



W1 - General Statement of Work Permit Policy

POLICY: GENERAL STATEMENT OF WORK PERMIT POLICY

REF: W1

- PERMISSION-IN-PRINCIPLE FOR CATEGORIES WHERE THERE IS A SEVERE SHORTAGE
- PERMISSION-IN-PRINCIPLE FOR KEY POSITIONS OR EMPLOYEES, NOT INCLUDED IN THE ABOVE DESCRIPTION, WHERE THE BUSINESS HAS A SIGNIFICANT PHYSICAL PRESENCE IN BERMUDA
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PURPOSE:

To describe the philosophy of the Minister of Labour, Home Affairs and Public Safety when reviewing applications for work permits.

STATEMENT:

The Department of Immigration is tasked with ensuring that two important needs of the community are met:

- the need to ensure that Bermudians who have the required skills are employed;
- the need for properly skilled employees to help run our sophisticated and multi-faceted economy.

These two needs are sometimes seen as competing goals. Bermudians often feel that the Department of Immigration is not responsive enough to their aspirations and, on occasion, employers consider that the Department of Immigration is not responsive enough to their needs. In addressing the issue the Minister has a statutory obligation to take account of the following factors:

- the character of the applicant and, where relevant, of his or her spouse;
- the existing and likely economic situation of Bermuda;
- the availability of the services of local companies and persons already resident in Bermuda;
- the desirability of giving preference to the spouses of persons possessing Bermudian status;
- the protection of local interests; and
- generally, the requirements of the community as a whole.

The work permit policies are designed to enable Bermudians to realise their full employment potential. They are also designed to ensure that each of the current 8,000 work permit holders needed to fill the shortfall in the numbers of Bermudian workers have the highest qualifications, are of the highest moral and ethical standards and will not become a burden on public funds. The requirements of Appendix D serve to ensure that work permit holders meet these conditions.

The main criterion in assessing whether or not to grant a work permit is whether there is a suitably qualified Bermudian, who is interested in the job and available to do it. If so, then a Bermudian applicant, who fulfils the minimum advertised requirements and qualifications for the job, should be hired in preference to a non-Bermudian. An employer who applies to employ a non-Bermudian in a job for which there was a Bermudian applicant is required to give clear, satisfactory reasons for not employing the Bermudian. It should be appreciated, though, that the

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Ministry can only prevent the hiring of a non-Bermudian by the refusal to grant a work permit. The Ministry has no powers to force that a particular Bermudian is employed.

The order in which qualified people are to fill jobs in Bermuda are:

- Bermudian;
- non-Bermudian spouse (including the widow or widower) of a Bermudian;
- divorced parent of a Bermudian;
- Working Resident's Certificate holder or permanent resident
- non-Bermudian with a qualifying Bermudian connection;
- other non-Bermudians.

Work permits are normally issued for a year. It should be noted that there is provision for longer-term work permits of up to 5 years (please see page II.9 below). Generally these may be granted to key employees in an organisation.

Employers must ensure that when a work permit has been granted for a national from a country on the visa control list, that the person has all necessary visas, including a Bermuda Entry visa, before arriving in Bermuda. The list of visa controlled countries is given at Appendix C.

There is zero-tolerance for Immigration infractions committed by employees and employers and for non-compliance with the Employment Act 2000. Infractions may result in work permits being revoked and the offending employees being required to settle their affairs and leave Bermuda. Employers who continue the offending behaviour will not be granted any further work permits.

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Permission-in-Principle for categories where there is a severe shortage

Applications which receive permission-in-principle will have the implied approval of the Minister and will receive final approval provided that the non-Bermudian applicant is suitably qualified and falls within the policies described within this document. Where permission-in-principle has been given and all other criteria have been met, the substantive application will be approved administratively.

Instead of advertising a specific job, a business or group of businesses may prefer to place general advertisements for vacancies at six-month intervals or on the renewal of a work permit, provided that the necessary time-frames for advertising have been met. This will allow applications for permission-in-principle to be made provided the particular occupation was represented in the most recent general advertisement, which was within the approved time-frame.

