

Work Permit Appeal Tribunal

Homepage

Welcome to the website for the Work Permit Appeal Tribunal in the Isle of Man.

This Website is provided by the General Registry to give general guidance only in relation to the Work Permit Appeal Tribunal and is not, and should not be treated as, a complete and authoritative statement of the law. Advice from legal or other appropriate sources should be sought as necessary.

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General

1 What is the Work Permit Appeal Tribunal and what does it do?

The Work Permit Appeal Tribunal ("the Tribunal") is an independent judicial body established in law. The principal function of the Tribunal is to hear and determine appeals brought in relation to work permits.

Under the provisions of the Control of Employment Act 2014, which came into operation on the 1st October 2015, appeals can be brought by specified persons (see section 5 below for details of the specified persons) who are aggrieved by a decision of the Dept. of Economic Development:

(a) on an application for a work permit to:

- i. grant the application;
- ii. grant the application but in terms which differ from those in which it was sought (whether by the inclusion of conditions, the imposition of limitations or otherwise); or
- iii. refuse the application; and

(b) to revoke a work permit.

A copy of the 2014 Act may be obtained from the Tynwald Library (telephone enquiries on 685520) or is available on the Dept. of Economic Development's website: www.gov.im/categories/working-in-the-isle-of-man/employment-rights/employment-legislation

The Tribunal is also responsible for hearing and determining appeals in relation to the refusal or revocation of licences under the Employment Agencies Act 1975, however to date such appeals have proved to be extremely rare. Information about appeals in relation to a decision of the Dept. of Economic Development to either refuse to grant a licence, or to revoke a licence, under the Employment Agencies Act 1975 is set out in Section 4 of the Employment Agencies Act 1975, a copy of which may be obtained from the Tynwald Library (telephone enquiries on 685520) or is available on the Dept. of Economic Development's website: www.gov.im/categories/working-in-the-isle-of-man/employment-rights/employment-legislation

Further information may be viewed or downloaded from the Dept. of Economic Development's website: www.gov.im/categories/working-in-the-isle-of-man/employment-rights/employment-agencies or can be obtained by contacting the Clerk to the Tribunal (see sections 31 & 32 below for contact information).

The following information is provided in relation to appeals concerning work permits under the Control of Employment Act 2014.

The Tribunals Office is not responsible for the content of external internet sites.

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2 Who sits on the Tribunal and how are they appointed?

Normally the Tribunal, at a hearing, comprises of a Chairperson (or Deputy Chairperson if the Chairperson is absent or unable to act) and two lay members.

The Chairperson, Deputy Chairpersons and the lay members of the Tribunal are appointed by the Appointments Commission, established under the provisions of the Tribunals Act 2006.

The Chairperson and Deputy Chairpersons are required to be a barrister, advocate or solicitor of not less than 7 years' standing.

Lay members of the Tribunal are drawn respectively from panels of persons who are appointed after consultation with organisation(s) who are representative of employers on the one hand and employees on the other. It is important to note that the two lay members present during a Tribunal hearing are not there in any way to represent an employer, a self-employed person or an employee appearing before the Tribunal, but rather to sit as independent members drawing upon their knowledge and experience of employment related matters.

3 Who are the current persons appointed to the Tribunal?

The current appointments made by the Appointments Commission are:

Chairperson – Mr J Wright

Deputy Chairpersons – Vacant

Panel of Persons representing employers – Mr C P Andrew, Mr J H Lindon and Mr P Murphy

Panel of Persons representing employees – Mrs R M Gale, Mr C S Barr, Mr A W Bath

4 Are there regulations governing the procedure of the Tribunal?

Yes – whilst the Control of Employment Act 2014 envisages that new rules of procedure will be established under the provisions of Section 8 of the Tribunals Act 2006, until such time as those rules come into operation the Act provides that the provisions of Schedule 4 to the Control of Employment Regulations 1993 shall continue to apply.

