TURKS AND CAICOS ISLANDS

IMMIGRATION ACT 2026

(Act 19 of 2026)

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TURKS AND CAICOS ISLANDS

IMMIGRATION ACT 2026

(Act 19 of 2026)

Assent……2nd November 2026

Publication in Gazette……6th November 2026

Commencement…… in accordance with section 1

AN ACT TO REPEAL AND REPLACE THE IMMIGRATION ACT.

ENACTED by the Parliament of the Turks and Caicos Islands.

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Immigration Act 2026 and shall come into operation on such day as the Governor may appoint by Notice published in the *Gazette*.

(2) Different dates may be appointed to bring the Act into operation for different provisions and different purposes.

Interpretation

2. (1) In this Act—

"advance passenger information ("API")" means information or data concerning a member of the crew, passenger or any other person travelling on a ship or an aircraft as set out in Schedule 2;

"advance passenger information system ("APIS")" means the automated electronic data interchange of advance passenger information and the screening of the advance passenger information by a border force officer, IMPACS and JRCC against a Watch List for any API hit;

"aircraft" includes an aeroplane or a helicopter or other means of airborne navigation by means of which a person can travel across international borders;

"API hit" means a name present in the Watch List Systems;

"appropriate authority" means the relevant authority issuing a permit under section 33, and—

(a) in relation to a Residence Permit, Long Term Residence Permit or a Home Owner's Permit, the Director General;

(b) in relation to a work permit, except a temporary work permit, the Board; and

(c) in relation to a temporary work permit, the Commissioner;

"authorised port" means a port designated as an authorised port under section 3;

"biometric authentication" means the process of verifying identification by assessing—

(a) information about a person's external physical characteristics, including fingerprints, facial image and DNA testing; and

(b) any other information about a person's physical characteristics that can be used in the identification of the person;

"Board" means any of the work permit boards established under section 74;

"Border Force" means the department of Government called the Border Force established under section 3 of the Border Force Act;

"border force officer" has the same meaning assigned under the Border Force Act;

"British overseas territories citizen" means a person who is a British overseas territories citizen under the British

Nationality Act 1981 by virtue of a connection with the Islands;

"Business Visitor's Visa" means a business visa issued by the Director General under section 51;

"child" means a person who has not attained the age of eighteen years and who is the child, adopted child or stepchild of any person; and the fact that a person's parents are not or have not been married to one another shall be left out of account in establishing whether the person is the child of those parents; and, accordingly, that person shall be treated as if those parents are or have been married to one another;

"commercial aircraft" means an aircraft which engages in transporting passengers or goods for monetary gain;

"Commissioner" means the Commissioner of Labour appointed under section 31 of the Employment Act, and references to the Commissioner in this Act shall be construed as if they are references to the Commissioner in the Employment Act;

"Department" means the Department responsible for registration and citizenship;

"dependant", except in the expression "dependant child", means in relation to a person, that person's—

(a) dependant child;

(b) spouse;

(c) unmarried child who has attained the age of eighteen years but has not attained the age of twenty-five years and is receiving full-time or part-time education at a university or other educational institution;

(d) unemployed parent who is incapable of self-support; or

(e) parent or child who is a person with special needs or disabilities who is incapable of self-support;

"dependant child" means a child who is a dependant of a person;

"detainee" means a person held in control custody while awaiting permission to enter the Islands, or for removal or deportation, or for the purpose of facilitating any process under this Act;

"Director General" means the office of the Director General established under section 4 of the Border Force Act;

"disembark" means disembark from a ship or aircraft, but—

(a) references to disembarking in the Islands do not apply to disembarking after a local journey from a place in the Islands; and

(b) references to embarking in the Islands do not apply to embarking for a local journey to a place in the Islands;

"eGates system" means an automated border control system that is utilised by the Border Force at a point of entry;

"embark" means embark on a ship or aircraft and includes attempting to embark;

"Electronic Travel Authorisation (ETA)" means an authorisation in electronic form to travel to the Islands;

"full age" means not less than eighteen years;

"gainful occupation" means the occupation of a person in any capacity in an undertaking, profession, trade or business for or in the expectation of profit, gain or reward in cash or kind or for any other form of consideration, but excludes—

(a) a person who invests in a business and is not employed in the day-to-day operations of that business; or

(b) a passive investor, with or without a non-executive seat on the board of directors of the business in which he invests;

"Home Owner's Permit" means a permit issued under section 33;

"IMPACS" means the Implementing Agency for Crime and Security established under the 2006 Agreement establishing the CARICOM Implementing Agency for Crime and Security;

"Islander" has the same meaning assigned under the Turks and Caicos Islander Status Act; and "Islander status" shall be construed accordingly;

"Joint Regional Communication Centre ("JRCC") means a sub-agency of IMPACS which is responsible for the operations and management of the API;

"lien", in relation to any ship, means a maritime lien;

"Long Term Residence Permit" means a permit issued by the Director General under section 33;

"member of the crew", in relation to a ship or aircraft, means a person actually employed in the working or service of the

ship or aircraft, including the captain or master of the ship or aircraft, whether or not that person is on a crew list;

"Minister" means the Minister who is assigned portfolio responsibility for the administration of a relevant area under this Act;

"Ministry" means the Ministry which is assigned portfolio responsibility for the administration of a relevant area under this Act;

"passenger" means a person arriving in or departing from the Islands in any ship or aircraft other than as a member of the crew;

"Permanent Residence Certificate" means a certificate issued under section 25;

"permanent resident" means a person who holds a Permanent Residence Certificate issued under this Act;

"Permanent Secretary" means the Permanent Secretary who is assigned portfolio responsibility for administration of a relevant area under this Act;

"permit", where used generally, means—

(a) a Residence Permit;

(b) a Long Term Residence Permit;

(c) a Home Owner's Permit;

(d) a work permit; or

(e) a temporary work permit;

"police officer" has the same meaning assigned under the Police Force Act;

"port" includes an airport;

"private aircraft" means any aircraft which is not licensed for commercial use or is a state aircraft;

"regional space" means the airspace and maritime areas within or adjacent to the Islands and, where the context requires, any airspace, maritime area, air or sea route or transportation corridor connecting the Islands with a CARICOM Member State, the United States of America or Canada, in respect of which the Government or a competent authority of the Islands exercises functions, or participates in cooperation or coordination with another State or territory, under international aviation or maritime law or pursuant to an applicable international agreement or arrangement;

"reside", with its grammatical variations and cognate expressions (including "ordinarily resident"), means being physically present, and, in relation to a period of time, means being physically present during that period except for reasonable periods of absence for the purposes of vacation, business or official travel, education or medical attention;

"Residence and Employment Rights Certificate" means a certificate issued under sections 22, 23(2) or 26;

"Residence Permit" means a permit issued by the Director General under section 33;

"ship" means every description of vessel used in navigation however propelled;

"spouse" means a person who is a party to a marriage that is legally recognised under the Marriage Act;

"Stop List" means the list maintained by the Director General under section 95;

"technical stop" or "stops for non-traffic purposes" means a ship or aircraft arriving for purposes of refuelling, repairs, emergency or a similar purpose other than taking on or discharging passengers, baggage, cargo or mail;

"temporary work permit" means a permit issued by the Commissioner under section 48;

"term limit" means the maximum period of time a work permit may be issued or renewed for a person as provided in sections 43 and 44;

"Tribunal" means the Immigration Appeal Tribunal whose establishment is continued under section 79;

"visa" means a permission to enter the Islands for a specified time, issued by the Director General in terms of section 50;

"Watch List" means a list that is used to watch or track the current activity or movements of criminals, including terrorists and persons who have been found guilty of involvement with stolen and lost travel documents, criminal deportees and other persons of interest to the intelligence community;

"Watch List System" means a secure electronic system designed to store and share information relating to intelligence connected with the Watch List, and contains the Watch List;

"Work Permit" means a permit issued under section 33.

(2) A person arriving in the Islands by ship or aircraft shall for the purposes of this Act be deemed not to enter the Islands—

(a) until he disembarks; and

(b) if on disembarkation at a port he remains in an area, if any, at the port as may be approved for this purpose by a border force officer; or

(c) if he has not otherwise entered the Islands, for as long as he is detained or temporarily admitted or released while liable to detention under the powers conferred by section 65.

(3) Except in so far as the context otherwise requires, references in this Act in relation to arriving in the Islands by ship extend to arrival by any floating structure, and "disembark" shall be construed accordingly.

(4) References in this Act relating to a member of the crew of a ship does not by virtue of subsection (3) apply to any floating structure not being a ship.

(5) References to the Minister in sections 8, 20, 21, 25, 37, 49, 58, 67, 77, 82, 98, 100 and 137 means the Minister acting in his discretion.

PART II

CONTROL OF ENTRY

Authorised ports

3. The Minister may by Order published in the *Gazette*, designate any port of the Islands as an authorised port for the purposes of this Act and may in that Order specify the limits of that port as an authorised port.

Leave to enter

4. (1) Except as otherwise provided by this Part, a person shall not enter the Islands from any place outside the Islands unless given leave to enter by a border force officer under this Part.

(2) Subsection (1) does not apply to a person who is—

(a) an Islander;

(b) a British overseas territories citizen; or

(c) a permanent resident.

(3) A person entering the Islands shall present a travel document to a border force officer or to the eGates system.

(4) Where it is required, a person shall not be permitted to travel to or enter the Islands without a Residence and Employment Rights Certificate, valid permit, visa or Electronic Travel Authority (ETA).

(5) Entry into the Islands shall be from an authorised port or any other place as a border force officer may acting in his discretion in any particular case allow.

(6) Leave to enter the Islands may be given manually or generated by digital means.

Border force officer may give leave to enter

5. (1) Subject to this Act, upon being satisfied that a person complies with the general entry requirements set out in Schedule 1, a border force officer may give leave to a person to enter and remain in the Islands—

(a) for a period as the border force officer may determine under subsection (2); and

(b) subject to any restrictions on gainful occupation as he may impose.

(2) The period for which a border force officer may give to a person leave to remain in the Islands under subsection (1) shall be—

(a) where a person produces a Residence and Employment Rights Certificate issued under section 22 or 23(2), the period specified in the Certificate;

(b) where a person produces a permit issued to him under sections 33 or 48 to remain in the Islands, the period specified in the permit;

(c) where a person produces a visa issued to him under sections 50 or 51, the period specified in the visa; or

(d) where a person does not produce to the border force officer a Residence and Employment Rights Certificate, permit or visa and is a visitor without the right to work, a period not exceeding ninety days which may be extended on application to the Director General for a further period or periods not exceeding six months in aggregate from the date of the most recent entry, provided that the

Director General for good reason may reduce any period given under this paragraph.

(3) A border force officer shall exercise his powers in terms of this Act and any regulations governing entry and residence in the Islands as may be prescribed.

Exemption for member of the crew and person in transit

6. (1) Notwithstanding section 4 and subject to subsections (2) and (3), the following persons may enter the Islands without leave—

(a) a member of the crew of a ship or an aircraft at an authorised port in the Islands, who disembarks, otherwise than for the purpose of being discharged, at any time while the ship or aircraft remains at that port; and

(b) a person who disembarks from an aircraft at an airport, in-transit to or for purposes of connecting to a flight to a destination outside the Islands.

(2) Until the departure of a ship or aircraft, a person mentioned in subsection (1) shall remain within an in-transit area or within any other limits as may be authorised for that purpose by a border force officer.

(3) A border force officer may at any time give notice to a person on board any ship or aircraft prohibiting him from disembarking without the leave of a border force officer.

Entitlement to enter

7. (1) This section applies to a person if he satisfies a border force officer that he belongs to any of the following classes of persons—

(a) persons enjoying relevant diplomatic, consular or other similar privileges by or under any Act or in accordance with any recognised international practice, as may be prescribed;

(b) serving members of any of His Majesty's Forces on duty in the Islands;

(c) persons employed in the service of the Government of the Islands; and

(d) persons employed in the service of any country engaged upon official duties in the Islands.

(2) A person entering the Islands shall present a travel document to a border force officer or to the eGates system.

(3) A border force officer shall give a person to whom this section applies leave to enter and remain for the duration of his employment, mission or tour of duty, as the case may be, even where that person may otherwise require a visa to enter.

(4) Where a border force officer gives leave to enter to a person under subsection (3), he must also grant leave to enter and remain on the same terms to the accompanying spouse and a dependant child of that person whether they are travelling together or separately.

(5) Leave to enter granted under subsection (4) does not include any entitlement to engage in gainful occupation unless the spouse or dependant child is issued a work permit.

Appeal against officer's refusal to give leave to enter

8. (1) Where a person is refused leave to enter the Islands by a border force officer, he may within seven days from the date of refusal appeal in writing to the Minister.

(2) A person refused entry under subsection (1) shall leave the Islands and may make an appeal outside the Islands.

(3) The Minister may confirm the decision of the border force officer or may direct the officer, through the Permanent Secretary, to give leave to enter on any terms as the Minister considers appropriate.

(4) Where a person is refused leave to enter the Islands by a border force officer, the border force officer shall inform the person of his right of appeal to the Minister.

Revocation of leave to enter

9. (1) Subject to subsection (2), a border force officer of the rank of Assistant Director or above may revoke leave to enter within 72 hours without notice—

(a) on further assessment or when new information is received which shows that a person would not have been permitted leave to enter due to fraud or misrepresentation;

(b) if it becomes apparent that a person did not meet the requirements of entry; or

(c) for urgent matters which are of public interest.

(2) A person whose leave to enter has been revoked without notice under subsection (1) shall be given notice after a period of 72 hours to make representations.

(3) A border force officer of the rank of Assistant Director or above may revoke a leave to enter where—

(a) he is satisfied that an error in judgment was made by a border force officer in allowing a person to enter the Islands; or

(b) where a person is proven to have entered the Islands by deception and is still physically within the Islands.

(4) Before revoking the leave to enter under subsection (3), the border force officer of the rank of Assistant Director or above shall by notice in writing, inform a person of the grounds on which it is proposed to revoke the leave to enter, and shall give the person the opportunity to make representations.

(5) A notice given under subsection (2) and (4) shall state that within five days of service of the notice, the person to whom the notice is addressed may make representations in writing to the Director General concerning the matter, and the matter shall not be determined without considering any representations received within that period of five days.

Immigration facilities at ports

10. (1) The manager of an authorised port shall provide the Government with facilities at the port free of charge, as the Minister may direct, as being reasonably necessary for or in connection with, the operation of immigration control at that port.

(2) Before giving a direction, the Minister shall consult any person likely to be affected by the direction as he considers appropriate.

(3) If the Minister gives a direction under subsection (1), the Minister shall send a copy of the direction to the person appearing to him to be the manager.

(4) If the manager persistently fails to comply with the direction, or part of it, the Minister, on the application of the Director General may, by Order published in the *Gazette*, revoke the designation of the port as an authorised port.

(5) A direction made under this section is enforceable on the application of the Director General by injunction issued by the Supreme Court.

(6) In this section—

"facilities" means accommodation, equipment, furnishings and services of a class or description specified in a direction made by the Minister; and

"manager" means the person responsible for the management of an authorised port.