The Minister will consider in-principle applications, under this section of the policy, provided the business making the application has demonstrated, to the Minister's satisfaction, that they are good corporate citizens by adhering to best practices. This policy is an incentive for such businesses.

Best practices, without limiting the generality of the foregoing, include:

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- actively attracting, recruiting and training Bermudians and being able to demonstrate the same;
- reporting periodically on training programmes and opportunities provided by the employer for Bermudians;
- producing clear and correct advertisements;
- disclosing full information about the selection procedure including the interview process;
- submitting fully completed and accurate applications e.g. correct fee, fully completed questionnaire form, properly identified chest X-ray(s), etc;
- exercising employment practices which have not regularly required the intervention of the labour relations officers of the Department of Labour and Industrial Relations or the Human Rights Commission or both;

and any other activities which will serve to enhance the reputation of a good corporate citizen, such as;

- providing business plans indicating development options periodically;
- being recognised as meeting the standards set by organisations such as Investors-in-People;
- voluntarily contributing to the development of Bermudians through such organisations as, but not limited to, the Bermuda College, the Bermuda Careers Centre, the National Training Board, the Bermuda Insurance Institute, scholarships, programmes aimed at providing for Bermudians to gain overseas work experience, significant financial support for job-related courses and training, etc.

These are examples of best practice and are not exhaustive or mutually exclusive. However, it must be noted that a business will not demonstrate good corporate citizenship simply by providing a one-off monetary gift. To be recognised as a good corporate citizen, a business needs to sustain the consistent practice of good behaviour.

Applications, from good corporate citizens, for permissions-in-principle will go to the Minister for categories where there is a severe shortage, either because the scarce resources world-wide have a local impact, or there are shortages locally owing to the exceptional high demand.

For example purposes only, categories where it may be said that there are severe shortages could include the following occupations:

- actuary
- butcher
- chartered accountant
- chef
- insurance broker
- registered nurse

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- senior catastrophe and finite insurance/reinsurance modelling analysts
- senior underwriters
- technically skilled specialists in information systems/technology fields

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Permission-in-Principle for key positions or employees, not included in the above description, where the business has a significant physical presence in Bermuda

Permission-in-principle will be considered for employees of any local company or exempted company with significant physical presence i.e. has large and important operations in Bermuda employing significant numbers of people at various levels and contributing greatly to the Bermuda community. There are two provisos. Firstly, that the Minister must be satisfied that the position, or the employee, is key to the organisation. Secondly, that the business fulfils the requirements listed above in the previous section, or other similar, credible examples, of best practice. Once permission-in-principle has been given and all other criteria have been met, the substantive application will be approved administratively.

For an employee to be categorised as “key” to the business’s operation, the business must demonstrate that one or more of the following is true:

- the person is among the best practitioners in the world; or
- the person has rare specialised expertise that cannot be easily found world-wide; or
- although not particularly specialised, there is a “severe shortage” of the person’s particular skills i.e. a shortage in Bermuda arising from the difficulty of recruiting persons because there is a general, chronic shortage of resources overseas.
- without the continued presence of the individual the business will be seriously injured to the detriment of the interests of Bermuda and Bermudians; or
- the person has crucial business contacts which are critical to the business’s continued success; or
- the individual is directly responsible for creating well-paying jobs to which Bermudians can aspire; or
- the person is directly responsible for training Bermudians in worthwhile careers and the business, based on its objective assessment of the individual’s attributes, relies on his or her skill and expertise in this regard.

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Existing Permission-in-Principle Applications

Where the Board of Immigration has considered and approved permission-in-principle, substantive permission will be granted provided the non-Bermudian applicant is suitably qualified and otherwise falls within the policies described within this document. Where permission-in-principle has been given, the substantive application will be approved administratively if all other criteria have been met.

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Extension of Spouse's Employment Rights to the "Divorced Parent of a Bermudian"

A "divorced parent of a Bermudian" is defined as a person with custody of a Bermudian child and acknowledged as such by way of an Extension of Spouse's Employment Rights Certificate ("ESERC"). Custody includes joint custody as well as sole custody.

For the purposes of this policy, a child is defined as a person who is under the age of 18 years or, if still in college, is under the age of 25 years.