A copy of these regulations may be obtained from the Tynwald Library (telephone enquiries on 685520) or are available through the Dept. of Economic Development's website: www.gov.im/categories/working-in-the-isle-of-man/employment-rights/employment-legislation

Making an Appeal

5 Who can lodge an appeal?

Section 14 of the Control of Employment Act 2014 provides for Appeals to the Tribunal, and applies to a decision on an application for a work permit if the Dept. of Economic Development:

- (a) grants the application;
- (b) grants the application but in terms which differ from those in which it was sought (whether by the inclusion of conditions, the imposition of limitations or otherwise); or
- (c) refuses the application.

The Section also applies to a decision to revoke a work permit.

The following persons who are aggrieved by a decision by the Dept. of Economic Development to which Section 14 applies may appeal to the Tribunal against the decision:

- (a) in the case of the grant of a work permit, any person who applied for the employment concerned;
- (b) in the case of the refusal or revocation of a work permit, or the inclusion of a condition in a work permit —
 - (i) the person concerned;
 - (ii) the employer or prospective employer of the person concerned.

Provision is also made that if it appears to the Tribunal that —

- (a) reasonable publicity for the employment concerned was not given, and
- (b) a person —

(i) for that reason did not apply for the employment, and

(ii) would, if he or she had applied, have had a reasonable expectation of obtaining the employment (having regard to the restrictions imposed by this Act),

the Tribunal may direct that, for the purpose of subsection (3)(a), that person shall be treated as having applied for the employment.

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6 Is there a charge for bringing an appeal?

No – there is currently no charge for bringing an appeal.

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7 How do I appeal?

An appeal has to be made in writing, although there is no prescribed form that you have to use. The appeal should clearly set out the grounds on which the appeal is based and should also clearly state your name and address, preferably with your telephone and/or e-mail contact details included.

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8 How long do I have to lodge an appeal?

Written notice of an appeal against any decision of the Department for Enterprise should be given to the Clerk to the Tribunal within 7 days of the notification of the decision. Appeals made outside of the 7 days allowed in which to lodge an appeal may be accepted at the discretion of the Chairperson if there are special circumstances or special reasons that caused the delay. If you are late lodging your appeal, you will need to put in a covering letter explaining the reason or reasons why you were not able to make your appeal on time.

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9 Who should I send my appeal to?

You should send your appeal to:

The Clerk to the Work Permit Appeal Tribunal
Tribunals Office
Isle of Man Courts of Justice
Deemster's Walk, Bucks Road
Douglas, Isle of Man
IM1 3AR

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10 Can I be represented in proceedings before the Tribunal?

Yes - in proceedings before the Tribunal a party may represent themselves or be represented by any other person.

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11 So does that mean I can get an Advocate to represent me?

Yes – as stated above, you can be represented by any other person you wish although you should be aware that if you use an Advocate you personally will be responsible for any professional fees charged by the Advocate to act on your behalf.

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12 Is Legal Aid available for proceedings before the Work Permit Appeal Tribunal?

No – Legal Aid is not available for proceedings before the Tribunal, although very limited assistance may be available (should your means be such as to comply with the rules) under what is termed the Green Form Scheme. This enables persons to obtain legal advice from an advocate, but this does not include representation at a Tribunal hearing.

Advice on the Green Form Scheme should be sought from an Advocate, a list of which is available at the Isle of Man Law Society, 27 Hope Street, Douglas. Their website is: www.iomlawsociety.co.im

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Before the Hearing

13 How will my appeal be progressed?

Having made an appeal, you will be referred to as “the Appellant.” The Clerk to the Tribunal will acknowledge receipt of your appeal in writing and will arrange a date for your appeal to be considered by the Tribunal. Once a hearing date has been arranged, you will be notified in writing of the date, time and venue for the hearing.

