

CAYMAN ISLANDS



IMMIGRATION (TRANSITION) (AMENDMENT) (NO.2) BILL, 2020

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**A BILL FOR A LAW TO AMEND THE IMMIGRATION (TRANSITION) LAW, 2018 AS A
CONSEQUENCE OF THE ENACTMENT OF THE DOMESTIC PARTNERSHIP LAW,
2020; AND FOR INCIDENTAL AND CONNECTED PURPOSES**

PUBLISHING DETAILS

Sponsoring Ministry/Portfolio: Governor's Office



Memorandum of OBJECTS AND REASONS

This Bill amends the Immigration (Transition) Law, 2018 (“the principal Law”) as a consequence of the enactment of the *Domestic Partnership Law, 2020*. This legislation will ensure that immigration rights will be extended to persons in domestic partnerships and to the children and other dependants of domestic partners.

The Bill, in order to effect such changes, primarily adds throughout the words “domestic partner” and “domestic partnership”.

By virtue of this legislation, domestic partners will be able, among other things, to obtain through their domestic partners, Caymanian status, permanent residence and Residency and Employment Rights Certificates. Any right which is given under the principal Law to a spouse will be extended to a domestic partner. The provisions relating to loss of rights will also apply.

The sections of the principal Law which are amended and which will be extended to domestic partners and domestic partnerships are as follows —

- (a) section 13 - functions of Boards; Head of Work Permits, Cayman Status and Permanent Residence;
- (b) section 28 - acquisition of the right to be Caymanian by grant of the Board;
- (c) section 33 - revocation of right to be Caymanian;
- (d) section 36 - categories of permanent residence;
- (e) section 37 - persons legally and ordinarily resident in the Islands for at least eight years;
- (f) section 38 - Residency and Employment Rights Certificate for spouse of a Caymanian;
- (g) section 40 - loss of Residency and Employment Rights Certificate;
- (h) section 42 - Certificate of Permanent Residence for Persons of Independent Means;
- (i) section 43 - spouse and dependants of the holder of a Residency Certificate for Persons of Intendent Means or a Certificate of Permanent Residence for Persons of Independent Means
- (j) section 47 - Certificate of Direct Investment;
- (k) section 48 - revocation of Certificate of Direct Investment;
- (l) section 50 - Residency Certificate (Substantial Business Presence);
- (m) section 53 - persons exempted;
- (n) section 58 - consideration of application for work permit by Board, etc.;



- (o) section 63 - grant or refusal of work permit;
- (p) section 66 - term limits; and
- (q) section 70 - marriages of convenience.

Of particular note, the Bill repeals and replaces section 70 to make it clear that domestic partnerships of convenience, like marriages of convenience, will not be permitted.



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Arrangement of Clauses

Clause	Page
1. Short title and commencement	7
2. Amendment of section 2 of the Immigration Law (2020 Revision) – interpretation.....	7
3. Amendment of section 13 - functions of Boards; Head of Work Permits, Cayman Status and Permanent Residence	8
4. Amendment of section 28 - acquisition of the right to be Caymanian by grant of the Board.....	8
5. Amendment of section 33 - revocation of right to be Caymanian.....	10
6. Amendment of section 36 - categories of permanent residence	11
7. Amendment of section 37 - persons legally and ordinarily resident in the Islands for at least eight years	11
8. Amendment of section 38 - Residency and Employment Rights Certificate for spouse of a Caymanian	12
9. Amendment of section 40 - loss of Residency and Employment Rights Certificate.....	13
10. Amendment of section 42 - Certificate of Permanent Residence for persons of Independent Means	14
11. Amendment of section 43 - spouse and dependants of the holder of a Residency Certificate for Persons of Independent Means or a Certificate of Permanent Residence for Persons of Independent Means	15
12. Amendment of section 47 - Certificate of Direct Investment	15
13. Amendment of section 48 - revocation of Certificate of Direct Investment	16
14. Amendment of section 49 - Certificate for Specialist Caregivers	16
15. Amendment of section 50 - Residency Certificate (Substantial Business Presence)	16
16. Amendment of section 53 - persons exempted	17
17. Amendment of section 58 - consideration of work permit by Board etc.....	18
18. Amendment of section 63 - grant or refusal of work permit	18



19. Amendment of section 66 - term limits	18
20. Amendment of section 70 - marriages of convenience	20



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(NO.2) BILL, 2020**

A BILL FOR A LAW TO AMEND THE IMMIGRATION (TRANSITION) LAW, 2018 AS A CONSEQUENCE OF THE ENACTMENT OF THE DOMESTIC PARTNERSHIP LAW, 2020; AND FOR INCIDENTAL AND CONNECTED PURPOSES

ENACTED by the Governor in accordance with section 81 of the Constitution, after consultation with the Premier and with the prior approval of a Secretary of State.

