

Jersey Law 5/1988

**PROTECTION OF EMPLOYMENT OPPORTUNITIES (JERSEY)
LAW, 1988.**

A LAW to protect opportunities for the taking of employment by persons having a connexion with the Island, sanctioned by Order of Her Majesty in Council of the

17th day of FEBRUARY, 1988.

(Registered on the 8th day of April, 1988.)

STATES OF JERSEY.

The 19th day of August, 1986.

THE STATES, subject to the sanction of Her Majesty in Council, have adopted the following Law –

ARTICLE 1

Interpretation

(1) In this Law, unless the context otherwise requires –

“Committee” means such Committee as the States shall designate under Article 10 of this Law;

“employment” means –

- (a) employment under a contract of service;
- (b) employment under an apprenticeship agreement;
- (c) self-employment;

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in any trade, profession or industry;

“exempted person” means any person who, being a person to whom the proviso to paragraph (1) of Article 3 of this Law applies, has completed the formalities required by paragraph (2) of that Article;

“prescribed employment” means employment of any category prescribed under Article 3 of this Law;

“school leaving age” means the upper limit of the compulsory school age by virtue of Article 20 of the “Loi (1912) sur l’Instruction Primaire”, as amended.¹

(2) For the purposes of this Law a person shall be deemed to take employment in the Island where, although there is no change of employer, there is a change from employment which is carried out outside the Island to employment which is carried out in the Island.

(3) For the purposes of this Law a person does not take employment where a change of employer results from –

- (a) the sale of the business of the employer; or
- (b) the reconstruction or amalgamation of the company which is the employer.

ARTICLE 2

Application

This Law applies to the taking of prescribed employment which is carried out in the Island.

¹ Tomes IV–VI, page 303, and Volume 1970–1972, page 377.

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ARTICLE 3

Power to prohibit the taking of prescribed employment without consent

(1) The States may by Regulations provide that no person shall take employment of any category prescribed in the Regulations without the consent of the Committee:

Provided that no such Regulations shall in any case apply to –

- (a) a person who –
 - (i) was born in the Island; and
 - (ii) who has attained school leaving age; and
 - (iii) has been ordinarily resident in the Island for a period of at least ten years;
- (b) a person who –
 - (i) has attained school leaving age; and
 - (ii) has at the time of taking employment been ordinarily resident in the Island for a period of at least ten years immediately preceding that taking of employment;
- (c) a person who wishes to take employment in –
 - (i) the service of the Crown in right of the Government of the United Kingdom;
 - (ii) an office to which he has been appointed by Her Majesty;
 - (iii) the office of Secretary and Aide de Camp to the Lieutenant Governor;

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- (iv) an office to which he has been appointed by the Bailiff;
- (v) service under an international organisation of which Her Majesty's Government in the United Kingdom is a member;
- (d) a person who qualifies to purchase, take on transfer or lease, on a registered contract of lease, any land under paragraph (1) of Regulation 1 of the Housing (General Provisions) (Jersey) Regulations, 1970,² as amended,³ or who qualifies to lease, other than on a registered contract of lease, any land under those sub-paragraphs as applied by paragraph (1A) of that Regulation;⁴
- (e) the spouse of a person who falls within paragraph (a), (b), (c) or (d) of this proviso.

(2) Any person who seeks to show that he is an exempted person shall complete such form as may be required from time to time by the Committee and shall deliver such form, together with such particulars as may likewise be required, to the person giving the employment, who shall, as soon as may be, forward the form and particulars to the Committee.

(3) In this Article, "land", "lease" and "registered contract" have the meanings assigned to those words in the Housing (Jersey) Law, 1949, as amended."⁵

² No. 5444.

³ Nos. 5981, 6651 and 6903.

⁴ Nos. 5444 and 5981.

⁵ Tome VII, pages 535 and 537.

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ARTICLE 4

Application for consent

An application for consent to take prescribed employment shall

- (i) be in the form required from time to time by the Committee;
- (ii) contain or be accompanied by such particulars as the Committee may require; and
- (iii) be accompanied by the fee (if any) prescribed by Order.

ARTICLE 5

General

(1) The Committee may grant consent to take prescribed employment either unconditionally or subject to such conditions as it considers appropriate, or may refuse to grant consent to take prescribed employment.

(2) In considering whether to grant consent to take prescribed employment, to impose conditions or to refuse consent, the Committee shall have particular regard to the matters set out in Part I or Part II of the Schedule to this Law, as the case may be.

(3) Where the Committee refuses to grant consent to take prescribed employment it shall furnish to the applicant a statement in writing of its reasons.

(4) The applicant, or his prospective employer, aggrieved by the decision of the Committee to refuse to grant consent to take prescribed employment or by any condition imposed by the Committee, may appeal to the Royal Court within two months of the date of the notification of the decision of the Committee in the matter, on the ground

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that the decision of the Committee was unreasonable having regard to all the circumstances of the case.

- (5) A consent to take prescribed employment shall –
 - (a) be in such form as the Committee may prescribe by Order made under Article 11 of this Law; and
 - (b) contain particulars of the prescribed employment for which it is given and of any conditions imposed by the Committee.

ARTICLE 6

Offences

(1) Any person who, not being an exempted person, takes prescribed employment otherwise than in accordance with the consent of the Committee shall be guilty of an offence and shall be liable to a fine.

