

ORDER IN COUNCIL

V
1990

ratifying a Projet de Loi

ENTITLED

The Right to Work (Limitation and Proof) (Guernsey) Law, 1990

(Registered on the Records of the Island of Guernsey
on the 10th April, 1990.)



1990

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 10th day of April, 1990 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:— Herbert Nicolle Machon, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Esquires, Mrs. Dorothy Winifred Le Pelley, John Edward Morris, Charles Anthony Spensley, Kenneth John Rowe and Lawrence Oscar Ozanne, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 14th day of February, 1990, approving and ratifying a *Projet de Loi* entitled "The Right to Work (Limitation and Proof) (Guernsey) Law, 1990", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller 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 of Saint James

The 14th day of February 1990

PRESENT,

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 18th day of January 1990 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 6th day of February 1990 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) an humble Petition of the States of the Island of Guernsey, setting forth:—

“1. That, in pursuance of their Resolutions of the 30th day of June, 1988, and the 27th day of April, 1989, the States of Deliberaion at a meeting held on the said 27th day of April, 1989, approved a Bill or “Projet de Loi” entitled “The Right

to Work (Limitation and Proof) (Guernsey) Law 1990", 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 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 Right to Work (Limitation and Proof) (Guernsey) Law, 1990", and to order that the same shall have force of law in the Island of Guernsey."; and

- (b) an humble Petition of the President and Secretary of the Guernsey Hotel and Tourism Association relating to the said Projet de Loi:

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petitions 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 of the States of Guernsey and to approve of and ratify the said Projet de Loi."

NOW, THEREFORE, Her Majesty Queen Elizabeth, The Queen Mother and His Royal Highness The Prince Charles, Prince of Wales, being authorised thereto by the said Letters Patent, have taken the said Report into consideration and do hereby, by and with the advice of Her Majesty's

Privy Council, on Her Majesty's behalf, approve of and ratify the said Projet de Loi, and order, and it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

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 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.

G. I. de Deney.

PROJET DE LOI

ENTITLED

The Right to Work (Limitation and Proof) (Guernsey) Law, 1990

ARRANGEMENT OF SECTIONS

Section

Residential status of employed people

1. Limitation on freedom of employment.
2. Right to work documents.
3. Tent dwellers' declarations.
4. Temporary exemption certificates.

Information and inspection

5. Records.
6. Amendments to Social Insurance Laws.
7. Appointment and powers of inspectors.
8. Confidentiality.

Criminal proceedings

9. Employment in contravention of section 1.
10. Obstruction, fraud etc.
11. Failure to keep records.
12. Breach of confidentiality.
13. Burden of proving non-applicability of section 1(1).
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Miscellaneous and supplementary

15. Suspension or modification of tent dwellers' provisions.
16. Interpretation and construction.
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19. Commencement.

PROJET DE LOI

ENTITLED

The Right to Work (Limitation and Proof) (Guernsey) Law, 1990

THE STATES, in pursuance of their Resolutions of the 30th day of June 1988 and the 27th day of April 1989, 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 Guernsey.

Residential status of employed people

Limitation
on freedom
of
employment.

1. (1) Every person who is in employment in Guernsey must be the holder of a currently valid right to work document.

(2) Subsection (1) of this section does not apply to any employment—

(a) in which the person concerned has been continuously engaged in Guernsey since 9th June 1988 either:

(i) as an employee under a contract of employment entered into on or before that date; or

(ii) as a self-employed person; or

(b) in the course of a visit to Guernsey of a duration not exceeding 15 hours; or

(c) of a person whose employer is not resident in Guernsey, or a self-employed person who is principally employed outside Guernsey, at a time when the person concerned has been in employment in Guernsey:

- (i) on no more than 10 days during the preceding 30 days; and
- (ii) on no more than 90 days during the preceding 12 months;
- (d) under an appointment made by Her Majesty's Warrant, Letters Patent or Commission (whether or not the appointee is or may be entitled to remuneration out of money provided by the States).

2. (1) In this Law a "right to work document" means— Right to
Work
Documents.

- (a) a status declaration issued in accordance with section 11 of the Housing Law, stating a decision of the Authority that its holder is a qualified resident; or
- (b) a housing licence granted by the Authority under section 3 of the Housing Law, whether or not it is a short-term licence as defined in subsection (1A) of that section;
- (c) a declaration of lawful residence issued by the Authority under section 12A of the Housing Law;
- (d) a tent dweller's declaration issued by the Authority under section 3 of this Law; or
- (e) a temporary exemption certificate issued by the Authority under section 4 of this Law.

