

EXECUTIVE COUNCIL

RESTRICTED

Title of Report: On-shore oil support workers – application for exemption from work permit regime

Paper No: 266/09

Date: 17 December 2009

Report of: Acting Principal Immigration Officer

1.0 Purpose

The purpose of this paper is to seek a direction under section 17(7A) of the Immigration Ordinance in relation to the employment of various on-shore oil support workers in connection with the forthcoming drilling operation on the rig Ocean Guardian.

2.0 Recommendations

(a) Honourable Members are recommended to agree a direction under 17(7A) of the Immigration Ordinance that the Principal Immigration Officer (PIO) should not require the employers of the on-shore oil support posts detailed in the attached letter to:

(i) advertise the posts;

(ii) satisfy the PIO that the issue of a work permit is necessary rather than engage a person with a right of residence in the Falklands Islands.

(b) Honourable Members are invited to note the other arrangements for the issue of work permits for on-shore oil support workers referred to in the paper.

3.0 Summary of Financial Implications

No direct financial implications.

4.0 Background

4.1 A letter of application was received from Desire Petroleum plc (Desire) on 9 December 2009 for various on-shore oil support workers to be exempted from the work permit regime (attached). A meeting and correspondence with Mr Clifton provided further information in connection with the application.

4.2 Mr Clifton explained that the potential for an exemption from the work permit regime had been discussed with the former Principal Immigration Officer a number of years ago in the light of the likelihood of a second drilling round, although nothing had been agreed. The Ag. PIO suggested to Mr Clifton that a complete exemption from the regime appeared difficult to justify; but that recommendations could likely be made for the relaxation of/exemption from elements of the regime, rather than a complete exemption. It was agreed to proceed on that basis.

Functions of work permit regime

4.3 The work permit regime involves a number of protections for the Falkland Islands as follows:

4.3.1 to ensure that anyone employed in the Falkland Islands has suitable accommodation during their employment;

4.3.2 to ensure that anyone employed in the Falkland Islands is not likely, because of their state of health, to impose a substantial financial or other burden on public resources which it is unreasonable to expect them to bear;

4.3.3 to ensure that FIG is not burdened with any repatriation costs of immigrant workers;

4.3.4 to protect employment opportunities for persons with a right of residence in the Falkland Islands; and

4.3.5 to reduce the risks of persons of unsatisfactory character being permitted into the Islands.

Revised application for exemption

4.4 The application which is being pursued is no longer for a complete exemption, but only for a departure from the usual policy referred to at 4.3.2. above.

4.5 Section 17(7A) implements the long standing policy for the protection of employment opportunities for persons with a right of residence in the Falkland Islands. The policy requirement is for work to be advertised and for the Principal Immigration Officer to be satisfied that it is necessary to issue a work permit rather than employ a person with a right of residence, before a work permit may be issued. However, the requirements are not absolute; Executive Council may direct that the provision should not apply in certain circumstances.

4.6 The basis for the Desire application that the usual section 17(7A) requirements be waived in relation to the posts detailed in the attached letter is summarised as follows:

(a) There are, to the best of the applicant's knowledge, no persons in the Islands who are suitably qualified or experienced in the oil industry to

undertake any of the posts. The applicant offers the following information to support this contention;

(i) the posts require a very specialised combination of technical expertise, current certification and lengthy relevant experience;

(ii) none of the job holders are filling new posts; they are undertaking the work as a critical part of their employer's current schedule of projects and will already have detailed knowledge of the planning stages of the project, having been involved in that planning for anything up to nine months;

(iv) the work to be undertaken will generally require detailed knowledge of the companies' own working practices for new operations such as this;

(iii) the experience of the Diamond Drilling rig manager, for example, is rig specific, ie previous experience of managing this particular rig is an essential requirement of the post.

(b) If there are any persons with a right of residence in the Islands who are working in the industry elsewhere in the world (and believe that they might have the appropriate combination of expertise, current certification, and experience) there has been sufficient publicity about the drilling project for them to have had the opportunity to contact the relevant operators to get involved at the appropriate stage. This is evidenced by the fact that one Falkland Islander did so, and will be employed on the rig. This, in turn shows the operators' willingness, where possible, to take on persons with a right of residence who indicate an interest in working on this drilling project.

(c) The applicant's commitment to employing persons with a right of residence in the Falkland Islands is further illustrated by the work currently underway to recruit and train (at some cost) other shore based workers within the Islands (eg stevedores, local aviation coordinator).

4.7 The application is supported by the Ag PIO on this basis. The application itself effectively provides the Ag PIO with sufficient information to determine that it is necessary to issue the work permits in accordance with section 17(7A)(b), arguably making that aspect of the application for a direction superfluous, but the real advantage of a direction being given at this stage is to provide the applicant with certainty and, potentially, to reduce the administration time for approval of the work permit applications.

Additional arrangements for the issue of work permits to on-shore oil support workers

4.8 Under section 17(4) of the Immigration Ordinance, a work permit may not be issued unless the Principal Immigration Officer is satisfied that the person will be satisfactorily accommodated during the relevant employment. Desire have advised that six houses in the private sector are available for the nine relevant

workers, together with a block booking of 12 rooms at Malvina to cater for overflow during handover periods etc. In the circumstances, there appears to be no difficulty in the usual requirements for accommodation being satisfied, and no exemption is sought in connection with section 17(4).

4.9 Under section 17(4A) of the Immigration Ordinance, a work permit will not ordinarily be issued if a person does not pass an immigration medical; the PIO has discretion to waive this requirement in exceptional circumstances. The applicant has made appropriate practical arrangements with the Chief Medical Officer in relation to immigration medicals in this case, so no exemption is sought in connection with section 17(4A). Desire have also advised that they will be responsible for any medical aeromedical evacuation costs associated with the workers (it is understood that this request would not normally be made in relation to work permit holders, but the Chief Medical Officer sought the reassurance on the basis that the de-mining contractors have been required to confirm responsibility for the cost of aeromedical evacuation of their workers).

4.10 Under section 17(5) of the Immigration Ordinance, a work permit may not be issued for employment in the private sector unless the employer (or some other approved person) has given an undertaking to pay repatriation costs if required. The PIO has no power to waive this requirement. Desire have confirmed that they will be willing to give the undertaking in this case; the Ag PIO is prepared to accept the undertaking from Desire in the capacity of an “other approved person”.

4.11 As a matter of policy and practice, applicants working in the Islands for more than 150 days in a 12 month period are required to submit a criminal record check with an application for a work permit, and an application may be refused if an applicant does not meet the good character requirements outlined in the policy approved by Executive Council in April 2007. Because the applications will be made on the basis that the workers will work 28 days on/28 days off, the 150 day threshold will not be reached in connection with the initial work permit applications. If there is an extension to the drilling programme which would take the workers into the 150 day threshold, the matter of criminal record checks will be addressed in the usual way. Desire have advised their principals of the potential need for criminal record checks in the event of an application to extend the work permits beyond the initial planned duration.

5.0 Financial Implications

No direct financial implications.

6.0 Legal Implications

No legal implications in addition to the legal issues addressed above.

7.0 Human Resources Implications

No human resources implications.