

CAYMAN ISLANDS



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**A BILL FOR A LAW TO AMEND THE IMMIGRATION LAW (2014
REVISION) TO REVISE IMMIGRATION POLICY AS IT RELATES TO
SPECIALIST CAREGIVERS; AND TO MAKE PROVISION FOR
INCIDENTAL AND CONNECTED MATTERS**

THE IMMIGRATION (AMENDMENT) BILL, 2015

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Immigration Law (2014 Revision).

In 2010, a new immigration category with the title ‘Certificate for Specialist Caregivers’ was introduced to allow domestic helpers and certain others who were employed to care for sick persons, elderly persons or persons with disabilities, to continue working in the same capacity notwithstanding that their term limit had expired and they were no longer entitled to be granted work permits.

In October 2013, as part of immigration policy reform, a decision was taken to discontinue issuing new Certificates for Specialist Caregivers but the renewal of existing certificates was allowed to continue.

This Bill seeks to re-introduce the ability to grant new Certificates for Specialist Caregivers.

Clause 1 of the Bill provides the short title of the legislation.

Clause 2 amends section 2 of the principal Law to remove references to a “handicapped person” and substitute references to a “person with a disability”.

Clause 3 repeals section 37C of the principal Law and substitutes a new section to provide for the acquisition of a Certificate for Specialist Caregivers for new applicants, using the same strict criteria that existed prior to October 2013 (for example, that the employee was employed with the employer making the application, as a domestic helper, nurse or nanny, or in some other care giving capacity and was caring for a sick person, an elderly person or a person with a disability, for at least three years immediately before the permission to be employed in that capacity terminated).

An employee’s Certificate for Specialist Caregivers would be valid for five years, to take effect upon the expiry of the employee’s current permission to work or, where the Certificate is authorizing the resumption of employment, upon the date of the Board’s or the Chief Immigration Officer’s, decision (new section 37C(3)).

The Certificate would be renewable for five years, and time spent working under a Certificate for Specialist Caregivers would continue to count as legal and ordinary residence for the purpose of qualifying to apply for permanent residence.

The Certificate would entitle the employee named in it to continue to work for the Certificate holder in the capacity of a domestic helper, nurse or nanny or in some other care giving capacity, caring for the sick person, elderly person or person with a disability named in the Certificate (new section 37C(5)).

The new section 37C(6) would set out circumstances in which a person named in a pending application for a Certificate for Specialist Caregivers, could continue to work as a caregiver even though the employee's final work permit or permission granted under section 52(4) has expired.

The Certificate for Specialist Caregivers would not confer rights on an employee's spouse or dependants with respect to residence and employment in the Islands (new section 37C(7)).

The new section 37C(8) and (9) would deal with transferral and revocation of a Certificate for Specialist Caregivers, and the new section 37C(11) contains provisions that would apply when the Certificate expires.

Clause 4 of the Bill contains a consequential amendment to section 114 of the principal Law.

THE IMMIGRATION (AMENDMENT) BILL, 2015

ARRANGEMENT OF CLAUSES

1. Short title
2. Amendment of section 2 of the Immigration Law (2014 Revision) - definitions
3. Repeal and substitution of section 37C - Certificate for Specialist Caregivers
4. Amendment of section 114 - transitional provisions

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ENACTED by the Legislature of the Cayman Islands.

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| 1. This Law may be cited as the Immigration (Amendment) Law, 2015. | Short title |
| 2. The Immigration Law (2014 Revision), in this Law referred to as the “principal Law”, is amended in section 2 as follows - <ul style="list-style-type: none">(a) by deleting the definition of the words “handicapped person”;(b) by inserting, after the definition of the words “permanent resident”, the following definition -<div style="padding-left: 40px;">“ “person with a disability” means a person who suffers from a permanent physical or mental disability which has been documented by a doctor and who as a result of this disability is dependent on the care of a specialist caregiver;” and</div>(c) in the definition of the words “specialist caregiver” by deleting the words “handicapped person” and substituting the words “person with a disability”. | Amendment of section 2 of the Immigration Law (2014 Revision) - definitions |

Repeal and substitution
of section 37C -
Certificate for Specialist
Caregivers

3. The principal Law is amended by repealing section 37C and substituting the following section -

“Certificate for Specialist Caregivers 37C. (1) The employer or former employer of a person who meets the criteria contained in subsection (2) may apply to the Work Permit Board or the Chief Immigration Officer for the grant or renewal of a Certificate for Specialist Caregivers in respect of that person.

(2) The criteria mentioned in subsection (1), in respect of a person’s eligibility for employment under a Certificate for Specialist Caregivers, are as follows -

- (a)(i) the person shall hold a final work permit;
- (ii) where the person held a final work permit which has expired, the application for employment under a Certificate for Specialist Caregivers may be made if the person is otherwise legally resident in the Islands;
- (iii) where the person held a final work permit which has expired and the person has departed the Islands, the application for employment under a Certificate for Specialist Caregivers shall be made within one year from the date of that departure;
- (iv) the person holds permission granted under section 52(4); or
- (v) where the person held permission granted under section 52(4) which has expired, the application for employment under a Certificate for Specialist Caregivers may be made if the person is otherwise legally resident in the Islands or remains in the Islands on the basis of permission granted under section 67,

and in relation to subparagraphs (i) to (v), such final work permit or permission is or was for employment by an employer (including, the Government or a nursing home approved by the Cabinet) as a

- domestic helper, nurse or nanny, or in some other care giving capacity;
- (b) the person is or was employed with the employer or former employer making the application, as a domestic helper, nurse or nanny, or in some other care giving capacity, for at least three years immediately before the permission to be employed in that capacity terminated;
- (c) the person is or was employed for the purpose of caring for a sick person, elderly person or person with a disability; and
- (d) the person is in good health and possesses health insurance coverage.