To qualify for the ESERC, the applicant:

- must be the divorced former spouse of a Bermudian;
- must immediately before the divorce from the Bermudian spouse, have been exercising, or was eligible to exercise, his or her spouse's employment rights under section 60 of the Bermuda Immigration and Protection Act 1956;
- must have custody of a Bermudian child; and
- must be of good character and conduct.

The ESERC confers privileges on the holder until the youngest Bermudian child of the household reaches the age of 18 years, or if he or she is still in college, 25 years. These include the following privileges:—

- to reside in Bermuda;
- to seek employment in Bermuda without restriction;
- if one is already employed, to continue to work in that employment without having to apply to the Department of Immigration for a work permit;
- to retire from work and reside in Bermuda without the need to apply to the Department of Immigration for any additional permission to do so.

A person wishing to apply for the ESERC is required to submit certain documents in support of his or her application. These comprise the following:—

- a completed ESERC application form which is available from the Department of Immigration;
- two (2) passport-type photographs of the applicant;
- a certified copy of the applicant's birth certificate or passport;
- the certificate of divorce;
- the Government fee of \$75.00 (2004) fees are revised from time-to time);
- the proof that the applicant had exercised, or was eligible to exercise, his or her spouse's employment rights immediately prior to the divorce (i.e. letters from the applicant's employers, or proof of the former Bermudian spouse's ordinary residence in Bermuda — i.e. letters from the former Bermudian spouse's employers; or letters/transcripts from schools, universities, etc., including the relevant dates; or a letter from a professional person attesting to the continuous ordinary residence in Bermuda of the applicant's former Bermudian spouse); and
- two (2) character references in support of the application.

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Please note that:

- the application will not be considered complete unless all documents are submitted with the application. It is prohibitively time consuming to retrieve documents from the Immigration file. Therefore applications should stand alone. Incomplete applications will be returned to the applicant.
- persons who may qualify will continue to be subject to work permit control until the application is approved and the certificate is issued.

Successful Applications

If an application is successful, the applicant will be required to:

- submit a copy of the ESERC to the applicant's employer;
- re-register with the Department of Immigration, using the ESERC re-registration form. The re-registration date is printed on the applicant's ESERC;
- seek permission from the Minister to take up alternative employment with a different employer, using the ESERC re-registration form;
- inform the Minister when the applicant's employment ceases, using the ESERC re-registration form.

The ESERC re-registration form is available from the Department of Immigration (please see copy in Appendix [B])

The Minister has the right to revoke the ESERC at any time under section 34 of the Bermuda Immigration and Protection Act, 1956. Without prejudice to the generality of the Minister's rights under the Act, examples of occurrences, which could lead to the revocation of an ESERC, are as follows:

- the ESERC was obtained by fraud, false pretences or concealment of a material fact; or
- the holder is convicted of a crime, whether in Bermuda or abroad, which resulted (or would have resulted if convicted in Bermuda) in a sentence of a term of imprisonment of two years or more whether or not the sentence was served in full or suspended; or
- the failure to register every three years with the Department of Immigration; or
- the failure to inform the Minister when the certificate holder ceases employment; or
- the failure to seek the permission of the Minister to take up alternative employment with a different employer; or
- the holder resides outside Bermuda for two years or more, without seeking leave from the Minister to do so prior to his or her departure.

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Working Resident's Certificate ("WRC")

To have qualified for the WRC, the applicant must have met the following requirements:

- have been ordinarily resident in Bermuda continuously for at least 20 years up to 1 August 1998;
- within the period of twenty (20) years or more of continuous residence, have worked in Bermuda for at least fifteen (15) years in aggregate. (In aggregating the fifteen (15) years only continuous periods of ordinary residence in Bermuda of twelve (12) months or more can be counted); and
- must be, and continue to be, of good character and conduct.

The WRC confers the following privileges on the holder:

- to reside in Bermuda indefinitely;
- to seek employment in Bermuda without restriction, except for those areas (e.g. taxi drivers) where another agency's controls prevent them from obtaining employment (e.g. TCD);
- if already employed, to continue to work in that employment without the need to apply to the Department of Immigration for a work permit;
- to retire from work and reside in Bermuda without the need to apply to the Department of Immigration for any additional permission.

