

The Chief Pleas Government of Sark

The Colin Kniveton Papers

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Issues regarding the introduction
of a Work Permit System for Sark

A document for consideration, consultation,
discussion and comment

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A Summary Paper Relating to the Issues Regarding the Introduction of a Work Permit System for Sark

Introduction

The introduction of work permits is a process fraught with difficulties. Few people genuinely appreciate the benefits that such a system can provide to the economy while those who consider themselves to be disadvantaged by the consequences of a work permit system, be they employers or employees, are often vociferous in their criticism.

Work permits can be administratively intense and may require an independent panel to adjudicate on applications that are not straightforward. Furthermore, independent checks are required by inspectors to ensure that regulations are not being circumvented and such visits by inspectors can often be the cause of irritation to employers.

However, it is believed by many that the state has a duty to protect the well-being of indigenous workers who may experience significant financial difficulties as a result of being unemployed. In turn, this can place demands upon the state in areas such as hardship payments, family support or, where applicable, unemployment benefits.

While it is recognised that Sark does not have the same level of financial liabilities that are incurred in other neighbouring countries, the principle of utilising local workers in preference to imported labour is a clearly recognised principle of any economic policy, including that of Sark.

Alternative models

It is difficult to provide a precise definition of a work permit system as there are considerable differences between the scope and underlying rationale for work permits across the three Crown Dependencies, i.e. Jersey, Guernsey and the Isle of Man. Many of the differences stem from attempts to use work permits to control population and the housing market, which is a major focus in Jersey and Guernsey. Both Jersey and Guernsey operate residency controls, the effects of which are to control who has the right to live permanently on each Island. Such controls limit entitlement to housing and employment whilst making provision for non-resident workers to be employed for limited periods of time.

On the Isle of Man, there are no restrictions with regards to the purchase of properties and as such, the Manx work permit system is probably the best comparator, if the primary motivating factor is the protection of local workers.

The Isle of Man Work Permit system

The Isle of Man system is predominantly applicable to nationals of the European Economic Area (EEA). Non EEA workers are subject to the Points Based System, as is the case with comparable immigration procedures in Jersey and Guernsey. Anyone who is not an Isle of Man worker requires a work permit to take up employment (including self-employment) except in the case of a small number of exempted occupations (e.g. doctors) and certain employments of a temporary nature.

Isle of Man workers

There are eight main categories of persons who are Isle of Man workers, the most important of which are as follows:

- persons born in the Island;
- persons ordinarily resident¹ in the Isle of Man for at least 10 consecutive years; or
- persons ordinarily resident in the Isle of Man for at least 5 consecutive years but subject to certain conditions; and
- spouses or civil partners of IOM workers.

Spouses and civil partners of permit-holders

The Government (through the Department of Economic Development) must grant a one year permit on application to anyone who is the spouse or the civil partner of a permit- holder or an exempt person. The permit is renewable annually provided that the primary permit holder is still working on a permit or remains an exempt person and the couple are still married or in a civil partnership. The requirement to apply for a permit has the effect of deterring some employers from employing spouses / civil partners even though they have an automatic entitlement to a permit.

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¹ The terms “resident” and “ordinarily resident” are not defined in the legislation. However, there are certain general legal principles as to what is meant which derive from case law. The following High Court case clarifies the issues.

<http://www.judgments.im/content/J266.htm>

The application process

An application for a permit is made by an employer to employ an individual to carry out a particular role or else by a self-employed person him/herself. In each case, where successful, the permit will be granted for a set period. Where necessary, an application for renewal of a permit can also be made.

Matters to be taken into consideration by the Department

In arriving at its decision as to whether or not to grant a permit the Department must take into account 5 prescribed matters and may take any of a further 11 further matters into consideration.

“Suitable” and “available” Isle of Man workers

The most important criteria are arguably as follows:

- 1. The likelihood of there being suitable Isle of Man workers available in the trade, industry or profession in respect of which the application is made.*
- 2. The likelihood of there being suitable Isle of Man workers becoming available within a period of 12 months, taking into account the future prospects of the trade, industry or profession in respect of which the application is made.*

The system allows employers to employ individuals who are not Isle of Man workers, provided that there are no suitable Isle of Man workers available to fill those specific roles. A suitable worker may not necessarily be the best applicant for a job. Further, potential *future* availability of suitable IOM workers must also be taken into consideration.

