the premises named in the warrant for the purposes of searching for and arresting that person.

(1) Persons may be detained under paragraph 16 above in such places as the Governor may direct (when not detained in accordance with paragraph 16 on board a ship or aircraft).

(2) Where a person is detained under paragraph 16, any immigration officer, constable or prison officer, or any other person authorised by the Governor, may take all such steps as may be reasonably necessary for photographing, measuring or otherwise identifying him.

(2A) The power conferred by sub-paragraph (2) includes power to take fingerprints.

(3) Any person detained under paragraph 16 may be taken in the custody of a constable, or of any person acting under the authority of an immigration officer, to and from any place where his attendance is required for the purpose of ascertaining his citizenship or nationality or of making arrangements for his admission to a country or territory other than the Isle of Man, or where he is required to be for any other purpose connected with the operation of this Act.

(4) A person shall be deemed to be in legal custody at any time when he is detained under paragraph 16 or is being removed in pursuance of sub-paragraph (3) above.

(1) Where a person is refused leave to enter the Isle of Man and directions are given in respect of him under paragraph 8 or 10 above, then subject to the provisions of this paragraph the owners or agents of the ship or aircraft in which he arrived shall be liable to pay the Governor on demand any expenses incurred by the latter in respect of the custody, accommodation or maintenance of that person for any period (not exceeding 14 days) after his arrival while he was detained or liable to be detained under paragraph 16 above.

(2) Sub-paragraph (1) above shall not apply to expenses in respect of a person who, when he arrived in the Isle of Man, held a certificate of entitlement or a current entry clearance or was the person named in a current work permit; and for this purpose a document purporting to be a certificate of entitlement, entry clearance or work permit is to be regarded as being one unless its falsity is reasonably apparent.

(3) If, before the directions for a person's removal under paragraph 8 or 10 above have been carried out, he is given leave to enter the Isle of Man, or if he is afterwards given that leave in consequence of the determination in his favour of an appeal under this Act (being an appeal against a refusal of leave to enter by virtue of which the directions were given), or it is determined on an appeal under this Act that he does not require leave to enter (being an appeal occasioned by such a refusal), no sum shall be demanded under sub-paragraph (1) above for expenses incurred in respect of that person and any sum already demanded and paid shall be refunded.

(4) The expenses to which subparagraph (1) above applies include expenses in conveying the person in question to and from the place where he is detained or accommodated.

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(1) Subject to the provisions of this paragraph, in either of the following cases, that is to say—

- (a) where directions are given in respect of an illegal entrant under paragraph 9 or 10 above; and
- (b) where a person has lawfully entered the Isle of Man without leave by virtue of section 8(1) of this Act, but directions are given in respect of him under paragraph 13(2)(A) above or, in a case within paragraph 13(2)(A), under paragraph 14;

the owners or agents of the ship or aircraft in which he arrived in the Isle of Man shall be liable to pay the Governor on demand any expenses incurred by the latter in respect of the custody, accommodation or maintenance of that person for any period (not exceeding 14 days) after his arrival while he was detained or liable to be detained under paragraph 16 above.

(1A) Sub-paragraph (1) above shall not apply to expenses in respect of an illegal entrant if he obtained leave to enter by deception and the leave has not been cancelled under paragraph 6(2) above.

(2) If, before the directions for a person's removal from the Isle of Man have been carried out, he is given leave to remain in the Isle of Man, no sum shall be demanded under sub-paragraph (1) above for expenses incurred in respect of that person and any sum already demanded and paid shall be refunded.

(3) The expenses to which subparagraph (1) above applies include expenses in conveying the person in question to and from the place where he is detained or accommodated.

#### *Temporary admission or release of persons liable to detention*

(1) A person liable to detention or detained under paragraph 16(1), (1A) or (2) above may, under the written authority of an immigration officer, be temporarily admitted to the Isle of Man without being detained or be released from detention; but this shall not prejudice a later exercise of the power to detain him.

(2) So long as a person is at large in the Isle of Man by virtue of this paragraph, he shall be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police or an immigration officer as may from time to time be notified to him in writing by an immigration officer.

(2A) The provisions that may be included in restrictions as to residence imposed under sub-paragraph (2) include provisions of such a description as may be prescribed by regulations made by the Governor.

(2B) The regulations may, among other things, provide for the inclusion of provisions—

- (a) prohibiting residence in one or more particular areas;
- (b) requiring the person concerned to reside in specified accommodation and prohibiting him from being absent from that accommodation except in accordance with the restrictions imposed on him.

(2C) The regulations may provide that a particular description of provision may be imposed only for prescribed purposes.

(3) Sub-paragraph (4) below applies where a person who is at large in the Isle of Man by virtue of this paragraph is subject to a restriction as to reporting to an immigration officer with a view to the conclusion of his examination under paragraph 2 or 2A above.

(4) If the person fails at any time to comply with that restriction—

- (a) an immigration officer may direct that the person's examination shall be treated as concluded at that time; but

- (b) nothing in paragraph 6 above shall require the notice giving or refusing him leave to enter the Isle of Man to be given within twenty-four hours after that time.

(1) The following, namely—

- (a) a person detained under paragraph 16(1) above pending examination;

- (aa) a person detained under paragraph 16(1A) above pending completion of his examination or a decision on whether to cancel his leave to enter; and

- (b) a person detained under paragraph 16(2) above pending the giving of directions,

may be released on bail in accordance with this paragraph.

(1A) An immigration officer not below the rank of chief immigration officer or an adjudicator may release a person so detained on his entering into a recognizance conditioned for his appearance before an immigration officer at a time and place named in the recognizance or at such other time and place as may in the meantime be notified to him in writing by an immigration officer.

(1B) Sub-paragraph (1)(a) above shall not apply unless seven days have elapsed since the date of the person's arrival in the Isle of Man.

(2) The conditions of a recognizance taken under this paragraph may include conditions appearing to the immigration officer or adjudicator to be likely to result in the appearance of the person bailed at the required time and place; and any recognizance shall be with or without sureties as the officer or adjudicator may determine.

(3) In any case in which an immigration officer or adjudicator has power under this paragraph to release a person on bail, the officer or adjudicator may, instead of taking the bail, fix the amount and conditions of the bail (including the amount in which any sureties are to be bound) with a view to its being taken subsequently by any such person as may be specified by the officer or adjudicator; and on the recognizance being so taken the person to be bailed shall be released.

(1) Where a recognizance entered into under paragraph 22 above appears to an adjudicator to be forfeited, the adjudicator may by order declare it to be forfeited and adjudge the persons bound thereby, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound or such part of it, if any, as the adjudicator thinks fit; and an order under this sub-paragraph shall specify a court of summary jurisdiction, and—

- (a) the recognizance shall be treated for the purposes of collection, enforcement and remission of the sum forfeited as having been forfeited by the court so specified; and

- (b) the adjudicator shall, as soon as practicable, give particulars of the recognizance to the Chief Registrar.

(3) Any sum the payment of which is enforceable by virtue of this paragraph by a court of summary jurisdiction shall, for the purposes of section 89 of the Summary Jurisdiction Act 1989 (an Act of Tynwald), be treated as being due under a recognizance forfeited by such a court.

(1) An immigration officer or constable may arrest without warrant a person who has been released by virtue of paragraph 22 above—

- (a) if he has reasonable grounds for believing that that person is likely to break the condition of his recognizance that he will appear at the time and place required or to break any other condition of it, or has reasonable grounds to suspect that that person is breaking or has broken any such other condition; or

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- (b) if, a recognizance with sureties having been taken, he is notified in writing by any sureties of the surety's belief that that person is likely to break the first-mentioned condition, and of the surety's wish for that reason to be relieved of his obligation as a surety;

and paragraph 17(2) above shall apply for the arrest of a person under this paragraph as it applies for the arrest of a person under paragraph 17.

(2) A person arrested under this paragraph—

- (a) if not required by a condition on which he was released to appear before an immigration officer within twenty-four hours after the time of his arrest, shall as soon as practicable be brought before an adjudicator or, if that is not practicable within those twenty-four hours, before a justice of the peace; and
- (b) if required by such a condition to appear within those twenty-four hours before an immigration officer, shall be brought before that officer.

(3) An adjudicator or justice of the peace before whom a person is brought by virtue of sub-paragraph (2)(a) above—

- (a) if of the opinion that that person has broken or is likely to break any condition on which he was released, may either—
  - (i) direct that he be detained under the authority of the person by whom he was arrested; or
  - (ii) release him, on his original recognizance or on a new recognizance, with or without sureties; and
- (b) if not of that opinion, shall release him on his original recognizance.

**25.** The power to make rules of procedure conferred by section 106 of the Nationality, Immigration and Asylum Act 2002 (appeals) shall include power to make rules with respect to applications to an adjudicator under paragraphs 22 to 24 above and matters arising out of such applications.

#### *Entry and search of premises*

(1) This paragraph applies if—

- (a) a person is arrested under this Schedule; or
- (b) a person who was arrested by a constable (other than under this Schedule) is detained by an immigration officer under this Schedule.

(2) An immigration officer may enter and search any premises—

- (a) occupied or controlled by the arrested person, or
- (b) in which that person was when he was arrested, or immediately before he was arrested,

for relevant documents.

(3) The power may be exercised—

- (a) only if the officer has reasonable grounds for believing that there are relevant documents on the premises;
- (b) only to the extent that it is reasonably required for the purpose of discovering relevant documents; and
- (c) subject to sub-paragraph (4), only if a senior officer has authorised its exercise in writing.

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- (4) An immigration officer may conduct a search under sub-paragraph (2)—
- (a) before taking the arrested person to a place where he is to be detained; and
  - (b) without obtaining an authorisation under sub-paragraph (3)(c),
- if the presence of that person at a place other than one where he is to be detained is necessary to make an effective search for any relevant documents.
- (5) An officer who has conducted a search under sub-paragraph (4) must inform a senior officer as soon as is practicable.
- (6) The officer authorising a search, or who is informed of one under sub-paragraph (5), must make a record in writing of—
- (a) the grounds for the search; and
  - (b) the nature of the documents that were sought.
- (7) An officer searching premises under sub-paragraph (2)—
- (a) may seize and retain any documents he finds which he has reasonable grounds for believing are relevant documents; but
  - (b) may not retain any such document for longer than is necessary in view of the purpose for which the person was arrested.
- (8) But sub-paragraph (7)(a) does not apply to documents which the officer has reasonable grounds for believing are items subject to legal privilege.
- (9) “Relevant documents” means any documents which might—
- (a) establish the arrested person’s identity, nationality or citizenship; or
  - (b) indicate the place from which he has travelled to the Isle of Man or to which he is proposing to go.
- (10) “Senior officer” means an immigration officer not below the rank of chief immigration officer.

#### *Searching persons arrested by immigration officers*

- (1) This paragraph applies if a person is arrested under this Schedule.
- (2) An immigration officer may search the arrested person if he has reasonable grounds for believing that the arrested person may present a danger to himself or others.
- (3) The officer may search the arrested person for—
- (a) anything which he might use to assist his escape from lawful custody; or
  - (b) any document which might—
    - (i) establish his identity, nationality or citizenship; or
    - (ii) indicate the place from which he has travelled to the Isle of Man or to which he is proposing to go.
- (4) The power conferred by sub-paragraph (3) may be exercised—
- (a) only if the officer has reasonable grounds for believing that the arrested person may have concealed on him anything of a kind mentioned in that sub-paragraph; and
  - (b) only to the extent that it is reasonably required for the purpose of discovering any such thing.
- (5) A power conferred by this paragraph to search a person is not to be read as authorising an officer to require a person to remove any of his clothing in public other than an outer coat, jacket or glove; but it does authorise the search of a person’s mouth.

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(6) An officer searching a person under sub-paragraph (2) may seize and retain anything he finds, if he has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or to another person.

(7) An officer searching a person under sub-paragraph (3)(a) may seize and retain anything he finds, if he has reasonable grounds for believing that he might use it to assist his escape from lawful custody.

(8) An officer searching a person under sub-paragraph (3)(b) may seize and retain anything he finds, other than an item subject to legal privilege, if he has reasonable grounds for believing that it might be a document falling within that sub-paragraph.

(9) Nothing seized under sub-paragraph (6) or (7) may be retained when the person from whom it was seized—

- (a) is no longer in custody, or
- (b) is in the custody of a court but has been released on bail.

#### *Searching persons in police custody*

(1) This paragraph applies if a person—

- (a) has been arrested under this Schedule; and
- (b) is in custody at a police station.

(2) An immigration officer may, at any time, search the arrested person in order to ascertain whether he has with him—

- (a) anything which he might use to—
  - (i) cause physical injury to himself or others;
  - (ii) damage property;
  - (iii) interfere with evidence; or
  - (iv) assist his escape; or
- (b) any document which might—
  - (i) establish his identity, nationality or citizenship; or
  - (ii) indicate the place from which he has travelled to the Isle of Man or to which he is proposing to go.

(3) The power may be exercised only to the extent that the officer considers it to be necessary for the purpose of discovering anything of a kind mentioned in sub-paragraph (2).

(4) An officer searching a person under this paragraph may seize and retain anything he finds, if he has reasonable grounds for believing that—

- (a) that person might use it for one or more of the purposes mentioned in sub-paragraph (2)(a); or
- (b) it might be a document falling within sub-paragraph (2)(b).

(5) But the officer may not retain anything seized under sub-paragraph (2)(a)—

- (a) for longer than is necessary in view of the purpose for which the search was carried out; or
- (b) when the person from whom it was seized is no longer in custody or is in the custody of a court but has been released on bail.

(6) The person from whom something is seized must be told the reason for the seizure unless he is—

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- (a) violent or appears likely to become violent; or
  - (b) incapable of understanding what is said to him.
- (7) An intimate search may not be conducted under this paragraph.
- (8) The person carrying out a search under this paragraph must be of the same sex as the person searched.
- (9) “Intimate search” has the same meaning as in section 28H(11).

#### *Access and copying*

- (1) If a person showing himself—
- (a) to be the occupier of the premises on which seized material was seized, or
  - (b) to have had custody or control of the material immediately before it was seized,
- asks the immigration officer who seized the material for a record of what he seized, the officer must provide the record to that person within a reasonable time.
- (2) If a relevant person asks an immigration officer for permission to be granted access to seized material, the officer must arrange for that person to have access to the material under the supervision of an immigration officer.
- (3) An immigration officer may photograph or copy, or have photographed or copied, seized material.
- (4) If a relevant person asks an immigration officer for a photograph or copy of seized material, the officer must arrange for—
- (a) that person to have access to the material under the supervision of an immigration officer for the purpose of photographing or copying it; or
  - (b) the material to be photographed or copied.
- (5) A photograph or copy made under sub-paragraph (4)(b) must be supplied within a reasonable time.
- (6) There is no duty under this paragraph to arrange for access to, or the supply of a photograph or copy of, any material if there are reasonable grounds for believing that to do so would prejudice—
- (a) the exercise of any functions in connection with which the material was seized; or
  - (b) an investigation which is being conducted under this Act, or any criminal proceedings which may be brought as a result.
- (7) “Relevant person” means—
- (a) a person who had custody or control of seized material immediately before it was seized, or
  - (b) someone acting on behalf of such a person.
- (8) “Seized material” means anything which has been seized and retained under this Schedule.

**25E.** Section 28L applies for the purposes of this Schedule as it applies for the purposes of Part 3.

#### *Supplementary duties of those connected with ships or aircraft or with ports*

- (1) The owners or agents of a ship or aircraft employed to carry passengers for reward shall not, without the approval of the Governor, arrange for the ship or aircraft to call at a port in

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the Isle of Man other than a port of entry for the purpose of disembarking passengers, if any of the passengers on board may not enter the Isle of Man without leave, or for the purpose of embarking passengers unless the owners or agents have reasonable cause to believe all of them to be British citizens.

(1A) Sub-paragraph (1) does not apply in such circumstances, if any, as Governor may by order prescribe.

(2) The Governor may from time to time give written notice to the owners or agents of any ships or aircraft designating control areas for the embarkation or disembarkation of passengers in any port in the Isle of Man and specifying the conditions and restrictions (if any) to be observed in any control area; and where by notice given to any owners or agents a control area is for the time being designated for the embarkation or disembarkation of passengers at any port, the owners or agents shall take all reasonable steps to secure that, in the case of their ships or aircraft, passengers do not embark or disembark, as the case may be, at the port outside the control area and that any conditions or restrictions notified to them are observed.

(3) The Governor may also from time to time give to any persons concerned with the management of a port in the Isle of Man written notice designating control areas in the port and specifying conditions or restrictions to be observed in any control area; and any such person shall take all reasonable steps to secure that any conditions or restrictions as notified to him are observed.

(1) The captain of a ship or aircraft arriving in the Isle of Man—

- (a) shall take such steps as may be necessary to secure that persons on board do not disembark there unless either they have been examined by an immigration officer, or they disembark in accordance with arrangements approved by an immigration officer, or they are members of the crew who may lawfully enter the Isle of Man without leave by virtue of section 8(1) of this Act; and
- (b) where the examination of persons on board is to be carried out on the ship or aircraft, shall take such steps as may be necessary to secure that those to be examined are presented for the purpose in an orderly manner.

(2) The Governor may by order require, or enable an immigration officer to require, a responsible person in respect of a ship or aircraft to supply—

- (a) a passenger list showing the names and nationality or citizenship of passengers arriving or leaving on board the ship or aircraft;
- (b) particulars of members of the crew of the ship or aircraft.

(3) An order under sub-paragraph (2) may relate—

- (a) to all ships or aircraft arriving or expected to arrive in the United Kingdom;
- (b) to all ships or aircraft leaving or expected to leave the United Kingdom;
- (c) to ships or aircraft arriving or expected to arrive in the United Kingdom from or by way of a specified country;
- (d) to ships or aircraft leaving or expected to leave the United Kingdom to travel to or by way of a specified country;
- (e) to specified ships or specified aircraft.

(4) For the purposes of sub-paragraph (2) the following are responsible persons in respect of a ship or aircraft—

- (a) the owner or agent, and
- (b) the captain.

(5) An order under sub-paragraph (2)—



- (a) may specify the time at which or period during which information is to be provided,
- (b) may specify the form and manner in which information is to be provided,

#### *Passenger information*

- (1) This paragraph applies to ships or aircraft—
  - (a) which have arrived, or are expected to arrive, in the Isle of Man; or
  - (b) which have left, or are expected to leave, the Isle of Man.
- (2) If an immigration officer asks the owner or agent (“the carrier”) of a ship or aircraft for passenger information, the carrier must provide that information to the officer.
- (3) The officer may ask for passenger information relating to—
  - (a) a particular ship or particular aircraft of the carrier;
  - (b) particular ships or aircraft (however described) of the carrier; or
  - (c) all of the carrier’s ships or aircraft.
- (4) The officer may ask for—
  - (a) all passenger information in relation to the ship or aircraft concerned; or
  - (b) particular passenger information in relation to that ship or aircraft.
- (5) A request under sub-paragraph (2)—
  - (a) must be in writing;
  - (b) must state the date on which it ceases to have effect; and
  - (c) continues in force until that date, unless withdrawn earlier by written notice by an immigration officer.
- (6) The date may not be later than six months after the request is made.
- (7) The fact that a request under sub-paragraph (2) has ceased to have effect as a result of sub-paragraph (5) does not prevent the request from being renewed.
- (8) The information must be provided—
  - (a) in such form and manner as the Governor may direct; and
  - (b) at such time as may be stated in the request.
- (9) “Passenger information” means such information relating to the passengers carried, or expected to be carried, by the ship or aircraft as may be specified.
- (10) “Specified” means specified in an order made by the Governor.