(2) Any person who gives employment to a person, not being an exempted person, otherwise than in accordance with the consent of the Committee to take that employment or who does not deliver the form and particulars required by virtue of paragraph (2) of Article 3 shall be guilty of an offence and shall be liable to a fine.

(3) A person commits an offence if for the purpose of procuring, whether for himself or another person, the consent of the

Committee to take prescribed employment, he makes any statement which he knows to be false.

(4) A person commits an offence if, for the purpose of showing that he, or another person, is an exempted person, he makes any statement or delivers any particulars which he knows to be false.

(5) A person commits an offence if he dishonestly represents himself to be an exempted person.

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(6) A person commits an offence if he contravenes or fails to comply with any condition imposed on him under Article 5 of this Law.

(7) Where any condition imposed under Article 5 of this Law is contravened or not complied with, the consent to take prescribed employment shall be of no effect.

(8) A person who is guilty of an offence under paragraph (3), (4), (5) or (6) of this Article shall be liable to a fine.

ARTICLE 7

Investigation

(1) A person authorised in that behalf by the Committee may at all reasonable times on production if so required of evidence of his authority, enter on any land or premises and make such enquiries and require the production of such documents as he thinks necessary in order to ensure that the provisions of this Law are being complied with.

(2) A person who obstructs or impedes any person so authorised in the execution of his duties shall be guilty of an offence and shall be liable in respect of each offence to a fine.

ARTICLE 8

Controller of Social Security to disclose information to Attorney General

(1) Notwithstanding anything in his oath of office or in any other enactment the person for the time being appointed as Controller for the purpose of administering the Social Security (Jersey) Law, 1974,⁶ as amended,⁷ shall disclose such information as may be required in accordance with paragraph (2) of this Article.

⁶ Volume 1973-1974, page 319.

⁷ Volume 1982-1983, pages 51, 53, 239 and 240.

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(2) Where the Attorney General is satisfied that it is necessary for the purpose of ascertaining whether the provisions of this Law or any Regulations made thereunder are being or have been complied with he may give notice in writing to the said Controller requiring the disclosure of information for that purpose from records kept by the said Controller.

(3) Information disclosed in accordance with paragraph (2) of this Article may be given in evidence in any court.

ARTICLE 9

Saving provisions

(1) It is hereby declared that nothing in this Law shall affect the right of a person to continue in the employment in which he is engaged on the commencement of a Regulation making that employment prescribed employment.

(2) The requirements of this Law shall not apply to or affect a person who is subject to any condition or restriction relating to employment imposed upon him under or by virtue of the Immigration Act 1971 (1971 c.77) as extended to the Island.⁸

(3) Nothing in this Law shall affect the power of the States to transfer functions of Committees under Article 29 of the States of Jersey Law, 1966,⁹ as amended.

ARTICLE 10

Regulations and Act designating Committee

(1) The States may by Regulations –

⁸ Volume 1970–1972, page 515, Volume 1982–1983, pages 136 and 137, and Volume 1984–1985, pages 164 and 165.

⁹ Volume 1966–1967, page 16.

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- (a) for the purposes of Article 3 of this Law prescribe any category of employment which a person may not take without the consent of the Committee;
- (b) amend sub-paragraphs (a), (b), (d) and (e) of the proviso to paragraph (1) of Article 3 of this Law;
- (c) alter the matters set out in Part I or Part II of the Schedule to this Law.

(2) The States shall before making any Regulations under this Law by Act designate one of its Committees as the Committee having functions under this Law.

(3) Once a person has acquired immunity from the application to him of Regulations made under Article 3 of this Law, his immunity shall not be affected by anything in Regulations made under this Article.

ARTICLE 11

Orders

(1) The Committee may make Orders generally for carrying this Law into effect and, in particular but without prejudice to the generality of the foregoing, shall make Orders –

- (a) prescribing the form of application to be used under Article 4 of this Law;
- (b) prescribing the fees to be paid under Article 4 of this Law; and
- (c) prescribing the form of consent to be used under Article 5 of this Law.

(2) The Subordinate Legislation (Jersey) Law, 1960, as amended,¹⁰ shall apply to Orders made under this Law.

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ARTICLE 12

Short title

This Law may be cited as the Protection of Employment Opportunities (Jersey) Law, 1988.

E.J.M. POTTER

Greffier of the States.

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SCHEDULE

(Article 5(2))

PART I

The Committee in considering whether to grant or refuse an application for consent to take prescribed employment with an employer shall have particular regard to –

- (a) the availability of persons having a level of experience or training adequate for that employment who may take employment without the consent of the Committee;
- (b) the extent to which that employment is actually sought by such persons;
- (c) the comparability of the wages and conditions of service offered for that employment with the wages and conditions of service of the majority of persons engaged in like employment;
- (d) the probable duration of that employment;
- (e) the period of time for which the vacancy has existed and the period of time (if any) during which it has been advertised;
- (f) the nature and extent of any such advertising;
- (g) the character of the prospective employee;
- (h) the job experience of the prospective employee;
- (j) the provision (if any) made by the prospective employer for housing the employee.

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PART II

The Committee in considering whether to grant or refuse an application for consent to take prescribed employment in a self-employed capacity shall have particular regard to –

- (a) the matters referred to in paragraphs (a), (b), (d), (g) and (h) of Part I of this Schedule; and
- (b) the economic situation of the Island.