Existing WRC Holders

Existing WRC holders are required to:

- submit a copy of his or her WRC to the applicant's employer;
- re-register with the Department of Immigration every three years, using the WRC re-registration form. The re-registration date is printed on the applicant's WRC;
- seek permission from the Minister to take up alternative employment with a different employer;
- inform the Minister, using the WRC re-registration form, when the applicant's employment ceases.

The WRC re-registration form is available from the Department of Immigration (please see copy in Appendix [B])

The Minister has the right to revoke the WRC at any time under section 34 of the Bermuda Immigration and Protection Act, 1956. Without prejudice to the generality of the Minister's rights under the Act, examples of occurrences, which could lead to the revocation of a WRC, are as follows:

- the WRC was obtained by fraud, false pretences or concealment of a material fact; or

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- the holder is convicted of a crime, whether in Bermuda or abroad, which resulted (or would have resulted if convicted in Bermuda) in a sentence of a term of imprisonment of two years or more whether or not the sentence was served in full or suspended; or
- the failure to register every three years with the Department of Immigration; or
- the failure to inform the Minister when the certificate holder ceases employment; or
- the failure to seek the permission of the Minister to take up alternative employment with a different employer; or
- the holder resides outside Bermuda for two years or more, without seeking leave from the Minister to do so prior to his or her departure.

WRC holders are encouraged to apply for a permanent resident's certificate under section 31A of the Bermuda Immigration and Protection Act 1956.

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Spouses of Consular or Diplomatic Service Officers

Under section 60 of the Bermuda Immigration and Protection Act 1956 the spouses of certain consular officers, or of others with diplomatic privileges, are permitted to work outside work permit control provided they fulfil certain requirements. In order to be eligible to work without the Minister's specific permission under this head, the requirements are that:

- "a person must be—
 - a citizen of the United States of America; and
 - the spouse of an employee of the Government of the United States of America, being such an employee who—
 - ❖ is in, or arrives in, Bermuda solely for the purpose of discharging his official duties as such an employee; and
 - ❖ is either—
 - a consular officer or a consular employee within the definitions of those expressions in paragraph 1 of Article 1 of the Vienna Convention as set forth in Schedule 1 to the Consular Relations Act 1971; or
 - a person to whom the Diplomatic Privileges (Pre-clearance Officials) Order 1980 applies;
 - the person must be living with that person's spouse as husband and wife;
- but, if any question arises whether those requirements are satisfied in relation to a person, that question shall be decided by the Minister."

The Minister has also taken account of the spouse of any person who is a United Kingdom diplomatic services officer serving at Government House in Bermuda. The spouse of any officer filling the post of Deputy Governor or Registrar has the Minister's permission to obtain employment in Bermuda provided he or she informs the Minister of it, at the time, and of any changes in that employment as they occur. As above, the spouse and the diplomatic officer must

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be living together as husband and wife. The spouse must not become self-employed or set up a business in Bermuda in competition with Bermudian interests.

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Reduced Fee for Persons with Close Bermuda Ties

An employer who applies for a work permit for a person with close Bermuda ties will pay a reduced fee (\$75.00 currently (2004): fees are revised from time-to-time). The fee is the same regardless of the term of the work permit.

Examples of persons with close Bermuda ties are, as follows:

- the parent or lawful guardian of, a person with Bermudian status who is under the age of 18 years of age and resides with him or her. Provided the parent or guardian has legal custody of the Bermudian;
- an individual born in Bermuda who can potentially qualify for the grant of Bermudian status under section 20A as a long-term resident child;
- a person who first arrived in Bermuda before his or her sixth birthday and can potentially qualify for the grant of Bermudian status under section 20A as a long-term resident child.