Short title and commencement

1. (1) This Law may be cited as the Immigration (Transition) (Amendment) (No.2) Law, 2020.
- (2) This Law comes into force immediately after the commencement of the *Domestic Partnership Law, 2020*.

Amendment of section 2 of the Immigration Law (2020 Revision) – interpretation

2. The *Immigration (Transition) Law, 2018*, in this Law referred to as the “principal Law”, is amended in section 2 as follows —
 - (a) in the definition of the word “dependant” by inserting after the word “spouse” the words “or domestic partner”;

- (b) in the definition of the word “step-child” by inserting after the word “marriage” the words “or a domestic partnership”;
- (c) in the definition of the word “student” by inserting after the word “spouse” the words “or domestic partner”; and
- (d) by inserting, in the appropriate alphabetical sequence, the following definitions —

“**Deputy Registrar**” means a person appointed under section 28 of the *Domestic Partnership Law, 2020*;

“**domestic partner**” has the meaning assigned by section 2 of the *Domestic Partnership Law, 2020*;

“**domestic partnership**” has the meaning assigned by section 2 of the *Domestic Partnership Law, 2020*;

“**domestic partnership of convenience**” means a domestic partnership entered into with the primary intention of avoiding, or benefiting from, any of the provisions of this Law;

“**domestic partnership officer**” means a person appointed under section 25 of the *Domestic Partnership Law, 2020* or licensed under section 31 or 32 of that Law; and

“**Registrar**” means the Registrar of Domestic Partnerships who shall be —

- (a) the Registrar-General; or
- (b) such other public officer as may be appointed by the Deputy Governor to carry out the functions of the Registrar in relation to this Law.;

Amendment of section 13 - functions of Boards; Head of Work Permits, Cayman Status and Permanent Residence

3. The principal Law is amended in section 13(3)(b)(iii) by inserting after the word “spouse” the words “or domestic partner”.

Amendment of section 28 - acquisition of the right to be Caymanian by grant of the Board

4. The principal Law is amended in section 28 as follows —
- (a) by repealing subsection (5) and substituting the following subsection —
 - “(5) A person —
 - (a) who has been married to, or been in a domestic partnership with, a Caymanian —



- (i) for at least five years immediately preceding the application, where the marriage took place prior to the 1st January, 2004;
 - (ii) for at least seven years immediately preceding the application, where the marriage took place on or after the 1st January, 2004; or
 - (iii) in the case of a domestic partnership, for at least seven years immediately preceding the application;
 - (b) whose marriage is not a marriage of convenience;
 - (c) whose domestic partnership is not a domestic partnership of convenience;
 - (d) who is not living apart from his or her spouse or domestic partner under a decree of a competent court or under a deed of separation;
 - (e) who has not lived apart from his or her spouse or domestic partner for an aggregate period of three months —
 - (i) out of the five years immediately preceding the application where the marriage took place prior to the 1st January, 2004;
 - (ii) out of the seven years immediately preceding the application where the marriage took place on or after the 1st January, 2004; or
 - (iii) in the case of a domestic partnership, out of the seven years immediately preceding the application;
 - (f) who is legally and ordinarily resident in the Islands immediately preceding his or her application; and
 - (g) who has not in any country been convicted of an offence for which a sentence of imprisonment not exceeding twelve months has been passed other than for non-payment of a fine unless —
 - (i) the conviction has been quashed on appeal or has been the subject of a free pardon;
 - (ii) the act or omission giving rise to such conviction would not be an offence if done or omitted in the Islands in similar circumstances; or
 - (iii) the conviction is one which, in the interest of justice, the Board directs to be ignored for the purposes of this section,
- may apply to the Board for the grant of the right to be Caymanian.”;
- (b) in subsection (6) as follows —