Appeal process

Any person aggrieved by a decision of the Department, (e.g. an employer who is refused a permit or an Isle of Man worker who considers that the permit should not have been granted) may appeal to the Work Permit Appeal Tribunal. The role of the Tribunal is limited; it determines whether the decision of the Department was lawfully reached as opposed to looking at the case afresh.

The fee

The processing fee for a work permit or renewal application is currently £50, irrespective of the duration for which the work permit is granted.

Delegation of functions

The Minister has delegated his powers to the Work Permit Committee, (though there is no legal requirement to do so); the Committee has in turn delegated some of its powers to civil servants in the Department, particularly the Secretary to the Committee.

What are the main objections to the existing system?

From an **employer's** perspective the system can be:

- time consuming, bureaucratic and expensive;
- bad for business (the system hinders employers from being able to recruit the best person for the job, promote their high fliers, or select a management team of its own choice).

However, it must be acknowledged that the majority of complaints levied by employers in respect of issues regarding the granting of work permits arise from a failure to follow laid out procedures.

From a **potential worker's** perspective, the wait and uncertainty to become an IOM worker and any restriction on his / her partner and children working are all disincentives to their coming to work on the IOM. So some talented people may simply go elsewhere.

Further, having obtained a work permit the worker is not free to move employments; nor can he or she move jobs or be promoted without a new work permit application being made by the employer or potential employer.

From **the Government's** perspective, the legislation:

- may have the undesirable effect of making Island employers less competitive over time by allowing wage rates to be higher and skills lower than would be the case if there was an open labour market;
- may inhibit some economic activity;
- sits ill at ease with the "Freedom to Flourish / Isle of Man Where You Can" marketing messages that attempt to portray the Isle of Man as being a business friendly jurisdiction with minimal government intervention.

The Guernsey Right to Work System

There are fundamental differences between the work permit system as operated by the Isle of Man and Guernsey's Right to Work system, which is administered by the States of Guernsey. As such, they provide a meaningful comparison when assessing what might be best for Sark.

The lack of Customs and Border Control facilities in Sark means that all immigration issues are encompassed within Bailiwick-wide legislation that controls the manner in which non-EEA citizens are admitted. These are broadly similar to those found across the Crown Dependencies.

Regulations that control the right to work extend to Guernsey only and arise from the requirement to control the local housing market. Rather than provide extended details in this paper, reference can be made to the States of Guernsey web-site, via the following links:

Immigration – Bailiwick wide: <http://www.gov.gg/CHttpHandler.ashx?id=5442&p=0>

<http://www.gov.gg/CHttpHandler.ashx?id=5440&p=0>

Housing Control/Right to Work – Guernsey only:

<http://www.gov.gg/HCAppliationforms>

Discussions with the External Affairs Division have confirmed that there is a great deal of dissatisfaction with regard to the current system and a consultation exercise is currently underway to assess what form a replacement system might take, as per the following link:

<http://www.gov.gg/article/5029/Population-Consultation>

One of the proposals within the consultative document is to introduce “employment Permits” which are defined as:

“Employment Permits will be issued for those who are permitted to live in the Island for employment reasons. There will be different types of Employment Permit with different conditions attached to them, including conditions on which posts and individuals would be eligible to receive them and restrictions on the period of time for which the Permit holder can continue to live in the Island.”

States of Alderney – Employment Permits

As always when considering courses of action that may be adopted in Sark, it is worthwhile to consider the approach adopted by Alderney.

Under the Employment Permits (Alderney) Law, 1975 and the Employment Permits (Exemptions) (Alderney) Ordinance, 1980 (as amended), all citizens of the EU (this includes

Guernsey, Sark and Jersey residents), are required to apply for and be granted an Employment permit before commencing employment in Alderney, unless they are exempted. A list of these exempted categories is as follows:

- *Representative of a foreign Government or of the United Nations*
- *Employee of the States of Alderney, the States of Guernsey or the States of Jersey*
- *Employees of Guernsey Telecoms Limited and Guernsey Post Limited*
- *Employee of the Corporation of Trinity House of Deptford Stroud*
- *Employee of Lloyds Bank Ltd., the Midland Bank Ltd., the National Westminster Bank Ltd., or the Trustee Savings Bank of the Channel Islands*
- *Advocate of the Royal Court of Guernsey*
- *Minister of religion*
- *Dentist*
- *Medical practitioner*
- *Veterinary surgeon*
- *Aircrew or Aircraft Maintenance staff*
- *Crew of a ship other than a fishing vessel*
- *Sales representative of a firm of wholesale suppliers*
- *Principal or technical employee of a firm of Accountants, Architects, Chartered Engineers or Travel Agents*
- *Representative of the Press or of a Broadcasting or Television company.*

