

NEW HEBRIDES CONDOMINIUM

JOINT REGULATION

No. 28 of 1977/

TO PROTECT the employment of New Hebridean workers.

MADE by the Resident Commissioners under Article 2(2) and Article 7 of the Anglo-French Protocol of 1914 after consultation with the Labour Advisory Committee and the Provisional Council established by the Exchange of Notes between the Governments of the French Republic and the United Kingdom of Great Britain and Northern Ireland on the the ninth day of June 1977.

PART I - PRELIMINARY PROVISIONS

Interpretation and application.

1. (1) In this Regulation, unless the context otherwise requires -

"employment" means the performance by an employee of a contract of service, whether written or not, and the words "employ", "employed", "employee" and "employer" shall be construed accordingly :

Provided that in the case of companies incorporated outside the New Hebrides, the employer shall be deemed to be the person for the time being holding the appointment of director or manager of the principal branch of such company within the New Hebrides ;

"Inspector of Labour" means an Inspector of Labour duly appointed for the purposes of the Joint Labour Regulation No. 11 of 1969 ;

"New Hebridean worker " means any person -

- (i) who was born in the New Hebrides ; or
- (ii) one of whose parents was born, or two of whose grandparents were born, in the New Hebrides ; or
- (iii) who has resided in the New Hebrides for a period or periods totalling in aggregate fifteen years at the date of commencement of this Regulation ;

"Non-New Hebridean worker" means any person who is employed or seeking employment and who is not a New Hebridean worker ;

"occupation" means any commercial or industrial activity, intellectual or manual work or any specific work or task which a person may execute as part of his employment.

ply to-

(2) The provisions of this Regulation shall not ap-

(a) any person appointed ^{by} either national administration to a post within such administration ;

(b) any person recruited under a written contract for employment in the Condominium Administration ;

(c) person rendering voluntary service in the New Hebrides under any technical aid scheme where such service has been authorised by the British or French Government ;

(d) any person entering the New Hebrides at the request or invitation of a public administration or consultant to such administration ;

(e) any other class or classes of persons as the Resident Commissioners may by Joint decision prescribe.

PART II - WORK PERMITS

Work Permits.

2. (1) It shall be an offence for any non-New Hebridean worker to whom this Regulation applies to take up or to continue in paid employment in the New Hebrides, otherwise than as provided by section 8, without first having obtained a work permit or, where such permit has been issued, otherwise than in accordance with the conditions thereof.

(2) Every employer who wishes to employ any non-New Hebridean worker shall make application for a work permit to an Inspector of Labour in the form and manner prescribed in the First Schedule.

(3) Subject to section 8 (2) (A) and (b), the Inspectors of Labour may jointly issue work permits valid -

(a) where the employment is not the subject of a written contract, for two years ;

(b) where the employment is or is to be the subject of a written contract, for three years or the duration of the contract, whichever period is the less.

(4) All work permits issued by the Inspectors of Labour shall contain -

(a) the full name and business address of the employer

(b) the full name of and the occupation to be carried out by the employee ;

(c) a photograph of the employee ;

(d) details of the residence permit of the employee in cases where the employee is subject to immigration control ;

(e) such further matters as may be prescribed by the Resident Commissioners by joint rules.

Change of employer or occupation.

3/ An employer shall make application to an Inspector of Labour in the manner and form prescribed in the First Schedule for the amendment of a work permit issued to any employee who -

(i) wishes to change his occupation although remaining in the service of the said employer ; or

(ii) has previously been employed in any occupation by another employer.

Renewal of extension of work permits.

4. An employer who wishes to retain the services of any employee to whom a work permit has been issued beyond the expiry of the period for which such permit is valid, shall make application in the manner and form prescribed in the First Schedule to an Inspector of Labour not less than thirty days prior to the date of expiry of such permit.

Offences.

5. (1) Subject to the provisions of section 8, it shall be an offence for any employer to employ any non-New Hebridean worker to whom a work permit has not been issued or whose work permit has been issued in respect of employment by another employer.

(2) It shall be an offence for any employer to continue to employ any non-New Hebridean worker to whom a work permit has been issued for such employment beyond the date of expiry of such permit.

(3) It shall be an offence for any employer to employ any non-New Hebridean worker to whom a work permit has been issued in any occupation other than that specified in such work permit.

Consideration of applications.