- (i) by inserting after the word “spouse” the words “or domestic partner”;
and
- (ii) by inserting after the word “spouses” the words “or domestic partners”;
- (c) in subsection (7) —
 - (i) by repealing the following —
“(7) The surviving spouse of a Caymanian who —
 - (a) was married to the deceased for at least seven years;”;and
 - (ii) by substituting therefor the following —
“(7) The surviving spouse or domestic partner of a Caymanian who —
 - (a) was married to, or in a domestic partnership with, the deceased for at least seven years;”;and
- (d) by repealing subsection (8) and substituting the following subsection —
“(8) Where the marriage or domestic partnership referred to in subsection (7)(a) has not subsisted for a period of seven years or the grant of the right to be Caymanian has been refused by the Board, the surviving spouse or domestic partner may apply to the Director of WORC for the right to permanently reside in the Islands and the Director of WORC shall take into account —
 - (a) the length of the marriage or domestic partnership;
 - (b) whether there are any children of the marriage or domestic partnership;
 - (c) whether immediately prior to the death the marriage or domestic partnership was no longer subsisting as evidenced by a decree of a competent court, a deed of separation or what appears to be the breakdown of the marriage or domestic partnership;
 - (d) the applicant’s ability to support himself or herself and any dependants; and
 - (e) the applicant’s health and character.”.

Amendment of section 33 - revocation of right to be Caymanian

5. The principal Law is amended in section 33(1) as follows —

- (a) by deleting the word “or” at the end of paragraph (c);
- (b) by inserting after paragraph (c) the following paragraph —
“(ca) where the domestic partnership of the holder, being the domestic partner of a Caymanian, is deemed by the Board to have been a domestic partnership of convenience; or”;



- (c) in paragraph (d) as follows —
 - (i) by inserting after the word “spouse” the words “or domestic partner”;
and
 - (ii) by inserting after the word “marriage” the words “or domestic partnership”.

Amendment of section 36 - categories of permanent residence

6. The principal Law is amended in section 36 by repealing subsections (1) and (2) and substituting the following subsections —

- “(1) The Caymanian Status and Permanent Residency Board and the Director of WORC may grant the right to reside permanently in the Islands to the following non-Caymanian applicants —
 - (a) persons, including their spouses and domestic partners, who have been legally and ordinarily resident in the Islands for a minimum period of eight years;
 - (b) the spouse or domestic partner of a Caymanian; and
 - (c) a dependant of a Residency and Employment Rights Certificate who meets the requirements set out in section 39.
- (2) The Director of WORC may grant the right to reside permanently to —
 - (a) the surviving spouse or domestic partner of a Caymanian under section 28(7); and
 - (b) persons of independent means, including their spouses or domestic partners, under section 42.”.

Amendment of section 37 - persons legally and ordinarily resident in the Islands for at least eight years

7. The principal Law is amended in section 37 as follows —

- (a) in subsection (1), by inserting after the word “spouse” the words “or domestic partner”;
- (b) in subsection (8), by inserting after the word “spouse” the words “or domestic partner”;
- (c) in subsection (10), by repealing paragraph (e) and substituting the following paragraph —
 - “(e) any change in the status of the applicant’s marriage or domestic partnership or in respect of the applicant’s dependants,”;
- (d) in subsection (16), by inserting after the word “spouse” the words “or domestic partner”;
- (e) in subsection (18) —

- (i) by inserting after the word “marriage” the words “or domestic partnership”; and
 - (ii) by inserting after the word “spouse” wherever it appears the words “or domestic partner”; and
- (f) in subsection (19) —
- (i) by inserting after the word “marriage” wherever it appears the words “or domestic partnership”; and
 - (ii) by inserting after the word “spouse” wherever it appears the words “or domestic partner”.