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Long Term Work Permits (2-year, 3-year, 4-year or 5-year)

There are a number of reasons why the Minister may grant a long-term work permit:

- the seniority of the position, e.g. a business with a reputable international base has decided to relocate to Bermuda. To make this possible, the business requires the CEO/President to be handpicked by the business because of the level of expertise and knowledge of the corporate culture. Clearly, a condition for granting such a work permit is that such businesses are seen to be of long-term benefit to Bermuda.
- it is important that the position have a high degree of continuity;
- the job requires a high degree of expertise;
- the job is of particular economic benefit to Bermuda;
- the job (and perhaps others) would not exist if it were not filled by a particular non-Bermudian. It is recognised that, although the most easily understood example of this would be a person who was the president or owner of the business, it may equally apply to an employee who performs a vital role in the business or brings special skills to that business;
- there is an overall shortage of qualified Bermudians in the applicable category;
- there is an immediate shortage of trained Bermudians in this area or there may not be an immediate shortage of Bermudians but the applicant is making a significant long-term commitment to training and retraining Bermudians;

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- there is a severe shortage of resources;
- the position or employee is key to the business's success.

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Work Permit Renewals

Generally, prior to the expiration of a work permit, including a periodic work permit, the employer is required to advertise the position. For information on how to advertise, please see Policy **W3**.

Once the position has been advertised and no suitably qualified Bermudian has come forward, the employer may then apply to the Department of Immigration for the work permit to be renewed.

Applications for the renewal of work permits should be submitted no fewer than four weeks and no more than twelve weeks prior to expiration. Given the peculiar problems they face and the recruiting cycle for teachers, the Ministry of Education and schools are permitted to apply to renew the work permits of teaching staff up to nine months before the work permits expire.

Where a child is born in Bermuda to a work permit holder, before that work permit can be renewed, the work permit holder must provide the Department of Immigration with proof of the child's citizenship outside Bermuda. Proof can take the form of:

- a valid passport for the child;
- a certificate of registration of the child as a citizen of a country; or
- a certified letter from the authorities of a country confirming that the child is a citizen of that country.

Failure to provide such information will result in termination of the family's permission to reside in Bermuda.

While Statements of Employment, as defined by subsection 6(2) of the Employment Act 2000, will not normally be required for renewals, it will be necessary to submit one for every work permit, where a contract was not required previously.

An employer **may** also be asked to prove that they have paid Social Insurance and Health Insurance premiums before the work permit is renewed. This has become necessary because the Department of Immigration has found, through complaints from customers and review of Immigration files, that, in a large number of cases, employers have not paid pension payments and health insurance premiums on behalf of their work permit holders. The Department of Immigration wishes to ensure that persons do not become a burden on the Government in the future. The Department of Immigration also has a secondary duty to ensure that, where work permit holders are involved, employers comply with all Government requirements.

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Dependants of a Work Permit Holder

It frequently happens that a person with a family is recruited from abroad. Initially only the one family member has a work permit.

The entry/re-entry document issued to the dependant of a work permit holder serves as a letter of permission to seek employment in Bermuda. However, before taking up employment, the dependant must obtain a work permit through his or her prospective employer.

Where one or other of the dependants of the work permit holder subsequently obtains permission to be employed, the dependant's work permit will be issued without reference to the expiry date of the permit of the supporting work permit holder.

Work permits are issued to dependants of a work permit holder on the understanding that their permission to reside and work in Bermuda is contingent upon the continuance of the permission for the supporting work permit holder to reside and work in Bermuda.

Where a child is born in Bermuda into a non-Bermudian family, before work permits are renewed for any members of the family, proof must be given to the Department of Immigration that the Bermuda-born child has the nationality of one or both of his or her parents. Proof can take the form of:

- a valid passport for the child;
- a certificate of registration of the child as a citizen of a country; or
- a certified letter from the authorities of a country confirming that the child is a citizen of that country.

Failure to provide such proof will be grounds for all active work permits and permissions to reside, that are held by family members, to be revoked and the family asked to leave Bermuda.

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Expedited Applications for Temporary Work Permits

This policy supersedes the Business Visitor Policy.

This policy was created to meet the genuine needs of the business community. The term "business community" includes the international company businesses, local companies and small businesses. The policy distinguishes between:

- business activities for which no specific permission is required;
- emergencies; and
- fast-track applications.

These are all activities which the Minister considers important for the business community but which do not threaten the employment aspirations of Bermudians.