6. In considering any application made for the issue of a work permit or for the renewal or extension of a work permit or for the amendment of a work permit to authorise a change of employer or change of occupation the Inspectors of Labour -

(a) shall ascertain whether the employer has advertised the vacant position adequately and whether any suitably qualified New Hebridean worker has applied for the position or has sought similar employment ; and

(b) may have regard to such other matters as they consider relevant and in particular -

(i) the professional or technical qualifications and experience of the prospective employee ;

(ii) the protection of local interests ; and

(iii) whether the conditions of employment offered are in conformity with the terms of any Collective Agreement which may be in force in respect of the industry or occupation concerned.

Decisions and appeals.

7. (1) Subject to the provisions of section 8, the Inspectors of Labour shall reach a decision upon every application made to them under the provisions of this Part within thirty days from the date of receiving such application, or within such extended period as provided by subsection (2) and such decision shall be communicated by the Inspectors of Labour to the employer making the application without delay.

(2) In cases where an application received by the Inspectors of Labour does not provide all the information required or where any of the information provided is required to be verified, the calculation of the period prescribed in subsection (1) shall be suspended until the date of receiving such additional information or of verification of such information and the employer making the application shall be so informed by the Inspectors of Labour.

(3) If the employer making the application shall not receive the decision of the Inspectors of Labour within 30 days

from the date of receipt of the application by them, the employer may appeal to the Resident Commissioners for the determination of his application in accordance with the procedure prescribed in section 11.

PART III - TRANSITIONAL PROVISIONS

Non-New
Hebridean
workers
employed at
commencement
of
Regulation.

8. (1) Every employer who at the commencement of this Regulation employs any non-New Hebridean worker shall, within six months of the date of such commencement, make application for a work permit for each such employee whom he intends to continue to employ beyond the expiry of the said period of six months. Such application shall be made to an Inspector of Labour in the form and manner prescribed in the First Schedule.

(2) Subject to the power of the Inspectors of Labour to refer an application made under subsection (1) back to the employer in cases where the information provided therein is incomplete or requires verification, work permits shall be issued without further consideration upon such applications in accordance with the following provisions -

(a) in the case of persons employed under written contracts of employment entered into more than three months prior to the commencement of this Regulation, a work permit shall be issued for a period corresponding to the period of the written contract remaining to be fulfilled;

(b) in the case of persons employed otherwise than under written contracts of employment as aforesaid, a work permit shall be issued for a period expiring not later than one year after the date of commencement of this Regulation.

(3) Where, at the time of issue of a work permit in accordance with the provisions of subsection (2), the Inspectors of Labour are of the opinion that no further extension or renewal of such permit should be granted, the employer concerned shall be so informed at that time.

(4) Notwithstanding the provisions of subsection (3) an employer who wishes to retain the services of any person to whom a work permit has been issued under subsection (2) beyond the date of expiry of such permit, may make application for the extension or renewal of such permit in accordance with the provisions of section 4.

PART IV - RESERVED OCCUPATIONS AND VOCATIONAL TRAINING

Declaration
reserved
occupation.

9. (1) The Resident Commissioner may by Joint Decision declare any occupational activity whatsoever to be a reserved occupation. Such joint decision shall fix the proportion of non-New Hebridean workers each employer may employ, if any, in such reserved occupation.

(2) Before making any joint decision under subsection (1), the Resident Commissioners shall obtain and consider the recommendations of the Labour Advisory Committee and the Inspectors of Labour.

(3) Any joint decision prescribing the number of non-New Hebridean workers who may be employed in a reserved occupation by any particular employer shall be prescribed as a percentage of the total number of New Hebridean workers employed in such reserved occupation by that employer ;

Provided that where the calculation of such percentage does not produce a whole number, the percentage shall be deemed to be the next higher whole number where the proportion of a whole number is .5 or over or the next lower whole number where the proportion of a whole number is less than .5.

(4) Any employer who wishes to employ a greater number of non-New Hebridean workers than that prescribed in any reserved occupation shall make prior application to an Inspector of Labour.

(5) The Inspectors of Labour may in their discretion grant or refuse an application made in accordance with subsection (4) ; when granted, the permission shall stipulate the additional numbers who may be so employed and the duration of such employment and may, in addition, require the employer to provide such vocational training for New Hebridean workers in his employment as may be necessary to enable them in due course to qualify for employment in the reserved occupation.

(6) Any employer who -

(i) employs any non-New Hebridean worker in any reserved occupation otherwise than in accordance with the provisions of any joint decision made under subsection (1) ; or

(ii) employs a greater number of non-New Hebridean workers in any reserved occupation than that prescribed by such joint decision otherwise than in accordance with permission of the Inspectors of Labour granted under subsection (5); or,

(iii) employs any non-New Hebridean worker in any manner contrary to the decision of the Resident Commissioners on any appeal made under section 11,

shall be guilty of an offence against this Regulation.