#### *Notification of non-EEA arrivals*

- (1) If a senior officer, or an immigration officer authorised by a senior officer, gives written notice to the owner or agent (“the carrier”) of a ship or aircraft, the carrier must inform a relevant officer of the expected arrival in the Isle of Man of any ship or aircraft—
  - (a) of which he is the owner or agent; and
  - (b) which he expects to carry a person who is not an EEA national.
- (2) The notice may relate to—
  - (a) a particular ship or particular aircraft of the carrier;
  - (b) particular ships or aircraft (however described) of the carrier; or

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- (c) all of the carrier's ships or aircraft.
- (3) The notice—
  - (a) must state the date on which it ceases to have effect; and
  - (b) continues in force until that date, unless withdrawn earlier by written notice given by a senior officer.
- (4) The date may not be later than six months after the notice is given.
- (5) The fact that a notice under sub-paragraph (1) has ceased to have effect as a result of sub-paragraph (3) does not prevent the notice from being renewed.
- (6) The information must be provided—
  - (a) in such form and manner as the notice may require; and
  - (b) before the ship or aircraft concerned departs for the Isle of Man.
- (7) If a ship or aircraft travelling to the Isle of Man stops at one or more places before arriving in the Isle of Man, it is to be treated as departing for the Isle of Man when it leaves the last of those places.
- (8) "Senior officer" means an immigration officer not below the rank of chief immigration officer.
- (9) "Relevant officer" means—
  - (a) the officer who gave the notice under sub-paragraph (1); or
  - (b) any immigration officer at the port at which the ship or aircraft concerned is expected to arrive.
- (10) "EEA national" means a national of a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being.

## PART 2 – Effect of appeals

### *Grant of bail pending appeal*

- (1) Where a person (in the following provisions of this Schedule referred to as "an appellant") has an appeal pending under Part 5 of the Nationality, Immigration and Asylum Act 2002 and is for the time being detained under Part 1 of this Schedule, he may be released on bail in accordance with this paragraph.
- (2) An immigration officer not below the rank of chief immigration officer or a police officer not below the rank of inspector may release an appellant on his entering into a recognizance conditioned for his appearance before an adjudicator at a time and place named in the recognizance.
- (3) An adjudicator may release an appellant on his entering into a recognizance conditioned for his appearance before an adjudicator at a time and place named in the recognizance.
- (5) The conditions of a recognizance taken under this paragraph may include conditions appearing to the person fixing the bail to be likely to result in the appearance of the appellant at the time and place named; and any recognizance shall be with or without sureties as that person may determine.
- (6) In any case in which an adjudicator has power or is required by this paragraph to release an appellant on bail, the adjudicator may, instead of taking the bail, fix the amount and conditions of the bail (including the amount in which any sureties are to be bound) with a view

to its being taken subsequently by any such person as may be specified by the adjudicator; and on the recognizance being so taken the appellant shall be released.

#### *Restrictions on grant of bail*

(1) An appellant shall not be released under paragraph 29 above without the consent of the Governor if directions for the removal of the appellant from the Isle of Man are for the time being in force, or the power to give such directions is for the time being exercisable.

(2) Notwithstanding paragraph 29(3) above, an adjudicator shall not be obliged to release an appellant unless the appellant enters into a proper recognizance, with sufficient and satisfactory sureties if required; and the adjudicator shall not be obliged to release an appellant if it appears to the adjudicator—

- (a) that the appellant, having on any previous occasion been released on bail (whether under paragraph 24 or under any other provision), has failed to comply with the conditions of any recognizance entered into by him on that occasion;
- (b) that the appellant is likely to commit an offence unless he is retained in detention;
- (c) that the release of the appellant is likely to cause danger to public health;
- (d) that the appellant is suffering from mental disorder and that his continued detention is necessary in his own interests or for the protection of any other person; or
- (e) that the appellant is under the age of seventeen, that arrangements ought to be made for his care in the event of his release and that no satisfactory arrangements for that purpose have been made.

#### *Forfeiture of recognizances*

(1) Where under paragraph 29 above a recognizance is entered into conditioned for the appearance of an appellant before an adjudicator, and it appears to the adjudicator, to be forfeited, the adjudicator may by order declare it to be forfeited and adjudge the persons bound thereby, whether as principal or sureties, or any of them, to pay the sum in which they are respectively bound or such part of it, if any, as the adjudicator thinks fit.

(2) An order under this paragraph shall, for the purposes of this sub-paragraph, specify a court of summary jurisdiction; and the recognizance shall be treated for the purposes of collection, enforcement and remission of the sum forfeited as having been forfeited by the court so specified.

(3) Where an adjudicator makes an order under this paragraph the adjudicator shall, as soon as practicable, give particulars of the recognizance to the Chief Registrar.

(4) Any sum the payment of which is enforceable by virtue of this paragraph by a court of summary jurisdiction shall, for the purposes of section 89 of the Summary Jurisdiction Act 1989 (an Act of Tynwald), be treated as being due under a recognizance forfeited by such a court.

#### *Arrest of appellants released on bail*

(1) An immigration officer or constable may arrest without warrant a person who has been released by virtue of this Part of this Schedule—

- (a) if he has reasonable grounds for believing that that person is likely to break the condition of his recognizance that he will appear at the time and place required or to

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break any other condition of it, or has reasonable ground to suspect that that person is breaking or has broken any such other condition; or

- (b) if, a recognizance with sureties having been taken, he is notified in writing by any surety of the surety's belief that that person is likely to break the first-mentioned condition, and of the surety's wish for that reason to be relieved of his obligations as a surety;

and paragraph 17(2) above shall apply for the arrest of a person under this paragraph as it applies for the arrest of a person under paragraph 17.

(2) A person arrested under this paragraph—

- (a) if not required by a condition on which he was released to appear before an adjudicator within twenty-four hours after the time of his arrest, shall as soon as practicable be brought before an adjudicator or, if that is not practicable within those twenty-four hours, before a justice of the peace; and
- (b) if required by such a condition to appear within those twenty-four hours before an adjudicator, shall be brought before that adjudicator.

(3) An adjudicator or justice of the peace before whom a person is brought by virtue of sub-paragraph (2)(a) above—

- (a) if of the opinion that that person has broken or is likely to break any condition on which he was released, may either—
  - (i) direct that he be detained under the authority of the person by whom he was arrested; or
  - (ii) release him on his original recognizance or on a new recognizance, with or without sureties; and
- (b) if not of that opinion, shall release him on his original recognizance.

#### *Grant of bail pending removal*

(1) Paragraph 22 above shall apply in relation to a person—

- (a) directions for whose removal from the Isle of Man are for the time being in force; and
- (b) who is for the time being detained under Part 1 of this Schedule,

as it applies in relation to a person detained under paragraph 16(1) above pending examination, detained under paragraph 16(1A) above pending completion of his examination or a decision on whether to cancel his leave to enter or detained under paragraph 16(2) above pending the giving of directions.

(2) Paragraphs 23 to 25 above shall apply as if any reference to paragraph 22 above included a reference to that paragraph as it applies by virtue of this paragraph.

### SCHEDULE 3 – Supplementary provisions as to deportation

#### *Removal of persons liable to deportation*

(1) Where a deportation order is in force against any person, the Governor may give directions for his removal to a country or territory specified in the directions being either—

- (a) a country of which he is a national or citizen; or

- (b) a country or territory to which there is reason to believe that he will be admitted.
- (2) The directions under sub-paragraph (1) above may be either—
- (a) directions given to the captain of a ship or aircraft about to leave the United Kingdom requiring him to remove the person in question in that ship or aircraft; or
  - (b) directions given to the owners or agents of any ship or aircraft requiring them to make arrangements for his removal in a ship or aircraft specified or indicated in the directions; or
  - (c) directions for his removal in accordance with arrangements to be made by the Governor.
- (3) In relation to directions given under this paragraph, paragraphs 11 and 16(4) of Schedule 2 to this Act shall apply, with the substitution of references to the Governor for references to an immigration officer, as they apply in relation to directions for removal given under paragraph 8 of that Schedule.
- (4) The Governor, if he thinks fit, may apply in or towards payment of the expenses of or incidental to the voyage from the United Kingdom of a person against whom a deportation order is in force, or the maintenance until departure of such a person and his dependants, if any, any money belonging to that person; and except so far as they are paid as aforesaid, those expenses shall be defrayed by the Governor.

#### *Detention or control pending deportation*

- (1) Where a recommendation for deportation made by a court is in force in respect of any person, and that person is not detained in pursuance of the sentence or order of any court, he shall, unless the court by which the recommendation is made otherwise directs, or a direction is given under sub-paragraph (1A) below, be detained pending the making of a deportation order in pursuance of the recommendation, unless the Governor directs him to be released pending further consideration of his case or he is released on bail.
- (1A) Where—
- (a) a recommendation for deportation made by a court on conviction of a person is in force in respect of him; and
  - (b) he appeals against his conviction or against that recommendation,
- the powers that the court determining the appeal may exercise include power to direct him to be released without setting aside the recommendation.
- (2) Where notice has been given to a person in accordance with regulations under section 105 of the Nationality, Immigration and Asylum Act 2002 (notice of decision) of a decision to make a deportation order against him, and he is not detained in pursuance of the sentence or order of a court, he may be detained under the authority of the Governor pending the making of the deportation order.
- (3) Where a deportation order is in force against any person, he may be detained under the authority of the Governor pending his removal or departure from the Isle of Man (and if already detained by virtue of sub-paragraph (1) or (2) above when the order is made, shall continue to be detained unless he is released on bail or the Governor directs otherwise).
- (4) In relation to detention under sub-paragraph (2) or (3) above, paragraphs 17, 18 and 25A to 25E of Schedule 2 to this Act shall apply as they apply in relation to detention under paragraph 16 of that Schedule; and for that purpose the reference in paragraph 17(1) to a person liable to detention includes a reference to a person who would be liable to detention upon receipt of a notice which is ready to be given to him.

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(4A) Paragraphs 22 to 25 of Schedule 2 to this Act apply in relation to a person detained under sub-paragraph (1), (2) or (3) as they apply in relation to a person detained under paragraph 16 of that Schedule.

(5) A person to whom this sub-paragraph applies shall be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police or an immigration officer as may from time to time be notified to him in writing by the Governor.

(6) The persons to whom sub-paragraph (5) above applies are—

- (a) a person liable to be detained under sub-paragraph (1) above, while by virtue of a direction of the Governor he is not so detained; and
- (b) a person liable to be detained under sub-paragraph (2) or (3) above, while he is not so detained.

#### *Effect of appeals*

3. So far as they relate to an appeal under section 82(1) of the Nationality, Immigration and Asylum Act 2002 against a decision of the kind referred to in section 82(2)(j) or (k) of that Act (decision to make deportation order and refusal to revoke deportation order), paragraphs 29 to 33 of Schedule 2 to this Act shall apply for the purposes of this Schedule as if the reference in paragraph 29(1) to Part 1 of that Schedule were a reference to this Schedule.

#### *Powers of courts pending deportation*

4. Where the release of a person recommended for deportation is directed by a court, he shall be subject to such restrictions as to residence, as to his employment or occupation and as to reporting to the police as the court may direct.

(1) On an application made—

- (a) by or on behalf of a person recommended for deportation whose release was so directed; or
- (b) by a constable; or
- (c) by an immigration order,

the appropriate court shall have the powers specified in sub-paragraph (2) below.

(2) The powers mentioned in sub-paragraph (1) above are—

- (a) if the person to whom the application relates is not subject to any such restrictions imposed by a court as are mentioned in paragraph 4 above, to order that he shall be subject to any such restrictions as the court may direct; and
- (b) if he is subject to such restrictions imposed by a court by virtue of that paragraph or this paragraph—
  - (i) to direct that any of them shall be varied or shall cease to have effect; or
  - (ii) to give further directions as to his residence and reporting.

(1) In this Schedule “the appropriate court” means—

- (a) where the court which directed release was a court of summary jurisdiction, a court of summary jurisdiction;
- (b) where the court which directed release was a Court of General Gaol Delivery, that Court or a court of summary jurisdiction;

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- (c) where the court which directed release was the Staff of Government Division on appeal from a Court of General Gaol Delivery, that Division or that Court;
- (d) where the court which directed release was the Staff of Government Division on appeal from a court of summary jurisdiction, that Division or a court of summary jurisdiction.

(2) In this paragraph “the Staff of Government Division” means the Staff of Government Division of the High Court.

(1) A constable or immigration officer may arrest without warrant any person who is subject to restrictions imposed by a court under this Schedule and who at the time of the arrest is in the Isle of Man—

- (a) if he has reasonable grounds to suspect that that person is contravening or has contravened any of those restrictions; or
- (b) if he has reasonable grounds for believing that that person is likely to contravene any of them.

(1) A person arrested in pursuance of paragraph 7 above shall be brought as soon as practicable and in any event within twenty-four hours after his arrest before a justice of the peace.

(2) In reckoning for the purposes of this paragraph any period of 24 hours, no account shall be taken of Christmas Day, Good Friday or any Sunday.

**10.** Any justice of the peace before whom a person is brought by virtue of paragraph 8 above—

- (a) if of the opinion that that person is contravening, has contravened or is likely to contravene any restriction imposed on him by a court under this Schedule, may direct—
  - (i) that he be detained; or
  - (ii) that he be released subject to such restrictions as to his residence and reporting to the police as the court may direct; and
- (b) if not of that opinion, shall release him without altering the restrictions as to his residence and his reporting to the police.

SCHEDULE 4 – Integration  
with Isle of Man law of  
immigration law of the  
United Kingdom and  
of the Channel Islands

*Leave to enter*

(1) Where under the immigration laws of the United Kingdom or any of the Channel Islands a person is or has been given leave to enter or remain in the United Kingdom or, as the case may be, any of the Channel Islands, or is or has been refused leave, this Act shall have effect in relation to him, if he is not a British citizen, as if the leave were leave (of like duration) given under this Act to enter or remain in the Isle of Man, or, as the case may be, as if he had under this Act been refused leave to enter the Isle of Man.

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(2) Where under the immigration laws of the United Kingdom or any of the Channel Islands a person has a limited leave to enter or remain in the United Kingdom or, as the case may be, any of the Channel Islands subject to any such conditions as are authorised in the Isle of Man by section 3(1) of this Act (being conditions imposed by notice given to him, whether the notice of leave or a subsequent notice), then on his coming to the Isle of Man this Act shall apply, if he is not a British citizen, as if those conditions related to his stay in the Isle of Man and had been imposed by notice under this Act.

(3) Without prejudice to the generality of sub-paragraphs (1) and (2) above, anything having effect in the Isle of Man by virtue of either of those sub-paragraphs may in relation to the Isle of Man be varied or revoked under this Act in like manner as if it had originated under this Act as mentioned in that sub-paragraph.

(4) Where anything having effect in the Isle of Man by virtue of sub-paragraph (1) or (2) above ceases to have effect or is altered in effect as mentioned in sub-paragraph (3) or otherwise by anything done under this Act, sub-paragraph (1) or (2) shall not thereafter apply to it or, as the case may be, shall apply to it as so altered in effect.

(5) Nothing in this paragraph shall be taken as conferring on a person a right of appeal under this Act against any decision or action taken in the United Kingdom or any of the Channel Islands.

2. Notwithstanding section 3(4) of this Act, leave given to a person under this Act to enter or remain in the Isle of Man shall not continue to apply on his return to the Isle of Man after an absence if he has during that absence entered the United Kingdom or any of the Channel Islands in circumstances in which he is required under the immigration laws of the United Kingdom or any of the Channel Islands to obtain leave to enter.

### *Deportation*

(1) This Act has effect in relation to a person who is subject to a UK or CI deportation order as if the order were a deportation order made against him under this Act.

(2) Sub-paragraph (1) does not apply if the person concerned is—

- (a) a British citizen;
- (b) an EEA national;
- (c) a member of the family of an EEA national; or
- (d) a member of the family of a British citizen who is neither such a citizen nor an EEA national.

(3) The Governor does not, as a result of sub-paragraph (1), have power to revoke a UK or CI deportation order.

(4) In any particular case, the Governor may direct that paragraph (b), (c) or (d) of sub-paragraph (2) is not to apply in relation to the UK or CI deportation order.

(5) Nothing in this paragraph makes it unlawful for a person in respect of whom a UK or CI deportation order is in force in the United Kingdom or any of the Channel Islands to enter the Isle of Man on his way from the United Kingdom or any of the Channel Islands to a place outside the Isle of Man.

(6) “UK or CI deportation order” means an order made under the immigration laws of the United Kingdom or any of the Channel Islands under which a person is, or has been, ordered to leave the United Kingdom or any of the Channel Islands and forbidden to return.



### *Illegal entrants*

4. Notwithstanding anything in section 1(3) of this Act, it shall not be lawful for a person who is not a British citizen to enter the Isle of Man from the United Kingdom or any of the Channel Islands where his presence was unlawful under the immigration laws of the United Kingdom or, as the case may be, of that island, unless he is given leave to enter.”

Article 11

## PART 2

### The Immigration Act 1988

#### **“2 Restriction on exercise of right of abode in cases of polygamy**

(1) This section applies to any woman who—

(a) has the right of abode in the Isle of Man under section 2(1)(b) of the principal Act as, or as having been, the wife of a man (“the husband”)—

(i) to whom she is or was polygamously married; and

(ii) who is or was such a citizen of the United Kingdom and Colonies, Commonwealth citizen or British subject as is mentioned in section 2(2)(a) or (b) of that Act as in force immediately before the commencement of the British Nationality Act 1981; and

(b) has not before the coming into force of this section and since her marriage to the husband been in the Isle of Man.

(2) A woman to whom this section applies shall not be entitled to enter the Isle of Man in the exercise of the right of abode mentioned in subsection (1)(a) above or to be granted a certificate of entitlement in respect of that right if there is another woman living (whether or not one to whom this section applies) who is the wife or widow of the husband and who—

(a) is, or at any time since her marriage to the husband has been, in the Isle of Man; or

(b) has been granted a certificate of entitlement in respect of the right of abode mentioned in subsection (1)(a) above or an entry clearance to enter the Isle of Man as the wife of the husband.

