



Jersey

## SHIPPING (EMPLOYMENT OF YOUNG PEOPLE) (JERSEY) ORDER 2007

### Arrangement

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## SHIPPING (EMPLOYMENT OF YOUNG PEOPLE) (JERSEY) ORDER 2007

*Made**16th February 2007**Coming into force**23rd February 2007*

**THE MINISTER FOR ECONOMIC DEVELOPMENT**, in pursuance of Articles 36, 196 and 197 and of the Shipping (Jersey) Law 2002<sup>1</sup>, orders as follows –

### 1 Interpretation

In this Order –

“Company”, in relation to a ship to which this Order applies, means the owner of the ship or any other organisation or person, such as the manager, or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner;

“competent person” means a person who has sufficient training and experience or knowledge and other qualities, to enable the person properly to undertake the duty imposed under the relevant provision of this Order;

“contract of employment” means a contract of employment, whether express or implied, and if express, whether oral or in writing;

“employer” means a person by whom a worker is employed under a contract of employment;

“health and safety” includes the occupational health and safety of people whilst on board a ship and whilst boarding or leaving a ship;

“Law” means the Shipping (Jersey) Law 2002<sup>2</sup>;

“master” includes the skipper of a fishing vessel;

“relevant agreement”, in relation to a worker, means an agreement in writing that is legally enforceable as between the worker and the worker’s employer;

“relevant inspector” means a person mentioned in Article 156(1) of the Law;

“rest period” means a period that is not working time;

“trainees and apprentices” does not include trainees on a training vessel;

“training vessel” means a vessel which is being used either –

- (a) to provide instruction in the principles of responsibility, resourcefulness, loyalty and team endeavour and to advance education in the art of seamanship; or
- (b) to provide instruction in navigation and seamanship for yachtsmen, and that is operating in accordance with a code of practice relating to the safety of vessels;

“week” means a period of 7 days starting at midnight on Sunday;

“worker” means a person who is employed by an employer under a contract of employment, including trainees and apprentices;

“working time”, in respect of a worker, means –

- (a) a period during which the worker is working, at his or her employer’s disposal and carrying out his or her activity or duties; and
- (b) any additional period that is to be treated as working time for the purpose of this Order under a relevant agreement,

and “work” shall be construed accordingly;

“young person” means a person who has attained the age of 14 but is under the age of 18.

## **2 Application and exemptions**

- (1) This Order applies to all activities of young people engaged as workers on Jersey ships.
- (2) Articles 1, 2, 11, 12, 13 and 14 apply to all activities of young people engaged as workers on ships other than Jersey ships that are in Jersey waters.
- (3) Except as provided by paragraph (4), a young person who is still of compulsory school age may not be engaged to work on a ship.
- (4) A person who has attained the age of 14 years but is still of compulsory school age may act as a member of the crew of a boat to which a licence issued under Part 4 or Part 5 of the Boats and Surf-Riding (Control) (Jersey) Regulations 1969 applies if –
  - (a) the Harbour Master is satisfied that the person is competent to act in that capacity; and
  - (b) the boat is operating wholly in Jersey waters.
- (5) Despite the other provisions of this Article, this Order does not apply to work carried out in circumstances that are unusual and unforeseeable, beyond the employer’s control or due to exceptional events, if –
  - (a) the work is of a temporary nature and must be performed immediately;
  - (b) an adult worker is not available; and

- (c) the young person affected is allowed equivalent compensatory rest time within the following 3 weeks.

### **3 People upon whom duties imposed**

- (1) Except where a duty is imposed on any other person, it shall be the duty of an employer to comply with the provisions of this Order.
- (2) If a person upon whom a duty is imposed by a provision of this Order does not have control of the matter to which the provision relates because the person does not have responsibility for the operation of the ship, then any duty imposed by the provision shall also extend to a person who has control of the matter.