PART III

ADVANCE PASSENGER INFORMATION

Duty to provide advance passenger information

11. The captain or master of every ship or aircraft which is expected to arrive in the Islands or is expected to leave the Islands shall provide the relevant advance passenger information and data relating to the voyage or flight as set out in Schedule 2—

(a) to a border force officer and IMPACS, before the ship or aircraft arrives in the Islands; or

(b) to a border force officer and IMPACS, before the ship or aircraft departs from the Islands.

Timeframe

12. The advance passenger information to be provided under section 11 shall be provided as follows—

(a) in the case of commercial aircraft, no later than forty minutes prior to departure from the last port of call;

(b) in the case of a private aircraft, no later than forty minutes prior to the departure from the last port of call;

(c) in the case of a ship arriving from outside the regional space, no later than twenty-four hours prior to arrival;

(d) in the case of a ship arriving from a destination within the regional space, no later than one hour prior to the arrival of the ship from the last port of call;

(e) in the event of any changes to the voyage or flight header data or data relating to an individual on board, an updated API file is required prior to departure of the ship or aircraft; and

(f) in the case of a ship or an aircraft, an API file is required five minutes immediately following departure.

Powers of border force officer for API

13. (1) The advance passenger information provided under sections 11 and 12 shall be verified by a border force officer during physical processing or through the eGates system at any port by using the travel documents provided by each member of the crew or passenger.

(2) A border force officer shall, if any discrepancy is found in the advance passenger information, correct the data at the port of entry or exit and update the information in the advance passenger information system after verifying it from the travel or other relevant documents of the member of the crew or passenger.

(3) The captain or master of a ship or aircraft and any member of the crew or passenger of a ship or aircraft shall—

(a) answer any question asked by a border force officer relating to the ship or aircraft and a member of the crew, passenger, voyage or flight and any person that is carried on the ship; and

(b) immediately, at the request of a border force officer, produce any documents in that person's possession or control relating to any of those matters.

Ship or aircraft arriving for non-traffic purposes or making a technical stop

14. (1) Section 11 does not apply to a ship or an aircraft which makes a technical stop or lands, berths, anchors, or otherwise arrives or stops for non-traffic purposes, if the arrival is—

(a) required by any statutory or other requirement relating to navigation;

(b) compelled by any emergency, accident, unfavourable weather conditions, or other necessity; or

(c) authorised by the Minister after consultation with the Governor.

(2) Where a ship or an aircraft arrives or stops for any of the reasons set out in subsection (1), the captain or master shall—

(a) immediately report to a border force officer;

(b) not permit any member of the crew or passenger to disembark from the ship or aircraft without the consent of a border force officer; and

(c) comply with any directions given by a border force officer in respect of any member of the crew or passenger carried on board the ship or aircraft.

(3) Subject to any authorisation granted by a border force officer, a member of the crew and passenger on the ship or aircraft shall not disembark from the ship or aircraft without the consent of the border force officer, and the member of the crew or passenger shall comply with any directions given by the border force officer.

(4) A captain or master who contravenes this section commits an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for a term of two years, or to both.

(5) Notwithstanding subsection (4), the disembarkation of a member of the crew or passenger from the ship or aircraft shall not constitute an offence, where the disembarkation is necessary for reasons of health, safety or the preservation of life.

Powers and duties of Director General under this Part

15. (1) The Director General shall—

(a) co-ordinate with IMPACS on all matters relating to the advance passenger information system;

(b) if requested, allow a member of the crew or passenger from a ship or an aircraft access to his personal identifiable information maintained in the advance passenger information system to ensure the information is correct, but this shall not include access to any information provided by IMPACS or JRCC through the screening of the advance passenger information by IMPACS and JRCC against a Watch List for any API hit;

(c) determine, after consultation with IMPACS, the admissibility or otherwise of a member of the crew or passenger;

(d) withhold clearance for the departure of an aircraft whose captain has not provided the advance passenger information required under section 11, pending submission of the advance passenger information; and

(e) assess the sufficiency and error rates in review of advance passenger information transmissions for each journey.

(2) Notwithstanding subsection (1)(*a)* and *(c),* any decision regarding the admissibility or inadmissibility of a

member of the crew or passenger from a ship or an aircraft shall be made by the Director General.

Use and sharing of API with regional and international security agencies

16. (1) IMPACS shall use the advance passenger information system to conduct screening against Watch Lists of a member of the crew and passenger on a ship and an aircraft that enters into, departs from and travels within the regional space in order to provide information to assist participating countries.

(2) IMPACS may share the information contained within the advance passenger information system with the International Criminal Police Organization (INTERPOL) and any other national, regional or international intelligence, law enforcement or security agency or centre approved by CARICOM Council for Security and Law Enforcement (CONSLE) in order to further national, regional or international security.

(3) Advance passenger information shall only be used for the purposes of this Act.

(4) For purposes of this section, "participating countries" means the signatories to—

(a) the Memorandum of Intent between the Government of the United States of America and the Members of the Caribbean Community on Cooperation regarding the Development of an Advance Passenger Information System; and

(b) the Memorandum of Understanding for the Sharing of Intelligence among Member States of the Caribbean Community.

Retention of advance passenger information

17. (1) The advance passenger information collected under this Act for entry screening purposes shall be retained for a period not exceeding three years from the date of travel of the member of the crew or passenger.

(2) Nothing contained in subsection (1) shall apply to the data copied from the advance passenger information system into any other security database system to which a different data retention schedule applies.

PART IV

RESIDENCE AND EMPLOYMENT IN THE ISLANDS

Restrictions

Restriction on residence

18. Except for an Islander, a British overseas territories citizen or permanent resident, a person shall not remain in the Islands after the expiration of the period during which he is permitted to remain in the Islands by a border force officer unless the person is in possession of a valid permit or visa issued under section 33, 48, 50 or 51 or Residence and Employment Rights Certificate issued under section 22, 23(2) or 26.

Restriction on engaging in gainful occupation

19. (1) Subject to subsection (3), a person shall not engage in any gainful occupation in the Islands unless he is—

(a) an Islander;

(b) the spouse of an Islander who is a holder of a Residence Permit;

(c) a British overseas territories citizen;

(d) the spouse of a British overseas territories citizen who is a holder of a Residence Permit;

(e) a permanent resident whose Permanent Residence Certificate authorises him to engage in gainful occupation;

(f) the holder of a Residence and Employment Rights Certificate;

(g) within the classes of persons specified in section 7(1); or

(h) in possession of a valid permit or Business Visitor's Visa issued under section 33, 48 or 51.

(2) A person shall not employ, whether on his own behalf, or on behalf of another, another person whether under a contract of employment or a contract for services who, under subsection (1), is prohibited from engaging in any gainful occupation.

(3) The Governor may by Order published in the *Gazette*, and subject to any conditions and restrictions as he deems fit to impose, exempt a person or category of persons from the requirements of subsection (1).

Application for Residence and Employment Rights Certificate

20. (1) An application for a Residence and Employment Rights Certificate to reside and be gainfully employed in the Islands may be made to the Governor in the prescribed form.

(2) An application made under subsection (1) shall precede an application for permanent residence.

(3) An application made under subsection (1) shall be submitted to a place designated by the Ministry, and the administrative process may be undertaken by the Department on behalf of the Governor.

(4) The Ministry may require a person to attend personally for an interview to assist in the administrative process of an application.

(5) An applicant shall provide further information that may be required in the particular case.

(6) The Minister may on the completion of assessment of an application by the Department, make a written recommendation to the Governor for a person to be issued or refused a Residence and Employment Rights Certificate, stating the reasons for the recommendation.

(7) If an applicant fails to provide any information as may be required or fails to attend an interview when required, the Governor may refuse the application.

(8) For the purposes of applications and provisions relating to a Residence and Employment Rights Certificate or Permanent Residence Certificate, the Governor means the Governor acting in his discretion.

Publication

21. (1) Upon receipt of an application made under section 20, the Department shall cause a notice of the application to be published in at least two issues of a local newspaper circulating in the Islands either by physical or electronic means, or other electronic publications, which publication shall include—

(a) the fact of the application;

(b) a photograph of the applicant;

(c) the name of the island on which the applicant resides;

(d) the name of spouse if any, and number of dependants; and

(e) any other particulars as may be prescribed.

(2) A publication made under subsection (1) shall request submissions to be made to the Department within thirty days of the last publication, and no application shall be considered by the Governor unless the notice of the application has been published.

(3) When the Minister makes a recommendation to the Governor of persons who are to be issued a Residence and Employment Rights Certificate, the Department shall cause a notice of the list of names to be published in at least one issue of a local newspaper circulating in the Islands, either by physical or electronic means, or other electronic publications.

Issue of Residence and Employment Rights Certificate

22. (1) The Governor may issue a Residence and Employment Rights Certificate to an applicant if—

(a) the applicant is of full age and capacity;

(b) the applicant meets the prescribed requirements;

(c) the applicant is proficient in English; and

(d) the Governor has had regard to the matters in subsection (2).

(2) In considering an application for a Residence and Employment Rights Certificate, the Governor shall have regard to the following matters—

(a) whether it is in the public interest to issue a Residence and Employment Rights Certificate;

(b) whether the applicant—

(i) is of good character and conduct;

(ii) has to his credit two good character references received by the Department with the application from two Islanders; and

(iii) has a clean criminal record;

(c) whether the applicant has been or is involved in incitement of violence, racism or public disorder;

(d) whether the economic situation of the Islands and the protection of persons already engaged in similar gainful occupations have been duly considered;

(e) whether the applicant brings any exceptional skill to the Islands; or

(f) the desirability of retaining the economic resources of the Islands in the control of Islanders.

(3) Without prejudice to the generality of subsection (1), prescribed requirements may include or consist of guidelines for the purpose of evaluating the merits of an application by awarding to or discounting from the applicant, credits based on his personal and occupational attributes as well as his potential value to the community.

(4) A Residence and Employment Rights Certificate is subject to immigrations restrictions.

Residence and Employment Rights Certificate and conditions

23. (1) A Residence and Employment Rights Certificate shall be for a period of ten years and be issued with the following conditions—

(a) the holder shall have a right to reside in the Islands and be gainfully employed in the Islands subject to an annual declaration and a payment of annual fees as may be prescribed; and

(b) the holder may reside in the Islands and endorse a dependant who was specified in his application.

(2) The spouse of a holder of a Residence and Employment Rights Certificate shall be issued a Residence and Employment Rights Certificate when the principal holder is issued a Certificate, which shall be subject to an annual fee as may be prescribed.

(3) A holder of a Residence and Employment Rights Certificate may apply for permanent residence, at least twelve months before the end of the expiration of the certificate.

Endorsement of names of dependant on Residence and Employment Rights Certificate

24. (1) When a Residence and Employment Rights Certificate is issued under section 22, the Governor may then or on a subsequent application in the prescribed form, endorse the Certificate to apply to the dependant of that person ordinarily resident with him.

(2) An endorsement under subsection (1) may be made subject to any conditions as the Governor may deem fit to impose, including a condition that the dependant, except the

spouse, shall not engage in any gainful occupation without a permit issued by the appropriate authority under section 33.

(3) A dependant child of the applicant who at the time of the first application was not disclosed by the applicant, may be endorsed in a subsequent application, subject to extenuating circumstances and proof of parentage by DNA testing or relation.

(4) A person who does not have a dependant at the time of first application, may when he later has a dependant, endorse a dependant as may be prescribed.

Application for Permanent Residence Certificate

25. (1) An application for a Permanent Residence Certificate may be made by—

(a) the holder of a Residence and Employment Rights Certificate at least twelve months before the expiration of the certificate; or

(b) the spouse of the holder of a Residence and Employment Rights Certificate at least twelve months before the expiration of the certificate.

(2) An application made under subsection (1) shall be made to the Governor in the prescribed form and be accompanied by the prescribed fee.

(3) An application made under subsection (1) shall be submitted to a place designated by the Ministry, and the administrative process may be undertaken by the Department on behalf of the Governor.

(4) The Minister may, on the completion of assessment of an application by the Department, make a written recommendation to the Governor for a person to be issued or refused a Permanent Residence Certificate, stating the reasons for the recommendation.

(5) The Governor may issue a Permanent Residence Certificate if he is satisfied that a person has met the requirements for grant of permanent residence.

(6) When a Permanent Residence Certificate is issued under section 26, the Governor may then, or on a subsequent application in the prescribed form, endorse the Certificate to apply to the dependant of that person ordinarily resident with him.

(7) Section 24 shall apply for the endorsement of a Permanent Residence Certificate with the necessary modifications.

Issue of Residence and Employment Rights Certificate to spouse of deceased holder

26. (1) Where a Residence and Employment Rights Certificate or Permanent Residence Certificate is endorsed as provided in section 24(1) and the holder predeceases the spouse, the spouse may apply, within a period of twelve months from the death of the holder, to the Governor, to be issued a Residence and Employment Rights Certificate.

(2) Where an application is made under subsection (1), the Governor shall issue a Residence and Employment Rights Certificate to the applicant free of charge and may endorse it as applying to any dependant child of the applicant ordinarily residing with him.

(3) A Residence and Employment Rights Certificate issued under subsection (2), shall give the holder a right to reside in the Islands and be gainfully employed in the Islands subject to an annual declaration and a payment of annual fees as may be prescribed

(4) On the application of the holder of a Residence and Employment Rights Certificate issued under this section, the Governor may vary an endorsement on the certificate.

Revocation of Residence and Employment Rights Certificate or Permanent Residence Certificate

27. Subject to section 29, the Governor, acting in his discretion, may revoke a Residence and Employment Rights Certificate or Permanent Residence Certificate on any of the following grounds—

(a) the application for a Residence and Employment Rights Certificate or Permanent Residence Certificate was false in a material particular or failed to disclose a material fact;

(b) the person to whom a Residence and Employment Rights Certificate or Permanent Residence Certificate was issued (P) has been convicted in the Islands of an offence, other than an offence under the Road Traffic Act which does not involve death or injury;

(c) P has been convicted of a criminal offence in any other country and sentenced to imprisonment for a term of not less than twelve months;

(d) P has become unable to support himself and his dependants;

(e) except where authorised by an endorsement on a Residence and Employment Rights Certificate or Permanent Residence Certificate, P has subsequent to the issue of the certificate, ordinarily resided outside the Islands for a continuous period of two years or more;

(f) P has breached a condition endorsed on a Residence and Employment Rights Certificate or Permanent Residence Certificate requiring him to take up residence in the Islands within a certain period of time;

(g) with regards to a Residence and Employment Rights Certificate the holder does not make an annual declaration; or

(h) for any other reason the Governor considers that it is not in the public interest that P continues to reside on the Islands.

Revocation of endorsement on Residence and Employment Rights Certificate or Permanent Residence Certificate

28. Subject to section 29, the Governor may revoke an endorsement on a Residence and Employment Rights Certificate or Permanent Residence Certificate on the ground that—

(a) a condition to which the endorsement is subject has not been fulfilled;

(b) the holder has engaged in gainful occupation other than that authorised by the endorsement on a Permanent Residence Certificate;

(c) the person endorsed, having been named as the spouse of the holder of the Residence and Employment Rights Certificate or Permanent Residence Certificate—

(i) is living apart from the holder of the certificate under a decree of a competent court or under a deed of separation; or

(ii) has ceased to be married to the holder of a certificate by reason of dissolution or annulment of the marriage; or

(*d)* the person endorsed, has been convicted of an offence against this Act.