(3) So long as a woman is precluded by subsection (2) above from entering the Isle of Man in the exercise of her right of abode or being granted a certificate of entitlement in respect of that right the principal Act shall apply to her as it applies to a person not having a right of abode.

(4) Subsection (2) above shall not preclude a woman from re-entering the Isle of Man if since her marriage to the husband she has at any time previously been in the Isle of Man and there was at that time no such other woman living as is mentioned in that subsection.

(5) Where a woman claims that this section does not apply to her because she had been in the Isle of Man before the coming into force of this section and since her marriage to the husband it shall be for her to prove that fact.

(6) For the purposes of this section a marriage may be polygamous although at its inception neither party has any spouse additional to the other.

(7) For the purposes of subsections (1)(b), (2)(a), (4) and (5) above there shall be disregarded presence in the Isle of Man as a visitor or an illegal entrant and presence in circumstances in which a person is deemed by section 11(1) of the principal Act not to have entered the Isle of Man.

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(8) In subsection (2)(b) above the reference to a certificate of entitlement includes a reference to a certificate treated as such a certificate by virtue of section 39(8) of the British Nationality Act 1981.

(9) No application by a woman for a certificate of entitlement in respect of such a right of abode as is mentioned in subsection (1)(a) above or for an entry clearance shall be granted if another application for such a certificate or clearance is pending and that application is made by a woman as the wife or widow of the same husband.

(10) For the purposes of subsection (9) above an application shall be regarded as pending so long as it has not been finally determined.

(11) This section does not apply to a woman who has made an application for a certificate of entitlement in respect of the right of abode mentioned in subsection (1)(a) before the 27th November 1991.

## **7 Persons exercising Community rights and nationals of member States**

(1) A person shall not under the principal Act require leave to enter or remain in the Isle of Man where he is entitled to enter or remain in the United Kingdom by virtue of an enforceable Community right or of any provision made under section 2B of the European Communities (Isle of Man) Act 1973 (an Act of Tynwald).

(2) The Council of Ministers may by order give leave to enter the Isle of Man for a limited period to any class of persons who are nationals of member States but who are not entitled to enter the Isle of Man as mentioned in subsection (1) above; and any such order may give leave subject to such conditions as may be imposed by the order.

(3) References in the principal Act to limited leave shall include references to leave given by an order under subsection (2) above and a person having leave by virtue of such an order shall be treated as having been given that leave by a notice given to him by an immigration officer within the period specified in paragraph 6(1) of Schedule 2 to that Act.

## **11 Expenses and receipts**

(1) There shall be paid out of money provided by Tynwald any expenses incurred by the Governor in consequence of this Act.

(2) Any sums received by the Governor by virtue of this Act shall be paid into the General Revenue of the Isle of Man.

## **12 Short title and interpretation**

(1) This Act may be cited as the Immigration Act 1988.

(2) In this Act “the principal Act” means the Immigration Act 1971 and any expression which is also used in that Act has the same meaning as in that Act.”

Article 13

## PART 3

### The Asylum and Immigration Act 1996

#### “Persons subject to immigration control

##### **8 Restrictions on employment**

(1) Subject to subsection (2) below, if any person (“the employer”) employs a person subject to immigration control (“the employee”) who has attained the age of 16, the employer shall be guilty of an offence if—

- (a) the employee has not been granted leave to enter or remain in the Isle of Man; or
- (b) the employee’s leave is not valid and subsisting, or is subject to a condition precluding him from taking up the employment,

and (in either case) the employee does not satisfy such conditions as may be specified in an order made by the Department of Trade and Industry.

(2) It is a defence for a person charged with an offence under this section to prove that before the employment began any relevant requirement of an order of the Department of Trade and Industry under subsection (2A) was complied with.

(2A) An order under this subsection may—

- (a) require the production to an employer of a document of a specified description;
- (b) require the production to an employer of one document of each of a number of specified descriptions;
- (c) require an employer to take specified steps to retain, copy or record the content of a document produced to him in accordance with the order;
- (d) make provision which applies generally or only in specified circumstances;
- (e) make different provision for different circumstances.

(3) The defence afforded by subsection (2) above shall not be available in any case where the employer knew that his employment of the employee would constitute an offence under this section.

(4) A person guilty of an offence under this section shall be liable—

- (a) on conviction on information, to a fine, or
- (b) on summary conviction, to a fine not exceeding the statutory maximum.

(5) Where an offence under this section committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate; or
- (b) any person who was purporting to act in any such capacity,

he as well as the body corporate shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(6) Where the affairs of a body corporate are managed by its members, subsection (5) above shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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(6A) Where an offence under this section is committed by a partnership (other than a limited partnership) each partner shall be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(6B) Subsection (5) shall have effect in relation to a limited partnership as if—

- (a) a reference to a body corporate were a reference to a limited partnership, and
- (b) a reference to an officer of the body were a reference to a partner.

(6C) Subsection (5) shall have effect in relation to a limited liability company constituted under the Limited Liability Companies Act 1996 (an Act of Tynwald) as if—

- (a) a reference to a body corporate were a reference to a limited liability company, and
- (b) a reference to an officer of the body were a reference to a member of the company or its manager or registered agent.

(8) In this section—

“contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether it is oral or in writing;

“employ” means employ under a contract of employment and “employment” shall be construed accordingly.

(10) An offence under this section shall be treated as—

- (a) a relevant offence for the purpose of sections 28B and 28D of that Act (search, entry and arrest), and
- (b) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28E, 28G and 28H (search after arrest).

## **8A Code of practice**

(1) Codes of practice issued under this section as it has effect in the United Kingdom shall apply in respect of the Isle of Man—

- (a) with the modification that references to unlawful discrimination shall be construed as references to discrimination in contravention of section 2(1) of the Race Relations Act 2004 (an Act of Tynwald), and
- (b) with any other necessary modifications.

(9) A failure on the part of any person to observe a provision of the code does not of itself make him liable to any proceedings.

(10) But the code is admissible in evidence in proceedings before the Employment Tribunal under the Employment Act 2006 (an Act of Tynwald).

(11) If any provision of the code appears to the tribunal to be relevant to any question arising in such proceedings, that provision is to be taken into account in determining the question.

## Miscellaneous and supplemental

### **13 Short title and interpretation**

(1) This Act may be cited as the Asylum and Immigration Act 1996.

(2) In this Act—

“the 1971 Act” means the Immigration Act 1971 as that Act has effect in the Isle of Man;

“person subject to immigration control” means a person who under the 1971 Act requires leave to enter or remain in the Isle of Man (whether or not such leave has been given).”

Article 15

## PART 4

### The Immigration and Asylum Act 1999

#### “Part 1 - Immigration: general

##### *Removal from the Isle of Man*

#### **10 Removal of certain persons unlawfully in the Isle of Man**

(1) A person who is not a British citizen may be removed from the Isle of Man, in accordance with directions given by an immigration officer, if—

- (a) having only a limited leave to enter or remain, he does not observe a condition attached to the leave or remains beyond the time limited by the leave;
- (b) he uses deception in seeking (whether successfully or not) leave to remain;
- (ba) his indefinite leave to enter or remain has been revoked under section 76(3) of the Nationality, Immigration and Asylum Act 2002 (person ceasing to be refugee); or
- (c) directions have been given for the removal, under this section, of a person to whose family he belongs.

(3) Directions for the removal of a person may not be given under subsection (1)(c) unless the Governor has given the person written notice of the intention to remove him.

(4) A notice under subsection (3) may not be given if—

- (a) the person whose removal under subsection (1)(a) or (b) is the cause of the proposed directions under subsection (1)(c) has left the Isle of Man, and
- (b) more than eight weeks have elapsed since that person’s departure.

(5) If a notice under subsection (3) is sent by first class post to a person’s last known address, that subsection shall be taken to be satisfied at the end of the second day after the day of posting.

(5A) Directions for the removal of a person under subsection (1)(c) cease to have effect if he ceases to belong to the family of the person whose removal under subsection (1)(a) or (b) is the cause of the directions under subsection (1)(c).

(6) Directions under this section—

- (a) may be given only to persons falling within a prescribed class;
- (b) may impose any requirements of a prescribed kind.

(7) In relation to any such directions, paragraphs 10, 11, 16 to 18, 21 and 22 to 24 of Schedule 2 to the 1971 Act (administrative provisions as to control of entry), apply as they apply in relation to directions given under paragraph 8 of that Schedule.

(8) When a person is notified that a decision has been made to remove him in accordance with this section, the notification invalidates any leave to enter or remain in the Isle of Man previously given to him.

(9) The costs of complying with a direction given under this section (so far as reasonably incurred) must be met by the Governor.

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(10) A person shall not be liable to removal from the Isle of Man under this section at a time when section 7(1)(b) of the Immigration Act 1971 (Commonwealth and Irish citizens ordinarily resident in United Kingdom and Islands) would prevent a decision to deport him.

### **13 Proof of identity of persons to be removed or deported**

(1) This section applies if a person—

- (a) is to be removed from the Isle of Man to a country of which he is a national or citizen; but
- (b) does not have a valid passport or other document establishing his identity and nationality or citizenship and permitting him to travel.

(2) If the country to which the person is to be removed indicates that he will not be admitted to it unless identification data relating to him are provided by the Governor, he may provide them with such data.

(3) In providing identification data, the Governor must not disclose whether the person concerned has made a claim for asylum.

(4) For the purposes of paragraph 4(1) of Schedule 4 to the Data Protection Act 2002 (an Act of Tynwald), the provision under this section of identification data is a transfer of personal data which is necessary for reasons of substantial public interest.

(5) “Identification data” means—

- (a) fingerprints taken under section 141; or
- (b) data collected in accordance with regulations made under section 144.

(6) “Removed” means removed as a result of directions given under section 10 or under Schedule 2 or 3 to the 1971 Act.

### **14 Escorts for persons removed from the Isle of Man under directions**

(1) Directions for, or requiring arrangements to be made for, the removal of a person from the Isle of Man may include or be amended to include provision for the person who is to be removed to be accompanied by an escort consisting of one or more persons specified in the directions.

(2) The Governor may by regulations make further provision supplementing subsection (1).

(3) The regulations may, in particular, include provision—

- (a) requiring the person to whom the directions are given to provide for the return of the escort to the Isle of Man;
- (b) requiring him to bear such costs in connection with the escort (including, in particular, remuneration) as may be prescribed;
- (c) as to the cases in which the Governor is to bear those costs;
- (d) prescribing the kinds of expenditure which are to count in calculating the costs incurred in connection with escorts.

### *Provision of financial security*

### **16 Security on grant of entry clearance**

(1) In such circumstances as may be specified, the Governor may require security to be given, with respect to a person applying for entry clearance, before clearance is given.

- (2) In such circumstances as may be specified—
  - (a) the Governor may accept security with respect to a person who is applying for entry clearance but for whom security is not required; and
  - (b) in determining whether to give clearance, account may be taken of any security so provided.
- (3) “Security” means—
  - (a) the deposit of a sum of money by the applicant, his agent or any other person, or
  - (b) the provision by the applicant, his agent or any other person of a financial guarantee of a specified kind,

with a view to securing that the applicant will, if given leave to enter the Isle of Man for a limited period, leave the Isle of Man at the end of that period.

(4) Immigration rules must make provision as to the circumstances in which a security provided under this section—

- (a) is to be repaid, released or otherwise cancelled; or
- (b) is to be forfeited or otherwise realised by the Governor.

(5) No security provided under this section may be forfeited or otherwise realised unless the person providing it has been given an opportunity, in accordance with immigration rules, to make representations to the Governor.

(6) Immigration rules may, in particular—

- (a) fix the maximum amount that may be required, or accepted, by way of security provided under this section;
- (b) specify the form and manner in which such a security is to be given or may be accepted;
- (c) make provision, where such a security has been forfeited or otherwise realised, for the person providing it to be reimbursed in such circumstances as may be specified;
- (d) make different provision for different cases or descriptions of case.

(7) “Specified” means specified by immigration rules.

(8) Any security forfeited or otherwise realised by the Governor under this section must be paid into the General Revenue of the Isle of Man.

## **17 Provision of further security on extension of leave**

(1) This section applies if security has been provided under section 16(1) or (2) with respect to a person who, having entered the Isle of Man (with leave to do so), applies—

- (a) to extend his leave to enter the Isle of Man; or
- (b) for leave to remain in the Isle of Man for a limited period.

(2) The Governor may refuse the application if security of such kind as the Governor considers appropriate is not provided, or continued, with respect to the applicant.

(3) Immigration rules must make provision as to the circumstances in which a security provided under this section—

- (a) is to be repaid, released or otherwise cancelled; or
- (b) is to be forfeited or otherwise realised by the Governor.

(4) No security provided under this section may be forfeited or otherwise realised unless the person providing it has been given an opportunity, in accordance with immigration rules, to make representations to the Governor.

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(5) Subsection (7) of section 16 applies in relation to this section as it applies in relation to that section.

(6) Any security forfeited or otherwise realised by the Governor under this section must be paid into the General Revenue of the Isle of Man.

#### *Reporting suspicious marriages*

### **24 Duty to report suspicious marriages**

(1) Subsection (3) applies if a registrar to whom a notice of marriage has been given under section 20 of the Marriage Act 1984 (an Act of Tynwald) has reasonable grounds for suspecting that the marriage will be a sham marriage.

(2) Subsection (3) also applies if—

- (a) a marriage is solemnized in the presence of a registrar of marriages; and
- (b) before, during or immediately after solemnization of the marriage, the registrar has reasonable grounds for suspecting that the marriage will be, or is, a sham marriage.

(3) The person concerned must report his suspicion to the Governor without delay and in such form and manner as may be prescribed by regulations.

(4) The regulations are to be made by the Clerk of the Rolls.

(5) “Sham marriage” means a marriage (whether or not void)—

- (a) entered into between a person (“A”) who is neither a British citizen nor a national of an EEA State other than the United Kingdom and another person (whether or not such a citizen or such a national); and
- (b) entered into by A for the purpose of avoiding the effect of one or more provisions of Isle of Man immigration law or the immigration rules.

#### *Immigration control: facilities and charges*

### **25 Provision of facilities for immigration control at ports**

(1) The Department must provide the Governor free of charge with such facilities at a control port as the Governor may direct as being reasonably necessary for, or in connection with, the operation of immigration control there.

(2) Before giving such a direction, the Governor must consult such persons likely to be affected by it as he considers appropriate.

(3) If the Governor gives such a direction, he must send a copy of it to the Department.

(6) “Control port” means a port in which a control area is designated under paragraph 26(3) of Schedule 2 to the 1971 Act.

(6A) “Department” means the Department of Transport.

(7) “Facilities” means accommodation, facilities, equipment and services of a class or description specified in an order made by the Governor.

### **26 Charges: immigration control**

(1) The Governor may, at the request of any person and in consideration of such charges as he may determine, make arrangements—



- (a) for the provision at any control port of immigration officers or facilities in addition to those (if any) needed to provide a basic service at the port;
  - (b) for the provision of immigration officers or facilities for dealing with passengers of a particular description or in particular circumstances.
- (2) “Control port” has the same meaning as in section 25.
  - (3) “Facilities” includes equipment.
  - (4) “Basic service” has such meaning as may be prescribed.

## Part 2 – Carriers’ liability

### *Clandestine entrants*

#### **32 Penalty for carrying clandestine entrants**

- (1) A person is a clandestine entrant if—
  - (a) he arrives in the Isle of Man concealed in a vehicle, ship or aircraft,
  - (b) he passes, or attempts to pass, through immigration control concealed in a vehicle, or
  - (c) he arrives in the Isle of Man on a ship or aircraft, having embarked—
    - (i) concealed in a vehicle; and
    - (ii) at a time when the ship or aircraft was outside the Isle of Man,and claims, or indicates that he intends to seek, asylum in the Isle of Man or evades, or attempts to evade, immigration control.
- (2) The Governor may require a person who is responsible for a clandestine entrant to pay—
  - (a) a penalty in respect of the clandestine entrant;
  - (b) a penalty in respect of any person who was concealed with the clandestine entrant in the same transporter.
- (2A) In imposing a penalty under subsection (2) the Governor—
  - (a) must specify an amount which does not exceed the maximum prescribed for the purpose of this paragraph,
  - (b) may, in respect of a clandestine entrant or a concealed person, impose separate penalties on more than one of the persons responsible for the clandestine entrant, and
  - (c) may not impose penalties in respect of a clandestine entrant or a concealed person which amount in aggregate to more than the maximum prescribed for the purpose of this paragraph.
- (3) A penalty imposed under this section must be paid to the Governor before the end of the prescribed period.
- (4) Where a penalty is imposed under subsection (2) on the driver of a vehicle who is an employee of the vehicle’s owner or hirer—
  - (a) the employee and the employer shall be jointly and severally liable for the penalty imposed on the driver (irrespective of whether a penalty is also imposed on the employer), and
  - (b) a provision of this Part about notification, objection or appeal shall have effect as if the penalty imposed on the driver were also imposed on the employer (irrespective

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of whether a penalty is also imposed on the employer in his capacity as the owner or hirer of the vehicle).

(4A) In the case of a detached trailer, subsection (4) shall have effect as if a reference to the driver were a reference to the operator.

(5) In the case of a clandestine entrant to whom subsection (1)(a) applies, each of the following is a responsible person—

- (a) if the transporter is a ship or aircraft, the owner and captain;
- (b) if it is a vehicle (but not a detached trailer), the owner, hirer and driver of the vehicle;
- (c) if it is a detached trailer, the owner, hirer and operator of the trailer.

(6) In the case of a clandestine entrant to whom subsection (1)(b) or (c) applies, each of the following is a responsible person—

- (a) if the transporter is a detached trailer, the owner, hirer and operator of the trailer;
- (b) if it is not, the owner, hirer and driver of the vehicle.

(6A) Where a person falls within the definition of responsible person in more than one capacity, a separate penalty may be imposed on him under subsection (2) in respect of each capacity.

(7) Subject to any defence provided by section 34, it is immaterial whether a responsible person knew or suspected—

- (a) that the clandestine entrant was concealed in the transporter; or
- (b) that there were one or more other persons concealed with the clandestine entrant in the same transporter.

(8) Subsection (9) applies if a transporter (“the carried transporter”) is itself being carried in or on another transporter.

(9) If a person is concealed in the carried transporter, the question whether any other person is concealed with that person in the same transporter is to be determined by reference to the carried transporter and not by reference to the transporter in or on which it is carried.

(10) “Immigration control” means Isle of Man immigration control.

### **32A Level of penalty: code of practice**

(1) Codes of practice issued by the Secretary of State under this section as it has effect in the United Kingdom shall apply in respect of the Isle of Man with the necessary modifications.

(2) The Governor shall have regard to the code (in addition to any other matters he thinks relevant)—

- (a) when imposing a penalty under section 32, and
- (b) when considering a notice of objection under section 35(4).