### **4 General duties**

- (1) Appropriate measures must be taken to protect young people at work from the risks to their health and safety that are a consequence of their lack of experience, or absence of awareness of existing or potential risks or the fact that young people have not yet fully matured.
- (2) Young people must not be permitted to begin work in a ship unless an assessment has first been made of the risks to the health and safety of young people that might arise during the normal course of their working time taking into account the inexperience, lack of awareness of risks and immaturity of young people.
- (3) Particular attention must be paid to –
  - (a) the fitting out and layout of working areas;
  - (b) the nature, degree and duration of exposure to physical, biological and chemical agents;
  - (c) the form, range and use of work equipment and the way in which it is handled;
  - (d) the organisation of processes and activities;
  - (e) the extent of the health and safety training provided or to be provided to the young people concerned; and
  - (f) risks from agents, processes and work listed in the Schedule.
- (4) Young people must be informed of possible risks to their health and safety identified by the assessment under paragraph (2), and of all measures adopted for their protection.
- (5) Young people must not be engaged in –
  - (a) work that is objectively beyond their physical or psychological capacity;
  - (b) work that involves harmful exposure to agents that are toxic, carcinogenic, cause heritable genetic damage, or harm to the unborn child or that in any other way chronically affect human health;
  - (c) work that involves harmful exposure to radiation;

- (d) work that involves the risk of accidents that it may be assumed cannot be recognised or avoided by young people owing to their insufficient attention to safety or lack of experience or training; or
  - (e) work in which there is a risk to health from extreme cold or heat, noise, or vibration.
- (6) In determining whether the work will involve harm or risk for the purposes of this Article, regard shall be had to –
- (a) the findings of the assessment carried out under paragraph (2); and
  - (b) the list of agents, processes and work contained in the Schedule.
- (7) Nothing in paragraph (5) prevents the employment of a young person to perform an activity where that activity –
- (a) is indispensable for their vocational training; and
  - (b) is performed under the supervision of a competent person.
- (8) In such a case the duty is to ensure so far as is reasonably practicable the health and safety of the young person when performing the activity.

## **5 Rest periods for young people**

- (1) A young person engaged as a worker on a ship must be provided with –
- (a) a rest period of at least 12 consecutive hours in every 24 hour period; and
  - (b) a rest period of at least 2 days, that are consecutive if possible, in every week.
- (2) If a young person's daily working time is more than 4½ hours, the person must be provided during that working time with a rest break of at least 30 minutes in respect of each complete period of working time of 4½ hours, the rest breaks to be consecutive if possible.
- (3) Time spent by a young person on training, whether under a theoretical or practical or combined theoretical and practical work training scheme is to be counted as working time.
- (4) If a young person is engaged as a worker by more than one employer, working days and working hours are to be cumulative.
- (5) The minimum daily rest period provided for in paragraph (1)(a) may be interrupted in the case of activities involving periods of work that are split up over the day or are of short duration.
- (6) The minimum weekly rest period provided for in paragraph (1)(b) –
- (a) may be interrupted in the case of activities involving periods of work that are split up over the day or of short duration; and
  - (b) may be reduced to a period which is not less than 36 hours if this is justified by technical or organizational reasons.
- (7) If the hours of work of a young person are subject to a schedule of duties paragraph (1) shall not apply, if –
- (a) the young person is allowed compensatory rest time; and

- (b) measures are taken to ensure that there is no risk to the young person's health and safety, by reason of his or her hours of work.
- (8) Where paragraph (6) does not apply, a young person may be permitted to work during the rest periods required by paragraph (1)(b) if –
  - (a) such hours are provided for in a relevant agreement;
  - (b) the young person is allowed compensatory rest time; and
  - (c) measures are taken to ensure that there is no risk to the young person's health and safety.
- (9) The Company must ensure that the duties placed on the employer or other person in control of the matter are complied with.
- (10) Paragraphs (1) to (8) do not apply to a young person engaged as a worker on a fishing vessel but the young person must be provided with compensatory rest periods that are as long as those that the young person would have been entitled to had paragraph (1) applied to the young person.
- (11) Despite any other provision of this Article, a young person engaged as a worker on a Jersey ship that navigates in or mainly in Jersey waters must be provided with the rest periods specified in, or in accordance with, the Employment (Jersey) Law 2003.