(3) Where, having received an application under subsection (1), the Work Permit Board or the Chief Immigration Officer, as the case may be, is satisfied that the criteria in subsection (2) are met, the Work Permit Board or the Chief Immigration Officer, having regard to the criteria contained in section 44(3) may, upon payment of the prescribed fee, issue a Certificate for Specialist Caregivers, valid for five years, to take effect upon the expiry of the employee's final work permit or permission granted under section 52(4) or, in the event that the employee's final work permit or permission granted under section 52(4) has expired, upon the date of the decision of the Board or the Chief Immigration Officer; and such Certificate shall be renewable for a period of five years, on application to the Board or the Chief Immigration Officer and upon payment of the prescribed fee, if the criteria contained in subsection (2) remain satisfied.

(4) Upon the issue of a Certificate for Specialist Caregivers, the name of the person being cared for shall be inscribed on the Certificate.

(5) A Certificate for Specialist Caregivers shall entitle the employee named in it to continue to work, or return to work, for the employer with whom the employee has been, or was, employed prior to the expiry of the employee's final work permit or permission granted under section 52(4) in the capacity of a domestic helper, nurse or nanny or in any other care giving capacity, caring for the sick person, elderly

person or person with a disability named in the Certificate.

(6) Where, during the currency of any final work permit or permission granted under section 52(4), an application had been made to the Work Permit Board or to the Chief Immigration Officer -

- (a) for the grant of a Certificate for Specialist Caregivers where the applicant is eligible to make such an application; or
- (b) for the renewal of a Certificate for Specialist Caregivers prior to the expiry of the current Certificate,

then, if such application -

- (i) has not yet been determined by the Work Permit Board or the Chief Immigration Officer; or
- (ii) has been refused by the Work Permit Board or the Chief Immigration Officer and that refusal has been appealed under section 15 to the Immigration Appeals Tribunal within the prescribed time for doing so,

notwithstanding the fact that the final work permit, permission granted under section 52(4) or the Certificate for Specialist Caregivers has expired, it shall not be an offence for the employee to whom the application relates to continue to be engaged in gainful occupation on the same terms and conditions of the final work permit, the permission granted under section 52(4) or the Certificate for Specialist Caregivers while awaiting a notification of the determination of the application or appeal.

(7) A Certificate for Specialist Caregivers shall not confer any rights on the employee's spouse or dependants with respect to residence and employment rights in the Islands.

(8) Where during the currency of a Certificate for Specialist Caregivers, the employer who is the holder of the Certificate dies or is no longer capable of holding the Certificate, the Certificate may be transferred at the

discretion of the Work Permit Board or the Chief Immigration Officer to another competent holder provided that the employee will continue to care for the same sick person, elderly person or person with a disability named in the Certificate.

(9) An application for the renewal of a Certificate for Specialist Caregivers, where the applicant was eligible to make such application, may be refused and a Certificate may be revoked by the Work Permit Board or the Chief Immigration Officer if -

- (a) the employee named in the Certificate ceases to be employed by the employer named in the Certificate;
- (b) the person named in the Certificate as being the employer dies or becomes in the opinion of the Work Permit Board or the Chief Immigration Officer no longer capable of holding the Certificate;
- (c) the person named in the Certificate as being cared for dies or ceases to be a sick person or a person with a disability; or
- (d) in the opinion of the Work Permit Board or the Chief Immigration Officer, any of the matters referred to in section 38(1)(a), (c), (d), (e), (f), (g), (h), (k) or (n) applies to the employee named in the Certificate.

(10) Where the employment arrangement between the employee and the employer who is the Certificate holder ceases or the Certificate holder or the person named in the Certificate as being cared for dies or ceases to be a sick person or a person with a disability, it shall be the duty of the employee named in the Certificate or the employer who is the Certificate holder, as the case may be, to inform the Board or the Chief Immigration Officer within thirty days of the cessation or the death or the change in circumstances with respect to the person being cared for, and failure to do so is an offence for which both the Certificate holder and the employee named in the Certificate, as the case may be, shall be liable.

(11) Upon the expiry of a Certificate for Specialist Caregivers and where no application is made for its renewal,

or such application is not permitted to be made, or an application is made but is refused and no appeal has been made, the employee named in the Certificate shall leave the Islands unless the employee is allowed to remain under some other provision of this Law, and neither the Board nor the Chief Immigration Officer shall grant or renew a work permit for the employee for not less than one year after the employee has left the Islands.”.

Amendment of section
114 - transitional
provisions

4. The principal Law is amended in section 114(5) by deleting the words “or Certificate for Specialist Caregivers”.

Passed by the Legislative Assembly the day of , 2015.

Speaker.

Clerk of the Legislative Assembly.