### **33 Prevention of clandestine entrants: code of practice**

**33** Codes of practice issued by the Secretary of State under this section as it has effect in the United Kingdom shall apply in respect of the Isle of Man with the necessary modifications.

### **34 Defences to claim that penalty is due under section 32**

(1) A person (“the carrier”) shall not be liable to the imposition of a penalty under section 32(2) if he has a defence under this section.

(2) It is a defence for the carrier to show that he, or an employee of his who was directly responsible for allowing the clandestine entrant to be concealed, was acting under duress.

(3) It is also a defence for the carrier to show that—

- (a) he did not know, and had no reasonable grounds for suspecting, that a clandestine entrant was, or might be, concealed in the transporter;
- (b) an effective system for preventing the carriage of clandestine entrants was in operation in relation to the transporter; and
- (c) on the occasion in question the person or persons responsible for operating that system did so properly.

(4) In determining, for the purposes of this section, whether a particular system is effective, regard is to be had to the code of practice having effect in the Isle of Man by virtue of section 33.

(6) Where a person has a defence under subsection (2) in respect of a clandestine entrant, every other responsible person in respect of the clandestine entrant is also entitled to the benefit of the defence.

### **35 Procedure**

(1) If the Governor decides that a person (“P”) is liable to one or more penalties under section 32, he must notify P of his decision.

(2) A notice under subsection (1) (a “penalty notice”) must—

- (a) state the Governor’s reasons for deciding that P is liable to the penalty (or penalties);
- (b) state the amount of the penalty (or penalties) to which P is liable;
- (c) specify the date before which, and the manner in which, the penalty (or penalties) must be paid; and
- (d) include an explanation of the steps—
  - (i) that P may take if he objects to the penalty;
  - (ii) that the Governor may take under this Part to recover any unpaid penalty.

(3) Subsection (4) applies where a person to whom a penalty notice is issued objects on the ground that—

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high.

(4) The person may give a notice of objection to the Governor.

(5) A notice of objection must—

- (a) be in writing,
- (b) give the objector’s reasons, and
- (c) be given before the end of such period as may be prescribed.

(6) Where the Governor receives a notice of objection to a penalty in accordance with this section he shall consider it and—

- (a) cancel the penalty,
- (b) reduce the penalty,
- (c) increase the penalty, or
- (d) determine to take no action under paragraphs (a) to (c).

(7) Where the Governor considers a notice of objection under subsection (6) he shall—

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- (a) inform the objector of his decision before the end of such period as may be prescribed or such longer period as he may agree with the objector,
- (b) if he increases the penalty, issue a new penalty notice under subsection (1), and
- (c) if he reduces the penalty, notify the objector of the reduced amount.

(9) The Governor may by regulations provide, in relation to detached trailers, for a penalty notice which is issued in such manner as may be prescribed to have effect as a penalty notice properly issued to the responsible person or persons concerned under this section.

(10) Any sum payable to the Governor as a penalty under section 32 may be recovered by the Treasury as a debt due to it.

(11) In proceedings for enforcement of a penalty under subsection (10) no question may be raised as to—

- (a) liability to the imposition of the penalty, or
- (b) its amount.

(12) A document which is to be issued to or served on a person outside the Isle of Man for the purpose of subsection (1) or (7) or in the course of proceedings under subsection (10) may be issued or served—

- (a) in person,
- (b) by post,
- (c) by facsimile transmission, or
- (d) in another prescribed manner.

(13) The Governor may by regulations provide that a document issued or served in a manner listed in subsection (12) in accordance with the regulations is to be taken to have been received at a time specified by or determined in accordance with the regulations.

### **35A Appeal**

(1) A person may appeal to the court against a penalty imposed on him under section 32 on the ground that—

- (a) he is not liable to the imposition of a penalty, or
- (b) the amount of the penalty is too high.

(2) On an appeal under this section the court may—

- (a) allow the appeal and cancel the penalty,
- (b) allow the appeal and reduce the penalty, or
- (c) dismiss the appeal.

(3) An appeal under this section shall be a re-hearing of the Governor's decision to impose a penalty and shall be determined having regard to—

- (a) any code of practice under section 32A which has effect at the time of the appeal,
- (b) the code of practice under section 33 which had effect at the time of the events to which the penalty relates, and
- (c) any other matters which the court thinks relevant (which may include matters of which the Governor was unaware).

(4) Subsection (3) has effect despite any provision of the rules of court.

(5) An appeal may be brought by a person under this section against a penalty whether or not—

- (a) he has given notice of objection under section 35(4);
- (b) the penalty has been increased or reduced under section 35(6).

### **36 Power to detain vehicles etc in connection with penalties under section 32**

(1) If a penalty notice has been issued under section 35, a senior officer may detain any relevant—

- (a) vehicle,
- (b) small ship,
- (c) small aircraft,

until all penalties to which the notice relates, and any expenses reasonably incurred by the Governor in connection with the detention, have been paid.

(2) That power—

- (a) may be exercised only if, in the opinion of the senior officer concerned, there is a significant risk that the penalty (or one or more of the penalties) will not be paid before the end of the prescribed period if the transporter is not detained; and
- (b) may not be exercised if alternative security which the Governor considers is satisfactory, has been given.

(2A) A vehicle may be detained under subsection (1) only if—

- (a) the driver of the vehicle is an employee of its owner or hirer,
- (b) the driver of the vehicle is its owner or hirer, or
- (c) a penalty notice is issued to the owner or hirer of the vehicle.

(2B) A senior officer may detain a relevant vehicle, small ship or small aircraft pending—

- (a) a decision whether to issue a penalty notice,
- (b) the issue of a penalty notice, or
- (c) a decision whether to detain under subsection (1).

(2C) That power may not be exercised in any case—

- (a) for longer than is necessary in the circumstances of the case, or
- (b) after the expiry of the period of 24 hours beginning with the conclusion of the first search of the vehicle, ship or aircraft by an immigration officer after it arrived in the Isle of Man.

(3) If a transporter is detained under this section, the owner, consignor or any other person who has an interest in any freight or other thing carried in or on the transporter may remove it, or arrange for it to be removed, at such time and in such way as is reasonable.

(4) The detention of a transporter under this section is lawful even though it is subsequently established that the penalty notice on which the detention was based was ill-founded in respect of all or any of the penalties to which it related.

(5) But subsection (4) does not apply if the Governor was acting unreasonably in issuing the penalty notice.

### **36A Detention in default of payment**

(1) This section applies where a person to whom a penalty notice has been issued under section 35 fails to pay the penalty before the date specified in accordance with section 35(2)(c).

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(2) The Governor may make arrangements for the detention of any vehicle, small ship or small aircraft which the person to whom the penalty notice was issued uses in the course of a business.

(3) A vehicle, ship, aircraft or wagon may be detained under subsection (2) whether or not the person to whom the penalty notice was issued owns it.

(4) But a vehicle may be detained under subsection (2) only if the person to whom the penalty notice was issued—

- (a) is the owner or hirer of the vehicle, or
- (b) was an employee of the owner or hirer of the vehicle when the penalty notice was issued.

(5) The power under subsection (2) may not be exercised while an appeal against the penalty under section 35A is pending or could be brought (ignoring the possibility of an appeal out of time with permission).

(6) The Governor shall arrange for the release of a vehicle, ship or aircraft detained under this section if the person to whom the penalty notice was issued pays—

- (a) the penalty, and
- (b) expenses reasonably incurred in connection with the detention.

### **37 Effect of detention**

(1) This section applies if a transporter is detained under section 36(1).

(2) The person to whom the penalty notice was addressed, or the owner or any other person claiming an interest in the transporter, whose interests may be affected by detention of the transporter, may apply to the court for the transporter to be released.

(3) The court may release the transporter if it considers that—

- (a) satisfactory security has been tendered in place of the transporter for the payment of the penalty alleged to be due and connected expenses;
- (b) there is no significant risk that the penalty (or one or more of the penalties) and any connected expenses will not be paid; or
- (c) there is a significant doubt as to whether the penalty is payable and the applicant has a compelling need to have the transporter released.

(3A) The court may also release the transporter on the application of the owner of the transporter under subsection (2) if—

- (a) a penalty notice was not issued to the owner or an employee of his, and
- (b) the court considers it right to release the transporter.

(3B) In determining whether to release a transporter under subsection (3A) the court shall consider—

- (a) the extent of any hardship caused by detention,
- (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
- (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).

(4) If the court has not ordered the release of the transporter, the Governor may sell it if the penalty in question and connected expenses are not paid before the end of the period of 84 days beginning with the date on which the detention began.

(5) “Connected expenses” means expenses reasonably incurred by the Governor in connection with the detention.

(5A) The power of sale under subsection (4) may be exercised only when no appeal against the imposition of the penalty is pending or can be brought (ignoring the possibility of an appeal out of time with permission).

(5B) The power of sale under subsection (4) shall lapse if not exercised within a prescribed period.

(6) Schedule 1 applies to the sale of transporters under this section.

(7) This section applies to a transporter detained under section 36A as it applies to a transporter detained under section 36(1); but for that purpose—

- (a) the court may release the transporter only if the court considers that the detention was unlawful or under subsection (3A) (and subsection (3) shall not apply), and
- (b) the reference in subsection (4) to the period of 84 days shall be taken as a reference to a period prescribed for the purpose of this paragraph.

#### *Passengers without proper documents*

### **40 Charge in respect of passenger without proper documents**

(1) This section applies if an individual requiring leave to enter the Isle of Man arrives in the Isle of Man by ship or aircraft and, on being required to do so by an immigration officer, fails to produce—

- (a) an immigration document which is in force and which satisfactorily establishes his identity and his nationality or citizenship, and
- (b) if the individual requires a visa, a visa of the required kind.

(2) The Governor may charge the owner of the ship or aircraft, in respect of the individual, the sum of £2,000.

(3) The charge shall be payable to the Governor on demand.

(4) No charge shall be payable in respect of any individual who is shown by the owner to have produced the required document or documents to the owner or his employee or agent when embarking on the ship or aircraft for the voyage or flight to the Isle of Man.

(5) For the purpose of subsection (4) an owner shall be entitled to regard a document as—

- (a) being what it purports to be unless its falsity is reasonably apparent, and
- (b) relating to the individual producing it unless it is reasonably apparent that it does not relate to him.

(6) For the purposes of this section an individual requires a visa if—

- (a) under the immigration rules he requires a visa for entry into the Isle of Man,

(9) In this section “immigration document” means—

- (a) a passport, and
- (b) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.

(10) The Governor may by order substitute a sum for the sum in subsection (2).

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#### **40A Notification and objection**

(1) If the Governor decides to charge a person under section 40, the Governor must notify the person of his decision.

(2) A notice under subsection (1) (a “charge notice”) must—

- (a) state the Governor’s reasons for deciding to charge the person,
- (b) state the amount of the charge,
- (c) specify the date before which, and the manner in which, the charge must be paid,
- (d) include an explanation of the steps that the person may take if he objects to the charge, and
- (e) include an explanation of the steps that the Governor may take under this Part to recover any unpaid charge.

(3) Where a person on whom a charge notice is served objects to the imposition of the charge on him, he may give a notice of objection to the Governor.

(4) A notice of objection must—

- (a) be in writing,
- (b) give the objector’s reasons, and
- (c) be given before the end of such period as may be prescribed.

(5) Where the Governor receives a notice of objection to a charge in accordance with this section, he shall—

- (a) consider it, and
- (b) determine whether or not to cancel the charge.

(6) Where the Governor considers a notice of objection, he shall inform the objector of his decision before the end of—

- (a) such period as may be prescribed, or
- (b) such longer period as he may agree with the objector.

(7) Any sum payable to the Governor as a charge under section 40 may be recovered by the Treasury as a debt due to it.

(8) In proceedings for enforcement of a charge under subsection (7) no question may be raised as to the validity of the charge.

(9) Subsections (12) and (13) of section 35 shall have effect for the purpose of this section as they have effect for the purpose of section 35(1), (7) and (10).

#### **40B Appeal**

(1) A person may appeal to the court against a decision to charge him under section 40.

(2) On an appeal under this section the court may—

- (a) allow the appeal and cancel the charge, or
- (b) dismiss the appeal.

(3) An appeal under this section—

- (a) shall be a re-hearing of the Governor’s decision to impose a charge, and
- (b) may be determined having regard to matters of which the Governor was unaware.

(4) Subsection (3)(a) has effect despite any provision of the rules of court.



(5) An appeal may be brought by a person under this section against a decision to charge him whether or not he has given notice of objection under section 40A(3).

### *Interpretation*

#### **43 Interpretation of Part 2**

**43** In this Part—

“aircraft” includes hovercraft;

“captain” means the master of a ship or commander of an aircraft;

“concealed” includes being concealed in any freight, stores or other thing carried in or on the vehicle, ship or aircraft concerned;

“court” means the High Court;

“detached trailer” means a trailer, semi-trailer, caravan or any other thing which is designed or adapted for towing by a vehicle but which has been detached for transport—

(a) in or on the vehicle concerned; or

(b) in the ship or aircraft concerned (whether separately or in or on a vehicle);

“equipment”, in relation to an aircraft, includes—

(a) any certificate of registration, maintenance or airworthiness of the aircraft;

(b) any log book relating to the use of the aircraft; and

(c) any similar document;

“hirer”, in relation to a vehicle, means any person who has hired the vehicle from another person;

“operating weight”, in relation to an aircraft, means the maximum total weight of the aircraft and its contents at which the aircraft may take off anywhere in the world, in the most favourable circumstances, in accordance with the certificate of airworthiness in force in respect of the aircraft;

“owner” includes, in relation to a ship or aircraft, the agent or operator of the ship or aircraft;

in relation to a transporter which is the subject of a hire-purchase agreement, includes the person in possession of it under that agreement;

“penalty notice” has the meaning given in section 35(2);

“senior officer” means an immigration officer not below the rank of chief immigration officer;

“ship” includes every description of vessel used in navigation;

“small aircraft” means an aircraft which has an operating weight of less than 5,700 kilogrammes;

“small ship” means a ship which has a gross tonnage of less than 500 tonnes;

“transporter” means a vehicle, ship or aircraft together with—

(a) its equipment; and

(b) any stores for use in connection with its operation.

“vehicle” includes a trailer, semi-trailer, caravan or other thing which is designed or adapted to be towed by another vehicle.

## Part 7 – Power to arrest, search and fingerprint

### *Fingerprinting*

#### **141 Fingerprinting**

(1) Fingerprints may be taken by an authorised person from a person to whom this section applies.

(2) Fingerprints may be taken under this section only during the relevant period.

(3) Fingerprints may not be taken under this section from a person under the age of sixteen (“the child”) except in the presence of a person of full age who is—

- (a) the child’s parent or guardian; or
- (b) a person who for the time being takes responsibility for the child.

(4) The person mentioned in subsection (3)(b) may not be an authorised person.

(5) “Authorised person” means—

- (a) a constable;
- (b) an immigration officer; or
- (c) a prison officer.

(7) This section applies to—

- (a) any person (“A”) who, on being required to do so by an immigration officer on his arrival in the Isle of Man, fails to produce a valid passport with photograph or some other document satisfactorily establishing his identity and nationality or citizenship;
- (b) any person (“B”) who has been refused leave to enter the Isle of Man but has been temporarily admitted under paragraph 21 of Schedule 2 to the 1971 Act if an immigration officer reasonably suspects that B might break any condition imposed on him relating to residence or as to reporting to the police or an immigration officer;
- (c) any person (“C”) in respect of whom a relevant immigration decision has been made;
- (d) any person (“D”) who has been detained under paragraph 16 of Schedule 2 to the 1971 Act or arrested under paragraph 17 of that Schedule;
- (f) any person (“F”) who is a dependant of any of those persons.

(8) “The relevant period” begins—

- (a) for A, on his failure to produce the passport or other document;
- (b) for B, on the decision to admit him temporarily;
- (c) for C, on the service on him of notice of the relevant immigration decision by virtue of section 105 of the Nationality, Immigration and Asylum Act 2002;
- (d) for D, on his detention or arrest;
- (f) for F, at the same time as for the person whose dependant he is.

(9) “The relevant period” ends on the earliest of the following—

- (a) the grant of leave to enter or remain in the Isle of Man;
- (b) for A, B, C or D, his removal or deportation from the Isle of Man;
- (c) for C—
  - (i) the time when the relevant immigration decision ceases to have effect, whether as a result of an appeal or otherwise, or

- (ii) if a deportation order has been made against him, its revocation or its otherwise ceasing to have effect;
  - (d) for D, his release if he is no longer liable to be detained under paragraph 16 of Schedule 2 to the 1971 Act;
  - (f) for F, at the same time as for the person whose dependant he is.
- (10) No fingerprints may be taken from A if the immigration officer considers that A has a reasonable excuse for the failure concerned.
- (11) No fingerprints may be taken from B unless the decision to take them has been confirmed by a chief immigration officer.
- (12) An authorised person may not take fingerprints from a person under the age of sixteen unless his decision to take them has been confirmed—
- (a) if he is a constable, by a person designated for the purpose by the chief constable;
  - (b) if he is a person mentioned in subsection (5)(b), by a chief immigration officer;
  - (c) if he is a prison officer, by a person designated for the purpose by the governor of the prison;
- (13) Neither subsection (3) nor subsection (12) prevents an authorised person from taking fingerprints if he reasonably believes that the person from whom they are to be taken is aged sixteen or over.
- (14) For the purposes of subsection (7)(f), a person is a dependant of another person if—
- (a) he is that person’s spouse or child under the age of eighteen; and
  - (b) he does not have a right of abode in the Isle of Man or indefinite leave to enter or remain in the Isle of Man.
- (16) “Relevant immigration decision” means a decision of the kind mentioned in section 82(2)(g), (h), (i), (j) or (k) of the Nationality, Immigration and Asylum Act 2002.

#### **142 Attendance for fingerprinting**

- (1) The Governor may, by notice in writing, require a person to whom section 141 applies to attend at a specified place for fingerprinting.
- (2) In the case of a notice given to a person of a kind specified in section 141(7)(a) to (d) or (f) (in so far as it applies to a dependant of a person of a kind specified in section 141(7)(a) to (d)), the notice—
- (a) must require him to attend during a specified period of at least seven days beginning with a day not less than seven days after the date given in the notice as its date of issue, and
  - (b) may require him to attend at a specified time of day or during specified hours.
- (3) A constable or immigration officer may arrest without warrant a person who has failed to comply with a requirement imposed on him under this section (unless the requirement has ceased to have effect).
- (4) Before a person arrested under subsection (3) is released—
- (a) he may be removed to a place where his fingerprints may conveniently be taken; and
  - (b) his fingerprints may be taken (whether or not he is so removed).
- (5) A requirement imposed under subsection (1) ceases to have effect at the end of the relevant period (as defined by section 141).

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### **143 Destruction of fingerprints**

(1) If they have not already been destroyed, fingerprints must be destroyed before the end of the specified period beginning with the day on which they were taken.