(7) The Labour Advisory Committee may at any time recommend to the Resident Commissioner that the provisions of any joint decision made under subsection (1) should be amended.

PART V - GENERAL PROVISIONS

Submission of applications.

10. (1) In the case of employing establishments situated on Efate, applications for work permits shall be lodged with the competent Inspector of Labour who shall issue a receipt for such application.

(2) In the case of other employing establishments such applications may be lodged with the District Agents who shall be responsible for the transmission of such applications to the appropriate Inspector of Labour who shall issue a receipt therefor.

(3) The periods prescribed in subsection (1) of section 7 shall commence from the date of receipt of the application by the Inspector of Labour.

Appeals.

11. Any person aggrieved by a decision of the Inspectors of Labour or who has not received their decision within the period prescribed by subsection (1) of section 7 may appeal to the resident Commissioners in accordance with the provisions and procedure set forth in the Second Schedule. The Resident

Commissioners may in their discretion confirm, modify, amend or rescind such decision, or determine any application which has not been so determined by the Inspectors of Labour within the said period. The decision of the Resident Commissioners shall be final and shall not be called into question in any Court in any proceedings whatsoever.

Register of non-New Hebridean employees.

12. Every employer shall maintain a register of non-New Hebridean workers employed by him and such register shall contain the particulars prescribed in the Third Schedule. It shall be an offence against this Regulation to fail to maintain such register or to enter such prescribed particulars.

Subsidiary legislation.

13. The Resident Commissioners may make such subsidiary legislation as they shall deem necessary for the implementation of this Regulation, which may constitute offences and prescribe penalties therefor not exceeding a fine of 10,000 FNH or the equivalent thereof in Australian dollars at the official rate of exchange.

Implementation and enforcement.

14. (1) The inspectors of Labour, District Agents, Assistant District Agents, Police officers, and any officer of a national administration authorised in writing by the Resident Commissioner concerned, shall be responsible for the implementation and enforcement of this Regulation.

(2) The competence of persons empowered or authorised under the provisions of subsection (1) shall be determined according to the Power of which the employer (if he is a non-New Hebridean) is a dependent or in the case of a corporate body, the legal system, French or British, under which such body is incorporated or registered.

(3) In the case of a New Hebridean employer, any person empowered or authorised under the provisions of subsection (1) shall be competent to implement and enforce this Regulation.

(4) Subject to the restrictions imposed by subsection (2), every person responsible for the implementation and enforcement of the provisions of this Regulation may without notice enter any business premises or place of employment other than any dwelling-house (in which case the consent of the owner or occupier shall be required), and require the employer, manager or other person in charge to furnish any information and to produce any book or other document which in his opinion is or may be relevant to the implementation or enforcement of this Regulation and may, for the purpose of further investigations or for the purposes of evidence in an intended prosecution, retain or make copies of or extracts from such book or document.

(5) If during the course of an inspection of any employing establishment, it appears that an offence may have been committed by a person with respect to whom the person making the inspection is not competent to implement or enforce this Regulation, he shall without delay report the circumstances in writing to the competent Inspector of Labour.

Report of offences.

15. (1) An Inspector of Labour may report offences against this Regulation or any subsidiary legislation made under the provisions thereof directly to the Joint court.

(2) Every such report shall be communicated to the person concerned or to his representative by means of a certified true copy failing which any subsequent proceedings shall be null and void.

(3) Any person other than the Inspectors of Labour responsible for the implementation and enforcement of the provisions of this Regulation may report offences to an Inspector of Labour. The Inspectors of Labour may after consideration of such report forward it to the Joint Court in accordance with the provisions of subsections (1) and (2).

Offences.

16. (1) Any person who shall furnish any information which he knows to be false or does not believe to be true, or shall produce any book or document which he knows to be incorrect, to any person responsible for the implementation and enforcement of this Regulation acting in the exercise of his powers or functions thereunder shall be guilty of an offence against this Regulation.

(2) Any person who shall wilfully resist or obstruct any person responsible for the implementation and enforcement of the provisions of this Regulation in the lawful performance of his duties thereunder shall be guilty of an offence against this Regulation.

Penalties

17. (1) Any person convicted of an offence against the provisions of section 12 shall be liable in the case of a first offence to a fine not exceeding 5.000 FNH or its equivalent in Australian dollars at the official rate of exchange and in the case of a second or subsequent offence to a fine not exceeding 10.000 FNH or its equivalent in Australian dollars at the official rate of exchange or to imprisonment for a term not exceeding one month or to both such fine and imprisonment.

