

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Employment of Immigrants (Control) (Guernsey) Law, 1974

(Registered on the Records of the Island of Guernsey
on the 30th day of September, 1974.)



1974.

XI
1974

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 30th day of September, 1974, before John Henry Loveridge, Esquire, C.B.E., Bailiff; present:—Bertram Guy Blampied, Esquire, O.B.E., Stanley Walter Gavey, Esquire, Gilbert Carey de Jersey, Esquire, C.B., D'Arcy George Le Tissier, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Jean Le Pelley, Walter Francis Robin, Richard Alan Kinnersly, Esquires, Harry Wall Poat, Esquire, D.S.O., M.C., A.D.C., Richard Brook Sutcliffe and Richard Oliver Symons, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 10th day of April, 1974, ratifying a *Projet de Loi* entitled "The Employment of Immigrants (Control) (Guernsey) Law, 1974", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

At the Court at Windsor Castle

The 10th day of April 1974

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey, dated the 3rd day of April 1974, in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That, in pursuance of their Resolution of the 27th day of September 1972, the States of Deliberation at a meeting held on the 30th day of January 1974 approved a Bill or ‘Projet de Loi’ entitled ‘The Employment of Immigrants (Control) (Guernsey) Law, 1974’ and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or ‘Projet de Loi’ of the States of Guernsey entitled ‘The Employment of Immigrants (Control) (Guernsey) Law, 1974’ and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou.’

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

W. G. Agnew.

Projet de Loi referred to in the foregoing
Order in Council.

PROJET DE LOI

ENTITLED

The Employment of Immigrants (Control) (Guernsey) Law, 1974

ARRANGEMENT OF SECTIONS

1. Restriction on employment of Community nationals.
2. Application for employment permit.
3. Employment permits.
4. Persons entitled to employment permits.
5. Delegation of functions.
6. Powers of inspectors.
7. Appeals.
8. Controlled employments.
9. Miscellaneous offences.
10. Interpretation.
11. Citation and commencement.

PROJET DE LOI

ENTITLED

The Employment of Immigrants (Control) (Guernsey) Law, 1974

THE STATES, in pursuance of their Resolution of the twenty-seventh day of September, nineteen hundred and seventy-two, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of Law in the Islands of Guernsey, Herm and Jethou.

1. (1) A Community national shall not undertake or become or be engaged in a controlled employment in the Island unless—

Restriction
on employ-
ment of
Community
nationals.

(a) he was born in the Bailiwick of Guernsey;
or

(b) on such day as the States may by Ordinance appoint in that behalf (hereinafter called "the appointed day") he was present in the Island and insured under the Social Insurance (Guernsey) Law, 1964(a); or

(c) he is authorised to do so by the terms of an employment permit.

(2) A person shall not knowingly engage or employ in a controlled employment any person who, under the provisions of the last foregoing subsection, is prohibited from engaging in such employment.

(3) If any person contravenes or fails to comply with any of the foregoing provisions of this section he shall be guilty of an offence under this section and shall be liable on conviction to a fine not ex-

(a) Ordres en Conseil Vol. XIX, p. 286.

ceeding fifty pounds and, in the case of a continuing offence, to a further fine not exceeding twenty-five pounds for each day during which the offence continues after such conviction.

(4) Where a person convicted of an offence under this section is a body corporate, every person who, at the time of the commission of the offence, was a director or officer of the body corporate, or was purporting to act in any such capacity, shall be deemed to be guilty of that offence unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of that offence.

Application
for employ-
ment permit.

2. A person who wishes to obtain an employment permit shall make application in that behalf to the Committee and such application shall be in such form and accompanied by such information as the Committee may, from time to time, require.

Employ-
ment
permits.

3. (1) Subject to the provisions of section four of this Law, the Committee may, upon application being made to it in that behalf in accordance with the provisions of section two of this Law by a person who is a Community national, grant an employment permit authorising the employment of that person in a controlled employment, in such form as the Committee thinks proper and valid for such period as the Committee specifies therein.

(2) An employment permit may authorise the employment of the person named therein in the capacity specified therein.

(3) An employment permit may be renewed at any time for such period as the Committee thinks fit.

(4) The Committee may revoke an employment permit whenever it considers that the circumstances which justified the grant or renewal of the permit have changed.

(5) Where the Committee decides an application adversely to the applicant or decides to revoke an employment permit, the Committee shall inform the applicant or the holder of the permit, as the case may be, in writing of the reasons for its decision and of his right to appeal to the tribunal.

4. (1) The Committee shall, upon application being made to it in accordance with the provisions of section two of this Law by a person who is a Community national to whom the provisions of this section apply, grant to that person an employment permit authorising the employment of that person in all controlled employments.

Persons
entitled to
employ-
ment
permits.

(2) An employment permit granted under the provisions of this section shall remain in force so long as the person to whom it is granted continues to be a person to whom the provisions of this section apply.

(3) The provisions of this section shall apply to a person who is a Community national of any such class as the States may, from time to time, by Ordinance prescribe.

5. Any function conferred upon the Committee by or under this Law may be exercised by the President or any other member of the Committee or by the Secretary to the Committee if authorised in that behalf by the Committee.

Delegation
of functions.