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Business Activities for which no Specific Immigration Permission is Required

There is an apparent misunderstanding by some, of how to complete the Immigration arrival card. The proper completion of the form will become even more important as we move closer towards e-government and the information is scanned into the Immigration computer system. Notwithstanding this, it is important that business visitors ensure that they travel to Bermuda with their complete documentation and that their employer has liaised with the Department of Immigration, in advance, to ascertain the requirements. It is to the mutual benefit of businesses and the Ministry if the paperwork is obtained and properly completed. While discretion can be exercised by the immigration supervisor at the Airport whether or not to prevent landing in Bermuda without the proper documentation, to minimise problems, it is preferable to get it right at the outset. The Ministry has instituted a one-day grace period such that a person who arrives in Bermuda, without the requisite documents, will be landed for one clear business day in which to produce the documents or risk being returned. The Ministry operates on the honour principle but will monitor and review its position on an on-going basis to ensure this latitude is not abused.

The business visitor, on arrival in Bermuda, should place a tick mark in the "Business and professional" box on Part A of the Immigration arrival card. A business visitor may enter Bermuda to undertake any activities that are excluded by the Bermuda Immigration and Protection Act 1956 from the definition of "gainful occupation", namely attending:

- directors' meetings;
- shareholders meetings.

In all other cases, businesses will no longer first be required to obtain a business visitor letter endorsed by the Department of Immigration before the business visitor is allowed to enter Bermuda. On arrival in Bermuda the business visitor will present to the Immigration Officer a letter, written by the Bermuda host-company, either in the format of a business visitor letter or in the form of a letter of introduction. A business visitor, using this route, may only enter Bermuda, on each such visit, for nine calendar days (including weekends and public holidays). Note that, where the business visitor is from the parent, a subsidiary or a branch of the host-company, a business visitor may enter for 21 calendar days. He or she may undertake any activities in the following capacities, for nine (or 21) days or less only, unless otherwise indicated:

- attending conferences including conference co-ordinator, presenters and exhibitors;
- for more than nine days, attending an extended conference or series of conferences, by the same group, as a conference co-ordinator;
- presenting business seminars or other presentations provided they are not open to the general public and are not for the purpose of promoting investment schemes or other money-making ventures;
- as potential customers, purchasing, checking details or examining goods or services;
- gathering information, or making a presentation, in response to a Request For Quote or a similar tendering process, provided the business visitor is not being paid for his or her services;

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- entering Bermuda for a job interview, provided that, on arrival in Bermuda, the person presents to Immigration the original letter, fax or e-mail from the business, inviting the person to interview;
- service provider (excluding travelling salesman) visiting a current client to negotiate deals, contracts, policies and other agreements;
- overseas vendor (excluding travelling salesman) meeting with his or her local importer to discuss marketing and sales performance, provided he or she is not engaging in direct sales with local retailers;
- financial adviser, provided that he or she has a letter of introduction from the business which he or she is visiting in Bermuda and he or she is not in contravention of the Investment Business Act, 1998;
- undertaking fact-finding missions, e.g. journalists on a short assignment to cover a story;
- advisers, consultants, trainers, trouble shooters, etc. provided that they are employed abroad, directly by the same company (or group of companies) to which the Bermuda client belongs but:
 - the involvement of such advisers must not extend to actual project management or providing consultancy services direct to clients of the Bermuda business;
 - training should be for a specific, one-off purpose, should not go beyond classroom instruction, and should not be otherwise readily available in Bermuda;
- interpreters or translators who are existing employees of an overseas business and who are accompanying and solely providing a service for business visitors from the business;
- representatives of computer software businesses entering Bermuda to install, debug or enhance their products. A trip to brief them on the requirements of a Bermuda customer is also acceptable. However, if representatives are to provide a detailed assessment of a potential customer's needs, this is regarded as consultancy for which a work permit is required;
- those coming to Bermuda for training in techniques and work practices employed in Bermuda, provided that the training is confined to observation, familiarisation and classroom instruction only;

Emergencies

It is recognised that there are genuine emergencies that need to be addressed. The problem, in the past, has been that the accommodation of emergencies has been at the expense of longer turnaround times for all other applications. Accordingly, it is expected that emergencies will account for only a very small fraction of work permit applications so that general turnaround times are not affected and the Department of Immigration can deliver a quality service to all its customers.