(2) Any person convicted of an offence against the provisions of this Regulation other than section 12 shall be liable in the case of a first offence to a fine not exceeding 50.000 FNH or its equivalent in Australian dollars at the official rate of exchange and in the case of a second or subsequent offence to such fine or to imprisonment for a term not exceeding six months or to both such fine and imprisonment.

(3) In this section, the expression "second or subsequent offence" means an offence which has been committed within five years of a previous conviction for the same offence.

Regulation not to detract from other laws.

18 For the avoidance of doubt, nothing in this Regulation shall derogate from the responsibility of any person of complying with any law applicable to him governing his entry into and residence in the New Hebrides.

Joint consideration of applications etc. by Inspectors of Labour

19. Any application or other document submitted to an Inspector of Labour under the provisions of this Regulation shall be communicated by him without delay to the other Inspector for consideration or determination by them jointly.

Citation and commencement.

20. This Regulation may be cited as the Labour (Work permits) Regulation N° 28 of 1977 and shall come into operation on the 1st day of October 1977.

MADE at Vila this sixteenth day of august 1977

The Acting Resident Commissioner
for the French Republic

Her Britannic Majesty's
Resident Commissioner

F. DOYEN

J.S. CHAMPION

APPLICATION TO EMPLOY A NON-NEW HEBRIDEAN WORKER FORM A

JOINT REGULATION N° 28 OF 1977

To be completed by the employer or prospective employer in block capitals or typescript in accordance with the following notes.

Two copies of this Form are to be completed in respect of every non-New Hebridean worker in employment at the date of commencement of Joint Regulation N° 28 of 1977 and in respect of every non-New Hebridean worker whom it is subsequently intended to employ and who has not previously held a work permit.

"Non-New Hebridean worker" includes every person -

- (a) not born in the New Hebrides ;
- (b) not having one parent or two grandparents born in the New Hebrides ;
- (c) not having been resident in the New Hebrides whether continuously or not for a period or periods totalling fifteen years at the commencement of the Regulation.

"Options" means the legal system chosen by the worker or prospective worker when he has neither French nor British nationality and is not protected person of either of those two Powers.

Two copies of the completed Form shall be lodged with the appropriate Department of Labour in Vila, or in cases where the employing establishment is situated other than on the island of Efate, the forms may be lodged with the appropriate District Agent of the District in which the employing establishment is situated, together with :-

- (i) two passport-size recent photographs of the worker or prospective worker ;
- (ii) a copy of the written contract under which the worker is employed or is intended to be employed if such is in force or has been drawn up ;
- (iii) supporting documents in respect of the trade or professional qualifications or experience of the worker or prospective worker.

IMPORTANT

The lodging of this application for a work permit in no way absolves the worker or prospective worker from compliance with such immigration regulations to which he may be subject.

PART I - DETAILS OF WORKER

Name and first names

Date and place of birth Sex

Nationality option (where applicable).....

Present address

Country of normal domicile Marital status

Details of dependents (if applicable) already resident with worker or to accompany him :-

Wife :- (Full name, date and place of birth and nationality)

.....

Children :- (Full names, date and place of birth)

.....

Date of arrival in New Hebrides

Date of commencing present employment or date upon which it is intended employment shall commence (as appropriate)

.....

Occupation or Profession

Occupation or Profession in which employed or to be employed

.....

Place of employment

Duration of employment offered

Whether employed under written contract or otherwise

If employed or to be employed under written contract :-

Date of entering into contract and date of commencement thereof

..... Date of termination of contract

Details of conditions of employment :-

Details of wage rate or salary

Annual rate of paid leave

Details of other benefits (free rations, accomodation, etc.)

.....

Details of supporting documents in respect of worker's professional qualifications or experience

.....

Immigration details of worker where appropriate (Serial number of Entry and Residence Permit) :-

Date of expiry of such Permit

PART II - DETAILS OF EMPLOYER

Full names or business name of firm

Postal address and registered office of business premises

.....

Nationality option (where applicable)

Economic activity

Details of workers already employed in a similar occupation to the
employment subject of this application :-

(a) Number of New Hebridean workers

(b) Number of non-New Hebridean workers

Details of any apprenticeship or vocational training schemes in force
or contemplated by the employer in respect of the occupation
in which the services of a non-New Hebridean worker are now
applied for :-

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.....

Signature of employer or prospective employer :

.....

