

# ORDER IN COUNCIL

**XVIII**

**1987**

ratifying a Projet de Loi

ENTITLED

## **The Employment Permits (Sark) Law, 1987**

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(Registered on the Records of the Island of Guernsey  
on the 15th day of December, 1987.)

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1987

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 15th day of December, 1987 before Sir Charles Frossard, Kt., Bailiff; present:—Donald Pescott Plummer, Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley and Leonard Arthur Moss, Esquire, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 21st October 1987, approving and ratifying a *Projet de Loi* of the Chief Pleas of the Island of Sark entitled "The Employment Permits (Sark) Law, 1987," THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island.
2. That an extract of this present Act together with a copy of the said Order in Council be sent by Her Majesty's Greffier to the Seneschal of Sark for registration on the records of that Island, of which Order in Council the tenor followeth:—

## At the Court of Saint James

The 21st day of October 1987

### The Counsellors of State in Council

WHEREAS Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 17th day of September 1987, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

AND 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 14th day of October 1987 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 a humble Petition of John Michael Beaumont, Esquire, Seigneur of Sark, Hilary Carre, Esquire, Seneschal and Alfred William John Adams, Esquire, Prévôt of the Island of Sark, setting forth:—

‘1. That, in pursuance of their Resolution of the 22nd day of April 1981, the Chief Pleas of the Island of Sark, at a meeting held on the 14th day of April 1982 approved a Bill or “Projet de Loi” entitled “The Employment Permits (Sark) Law, 1987”. 2. That the said Bill or “Projet de Loi” is as 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 Chief Pleas of Sark entitled "The Employment Permits (Sark) Law, 1987" and to order that the same shall have force of law in the Island of Sark.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the Projet de Loi annexed thereto 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."

NOW, THEREFORE, His Royal Highness The Prince Andrew, Duke of York, and Her Royal Highness The Princess Royal, being authorised thereto by the said Letters Patent, having taken the said Report into consideration, are pleased, by and with the advice of Her Majesty's Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of law within the Island of Sark.

AND do 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 Sark 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 Bailiwick, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

*G. I. de Deney.*

LAW NOT YET IN FORCE

Projet de Loi referred to in the foregoing  
Order in Council

## PROJET DE LOI

ENTITLED

### **The Employment Permits (Sark) Law, 1987**

#### ARRANGEMENT OF SECTIONS

1. Restriction on employment.
2. Application for employment permit.
3. Employment permits.
4. Factors to be taken into account by the Committee.
5. Appeals.
6. Exemptions.
7. Powers of Constable and Vingtenier.
8. Miscellaneous Offences.
9. Offences by bodies corporate.
10. Service of notices.
11. Interpretation.
12. Citation and commencement.

# PROJET DE LOI

ENTITLED

## **The Employment Permits (Sark) Law, 1987**

THE CHIEF PLEAS OF SARK, in pursuance of their resolution of the twenty-second day of April, nineteen hundred and eighty-one, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Sark.

Restriction  
on employ-  
ment.

1. (1) A Community national shall not undertake or be engaged in any gainful employment in the Island unless—

- (a) he was born in the Island; or
- (b) he was born outside the Island between the first day of January, nineteen hundred and forty, and the thirty-first day of December, nineteen hundred and forty-seven, and is the child of a person who at any time during the period between the first day of January, nineteen hundred and forty, and the thirtieth day of June, nineteen hundred and forty, was ordinarily resident in the Island; or
- (c) he was born outside the Island and is the child of a person who at the time of such birth was ordinarily resident in the Island; or
- (d) on such day as the Chief Pleas may by Ordinance appoint in that behalf, he was ordinarily resident in the Island; or
- (e) he is authorised to do so by the terms of an employment permit.

(2) A person shall not knowingly engage or employ in any gainful 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 exceeding one hundred 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) If in any proceedings for a contravention of this section a person claims that he or a person whom he has engaged or employed is a person to whom paragraph (a), (b), (c), (d) or (e) of subsection (1) of this section applies, the burden of proving that fact to the satisfaction of the Court shall be discharged by the person who so claims.

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.

Application  
for employ-  
ment permit.

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

Employ-  
ment permits.



(2) An employment permit may authorise the employment of the person named therein in the capacity specified therein either generally or by a specified employer or at a specified place or by a specified employer at a specified place.

(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 a permit, the Committee shall inform the applicant or the holder of the permit, as the case may be, within fourteen days in writing of the reasons for its decision and of his right to appeal to the tribunal.

Factors to  
be taken  
into account  
by the Com-  
mittee.

4. (1) In deciding whether or not, in the exercise of its powers under the provisions of the last preceding section, to grant an employment permit the Committee shall take into account the following factors:—

- (a) the availability of employment in the Island;
- (b) the number of persons in the Island who are unemployed;
- (c) the qualifications and experience of the person applying for such permit;
- (d) the character and antecedent history, including the criminal record, if any, of the person applying for such permit.

(2) Nothing in the last preceding subsection shall preclude the Committee, in exercising its powers under the last preceding section from taking into account such other factors as the Committee may, from time to time, deem necessary or expedient.