(2) If a person from whom fingerprints were taken proves that he is—

- (a) a British citizen, or
- (b) a Commonwealth citizen who has a right of abode in the Isle of Man as a result of section 2(1)(b) of the 1971 Act,

the fingerprints must be destroyed as soon as reasonably practicable.

(9) Fingerprints taken from F (within the meaning of section 141(7)) must be destroyed when fingerprints taken from the person whose dependant he is have to be destroyed.

(10) The obligation to destroy fingerprints under this section applies also to copies of fingerprints.

(11) The Governor must take all reasonably practicable steps to secure—

- (a) that data which are held in electronic form and which relate to fingerprints which have to be destroyed as a result of this section are destroyed or erased; or
- (b) that access to such data is blocked.

(12) The person to whom the data relate is entitled, on request, to a certificate issued by the Governor to the effect that he has taken the steps required by subsection (11).

(13) A certificate under subsection (12) must be issued within three months of the date of the request for it.

(15) “Specified period” means—

- (a) such period as the Governor may specify by order;
- (b) if no period is so specified, ten years.

### **144 Other methods of collecting data about physical characteristics**

(1) The Governor may make regulations containing provisions equivalent to sections 141, 142 and 143 in relation to such other methods of collecting data about external physical characteristics as may be prescribed.

(2) In subsection (1) “external physical characteristics” includes, in particular, features of the iris or any other part of the eye.

### *Codes of practice*

#### **145 Codes of practice**

(1) An immigration officer exercising any specified power to—

- (a) arrest, question, search or take fingerprints from a person,
- (b) enter and search premises, or
- (c) seize property found on persons or premises,

must have regard to such provisions of a code as may be specified.

(2) Subsection (1) also applies to an authorised person exercising the power to take fingerprints conferred by section 141.

(2A) A person exercising a power under regulations made by virtue of section 144 must have regard to such provisions of a code as may be specified.

(3) Any specified provision of a code may have effect for the purposes of this section subject to such modifications as may be specified.

(4) “Specified” means specified in a direction given by the Governor.

(5) “Authorised person” has the same meaning as in section 141.

(6) “Code” means any code of practice for the time being in force under the Police Powers and Procedures Act 1998 (an Act of Tynwald).

### *Use of force*

#### **146 Use of force**

(1) An immigration officer exercising any power conferred on him by the 1971 Act or this Act may, if necessary, use reasonable force.

(2) A person exercising a power under any of the following may if necessary use reasonable force—

- (a) section 28CA, 28FA or 28FB of the 1971 Act (business premises: entry to arrest or search),
- (b) section 141 or 142 of this Act, and
- (c) regulations under section 144 of this Act.

## **Part 10 – Miscellaneous and supplemental**

#### **166 Regulations and orders**

(3) Any rules, regulations or orders made under the Immigration Acts may—

- (a) contain such incidental, supplemental, consequential and transitional provision as the person making it considers appropriate;
- (b) make different provision for different cases or descriptions of case; and
- (c) make different provision for different areas.

(4) Rules, regulations and orders made under the Immigration Acts by the Governor, the Council of Ministers, the Deemsters, the Clerk of the Rolls or any Department of the Isle of Man Government shall be laid before Tynwald as soon as practicable after they are made, and if Tynwald at the sitting at which they are laid or at the next following sitting resolves that they shall be annulled, they shall cease to have effect.

#### **167 Interpretation**

(1) In this Act—

“the 1971 Act” means the Immigration Act 1971;

“adjudicator” means an adjudicator designated by section 81 of the Nationality, Immigration and Asylum Act 2002;

“country” includes any territory;

“EEA State” means a State which is a Contracting Party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 as it has effect for the time being;

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“the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November 1950 as it has effect for the time being in relation to the Isle of Man;

“prescribed” means prescribed by regulations made by the Governor;

(2) The following expressions have the same meaning as in the 1971 Act—

“certificate of entitlement”;

“entry clearance”;

“illegal entrant”;

“immigration officer”;

“immigration rules”;

“port”;

“United Kingdom passport”;

“work permit”.

#### **168 Expenditure and receipts**

(1) There is to be paid out of money provided by Tynwald—

(a) any expenditure incurred by the Governor in consequence of this Act; and

(b) any increase attributable to this Act in the sums so payable by virtue of any other Act.

(2) Sums received under this Act shall be paid into the General Revenue of the Isle of Man.

#### **170 Short title, commencement and extent**

(1) This Act may be cited as the Immigration and Asylum Act 1999.

### SCHEDULE 1 - Sale of transporters

#### **1. Leave of court required**

(1) The sale of a transporter requires the leave of the court.

(2) The court is not to give its leave except on proof—

(a) that the penalty is or was due;

(b) that the person liable to pay it or any connected expenses has failed to do so; and

(c) that the transporter which the Governor seeks leave to sell is liable to sale.

#### **2. Notice of proposed sale**

**2.** Before applying for leave to sell a transporter, the Governor must take such steps as may be prescribed—

(a) for bringing the proposed sale to the notice of persons whose interests may be affected by a decision of the court to grant leave; and

(b) for affording to any such person an opportunity of becoming a party to the proceedings if the Governor applies for leave.

**2A.** Where the owner of a transporter is a party to an application for leave to sell it, in determining whether to give leave the court shall consider—

- (a) the extent of any hardship likely to be caused by sale,
- (b) the extent (if any) to which the owner is responsible for the matters in respect of which the penalty notice was issued, and
- (c) any other matter which appears to the court to be relevant (whether specific to the circumstances of the case or of a general nature).

### **3. Duty to obtain best price**

**3.** If leave for sale is given, the Governor must secure that the transporter is sold for the best price that can reasonably be obtained.

### **4. Effect of failure to comply with paragraph 2 or 3**

- 4.** Failure to comply with any requirement of paragraph 2 or 3 in respect of any sale—
- (a) is actionable against the Governor at the suit of any person suffering loss in consequence of the sale; but
  - (b) after the sale has taken place, does not affect its validity.

### **5. Application of proceeds of sale**

- (1) Any proceeds of sale arising from a sale under section 37 must be applied—
- (a) in making prescribed payments; and
  - (b) in accordance with such provision as to priority of payments as may be prescribed.
- (2) The regulations may, in particular, provide for proceeds of sale to be applied in payment—
- (a) of customs or excise duty,
  - (b) of value added tax,
  - (c) of expenses incurred by the Governor,
  - (d) of any penalty which the court has found to be due,
  - (e) in the case of the sale of an aircraft, of charges due as a result of regulations made under section 73 of the Civil Aviation Act 1982,
  - (f) of any surplus to or among the person or persons whose interests in the transporter have been divested as a result of the sale,

but not necessarily in that order of priority.”

Article 17

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## PART 5

### The Nationality, Immigration and Asylum Act 2002

#### “Part 1 - nationality

##### **10 Right of abode: certificate of entitlement**

(1) The Governor may by regulations make provision for the issue to a person of a certificate that he has the right of abode in the Isle of Man.

(2) The regulations may, in particular—

- (a) specify to whom an application must be made;
- (b) specify the place (which may be outside the United Kingdom) to which an application must be sent;
- (c) provide that an application must be made in a specified form;
- (d) provide that an application must be accompanied by specified documents;
- (f) specify the consequences of failure to comply with a requirement under any of paragraphs (a) to (d) above;
- (g) provide for a certificate to cease to have effect after a period of time specified in or determined in accordance with the regulations;
- (h) make provision about the revocation of a certificate.

(3) The regulations may—

- (a) make provision which applies generally or only in specified cases or circumstances;
- (b) make different provision for different purposes;
- (c) include consequential, incidental or transitional provision.

(6) Regulations under this section may, in particular, include provision saving, with or without modification, the effect of a certificate which is issued before the regulations come into force.

#### Part 4 – detention and removal

##### *Detention*

##### **62 Detention by Governor**

(1) A person may be detained under the authority of the Governor pending—

- (a) a decision by the Governor whether to give directions in respect of the person under paragraph 10, 10A or 14 of Schedule 2 to the Immigration Act 1971 (control of entry: removal), or
- (b) removal of the person from the Isle of Man in pursuance of directions given by the Governor under any of those paragraphs.

(2) Where the Governor is empowered under section 3A of that Act (powers of Governor) to examine a person or to give or refuse a person leave to enter the Isle of Man, the person may be detained under the authority of the Governor pending—



- (a) the person's examination by the Governor,
  - (b) the Governor's decision to give or refuse the person leave to enter,
  - (c) a decision by the Governor whether to give directions in respect of the person under paragraph 8 or 9 of Schedule 2 to that Act (removal), or
  - (d) removal of the person in pursuance of directions given by the Governor under either of those paragraphs.
- (3) A provision of Schedule 2 to that Act about a person who is detained or liable to detention under that Schedule shall apply to a person who is detained or liable to detention under this section: and for that purpose—
- (a) a reference to paragraph 16 of that Schedule shall be taken to include a reference to this section,
  - (b) a reference in paragraph 21 of that Schedule to an immigration officer shall be taken to include a reference to the Governor, and
  - (c) a reference to detention under that Schedule or under a provision or Part of that Schedule shall be taken to include a reference to detention under this section.
- (4) In the case of a restriction imposed under paragraph 21 of that Schedule by virtue of this section—
- (a) a restriction imposed by an immigration officer may be varied by the Governor, and
  - (b) a restriction imposed by the Governor may be varied by an immigration officer.
- (5) In subsection (1) the reference to paragraph 10 of that Schedule includes a reference to that paragraph as applied by virtue of section 10 of the Immigration and Asylum Act 1999 (persons unlawfully in Isle of Man: removal).
- (6) Subsection (5) is without prejudice to the generality of section 159.
- (7) A power under this section which is exercisable pending a decision of a particular kind by the Governor is exercisable where the Governor has reasonable grounds to suspect that he may make a decision of that kind.

### *Removal*

#### **72 Serious criminal**

- (1) This section applies for the purpose of the construction and application of Article 33(2) of the Refugee Convention (exclusion from protection).
- (2) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the Isle of Man if he is—
- (a) convicted in the Isle of Man of an offence, and
  - (b) sentenced to a period of custody of at least two years.
- (3) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the Isle of Man if—
- (a) he is convicted outside the Isle of Man of an offence,
  - (b) he is sentenced to a period of custody of at least two years, and
  - (c) he could have been sentenced to a period of custody of at least two years had his conviction been a conviction in the Isle of Man of a similar offence.
- (4) A person shall be presumed to have been convicted by a final judgment of a particularly serious crime and to constitute a danger to the community of the Isle of Man if—

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- (a) he is convicted of an offence specified by order of the Governor, or
  - (b) he is convicted outside the Isle of Man of an offence and the Governor certifies that in his opinion the offence is similar to an offence specified by order under paragraph (a).
- (6) A presumption under subsection (2), (3) or (4) that a person constitutes a danger to the community is rebuttable by that person.
- (7) A presumption under subsection (2), (3) or (4) does not apply while an appeal against conviction or sentence—
- (a) is pending, or
  - (b) could be brought (disregarding the possibility of appeal out of time with leave).
- (9) Subsection (10) applies where—
- (a) a person appeals under section 82 of this Act wholly or partly on the ground that to remove him from or to require him to leave the Isle of Man would breach the United Kingdom’s obligations under the Refugee Convention, and
  - (b) the Governor issues a certificate that presumptions under subsection (2), (3) or (4) apply to the person (subject to rebuttal).
- (10) The adjudicator hearing the appeal—
- (a) must begin substantive deliberation on the appeal by considering the certificate, and
  - (b) if in agreement that presumptions under subsection (2), (3) or (4) apply (having given the appellant an opportunity for rebuttal) must dismiss the appeal in so far as it relies on the ground specified in subsection (9)(a).
- (11) For the purposes of this section—
- (a) “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
  - (b) a reference to a person who is sentenced to a period of custody of at least two years—
    - (i) does not include a reference to a person who receives a suspended sentence (unless at least two years of the sentence are not suspended),
    - (ii) includes a reference to a person who is sentenced to detention, or ordered or directed to be detained, in an institution other than a prison (including, in particular, a hospital or an institution for young offenders), and
    - (iii) includes a reference to a person who is sentenced to custody or detention, or ordered or directed to be detained, for an indeterminate period (provided that it may last for two years).

## **76 Revocation of leave to enter or remain**

- (1) The Governor may revoke a person’s indefinite leave to enter or remain in the Isle of Man if the person—
- (a) is liable to deportation, but
  - (b) cannot be deported for legal reasons.
- (2) The Governor may revoke a person’s indefinite leave to enter or remain in the Isle of Man if—
- (a) the leave was obtained by deception,
  - (b) the person would be liable to removal because of the deception, but
  - (c) the person cannot be removed for legal or practical reasons.

- (3) The Governor may revoke a person's indefinite leave to enter or remain in the Isle of Man if the person, or someone of whom he is a dependant, ceases to be a refugee as a result of—
- (a) voluntarily availing himself of the protection of his country of nationality,
  - (b) voluntarily re-acquiring a lost nationality,
  - (c) acquiring the nationality of a country other than the United Kingdom and availing himself of its protection, or
  - (d) voluntarily establishing himself in a country in respect of which he was a refugee.
- (4) In this section—
- “indefinite leave” has the meaning given by section 33(1) of the Immigration Act 1971 (interpretation),
- “liable to deportation” has the meaning given by section 3(5) and (6) of that Act (deportation),
- “refugee” has the meaning given by the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol, and
- “removed” means removed from the Isle of Man under—
- (a) paragraph 9 or 10 of Schedule 2 to the Immigration Act 1971 (control of entry: directions for removal), or
  - (b) section 10(1)(b) of the Immigration and Asylum Act 1999 (removal of persons unlawfully in Isle of Man: deception).
- (5) A power under subsection (1) or (2) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force;
  - (b) in reliance on anything done before this section comes into force.
- (6) A power under subsection (3) to revoke leave may be exercised—
- (a) in respect of leave granted before this section comes into force, but
  - (b) only in reliance on action taken after this section comes into force.

#### **78 No removal while appeal pending**

- (1) While a person's appeal under section 82(1) is pending he may not be—
- (a) removed from the Isle of Man in accordance with a provision of the Immigration Acts, or
  - (b) required to leave the Isle of Man in accordance with a provision of the Immigration Acts.
- (2) In this section “pending” has the meaning given by section 104.
- (3) Nothing in this section shall prevent any of the following while an appeal is pending—
- (a) the giving of a direction for the appellant's removal from the Isle of Man,
  - (b) the making of a deportation order in respect of the appellant (subject to section 79), or
  - (c) the taking of any other interim or preparatory action.
- (4) This section applies only to an appeal brought while the appellant is in the Isle of Man in accordance with section 92.

#### **79 Deportation order: appeal**

- (1) A deportation order may not be made in respect of a person while an appeal under section 82(1) against the decision to make the order—

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- (a) could be brought (ignoring any possibility of an appeal out of time with permission),  
or
  - (b) is pending.
- (2) In this section “pending” has the meaning given by section 104.

## Part 5 - immigration appeals

### *Appeal to adjudicator*

#### **81 Adjudicators**

**81** The High Bailiff and any Deputy High Bailiff shall be adjudicators for the purposes of this Part.

#### **82 Right of appeal: general**

(1) Where an immigration decision is made in respect of a person he may appeal to an adjudicator.

(2) In this Part “immigration decision” means—

- (a) refusal of leave to enter the Isle of Man,
- (b) refusal of entry clearance,
- (c) refusal of a certificate of entitlement under section 10 of this Act,
- (d) refusal to vary a person’s leave to enter or remain in the Isle of Man if the result of the refusal is that the person has no leave to enter or remain,
- (e) variation of a person’s leave to enter or remain in the Isle of Man if when the variation takes effect the person has no leave to enter or remain,
- (f) revocation under section 76 of this Act of indefinite leave to enter or remain in the Isle of Man,
- (g) a decision that a person is to be removed from the Isle of Man by way of directions under section 10(1)(a), (b), (ba) or (c) of the Immigration and Asylum Act 1999 (removal of person unlawfully in Isle of Man),
- (h) a decision that an illegal entrant is to be removed from the Isle of Man by way of directions under paragraphs 8 to 10 of Schedule 2 to the Immigration Act 1971 (control of entry: removal),
- (i) a decision that a person is to be removed from the Isle of Man by way of directions given by virtue of paragraph 10A of that Schedule (family),
- (ia) a decision that a person is to be removed from the Isle of Man by way of directions under paragraph 12(2) of Schedule 2 to the Immigration Act 1971 (seamen and aircrews),
- (ib) a decision to make an order under section 2A of that Act (deprivation of right of abode),
- (j) a decision to make a deportation order under section 5(1) of that Act, and
- (k) refusal to revoke a deportation order under section 5(2) of that Act.

(4) The right of appeal under subsection (1) is subject to the exceptions and limitations specified in this Part.

#### **84 Grounds of appeal**

(1) An appeal under section 82(1) against an immigration decision must be brought on one or more of the following grounds—

- (a) that the decision is not in accordance with immigration rules;
- (b) that the decision is unlawful by virtue of section 1 or 2 of the Race Relations Act 2004 (an Act of Tynwald) (public authorities: general statutory duty);
- (c) that the decision is unlawful under section 6 of the Human Rights Act 2001 (an Act of Tynwald) (public authority not to act contrary to Human Rights Convention) as being incompatible with the appellant's Convention rights;
- (d) that the appellant is an EEA national or a member of the family of an EEA national and the decision breaches the appellant's rights under the Community Treaties in respect of entry to or residence in the Isle of Man;
- (e) that the decision is otherwise not in accordance with the law;
- (f) that the person taking the decision should have exercised differently a discretion conferred by immigration rules;
- (g) that removal of the appellant from the Isle of Man in consequence of the immigration decision would breach the United Kingdom's obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 2001 (an Act of Tynwald) as being incompatible with the appellant's Convention rights.

(2) In subsection (1)(d) "EEA national" means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time).

#### **85 Matters to be considered**

(1) An appeal under section 82(1) against a decision shall be treated by the adjudicator as including an appeal against any decision in respect of which the appellant has a right of appeal under section 82(1).

(2) If an appellant under section 82(1) makes a statement under section 120, the adjudicator shall consider any matter raised in the statement which constitutes a ground of appeal of a kind listed in section 84(1) against the decision appealed against.

(3) Subsection (2) applies to a statement made under section 120 whether the statement was made before or after the appeal was commenced.

(4) On an appeal under section 82(1) against a decision an adjudicator may consider evidence about any matter which he thinks relevant to the substance of the decision, including evidence which concerns a matter arising after the date of the decision.

(5) But in relation to an appeal under section 82(1) against refusal of entry clearance or refusal of a certificate of entitlement under section 10—

- (a) subsection (4) shall not apply, and
- (b) the adjudicator may consider only the circumstances appertaining at the time of the decision to refuse.