In the meantime, a copy of the appeal and any subsequent information received from you and/or your representative will be forwarded to the Chairperson and members of the Tribunal and to the Secretary to the Work Permit Committee. The Clerk will request a submission from the Work Permit Committee including background information about the application and the criteria applied in reaching the decision which gave rise to your appeal. Once received by the Clerk, this information will be circulated to you and/or your representative, and the members of the Tribunal, prior to the hearing.

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14 What if I have any further information to add to my appeal?

You may submit any further information to the Clerk to the Tribunal at any time up until the Tribunal hearing but if the Secretary to the Work Permit Committee and the Tribunal have not had enough opportunity to consider the information supplied the hearing may be adjourned. In order to avoid delays, it is therefore important that you make every effort to include all the information, and supporting documentation that you wish the Tribunal to consider, as part of your initial appeal wherever possible – where it is not possible to lodge all the information as part of the appeal, you should forward the additional information as soon as you can.

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15 When will I be advised of the date for the hearing before the Tribunal?

You should receive details of the Tribunal hearing approximately two weeks before the hearing date. The letter notifying you of the hearing date will also indicate the venue for the hearing and the time that you will have to attend. The Clerk will ask you to forward any further submissions you may wish to make to the Tribunal – please note that if you do wish to make further submissions, you are encouraged to do so at the earliest opportunity possible in order to avoid the possibility of the hearing being adjourned (see 14 above).

Tribunal hearings are usually held every 3 to 4 weeks, although obviously this can vary depending on the number of appeals received and due to the difficulties in matching the availability of all the parties and the need to allow them appropriate time to prepare for the hearing. However, our main aim is to organise a date for your appeal to be heard as soon as possible.

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16 What if my address, or that of my representative, changes after my appeal is submitted?

In the event that there is a change of address or telephone number for you, or your representative, it is important that such is communicated immediately in writing to the Clerk to the Tribunal.

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17 Can I ask for a postponement?

Yes, although any request must be made in writing prior to the hearing and should clearly explain the reason(s) why you are asking for an adjournment. The request should be forwarded to the Clerk, who in turn will bring it to the attention of the Chairperson for their consideration.

If, after considering your application, the Chairperson decides to grant an adjournment, the Clerk will notify you accordingly and will arrange a new date for the appeal to be considered.

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18 What if I do not wish to attend the hearing?

Although you do not have to attend the hearing, it is important that you do try to attend; the Tribunal will have considered the written evidence but that alone may not tell the whole story. By attending the actual hearing you will be offered the opportunity to put your side of the story forward, as well as calling any witnesses you may wish to give relevant evidence, and answer any questions the Tribunal may have, all information which may lead to the Tribunal reaching a decision in your favour. You will also be able to ask questions of the Presenting Officer for the Department for Enterprise and any witnesses they call. You may bring anyone you choose to attend the appeal hearing with you, even if it is just a friend or relative for moral support.

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19 If an appeal is made can it be withdrawn?

Yes – the Tribunal may allow an Appellant to withdraw an appeal at any time before the appeal is determined by the Tribunal.

An application to withdraw must be made in writing and sent to the Clerk to the Tribunal.

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20 What about travel and parking arrangements for the hearing?

Each party will have been notified of the date, time and place of the hearing and will normally be asked to arrive 15 minutes before the hearing is due to commence. It is important that consideration is given to travel arrangements, parking etc so as to ensure that a party arrives on time. If you are not sure as to the location, or indeed any other matters, please contact the Clerk.

Arrangements for car parking should be made, by both parties and witnesses, for sufficient time to avoid parking penalties being incurred whilst the hearing proceeds. Please note parties and witnesses are responsible for their own parking fees, and indeed any parking penalties incurred.

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The Hearing

21 Who will be present in the hearing room?

As well as the Tribunal Chairperson and members, the Clerk to the Appeal Tribunal will also be present as the Clerk is responsible for recording the hearing. Prior to the hearing, if you have any questions, please do not hesitate to contact the Clerk who will do their utmost to assist you. However, please bear in mind the Clerk will not be able to provide you with legal advice or comment on the merit of your appeal.