Person to show cause why Residence and Employment Rights Certificate, Permanent Residence Certificate or endorsement should not be revoked

29. (1) Before revoking a Residence and Employment Rights Certificate or Permanent Residence Certificate under section 27 or an endorsement under section 28, the Governor shall, by notice in writing, inform—

(a) the holder; and

(b) where it is proposed to revoke the endorsement of the name of the dependant, the person endorsed on the certificate,

of the proposed grounds to revoke the certificate or endorsement and shall give the person the opportunity to make representations.

(2) A notice given under subsection (1) shall state that within twenty-one days of service of the notice, the person to whom the notice is addressed may make representations in writing to the Governor concerning the matter, and the Governor shall not determine the matter without considering any representations received within that period of twenty-one days.

Decision of Governor final

30. (1) A decision of the Governor made in accordance with section 22 or 25 to refuse to issue a Residence and Employment Rights Certificate or Permanent Residence Certificate or to issue a certificate subject to conditions, is final and shall not be reviewed or enquired into by any court.

(2) A person aggrieved by a decision of the Governor to revoke a Residence and Employment Rights Certificate or Permanent Residence Certificate under section 27, or to revoke an endorsement on a Residence and Employment Rights Certificate or Permanent Residence Certificate under section 28, may appeal against that decision to the Supreme Court.

(3) Provisions may be made by rules of court for the procedure to be followed on appeals to the Supreme Court made under subsection (2).

Residence, Home Owner's and work permits

Application for permit

31. (1) An application for a Residence Permit, Long Term Residence Permit or Home Owner's Permit may be made to the Director General in the prescribed form.

(2) An application for a work permit, except a temporary work permit, may be made to a Board in the prescribed form.

(3) An application made under subsection (1) or (2) shall be submitted to a place designated by the Ministry, where the application will be administratively processed on behalf of the Director General, Commissioner or Board.

Particulars required to be furnished for permit

32. (1) Without prejudice to another provision under this Act, a person applying for a Residence Permit, Long Term Residence Permit, Home Owner's Permit or work permit under section 31 may be required by the appropriate authority—

(a) to furnish evidence of good character in respect of himself and his dependants as the authority may consider necessary;

(b) in respect of a work permit, to furnish the authority with medical certificates in respect of himself and his dependants, certified by a medical officer in the Islands and with any particulars as the appropriate authority may consider necessary;

(c) to satisfy the authority that he is able to maintain himself and his dependants in the Islands;

(d) to provide—

(i) in the case of a person wishing to remain in the Islands for purposes other than engaging in gainful occupation, an undertaking, in writing that he will not engage in any gainful occupation in the Islands; or

(ii) in the case of a person wishing to remain in the Islands for the purpose of engaging in any gainful occupation, full particulars of such occupation;

(e) in the case of an applicant for a permit, to provide proof of valid health or medical insurance, or if not available at the time of application, to submit the proof before a permit is issued; and

(f) to furnish particulars, whether of the same kind as those already referred or not, as the authority may consider material to the application.

(2) If an applicant fails to furnish the appropriate authority with any of the particulars it has requested under subsection (1), the authority may refuse the application.

(3) This section does not apply to a residence permit application by a spouse of an Islander or British overseas territory citizen.

Issue of permit

33. (1) If on an application for a Residence Permit, Long Term Residence Permit, Home Owner's Permit or work permit made by a person of full age and capacity, the appropriate authority is satisfied that the applicant fulfils the prescribed requirements for that permit, the appropriate authority may in its discretion issue the person a Residence Permit, Long Term Residence Permit, Home Owner's Permit or work permit.

(2) Without prejudice to the generality of subsection (1), prescribed requirements may include or consist of policy guidelines for the purpose of evaluating the merits of an application by awarding to, or discounting from the applicant, credits based on his personal and occupational attributes as well as his potential value to the community.

(3) A permit may be valid for a prescribed period, unless revoked or varied.

Permit to authorise to reside or engage in gainful occupation

34. A permit issued under section 33 may authorise a person—

(a) if issued by the Director General, to remain in the Islands for the period specified in the permit, and whether the person is permitted to engage in any gainful occupation or not; or

(b) if issued by the Board or Commissioner, to remain in the Islands for the period specified in the permit for the purpose of engaging in the gainful occupation specified in the permit.

Endorsement of names of dependant on permit

35. (1) When a permit is issued under section 33, the appropriate authority may then or on a subsequent application in the prescribed form, endorse the permit to apply to the dependant of that person ordinarily resident with him.

(2) An endorsement under subsection (1) may be made subject to any conditions as the appropriate authority may deem fit to impose, including a condition that the dependant, as the case may be, shall not engage in any gainful occupation without a permit issued by the appropriate authority under section 33.

Conditions of permit

36. (1) A permit issued under section 33—

(a) may be limited in duration to the period specified in the permit;

(b) shall be issued with a condition that the person shall hold and maintain a valid health or medical insurance;

(c) shall be issued subject to such conditions or restrictions which may be prescribed; and

(d) shall be subject to any special conditions or restrictions which the appropriate authority may impose in respect of any particular person.

(2) A condition or restriction imposed under subsection (1)*(c)* or *(d)* shall be set out in the permit.

Additional conditions for work permit

37. (1) A Board shall not issue a work permit unless the following conditions are satisfied—

(a) the employer has provided a Board with—

(i) details of the job description and salary package;

(ii) details of the proposed employee's background, qualifications and experience;

(iii) details of any application for the position from an Islander together with an explanation as to why the Islander is considered unsuitable for the post; and

(iv) a copy of the draft employment contract, or a copy of the employment contract, where the application is for a renewal;

(b) the advertisement condition under subsection (2) is satisfied;

(c) the information in the advertisement matches the position in question;

(d) no Islander has applied for the position or, if an Islander has applied, he is not suitable for the position;

(e) the consultation condition under subsection (4) is satisfied;

(f) the person in respect of whom the work permit is sought is proficient in written and spoken English; and

(g) the person in respect of whom the work permit is sought is not the holder of a temporary work permit, visa or a visitor to the Islands.

(2) The advertisement condition is satisfied if the employer has advertised the position in at least two consecutive issues of a newspaper published in and sold or distributed in the Islands either by physical or electronic means, or other electronic publications, and the advertisement—

(a) describes the nature of the position available in sufficient detail to enable persons reading the advertisement to have a reasonable indication of the nature of the work and conditions of employment;

(b) contains the name of the employer and details of the whereabouts of the office or other place to which the application is to be submitted together with contact details, including a telephone number or email address and a fax number, if any, but not a personal residential address for an employer who is not a business;

(c) sets out clearly the salary package relating to the position;

(d) invites prospective applicants who are Islanders to send copies of their applications to a Board; and

(e) state whether the position is currently held by a work permit holder.

(3) Subsection (2) does not apply to a work permit application in the category for a domestic worker and labourer.

(4) The consultation condition is satisfied if a Board—

(a) has consulted the relevant body, if any; and

(b) has taken account of the view of the relevant body, received within the specified time, in respect of the requirements in the Islands of persons engaged in the profession or description of activity concerned.

(5) A reference to a relevant body is to a body or other entity having responsibility for regulating a particular profession or description of employment activity.

(6) A Board shall, as directed by the Minister or as it deems appropriate, refer certain classes of applications to the Commissioner.

(7) Where a Board has referred a matter to the Commissioner under subsection (6), the Commissioner shall make a final decision regarding that matter.

(8) The Governor may by Order published in the *Gazette*, exempt a person or category of persons from the requirements of subsection (1)*(f)*.

Restrictions on work permit

38. (1) A work permit does not permit the person to whom it is issued—

(a) to work for more than one employer, unless the person is a domestic worker or labourer, who may work for up to two employers as approved by the appropriate authority;

(b) to work for a person other than the person specified in the permit; or

(c) to work in any capacity other than that specified in the permit.

(2) Subsection (1)*(b)* does not apply if—

(a) not less than two years has elapsed since the work permit was issued; and

(b) the appropriate authority, on application for a new permit, approves the person to work for another employer.

(3) Subsection (1)*(b)* does not apply where—

(a) a person's work ceases because the company he works for has ceased operations or has been liquidated; or

(b) a person's contract has been terminated, on no fault of his own; and

in this case, a person may apply for a work permit to work for another employer.

(4) Subsection (1)*(c)* does not apply if, on an application to a Board, the Board approves the permit holder's application to work in a different capacity.

(5) A Board shall not approve an application as mentioned in subsection (4) unless—

(a) it is satisfied that it is reasonable for the employer to fill the post with a person who requires a work permit;

(b) if the change in capacity involves a promotion, it has considered the effect that approving the application would have on the opportunity for advancement to the promoted level of qualified Turks and Caicos Islanders already engaged in the same profession or field, or work within the business enterprise concerned; and

(c) it is satisfied that the requirements and conditions set out in section 37 are satisfied.

Renewal and variation of permit

39. (1) A permit issued under section 33 may be renewed or varied, on an application made in the prescribed form.

(2) Subject to this Act, the appropriate authority may renew a permit or vary any special conditions or restrictions endorsed on the permit.

No right to, or expectation of further permit or renewal

40. (1) This section applies where—

(a) a permit is issued under section 33 in respect of the gainful occupation or residence of a person, and the earlier gainful occupation or residence of the person had been authorised by a previous permit; or

(b) a permit is renewed under section 39.

(2) The issue or renewal of a permit does not give rise to any right to, or any expectation of a right to, any further new permit or renewal of an existing permit.

(3) The appropriate authority may refuse an application for a further new permit or renewal without any right arising to the applicant concerned to appeal against the refusal either to the Tribunal or to the Supreme Court on the grounds that the previous issue of a permit or renewal gave a right or expectation of any right to a further new permit or renewal of an existing one.

Revocation of permit

41. Subject to section 42, the appropriate authority may revoke a permit issued under section 33 if the authority is satisfied that in respect of a permit holder other than a person

who is married to an Islander or British overseas territory citizen—

(a) the application was false in a material particular or failed to disclose a material fact;

(b) the person to whom the permit is issued has failed to comply with a condition or restriction to which he is subject;

(c) any fee payable by or under this Act in respect of the permit has not been paid;

(d) the person to whom the permit is issued has been convicted of an offence against this Act;

(e) the person to whom the permit is issued is no longer a fit and proper person to hold it;

(f) it is in the public interest to revoke the permit;

(g) a deportation order has been made under section 98(2) in respect of the person to whom the permit is granted;

(h) with regards to a work permit—

(i) if the person to whom the permit is issued, is working contrary to the work permit;

(ii) if the person to whom the permit is issued has been convicted of an offence under any Act, other than an offence under the Road Traffic Act which does not involve death or injury; or

(i) in respect of a holder of a Long Term Residence Permit, that the person has failed to retain an investment used in an application for a permit that has been issued, as prescribed.

Permit holder to show cause why permit should not be revoked

42. (1) Before revoking a permit under section 41, the appropriate authority shall give the permit holder, notice in writing of its intention to revoke the permit and the reasons for it.

(2) A notice given under subsection (1) shall state that, within seven days of service, the permit holder may make representations in writing to the appropriate authority concerning the matter and the authority shall not determine the matter without considering any representations received within that period of seven days.

(3) This section shall not apply to a revocation made on the grounds specified under section 41*(d)* and *(h)*, which shall be revoked without notice.

Term Limits

43. (1) Subject to subsections (4) or (5) and section 44(1) and (2), there shall be a term limit for a work permit holder which shall be ten years commencing with—

(a) the date on which the work permit holder first entered the Islands, if the worker first entered the Islands as a work permit holder; or

(b) the date on which the worker is issued a work permit, if the worker first entered the Islands as a temporary work permit holder.

(2) Whether a permit is issued and held continuously or not, and upon the expiration of the work permit holder's term limit, the worker shall leave the Islands and a Board shall not issue or renew a work permit for the worker until the worker has ceased to hold a work permit for not less than one year after the worker has left the Islands.

(3) A work permit holder who leaves the Islands before the expiration of his term limit and who has ceased to hold a work permit for not less than one year, may apply for and be issued a new work permit and shall thereupon have a new term limit as provided for in subsection (1).

(4) Where a person is eligible to apply and has applied for a Residence and Employment Rights Certificate, the person may apply to a Board for permission —

(a) to continue working on the same terms that applied to the work permit; or

(b) to work for a different employer but in the same occupation as that in which that person was authorised to work at the time of making the application; and

(c) to endorse or remove a dependant, as applicable, and that permission may be issued or renewed by a Board until such time as that person's application or any appeal arising from it is determined.

(5) A person working under permission issued under subsection (4) shall, where—

(a) the person's application for a Residence and Employment Rights Certificate has been refused,

and no appeal has been filed within the time allowed to appeal; or

(b) having applied for a Residence and Employment Rights Certificate which has been refused and all further appeals have been exhausted,

and that person's term limit has expired, be entitled to continue receiving permission under that subsection for a period not exceeding ninety days from the date of the communication to that person of such refusal or the determination of any appeal or proceedings arising therefrom, whichever shall be the later.

(6) Where the period of ninety days has expired under subsection (5), a person shall leave the Islands, and a Board shall not issue or renew a work permit for the person until the person has ceased to hold a work permit for not less than one year thereafter.

(7) A person working in terms of subsection (4) and (5) shall continue to pay the applicable work permit fees.

(8) On the issue or renewal of a work permit, a Board shall notify the worker and the worker's employer of the worker's term limit and its expiration date for the purposes of this Act.

(9) Subsection (1) does not apply to a person who had and continues to have, that person's normal place of work and abode for the time being outside the Islands and who enters the Islands on a temporary work permit or business visa and leaves the Islands at the conclusion of the business under that permit or visa, or upon the expiration of the permit or visa.

(10) A term limit shall not apply to a person employed in the category or sector listed in Schedule 3.

Term limits for dependants

44.(1) A person—

(a) who is married to—

(i) a work permit holder;

(ii) a person enjoying relevant diplomatic, consular or other similar privileges by or under any Act or in accordance with any recognised international practice, as may be prescribed whose duty of service is in the Islands;

(iii) a serving member of any of His Majesty's Forces on duty in the Islands;

(iv) a person employed in the service of the Government of the Islands; or

(v) a person who is working by operation of law with the permission granted under subsection section 43(4) or (5), and whose right to work in the Islands will expire before that of that person's spouse;

(b) whose marriage is, in the opinion of a Board, not a marriage of convenience;

(d) who is not living apart from his spouse under a decree of a competent court or under a deed of separation; and

(e) who has not lived apart from his spouse for an aggregate period of three months out of the twelve months immediately preceding the application for the issue of a work permit, in circumstances which, in the opinion of a Board, have led the Board to conclude that the marriage has broken down,

may, during the currency of the spouse's work permit, tenure or contract of employment for services stated under subsection (1)*(a)*(ii), (iii) and (iv), or in the period during which his spouse is working by operation of law with permission granted under section 43(4) or (5), apply for the issue of a work permit or the renewal of an existing work permit.

(2) Where a person has made an application for a work permit under subsection (1), a Board may—

(a) grant the application for a period not exceeding that of the spouse's work permit or any renewal thereof;

(b) grant the application for a period not exceeding that of the spouse's tenure or contract of employment; or

(c) grant the application for a period not exceeding that of the period for which his spouse is working by operation of law or under permission granted under section 43(4) or (5).

