IMMIGRATION REGULATIONS 2021

PART 5 –EMPLOYMENT OF MIGRANT WORKERS

22.  Registered Employer Scheme

(1) Before employing or otherwise engaging a migrant worker, a person must be registered under the Registered Employer Scheme (“**the register**”).

(2) A person who wishes to be included in the register must pay the prescribed fee and provide the information listed in Schedule 1 to the Principal Immigration Officer and such other information concerning the person’s business as the Principal Immigration Officer may reasonably request for the purposes of determining whether the person should be registered or not.

**SCHEDULE 1**

**Information to be provided with application for registration under the Registered Employers Scheme**

*Regulation 22(2)*

1. Full name and any trading name under which the person operates or proposes to operate in the Falkland Islands.

 2. An address for service of documents in the Falkland Islands.

3. An address for service electronically.

4. Any other address from which the person operates or proposes to operate in the Falkland Islands.

 5. If the person is not resident in the Falkland Islands, the full name and contact details of a servant or agent who is resident in the Falkland Islands and authorised to engage migrant workers, perform the person’s duties as sponsor and provide undertakings on behalf of the person.

6. The most recent accounts of the business.

(3) The Principal Immigration Officer must not include a person in the register unless satisfied that the person is capable of performing the duties of a registered employer set out in regulation 24.

(4) The register must include the information provided under subregulation (2) and be open for inspection during normal business hours at the Customs and Immigration Office.

(5) This regulation does not apply in relation to migrant workers employed or engaged before these Regulations come into force.

23.  Advertisement of employment opportunities and related matters

(1) The Principal Immigration Officer may by notice published in the *Gazette* require a registered employer or a specified category of registered employers to advertise employment vacancies in the Falkland Islands for a specified period before employing migrant workers to fill those vacancies.

(2) The Principal Immigration Officer must not issue a new work permit to a worker in respect of a post that worker has filled for 3 years 6 months or more unless the registered employer has advertised the post in the Falkland Islands.

(3) Subregulation (2) does not apply in relation to an application for a work permit made by a worker —

 (a) before these Regulations come into force; or

 (b) whose existing work permit is due to expire within 6 months after this regulation comes into force provided the application is made before the existing work permit expires.

24.  Duties of registered employers

(1) A registered employer must advertise employment vacancies in accordance with any requirements published under regulation 23(1).

(2) A registered employer must not employ a migrant worker to fill an employment vacancy if a suitable person who has a right of abode in the Falkland Islands and who has applied as a result of an advertisement or otherwise to fill the vacancy is available and willing to do the work.

(3) A registered employer must not employ a migrant worker unless —

 (a) the migrant worker holds a permit or other permission from the Principal Immigration Officer that permits the migrant worker to do the work in question; and

 (b) the migrant worker is appropriately qualified or skilled and experienced to do the work in question.

(4) A registered employer must maintain an up-to-date record of the information listed in the Schedule to these Regulations for each migrant worker employed by them.

**SCHEDULE 2**

**Records to be kept by a registered employer for each migrant worker**

*Regulation 24(4)*

1. The full name and date of birth of the migrant worker.

2. The migrant worker’s accommodation address and other contact details.

 3. Details of any advertisement of the vacancy for which a migrant worker has been recruited or post to which a migrant worker has been appointed.

 4. Details of any applications for the vacancy or post received from a person with right of abode in the Falkland Islands and the reasons why the migrant worker rather than that person was appointed.

 5. The migrant worker’s application for the vacancy or post including evidence of relevant qualifications and references provided by previous employers.

 6. A copy of the offer letter and contract or other statement of the terms of employment.

 7. A copy of the migrant worker’s permit and (if appropriate) grant of permission to do the work in question.

 8. If the migrant worker holds —

 (a) a work permit, the names of any accompanying dependents who live in the worker’s household;

 (b) an accompanying dependent permit, the name of the worker with whom the migrant worker lives;

 (c) a dependent permit, the name of the person with right of abode with whom the migrant worker lives; or

 (d) a carer permit, the name of the person who needs the permit holder’s care.

 9. If the registered employer is the migrant worker’s sponsor or sponsoring organisation, the name and contact details of any other registered employer for whom the migrant worker works; and in any other case, the name and contact details of the sponsor or sponsoring organisation.

(5) The records referred to in subregulation (4) must be kept for not less than three years after the date on which the migrant worker ceased to work for the registered employer.

(6) A registered employer must permit the Principal Immigration Officer to inspect records kept under subregulation (4) without notice during normal business hours and must provide the Principal Immigration Officer with copies of the records or any part of them, if requested to do so.

(7)  A registered employer who is the sponsor or sponsoring organisation for a migrant worker must —

 (a) notify the Principal Immigration Officer within two working days if the migrant worker, without sufficient excuse, does not start work on the date expected; and

 (b) ensure that the migrant worker is suitably accommodated during the whole of the period of validity of the work permit.

(8) A registered employer who is not the sponsor or sponsoring organisation for a migrant worker must notify the Principal Immigration Officer within five working days of the migrant worker starting work.