#### **86 Determination of appeal**

(1) This section applies on an appeal under section 82(1).

(2) The adjudicator must determine—

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- (a) any matter raised as a ground of appeal (whether or not by virtue of section 85(1)), and
  - (b) any matter which section 85 requires him to consider.
- (3) The adjudicator must allow the appeal in so far as he thinks that—
- (a) a decision against which the appeal is brought or is treated as being brought was not in accordance with the law (including immigration rules), or
  - (b) a discretion exercised in making a decision against which the appeal is brought or is treated as being brought should have been exercised differently.
- (4) For the purposes of subsection (3) a decision that a person should be removed from the Isle of Man under a provision shall not be regarded as unlawful if it could have been lawfully made by reference to removal under another provision.
- (5) In so far as subsection (3) does not apply, the adjudicator shall dismiss the appeal.
- (6) Refusal to depart from or to authorise departure from immigration rules is not the exercise of a discretion for the purposes of subsection (3)(b).

### **87 Successful appeal: direction**

- (1) If an adjudicator allows an appeal under section 82 he may give a direction for the purpose of giving effect to his decision.
- (2) A person responsible for making an immigration decision shall act in accordance with any relevant direction under subsection (1).

### *Exceptions and limitations*

### **88 Ineligibility**

- (1) This section applies to an immigration decision of a kind referred to in section 82(2) (a), (b), (d) or (e).
- (2) A person may not appeal under section 82(1) against an immigration decision which is taken on the grounds that he or a person of whom he is a dependant—
- (a) does not satisfy a requirement as to age, nationality or citizenship specified in immigration rules,
  - (b) does not have an immigration document of a particular kind (or any immigration document),
  - (ba) has failed to supply a medical report or a medical certificate in accordance with a requirement of immigration rules,
  - (c) is seeking to be in the Isle of Man for a period greater than that permitted in his case by immigration rules, or
  - (d) is seeking to enter or remain in the Isle of Man for a purpose other than one for which entry or remaining is permitted in accordance with immigration rules.
- (3) In subsection (2)(b) “immigration document” means—
- (a) entry clearance,
  - (b) a passport,
  - (c) an immigration employment document, and
  - (d) a document which relates to a national of a country other than the United Kingdom and which is designed to serve the same purpose as a passport.

(4) Subsection (2) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

(5) In subsection (3)(c), “immigration employment document” means—

- (a) a work permit, and
- (b) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the Isle of Man.

#### **88A Ineligibility: entry clearance**

(1) A person may not appeal under section 82(1) against refusal of entry clearance if the decision to refuse is taken on grounds which—

- (a) relate to a provision of immigration rules, and
- (b) are specified for the purpose of this section by order of the Governor.

(2) Subsection (1)—

- (a) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c), and
- (b) is without prejudice to the effect of section 88 in relation to an appeal under section 82(1) against refusal of entry clearance.

#### **89 Refusal of leave to enter**

(1) A person may not appeal under section 82(1) against refusal of leave to enter the Isle of Man unless—

- (a) on his arrival in the Isle of Man he had entry clearance, and
- (b) the purpose of entry specified in the entry clearance is the same as that specified in his application for leave to enter.

(2) Subsection (1) does not prevent the bringing of an appeal on any or all of the grounds referred to in section 84(1)(b), (c) and (g).

#### **90 Non-family visitor**

(1) A person who applies for entry clearance for the purpose of entering the Isle of Man as a visitor may appeal under section 82(1) against refusal of entry clearance only if the application was made for the purpose of visiting a member of the applicant’s family.

(2) In subsection (1) the reference to a member of the applicant’s family shall be construed in accordance with regulations.

(3) Regulations under subsection (2) may, in particular, make provision wholly or partly by reference to the duration of two individuals’ residence together.

(4) Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).

#### **91 Student**

(1) A person may not appeal under section 82(1) against refusal of entry clearance if he seeks it—

- (a) in order to follow a course of study for which he has been accepted and which will not last more than six months,
- (b) in order to study but without having been accepted for a course, or

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(c) as the dependant of a person seeking entry clearance for a purpose described in paragraph (a) or (b).

(2) Subsection (1) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).

## **92 Appeal from within Isle of Man: general**

(1) A person may not appeal under section 82(1) while he is in the Isle of Man unless his appeal is of a kind to which this section applies.

(2) This section applies to an appeal against an immigration decision of a kind specified in section 82(2)(c), (d), (e), (f) and (j).

(3) This section also applies to an appeal against refusal of leave to enter the Isle of Man if—

- (a) at the time of the refusal the appellant is in the Isle of Man, and
- (b) on his arrival in the Isle of Man the appellant had entry clearance.

(3A) But this section does not apply by virtue of subsection (3) if subsection (3B) or (3C) applies to the refusal of leave to enter.

(3B) This subsection applies to a refusal of leave to enter which is a deemed refusal under paragraph 2A(9) of Schedule 2 to the Immigration Act 1971 resulting from cancellation of leave to enter by an immigration officer—

- (a) under paragraph 2A(8) of that Schedule, and
- (b) on the grounds specified in paragraph 2A(2A) of that Schedule.

(3C) This subsection applies to a refusal of leave to enter which specifies that the grounds for refusal are that the leave is sought for a purpose other than that specified in the entry clearance.

(3D) This section also applies to an appeal against refusal of leave to enter the Isle of Man if at the time of the refusal the appellant—

- (a) is in the Isle of Man,
- (b) has a work permit, and
- (c) is any of the following (within the meaning of the British Nationality Act 1981)—
  - (i) a British overseas territories citizen,
  - (ii) a British Overseas citizen,
  - (iii) a British National (Overseas),
  - (iv) a British protected person, or
  - (v) a British subject.

(4) This section also applies to an appeal against an immigration decision if the appellant—

- (a) has made a human rights claim, while in the Isle of Man, or
- (b) is an EEA national or a member of the family of an EEA national and makes a claim to the Governor that the decision breaches the appellant's rights under the Community Treaties in respect of entry to or residence in the Isle of Man.

## **94 Appeal from within Isle of Man: unfounded human rights claim**

(1) This section applies to an appeal under section 82(1) where the appellant has a human rights claim.



(1A) A person may not bring an appeal against an immigration decision of a kind specified in section 82(2)(c), (d) or (e) in reliance on section 92(2) if the Governor certifies that the claim mentioned in subsection (1) above is clearly unfounded.

(2) A person may not bring an appeal to which this section applies in reliance on section 92(4)(a) if the Governor certifies that the claim mentioned in subsection (1) above is clearly unfounded.

(3) If the Governor is satisfied that a human rights claimant is entitled to reside in a State specified in an order under subsection (4), he shall certify the claim under subsection (2) unless satisfied that it is not clearly unfounded.

(4) The Governor may by order specify a State for the purpose of subsection (3) if he is satisfied that—

- (a) there is in general in that State or part no serious risk of persecution of persons entitled to reside in that State or part, and
- (b) removal to that State or part of persons entitled to reside there will not in general contravene the United Kingdom's obligations under the Human Rights Convention.

(6A) Subsection (3) shall not apply in relation to a human rights claimant who—

- (d) is the subject of an authority to proceed under section 7 of the Extradition Act 1989) or an order under paragraph 4(2) of Schedule 1 to that Act, or
- (e) is the subject of a provisional warrant under section 8 of that Act or of a warrant under paragraph 5(1)(b) of Schedule 1 to that Act.

(6B) A certificate under subsection (1A) or (2) may not be issued (and subsection (3) shall not apply) in relation to an appeal under section 82(2)(d) or (e) against a decision relating to leave to enter or remain in the Isle of Man, where the leave was given in circumstances specified for the purposes of this subsection by order of the Governor.

(7) A person may not bring an appeal to which this section applies in reliance on section 92(4) if the Governor certifies that—

- (a) it is proposed to remove the person to a country of which he is not a national or citizen, and
- (b) there is no reason to believe that the person's rights under the Human Rights Convention will be breached in that country.

(8) In determining whether a person in relation to whom a certificate has been issued under subsection (7) may be removed from the Isle of Man, the country specified in the certificate is to be regarded as—

- (a) a place where a person's life and liberty is not threatened by reason of his race, religion, nationality, membership of a particular social group, or political opinion, and
- (b) a place from which a person will not be sent to another country otherwise than in accordance with the Refugee Convention.

(9) Where a person in relation to whom a certificate is issued under this section subsequently brings an appeal under section 82(1) while outside the Isle of Man, the appeal shall be considered as if he had not been removed from the Isle of Man.

## **95 Appeal from outside Isle of Man: removal**

**95** A person who is outside the Isle of Man may not appeal under section 82(1) on the ground specified in section 84(1)(g) (except in a case to which section 94(9) applies).

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## **96 Earlier right of appeal**

(1) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought if the Governor or an immigration officer certifies—

- (a) that the person was notified of a right of appeal under that section against another immigration decision (“the old decision”) (whether or not an appeal was brought and whether or not any appeal brought has been determined),
- (b) that the claim or application to which the new decision relates relies on a matter that could have been raised in an appeal against the old decision, and
- (c) that, in the opinion of the Governor or the immigration officer, there is no satisfactory reason for that matter not having been raised in an appeal against the old decision.

(2) An appeal under section 82(1) against an immigration decision (“the new decision”) in respect of a person may not be brought if the Governor or an immigration officer certifies—

- (a) that the person received a notice under section 120 by virtue of an application other than that to which the new decision relates or by virtue of a decision other than the new decision,
- (b) that the new decision relates to an application or claim which relies on a matter that should have been, but has not been, raised in a statement made in response to that notice, and
- (c) that, in the opinion of the Governor or the immigration officer, there is no satisfactory reason for that matter not having been raised in a statement made in response to that notice.

(4) In subsection (1) “notified” means notified in accordance with regulations under section 105.

(5) Subsections (1) and (2) apply to prevent a person’s right of appeal whether or not he has been outside the Isle of Man since an earlier right of appeal arose or since a requirement under section 120 was imposed.

(7) A certificate under subsection (1) or (2) shall have no effect in relation to an appeal instituted before the certificate is issued.

## **97 National security, &c**

(1) An appeal under section 82(1) against a decision in respect of a person may not be brought or continued if the Governor certifies that the decision is or was taken—

- (a) by the Governor wholly or partly on a ground listed in subsection (2), or
- (b) in accordance with a direction of the Governor which identifies the person to whom the decision relates and which is given wholly or partly on a ground listed in subsection (2).

(2) The grounds mentioned in subsection (1) are that the person’s exclusion or removal from the Isle of Man is—

- (a) in the interests of national security in the United Kingdom or the Isle of Man, or
- (b) in the interests of the relationship between the United Kingdom and another country.

(3) An appeal under section 82(1) against a decision may not be brought or continued if the Governor certifies that the decision is or was taken wholly or partly in reliance on information which in his opinion should not be made public—

- (a) in the interests of national security,

(b) in the interests of the relationship between the United Kingdom and another country, or

(c) otherwise in the public interest.

(4) In subsections (1)(a) and (b) and (3) a reference to the Governor is to the Governor acting in person.

#### **97A National security: deportation**

(1) This section applies where the Governor certifies that the decision to make a deportation order in respect of a person was taken on the grounds that his removal from the Isle of Man would be in the interests of national security in the United Kingdom or the Isle of Man.

(2) Where this section applies—

(a) section 79 shall not apply, and

(b) the Governor shall be taken to have certified the decision to make the deportation order under section 97.

#### **98 Other grounds of public good**

(1) This section applies to an immigration decision of a kind referred to in section 82(2)(a) or (b).

(2) An appeal under section 82(1) against an immigration decision may not be brought or continued if the Governor certifies that the decision is or was taken—

(a) by the Governor wholly or partly on the ground that the exclusion or removal from the Isle of Man of the person to whom the decision relates is conducive to the public good, or

(b) in accordance with a direction of the Governor which identifies the person to whom the decision relates and which is given wholly or partly on that ground.

(3) In subsection (2)(a) and (b) a reference to the Governor is to the Governor acting in person.

(4) Subsection (2) does not prevent the bringing of an appeal on either or both of the grounds referred to in section 84(1)(b) and (c).

(5) Subsection (2) does not prevent the bringing of an appeal against an immigration decision of the kind referred to in section 82(2)(a) on the grounds referred to in section 84(1)(g).

#### **99 Sections 96 to 98: appeal in progress**

(1) This section applies where a certificate is issued under section 96(1) or (2), 97 or 98 in respect of a pending appeal.

(2) The appeal shall lapse.

#### **103E Appeal from adjudicator**

(1) This section applies to a decision of the adjudicator on an appeal under section 82.

(2) A party to the appeal may bring a further appeal on a point of law to the High Court.

(3) An appeal under subsection (2) may be brought only with the permission of—

(a) the adjudicator, or

(b) if the adjudicator refuses permission, the High Court.

(4) On an appeal under subsection (2) the High Court may—

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- (a) affirm the adjudicator's decision;
- (b) make any decision which the adjudicator could have made;
- (c) remit the case to the adjudicator;
- (d) affirm a direction under section 87;
- (e) vary a direction under section 87;
- (f) give a direction which the adjudicator could have given under section 87.

(7) In this section a reference to the adjudicator's decision on an appeal does not include a reference to—

- (a) a procedural, ancillary or preliminary decision.
- (8) A decision of the High Court under this section shall be final.

#### **104 Pending appeal**

(1) An appeal under section 82(1) is pending during the period—

- (a) beginning when it is instituted, and
- (b) ending when it is finally determined, withdrawn or abandoned (or when it lapses under section 99).

(4) An appeal under section 82(1) brought by a person while he is in the Isle of Man shall be treated as abandoned if the appellant leaves the Isle of Man.

(4A) An appeal under section 82(1) brought by a person while he is in the Isle of Man shall be treated as abandoned if the appellant is granted leave to enter or remain in the Isle of Man (subject to subsections (4B) and (4C)).

(4B) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground relating to the Refugee Convention specified in section 84(1)(g) where the appellant—

- (a) is granted leave to enter or remain in the Isle of Man for a period exceeding 12 months, and
- (b) gives notice, in accordance with any relevant procedural rules (which may include provision about timing), that he wishes to pursue the appeal in so far as it is brought on that ground.

(4C) Subsection (4A) shall not apply to an appeal in so far as it is brought on the ground specified in section 84(1)(b) where the appellant gives notice, in accordance with any relevant procedural rules (which may include provision about timing), that he wishes to pursue the appeal in so far as it is brought on that ground.

(5) An appeal under section 82(2)(a), (c), (d), (e) or (f) shall be treated as finally determined if a deportation order is made against the appellant.

#### **105 Notice of immigration decision**

(1) The Governor may make regulations requiring a person to be given written notice where an immigration decision is taken in respect of him.

(2) The regulations may, in particular, provide that a notice under subsection (1) of a decision against which the person is entitled to appeal under section 82(1) must state—

- (a) that there is a right of appeal under that section, and
- (b) how and when that right may be exercised.

(3) The regulations may make provision (which may include presumptions) about service.

## 106 Rules

- (1) The Deemsters may make rules—
  - (a) regulating the exercise of the right of appeal under section 82 or by virtue of section 109;
  - (b) prescribing procedure to be followed in connection with proceedings under section 82 or by virtue of section 109.
- (1A) In making rules under subsection (1) the Deemsters shall aim to ensure—
  - (a) that the rules are designed to ensure that proceedings before an adjudicator are handled as fairly, quickly and efficiently as possible, and
  - (b) that the rules where appropriate confer on an adjudicator responsibility for ensuring that proceedings before the adjudicator are handled as fairly, quickly and efficiently as possible.
- (2) In particular, rules under subsection (1)—
  - (a) must entitle an appellant to be legally represented at any hearing of his appeal;
  - (b) may enable or require an appeal to be determined without a hearing;
  - (c) may enable or require an appeal to be dismissed without substantive consideration where practice or procedure has not been complied with;
  - (d) may enable or require an adjudicator to treat an appeal as abandoned in specified circumstances;
  - (e) may enable or require an adjudicator to determine an appeal in the absence of parties in specified circumstances;
  - (f) may enable or require an adjudicator to determine an appeal by reference only to written submissions in specified circumstances;
  - (g) may make provision about the adjournment of an appeal by an adjudicator (which may include provision prohibiting an adjudicator from adjourning except in specified circumstances);
  - (h) may make provision about the treatment of adjourned appeals by an adjudicator (which may include provision requiring an adjudicator to determine an appeal within a specified period);
  - (i) may make provision about the use of electronic communication in the course of or in connection with a hearing;
  - (m) must make provision about the consolidation of appeals;
  - (n) may make provision (which may include presumptions) about service;
  - (o) may confer ancillary powers on an adjudicator;
  - (p) may confer a discretion on an adjudicator;
  - (q) may require an adjudicator to give notice of a determination to a specified person;
  - (r) may require or enable notice of a determination to be given on behalf of an adjudicator;
  - (s) may make provision about the grant of bail by an adjudicator (which may, in particular, include provision which applies or is similar to any enactment).
  - (w) shall provide that a party to an appeal is to be treated as having received notice of an adjudicator's decision, unless the contrary is shown, at such time as may be specified in, or determined in accordance with, the rules;
  - (y) may make provision about the form and content of decisions of an adjudicator.

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- (3) Rules under subsection (1)—
- (a) may enable an adjudicator to make an award of costs or expenses,
  - (b) may make provision (which may include provision conferring discretion on a court) for the taxation or assessment of costs or expenses,
  - (c) may make provision about interest on an award of costs or expenses (which may include provision conferring a discretion or providing for interest to be calculated in accordance with provision made by the rules),
  - (d) may enable an adjudicator to disallow all or part of a representative's costs or expenses, and
  - (e) may enable an adjudicator to require a representative to pay specified costs or expenses.
- (4) A person commits an offence if without reasonable excuse he fails to comply with a requirement imposed in accordance with rules under subsection (1) to attend before an adjudicator—
- (a) to give evidence, or
  - (b) to produce a document.
- (5) A person who is guilty of an offence under subsection (4) shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **108 Forged document: proceedings in private**

- (1) This section applies where it is alleged—
- (a) that a document relied on by a party to an appeal under section 82 is a forgery, and
  - (b) that disclosure to that party of a matter relating to the detection of the forgery would be contrary to the public interest.
- (2) The adjudicator—
- (a) must investigate the allegation in private, and
  - (b) may proceed in private so far as necessary to prevent disclosure of the matter referred to in subsection (1)(b).

#### *General*

#### **109 European Union and European Economic Area**

- (1) Regulations may provide for, or make provision about, an appeal against an immigration decision taken in respect of a person who has or claims to have a right under any of the Community Treaties.
- (2) The regulations may—
- (a) apply a provision of this Act with or without modification;
  - (b) make provision similar to a provision made by or under this Act;
  - (c) disapply or modify the effect of a provision of this Act.
- (3) In subsection (1) “immigration decision” means a decision about—
- (a) a person's entitlement to enter or remain in the Isle of Man, or
  - (b) removal of a person from the Isle of Man.