A Presenting Officer will attend on behalf of the Work Permit Committee and you will be given the opportunity to ask them questions; they will also have the opportunity to ask you questions.

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22 What happens at the hearing?

The Clerk to the Tribunal will come to collect you from the waiting area as soon as the Tribunal is ready to hear your appeal. Please bring your case papers with you as you will need to refer to them from time to time.

The Chairperson will introduce everyone and explain the procedure, however please do not hesitate to ask if you are unsure about anything.

Your hearing will usually take about 20-30 minutes, although, depending on the complexity of the matter, some cases may take longer.

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23 Is the hearing recorded?

Yes - the Clerk will ensure that the hearing is recorded and parties will see microphones for this purpose located on each of the tables.

Although copies of the recording may be purchased following the hearing (it usually takes a few days for copy discs to be made available), on payment of the prescribed fee, it is the responsibility of parties to take their own notes for their use during the proceedings.

Apart from the Clerk, it is **not permitted** for any other person in attendance at the hearing to use any form of recording equipment.

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24 Are members of the public allowed to attend the hearing?

Yes, hearings are conducted in public with members of the public free to attend if they wish, however in reality it is very rare for members of the public to attend at a hearing.

If, for whatever reason, you think that members of the public should not be allowed to attend at the hearing, you may make an application for your case to be heard in private. The application must be made in writing and should clearly set out the reasons why you feel the hearing should be held in private. The application, which should be sent to the Clerk to the Tribunal, will be forwarded to the Chairperson for their consideration as to whether or not it would be appropriate for the matter to be heard in private.

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25 How do parties address the Chairperson and members of the Tribunal?

It is customary to address the Tribunal via the Chairperson who should be called either 'Sir' or 'Madam', as applicable. If it is necessary to address either of the lay members directly they may be referred to as 'Sir' or 'Madam', as applicable, or alternatively by name.

Tribunal hearings are less formal than, for example, in the High Court so there are no wigs and gowns worn. It is not necessary to bow to the Tribunal upon entering and leaving the hearing room and it is not necessary to stand to address the Tribunal, unless of course a party prefers to do so.

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26 Can a party be liable for costs in proceedings before the Tribunal?

No – there are no provisions for costs to be awarded

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The Decision

27 When will I be given a decision?

After closing statements the Tribunal will adjourn briefly to consider the appeal and reach a decision; the decision will be confirmed in writing, including the reasons for the decision in full and signed by the Chairperson, as soon as is practicable after the hearing. In practice, this is normally within 3 weeks of the hearing date.

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28 Does the decision have to be unanimous?

No – a decision of the Tribunal may be taken by a majority.

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Appeals against the Tribunal's decision

29 Can I appeal against the Tribunal's decision?

Yes, **but only on a point of law**. The usual period allowed for bringing such an appeal, which lies to the High Court, is understood to be 6 weeks. Any person considering an appeal from a decision of the Tribunal should seek legal advice.

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30 Can the Department for Enterprise appeal against the decision?

Yes, the Department for Enterprise may also appeal a decision to the High Court but again only where the decision involves a question of law. The usual period allowed for bringing such an appeal is understood to be 6 weeks.

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Contacting the Tribunal

31 What is the address for the Work Permit Appeal Tribunal?

The address to which correspondence should be sent is:

**Clerk to the Work Permit Appeal Tribunal
Tribunals Office
Isle of Man Courts of Justice
Deemsters Walk, Bucks Road
Douglas
Isle of Man, IM1 3AR**

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32 How do I contact the Clerk to the Work Permit Appeal Tribunal?

If a person wishes to contact the Clerk they can do so during normal office hours (Monday - Friday 9am to 5pm) on: **Tel: 685941 Fax: 685573 or Email: tribunals@gov.im**

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Useful Links

Dept. for Enterprise, Work Permits website: www.gov.im/categories/working-in-the-isle-of-man/work-permits/

Isle of Man Law Society website: www.iomlawsociety.co.im

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