(2) For the purposes of this Law a right to work document ceases to be "currently valid"—

- (a) in the case of a status declaration, when a person is convicted of an offence under section 42(a) of the Housing Law in connection with any application in consequence of which it was issued;

(b) in the case of a housing licence (including a short-term housing licence):

(i) upon the breach of any condition attached to it; or

(ii) on the date on which it is expressed to expire;

(c) in the case of a declaration of lawful residence:

(i) when a person is convicted of an offence under section 42(a) of the Housing Law in connection with any application in consequence of which it was issued; or

(ii) when its holder ceases to reside at the dwelling specified in it in the same circumstances as those specified in it pursuant to section 12A(2)(b) of the Housing Law; or

(iii) on the date on which it is expressed to expire;

(d) in the case of a tent dweller's declaration:

(i) if its holder ceases to be employed by the employer specified in it pursuant to section 3(3)(b) of this Law; or

(ii) if its holder ceases to live in a tent at the address specified in it pursuant to section 3(3)(d) of this Law; or

(iii) on the date on which it is expressed to expire pursuant to section 3(3)(f) of this Law;

(e) in the case of a temporary exemption certificate:

(i) upon the breach of any condition attached to it; or

- (ii) three months, or such shorter period as may be specified in it in that regard, after the date of its issue.

3. (1) The Authority shall issue a tent dweller's **Tent dwellers' declarations.** declaration if, upon an application being made to it in such form, and accompanied by such information, as it may (in general or in any particular case) require, the Authority is satisfied that the person in respect of whom the application is made is living, or intends to live, in a tent at a specified address whilst engaged in employment with a specified employer in connection with

(a) horticulture; or

(b) tourism.

(2) If the Authority is not satisfied as to all of the matters mentioned in subsection (1) of this section it shall refuse to issue a tent dweller's declaration and notify the applicant in writing of its reasons as soon as practicable; and a person aggrieved by such a refusal may appeal to the Ordinary Court, by way of a summons served on the President of the Authority within two months of that notification, on the ground that the Authority ought to have been satisfied as to all of those matters.

(3) A tent dweller's declaration shall be in such form as the Authority may from time to time determine, shall be signed by a person authorised in that behalf by the Authority, and shall specify:

(a) the name of its holder; and

(b) the name, and address in Guernsey, of its holder's employer; and

(c) the nature of its holder's employment; and

(d) the address where its holder will live in a tent; and

(e) the date, not being earlier than 1st April in the year in which it is issued, on which it is to commence; and

(f) the date, not being later than 31st October in the year in which it is issued, on which it is to expire.

**Temporary
exemption
certificates.**

4. Upon an application being made to it in such form, and accompanied by such information, as the Authority may (in general or in any particular case) require, the Authority may issue a temporary exemption certificate, signed by a person authorised in that behalf by the Authority, in such form as the Authority may from time to time determine, and either unconditionally or subject to such conditions as it considers desirable.

Information and inspection

Records.

5. It is the duty—

(a) of every employer, in respect of every contract of employment entered into by him and in respect of every person employed by him in Guernsey;

(b) of every self-employed person, in respect of his employment,

to keep a record, containing such information and in such form (if any) as the Authority may from time to time prescribe by regulations made under this section.

6. (1) The Social Insurance (Guernsey) Law, 1978(a) is amended as follows:

Amendments
to Social
Insurance
Laws.

(a) in section 111(1) for "Subject to the provisions of section one hundred and eleven A of this Law, information" substitute "Subject to sections 111A and 111B of this Law, information";

(b) immediately after section 111A,(b), insert:

"Further
informa-
tion.

111B. The Administrator shall, if and to the extent that he is requested to do so by a person authorised in that behalf by the States Housing Authority, disclose as soon as practicable to that person (for use in connection with the performance by that Authority of its functions under the Right to Work (Limitation and Proof) (Guernsey) Law, 1990 and the Housing (Control of Occupation) (Guernsey) Law, 1982)—

(a) the following information in respect of every insured person in respect of whom there has been paid a secondary class 1, or a class 2, contribution, or who has been credited with a class 1 or class 2 contribution credit, during any contribution quarter:

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- (a) Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; No. V of 1985; Nos. III and XXXI of 1986.
(b) Section 111A was inserted by the Social Insurance (Amendment) (Guernsey) Law, 1982 (Vol. XXVII, p. 392).

- (i) his name, address and social insurance number;
 - (ii) the name and address of any person who was his employer during that contribution quarter;
 - (iii) if he commenced or ceased any employment or self employment, or if he ceased to fulfil such conditions as to residence in Guernsey as were for the time being prescribed, that fact and the date on which he did so;
- (b) the name and address of every employer of a person employed in Guernsey;
- (c) the name, address, social insurance number, economic sector of employment (if any) and name and address of employer (if any) of everyone who was an insured person on, and who paid, or was credited with, a contribution in

respect of the contribution week which included, 9th June 1988, as at that date."