## **112 Regulations, &c**

- (1) Regulations under this Part shall be made by the Governor.
- (3) Regulations and rules under this Part—
  - (a) may make provision which applies generally or only in a specified case or in specified circumstances,
  - (b) may make different provision for different cases or circumstances,
  - (c) may include consequential, transitional or incidental provision, and
  - (d) may include savings.
- (3A) An order under section 88A—
  - (c) may include transitional provision.

## **113 Interpretation**

- (1) In this Part, unless a contrary intention appears—
  - “entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971 (interpretation),
  - “human rights claim” means a claim made by a person to the Governor that to remove the person from or require him to leave the Isle of Man or the United Kingdom would be unlawful under section 6 of the Human Rights Act 2001 (an Act of Tynwald) (public authority not to act contrary to Convention) as being incompatible with his Convention rights,
  - “the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 2001 (an Act of Tynwald) and “Convention rights” shall be construed in accordance with section 1 of that Act,
  - “illegal entrant” has the meaning given by section 33(1) of the Immigration Act 1971,
  - “immigration rules” means rules under section 1(4) of that Act (general immigration rules),
  - “prescribed” means prescribed by regulations,
  - “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951 and its Protocol,
  - “visitor” means a visitor in accordance with immigration rules, and
  - “work permit” has the meaning given by section 33(1) of the Immigration Act 1971 (interpretation).
- (2) A reference to varying leave to enter or remain in the Isle of Man does not include a reference to adding, varying or revoking a condition of leave.

## **Part 6 - immigration procedure**

### *Applications*

#### **120 Requirement to state additional grounds for application**

- (1) This section applies to a person if—
  - (a) he has made an application to enter or remain in the Isle of Man, or

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- (b) an immigration decision within the meaning of section 82 has been taken or may be taken in respect of him.
- (2) An immigration officer may by notice in writing require the person to state—
  - (a) his reasons for wishing to enter or remain in the Isle of Man,
  - (b) any grounds on which he should be permitted to enter or remain in the Isle of Man, and
  - (c) any grounds on which he should not be removed from or required to leave the Isle of Man.
- (3) A statement under subsection (2) need not repeat reasons or grounds set out in—
  - (a) the application mentioned in subsection (1)(a), or
  - (b) an application to which the immigration decision mentioned in subsection (1)(b) relates.

*Provision of information by traveller*

**126 Physical data: compulsory provision**

- (1) The Governor may by regulations—
  - (a) require an immigration application to be accompanied by specified information about external physical characteristics of the applicant;
  - (b) enable an authorised person to require an individual who makes an immigration application to provide information about his external physical characteristics;
  - (c) enable an authorised person to require an entrant to provide information about his external physical characteristics.
- (2) In subsection (1) “immigration application” means an application for—
  - (a) entry clearance,
  - (b) leave to enter or remain in the Isle of Man, or
  - (c) variation of leave to enter or remain in the Isle of Man.
- (3) Regulations under subsection (1) may not—
  - (a) impose a requirement in respect of a person to whom section 141 of the Immigration and Asylum Act 1999 (fingerprinting) applies, during the relevant period within the meaning of that section, or
  - (b) enable a requirement to be imposed in respect of a person to whom that section applies, during the relevant period within the meaning of that section.
- (4) Regulations under subsection (1) may, in particular—
  - (a) require, or enable an authorised person to require, the provision of information in a specified form;
  - (b) require an individual to submit, or enable an authorised person to require an individual to submit, to a specified process by means of which information is obtained or recorded;
  - (c) make provision about the effect of failure to provide information or to submit to a process (which may, in particular, include provision for an application to be disregarded or dismissed if a requirement is not satisfied);
  - (d) confer a function (which may include the exercise of a discretion) on an authorised person;



- (e) require an authorised person to have regard to a code (with or without modification);
  - (f) require an authorised person to have regard to such provisions of a code (with or without modification) as may be specified by direction of the Governor;
  - (g) make provision about the use and retention of information provided (which may include provision permitting the use of information for specified purposes which do not relate to immigration);
  - (h) make provision which applies generally or only in specified cases or circumstances;
  - (i) make different provision for different cases or circumstances.
- (5) Regulations under subsection (1) must—
- (a) include provision about the destruction of information obtained or recorded by virtue of the regulations,
  - (b) require the destruction of information at the end of the period of ten years beginning with the day on which it is obtained or recorded in a case for which destruction at the end of another period is not required by or in accordance with the regulations, and
  - (c) include provision similar to section 143(2) and (10) to (13) of the Immigration and Asylum Act 1999 (fingerprints: destruction of copies and electronic data).
- (6) In so far as regulations under subsection (1) require an individual under the age of 16 to submit to a process, the regulations must make provision similar to section 141(3) to (5) and (13) of the Immigration and Asylum Act 1999 (fingerprints: children).
- (7) In so far as regulations under subsection (1) enable an authorised person to require an individual under the age of 16 to submit to a process, the regulations must make provision similar to section 141(3) to (5), (12) and (13) of that Act (fingerprints: children).
- (9) In this section—
- “authorised person” has the meaning given by section 141(5) of the Immigration and Asylum Act 1999 (authority to take fingerprints),
  - “code” has the meaning given by section 145(6) of that Act (code of practice),
  - “entrant” has the meaning given by section 33(1) of the Immigration Act 1971 (interpretation),
  - “entry clearance” has the meaning given by section 33(1) of that Act, and
  - “external physical characteristics” includes, in particular, features of the iris or any other part of the eye.

## **127 Physical data: voluntary provision**

- (1) The Governor may operate a scheme under which an individual may supply, or submit to the obtaining or recording of, information about his external physical characteristics to be used (wholly or partly) in connection with entry to the Isle of Man.
- (2) In particular, the Governor may—
- (a) require an authorised person to use information supplied under a scheme;
  - (b) make provision about the collection, use and retention of information supplied under a scheme (which may include provision requiring an authorised person to have regard to a code);
  - (c) charge for participation in a scheme.
- (3) In this section the following expressions have the same meaning as in section 126—
- (a) “authorised person”,

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- (b) “code”, and
- (c) “external physical characteristics”.

*Disclosure of information by public authority*

**133 Medical inspectors**

(1) This section applies to a person if an immigration officer acting under Schedule 2 to the Immigration Act 1971 (control on entry, &c) has brought the person to the attention of—

- (a) a medical inspector appointed under paragraph 1(2) of that Schedule, or
- (b) a person working under the direction of a medical inspector appointed under that paragraph.

(2) A medical inspector may disclose to the Department—

- (a) the name of a person to whom this section applies,
- (b) his place of residence in the Isle of Man,
- (c) his age,
- (d) the language which he speaks,
- (e) the nature of any disease with which the inspector thinks the person may be infected,
- (f) relevant details of the person’s medical history,
- (g) the grounds for an opinion mentioned in paragraph (e) (including the result of any test or examination which has been carried out), and
- (h) the inspector’s opinion about action which the Department should take.

(3) A disclosure may be made under subsection (2) only if the medical inspector thinks it necessary for the purpose of—

- (a) preventative medicine,
- (b) medical diagnosis,
- (c) the provision of care or treatment, or
- (d) the management of health care services.

(4) In this section “the Department” means the Department of Health and Social Security.

*Disclosure of information by private person*

**134 Employer**

(1) The Governor may require an employer to supply information about an employee whom the Governor reasonably suspects of having committed an offence under—

- (a) section 24(1)(a), (b), (c), (e) or (f), 24A(1) or 26(1)(c) or (d) of the Immigration Act 1971 (illegal entry, deception, &c),

(2) The power under subsection (1) may be exercised to require information about an employee only if the information—

- (a) is required for the purpose of establishing where the employee is, or
- (b) relates to the employee’s earnings or to the history of his employment.

(3) In this section a reference to an employer or employee—

- (a) includes a reference to a former employer or employee, and

(b) shall be construed in accordance with section 8(8) of the Asylum and Immigration Act 1996 (restrictions on employment).

(4) Where—

(a) a business (the “employment agency”) arranges for one person (the “worker”) to provide services to another (the “client”), and

(b) the worker is not employed by the employment agency or the client,

this section shall apply as if the employment agency were the worker’s employer while he provides services to the client.

### **136 Notice**

(1) A requirement to provide information under section 134 must be imposed by notice in writing specifying—

(a) the information,

(b) the manner in which it is to be provided, and

(c) the period of time within which it is to be provided.

(2) A period of time specified in a notice under subsection (1)(c)—

(a) must begin with the date of receipt of the notice, and

(b) must not be less than ten working days.

(3) A person on whom a notice is served under subsection (1) must provide the Governor with the information specified in the notice.

(4) Information provided under subsection (3) must be provided—

(a) in the manner specified under subsection (1)(b), and

(b) within the time specified under subsection (1)(c).

(5) In this section “working day” means a day which is not—

(a) Saturday,

(b) Sunday,

(c) Christmas Day,

(d) Good Friday, or

(e) a day which has been declared a bank holiday under section 1 of the Bank Holidays Act 1989 (an Act of Tynwald).

### **137 Disclosure of information: offences**

(1) A person commits an offence if without reasonable excuse he fails to comply with section 136(3).

(2) A person who is guilty of an offence under subsection (1) shall be liable on summary conviction to—

(a) custody for a term not exceeding three months,

(b) a fine not exceeding level 5 on the standard scale, or

(c) both.

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### **138 Offence by body corporate**

(1) Subsection (2) applies where an offence under section 137 is committed by a body corporate and it is proved that the offence—

- (a) was committed with the consent or connivance of an officer of the body, or
- (b) was attributable to neglect on the part of an officer of the body.

(2) The officer, as well as the body, shall be guilty of the offence.

(3) In this section a reference to an officer of a body corporate includes a reference to—

- (a) a director, manager or secretary,
- (b) a person purporting to act as a director, manager or secretary, and
- (c) if the affairs of the body are managed by its members, a member.

(4) Where an offence under section 137 is committed by a partnership (other than a limited partnership), each partner shall be guilty of the offence.

(5) Subsection (1) shall have effect in relation to a limited partnership as if—

- (a) a reference to a body corporate were a reference to a limited partnership, and
- (b) a reference to an officer of the body were a reference to a partner.

(5A) Subsection (1) shall have effect in relation to a limited liability company constituted under the Limited Liability Companies Act 1996 (an Act of Tynwald) as if—

- (a) a reference to a body corporate were a reference to a limited liability company, and
- (b) a reference to an officer of the body were a reference to a member of the company or its manager or registered agent.

### **139 Privilege against self-incrimination**

(1) Information provided by a person pursuant to a requirement under section 134 shall not be admissible in evidence in criminal proceedings against that person.

(2) This section shall not apply to proceedings for an offence under section 137.

## **Part 7 - Offences**

### **145 Traffic in prostitution**

(1) A person commits an offence if he arranges or facilitates the arrival in the Isle of Man of an individual (the “passenger”) and—

- (a) he intends to exercise control over prostitution by the passenger in the United Kingdom or elsewhere, or
- (b) he believes that another person is likely to exercise control over prostitution by the passenger in the United Kingdom or elsewhere.

(2) A person commits an offence if he arranges or facilitates travel within the Isle of Man by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and—

- (a) he intends to exercise control over prostitution by the passenger in the Isle of Man or elsewhere, or
- (b) he believes that another person is likely to exercise control over prostitution by the passenger in the Isle of Man or elsewhere.

(3) A person commits an offence if he arranges or facilitates the departure from the Isle of Man of an individual (the “passenger”) and—

- (a) he intends to exercise control over prostitution by the passenger outside the Isle of Man, or
- (b) he believes that another person is likely to exercise control over prostitution by the passenger outside the Isle of Man .

(4) For the purposes of subsections (1) to (3) a person exercises control over prostitution by another if for purposes of gain he exercises control, direction or influence over the prostitute’s movements in a way which shows that he is aiding, abetting or compelling the prostitution.

(5) A person guilty of an offence under this section shall be liable—

- (a) on conviction on information, to custody for a term not exceeding 14 years, to a fine or to both, or
- (b) on summary conviction, to custody for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

#### **146 Section 145: supplementary**

(1) Subsections (1) to (3) of section 145 apply to anything done—

- (a) in the Isle of Man,
- (b) outside the Isle of Man by an individual to whom subsection (2) applies, or
- (c) outside the Isle of Man by a body incorporated under the law of the Isle of Man.

(2) This subsection applies to—

- (a) a British citizen,
- (b) a British overseas territories citizen,
- (c) a British National (Overseas),
- (d) a British Overseas citizen,
- (e) a person who is a British subject under the British Nationality Act 1981, and
- (f) a British protected person within the meaning of that Act.

(3) Sections 25C and 25D of the Immigration Act 1971 (forfeiture or detention of vehicle, &c.) shall apply in relation to an offence under section 145 of this Act as they apply in relation to an offence under section 25 of that Act.

## **Part 8 – General**

#### **159 Applied provision**

(1) Subsection (2) applies where this Act amends or refers to a provision which is applied by, under or for purposes of—

- (a) another provision of the Act which contains the provision, or
- (b) another Act.

(2) The amendment or reference shall have effect in relation to the provision as applied.

(3) Where this Act applies a provision of another Act, a reference to that provision in any enactment includes a reference to the provision as applied by this Act.

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## **160 Money**

(1) Expenditure of the Governor in connection with a provision of this Act shall be paid out of money provided by Tynwald.

(2) An increase attributable to this Act in the amount payable out of money provided by Tynwald under another enactment shall be paid out of money provided by Tynwald.

(3) Sums received under this Act shall be paid into the General Revenue of the Isle of Man.

## **164 Short title**

**164** This Act may be cited as the Nationality, Immigration and Asylum Act 2002.”  
Article 19

# **PART 6**

## **The Asylum and Immigration (Treatment of Claimants, etc.) Act 2004**

### *“Offences*

#### **2 Entering Isle of Man without passport, &c**

(1) A person commits an offence if at a leave or asylum interview he does not have with him an immigration document which—

(a) is in force, and

(b) satisfactorily establishes his identity and nationality or citizenship.

(2) A person commits an offence if at a leave or asylum interview he does not have with him, in respect of any dependent child with whom he claims to be travelling or living, an immigration document which—

(a) is in force, and

(b) satisfactorily establishes the child’s identity and nationality or citizenship.

(3) But a person does not commit an offence under subsection (1) or (2) if—

(a) the interview referred to in that subsection takes place after the person has entered the Isle of Man, and

(b) within the period of three days beginning with the date of the interview the person provides to an immigration officer or to the Governor a document of the kind referred to in that subsection.

(4) It is a defence for a person charged with an offence under subsection (1)—

(a) to prove that he is an EEA national,

(b) to prove that he is a member of the family of an EEA national and that he is exercising a right under the Community Treaties in respect of entry to or residence in the Isle of Man,

(c) to prove that he has a reasonable excuse for not being in possession of a document of the kind specified in subsection (1),

(d) to produce a false immigration document and to prove that he used that document as an immigration document for all purposes in connection with his journey to the Isle of Man, or

- (e) to prove that he travelled to the Isle of Man without, at any stage since he set out on the journey, having possession of an immigration document.
- (5) It is a defence for a person charged with an offence under subsection (2) in respect of a child—
- (a) to prove that the child is an EEA national,
  - (b) to prove that the child is a member of the family of an EEA national and that the child is exercising a right under the Community Treaties in respect of entry to or residence in the Isle of Man,
  - (c) to prove that the person has a reasonable excuse for not being in possession of a document of the kind specified in subsection (2),
  - (d) to produce a false immigration document and to prove that it was used as an immigration document for all purposes in connection with the child's journey to the Isle of Man, or
  - (e) to prove that he travelled to the Isle of Man with the child without, at any stage since he set out on the journey, having possession of an immigration document in respect of the child.
- (6) Where the charge for an offence under subsection (1) or (2) relates to an interview which takes place after the defendant has entered the Isle of Man—
- (a) subsections (4)(c) and (5)(c) shall not apply, but
  - (b) it is a defence for the defendant to prove that he has a reasonable excuse for not providing a document in accordance with subsection (3).
- (7) For the purposes of subsections (4) to (6)—
- (a) the fact that a document was deliberately destroyed or disposed of is not a reasonable excuse for not being in possession of it or for not providing it in accordance with subsection (3), unless it is shown that the destruction or disposal was—
    - (i) for a reasonable cause, or
    - (ii) beyond the control of the person charged with the offence, and
  - (b) in paragraph (a)(i) “reasonable cause” does not include the purpose of—
    - (i) delaying the handling or resolution of a claim or application or the taking of a decision,
    - (ii) increasing the chances of success of a claim or application, or
    - (iii) complying with instructions or advice given by a person who offers advice about, or facilitates, immigration into the Isle of Man, unless in the circumstances of the case it is unreasonable to expect non-compliance with the instructions or advice.
- (8) A person shall be presumed for the purposes of this section not to have a document with him if he fails to produce it to an immigration officer on request.
- (9) A person guilty of an offence under this section shall be liable—
- (a) on conviction on information, to custody for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to custody for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
- (10) If a constable or immigration officer reasonably suspects that a person has committed an offence under this section he may arrest the person without warrant.
- (11) An offence under this section shall be treated as—

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- (a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (search, entry and arrest), and
- (b) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c) of that Act.

(12) In this section—

“EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),

“immigration document” means—

- (a) a passport, and
- (b) a document which relates to a national of a State other than the United Kingdom and which is designed to serve the same purpose as a passport, and

“leave or asylum interview” means an interview with an immigration officer at which a person—

- (a) seeks leave to enter or remain in the Isle of Man, or
- (b) claims that to remove him from or require him to leave the Isle of Man would breach the United Kingdom’s obligations under the Refugee Convention or would be unlawful under section 6 of the Human Rights Act 2001 (an Act of Tynwald) as being incompatible with his Convention rights.

(13) For the purposes of this section—

- (a) a document which purports to be, or is designed to look like, an immigration document, is a false immigration document, and
- (b) an immigration document is a false immigration document if and in so far as it is used—
  - (i) outside the period for which it is expressed to be valid,
  - (ii) contrary to provision for its use made by the person issuing it, or
  - (iii) by or in respect of a person other than the person to or for whom it was issued.

(14) Section 11 of the Immigration Act 1971 shall have effect for the purpose of the construction of a reference in this section to entering the Isle of Man.

#### **4 Trafficking people for exploitation**

(1) A person commits an offence if he arranges or facilitates the arrival in the Isle of Man of an individual (the “passenger”) and—

- (a) he intends to exploit the passenger in the Isle of Man or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in the Isle of Man or elsewhere.

(2) A person commits an offence if he arranges or facilitates travel within the Isle of Man by an individual (the “passenger”) in respect of whom he believes that an offence under subsection (1) may have been committed and—

- (a) he intends to exploit the passenger in the Isle of Man or elsewhere, or
- (b) he believes that another person is likely to exploit the passenger in the Isle of Man or elsewhere.