6. (1) Any person authorised by the Committee in that behalf (hereinafter referred to as "an

Powers of
inspectors.

inspector") shall, for the purposes of the execution of this Law, have power to do any or all of the following things, that is to say:—

- (a) to enter at all reasonable times any premises or place where he has reasonable cause to believe that any person is engaged in a controlled employment;
- (b) to make such examination and inquiry as may be necessary to ascertain whether the provisions of this Law or of any Ordinance made thereunder are being complied with in respect of any such person;
- (c) to examine, either alone or in the presence of any other person, as he thinks fit, with respect to any matters under this Law or any Ordinance made thereunder every person whom he finds in such premises or place or whom he has reasonable cause to believe to be or to have been within the preceding two months engaged in a controlled employment, and to require every such person to be so examined and to sign a declaration of the truth of the matters respecting which he is so examined;
- (d) to require any such person to produce his employment permit and to inspect, examine and copy such permit or, where the permit has been revoked by the Committee, to retain the permit and deliver it to the Committee;
- (e) to exercise such other powers as may be necessary for carrying into effect this Law and any Ordinance made thereunder and in respect of which an inspector has been authorised by the Committee to act on its behalf.

(2) The occupier of any premises or place in which persons are working in a controlled employment and any other person employing persons in a controlled employment, and the servants or agents of any such occupier or other person, and any person engaged in a controlled employment shall furnish to any inspector all such information and shall produce for inspection all such documents as the inspector may reasonably require.

(3) If any person wilfully delays or obstructs an inspector in the exercise of any power under this section or fails to give such information or to produce such documents as aforesaid, or conceals or prevents or attempts to conceal or prevent any person from appearing before or being examined by an inspector, he shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds:

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

(4) Every inspector shall be furnished by the Committee with a certificate of his appointment in such form as the Committee may from time to time determine and shall, if so required, produce such certificate to the occupier of any premises or place which he wishes to enter or to any person from whom he wishes to obtain information for the purposes of this section.

7. (1) Subject to the provisions of this Law, the States may by Ordinance provide for the determination of appeals by a tribunal appointed by the Royal Court in accordance with the provisions of such Ordinance. Appeals.

(2) Any person aggrieved by a decision of the Committee refusing to grant or renew an employ-

ment permit, imposing restrictive conditions upon the grant or renewal of an employment permit or revoking an employment permit may appeal from that decision to the tribunal, on the grounds that the decision was ultra vires or was an unreasonable exercise of the powers of the Committee, within such period and in accordance with such procedure as the States may, by Ordinance, prescribe.

(3) Any decision of the tribunal under the provisions of this section shall be final.

Controlled
employ-
ments.

8. The States may, from time to time, by Ordinance provide:—

- (a) that such class or classes of employment under a contract of service or apprenticeship as may be specified in such Ordinance shall be controlled employments; and
- (b) that an independent contractor or sub-contractor who personally performs manual labour in furtherance of a contract which relates to a controlled employment shall be deemed to be engaged in a controlled employment; and
- (c) for such incidental and supplementary matters for which the States deem it necessary or expedient for the purposes of any such Ordinance to provide.

Miscel-
laneous
offences.

9. Any person who—

- (a) for the purpose of obtaining an employment permit for himself or for any other person knowingly furnishes any information which is false in any material particular; or
- (b) falsely personates any person named in an employment permit; or

- (c) wilfully misrepresents to any employer that he is a person in respect of whom an employment permit has been granted or that he is a person in respect of whom no such permit is required to be granted under this Law; or
- (d) without lawful authority, alters any employment permit or uses for the purpose of this Law, or has in his possession for such use, an employment permit which he knows or has reasonable cause to believe to be false;

shall, without prejudice to any other penalty, be guilty of an offence under this section and liable on conviction to a fine not exceeding fifty pounds.

10. (1) In this Law, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:—

Interpreta-
tion.

“the Committee” means the States Labour and Welfare Committee;

“Community national” means a person who is a national of a member State of the European Economic Community for the purposes of the Treaties;

“contract of service or apprenticeship” includes any such contract wherever made, whether expressed or implied, oral or in writing and whether made before or after the coming into force of this Law;

“controlled employment” means any employment which is for the time being declared to be a controlled employment by Ordinance made under the provisions of section eight of this Law;

“employment permit” means a permit issued by the Committee under the provisions of section three of this Law;

“the Island” includes the Islands of Guernsey, Herm and Jethou;

“member” in the expression “member State”, and the expression “the Treaties” have the meanings respectively assigned to them by section one of the European Communities (Bailiwick of Guernsey) Law, 1973(b);

“the tribunal” means the tribunal established in accordance with the provisions of subsection (1) of section seven of this Law.

(2) Except in so far as the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment including this Law.

(3) Any power conferred by this Law to make any Ordinance shall be construed as including a power exercisable in the like manner to vary or repeal the Ordinance.

Citation and
commence-
ment.

11. This Law may be cited as the Employment of Immigrants (Control) (Guernsey) Law, 1974, and shall come into force on such day as the States may by Ordinance appoint.

R. H. VIDELO,
Her Majesty's Greffier.

(b) Ordres en Conseil No. XI of 1973.