(2) Section 1(a) of the Social Insurance (Amendment) (Guernsey) Law, 1982(c) is repealed.

7. (1) The Authority may from time to time appoint inspectors for the purposes of this Law; and every inspector so appointed shall be furnished with a certificate of appointment. Appointment and powers of inspectors.

(2) For the purpose of ascertaining whether the provisions of this Law are being or have been complied with an inspector may, on production if so required of his certificate of appointment—

- (a) subject to subsection (3) of this section, enter at any reasonable time any premises where he has reasonable cause to believe that a person is in employment;
- (b) require the production of any record kept as required under section 5 of this Law and of any other information relating to a person in employment;
- (c) require any person appearing to the inspector to be in employment, or to be an employer, to answer such questions as the inspector may reasonably put to him and to sign a declaration as to the truth of his answers to those questions;
- (d) require any person appearing to the inspector to have taken up self-employment or to have entered into a contract of em-

ployment as an employee on or after 10th June 1988 to produce, within such time as the inspector may reasonably require, a currently valid right to work document issued or granted to that person.

(3) An inspector shall not enter any dwelling without the consent of a person whom he reasonably believes to be entitled to grant entry unless—

- (a) upon information laid before the Bailiff on oath, the Bailiff has issued a warrant under this subsection authorising him so to enter; and
- (b) he produces that warrant, if requested to do so, upon seeking to enter the dwelling.

(4) An inspector exercising any of his powers under this section may have with him such other persons as he thinks fit.

(5) A power conferred by this section to require the production of any record, document or other information includes the power—

- (a) if it is produced, to examine and take copies of it;
- (b) if it is not produced, to require the person who was required to produce it to state, to the best of his knowledge and belief, where it is;
- (c) to require the reproduction in legible form of any record or information maintained otherwise than in legible form.

(6) An inspector may act simultaneously under powers conferred on him under this section and powers conferred on him under any other enactment.

8. (1) Information obtained in connection with the operation of this Law shall not be disclosed, if it is information from which an individual or a body corporate or unincorporated body can be identified, except—

Confidentiality.

(a) to the extent necessary for the performance of any function, or for the purpose of civil or criminal proceedings, in connection with this Law, the Housing Law or the Social Insurance (Guernsey) Law, 1978; or

(b) in compliance with an order of any division of the Royal Court.

(2) For the purposes of subsection (1) of this section information disclosed to a person under section 111B of the Social Insurance (Guernsey) Law, 1978 is obtained by that person in connection with the operation of this Law.

Criminal proceedings

9. (1) If a person is in employment in Guernsey in contravention of section 1 of this Law, then

Employment in contravention of section 1.

(a) that person, and

(b) subject to subsection (2) of this section, any person who is his employer is guilty of an offence.

(2) It is a defence for an employer charged with an offence under subsection (1) of this section to prove that he has taken all reasonable precautions to avoid the commission of an offence.

(3) A person convicted of an offence under subsection (1) of this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 4 on the uniform scale, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

Obstruction,
fraud etc.

10. A person who—

- (a) obstructs, or fails to give all reasonable assistance to, an inspector exercising his functions under this Law; or
- (b) falsely represents that he, or an employee of his, is the holder of a currently valid right to work document; or
- (c) forges a right to work document; or
- (d) alters a right to work document without lawful authority; or
- (e) has in his possession without lawful excuse a right to work document which has been forged, or altered without lawful authority; or
- (f) includes in a record purporting to be kept in accordance with any regulations made under section 5 of this Law any information which is false or misleading in a material particular,

is guilty of an offence and liable:

- (i) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 4 on the uniform scale, or to both;

- (ii) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or to both.

11. A person who fails to keep any record which he is required to keep by any regulations made under section 5 of this Law is guilty of an offence and liable, on conviction, to a fine not exceeding level 4 on the uniform scale.

Failure to keep records.

12. A person who discloses information in contravention of section 8 of this Law is guilty of an offence and liable, on conviction, to a fine not exceeding level 3 on the uniform scale, or to imprisonment for a term not exceeding one month, or to both.

Breach of confidentiality.

13. It is hereby declared for the avoidance of doubt that in any proceedings for an offence under this Law the burden of proving that the employment concerned fell within any paragraph of section 1(2) of this Law must be discharged by the person who so alleges.

Burden of proving non-applicability of section 1(1).