(3) Where a work permit has been issued to a spouse under subsection (2) and the worker spouse ceases to have the right to work and is required to leave the Islands, the work permit issued to his spouse shall automatically terminate on the date on which the worker's spouse ceases to have the right to work and the worker and his spouse shall leave the Islands and not be entitled to the issue or renewal of any further work permit until

the worker has ceased to hold a work permit for not less than one year after the worker has left the Islands.

(4) A Board in calculating under subsection (1)*(d)* the period of time that an applicant has spent apart from his spouse, shall not consider those occasions when either spouse's absences were because of medical, educational, business, vacation or other analogous circumstances.

(5) This section does not apply to the spouse of a person who falls within the category of workers or sectors excluded in section 43(10).

Business staffing plan

45. (1) This section applies to an employer, whether an individual, a company or other entity, who—

(a) employs not less than fifteen employees who hold work permits; or

(b) is designated for the purposes of this section by the Commissioner.

(2) The employer shall, before the end of the period of six months starting with the date on which this section first applies to the employer, prepare and submit to the Commissioner a business staffing plan.

(3) The business staffing plan shall contain the following information relating to the business—

(a) the names and number of employees, including part-time employees and persons employed through a temping agency, on staff as at the date of submission of the plan;

(b) the names and number of Islanders and non-Islanders employed;

(c) the positions occupied by all Islanders and non-Islander employees, and the nationality of each non-Islander employee and whether that non-Islander employee is—

(i) a permanent resident;

(ii) a person endorsed on a Permanent Residence Certificate;

(iii) a holder of a Residence and Employment Rights Certificate;

(iv) the spouse of an Islander or British overseas territory citizen; or

(v) the holder of a work permit;

(d) the length of time each position has been held by the holder of a work permit;

(e) in respect of posts held by work permit holders other than permanent residents, the likelihood of the posts being filled by Islanders, and the anticipated length of time, for each post, before that happens;

(f) the anticipated growth of the business and its future plans for the next five years;

(g) the commitment of the business to education and development locally, including scholarships, training schemes and in-house training;

(h) the recruitment policy of the business;

(i) the identification by the business of the number of work permits that will be required for the period of the plan, the posts for which they will be required and the desired duration of those work permits; and

(j) other information relating to the employment needs of the business as the Commissioner may require.

Temporary work permits and visas

Temporary work permit

46. (1) This section applies to a person who is eligible for the issue of a work permit by or under this Act and is coming to the Islands for a temporary period for the purpose of engaging in gainful occupation or other commercial activity with one or more persons or entities licensed to carry on business in the Islands under the Business Licensing Act or any other law.

(2) The types of temporary work permits are—

(a) an Emergency Work Permit which is a single use permit and will apply to a person coming to the Islands for up to ten calendar days; and

(b) a Short Term Work Permit which will apply to a person coming to the Islands for a period of more than ten days but not exceeding six months.

(3) An Emergency Work Permit does not apply to barmaids, bar attendants, caregivers, domestic workers and labourers.

Application for temporary work permit

47. (1) An application for a temporary work permit may be made to the Commissioner in the prescribed form, prior to arrival in the Islands, where the applicant shall select the type of temporary work permit required.

(2) Notwithstanding subsection (1), an application for an Emergency Work Permit may be made at a point of entry.

Issue and duration of temporary work permit

48. (1) The Commissioner may, subject to such conditions as may be prescribed issue a permit—

(a) to an applicant for an Emergency Work Permit, a permit for a period of ten days, which may be renewed under this section; or

(b) to an applicant of a Short Term Work Permit, a permit for a period of more than ten days but not exceeding six months.

(2) An application for the renewal of an Emergency Work Permit may be made to the Commissioner in the prescribed form.

(3) Subject to such conditions as may be prescribed or as he may impose, the Commissioner may renew an Emergency Work Permit for a period not exceeding thirty days from the date of first issue as he considers appropriate.

(4) A Short Term Work Permit is not renewable after a period of six months, but the holder is eligible to apply for a full-term work permit one month before the expiration of the Short Term Work Permit.

(5) Where a person does not apply for a full-term work permit, a Short Term Work Permit shall expire, and a person may apply for a new Short Term Work Permit after the person has been absent from the Islands for a period of ninety days.

Appeals for refusal to issue Temporary Work Permit

49. (1) A person who is dissatisfied with a decision of the Commissioner to refuse to issue or renew a temporary work permit may appeal in writing to the Minister before the end of the period of five days starting with the day on which he is notified of the refusal.

(2) The Minister shall give a decision on an appeal under subsection (1) before the end of the period of five days starting with the day on which he is notified of the appeal.

(3) The decision of the Minister under subsection (2) is final and binding and is not subject to appeal.

Visa to enter the Islands

50. (1) A person may apply for a visa for leave to enter the Islands as may be prescribed.

(2) The types of visas that the Director General may issue to a person to enter the Islands are—

(a) B1 Business Visitor's Single Visa;

(b) B2 Business Visitor's Multiple Visa;

(c) C1 Single Visit Visa;

(d) C2 Multiple Visit Visa;

(e) D1 Student Visa;

(f) E1 Seaman's Visa; and

(g) S1 Special Visa;

(3) The decision of the Director General on a visa is final, and a refusal shall not be appealed, reviewed or enquired into by any court.

(4) Regulations may be made to set out provisions relating to visas.

Business Visitor's Visa

51. (1) A Business Visitor's Visa may be issued to a director, chief executive officer or an executive associated with a company or partnership registered or carrying on business in the Islands.

(2) A person may make a single application in each calendar year to the Director General for the issue, in each calendar year, of one or more business visitor's visa, and for more than one visit.

(3) There are two types of business visitor's visa—

(a) a B1 Business Visitor's Single Visa which shall be a single entry visa for a period not exceeding fourteen days; and

(b) a B2 Business Visitor's Multiple Visa which shall be a multiple entry visa for a period not exceeding one year, permitting a person to stay for a period not exceeding fourteen days for each visit.

Application for Business Visitor's Visa

52. (1) An application for a Business Visitor's Visa shall be for any number of persons and visits as the company, partnership or firm wishes to have a business visitor's visa issued to each person and shall contain for each person any information as may be prescribed.

(2) The application shall state—

(a) the maximum number of times it is desired that each business visitor be admitted to the Islands in that year;

(b) his occupation; and

(c) the maximum duration of the stay of each business visitor during each visit.

Issue of Business Visitor's Visa

53. (1) The Director General may issue a Business Visitor's Visa, subject to any condition and limitation as he thinks fit.

(2) A border force officer of the rank of Assistant Director or higher may approve a Business Visitor's Visa on behalf of the Director General.

(3) The fee for a Business Visitor's Visa shall be prescribed.

Appeals against Decisions of Appropriate Authority

Appeal to Tribunal

54. A person aggrieved by a decision of the appropriate authority for a Residence Permit, Long Term Residence Permit, Home Owner's Permit and work permit—

(a) refusing to issue a permit;

(b) imposing a condition or restriction on a permit;

(c) refusing to vary a term, condition or restriction of a permit;

(d) refusing to renew a permit; or

(e) revoking a permit,

may appeal in writing to the Tribunal within a period of fourteen days following notification to the person of the decision appealed against.

Appeal to Tribunal suspends execution of appropriate authority's decision

55. (1) Until the Tribunal has given its decision on the appeal, an appeal to the Tribunal shall have the effect of—

(a) suspending the execution of the decision of the appropriate authority, where the appeal is under section 54*(b)*;

(b) suspending the refusal to renew a permit, where the appeal is under section 54*(d)*;

(c) suspending a revocation, where the appeal is under section 54*(e)*.

(2) This section does not apply to the refusal of—

(a) a temporary work permit issued under section 48; or

(b) a visa issued under section 50 or 51.

Powers of Tribunal on appeal

56. (1) The Tribunal may confirm the decision appealed against, or—

(a) direct the appropriate authority to issue the permit applied for on such terms and conditions as he considers appropriate;

(b) direct the authority to cancel a condition or restriction it imposed on a permit;

(c) direct the authority to vary a condition or restriction it imposed on a permit;

(d) direct the authority to renew a permit; or

(e) direct the authority to restore a permit it has revoked on any terms and conditions as he considers appropriate.

(2) The authority shall comply with a direction made by the Tribunal under subsection (1).

(3) The Tribunal shall give its decision before the end of the period of thirty days starting on the day it receives notice of the appeal.

Tribunal's decision final

57. The decision of the Tribunal under section 56 for an appeal made under section 54 shall be final and shall not be reviewed or enquired into by any court.

Directions to Commissioner by Minister

58. The Minister may from time to time, through the Permanent Secretary, give to the Commissioner or any assistants or deputies appointed under section 31 of the Employment Act general or special directions, not inconsistent with this Act, as to the exercise or performance of their powers, discretions or functions under this Part, and the Commissioner, assistant or deputy shall comply with the direction.

Power to require information

59. For the purpose of discharging functions under this Part, the Director General, Commissioner or Board may require a person to provide any information as the Director General, Commissioner or Board thinks appropriate.

PART V

POWERS OF BORDER FORCE OFFICERS

Power of border force officer to examine persons on entry

60. (1) A border force officer may board, and without a search warrant search any ship or aircraft for the purpose of exercising his functions under this Act.

(2) A border force officer may examine a person who has arrived in the Islands by ship or aircraft for the purposes of establishing—

(a) whether the person is not an Islander, a British overseas territories citizen or a permanent resident;

(b) if he is not a person within paragraph *(a)*, whether the person may or may not enter the Islands without leave; or

(c) if the person may not enter without leave, whether the person should be given leave and for what period and on what conditions (if any), or should be refused leave.

(3) A person may be examined by—

(a) a medical officer in the Islands; or

(b) any other person who holds an appropriate medical qualification and is authorised for that purpose by the Chief Medical Officer.

(4) A person on being examined by a border force officer or a medical officer in the Islands or other authorised person may be required to submit to further examination.

(5) An authorisation for the purposes of subsection (3) may be made generally or for specific purposes.

Power of border force officer to examine persons being in the Islands unlawfully

61. (1) A border force officer may examine a person whom he reasonably suspects—

(a) of having entered the Islands unlawfully; or

(b) of being in the Islands in breach of a condition or restriction of his permit to enter or reside in the Islands.

(2) A person on being examined by a border force officer under this section may be required to produce any documents in his possession, custody or control.

Requirements to produce identification documents

62. (1) A person is required to produce a government issued photo identification upon request by a border force officer or police officer, to show his legal status in the Islands.

(2) A border force officer or police officer may examine a person to determine his legal status in the Islands and may require that person to produce any documents in his possession, custody or control.

Directions for removal of persons refused leave to enter

63. (1) Where a person arriving in the Islands is refused leave to enter, a border force officer may, subject to subsection (2) give directions to—

(a) the captain or master of the ship or aircraft in which the person arrived in the Islands, requiring the captain or master to remove that person immediately from the Islands in that ship or aircraft;

(b) the owner or agent of the ship or aircraft, requiring the owner or agent to remove the person immediately from the Islands in any ship or aircraft specified in the directions, being a ship or aircraft of which they are owner or agent; and

(c) an owner or agent, requiring the owner or agent to make arrangements for the removal of that person from the Islands in any ship or aircraft bound for a country or territory specified in the directions, being either—

(i) a country of which the person is a national or citizen;

(ii) a country or territory in which the person has obtained a passport or other document of identity;

(iii) a country or territory in which the person embarked for the Islands; or

(iv) a country or territory to which there is reason to believe the person will be admitted.

(2) A person in respect of whom directions is given under subsection (1) may be placed, under the authority of a border force officer, on board any ship or aircraft in which the person is to be removed in accordance with the directions.

(3) Where a border force officer refuses leave to enter a person and the border force officer gives directions under this section, a person to whom the directions are given shall comply with the directions.

(4) Where a border force officer refuses leave to enter to a person under Part II and that person is detained pending the implementation of directions given under this section, the local representative, or if there is no local representative, the captain or master, owner or agent, of the ship or aircraft from which that person disembarked shall be financially responsible for any public charges reasonably incurred in respect of that person's maintenance during the detention period.

Directions for removal of unlawful entrants

64. (1) Section 63 applies to a person mentioned in any of the following paragraphs as if he had been refused leave to enter by a border force officer—

(a) he is found in the Islands after entering in contravention of this Act;

(b) he has been permitted to enter after having disembarked from a ship or aircraft of which he was a member of the crew subject to a condition that he should leave the Islands by a specified ship or aircraft or within a specific period, but fails to

comply with that condition or is reasonably suspected of intending not to leave; or

(c) he has entered the Islands after having disembarked from a ship or aircraft of which he was a member of the crew under section 6(1) without leave of the border force officer but fails to leave with that ship or aircraft from the port where he had entered or is reasonably suspected of intending not to leave.

(2) If a person enters the Islands from a ship or aircraft on which he was a stowaway, section 60 applies to him as if he had been refused leave to enter by a border force officer.

(3) Where section 63(2) applies, subsection (2) shall be deemed to include a reference to the country in which that person stowed away.

Detention of persons liable to examination or removal

65. (1) A person who may be required to submit to examination under section 60(2), (3) or (4) or section 61 may be detained under the authority of a border force officer pending the examination and pending—

(a) in the case of a person to whom section 60 applies, a decision to give or refuse him leave to enter; or

(b) in the case of a person to whom section 61 applies, a decision whether to recommend his deportation.

(2) A person in respect of whom directions may be given under section 63 or 64 may be detained under the authority of a border force officer pending the giving of directions and pending his removal in accordance with any directions given.

(3) Subject to subsection (4), a person on board a ship or aircraft may, under the authority of a border force officer, be removed from the ship or aircraft for detention under this section.

(4) If a border force officer requires, the captain or master of the ship or aircraft shall prevent a person who has arrived in the Islands on the ship or aircraft and been refused leave to enter from disembarking in the Islands, and the captain or master of the ship or aircraft, may for that purpose detain the person in custody on board the ship or aircraft.

(5) The captain or master of the ship or aircraft, if required by a border force officer, shall prevent a person placed on board the ship or aircraft under section 63(2), from disembarking in the Islands or before the directions for his removal have been

fulfilled, and the captain or master, may for that purpose detain him in custody on board the ship or aircraft.

(6) If a decision is taken to recommend the deportation of a person as mentioned in subsection (1)*(b)* the detention of the person may be continued until a deportation order is made in respect of that person.

Arrest without warrant of persons liable to be detained

66. A person liable to be detained under section 65 may be arrested without warrant by a border force officer or police officer.

Detention centres

67. (1) A person may be detained under section 65 in a place that the Minister may direct, except if the person is detained under subsections (3), (4) and (5) of that section on board a ship or aircraft.

(2) A border force officer, police officer or any person authorised by an officer of the rank of Director or above, may take all steps as may be reasonably necessary for photographing, measuring, fingerprinting or otherwise identifying a detainee.

(3) A detainee may be taken in the custody of a police officer, or of a person acting under the authority of a border force 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 Islands.

(4) A person shall be deemed to be in legal custody at any time when he is a detainee or is being removed in accordance with subsection (3).

(5) A person may be detained if—

(a) he is charged of an offence under this Act, pending the process to remove him from the Islands; or

(b) he has been ordered by a court to be deported, and Border Force is in the process of deporting him

(6) A person or vehicle entering a detention centre may be searched without warrant by a border force officer or other person authorised for the purpose in respect of evidence mentioned in section 68(1).