5. (1) Subject to the provisions of this section, any person aggrieved by any decision of the Committee refusing to grant or renew an employment permit, imposing conditions upon the grant or renewal of an employment permit or revoking an employment permit may appeal therefrom to a tribunal (hereinafter referred to as "the tribunal") which shall be constituted in such manner as the Chief Pleas may, from time to time, by Ordinance direct and of which the members shall, from time to time, be appointed by the Chief Pleas by Resolution either generally or in respect of a particular appeal. Appeals.

(2) A person may appeal to the tribunal under the provision of the last preceding subsection on the grounds that the decision of the Committee was ultra vires or was an unreasonable exercise of its powers and any such appeal shall be instituted before the expiration of a period of six weeks commencing on the day on which notice of such decision was served on that person.

(3) An appeal under the provisions of subsection (1) of this section shall be instituted by way of a summons served on the President of the Committee to show cause why the decision appealed from should not be set aside or varied.

(4) On any appeal under the provisions of subsection (1) of this section the burden of satisfying the tribunal that the decision of the Committee which is the subject of the appeal is intra vires or

reasonable shall be discharged by the Committee and the appellant shall be entitled to a final right of reply.

(5) The tribunal may, in such manner as shall be directed by Order of the Royal Court, refer to the Royal Court sitting as a Full Court (hereinafter referred to as "the Royal Court") for decision any question arising in connection with the determination of an appeal by the tribunal under the provisions of this section and certified as a question of law by Her Majesty's Procureur.

(6) Any person aggrieved by a decision of the tribunal on any question of law may appeal from that decision to the Royal Court in such manner and within such period as shall be directed by Order of the Royal Court.

(7) A decision of the Committee or of the tribunal, as the case may be, on any question in respect of which there has been no appeal under the provisions of this section, shall be final and conclusive.

**Exemptions.**

6. The Chief Pleas may, from time to time, by Ordinance provide—

(a) that the provisions of this Law shall not apply in relation to such additional class or classes of persons or to such class or classes of employment as may be specified in such Ordinance; and

(b) for such incidental and supplementary matters for which the Chief Pleas deem it necessary or expedient to provide.

7: (1) If the Seneschal or Deputy Seneschal is satisfied by information on oath that there is reasonable ground for suspecting that any person has committed or is committing any offence punishable under subsection (3) of section one of this Law, he may grant a warrant authorising the Constable or the Vingtenier to enter at any reasonable time within one month from the date of the warrant any premises or place specified in the warrant, and to make such examination and inquiry, and to require any person whom he finds at such premises or place to give such information and to produce such documents, as may be necessary in order to ascertain whether any such offence has been committed or is being committed.

Powers of  
Constable  
and  
Vingtenier.

(2) The Constable or the Vingtenier may require a person whose employment permit has expired or has been revoked by the Committee to surrender such employment permit to the Constable or the Vingtenier, and on receipt thereof shall deliver such permit to the Committee.

(3) Any person who—

(a) obstructs the Constable or the Vingtenier in the exercise of any of his powers under this section; or

(b) refuses, or, without reasonable excuse, fails to comply with any requisition of the Constable or the Vingtenier under this section;

shall be guilty of an offence and liable, on conviction, to a fine not exceeding fifty pounds.

(4) A person shall not be required under subsection (1) of this section to answer any question or to give any information tending to incriminate himself.

(5) In this section the expression "the Constable" includes the Assistant Constable.

Miscellaneous offences.

8. Any person who—

- (a) for the purpose of obtaining an employment permit for himself or 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 no such permit is required to be granted under this Law; or
- (d) without lawful authority, alters any employment permit or uses for the purposes of this Law, or has in his possession for such use a 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 one hundred pounds.

Offences by bodies corporate.

9. Where an offence under this Law or any Ordinance made thereunder which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any negligence on the part of, any director, manager, secretary or other similar officer of the body corporate, he as well as the body corporate shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

10. Any notice which may be served for the purposes of this Law shall be validly served:— Service of notices.

- (a) on any person, if delivered to him, left, or sent by post addressed to him, at his usual or last known place of abode;
- (b) on any firm, if delivered to any partner of the firm, or left at, or sent by post to, the principal or last known principal place of business of the firm;
- (c) on any body corporate, if sent by post to its registered office or if left at, or sent by post to, its principal or last known principal place of business.

11. (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:— Interpretation.

“the Committee” means such Committee as the Chief Pleas may, from time to time, appoint for the purposes of this Law;

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

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

“gainful employment” means any employment including self-employment whether part-time or full-time for which remuneration or a consideration is received directly or indirectly, but does not include any employment to which the provisions of this Law do not apply by virtue of an Ordinance made under section six thereof;

“Her Majesty’s Procureur” includes Her Majesty’s Comptroller;

“the Island” means the Island of Sark;

“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, as amended(a);

“the tribunal” has the meaning assigned to it by subsection (1) of section five 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) The Interpretation (Guernsey) Law, 1948(b), shall apply to the interpretation of this Law as it applies to the interpretation of an enactment in force in the Island of Guernsey.

(4) 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.

12. This Law may be cited as the Employment Permits (Sark) Law, 1987, and shall come into force on such day as the Chief Pleas may by Ordinance appoint.

K. H. TOUGH,

Her Majesty’s Greffier.

(a) Ordres en Conseil Vol. XXIV, p. 87; No. V of 1980.

(b) Ordres en Conseil Vol. XII, p. 355.