14. (1) If an offence under this Law committed by a body corporate or by an unincorporated body is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of that body or any person who was purporting to act in any such capacity, he, as well as that body, is guilty of that offence and liable to be proceeded against and punished accordingly.

Criminal liability of directors, etc.

(2) For the purposes of this section a person is deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

Miscellaneous and Supplementary

"Suspension
or modifi-
cation of
certain pro-
visions.

15. (1) The States may from time to time by Ordinance—

- (a) suspend (either indefinitely or for a specified period) sections 2(1)(d), 2(2)(d) and 3 of this Law;
- (b) amend the list of industries set out in section 3(1) of this Law;
- (c) amend section 2 of this Law so as to:
 - (i) include in the definition of a "right to work document" a document issued by the Authority under powers conferred by the Ordinance entitling a person to work as a member of the crew of a vessel on which the Authority is satisfied that he is residing at the time; and
 - (ii) set out the circumstances in which a document so issued ceases to be valid.

(2) An Ordinance made under this section may—

- (a) make different provision in relation to different cases and circumstances;
- (b) contain incidental provisions relevant to its operation and enforcement;
- (c) contain supplementary and transitional provisions;
- (d) be varied or repealed by a subsequent Ordinance so made."

Inter-
pretation
and con-
struction.

16. (1) In this Law, unless the context otherwise requires,—

"the Authority" means the States Housing Authority or such other Committee of the States as the States may from time to time specify by Ordinance;

“body corporate” includes a body incorporated under the law of any country or territory;

“contract of employment” means a contract of service or apprenticeship (whether written or oral, express or implied);

“dwelling” means any premises, or any part of any premises (including premises in respect of which there is in force a boarding permit granted under the Tourist Law, 1948(d)) used or usable for human habitation;

“employee” means a person engaged in an occupation under a contract of employment;

“employer” means a person responsible under a contract of employment for paying the remuneration of an employee;

“employment” means any occupation (whether full-time or part-time, and whether under a contract of employment or as a self-employed person) from which remuneration or profit in money or money's worth is or may be directly or indirectly derived, and includes any trade, business, office, profession and vocation;

“holder” —

(a) in the case of a status declaration, tent dweller's declaration or temporary exemption certificate, means the person identified in it as the person in respect of whom it was issued;

(b) in the case of a housing licence or declaration of lawful residence, means the person identified in it as the person in respect of whose occupation of a dwelling it was granted or issued;

- “the Housing Law” means the Housing (Control of Occupation) (Guernsey) Law, 1982(e);
 - “inspector” means a person appointed as an inspector for the purposes of this Law under section 7(1);
 - “this Law” includes any regulations made under a power conferred by this Law;
 - “Ordinary Court” means the Royal Court sitting as an Ordinary Court;
 - “premises” includes land, vessels and aircraft, as well as buildings;
 - “prescribed” means prescribed by regulations made under this Law;
 - “qualified resident” has the same meaning as in the Housing Law;
 - “right to work document” has the meaning given in section 2(1);
 - “self-employment” means employment otherwise than under a contract of employment;
 - “the States” means the States of Guernsey;
- and related words and expressions are to be construed accordingly.

(2) For the purposes of this Law a person is “in employment in Guernsey” wherever he does anything in connection with his employment whilst physically present in Guernsey.

(3) A reference in this Law to an enactment is a reference to that enactment as from time to time amended, repealed and replaced, extended or applied by or under any other enactment including this Law.

(e) Ordres en Conseil Vol. XXVII, p. 448; No. V of 1988; No. VIII of 1990.

17. Regulations made under this Law—

Regulations.

- (a) may make different provision in relation to different cases or circumstances;
- (b) may contain such incidental, supplementary and transitional provisions as appear to the Authority to be expedient;
- (c) may be varied or revoked by subsequent regulations so made;
- (d) shall be laid before a meeting of the States as soon as possible after being made; and if, at that meeting or the next meeting, the States resolve that the regulations be annulled, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

18. This Law may be cited as the Right to Work Citation.
(Limitation and Proof) (Guernsey) Law, 1990.

19. This Law shall come into force on such date Commence-
ment etc.
as the States may by Ordinance appoint; and such
an Ordinance may—

- (a) appoint different dates for different provisions of this Law and for different purposes;
- (b) contain transitional provisions, exceptions and savings;
- (c) modify the provisions of this Law by substituting for the date "9th June 1988", in paragraph (a) of section 1(2) of this Law and

in the amendment to the Social Insurance (Guernsey) Law, 1978 effected by paragraph (b) of section 6(1) of this Law, such later date as may be specified in that regard in the Ordinance.

D. R. DOREY,
Her Majesty's Deputy Greffier.