(7) An item or thing found in or brought into a detention centre shall be subject to search without warrant for the reasons mentioned in section 68(1).

(8) The Minister or person appointed by him to have charge of a detention centre may refuse admission to or remove from the detention centre any person as he directs.

(9) Any property or other possessions seized in consequence of a search under subsection (6) or (7) or section 68 may be retained for use in connection with the purposes of this Act.

(10) In this section and section 68—

(a) a detention centre is a place referred to in subsection (1) of this section; and

(b) a detainee is a person detained in a detention centre as mentioned in that subsection.

(11) For the avoidance of doubt, subsection (8) does not apply to a detainee.

Detainees

68. (1) A detainee may be searched without warrant for any of the following reasons—

(a) evidence of identity;

(b) evidence of citizenship;

(c) evidence of status in the Islands;

(d) evidence of the commission of an offence;

(e) evidence of travel;

(f) anything which could cause injury to the detainee or others;

(g) anything that may cause damage to property;

(h) anything that could assist in an escape; or

(i) anything that may be used to interfere or tamper with evidence relating to the detainee.

(2) If a detainee is detained by virtue of powers conferred by or under this Act the search may include a search of the detainee's body orifices or any device found on the person.

(3) A search conducted under this section may be carried out by using a digital device.

(4) A search for anything mentioned in subsection (1) may also be carried out in any part of the detention centre if it is a place—

(a) which is or has, at any time been occupied by a detainee; or

(b) where there are reasonable grounds for believing that evidence relating to any matter mentioned in subsection (1) may have been concealed.

(5) The detainee may be required to submit to examination by a registered and licensed medical practitioner.

(6) For purposes of this section, a 'digital device" means an electronic equipment used for purposes of searching a person or goods and includes a hand-held or other detection technologies that may be used by Border Force to discharge its duties.

Temporary admission or release of persons liable to detention

69. (1) A person liable to detention or detained under section 65 may, under the written authority of the Director General—

(a) be temporarily admitted to the Islands without being detained; or

(b) be released from detention.

(2) When a person is released from detention—

(a) the person shall enter into a recognizance with or without sureties, for a reasonable amount; and

(b) appear before a border force officer at a fixed time and place as may be stated in the recognizance.

(3) An action under subsection (1) shall not prejudice a later exercise of the power to detain a person.

(4) As long as a person is at large in the Islands, by this section, the person shall be subject to the restrictions relating to residence and to reporting to a border force officer or police officer, as may be notified to him in writing.

Financial responsibility for unlawful entrants

70. (1) Where a person enters the Islands by ship or aircraft in contravention of sections 61, 64 and 65 of this Act then, without prejudice to another provision under this Act, the local representative of the ship or aircraft may be financially responsible for any public charges reasonably incurred in respect of the person's maintenance, including any detention while in the Islands, and his subsequent repatriation, removal or deportation from the Islands.

(2) Where a person enters the Islands without leave or remains in the Islands beyond the time permitted by a border force officer, and the Director General directs his removal from

the Islands, any money found in his possession shall be used to defray the costs of his removal.

Boarding of ship or aircraft

71. Where an officer of the Royal Navy, police officer, an officer of the Regiment or other authorised officer has reasonable grounds to believe that a person on board a ship or aircraft which is in the territorial waters of the Islands is landing or preparing to land in the Islands in contravention of this Act, he may board the ship or aircraft and exercise the powers conferred on a border force officer under section 60.

Border force officers: general powers

72. (1) Without prejudice to any other power under this Part, for the purpose of the exercise of his functions under this Act, a border force officer has the following general powers—

(a) without warrant, to enter and search any premises;

(b) without warrant to seize and detain any thing, including any ship, aircraft or vehicle;

(c) without warrant, to search a person if he has reasonable grounds to suspect that an offence has been committed under this Act;

(d) with or without warrant, to seize a device found during a search conducted under this Act; and

(e) with or without warrant, to break, open or download a device seized in terms of paragraph *(d)*, where there is reasonable belief that the device contains information in electric form which may be used as evidence of an offence under this Act.

(2) For the purpose of the exercise of any power conferred by or under this Act, a border force officer may use such force as is reasonable in the circumstances.

(3) The Governor may from time to time issue guidance as to what constitutes the use of reasonable force in particular circumstances.

(4) In any question as to whether the use of force was reasonable, it shall be presumed, unless the contrary is shown, that a person acting in accordance with such guidance used reasonable force.

Power to require information from an employer

73. A border force officer may require a person who is an employer or engages another person under a contract for services

to provide him, within five working days, with information, including documents, which he may reasonably require for the purpose of the exercise by the officer of his functions under this Act.

PART VI

WORK PERMIT BOARDS AND IMMIGRATION TRIBUNAL

Work Permit Boards

Establishment of Work Permit Boards

74. (1) For the purposes of this Act this section establishes work permit boards.

(2) The boards are established as follows—

(a) Work Permit Board 1;

(b) Work Permit Board 2; and

(c) any other Board as the Minister may determine.

Functions of Board

75. (1) A Board shall—

(a) exercise general supervision and control over matters connected with the entry of persons into the Islands for the purposes of taking up or seeking employment;

(b) be responsible for the issuance of work permits, except for temporary work permits;

(c) give advice to the Minister relating to the formulation and implementation of policy in connection with the matters under paragraph *(a)*; and

(d) give advice to the Minister or the Commissioner on any matter referred to the Board by the Minister or Commissioner.

(2) For the purpose of the exercise of its functions, a Board shall provide the Minister with such reports and other information as the Minister requires.

Constitution of Board

76. (1) A Board shall consist of—

(a) a chairperson and three other members appointed by the Governor, acting on the advice of the Minister;

(b) the Director General or his representative;

(c) the Commissioner of Labour or his representative; and

(d) the Permanent Secretary, Finance or his representative.

(2) A person shall be disqualified from appointment as a member if he is not an Islander or is a member of the Cabinet or the Parliament.

(3) In appointing the members of a Board under subsection (1*)(a)*, the Governor—

(a) must ensure there is a fair representation from all the islands; and

(b) that a person is appointed from persons—

(i) who have local knowledge of the Islands;

(ii) who are community representatives,

(iii) with the requisite skills including law, human resources and business;

(iv) who have knowledge and understanding of the framework concerning work permits; or

(v) who have a reputation for honesty, integrity, and objectivity.

(4) A chairperson or an appointed member, unless he sooner resigns or is removed from office shall be appointed for a term not exceeding three years, as may be specified in the instrument of appointment, and may be re-appointed.

(5) An appointment made under subsection (4) shall be made in a way that the tenure of half of a Board expires at a different date.

(6) The Governor may at any time without cause terminate the appointment of a chairperson and an appointed member.

(7) A chairperson or an appointed member may at any time resign by giving notice in writing to the Governor, and the

membership shall cease from the date the Governor receives the notice of resignation

Meetings of Board

77. (1) Unless there is no business to transact, a Board shall meet at least once in each month and on such occasions as, in the opinion of the chairperson, may be necessary or desirable in the public interest.

(2) Where the Minister considers it necessary to ensure the continuity of the business of the Board, the Minister may convene a meeting of the Board.

(3) A chairperson shall preside at all meetings of a Board, and in his absence from a meeting, the members present shall appoint one of their number to preside.

(4) Four members shall form a quorum at a meeting of a Board.

(5) At a meeting of a Board all questions shall be decided by a majority of the votes of the members present and voting, and in the event of an equality of votes, the member presiding shall have a casting vote.

(6) A Board may, with the approval of the Minister make rules to regulate its proceedings.

Secretary of Board

78. (1) The Governor, acting on the advice of the Minister, shall appoint a public officer to be the Secretary of a Board.

(2) The Secretary shall—

(a) attend all meetings of a Board but shall not vote on any matter or question before a Board;

(b) prepare minutes of the meetings of a Board;

(c) keep a record of the proceedings and decisions of a Board; and

(d) attend to such other duties as a chairperson of a Board may require.

(3) As soon as is practicable after every meeting of a Board, the Secretary shall furnish the Minister with a copy of the minutes of meetings and proceedings of a Board.

Immigration Appeal Tribunal

79. The Immigration Appeal Tribunal is continued in existence.

Composition of Tribunal

80. The Tribunal shall consist of a Chairperson and four other members appointed by the Governor from persons—

(a) who are Turks and Caicos Islanders; and

(b) have extensive and relevant professional expertise in matters relevant to the functions of the Tribunal.

Term of appointment of members

81. (1) The members of the Tribunal shall be appointed by instrument for such period not exceeding three years, as may be specified in their respective instruments of appointment.

(2) A member is eligible for re-appointment.

Functions of Tribunal

82. (1) The functions of the Tribunal shall be to hear and determine appeals against decisions of—

(a) the Director in relation to residence permits, long term residence permits and home owner's permits; and

(b) the Board or Commissioner in relation to work permits.

(2) For the purpose of discharging its functions under this Act, the Tribunal may—

(a) summon any person connected in any material way with a matter or question to attend to give evidence relating to such matter or question;

(b) administer oaths or affirmations; and

(c) examine on oath, affirmation or otherwise any person attending before it and require such person to answer all questions put to him.

(3) A person commits an offence if he has been summoned under subsection (2)(*a)* and, without reasonable excuse—

(a) fails to attend;

(b) refuses or fails to be sworn or to make an affirmation; or

(c) refuses, fails to answer or does not answer truthfully a question that he is required to answer under subsection (2)*(c)*.

(4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine of $2,000 or to imprisonment for a term of six months, or to both.

(5) In carrying out its functions, the Tribunal shall consider such guidance as the Minister may, from time-to-time issue.

(6) In the exercise and discharge of its functions the Tribunal is not subject to the direction or control of any person or authority but shall have regard to the policy of the Government in reaching its decision.

(7) The members of the Tribunal shall not disclose to any person other than another member of the Tribunal or the Secretary any information obtained during the exercise of his functions.

Resignation and removal from office

83. (1) A member of the Tribunal may resign by giving notice in writing to the Governor, but the resignation shall not take effect until the Governor has received the notice.

(2) A member shall vacate his office—

(a) upon termination of his appointment by the Governor;

(b) upon resigning;

(c) if he is declared bankrupt, suspends payment to or compounds with his creditors;

(d) if he is convicted of an offence involving dishonesty, fraud or any indictable offence;

(e) if he fails to disclose a conflict of interest in accordance with this Act;

(f) if he is in breach of section 82(7); or

(g) if he absents himself, except with the leave granted by the Chairperson, (or in the case of the Chairperson, except with leave granted by the Governor) from three consecutive meetings of the Tribunal.

(3) The Governor shall cause every appointment, removal, resignation and death of a member to be published in the *Gazette*.

Meetings of Tribunal

84. (1) The Chairperson shall preside at meetings of the Tribunal.

(2) In the case of the absence or inability of the Chairperson to act at any meeting, the remaining members shall elect a member to preside at the meeting

(3) The Chairperson or person presiding, and two other members shall constitute a quorum at any meeting of the Tribunal.

(4) Every appeal before the Tribunal shall be determined by the opinion of the majority of the members present, but if the members present are equally divided in their opinions, the Chairperson or person presiding shall have and exercise a casting vote.

Secretary of Tribunal

85. (1) The Governor, acting on the advice of the Minister, shall appoint a public officer to be the Secretary of the Tribunal.

(2) The Secretary shall—

(a) attend all meetings of the Tribunal but shall not vote on any matter or question before the Tribunal;

(b) prepare minutes of the meetings of the Tribunal;

(c) keep a full and complete record of the proceedings and decisions taken on an appeal by the Tribunal; and

(d) attend to such other duties as the chairperson of the Tribunal may require.

Procedure generally

86. Subject to the provisions of this Act, the Tribunal shall have power to regulate its own procedure, including the manner in which matters subject to the determination of the Tribunal are determined by it.

Disclosure of interest

87. (1) Where a member of a Board or Tribunal is present at a meeting of the Board or Tribunal, at which meeting a matter which is the subject of consideration is one in which the member has any personal interest, professional or pecuniary interest, directly or indirectly, in a contract, proposed contract or other matter, the member shall as soon as practicable after the commencement of the meeting and before the matter is discussed, disclose his interest and shall leave the meeting for the duration of and not take part in any consideration or discussion of any question touching upon that matter.

(2) A disclosure of interest made under subsection (1) shall be recorded in the minutes of the meeting at which it is made.

(3) Where a member of a Board or Tribunal fails to disclose his interest in terms of subsection (1) and a decision by the Board or Tribunal is made benefiting the member, the decision shall be null and void to the extent to which it benefits that member.

Pecuniary interest

88. (1) For the purposes of section 87, a member of a Board or Tribunal shall be treated as having an indirect pecuniary interest in a contract, proposed contract, licence or other matter if—

(a) the member, or any nominee of his, is a member of a company or other body which has a direct or indirect pecuniary interest in the contract, proposed contract or other matter under consideration;

(b) the member is a partner, or in the employment of a person with whom the contract was made or is proposed to be made, or who has a direct or indirect pecuniary interest in a contract, proposed contract or other matter under consideration;

(c) the member or any partner of his is a professional advisor to a person who has a direct or indirect pecuniary interest in a contract, proposed contract or other matter under consideration; or

(d) the member’s spouse or child has a direct or indirect pecuniary interest in a contract, proposed contract or other matter under consideration.

(2) Subsection (1) does not apply to membership of, or employment by, any public body.

(3) The Governor may, subject to such conditions as he may determine, appoint a person to act as a member for any specified period, in any case in which the number of members disabled by section 87 at any one time would be so great a proportion of the whole, as to impede the transaction of business of a Board or Tribunal.

Confidentiality

89. (1) A member of a Board or Tribunal, or officer or employee of the Ministry, or any person assisting a Board or Tribunal shall observe and preserve the confidentiality of all matters coming before a Board or Tribunal, and the confidentiality shall subsist even after the termination of the term of office or the mandate.

(2) A member of a Board or Tribunal, officer or employee of the Ministry, or any person to whom confidential information is revealed through working with a Board or Tribunal, shall not disclose that information to any person, unless he is required to disclose in terms of any law or for purposes of any legal proceedings.

Validity of decisions

90. The validity of any act or proceedings of a Board or Tribunal shall not be affected by any vacancy among its members, or by any defect in the appointment of a member.

Submission of particulars for declaration

91. A member of a Board or Tribunal shall comply with the Integrity Commission Act and shall submit all particulars required by that Act to identify the member's assets, holdings, beneficial income and other relevant interests.

Protection of members acting in good faith

92. No action, suit, prosecution or other proceedings shall be brought or instituted personally against a chairperson or any member of a Board or the Tribunal in respect of any act done in good faith in the course of the operations of a Board or the Tribunal.

Remuneration

93. There may be paid to the Chairperson and each member of the Board or Tribunal who is not a public officer such remuneration as the Governor may determine.

Financial provisions for Board or Tribunal

94. Any expenses of a Board or Tribunal incurred in the performance of its functions under this Act, shall be payable out of money appropriated by the Parliament for the purpose.

