

PROJET DE LOI

ENTITLED

The Employment Permits (Alderney) Law, 1975 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XXV, p. 31; as amended by the Employment Permits (Amendment) (Alderney) Law, 1981 (Ordres en Conseil Vol. XXVII, p. 339); the Uniform Scale of Fines (Alderney) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 306); the Fees (Alderney) Law, 2011 (No. XX of 2012); the States Committees (Transfer of Functions) (Alderney) Ordinance, 1997 (Alderney Ordinance No. II of 1997). See also the Fees (Alderney) Law, 2011 (*supra*); the Fees (Alderney) Ordinance, 2018 (Alderney Ordinance No. XVII of 2018).

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ARRANGEMENT OF SECTIONS

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The Employment Permits (Alderney) Law, 1975

THE STATES, in pursuance of their Resolution of the nineteenth day of July, 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 Island of Alderney.

Restriction on employment.

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 States 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 Alderney 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 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 the offence.

NOTES

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

In accordance with the provisions of the Employment Permits (Alderney) Ordinance, 1976, section 1, the day appointed for the purposes of paragraph (d) of subsection (1) is 4th February, 1976.

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 –

- (a) such information as the Committee may from time to time require, and
- (b) such sums as the States may prescribe by Ordinance in accordance with the Fees (Alderney) Law, 2011.]

NOTES

In section 2, the words in square brackets were substituted inserted by the Fees (Alderney) Law, 2011, section 2, Schedule, Part I, paragraph 3, with effect from 1st January, 2019.¹

In accordance with the provisions of the Fees (Alderney) Law, 2011, section 3, Schedule, Part II, paragraph 8, with effect from 1st January, 2019, the fees referred to in this section may be prescribed in accordance with that Law.

In accordance with the provisions of the Fees (Alderney) Ordinance, 2018, section 1, Schedule 1, Part I, with effect from 1st January, 2019, the fees payable hereunder are as set out therein.

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 forms 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 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 Court.

[Factors to be taken into account by the Committee.]

3A. (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.]

NOTE

Section 3A was inserted by the Employment Permits (Amendment) (Alderney) Law, 1981, section 1, with effect from 25th August, 1981.

Appeals.

4. (1) Any person aggrieved by a 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 from that decision to the Court, 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.

(2) Any decision of the Court under the provisions of this section shall be final.

NOTE

The following Ordinance has been made under section 4:

Employment Permits (Alderney) Ordinance, 1976.

Exempted employments.

5. The States may, from time to time, by Ordinance provide –

- (a) that the provisions of this Law shall not apply in relation 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 States deem it necessary or expedient to provide.

NOTE

The following Ordinances have been made under section 5:

Employment Permits (Alderney) Ordinance, 1976;
Employment Permits (Exemptions) (Alderney) Ordinance, 1980;
Employment Permits (Exemptions) (Amendment) Ordinance, 2002.

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 employed,
- (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 employed, 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,
- (c) 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 employed and any other person employing persons, and the servants or agents of any such occupier or other person, and any person who is employed 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 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 Alderney 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.

NOTE

In section 6, the words and figure in square brackets were substituted by the Uniform Scale of Fines (Alderney) Law, 1989, section 2(2), with effect from 1st October, 1989.

Offences.

7. 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 Alderney uniform scale].

NOTE

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

Interpretation.

8. (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 States may, from time to time, appoint for the purposes of this Law,

"the Court" means the Court of Alderney,

"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 five thereof,

"the Island" means the Island of Alderney,

"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^a,

"the States" means the States of Alderney.

(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

The functions of the Committee under this Law were transferred to the Policy and Finance Committee by the States Committees (Transfer of Functions) (Alderney) Ordinance, 1997, section 1, Schedule 1, Part I, paragraph 4, with effect from 2nd April, 1997, subject to the savings and transitional provisions in section 3 of the 1997 Ordinance.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016,

^a Ordres en Conseil No. XI of 1973.

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

section 28(a), with effect from 1st October, 2018.

Citation and commencement.

9. This Law may be cited as the Employment Permits (Alderney) Law, 1975, and shall come into force on such day as the States may by Ordinance appoint.

NOTE

The Law was brought into force on 4th February, 1976 by the Employment Permits (Alderney) Law, 1975 (Commencement) Ordinance, 1976, section 1.

1 These words were previously amended by the Fees (Alderney) Law, 1989, section 1(2), Schedule, with effect from 21st January, 1999.