The criteria to be used by the Department of Immigration to define emergencies are as follows:

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- the business did not expect to have to bring in someone; or
- if the event was expected, (e.g. an internal audit) there was little or no warning of the intended arrival of the business visitor; or
- the business would not be able to operate without the person (e.g. sudden loss of key staff); and
- it is important that the person be brought in at very short notice.

The employee may undertake work only within the business that brought him or her into Bermuda. No work is to be carried out for third parties.

The following events are the only ones which constitute *bona fide* emergencies:

- loss of key staff;
- mass exodus of staff, other than that arising from an industrial dispute;
- break down of equipment, including computer hardware and software, which is integral to the operation of the business;
- secondment of an employee of any of its overseas branches, subsidiaries, affiliates or parent company required to troubleshoot a problem, e.g. the Y2K issue;
- retaining an outside consultant to troubleshoot a problem;
- receiving internal auditors where there is little or no warning;
- temporarily filling a vacancy where there is potential risk to life or economic survival, e.g. *locum tenens* in the emergency room of the Hospital;
- a potential disaster situation.

A temporary work permit, of up to three months' duration, can be issued within 24 hours.

Fast-track Applications

The Minister recognises that there are commercial exigencies which, while not strictly speaking emergencies as defined above, demand a more rapid response without compromising due diligence.

The employee may only work within the business who sponsored him or her under this policy, save in the case of travelling salesmen. The employee may not do any work in Bermuda for a third party.

We should note that, in such instances, and given the particular nature of the business demands, the facility is afforded recognising that, given the unique nature of certain specialist short-term initiatives, Bermudians are not available or not trained in the required speciality.

The fast-track may be applied to a person who is:

- not a travelling salesperson, but is visiting prospective clients including insurance brokers, investment brokers, investment managers, etc.;

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- providing short-term training in-house or offered by the Bermuda Employers' Council, the Bermuda College, Bermuda Chamber of Commerce or other recognised training bodies or institutes;
- installing an upgrade of the business's computer software;
- performing reconciliation procedures;
- servicing inter-company communications network;
- after signing contracts, but prior to implementation of the product, presenting or demonstrating, to the business, new products or services in existing lines and is providing the associated staff training;
- working for a not-for-profit organisation — including a registered charity — as sports coach, teacher of sport or recreation, clergy, speaker or musician (letter of permission);
- a technician providing services to a conference;
- a performing artist providing entertainment to a conference;
- an entertainer who is a featured act for less than a week;
- a travelling salesman who is sponsored by the Bermuda Chamber of Commerce or who is a sole agent sponsored by a local business;
- a technician supplying a specialised service which cannot currently be provided in Bermuda, e.g. servicing the Tynes Bay Incinerator; servicing Longbird Bridge;
- a consultant in a specialised field;
- a technician maintaining equipment under contract;
- an employee of any of a Bermuda based company's overseas branches, subsidiaries, affiliates or parent company which employee is to work in Bermuda for no more than 3 months;
- providing temporary support to cover for illness or performance issues;
- a *locum tenens* for a minister of religion or a physician;
- replacing a school teacher on a temporary basis;
- extending, for up to 3 months, an existing work permit of a person who is leaving after the extension;
- a person for whom an initial standard work permit application is about to be submitted, or is being processed, but whom the employer wishes to have employed as soon as possible. Grant of such a temporary permit does not imply approval of any application for a standard work permit.

Permits covering any of the above situations — including: letter of permission; temporary work permit, of up to a maximum of three months' duration; salesmen's permits; and periodic (1-year) permits — can be issued within 8 working days. However, this processing period will be extended where the application has to be referred to a consultative body. For a list of these

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please see Appendix A. Where the consultative body is a statutory, professional one, the processing time of 8 working days will be increased by the response time from the professional body. Where the consultative body is non-statutory, the processing time will be extended by about two weeks.