PART VII

STOP LIST: PROHIBITED IMMIGRANTS: DEPORTATION AND PROVISIONS RELATING TO THE REMOVAL OF PERSONS FROM THE ISLANDS

Stop List

95. (1) Where the Director General is satisfied that a person, other than an Islander, a British overseas territories citizen or a permanent resident, who is for the time being outside the Islands—

(a) is a person who has, while in the Islands conducted himself in an undesirable manner; or

(b) is a person whose entry into the Islands in the opinion of the Director General appears undesirable in view of information or advice received from any source which the Director General considers reliable,

the Director General may cause that person's name to be entered on a list to be called "the Stop List" to be maintained by him, consequently the person shall be prohibited from entering the Islands in accordance with the Stop List Policy.

(2) In the exercise of his special responsibilities under the Constitution the Governor may, acting in his discretion, require the Director General to include or remove from the Stop List the name of such person as the Governor thinks fit, and the Director General shall forthwith comply with such requirement.

(3) If a deportation order has been made against a person and he is removed from the Islands, his name shall be entered in the Stop List.

(4) The Stop List does not apply to a person who is under the age of eighteen years.

Distribution of copies of Stop List, etc., to shipping agents

96. The Director General may cause copies of the Stop List, or notification of the entry in or removal of any name from the Stop List, to be given to the agents or representative of ships or aircraft ordinarily calling at the Islands, or to travel agencies or relevant government agencies or departments which are in or outside the Islands.

Prohibited immigrants

97. In the exercise of his special responsibilities under the Constitution, the Governor may by Order published in the *Gazette*, declare a person or class of persons to be prohibited immigrants, and after the declaration, the person or class of persons shall be prohibited from entering the Islands.

Deportation process

98. (1) A person, other than an Islander, a British overseas territories citizen or a permanent resident, shall be liable to deportation from the Islands if the person—

(a) has remained in the Islands contrary to this Act, and the Director General has recommended that the person be deported;

(b) has been convicted of an offence under this Act or any other Act, and the court convicting that person has recommended that the person be deported;

(c) is a person whose presence in the Islands would in the opinion of the Director General be undesirable and not conducive to the public good and the Director General has recommended that the person be deported;

(d) has applied for and been refused asylum under the Asylum Act; or

(e) is a person whose presence in the Islands would in the opinion of the Governor, in the exercise of his special responsibilities under the Constitution, be undesirable and not conducive to the public good.

(2) If the conditions in subsection (3) are satisfied, the Minister may make a deportation order requiring a person to leave the Islands within the time fixed by the order and after that, to remain out of the Islands.

(3) The conditions are that—

(a) the Minister serves on the person a notice of the intention to make the order; and

(b) having considered any representations made by the person, the Minister thinks it is appropriate to make the order.

(4) A person on whom a notice is served in terms of subsection (3)*(a)* may, before the end of a period of three days starting with the date on which the person receives the notice, make representations, to the Minister in a manner that may be specified in the notice, why a deportation order should not be made.

(5) Where the Minister makes a deportation order in respect of any person, he may further order that the dependant of that person be deported.

(6) Notwithstanding subsection (1), a deportation order shall not be made in respect of a person who is the spouse of an Islander and who is living together with the Islander unless—

(a) that person has been convicted of a criminal offence and sentenced to not less than twelve months' imprisonment; and

(b) the court which has convicted that person has recommended deportation.

(7) For the purposes of subsection (1)*(b)*, if a person is convicted of an offence under this Act, the court which convicts the person may, unless the person is an Islander, a British overseas territories citizen or a permanent resident, recommend that the person be deported.

(8) Where a deportation order is made in respect of a person who immediately before the making of the deportation order was lawfully within the Islands in terms of this Act, a copy of the order shall be served to the person by a border force officer or police officer.

Revocation of deportation order

99. (1) A deportation order shall not be enforced until the period of seven days has elapsed from the date of service.

(2) A person on whom a deportation order is served may, not later than seven days after the date of service, give notice to the Governor that he requests the Governor to revoke the order.

(3) A notice served under subsection (2) shall include the reasons why the person considers that the deportation order should be revoked.

(4) The Governor may, acting in his discretion, revoke a deportation order if he is satisfied—

(a) that there are circumstances relating to the person against whom the order was made or his family that render removal from the Islands unreasonable or unfair; and

(b) that there is no prejudice to the public interest if the person is not removed.

(5) This section does not apply to a deportation order if the Governor certifies that in the interests of defence, public safety or public order, it is not appropriate for him to revoke the order.

(6) The Governor shall give his decision before the end of seven days starting with the day he receives notice under subsection (2).

Detention of persons subject to deportation order

100. (1) A person in respect of whom a deportation order has been made may be detained by a border force officer until—

(a) the order is enforced; or

(b) the order is revoked.

(2) A person detained under subsection (1)—

(a) is to be detained at a place directed by the Minister for the purposes of section 68; and

(b) is deemed to be in legal custody.

Removal of persons subject to deportation order

101. (1) A border force officer, under the authority of the Director General, may place a person who has been issued a deportation order on board a ship or aircraft which is about to leave the Islands, and the captain or master of the ship or aircraft shall, if required by the Director General or a border force officer, take the necessary steps to prevent the person from disembarking before the ship or aircraft leaves the Islands, and may for that purpose detain the person in custody on board the ship or aircraft.

(2) The Director General or a border force officer may give directions to the captain or master of the ship or aircraft which is about to leave the Islands, requiring him to give a person who has been issued a deportation order and his dependants, if

any, a passage to any port specified in the directions, being a port to which the ship or aircraft is to call in the course of its voyage, and proper accommodation and maintenance during the passage.

(3) The Director General may, if he thinks fit, apply any money or property belonging to the person being deported, to payment of the whole or any part of the expenses of or incidental to the voyage from the Islands and the maintenance, until departure of the person and his dependants, if any.

(4) Subject to subsection (3), a person who has been issued a deportation order may be detained, under the authority of the Director General, until he is dealt with under subsection (1).

(5) A person who has been recommended for deportation by the court shall, unless the court in any case where the person is not sentenced to imprisonment, otherwise directs, be detained until the Governor makes a deportation order in his case or directs him to be released.

Removal from the Islands

102. (1) A person may be removed from the Islands in terms of the provisions of this Act or as may be prescribed by regulations or in a policy made by the Director General.

(2) The Director General may make a policy to provide for the removal of a person from the Islands, not departing from this Act.

Lien on ship or aircraft for landing passengers in contravention of this Act

103. (1) If, to the knowledge of the captain or master of the ship or aircraft, a passenger enters or attempts to enter the Islands or does any act to prepare to enter the Islands, where the entry is or would be in contravention of this Act, the captain or master of the ship or aircraft commits an offence.

(2) Where the captain or master of the ship or aircraft commits an offence under subsection (1), the ship or aircraft shall be subject to a lien in favour of His Majesty for the sum of $2,500 for each passenger who enters, attempts to enter or makes preparation to enter the Islands.

(3) The amount charged under subsection (2) may be sued for and recovered by the Director General in the Supreme Court.

(4) A border force officer or police officer, acting under instructions of the Permanent Secretary, Finance, shall detain, by force, if necessary, any ship or aircraft charged with the payment of any sum under this section.

(5) Where a ship or aircraft is detained in terms of subsection (4), the detainment shall cease—

(a) on payment of all sums charged on the ship or aircraft; or

(b) when the person who is in actual charge of the ship or aircraft is arrested under the process of the Supreme Court issued in an action for the recovery of the sums.

(6) Where the sum charged upon a ship or aircraft under this section exceeds the value of the ship or aircraft, it shall be lawful for the Supreme Court on the application of the Director General to order the forfeiture of the ship or aircraft.

Lien to cease if passenger returned on board

104. If a passenger enters the Islands from a ship or aircraft in contravention of this Act, and the passenger is, on the complaint of the captain or master of the ship or aircraft, apprehended and conveyed on board the ship or aircraft under section 63 or 64, the lien arising under section 103 on the entry of the passenger shall cease to exist when the passenger is conveyed on board the ship or aircraft, but shall revive if the passenger enters the Islands again in contravention of this Act.

Power of Governor to remit lien

105. In the event of a ship or aircraft becoming subject to a lien in respect of a passenger under section 104, the Governor may, before or after any suit has been commenced for the recovery of the amount, remit the whole or any part of that amount as he shall deem expedient, and order the release of the ship or aircraft on any terms and conditions as he shall think fit.

PART VIII

IMMIGRATION SERVICES

Definition for this Part

106. In this Part—

(a) "immigration advice" means advice which—

(i) relates to a particular individual;

(ii) is given in connection with one or more relevant matters under this Act or in connection with a person's immigration or legal status in the Islands;

(iii) is given by a person who knows that he is giving it in relation to a particular individual and in connection with one or more relevant matters; and

(iv) is not given in connection with representing an individual before a court in legal proceedings or matters ancillary to the proceedings; and

(b) "immigration services" means the making of representations on behalf of a particular individual—

(i) in civil proceedings before a court, tribunal or adjudicator in the Islands for matters under this Act or in connection with a person's immigration or legal status in the Islands; or

(ii) in correspondence with a Government department in connection with one or more relevant matters under this Act or in connection with a person's immigration or legal status in the Islands.

Immigration services

107. (1) A person shall not provide or purport to provide immigration advice or immigration services for a fee, gain or reward unless he is a qualified person.

(2) A person is qualified if—

(a) he is an Islander and is registered with the Director General, or is employed by the registered person;

(b) he is a member or employee of a body which is licensed or exempted by the Business Licensing Act; or

(c) he is a person admitted as an Attorney under the Legal Profession Act.

(3) Subsection (1) does not apply to a person who—

(a) is certified by the Director General as exempt ("an exempt person");

(b) is employed by an exempt person; or

(c) falls within a category of persons specified in an order made by the Governor for the purposes of this subsection.

(4) A certification made under subsection (3)*(a)* may relate only to a specified description of immigration advice or immigration services.

(5) An exemption made under subsection (3)*(a)* may be modified or withdrawn by the Director General.

Exception to section 107

108. Section 107(1) does not apply to a person—

(a) holding office under the Crown when acting in that capacity;

(b) employed by, or for the purposes of a Government department when acting in that capacity;

(c) acting under the control of a Government department; or

(d) otherwise exercising functions on behalf of the Crown.

Immigration agency

109. (1) A person may operate an immigration agency to provide immigration advice or immigration services but not including representation in civil proceedings.

(2) An immigration agency shall not be operated—

(a) by a person who is not registered under this Part; or

(b) from an office not registered under this Part.

(3) The registration of an immigration agency does not apply to a law firm or a person admitted as an Attorney under the Legal Profession Act.

Registration of immigration agency

110. (1) A person may apply to the Director General to operate an immigration agency, as may be prescribed.

(2) A person is qualified to operate an immigration agency—

(a) if he is a Turks and Caicos Islander;

(b) he is eighteen years old and above;

(c) he has a business licence issued under the Business Licensing Act; and

(d) he is a fit and proper person to provide immigration advice and immigration services, being a person of integrity and good character; and

(e) he satisfies other requirements as may be prescribed.

PART IX

CRIMINAL PROCEEDINGS; OFFENCES AND PENALTIES

Unlawful entry and other offences

111. (1) If a person—

(a) in contravention of section 4(1), 6(2) or 6(3) knowingly enters the Islands without leave;

(b) in contravention of section 4(5) knowingly enters the Islands from an unauthorised port;

(c) having been granted leave to enter under section 5 without reasonable excuse fails to observe a restriction or condition of the leave;

(d) in contravention of section 18 knowingly remains in the Islands beyond the time permitted by a border force officer;

(e) in contravention of section 19(1) engages in any gainful occupation;

(f) without reasonable excuse fails to comply with any directions given under section 63(4);

(g) fails to disclose a conflict of interest under section 87(1);

(h) fails to adhere to confidentiality and discloses or allows to be disclosed information contrary to section 89(1) and (2);

(i) being a person, whose name appears on the Stop List, knowingly enters the Islands;

(j) being a person or a member of a class of persons declared prohibited immigrants under section 97, knowingly enters the Islands;

(k) contrary to a deportation order made by the Minister under section 98(2), knowingly enters the Islands;

(l) without reasonable excuse fails to observe any restriction or condition imposed on his Permanent

Residence Certificate, Residence and Employment Rights Certificate or permit,

the person commits an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for a term of two years, or to both, and if the offence is a continuing one, to a further fine not exceeding $100 for every day or part of a day on which the offence has continued.

(2) If any person, in contravention of section 19(2), employs a person prohibited by section 19(1) from engaging in any gainful occupation, he commits an offence and—

(a) is liable—

(i) on summary conviction to a fine of $20,000 or to imprisonment for a term of four years, or to both; or

(ii) on conviction on indictment to a fine or to imprisonment for a term of seven years, or to both;

(b) if the offence is a continuing one, is liable to a further fine not exceeding $100 for every day or part of a day on which the offence has continued; or

(c) if he is convicted of an offence under this subsection and he holds at the time of the offence a business licence issued under the Business Licensing Act, the court before which he has been convicted may, in addition to any other penalty it may impose, order the suspension of the business licence for such period not exceeding six months as it considers appropriate in the circumstances, and it shall cause a copy of the order to be sent to the Permanent Secretary, Finance.

(3) A person whose licence has been suspended under subsection (2), and who carries on any business in or from within the Islands during the period of suspension commits an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for a term of two years, or to both.

Offences related to advance passenger information

112. (1) A captain or master of a ship or aircraft who–

(a) fails to provide advance passenger information to a border force officer and IMPACS under section 12; or

(b) intentionally or recklessly provides erroneous, faulty, misleading, incomplete or false advance passenger information or transmits the information in an incorrect format,

commits an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for a term of two years, or to both.

(2) Where the advance passenger information provided is inaccurate and the captain or master of the ship or aircraft satisfies the border force officer that the error was not made knowingly or recklessly, notwithstanding any other provision of this Act, the captain or master may not be charged for an offence.

(3) The captain or master of a ship or aircraft and any member of the crew or passenger of a ship or aircraft who—

(a) refuses to answer any question put to him by a border force officer under section 13(3)*(a)* or knowingly gives a false answer to the question; or

(b) fails to comply with any request made by a border force officer under section 13(3)*(b)*,

commits an offence and is liable on summary conviction to a fine of $5,000 or to imprisonment for a term of twelve months, or to both.

Failure to provide information under section 59

113. (1) A person commits an offence if he—

(a) fails or refuses to provide information to the Director General, Commissioner or Board under section 59; or

(b) provides information which is misleading or false in a material particular.

(2) A person commits an offence if, he is required to provide information by a border force officer under section 73, and the person—

(a) fails or refuses to provide the information; or

(b) provides information that is false in a material particular.

(3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine of $5,000 or to imprisonment for a term of twelve months, or to both.

Failure to produce identification

114. A person who does not produce his identification document as required under section 62(1) commits an offence and is liable on summary conviction to a fine of $2,000 or to imprisonment for a term of six months, or to both.

Detention offences

115. (1) A person commits an offence under sections 65 and 67, if the person—

(a) assaults or obstructs a person for the time being responsible for the custody of detainees;

(b) escapes or attempts to escape from custody;

(c) assists a detainee to escape or attempt to escape from custody;

(d) offers a bribe, inducement or gratuity to a person responsible for the custody of detainees; or

(e) offers to, or accepts a bribe, inducement or gratuity, from, or on behalf of a detainee.

