

PROJET DE LOI

ENTITLED

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

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* Ordres en Conseil Vol. XXIV, p. 334; as amended by the Social Insurance (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 292); the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the Board of Employment, Industry and Commerce (Transfer of Functions) Ordinance, 1996 (No. XXXI of 1996, Recueil d'Ordonnances Tome XXVII, p. 139); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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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.

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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.

Restriction on employment of Community nationals.

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

- (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, 1978], 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 exceeding [level 1 on the uniform scale] 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.

NOTES

In section 1,

the words in square brackets in paragraph (b) of subsection (1) were substituted by the Social Insurance (Guernsey) Law, 1978, section 120, Fifth Schedule, with effect from 1st January, 1979;

the words and figure in square brackets in subsection (3) were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

Application for employment 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.

NOTE

In section 2, the words "the Committee" in square brackets, wherever

occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Employment 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.

NOTE

In section 3, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Persons entitled to employment permits.

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.

(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.

NOTE

In section 4, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Delegation of functions.

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].

NOTE

In section 5, the words, first, "President" and, second, "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of

States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1 and section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.¹

Powers of inspectors.

6. (1) Any person authorised by [the Committee] in that behalf (hereinafter referred to as "**an 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 [level 1 on the uniform scale]:

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.

NOTES

In section 6,

the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;

the words and figure in square brackets in subsection (3) were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

Appeals.

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.

(2) Any person aggrieved by a decision of [the Committee] refusing to grant or renew an employment 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.

NOTE

In section 7, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.

Controlled employments.

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.

Miscellaneous 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 [level 1 on the uniform scale].

NOTE

In section 9, the words and figure in square brackets were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

Interpretation.

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 –

"[the Committee]" means the [States of Guernsey [Committee for Employment & Social Security]],

"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.

^b Ordres en Conseil No. XI of 1973.

NOTES

In section 10,

the words in square brackets in the definition of the expression "the Committee" in subsection (1) were substituted by the Board of Employment, Industry and Commerce (Transfer of Functions) Ordinance, 1996, section 3, Schedule 2, paragraph 5, with effect from 31st October, 1996;

the words, first, "the Committee" and, second, "Committee for Employment & Social Security" in square brackets in the definition of the expression "the Committee" in subsection (1) and, third, the words "the Committee" in square brackets wherever else occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 4, section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1 and section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016.²

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Employment & Social Security and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.³

The European Communities (Bailiwick of Guernsey) Law, 1973 has since been repealed by the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, section 1, with effect from 11 p.m. on 31st December, 2020, subject to the saving in section 2 of the 2018 Law.

Citation and commencement.

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.

NOTE

The Law is not yet in force.

¹ The word "President" was previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004.

² The words "Committee for Employment & Social Security" were previously substituted by the Board of Employment, Industry and Commerce by the Board of Employment, Industry and Commerce (Transfer of Functions) Ordinance, 1996, section 3, Schedule 2, paragraph 5, with effect from 31st October, 1996; the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 5, with effect from 6th May, 2004.

³ The functions, rights and liabilities of the Commerce and Employment Department and its Minister were previously transferred to them from the Board of Industry and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 5, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance; the functions of the Board of Industry under this Law were previously transferred to it from the Board of Employment, Industry and Commerce by the Board of Employment, Industry and Commerce (Transfer of Functions) Ordinance, 1996, section 1, Schedule 1, paragraph 5, with effect from 31st October, 1996, subject to the savings and transitional provisions in section 2 of the 1996 Ordinance.