Application Procedure for Temporary and Periodic Permits

There is no fee for a letter of permission. Otherwise the fee of \$293.00 (2004) should accompany a letter of application for a three-month or salesman's permit or \$587.00 (2004) for a periodic permit, which should be marked "FAST TRACK" and include:

- the name of the business or organisation making the request (letterhead) - the client business;
- the name of the employee;
- date of birth of the employee
- nationality of the employee
- résumé of the employee
- the name of the overseas business for which the employee works;
- whether the overseas business is a branch, etc. of the client company;
- the nature of the business to be carried out;
- the date of arrival in Bermuda;
- the intended date of departure from Bermuda;
- the date work will start;
- the date work will end; and
- where application for a substantive work permit is likely to be made, the marital status of the employee and the number of children he or she has.

While a police certificate is required for all work permit holders, because of the length of time it can take to obtain one, temporary permits will be granted without a police certificate but one must be submitted before application is made for a substantive work permit.

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Changing Employers

A non-Bermudian on a work permit is not normally permitted to change jobs, with different employers, more than once in any five-year period. Where a person formerly on a work permit leaves Bermuda but returns to the Island to work within a period of two years, the previous job moves will count. Please see policy **W5** governing procedures for seeking alternative employment.

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Sharing the Services of an Employee

Sometimes more than one employer wishes to hire a particular person. These are generally part-time positions, commonly of a domestic services nature. A similar circumstance is the situation within the hospitality industry where cover is needed when resources are scarce. There is no objection to this practice provided each employer obtains a work permit for the person. The services of an employee may be shared but a work permit cannot be shared between employers.

Employment categories covered under this policy are as follows:

- chef (hospitality industry)
- child-care worker (private home) up to three children
- dish/pot washer (hospitality industry)
- gardener (private home or hospitality industry)
- nanny/housekeeper (private home)

Employers may advertise jointly to fill part-time positions, in this way, provided the name of each employer appears in the advertisement.

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Repatriation of Non-Bermudians

An employer of a non-Bermudian is required to guarantee, should the need arise, the cost of repatriation of the non-Bermudian and his or her dependants residing in Bermuda. This may be accomplished by requiring the non-Bermudian worker and each of his or her dependants who are entering Bermuda to have a return ticket valid for the period for which they will be employed or resident in Bermuda. The person on a work permit whose dependants have return tickets must provide proof that all the tickets have been revalidated by the airline concerned before the work permit is renewed.

The Department of Immigration generally accepts the written statement of the employer to honour the guaranty to repatriate the employee and the employee's dependants. The employee and his or her family who have had their repatriation guaranteed by the employer are permitted to land in Bermuda on a one way ticket basis as indicated on landing permits and work permits. Alternatively, the employer may be asked to submit an irrevocable letter of credit to the Department of Immigration that will guarantee that the funds are available to cover the cost of return tickets at the time of repatriation. The Department of Immigration may exercise the letter of credit if a work permit holder has to be repatriated and the employer cannot or does not honour his or her commitment.

The employer's guaranty to the Department of Immigration is so that Government will not have to bear the cost of repatriating a former employee and any dependants. It does not mean that the employee is entitled to have his or her family's repatriation paid for by the employer, unless that entitlement is part of the agreement between employer and employee. The main object is to ensure that the cost of repatriating a former work permit holder will not fall on the Government.

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There may be special provisions for nationals of visa-controlled countries in effect from time to time. For a list of visa-controlled countries please see Appendix C. The employer's guaranty remains in effect until the employee leaves Bermuda or obtains further employment for which a work permit is issued. It is accepted that there may be extenuating circumstances, such as marriage to a Bermudian or the employee receiving a WRC or a permanent resident's certificate, which will cause this policy to cease to have effect in individual cases.

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Part Owners of Businesses

Part ownership of a Bermuda business does not confer any expectation of a work permit.

In deciding whether to grant a work permit, the Minister is required by law to take particularly into account those things set out on page II.1 of this policy. Competition from a non-Bermudian will not be permitted where the market already has a number of competitors (e.g. security services). Where the industry is new (e.g. e-commerce) non-Bermudian entrepreneurs are more likely to be encouraged, especially where the enterprise creates a new source of quality employment for Bermudians and there is a clear and demonstrable benefit to Bermuda and Bermudians.

If there is no obvious benefit to Bermuda, the part owner is unlikely to obtain a work permit. This is particularly true where the expertise in the business of the company resides entirely, or nearly so, in the non-Bermudian co-owner.

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