

PROJET DE LOI

ENTITLED

The Employment Permits (Sark) Law, 1987 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XXX, p. 228; as amended by the: Uniform Scale of Fines (Sark) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 320); Employment Permits (Brexite) (Sark) Regulations, 2021 (S.S.I. No. 1 of 2021).

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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 employment.

1. (1) A [person] 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 [level 2 on the Sark 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) 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.

NOTES

In section 1,

the word in square brackets in subsection (1) was substituted by the Employment Permits (Brexit) (Sark) Regulations, 2021, regulation 1(2), with effect from 11 p.m. on 31st December, 2020;

the words and figure in square brackets in subsection (3) were substituted by the Uniform Scale of Fines (Sark) Law, 1989, section 2(2),

with effect from 1st November, 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.

Employment permits.

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.

(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 Committee.

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.

Appeals.

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.

(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.

Powers of Constable and Vingtenier.

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.

(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 [level 1 on the Sark uniform scale].

(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.

NOTE

In section 7, the words and figure in square brackets were substituted by the Uniform Scale of Fines (Sark) Law, 1989, section 2(2), with effect from 1st November, 1989.

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 [level 2 on the Sark uniform scale].

NOTE

In section 8, the words and figure in square brackets were substituted by the Uniform Scale of Fines (Sark) Law, 1989, section 2(2), with effect from 1st November, 1989.

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.

Service of notices.

10. Any notice which may be served for the purposes of this Law shall be validly served –

- (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.

Interpretation.

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 –

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

[...]

"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,

[...]

"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.

NOTES

In section 11, the words omitted in the first and second pairs of square brackets in subsection (1) were repealed by the Employment Permits (Brexit) (Sark) Regulations, 2021, regulation 1(3), with effect from 11 p.m. on 31st December, 2020.

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.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the

^b Ordres en Conseil Vol. XIII, p. 355.

Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Citation and commencement.

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.

NOTE

The Law is not yet in force.