Date :

APPLICATION FOR A CHANGE OF OCCUPATION FORM B
OR CHANGE OF EMPLOYER IN RESPECT OF A
NON-NEW HEBRIDEAN WORKER WHO HOLDS OR HAS HELD A WORK PERMIT

JOINT REGULATION N°28 OF 1977

To be completed by the employer or prospective employer in block capitals or typescript in accordance with the following notes:-

- (a) Where a change of occupation without a change of employer is applied for, Part I only of the form is to be completed by the current employer.
- (b) Where a change of employer is applied for, Part II only of the form is to be completed by the prospective employer.
- (c) In each case two copies of the completed form shall be lodged with the appropriate Department of Labour in Vila, or in cases where the place of employment or place of prospective employment is situated other than on the island of Efate, the forms may be lodged with the appropriate District Agent of the District in which the place of employment or prospective employment is situated.
- (d) Every application must be accompanied by the work permit held by the worker or prospective worker. In cases where a change of employer is applied for the application must be accompanied by a copy of the written contract, if any, under which it is intended that the prospective worker is to be employed. Where a change of occupation is applied for, the application must be accompanied by supporting documents in the respect of trade or professional qualifications or experience of the worker appropriate to the changed occupation in which it is intended he is to be employed.

PART I - CHANGE OF OCCUPATION

Name and first names of worker

Serial number of Work Permit and date of issue

Occupation authorised by Work Permit

Occupation for which authority is now sought

Details of wage rate or salary and other allowances or benefits in respect of the occupation for which authority is now sought

Details of any changes of conditions of employment or place of employment which would be occasioned by the change of occupation:-

Details of workers already employed in a similar occupation to that for which authority to employ a non-New Hebridean is now sought :-

- (a) number of New Hebridean workers
- (b) number of non-New Hebridean workers

Details of any apprenticeship or vocational training schemes in force force or contemplated by the employer in respect of the occupation in which the services of a non-New Hebridean worker are now sought:-

.....
.....

Full names and business name of employer and postal address :-

.....
.....

Signature of employer

Date

PART II - CHANGE OF EMPLOYER

DETAILS OF WORKER

Names and first names of worker

Serial number of work permit and date of issue

Employer as authorised by work permit

Occupation as authorised by work permit

Occupation in which authority to employ is now sought

Place of employment

Duration of employment offered

Details of conditions of employment :-

 Details of wage rate or rsalary

 Annual rate of paid leave

 Details of other benefits (free rations, accomodation etc.)

.....

Whether to be employed on written contract or otherwise

.....

DETAILS OF EMPLOYER

Full names or business name of firm

Postal address and registered office of business premises

.....

Nationality Option (where applicable).....

Economic activity

Details of workers already employed in a similar occupation to the employment subject of this application :-

(a) Number of New Hebridean workers

(b) Number of non-New Hebridean workers

Details of any apprenticeship or vocational training scheme in force or contemplated by the employer in respect of the occupation in which the services of a non-New Hebridean worker are now applied for :-

.....

.....

Signature of employer

Date

APPLICATION FOR EXTENSION OR RENEWAL OF
A WORK PERMIT

FORM C

JOINT REGULATION NO. 28 OF 1977

To be completed by the employer in block capitals or in type-script in accordance with the following notes:-

- (a) Parts I and II of the form to be completed by the employer seeking the continued services of a non-New Hebridean worker being the holder of a work permit beyond the duration of the period for which such a permit is valid.
- (b) two copies of the completed form shall be lodged with the appropriate Inspector of Labour in Vila, or in cases where the place of employment is situated other than on the island of Efate, the forms may be lodged with the appropriate District Agent of the District in which the place of employment is situated.
- (c) Every application must be accompanied by the work permit the extension or renewal of which is sought and a copy of the written contract under which it is intended that the worker's continued service shall be performed.

PART I - DETAILS OF WORKER

Name and first names

Serial number of work permitDate of issue

..... Date of expiry

Duration of continued employment offered

In cases where a break in employment in respect of continued employment offered :-

Details of wage rate or salary

Annual rate of paid leave

Details of other benefits (free rations, accomodation etc.) :-

.....

Whether continued employment is to be performed under written contract or otherwise

.....

Place or establishment in which continued employment is to be performed :

.....

PART II - DETAILS OF EMPLOYER

Full names or business name of firm

Postal address and registered office of business premises .

....

Economic activity

Details of workers employed as at the date of this application
in a similar occupation to that in which the continued employment
of the work permit holder is sought :-

(a) Number of New Hebridean workers

(b) Number of non-New Hebridean workers

Details of any apprenticeship or vocational training schemes in force
or contemplated by the employer in respect of the occupation in
which the continued services of the permit holder are applied for:-

.....

.....

Signature of employer

Date