(2) A detainee commits an offence—

(a) if he refuses to be searched in terms of section 68(1), (2) or (3); or

(b) if he refuses to submit to a medical examination in terms of section 68(5).

(3) A person who commits an offence under subsection (1) and (2) is liable on summary conviction to a fine of $2,000 or to imprisonment for a term of six months, or to both.

Offence for interfering with a ship, aircraft or artefacts

116. (1) A person who, without reasonable cause—

(a) interferes in any way with a ship, aircraft, vehicle, buoy, anchor, chain, rope or mark which is used by a border force officer or police officer in the performance of his duty; or

(b) interferes with, damages, injures or destroys any animal or thing used for the purposes of paragraph *(a)*,

commits an offence and is liable on conviction to a fine of $20,000 or to imprisonment for a term of two years, or to both.

(2) A person who fires upon a ship, aircraft or vehicle being used by a border force officer or police officer, commits an

offence and is liable on conviction on indictment to imprisonment for life.

Providing Immigration services without qualification or certification

117. (1) A person commits an offence if he provides or purports to provide immigration advice or immigration services in term of section 107(1) when he is not qualified and is liable on summary conviction to a fine of $5,000 or to imprisonment for a term of twelve months, or to both.

(2) A person who operates an immigration agency in contravention of section 109 commits an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for a term of two years, or to both.

(3) A person commits an offence, if being a registered agency, enables or facilities another person who is not employed or part of the agency to provide immigration services under the name of the registered agency, and is liable to a fine of $20,000.

Marriage designed to gain immigration advantage

118. A person who enters into a marriage with the sole or main purpose of benefiting from, or avoiding, the effect of any provision of this Act, or for enabling another person to do so, commits an offence and is liable on summary conviction to a fine of $10,000 or to imprisonment for a term of two years, or to both.

Making false statements, furnishing false information

119. (1) A person commits an offence if, he knowingly makes a false or misleading statement or knowingly furnishes false or misleading information in connection with an application for—

(a) a Permanent Residence Certificate;

(b) a Residence and Employment Rights Certificate;

(c) a Residence Permit;

(d) a Long Term Residence Permit;

(e) a Home Owner's Permit

(f) a work permit;

(g) a temporary work permit; or

(h) a visa.

(2) A person commits an offence if—

(a) without lawful authority he alters any certificate, permit or document issued under this Act; or

(b) he uses for the purposes of this Act or has in his possession for that use, any forged, altered or irregular certificate, passport, visa or other document, whether or not issued under this Act.

(3) A person who commits an offence under subsection (1) or (2) is liable on summary conviction to a fine of $20,000 or to imprisonment for a term of four years, or to both.

Assisting illegal entry

120. (1) For purposes of this section—

(a) "unlawful entrant" means a person entering or seeking to enter, or who has entered the Islands in contravention of this Act or in contravention of a deportation order or the Stop List;

(b) in subsection (3), but not subsection (4), "owner", in relation to a ship or aircraft which is the subject of a hire-purchase agreement, includes the person in possession of it under the agreement, and also includes a charterer; and

(c) in subsection (4), "operating weight" means, in relation to an aircraft 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.

(2) A person who, in contravention of this Act and whether for financial or material benefit or not, assists or facilitates the transportation or entry into the Islands of anyone whom he knows or has reasonable cause for believing to be an unlawful entrant, commits an offence and is liable—

(a) on summary conviction to a fine of $20,000 or to imprisonment for a term of four years, or to both; or

(b) on conviction on indictment to a fine or to imprisonment for a term of seven years, or to both.

(3) If a person convicted of an offence under subsection (2) is, at the time of the offence—

(a) the owner or one of the owners of the ship or aircraft, used or intended to be used in carrying

out the arrangements in respect of which the offence is committed;

(b) a director or manager of a company which is the owner or one of the owners of a ship or aircraft; or

(c) the captain or master of the ship or aircraft,

then subject to subsections (4) and (5), the court before which he is convicted may order the forfeiture of the ship or aircraft.

(4) A court shall not order a ship or aircraft to be forfeited under subsection (3) on a person's conviction, unless—

(a) in the case of a ship, it is less than 500 tons gross tonnage or, in the case of an aircraft it is of less than 5,700 kilogrammes operating weight; or

(b) the person convicted is at the time of the offence the owner or one of the owners, or a director or manager of a company which is the owner or one of the owners, of the ship or aircraft.

(5) A court shall not order a ship or aircraft to be forfeited under subsection (3), where a person claiming to be the owner of the ship or aircraft, or otherwise has an interest in the ship or aircraft, applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

Aggravated offence of assisting illegal entry (danger of death or serious harm etc.)

121. (1) A person commits an offence under this section if the person commits an offence of assisting illegal entry (the underlying offence) in relation to another person (the victim) and either or both of the following apply—

(a) in committing the underlying offence, the person subjects the victim to cruel, inhuman or degrading treatment (within the ordinary meaning of that expression);

(b) in committing the underlying offence—

(i) the person's conduct gives rise to a danger of death or serious harm to the victim; and

(ii) the person is reckless as to the danger of death or serious harm to the victim that arises from the conduct.

(2) A person convicted of an offence under subsection (1) is liable on conviction on indictment to a fine or to imprisonment for a term of fourteen years, or to both.

(3) If the offence at subsection (1) is in connection with a child, the court may for purposes of a penalty under subsection (2), sentence a higher fine for purposes of discharging its functions to protect the best interests of a child.

(4) For purposes of this section—

"serious harm" means—

(a) harm that endangers a person's life;

(b) harm that results in serious impairment of physical or mental function; or

(c) harm that results in serious disfigurement.

Harbouring

122. A person who knowingly harbours another person who is in the Islands in contravention of this Act commits an offence and is liable—

(a) on summary conviction to a fine of $20,000 or to imprisonment for a term of four years, or to both; or

(b) on conviction on indictment to a fine or to imprisonment for a term of seven years, or to both.

Offences against border force officers

123. (1) A person commits an offence if the person—

(a) assaults a border force officer in the exercise of his duty;

(b) obstructs a border force officer in the exercise of his duty;

(c) threatens or attempts to intimidate a border force officer in the exercise of his duty;

(d) refuses to comply with a border force officer while he is exercising his duty;

(e) uses profane or abusive language against a border force officer while he exercises his duty; or

(f) does any action against a border force officer in paragraphs *(a)* to *(e)* while the officer is of duty, which is connected to the duty of a border force officer.

(2) A person who commits an offence under subsection (1) is liable on conviction to a fine of $20,000 or to imprisonment for a term of seven years, or to both.

Failure to comply with directions

124. (1) This section applies to a person who is—

(a) the owner of a ship or aircraft;

(b) the operator of a ship or aircraft; or

(c) acting under the authority of the owner or operator of a ship or aircraft.

(2) A person to whom this section applies commits an offence if the person—

(a) fails or refuses to comply with any direction given under this Act; or

(b) otherwise fails or refuses to comply with any provision of this Act which applies to him.

(3) A person who commits an offence under subsection (1) is liable on summary conviction to a fine of $10,000 or to imprisonment for a term of two years, or to both.

Offences by corporations

125. Where a person convicted of an offence against this Act is a body corporate, then every person who, at the time of the commission of the offence, was a managing director, manager, secretary or other officer of the body corporate, shall be deemed to have committed that offence unless the person proves that the offence was committed without his knowledge or that he exercised all reasonable diligence, having regard to his office, to prevent the commission of the offence.

Ticketable offences

126. (1) This section applies to an offence specified in—

(a) section 14(4);

(b) section 112(1);

(c) section 113(1) and 113(2);

(d) section 114;

(e) section 115(2);

(f) section 117(1), 117(2) and 117(3);

(g) section 118; and

(h) section 124(2).

(2) Where a border force officer has reason to believe that a person has committed or is committing an offence listed in subsection (1), the border force officer may issue to the person a

ticket, in the form set out in Schedule 4 informing the person of the option to discharge any liability to conviction in respect of the offence by payment of a fixed penalty as specified in Schedule 5 within a period stated in the Schedule, from the date of receipt of the ticket.

(3) A border force officer shall send a duplicate of the ticket to the Magistrate, and the duplicate shall be deemed to be a complaint laid before the Magistrate.

(4) A person is not liable to conviction for an offence if the person pays the fixed penalty in accordance with subsection (2).

Payment of fixed penalty

127. If a person opts to pay the fixed penalty, the person shall pay the fixed penalty to the Clerk to the Magistrate's Court as stated in the ticket given in accordance with section 126 and the payment shall be accompanied by the ticket.

Failure to pay fixed penalty

128. Where a person fails to pay the fixed penalty within the time specified in the notice, the person shall appear at the Magistrate Court specified in the notice on the day and at the hour stated in the notice to answer the complaint.

Certificate of payment or non-payment of fixed penalty

129. In any proceedings, a certificate that payment of the fixed penalty was or was not made to the Clerk to the Magistrate's Court by the date specified in the certificate shall, if the certificate purports to be signed by the Clerk to the Magistrate's Court, be admissible as evidence of the stated facts.

Border force officers to have powers of police officers

130. A border force officer investigating an offence or alleged or suspected offence under this Act, shall have all the powers, privileges, protection and authority conferred by law on a police officer for and in relation to the investigation of an offence.

Powers of arrest

131. If a border force officer or police officer has reasonable cause to suspect that a person has committed an offence under this Act and if it appears to him to be necessary to arrest that person immediately, in order to ensure that the ends of justice for the purposes of this Act are not defeated, the border

force officer or police officer may arrest that person without warrant, and section 31 of the Magistrate's Court Act shall apply in that case.

Evidence by certificate

132. (1) In any proceedings for an offence under this Act, a certificate signed by or on behalf of the Governor, Director General, Commissioner or Board, verifying—

(a) that, on any date, a person was or was not the holder of a Permanent Residence Certificate, a Residence and Employment Rights Certificate, a permit or visa issued under this Act, or a British overseas territories citizenship certificate;

(b) the date of issue and expiration of the Permanent Residence Certificate, Residence and Employment Rights Certificate, permit or visa;

(c) the date of issue of the British overseas territories citizenship certificate; or

(d) the conditions or restrictions to which the Permanent Residence Certificate, Residence and Employment Rights Certificate, permit, visa or British overseas territories certificate is subject, and any endorsements thereon,

shall be evidence of the facts stated.

(2) A certificate referred to under subsection (1) shall be presumed to be signed on behalf of the Governor, Director General, Commissioner or Board, unless the contrary is proved.

Request of other documents from other entities

133. For purposes of processing intelligence or surveillance or providing evidence for any proceedings under this Act, the Ministry may request the following for information —

(a) the Registrar General to provide a certificate signed by or on behalf of the Registrar General, verifying whether a person is the holder of a birth certificate or not;

(b) verification from the National Health Insurance Board whether a person is the holder of a National Health Insurance Card and information related to that card;

(c) verification from the National Insurance Board whether a person is the holder of a National

Insurance Card and information related to that card;

(d) verification from the Department of Motor Vehicles whether a person is the holder of a driver's licence and information related to that licence; or

(e) any other information that may be required.

Court's power to recommend revocation etc.

134. (1) Where under section 41*(d)* a person convicted of an offence is liable to have his permit revoked on the recommendation of the court, any court having power to sentence him may recommend that his permit be revoked.

(2) Where under section 98(1)*(b)* a person convicted of an offence is liable to be deported on the recommendation of the court, any court having power to sentence him may recommend that he be deported.

Presumption of gainful occupation

135. Where, in any proceedings under section 111(1)*(e)* or 111(2), it is proved that a person engaged in any occupation, in any capacity, undertaking, profession, trade or business at a time when he was not the holder of a Work Permit, Residence or Employments Rights Certificate or a Permanent Residence Certificate authorising him to engage in gainful occupation, it shall be presumed unless the contrary is proved—

(a) that that person engaged in that occupation, at that time, for or in the expectation of profit, gain or reward in cash or in kind, or for some other form of consideration; and

(b) where the proceedings are under section 111(2) and it is proved that that person engaged in any gainful occupation which either benefited the defendant or engaged in such occupation under his direction and control, that that person was in the employment of the defendant.

PART X

GENERAL

Forfeiture

136. Anything which is detained or seized under this Act shall be liable for forfeiture, and the Customs Act shall apply to the process of forfeiture and disposal of that thing.

Directions to Director General and border force officers

137. Subject to this Act, the Minister may from time to time, through the Permanent Secretary, give to the Director General or any border force officer, general or special directions, not inconsistent with the provisions of this Act, as to the exercise or performance of their powers, discretions or functions under this Act and the Director General or any border force officer shall comply with any such direction.

Conflict by Minister

138. (1) Where the Minister is in conflict of interest in any matter under consideration by him under this Act, the Minister shall refer the matter to the Governor, and shall act in relation to that matter, in accordance with the decision of the Governor.

(2) Notwithstanding subsection (1), where the Minister is unable to act under section 98 because of a conflict of interest in the matter, the Minister shall refer that matter to the Premier for determination.

Service of documents

139. For the purposes of this Act, the service of any notice or document shall be sufficient if delivered by electronic means, by hand or posted by registered post to the registered or other office of the addressee, and an affidavit testimony of delivery of the notice or document by hand or supporting the registration certificate shall be deemed sufficient proof of service.

Biometric authentication

140. (1) A border force officer, police officer or any person authorised by a border force officer, may request a person entering the Islands, a detainee or any other person required to be identified for other immigration purposes to undergo biometric authentication including DNA testing, fingerprinting and face recognition.

(2) Notwithstanding subregulation (1), where an issue arises regarding the identification of a person in the processing of

a Permanent Residence Certificate, Residence or Employments Rights Certificate, any permit or visa issued under the Act, the appropriate authority may require the person to undergo biometric authentication as provided under subregulation (1).

Amendment of Schedule

141. The Governor may by Order published in the *Gazette*, amend a Schedule.

Regulations

142. (1) The Governor may make regulations for carrying out or giving effect to this Act, and may make regulations—

(a) prescribing anything which is to be, or may be, prescribed under this Act;

(b) providing further provisions for entry in the Islands;

(c) providing further provisions relating to the transit of passengers;

(d) providing for visa requirements and procedures;

(e) providing for procedures for collaboration and coordination of gathering and sharing advance passenger information under this Act;

(f) guidelines for the purpose of evaluating the merits of an application for Residence and Employment Rights Certificate by an evaluation criterion;

(g) providing further provisions for a Permanent Residence Certificate, Residence or Employment Rights Certificate or permit;

(h) providing for the fees to be paid for any matter or thing done under this Act;

(i) providing for forms;

(j) exempting a person or category of persons from the requirement to pay any fees payable under this Act;

(k) remitting the fees payable by a person or category of persons under this Act;

(l) providing penalties for contraventions of any regulations under this Act;

*(m)*providing for further provisions for detention centres;

(n) providing further provisions for removal;

(o) providing further provisions for the stop list;

(p) providing further provisions for immigration agencies;

(q) providing for requirements and procedures for biometrics data;

(r) providing for automated border crossing and an immigration management system; and

(s) providing for electronic travel authorization (ETA) requirements and procedures.

(2) Forms prescribed under this Act, may be set out in regulations or in such format as the Ministry may determine in electronic format or on an online platform.