(3) A person commits an offence if he arranges or facilitates the departure from the Isle of Man of an individual (the “passenger”) and—



- (a) he intends to exploit the passenger outside the Isle of Man, or
  - (b) he believes that another person is likely to exploit the passenger outside the Isle of Man.
- (4) For the purposes of this section a person is exploited if (and only if)—
- (a) he is the victim of behaviour that contravenes Article 4 of the Human Rights Convention (slavery and forced labour),
  - (b) he is encouraged, required or expected to do anything as a result of which he or another person would commit an offence under the Human Organ Transplants Act 1993 (an Act of Tynwald),
  - (c) he is subjected to force, threats or deception designed to induce him—
    - (i) to provide services of any kind,
    - (ii) to provide another person with benefits of any kind, or
    - (iii) to enable another person to acquire benefits of any kind, or
  - (d) he is requested or induced to undertake any activity, having been chosen as the subject of the request or inducement on the grounds that—
    - (i) he is mentally or physically ill or disabled, he is young or he has a family relationship with a person, and
    - (ii) a person without the illness, disability, youth or family relationship would be likely to refuse the request or resist the inducement.
- (5) A person guilty of an offence under this section shall be liable—
- (a) on conviction on information, to custody for a term not exceeding 14 years, to a fine or to both, or
  - (b) on summary conviction, to custody for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

#### **5 Section 4: supplemental**

- (1) Subsections (1) to (3) of section 4 apply to anything done—
- (a) in the Isle of Man,
  - (b) outside the Isle of Man by an individual to whom subsection (2) below applies, or
  - (c) outside the Isle of Man by a body incorporated under the law of the Isle of Man.
- (2) This subsection applies to—
- (a) a British citizen,
  - (b) a British overseas territories citizen,
  - (c) a British National (Overseas),
  - (d) a British Overseas citizen,
  - (e) a person who is a British subject under the British Nationality Act 1981, and
  - (f) a British protected person within the meaning of that Act.
- (3) In section 4(4)(a) “the Human Rights Convention” means the Convention for the Protection of Human Rights and Fundamental Freedoms agreed by the Council of Europe at Rome on 4th November 1950.
- (4) Sections 25C and 25D of the Immigration Act 1971 (forfeiture or detention of vehicle, &c) shall apply in relation to an offence under section 4 of this Act as they apply in relation to an offence under section 25 of that Act.

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### *Enforcement powers*

#### **14 Immigration officer: power of arrest**

(1) Where an immigration officer in the course of exercising a function under the Immigration Acts forms a reasonable suspicion that a person has committed or attempted to commit an offence listed in subsection (2), he may arrest the person without warrant.

(2) Those offences are—

- (a) the offence of conspiracy under section 330 of the Criminal Code 1872 (an Act of Tynwald) (in relation to conspiracy to defraud),
- (c) an offence under section 70 of the Criminal Code 1872 (an Act of Tynwald) (bigamy),
- (d) an offence under section 3 or 4 of the Perjury Act 1952 (an Act of Tynwald) (false statements),
- (e) an offence under section 7 of that Act (aiding, abetting &c.) if it relates to an offence under section 3 or 4 of that Act,
- (g) an offence under any of the following provisions of the Theft Act 1981 (an Act of Tynwald)—
  - (i) section 1 (theft),
  - (ii) section 14 (obtaining property by deception),
  - (iii) section 15 (obtaining pecuniary advantage by deception),
  - (iv) section 16 (obtaining services by deception),
  - (v) section 19 (false accounting),
  - (vi) section 24 (handling stolen goods),
- (m) an offence under any of the following provisions of the Forgery Act 1952 (an Act of Tynwald)—
  - (i) section 3 (forgery of certain documents with intent to defraud or deceive),
  - (ii) section 6 (uttering),
- (p) an offence under section 4 of this Act.

(3) The following provisions of the Immigration Act 1971 shall have effect for the purpose of making, or in connection with, an arrest under this section as they have effect for the purpose of making, or in connection with, arrests for offences under that Act—

- (a) section 28C (entry and search before arrest),
- (b) sections 28E and 28F (entry and search after arrest),
- (c) sections 28G and 28H (search of arrested person), and
- (d) section 28I (seized material).

#### **17 Retention of documents**

**17** Where a document comes into the possession of the Governor or an immigration officer in the course of the exercise of an immigration function, the Governor or an immigration officer may retain the document while he suspects that—

- (a) a person to whom the document relates may be liable to removal from the Isle of Man in accordance with a provision of the Immigration Acts, and
- (b) retention of the document may facilitate the removal.

### *Procedure for marriage*

#### **19 Procedure for marriage**

- (1) This section applies to a marriage—
- (a) which is to be solemnised on the authority of certificates issued by a registrar under Part 3 of the Marriage Act 1984 (an Act of Tynwald), and
  - (b) a party to which is subject to immigration control.

(2) In relation to a marriage to which this section applies, the notices under section 20 of the Marriage Act 1984 (an Act of Tynwald) shall be delivered to the registrar or registrars in person by the two parties to the marriage.

(3) The registrar shall not enter in the marriage notice book notice of a marriage to which this section applies unless satisfied, by the provision of specified evidence, that the party subject to immigration control—

- (a) has an entry clearance granted expressly for the purpose of enabling him to marry in the Isle of Man,
- (b) has the written permission of the Governor to marry in the Isle of Man, or
- (c) falls within a class specified for the purpose of this paragraph by regulations made by the Governor.

(4) For the purposes of this section—

- (a) a person is subject to immigration control if—
  - (i) he is not an EEA national, and
  - (ii) under the Immigration Act 1971 he requires leave to enter or remain in the Isle of Man (whether or not leave has been given),
- (b) “EEA national” means a national of a State which is a contracting party to the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 (as it has effect from time to time),
- (c) “entry clearance” has the meaning given by section 33(1) of the Immigration Act 1971, and
- (d) “specified evidence” means such evidence as may be specified in guidance issued by the Chief Registrar.

#### **20 Procedure for marriage: supplemental**

(1) The Marriage Act 1984 (an Act of Tynwald) shall have effect in relation to a marriage to which section 19 applies—

- (a) subject to that section, and
- (b) with any necessary consequential modification.

(2) In particular section 21(1)(b) of that Act (declaration: residence) shall have effect as if it required a declaration that—

- (i) the notice of marriage is given in compliance with section 19(2) above, and
- (ii) the party subject to immigration control satisfies section 19(3)(a), (b) or (c).

(3) Regulations of the Governor under section 19(3)(c) may make transitional provision.

(5) An expression used in section 19 or this section and in Part 3 of the Marriage Act 1984 (an Act of Tynwald) has the same meaning in section 19 or this section as in that Part.

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## **25 Application for permission under section 19(3)(b)**

- (1) The Governor may make regulations which—
  - (a) require a person seeking permission under section 19(3)(b) to make an application in writing, or
  - (b) specify the information to be contained in, or provided with, the application, and how and to whom the fee in respect of that application is to be paid.
- (2) In such regulations, the reference to the fee to be paid shall be taken to be a reference to the fee to be paid in connection with such an application payable by virtue of an order made under section 51(1) of the Immigration, Asylum and Nationality Act 2006.

### *Removal and detention*

## **35 Deportation or removal: co-operation**

- (1) The Governor may require a person to take specified action if the Governor thinks that—
  - (a) the action will or may enable a travel document to be obtained by or for the person, and
  - (b) possession of the travel document will facilitate the person's deportation or removal from the Isle of Man.
- (2) In particular, the Governor may require a person to—
  - (a) provide information or documents to the Governor or to any other person;
  - (b) obtain information or documents;
  - (c) provide fingerprints, submit to the taking of a photograph or provide information, or submit to a process for the recording of information, about external physical characteristics (including, in particular, features of the iris or any other part of the eye);
  - (d) make, or consent to or co-operate with the making of, an application to a person acting for the government of a State other than the United Kingdom;
  - (e) co-operate with a process designed to enable determination of an application;
  - (f) complete a form accurately and completely;
  - (g) attend an interview and answer questions accurately and completely;
  - (h) make an appointment.
- (3) A person commits an offence if he fails without reasonable excuse to comply with a requirement of the Governor under subsection (1).
- (4) A person guilty of an offence under subsection (3) shall be liable—
  - (a) on conviction on information, to custody for a term not exceeding two years, to a fine or to both, or
  - (b) on summary conviction, to custody for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.
- (5) If a constable or immigration officer reasonably suspects that a person has committed an offence under subsection (3) he may arrest the person without warrant.
- (6) An offence under subsection (3) shall be treated as—
  - (a) a relevant offence for the purposes of sections 28B and 28D of the Immigration Act 1971 (search, entry and arrest), and

- (b) an offence under Part 3 of that Act (criminal proceedings) for the purposes of sections 28(4), 28E, 28G and 28H (search after arrest, &c.) of that Act.
- (7) In subsection (1)—
- “travel document” means a passport or other document which is issued by or for Her Majesty’s Government or the government of another State and which enables or facilitates travel from the Isle of Man to another State, and
  - “removal from the Isle of Man” means removal under—
- (a) Schedule 2 to the Immigration Act 1971 (control on entry) (including a provision of that Schedule as applied by another provision of the Immigration Acts), or
  - (b) section 10 of the Immigration and Asylum Act 1999 (removal of person unlawfully in Isle of Man).

### **36 Electronic monitoring**

- (1) In this section—
- (a) “residence restriction” means a restriction as to residence imposed under—
    - (i) paragraph 21 of Schedule 2 to the Immigration Act 1971 (control on entry) (including that paragraph as applied by another provision of the Immigration Acts), or
    - (ii) Schedule 3 to that Act (deportation),
  - (b) “reporting restriction” means a requirement to report to a specified person imposed under any of those provisions,
  - (c) “employment restriction” means a restriction as to employment or occupation imposed under any of those provisions, and
  - (d) “immigration bail” means—
    - (i) release under a provision of the Immigration Acts on entry into a recognizance,
    - (ii) bail granted in accordance with a provision of the Immigration Acts by a court, a justice of the peace, the Governor or an immigration officer (but not by a police officer).
- (2) Where a residence restriction is imposed on an adult—
- (a) he may be required to co-operate with electronic monitoring, and
  - (b) failure to comply with a requirement under paragraph (a) shall be treated for all purposes of the Immigration Acts as failure to observe the residence restriction.
- (3) Where a reporting restriction could be imposed on an adult—
- (a) he may instead be required to co-operate with electronic monitoring, and
  - (b) the requirement shall be treated for all purposes of the Immigration Acts as a reporting restriction.
- (4) Immigration bail may be granted to an adult subject to a requirement that he co-operate with electronic monitoring; and the requirement may (but need not) be imposed as a condition of a recognizance.
- (5) In this section a reference to requiring an adult to co-operate with electronic monitoring is a reference to requiring him to co-operate with such arrangements as the person imposing the requirement may specify for detecting and recording by electronic means the location of the adult, or his presence in or absence from a location—
- (a) at specified times,

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- (b) during specified periods of time, or
  - (c) throughout the currency of the arrangements.
- (6) In particular, arrangements for the electronic monitoring of an adult—
- (a) may require him to wear a device;
  - (b) may require him to make specified use of a device;
  - (c) may prohibit him from causing or permitting damage of or interference with a device;
  - (d) may prohibit him from taking or permitting action that would or might prevent the effective operation of a device;
  - (e) may require him to communicate in a specified manner and at specified times or during specified periods of time;
  - (f) may involve the performance of functions by persons other than the person imposing the requirement to co-operate with electronic monitoring (and those functions may relate to any aspect or condition of a residence restriction, of a reporting restriction, of an employment restriction, of a requirement under this section or of immigration bail).
- (7) In this section “adult” means an individual who is at least 18 years old.
- (8) The Governor—
- (a) may make rules about arrangements for electronic monitoring for the purposes of this section, and
  - (b) when he thinks that satisfactory arrangements for electronic monitoring are available in respect of an area, shall notify persons likely to be in a position to exercise power under this section in respect of the area.
- (9) Rules under subsection (8)(a) may, in particular, require that arrangements for electronic monitoring impose on a person of a specified description responsibility for specified aspects of the operation of the arrangements.
- (10) A requirement to co-operate with electronic monitoring—
- (a) shall comply with rules under subsection (8)(a), and
  - (b) may not be imposed in respect of an adult who is or is expected to be in an area unless the person imposing the requirement has received a notification from the Governor under subsection (8)(b) in respect of that area.
- (11) Rules under subsection (8)(a)—
- (a) may include incidental, consequential or transitional provision,
  - (b) may make provision generally or only in relation to specified cases, circumstances or areas.

### *Fees*

#### **42 Amount of fees**

(1) In prescribing a fee under section 51 of the Immigration, Asylum and Nationality Act 2006 (fees) in connection with a matter specified in subsection (2) the Governor may prescribe an amount which is intended to—

- (a) exceed the administrative costs of determining the application or undertaking the process, and

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- (b) reflect benefits that the Governor thinks are likely to accrue to the person who makes the application, to whom the application relates or by or for whom the process is undertaken, if the application is successful or the process is completed.
- (2) Those matters are—
  - (a) anything done under, by virtue of or in connection with a provision of the British Nationality Act 1981 or of the former nationality Acts (within the meaning given by section 50(1) of that Act),
  - (b) an application for leave to remain in the Isle of Man,
  - (c) an application for the variation of leave to enter, or remain in, the Isle of Man,
  - (d) section 10 of the Nationality, Immigration and Asylum Act 2002 (right of abode: certificate of entitlement),
  - (e) a work permit, and
  - (f) any other document which relates to employment and is issued for a purpose of immigration rules or in connection with leave to enter or remain in the Isle of Man.
- (4) Where an instrument prescribes a fee in reliance on this section it may include provision for the refund, where an application is unsuccessful or a process is not completed, of that part of the fee which is intended to reflect the matters specified in subsection (1)(b).
- (5) Provision included by virtue of subsection (4)—
  - (a) may determine, or provide for the determination of, the amount to be refunded;
  - (b) may confer a discretion on the Governor or another person (whether in relation to determining the amount of a refund or in relation to determining whether a refund should be made).
- (6) An instrument may not be made in reliance on this section unless the Governor has consulted with such persons as appear to him to be appropriate.
- (6A) In relation to an application for or relating to a work permit, the references in this section to the Governor shall be construed as references to the Department of Trade and Industry.

### *General*

#### **45 Interpretation: immigration officer**

**45** In this Act “immigration officer” means a person appointed by the Governor as an immigration officer under paragraph 1 of Schedule 2 to the Immigration Act 1971.

#### **50 Short title**

**50** This Act may be cited as the Asylum and Immigration (Treatment of Claimants, etc) Act 2004.”

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## PART 7

### The Immigration, Asylum and Nationality Act 2006

#### *“Claimants and applicants*

#### **50 Procedure**

- (1) Rules under section 3 of the Immigration Act 1971—
  - (a) may require a specified procedure to be followed in making or pursuing an application or claim (whether or not under those rules or any other enactment),
  - (b) may, in particular, require the use of a specified form and the submission of specified information or documents,
  - (c) may make provision about the manner in which a fee is to be paid, and
  - (d) may make provision for the consequences of failure to comply with a requirement under paragraph (a), (b) or (c).
- (2) In respect of any application or claim in connection with immigration (whether or not under the rules referred to in subsection (1) or any other enactment) the Council of Ministers—
  - (a) may require the use of a specified form,
  - (b) may require the submission of specified information or documents, and
  - (c) may direct the manner in which a fee is to be paid;and the rules referred to in subsection (1) may provide for the consequences of failure to comply with a requirement under paragraph (a), (b) or (c).

#### **51 Fees**

- (1) The Governor may by order require an application or claim in connection with immigration or nationality (whether or not under an enactment) to be accompanied by a specified fee.
- (2) The Governor may by order provide for a fee to be charged by him, by an immigration officer or by another specified person in respect of—
  - (a) the provision on request of a service (whether or not under an enactment) in connection with immigration or nationality,
  - (b) a process (whether or not under an enactment) in connection with immigration or nationality,
  - (c) the provision on request of advice in connection with immigration or nationality, or
  - (d) the provision on request of information in connection with immigration or nationality.
- (3) Where an order under this section provides for a fee to be charged, regulations made by the Governor—
  - (a) shall specify the amount of the fee,
  - (b) may provide for exceptions,
  - (c) may confer a discretion to reduce, waive or refund all or part of a fee,
  - (d) may make provision about the consequences of failure to pay a fee,
  - (e) may make provision about enforcement, and



- (f) may make provision about the time or period of time at or during which a fee may or must be paid.
- (4) Fees paid by virtue of this section shall—
  - (a) be paid into the General Revenue of the Isle of Man, or
  - (b) be applied in such other way as the relevant order may specify.

## **52 Fees: supplemental**

- (1) A fee imposed under section 51 may relate to a thing whether or not it is done wholly or partly outside the Isle of Man; but that section is without prejudice to—
  - (a) the Fees and Duties Act 1989 (an Act of Tynwald), and
  - (b) any other power to charge a fee.
- (3) An order or regulations under section 51—
  - (a) may make provision generally or only in respect of specified cases or circumstances,
  - (b) may make different provision for different cases or circumstances,
  - (c) may include incidental, consequential or transitional provision.
- (4) An order under section 51—
  - (a) may be made only with the consent of the Treasury.
- (5) Regulations under section 51—
  - (a) may be made only with the consent of the Treasury.
- (6) A reference in section 51 to anything in connection with immigration or nationality includes a reference to anything in connection with an enactment (including an enactment of a jurisdiction outside the Isle of Man) that relates wholly or partly to immigration or nationality.

## *Miscellaneous*

### **54 Refugee Convention: construction**

- (1) In the construction and application of Article 1(F)(c) of the Refugee Convention the reference to acts contrary to the purposes and principles of the United Nations shall be taken as including, in particular—
  - (a) acts of committing, preparing or instigating terrorism (whether or not the acts amount to an actual or inchoate offence), and
  - (b) acts of encouraging or inducing others to commit, prepare or instigate terrorism (whether or not the acts amount to an actual or inchoate offence).
- (2) In this section—
  - “the Refugee Convention” means the Convention relating to the Status of Refugees done at Geneva on 28th July 1951, and
  - “terrorism” has the meaning given by section 1 of the Anti-Terrorism and Crime Act 2003 (an Act of Tynwald).

## *General*

### **64 Citation**

- (1) This Act may be cited as the Immigration, Asylum and Nationality Act 2006.

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(2) A reference (in any enactment, including one passed or made before this Act) to “the Immigration Acts” is to—

- (a) the Immigration Act 1971 (c.77),
- (b) the Immigration Act 1988 (c.14),
- (d) the Asylum and Immigration Act 1996 (c.49),
- (e) the Immigration and Asylum Act 1999 (c.33),
- (f) the Nationality, Immigration and Asylum Act 2002 (c.41),
- (g) the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 (c.19), and
- (h) this Act.”