## **6 Health assessment**

- (1) This Article applies if –
  - (a) the assessment of risk under Article 4(2) shows that there is a risk to the safety, the physical or mental health or the development of young people; or
  - (b) a young person is likely to be required to work at night.
- (2) A young person must not be engaged as a worker unless the person is provided with a free assessment of his or her health and capacities before starting work, and there is monitoring of the person's health at regular intervals thereafter.
- (3) Where paragraph (1)(b) applies the requirement for a health assessment shall not apply if the only night work carried out is of an exceptional nature.

## **7 Young people's medical certificates**

- (1) Except as provided by paragraph (3), a young person must not be engaged as a worker in any capacity on a ship unless the master of the ship has been provided with a medical fitness certificate certifying that the young person is fit to be engaged in that capacity –
  - (a) in accordance with the requirements, medical standards and procedures specified in the relevant Merchant Shipping Notice issued by the United Kingdom's Maritime and Coastguard Agency; or

- (b) in the case of ships operating in Jersey waters and ships in which only family members are employed, in accordance with any medical standards and procedures specified by the Harbour Master.
- (2) A certificate is valid for 12 months from when it is granted but if its period of validity expires during a voyage in which the young person is engaged as a worker in the ship, it continues to be valid until the ship's next port of call where there is a duly qualified medical practitioner.
- (3) Paragraph (1) does not apply where –
  - (a) a young person is engaged as a member of the crew of a boat to which a licence issued under Part 4 or 5 of the Boats and Surf-Riding (Control) (Jersey) Regulations 1969 applies;
  - (b) the boat operates wholly in Jersey waters and is not used in maritime navigation; and
  - (c) the period of the engagement does not exceed 6 months in any calendar year.

## **8 Record of young people**

- (1) There must be included in any crew agreement (being an agreement between the people employed on a ship and the person employing them) –
  - (a) a list of the young people who are engaged as workers on the ship, together with particulars of their dates of birth; and
  - (b) a short summary of the provisions of this Order.
- (2) If there is no crew agreement in respect of a ship and if young people are engaged as workers on the ship its master must keep a register of those people with particulars of their dates of birth and of the dates on which they became engaged as workers on the ship.

## **9 Onus of proving what is reasonably practicable**

In proceedings for an offence under any Article of this Order that consists of a failure to comply with a duty or requirement to do something so far as is reasonably practicable, it shall be for the defendant to prove that it was not reasonably practicable to do more than was in fact done to satisfy the duty or requirement.

## **10 Inspection and detention of a Jersey ship**

A relevant inspector may inspect a Jersey ship and if the inspector is satisfied that there has been a failure to comply in relation to that ship with a requirement of this Order may detain the ship until the health and safety of all young people aboard the ship is secured, but shall not in the exercise of these powers detain or delay a ship unreasonably.

**11 Inspection, detention and other measures in respect of ships registered outside Jersey**

- (1) A relevant inspector may inspect a ship that is not a Jersey ship when the ship is in Jersey waters.
- (2) If satisfied that the ship does not conform to the standards required of Jersey ships by this Order, the inspector may send a report to the government of the country in which the ship is registered, and a copy of it to the Director General of the International Labour Office.
- (3) In addition, if the inspector is satisfied that conditions on board are clearly hazardous to health and safety, the inspector may –
  - (a) take such measures as are necessary to rectify those conditions, or
  - (b) detain the ship.
- (4) The measures specified in paragraphs (1), (2) and (3) shall not be taken unless the ship has called at a Jersey port in the normal course of business for operational reasons.
- (5) If either of the measures specified in paragraph (3) are taken, the relevant inspector must forthwith notify the nearest maritime, consular or diplomatic representative of the State whose flag the ship is entitled to fly.
- (6) The relevant inspector must not in exercise of his or her powers under this Article detain or delay a ship unreasonably.

**12 Enforcement of detention**

If a ship is liable to be detained under this Order, Article 177(1) to (5) of the Law (which relates to the detention of ships) shall apply as if for references to “this Law” there were substituted references to this Order.