Amendment of section 38 - Residency and Employment Rights Certificate for spouse of a Caymanian

8. The principal Law is amended in section 38 as follows —

- (a) in the section heading, by inserting after the word “spouse” the words “or domestic partner”;
- (b) in subsection (1), by inserting after the word “spouse” the words “or domestic partner”;
- (c) in subsection (2) as follows —
 - (i) by inserting after the word “marriage” the words “or domestic partnership”; and
 - (ii) by inserting after the word “spouse” the words “or domestic partnership”;
- (d) in subsection (3) —
 - (i) in paragraph (a), by inserting after the word “spouse” the words “or domestic partner”;
 - (ii) by inserting after paragraph (b) the following paragraph —

“(ba) the domestic partnership is not a domestic partnership of convenience.”;
 - (iii) in paragraph (e), by inserting after the word “marriage” the words “or domestic partnership”; and
 - (iv) in paragraph (f), by inserting after the word “spouse” the words “or domestic partner”;
- (e) in subsection (4), by inserting after the word “marriage” the words “or domestic partnership”;
- (f) by repealing subsection (6) and substituting the following subsection —

“(6) The spouse or domestic partner of a Caymanian shall have no right to reside or be gainfully employed in the Islands unless the spouse or the domestic partner is the holder of a Residency and Employment



Rights Certificate granted under this section; and the spouse or domestic partner shall not be entitled to apply for, or to be granted, a work permit or the renewal of a work permit, but where a work permit is in effect on the date of the marriage or domestic partnership, the spouse or domestic partner may continue to work under the terms and conditions of the work permit until its expiration.”;

- (g) in subsection (7) —
 - (i) by inserting after the word “spouse” the words “or domestic partner”; and
 - (ii) by inserting after the word “marriage” the words “or domestic partnership”; and
- (h) in subsections (8) and (9), by inserting after the word “spouse” the words “or domestic partner”.

Amendment of section 40 - loss of Residency and Employment Rights Certificate

9. The principal Law is amended by repealing section 40 and substituting the following —

“Loss of Residency and Employment Rights Certificate

40. (1) Subject to subsection (2), the holder of a Residency and Employment Rights Certificate who is the spouse or domestic partner of a Caymanian or has obtained a Residency and Employment Rights Certificate as a result of his or her marriage to or domestic partnership with, the holder of a Residency and Employment Rights Certificate under section 37(16) or any other earlier analogous provision, shall forfeit his or her rights under that Certificate if —
- (a) the holder falls within any of the provisions of section 51;
 - (b) the holder’s spouse or domestic partner ceases to be a Caymanian or to be a Residency and Employment Rights Certificate holder;
 - (c) within ten years of the marriage or the domestic partnership, the marriage or domestic partnership is dissolved or annulled;
 - (d) the holder ceases to be legally and ordinarily resident in the Islands; or
 - (e) the holder and his or her spouse or domestic partner are living apart —
 - (i) under a decree of a competent court;
 - (ii) under a deed of separation; or

- (iii) in circumstances where, in the opinion of the Board or the Director of WORC, the marriage or domestic partnership has irretrievably broken down.
- (2) A person who has forfeited his or her rights under subsection (1) and —
- (a) is or was the spouse or domestic partner of a Caymanian; and
 - (b) is the parent of a Caymanian child,
- may apply to the Board or the Director of WORC for a continuation of the Residency and Employment Rights Certificate —
- (i) until the child reaches the age of eighteen years; or
 - (ii) where the child is enrolled in tertiary education, until the child completes his or her education or has reached the age of twenty-four years, whichever happens earlier.
- (3) Notwithstanding section 38(1), where the holder of a Residency and Employment Rights Certificate is the surviving spouse or domestic partner of a Caymanian, that surviving spouse or domestic partner shall be required, in order to continue to hold that Certificate, to apply to the Board or the Director of WORC for the right to continue to hold the Certificate and —
- (a) the Board or the Director of WORC shall, in considering the application take into account —
 - (i) the length of the marriage or the domestic partnership;
 - (ii) whether there are any children;
 - (iii) whether immediately prior to the death, the marriage or domestic partnership was no longer subsisting as evidenced by a decree of a competent court, a deed of separation or what appears to be the breakdown of the marriage or domestic partnership;
 - (iv) the applicant's ability to support himself or herself and any dependants; and
 - (v) the applicant's health and character; and
 - (b) thereafter, the Board or the Director of WORC shall either revoke the Certificate or allow the continuation of the Certificate.”.