(3) Regulations made under this section or any other section of this Act may—

(a) create offences and prescribe a maximum penalty not exceeding a fine of $10,000 or imprisonment for a term of two years, or to both; and

(b) may establish and implement fixed penalty regime to enforce the regulations, which may impose a fixed penalty not exceeding a fine of $10,000.

Repeal

143. The Immigration Act (hereinafter referred to as the "repealed Act") is repealed.

Savings provisions

144. (1) A person who has been granted a Permanent Residence Certificate before the commencement of this Act, shall continue to hold the Permanent Residence Certificate as if granted under this Act, and this Act shall apply to the Permanent Residence Certificate.

(2) A person endorsed under a Permanent Residence Certificate before the commencement of this Act, shall continue to be endorsed under the Permanent Residence Certificate as if the endorsement is made under this Act.

(3) A person who has been granted a Permanent Residence Certificate under the investment category before the commencement of this Act, shall continue to hold the Permanent Residence Certificate as if granted under this Act, and the provisions of the repealed Act in relation to the Permanent

Residence Certificate for investment shall continue to apply to the certificate as if those provisions were still in force.

(4) A person who has been granted a permit before the commencement of this Act, shall continue to hold the permit as if granted under this Act, and this Act shall apply to the permit.

(5) A permit saved under subsection (4) shall continue to be in force until its expiration and the holder may apply for renewal under this Act.

(6) A person endorsed under a work permit granted before the commencement of this Act, shall continue to be endorsed and on expiration be renewed under the provisions of this Act.

(7) A person, who at the time of commencement of this Act has a valid Freelancer's Work Permit shall continue to hold the Freelancer's Work Permit until its expiration, in terms of the provisions of the repealed Act as if those provisions were still in force.

(8) A person referred to in subsection (7) may apply for a Permanent Residence Certificate—

(a) at the expiration of his Freelancer's Work Permit where he has reached an aggregate of ten years in that permit; or

(b) if his Freelancer's Work Permit is in the process of renewal, may continue to apply for renewal under the repealed Act as if those provisions were still in force, until he reaches the qualified period stated in paragraph *(a).*

(9) A person who has been granted a student visa before the commencement of this Act, shall continue to hold the student visa until its expiration as if made under this Act.

(10) At the expiration of a student visa under subsection (9), a person may apply for the renewal of a student visa under the repealed Act as if those provisions were still in force, and this subsection shall apply for the duration of the persons study or until the person attains the age 18 years, whereupon the person shall be subject to the student visa provisions under this Act.

(11) A person registered to operate an immigration agency before the commencement of this Act who is not a Turks and Caicos Islander, shall continue to operate an immigration agency, as if registered under this Act.

(12) Any legal proceedings instituted and ongoing before the commencement of this Act, shall continue to be conducted in terms of the provisions of the repealed Act as if those provisions were still in force.

(13) A reference to the Immigration Act in any enactment, a Permanent Residence Certificate or permit, or other document issued or made by under the repealed Act shall, unless the context otherwise requires, be construed as a reference to this Act.

Transitional provisions

145. (1) A person, who at the time of commencement of this Act is qualified to apply for a Permanent Residence Certificate under the repealed Act for a category in regulation 13(2)(*a)* (residence for a period of not less than ten consecutive years) of the repealed Immigration Regulations, may apply for a Permanent Residence Certificate under the provisions of the repealed Act and Regulations as if those provisions were still in force, except that the period of ten consecutive years may be calculated to combine the period for the conditions stated at paragraphs (i) to (iii) of regulation 13(2*)(a)*.

(2) An application made under subsection (1) shall be made before the expiration of twelve months from the date of commencement of this Act.

(3) A person who at the commencement of this Act will attain the period of not less than ten consecutive years under regulation 13(2)*(a)* of the repealed Regulations, within twelve months of commencement of this Act, may when the person reaches the required ten years, apply for a Permanent Residence Certificate under the provisions of the repealed Act as if those provisions were still in force, except that the period of ten consecutive years may be calculated to combine the period for the conditions stated at paragraphs (i) to (iii) of regulation 13(2)*(a)*.

(4) An application made under subsection (3) shall be made within a period of twelve months from the date the person attains the period of ten years.

(5) A person who, at the time of commencement of this Act is qualified to apply for a Permanent Residence Certificate under regulation 13(2)*(b), (c), (d), (e), (i)* and *(j)* of the repealed Act, or who will qualify within a period of twelve months of the commencement of this Act, may apply for a Permanent Residence Certificate under the provisions of the repealed Act and Regulations as if those provisions were still in force.

(6) An application made under subsection (6) may be made before the expiration of twelve months from the date of commencement of this Act or within a period of twelve months from the date the person qualifies.

(7) Every application for a Permanent Residence Certificate or permit made under the repealed Act before the commencement of this Act, shall continue to be processed and finalised under the provisions of the repealed Act as if those provisions were still in force.

(8) A person who at the commencement of this Act has been in the Islands for a period of ten years or more, who does not satisfy the period of ten consecutive years under the repealed Act, and who does not qualify under subsection (1), may apply for a Residence and Employment Rights Certificate under this Act, provided that the calculation of ten years shall be an aggregate of ten years that the person has been ordinarily resident in the Islands.

(9) An application made under subsection (8) shall be made before the expiration of twelve months from the date of commencement of this Act.

(10) Notwithstanding sections 43 and 44 of this Act the term limit for a work permit holder and dependants shall start to run from the date a person first held a work permit.

Review of Act

146. (1) The Minister shall appoint a suitably qualified and independent person to review the operation of this Act and regulations made under the Act—

(a) not later than four years after the commencement of this Act; and

(b) thereafter, at intervals not exceeding four years.

(2) A review under subsection (1) shall consider—

(a) the extent to which the objects of this Act are being achieved;

(b) the effectiveness of the administration and operation of this Act; and

(c) whether any amendments to this Act or other legislative measures are necessary or desirable to further the objects of this Act, including the introduction of performance standards or other mandatory requirements.

(3) The Minister shall ensure that the review is carried out in consultation with the relevant stakeholders and community bodies.

(4) The person conducting the review shall prepare a written report of the review and submit it to the Minister.

(5) The Minister shall cause a copy of the report to be laid before the Parliament within thirty days after the report is submitted to the Minister.

Consequential amendment to Border Force Act

147. The Border Force Act is amended by inserting the following new section after section 7—

"**Reporting obligations**

7A.(1) The Director General shall prepare and submit to the Minister, quarterly reports on the performance of the Border Force and the exercise of his functions under this Act, the Customs Act and the Immigration Act.

(2) A report submitted under subsection (1) shall be submitted no later than thirty days after the end of the quarter.".

SCHEDULE 1

GENERAL ENTRY REQUIREMENTS

(Section 5)

1. Before issuing a permit to enter the Islands, the border force officer shall satisfy himself that a person—

(a) is not likely to behave in a manner prejudicial to the peace, order or good governance of the Islands;

(b) is not a threat to public safety or public order.

(c) is not a person who is reasonably believed to have come to the Islands for any immoral purpose, or who is not reasonably believed to be a prostitute or to have come to the Islands for the purpose of prostitution;

(d) has not been convicted in any place for murder or an offence punishable in the Islands with imprisonment for a term of three years or more and who by reason of such conviction is deemed by the border force officer to be undesirable;

(e) is not a person whose name is for the time being on the Stop List;

(f) is not a person or a member of a class of persons declared to be prohibited immigrants by the Governor under section 97;

(g) is not a person whose presence in the Islands would in the opinion of the Director General be undesirable and not conducive to the public good;

(h) is capable of supporting himself and his dependants, if any, during such time as he may be permitted to remain in the Islands;

(i) is not a dependant of a person who is precluded from being given leave to enter by reason of any of the provisions of this Schedule.

2. For the purposes of paragraph 1, a border force officer may require a person—

(a) to furnish him with evidence of good character in respect of himself and his dependants;

(b) to furnish him with evidence of his ability to maintain himself and his dependants in the Islands;

(c) to furnish him with such other particulars as he considers material to the consideration of any application.

———————

SCHEDULE 2

(Section 10)

ADVANCE PASSENGER INFORMATION

1. **Data relating to the voyage or flight (Header Data):**

(a) **Flight Identification**

(IATA Airline code and flight number)

(b) **Ship Identification**

(Ship name and voyage number)

(c) **Country of Registration**

(Country where ship is registered)

(d) **Agent/Owner (Where applicable)**

(Name of Agent for the ship or where no Agent, Name of owner)

(e) **Call Sign (If applicable**)

(f) **Schedule Departure Date**

(Date of scheduled departure of ship based on local time of departure location)

(g) **Scheduled Departure Time**

(Time of scheduled departure of ship based on local time of arrival location)

(h) **Scheduled Arrival Date**

(Date of scheduled arrival of ship based on local time of arrival location)

(i) **Scheduled Arrival Time**

(Time of scheduled arrival of ship based on local time of arrival location)

(j) **Last Place/Port of Call of Ship or Aircraft**

(Ship departed from this last foreign place/port of call to go to "place/port of ship initial arrival")

(k) **Place/Port of Ship or Aircraft Initial Arrival**

(Place or Port in the country of destination where the ship arrives from the "last place or Port of call of ship or aircraft)

(l) **Subsequent Place/Port of Call within the country/regional s pace**

(m) **Number of Passengers on board**

(Total number of passengers on board)

(n) **Number of the crew on board**

2. **Data relating to each individual on board**

(a) **Official Travel Document Number**

(Passport, or other Government approved travel documents)

(b) **Issuing State or Organization of the Official Travel Document**

(Name State or Organisation responsible for the issuance of the official document)

(c) **Official Travel Document Type**

(Indicator to identify type of official travel document)

(d) **Expiration Date of Official Travel Document**

(Expiration date of the official travel document)

(e) **Surname/Given Name(s)**

(Family name and given name(s) of the holder as it appears on the travel document)

(f) **Nationality**

(Nationality of the holder of the travel document)

(g) **Date of Birth**

(Date of birth of the holder)

(h) **Gender**

(Gender of the holder)

(i) **Place of Birth**

(Please give City and Country of birth)

(j) **Traveller's Status**

(Passenger, crew, in-transit)

(k) **Place/Port of Original Embarkation**

(Place/Port on that journey where traveller first boarded for foreign travel)

(l) **Port/Place of Clearance**

(Place/Port where the traveller is cleared by the border control agencies)

(m) **Place/Port of Onward Foreign Destination**

(Foreign place/port where the traveller is transiting)

(n) **Passenger Name Record (PNR) Data**

(As available in the traveller's Passenger Name Record in the carrier's Reservation System including all historical changes to the PNR listed) Must include:

(i) PNR record locator

(ii) Date of reservation/issue of ticket

(iii) Date(s) of intended travel

(iv) Name(s)

(v) Address and contact information (telephone number, e-mail address)

(vi) All forms of payment information, including billing address

(vii) Complete travel itinerary for specific PNR

(viii) Frequent flyer information

(ix) Travel agency/Travel agent

(x) Travel status of passenger, including confirmations, check-in status, no show or go show information

(xi) Split/divided PNR information

(xii) General remarks (including all available information on unaccompanied minors under 18 years, such as name and gender of the minor, language(s) spoken, name and contact details of guardian on departure and relationship to the minor, name and contact details of guardian on arrival and relationship to the minor, departure and arrival agent)

(xiii) Ticketing field information, including ticket number, date of ticket issuance and one-way tickets, Automated Ticket Fare Quote fields

(xiv) Seat number and other seat information

(xv) Code share information

(xvi) All baggage information

(xvii) Number and other names of travellers on PNR

(xviii) Any Advance Passenger Information (API) data collected

(xix) All historical changes to the PNR listed in numbers 1 to 18

3. **Additional Data Elements**

(a) **Visa Number (if applicable)**

(b) **Issue Date of Visa**

(Date Visa issued)

(c) **Place of Issuance of the Visa**

(Place where Visa was issued)

(d) **Other Document Number used for Travel (if applicable)**

(The other document number used for travel when the official travel document is not required)

(e) **Type of Other Document used for Travel (supporting travel document)**

(Indicator to identify type of other document used for travel)

(f) **Primary Residence**

(i) Country of Primary Residence

(Country where Passenger resides most of the year)

(ii) Address

(Location identification such as street name and number)

(iii) City

(iv) State/Province/County

(v) Postal Code

(g) **Destination Address**

(i) Address where Passenger will be staying in territory of Disembarkation

(ii) City

(iii) State/Province/County

(iv) Postal Code

4. **Data relating to the Reporting Party**

(a) Reporting Party Name

(b) Reporting Party Telephone Number

(c) Reporting Party Facsimile Number

(d) Reporting Party Electronic Mail Address

SCHEDULE 3

(Section 43(10))

LIST OF PROFESSIONS AND SECTORS EXCLUDED FROM TERM LIMIT

A term limit does not apply to persons employed in the following categories or sectors-

(a) health professionals;

(b) teachers;

(c) farmers;

(d) caregivers;

(e) utilities service providers (energy, telecommunications, water and sewerage);

(f) aviation workers;

(g) marine;

(h) law enforcement;

(i) employees in His Majesty's Service;

(j) persons in the service of the Government of the Islands; and

(k) persons in diplomatic, consular and or other similar service.

SCHEDULE 4

(Section 126(2))

TICKET

TAKE NOTICE THAT I ……...have reason to believe that an offence, particulars of which are given below, has been committed under the Immigration Act

……. (*insert ticketable offence and section)*

The fixed penalty for the offence is …….

(*penalty in words and figures)*.

If this amount is paid to the Clerk to the Magistrate's Court within [state] days from the date of this notice no proceedings will be taken and any liability for conviction of the offence will be discharged. The offence carries a maximum fine of …….

In paying the fixed penalty the following conditions shall be observed:

(1) The fixed penalty shall be accompanied by this notice.

(2) Payment of the fixed penalty shall be made or remitted to the Clerk to the Magistrate's Court at any office of the Magistrate's Court in the Islands.

Should you fail to pay the fixed penalty you are hereby required to attend the Magistrate's Court on the ……day of …….20….at…o'clock at the address below as the defendant in the matter in respect of which this ticket was issued.
……
……..……..

(*state name and address of court)*

THIS NOTICE was given at ……. (*state location*)
on……20…. (*state date*) at…….am/pm (*state time).*

PARTICULARS OF OFFENCE

At……am/pm on the ……. day of
20……at…….you
...……contrary
to……. (*state section contravened*) of the Immigration Act.

Name of person…….

Address of person…….

……..……

Signature of Border Force Officer

SCHEDULE 5

(126(2))

TICKETABLE OFFENCES AND FIXED PENALTY

OFFENCE	SECTION	PAYMENT PERIOD	FIXED PENALTY
Failure of captain or master to report technical stop, etc.	14(4)	30 days	$8,000
Failure to provide advance passenger information etc.	112(1)	30 days	$8,000
Failure to provide information under section 59	113(1)	14 days	$2,000
Failure to provide information under section 73	113(2)	14 days	$2,000
Failure to produce Identification	114	14 days	$1,000
Refusal to be searched or examined	115(2)	14 days	$1,000
Providing Immigration services or advise without authority	117(1)	14 days	$3,000
Operate agency without registration	117(2)	30 days	$8,000
Enables conduct of services under agency name	117(3)	30 days	$10,000
Marriage for immigration advantage	118	21 days	$5,000
Failure to comply with directions	124(2)	21 days	$5,000