**13 Compensation**

- (1) Articles 59 and 60 of the Law (which relate to arbitration and compensation) shall apply in relation to a detention notice or order under this Order as they apply to a detention notice under Article 58(3) of the Law.
- (2) In such application a reference to a dangerously unsafe ship shall be taken to be a reference to a contravention of a provision of this Order and a reference to a relevant inspector shall be taken to be a reference to a person making an inspection under this Order.

**14 Citation and commencement**

- (1) This Order may be cited as the Shipping (Employment of Young People) (Jersey) Order 2007.
- (2) This Order shall come into force 7 days after it is made.

**SENATOR P.F.C. OZOUF**

*Minister for Economic Development*

**SCHEDULE**

(Article 4(6)(b))

**NON-EXHAUSTIVE LIST OF AGENTS, PROCESS AND WORK****I. Agents***1. Physical agents*

- (a) Ionising radiation;
- (b) Work in a high pressure atmosphere, e.g. in pressurised containers, diving.

*2. Biological agents*

- (a) Biological agents belonging to groups 3 and 4 within the meaning of Article 2(d) of Council Directive 90/679/EEC of 26 November 1990 on the protection of workers from risks related to exposure to biological agents at work (Seventh individual Directive within the meaning of Article 16(1) of Directive 89/391/EEC) (O.J. No.L374; 31.12.1990 p.1)

*3. Chemical Agents*

- (a) Substances and preparations classified according to Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (O.J. No. 196 16.8.1967, p.1.As last amended by Directive 93/697/EEC (O.J. No. L268, 29.10.1993, p.71)) with amendments and Council Directive 88/379/EEC of 7 June 1988 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the classification, packaging and labelling of dangerous preparations (O.J. No.L187, 16.7.1988, p.14. As last amended by Directive 93/18/EEC (O.J. No. L104, 29.4.1993, p.46)) as toxic (T), very toxic (Tx), corrosive (C) or explosive (E);
- (b) Substances and preparations classified according to Directives 67/548/EEC and 88/379/EEC as harmful (Xn) and with one or more of the following risk phrases:
  - danger of very serious irreversible effects (R29),
  - possible risk of irreversible effects (R40),
  - may cause sensitisation by inhalation (R42),
  - may cause sensitisation by skin contact (R43),
  - may cause cancer (R45),
  - may cause heritable genetic damage (R46),
  - danger of serious damage to health by prolonged exposure (R48),

- may impair fertility (R60),
- may cause harm to the unborn child (R61);
- (c) Substances and preparations classified according to Directives 67/548/EEC and 88/379/EEC as irritant (Xi) and with one or more of the following risk phrases:
  - highly flammable (R12),
  - may cause sensitisation by inhalation (R42),
  - may cause sensitisation by skin contact (R43);
- (d) Substances and preparations referred to in Article 2(c) of Council Directive 90/394/EEC of 28 June 1990 on the protection of workers from the risks related to exposure to carcinogens at work (Sixth individual directive within the meaning of Article 16(1) of Directive 89/391/EEC) (O.J. No. L196, 26.7.1990, p.1);
- (e) Lead and compounds thereof, inasmuch as the agents in question are absorbable by the human organism;
- (f) Hazardous forms of asbestos.

## **II. Processes and work**

1. Processes at work referred to in Annex I to Directive 90/394/EEC.
2. Manufacture and handling of devices, fireworks or other objects containing explosives.
3. Work with fierce or poisonous animals.
4. Animal slaughtering on an industrial scale.
5. Work involving the handling or equipment for the production, storage or application of compressed, liquefied or dissolved gases.
6. Work with vats, tanks, reservoirs or carboys containing chemical agents referred to in paragraph 1.3.
7. Work involving a risk of structural collapse.
8. Work involving high-voltage electrical hazards.
9. Work the pace of which is determined by machinery and involving payment by results.

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- <sup>1</sup> *chapter 19.885*  
<sup>2</sup> *chapter 19.885*