Amendment of section 42 - Certificate of Permanent Residence for persons of Independent Means

10. The principal Law is amended in section 42 as follows —



- (a) in subsection (2)(b) and (c), by inserting after the word “spouse” the words “or domestic partner”; and
- (b) in subsection (3) by inserting after the word “spouse” the words “or domestic partner”.

Amendment of section 43 - spouse and dependants of the holder of a Residency Certificate for Persons of Independent Means or a Certificate of Permanent Residence for Persons of Independent Means

11. The principal Law is amended in section 43 as follows —

- (a) in the section header, by inserting after the word “spouse” the words “or domestic partner”;
- (b) in subsection (1), by inserting after the word “spouse” the words “, domestic partner”;
- (c) by repealing subsection (3) and substituting the following subsection —
“(3) Upon —

- (a) the death of the holder of a Residency Certificate for Persons of Independent Means or a Certificate of Permanent Residence for Persons of Independent Means; or
- (b) the dissolution of the marriage or domestic partnership of the holder of a Residency Certificate for Persons of Independent Means or a Certificate of Permanent Residence for Persons of Independent Means,

the right of the surviving or former spouse or domestic partner to reside in the Islands may be revoked at the discretion of the Director of WORC but the surviving or former spouse or domestic partner may, within a period of three months of any revocation, apply for the grant of a Residency Certificate for Persons of Independent Means or a Certificate of Permanent Residence for Persons of Independent Means upon satisfying the requirements of this section.”.

Amendment of section 47 - Certificate of Direct Investment

12. The principal Law is amended in section 47 as follows —

- (a) in subsection (2)(a) and (b), by inserting after the word “spouse” the words “or domestic partner”;
- (b) in subsection (6), by inserting after the word “spouse” the words “, domestic partner”;
- (c) in subsection (7) —
 - (i) by inserting after the word “marriage” the words “or domestic partnership”; and

- (ii) by inserting after the word “spouse” where it twice appears the words “or domestic partner”; and
- (d) by repealing subsection (10) and substituting the following subsection —
 - “(10)Where —
 - (a) there is a change in the number of children who are dependants of the holder of a Certificate of Direct Investment;
 - (b) the holder —
 - (i) marries or enters into a domestic partnership;
 - (ii) divorces; or
 - (iii) dissolves a domestic partnership, subsequent to the issue of the Certificate; or
 - (c) changes his or her occupation within the business or businesses, the holder shall so inform the Director of WORC of the fact and the Director of WORC may amend the Certificate accordingly and subject to such conditions as Director of WORC may, in the Director’s absolute discretion, determine.”.

Amendment of section 48 - revocation of Certificate of Direct Investment

- 13.** The principal Law is amended in section 48(g) by inserting after the word “spouse” the words “or domestic partner”.

Amendment of section 49 - Certificate for Specialist Caregivers

- 14.** The principal Law is amended in section 49(7) by inserting after the word “spouse” the words “, domestic partner”.

Amendment of section 50 - Residency Certificate (Substantial Business Presence)

- 15.** The principal Law is amended in section 50 as follows —
- (a) in subsection (3) —
 - (i) in paragraph (a), by inserting after the word “spouse” the words “or domestic partner”; and
 - (ii) in paragraph (b), by inserting after the words “spouse” the words “, or domestic partner.”;
 - (b) in subsection (6), by inserting after the words “spouse” the words “, or domestic partner.”;
 - (c) by repealing subsection (7) and substituting the following subsection —
 - “(7) Upon —



- (a) the death of the holder of an Approval-in-Principle Residency Certificate (Substantial Business Presence) or a Residency Certificate (Substantial Business Presence); or
- (b) the dissolution of the marriage or domestic partnership of the holder of an Approval-in-Principle Residency Certificate (Substantial Business Presence) or a Residency Certificate (Substantial Business Presence),

the right of the dependent spouse or domestic partner to reside in the Islands shall cease after a period of one year from the date of the death or the dissolution unless —