Those who are exempted by virtue of their birth, are defined as follows:

- (a) a person born in Alderney;
- (b) a person born outside Alderney during the war years in the 1940s, but whose parents were ordinarily resident in Alderney between 1 January 1940 and 30 June 1940;
- (c) a person born outside of Alderney to parents who are normally resident in the Island; or
- (d) a person resident in Alderney on 4 February 1976.

The positions of work, for which employment permits are to be applied for, are required to be advertised on Alderney for at least seven days, to enable resident tradesmen/workers the opportunity to apply for the positions advertised, prior to an employment permit application form being completed and received.

Permits are issued for a maximum period of 12 months and are renewable and it is stated that employment permit process will normally be completed within 5 working days, reliant upon the application form being correctly and honestly completed. By law, no employment can commence before employees are in possession of valid employment permits.

The fee for a new application in Alderney is currently £20.50, with £15.50 being charged for renewals.

Citizens of a non-EU country must apply to the British Consulate in their country of origin for a working visa prior to travelling to Alderney.

Conclusion and Recommendation

Given that the existence of the current work/employment permit systems in Alderney and the Isle of Man appear more focused on the objectives of providing protection to the indigenous workforce, it is not perhaps surprising that there is a recognition on Guernsey that the system there requires a radical overhaul.

As such, while the constitutional relationship between Guernsey and Sark requires that a dialogue on Sark's intentions be maintained through the External Affairs Division, the Alderney or Isle of Man models should be given detailed consideration.

Given the relatively low level of economic activity in Sark and the potential for negative reaction to be forthcoming from employers, the advantages and disadvantages needed to be considered extremely carefully.

Consideration should be given to a proposed consultation document that is awaiting authorisation for circulation in Alderney. A number of key messages are contained within a draft that is currently being finalised. These include:

"In recent years both the economy and the island's population have shrunk. The States of Alderney is embarking upon a strategy to assist economic growth, and recognises that a successful strategy will require a more modern approach to employment permits. It is important to ensure that the legislation, the protection afforded to local workers and the needs of the economy are in alignment.

Employment permit legislation does not act as an immigration control nor is it designed to control access to public services. It does however have an important role to play in both and close alignment to immigration and social policies is required.

The States of Alderney is committed to working with the States of Guernsey in securing the improvement in the skills of the Alderney born workers through the education of our young people and the access to further education and training, such as apprenticeship schemes."

It can be seen that the use of work permits must be done within the framework of a cohesive policy to develop the economy. The necessity of providing some form of protection to its indigenous workers must be balanced against a policy of minimising restrictions placed upon employers who offered Sark based jobs. If an equilibrium is

reached, this can be achieved in a manner that is acceptable to all parties and will only be challenged by those who do not have the best interests of Sark at heart.

However, if a balance is not found, the system will either be too lenient so as not to protect the vulnerable workers who will suffer as a result, or alternatively, a system that is overly bureaucratic or restrictive will limit employment prospects on Sark.

If a work permit system is to be introduced, then it will be far more effective if accompanied by a training regime that seeks to equip local workers with the skills necessary to those employment opportunities that present themselves in Sark. In this manner, a pool of labour will exist that should negate the requirement for imported labour.

If supported by a fair and practical work permit system, local workers' interests will be preserved without creating a negative impact upon opportunities to grow the economy.

As such, the recommendations of this paper are that:

- a detailed dialogue be entered into with Alderney, with a view to replicating its work permit regulations, subject to the outcome of the forthcoming consultation process;
- that discussions take place with appropriate sources of information to assess the opportunities afforded by Digi Map to act as a basis for holding information and assisting with both administration and enforcement responsibilities;
- that consideration be given to ensuring training opportunities exist for local workers in order that vacancies can be occupied by suitably qualified staff; and
- a fee structure is charged that covers the administrative costs and acts as a deterrent to frivolous applications.