(9) A registered employer must notify the Principal Immigration Officer —

 (a) within five working days —

 (i) of becoming aware of any significant changes in a migrant worker’s personal circumstances that are relevant to the permit and in particular of any change of address or contact details or, in the case of a worker, an accompanying dependent or a dependent, in the composition of the household in which that person is living;

 (ii) if the registered employer makes any significant change to the migrant worker’s job description;

 (iii) of any breach of condition of the migrant worker’s permit or permission to work, whether by the registered employer or by the migrant worker; or

 (iv) of the migrant worker ceasing to work for the registered employer.

 (b) within twenty-eight days of —

 (i) any change to the information provided under regulation 22(2);

 (ii) any sale of all or part of the business; or

 (iii) any acquisition or takeover of, or any merger with, any other person in the Falkland Islands;

 (iv) the business ceasing to trade;

 (v) the registered employer being declared bankrupt or, in the case of a corporate body, insolvent or having a winding up order made in respect of it.

25.  Removal from the register

(1) The Principal Immigration Officer may remove a registered employer from the register if the registered employer so requests in writing and does not employ any migrant workers and in those circumstances removal is immediately effective.

(2) The Principal Immigration Officer may remove a registered employer on one or more grounds set out in subregulation (3).

(3) The grounds for removal from the Registered Employer Scheme are that the registered employer —

 (a) so requests in writing and subregulation (1) does not apply;

 (b) in the case of a registered employer that is a body corporate, is declared insolvent or has a winding up order made in respect of it;

 (c) in the case of a registered employer that is an individual, is declared bankrupt;

 (d) in the case of a registered employer that is an unincorporated body of persons, is dissolved or declared bankrupt;

 (e) is in breach of an undertaking;

 (f) is in breach of a duty in regulation 24 or employs a migrant worker otherwise than in accordance with these Regulations;

 (g) fails to comply with any other requirement relating to the conduct of the business under Falkland Islands law; or

 (h) in connection with an application for registration or with a view to procuring the issue of a permit or the grant of permission to any person, wilfully or recklessly gave false or misleading information or withheld information that was material in relation to its issue.

(4) Before removing a registered employer from the Registered Employer Scheme under subregulation (2) —

 (a) the Principal Immigration Officer must give not less than twenty-eight days written notice (“**notice of removal**”) to the registered employer of the proposed grounds for removal from the register and any facts or matters relied on in support of those grounds;

 (b) the registered employer may, within fourteen days of receipt of a notice of removal make written representations to the Principal Immigration Officer of the reasons why the registered employer should not be removed from the register and the Principal Immigration Officer must consider those representations;

 (c) the Principal Immigration Officer must confirm or withdraw the notice of removal in writing to the registered employer before the end of the period referred to in paragraph (a); and

 (d) if the removal notice is confirmed, the registered employer may within five working days request a review under regulation 26.

(5) If the registered employer does not request a review, removal from the register under subregulation (2) has effect —

 (a) on whichever is the later of —

 (i) the fifth day after the date on which confirmation of a removal notice is given; or

 (ii) the expiration of the twenty-eight day period referred to in subregulation (3)(a).

 (6) If the registered employer requests a review and the review is unsuccessful, removal from the register under subregulation (2) has effect upon determination of the review.

(7) The Principal Immigration Officer must, as soon as reasonably practicable after removal from the register has effect, give written notice to any migrant worker known to the Principal Immigration Officer to be working for the former registered employer that —

 (a) the person has been removed from the register;

 (b) the migrant worker is no longer permitted to work for the person; and

 (c) if the person is the migrant worker’s sponsor or sponsoring organisation, the migrant worker’s permit is cancelled in accordance with regulation 20.

(8) In the case of a person who is a sponsor, removal from the register does not affect any undertakings given by that person.

26.  Review of decisions of the Principal Immigration Officer

(1) Except in a case to which regulation 25(1) applies, a person may request a review by the Governor of a decision of the Principal Immigration Officer to refuse to include them in, or to remove them from, the register.

(2) Subregulation (1) is subject to the time limit for requesting a review in regulation 25(3)(d).

(3) The procedure set out in section 27(1) to (3) and (5) of the Ordinance applies to a review under this Part as it does to the review of decision that relates to a permit.

(4) If the decision is rescinded, the Governor may require the Principal Immigration Officer to register the person or to restore the person to the register, as the case may be, and give any directions necessary for giving effect to the determination, including rescinding cancellation of a work permit or volunteer permit under regulation 20.

27.  Offences

(1) A person commits an offence if that person employs or otherwise engages a migrant worker and is not registered under the Registered Employers Scheme.

(2) It is an offence for any person knowingly to give false or misleading information or to withhold information in relation to registration under the Registered Employer Scheme or removal from the register.

(3) A registered employer or their servant or agent named in the register who knowingly causes or permits a breach of regulation 24 commits an offence.

**Penalty**: A fine not exceeding the maximum of level 5 on the standard scale or a term of imprisonment not exceeding three months.