- (i) the spouse or domestic partner can demonstrate to the satisfaction of the Director of WORC that he or she can support himself or herself and any dependent children without having to become gainfully occupied in the Islands; or
 - (ii) the holder is granted permission to remain under any other provision of this Law.”;
- (d) by repealing subsection (9) and substituting the following subsection —
- “(9) Where —
- (a) there is a change in the number of children who are dependants of the holder of a Certificate issued under this section;
 - (b) the holder —
 - (i) marries or enters into a domestic partnership;
 - (ii) divorces;
 - (iii) dissolves a domestic partnership;
 subsequent to the issue of the Certificate; or
 - (c) the holder changes his or her occupation within the business, the holder shall so inform the Director of WORC of the fact and the Director of WORC may amend the Certificate accordingly and subject to such conditions as Director of WORC may, in the Director’s absolute discretion, determine.”; and
- (e) in subsection (11)(f), by inserting after the word “spouse” the words “or domestic partner”.

Amendment of section 53 - persons exempted

- 16.** The principal Law is amended in section 53(1)(d) by inserting after the word “spouse” the words “or domestic partner”.

Amendment of section 58 - consideration of work permit by Board etc.

17. The principal Law is amended in section 58 as follows —

- (a) in subsection (3)(d), by inserting after the word “spouse” where it twice appears the words “or domestic partner”; and
- (b) in subsection (5)(a), by inserting after the word “spouse” the words “or domestic partner”.

Amendment of section 63 - grant or refusal of work permit

18. The principal Law is amended in section 63(10) by inserting after the word “spouse” the words “or domestic partner”.

Amendment of section 66 - term limits

19. The principal Law is amended in section 66 as follows —

- (a) by repealing subsection (10) and substituting the following subsection —

“(10) A person —

- (a) who is married to, or in a domestic partnership with —
 - (i) a worker;
 - (ii) a person employed by the Government of the Islands;
 - (iii) a person employed by the Government of the United Kingdom, in the Islands;
 - (iv) a person employed by any statutory authority or Government owned company, the employees of which are by law not required to hold work permits; or
 - (v) a person who is working by operation of law with the permission granted under subsection (4) or (8),
and whose right to work in the Islands will expire before that of his or her spouse or domestic partner;
- (b) whose marriage is, in the opinion of the Board or the Director of WORC, not a marriage of convenience; or
- (c) whose domestic partnership is, in the opinion of the Board or the Director of WORC, not a domestic partnership of convenience;
- (d) who is not living apart from his or her spouse or domestic partner under a decree of a competent court or under a deed of separation; and
- (e) who has not lived apart from his or her spouse or domestic partner for an aggregate period of three months out of the twelve months immediately preceding the application for the grant in circumstances which, in the opinion of the Board or the



Director of WORC, have led it to conclude that the marriage or domestic partnership has broken down,

may, during the currency of the spouse’s or the domestic partner’s work permit or contract of employment with the Government of the Islands or with the Government of the United Kingdom in the Islands or in the period during which his or her spouse or domestic partner is working by operation of law with permission granted under subsection (4) or (8), apply for the grant of a work permit or the renewal of an existing work permit; and the Board or the Director of WORC may —

- (i) grant the application for a period not exceeding that of the spouse’s or domestic partner’s work permit or any renewal thereof;
 - (ii) grant the application for a period not exceeding that of the spouse’s or domestic partner’s contract of employment; or
 - (iii) grant the application for a period not exceeding that of the period for which his or her spouse or domestic partner is working by operation of law or under permission granted under subsection (4) or (8).”;
- (b) by repealing subsection (11) and substituting the following subsection —
- “(11)A person working under subsection (10) whose spouse or domestic partner is granted permanent residence under section 37 and who has applied for a Residency and Employment Rights Certificate as the spouse or domestic partner of a permanent resident under section 37(16) will not lose his or her right to work and may continue to be granted work permits until the final determination of his or her application where that application was submitted within ninety days of the grant of his or her spouse’s or domestic partner’s permanent residence.”;
- (c) in subsection (12), by inserting after the word “spouse” where it twice appears the words “or domestic partner”; and
- (d) by repealing subsection (13) and substituting the following subsection —
- “(13)The Board or the Director of WORC, in calculating under subsection (10)(d), the period of time that an applicant has spent apart from his or her spouse or domestic partner , shall not take into account those occasions when either spouse’s or domestic partner’s absences were because of medical, educational, business, vacation or other analogous circumstances.”.

