



Jersey

EMPLOYMENT AGENCIES (REGISTRATION AND CODE OF CONDUCT) (AMENDMENT) (JERSEY) ORDER 2013

Arrangement

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Made

Coming into force

THE MINISTER FOR SOCIAL SECURITY, in pursuance of Articles 3, 11 and 12 of the Employment Agencies (Registration) (Jersey) Law 1969, orders as follows –

1 Interpretation

In this Order –

- (a) the “Law” means the Employment Agencies (Registration) (Jersey) Law 1969;
- (b) the “Code of Conduct Order” means the Employment Agencies (Registration) (Code of Conduct) (Jersey) Order 1970;
- (c) the “Registration Order” means the Employment Agencies (Registration) (Jersey) Order 1970.

2 Code of Conduct Order: Article 1 amended

In Article 1 of the Code of Conduct Order, at the end there shall be added the following definitions –

“ ‘seafarer’ means any person who is employed, engaged, or works in any capacity, on board a ship;

‘ship’ includes every description of vessel used in navigation, except –

- (a) a warship or naval auxiliary;
- (b) a fishing vessel;
- (c) a ship which navigates exclusively in inland waters, inshore waters or areas where port or harbour regulations apply; or
- (d) a pleasure vessel as defined in Regulation 1 of the Shipping (Tonnage) (Jersey) Regulations 2004.

‘shipowner’ means the owner of a ship, or any other organization or person having assumed responsibility (including the duties and responsibilities imposed on shipowners by the Maritime Labour Convention, 2006) for the operation of a ship on behalf of the owner.”.

3 Code of Conduct Order: Article 2 amended

(1) At the beginning of paragraph (1) of Article 2 of the Code of Conduct Order, there shall be inserted the words “Subject to paragraph (1A),”.

(2) After paragraph (1) of that Article there shall be inserted the following paragraphs –

“(1A) Paragraph (1) shall not apply in a case where the applicant is a seafarer, and in such a case an agent shall not demand or receive from the applicant any fee, charge, deposit or remuneration whatsoever, in whole or in part, directly or indirectly, and in particular (but without prejudice to the generality of this prohibition) shall not demand or receive –

- (a) any payment in advance by the applicant towards the cost of repatriation; or
- (b) any fee or charge relating to the preparation or provision of a seafarer’s employment agreement, except such reasonable cost as may have been incurred by the agent on the seafarer’s behalf in obtaining or providing any of the documents listed in paragraph (1B).

(1B) The documents mentioned in paragraph (1A)(b) are –

- (a) a valid medical certificate;
- (b) a passport or other similar personal travel document (except a visa, the cost of which shall be borne by the shipowner);
- (c) a document containing a record of the seafarer’s employment (a ‘seafarer’s book’),

and for the purposes of sub-paragraph (a), a medical certificate is valid if it satisfies the requirements as to such certificates in Regulation 1.2 of the Maritime Labour Convention, 2006.”.

4 Code of Conduct Order: Article 4A inserted

After Article 4 of the Code of Conduct Order, there shall be inserted the following Article –

“4A Recruitment and placement of seafarers: additional requirements

- (1) This Article applies in relation to agents engaging, or proposing to engage, in recruitment and placement of seafarers.
- (2) Such an agent shall have, upon application for registration in accordance with Article 3 of the Law, and shall maintain at all relevant times, sufficient insurance provided by an approved

insurer (or another arrangement having the same effect as such insurance), and shall, when required, produce evidence of the insurance or other arrangement to an authorized officer.

- (3) For the purposes of paragraph (2) –
 - (a) ‘approved insurer’ has the same meaning as given to that expression by Regulation 8(7) of the Harbours (Inshore Safety) (Jersey) Regulations 2012;
 - (b) ‘authorized officer’ means an officer duly authorized under Article 10 of the Law, or such an officer as defined for the purposes of Article 15A by paragraph (3) of that Article;
 - (c) insurance is sufficient if it provides cover compensating a seafarer for monetary loss incurred as a result of failure by the agent or by a shipowner to meet obligations to the seafarer under the seafarer’s employment agreement.
- (4) An agent shall not enter into an agreement with a shipowner for the recruitment of a seafarer unless the requirements of paragraphs (5) and (6) are fulfilled.
- (5) The first requirement mentioned in paragraph (4) is that the agent shall be satisfied that the shipowner has made sufficient provision, whether by means of insurance or otherwise and as far as practicable, to protect the seafarer from being stranded in a foreign port.
- (6) The second requirement mentioned in paragraph (4) is that the agent shall obtain details in writing of the principal terms and conditions of the seafarer’s employment agreement, which shall include at least (but need not be limited to) the following particulars –
 - (a) the seafarer’s full name, date of birth or age, and birthplace;
 - (b) the shipowner’s name and address;
 - (c) the place where, and date from which, the agreement is to be made;
 - (d) the post for which the seafarer is employed or engaged and the nature of the seafarer’s responsibilities;
 - (e) the amount of the seafarer’s wages or the formula to be used for calculating them;
 - (f) the seafarer’s entitlement to paid annual leave or the formula to be used for calculating such leave;
 - (g) reasonable provisions as to the term of the agreement and its termination, including the minimum notice period, and as to repatriation of the seafarer upon expiry or earlier termination of the agreement;
 - (h) the health and social security benefits to be provided to the seafarer by the shipowner;
 - (i) the terms of, or clear reference to, any relevant collective bargaining agreement.

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- (7) An agent shall not propose or arrange for the employment, engagement or placement of a seafarer unless the requirements of paragraphs (8) and (10) are fulfilled.
 - (8) The first requirement mentioned in paragraph (7) is that (without prejudice to the provisions of Article 6(7) of this Order) the agent shall ensure that an applicant is given sufficient opportunity to examine and seek advice on the draft seafarer's employment agreement so that the applicant is able in particular to understand the rights and duties of the shipowner and the seafarer under the agreement.
 - (9) The requirement in paragraph (8) shall not be taken to have been fulfilled unless the draft employment agreement provided to an applicant is in English or (by consent freely given by the applicant) in a language other than English understood by the applicant.
 - (10) The second requirement mentioned in paragraph (7) is that the agent shall be satisfied that the applicant currently holds all qualifications and competences required in relation to the post in question.
 - (11) The requirement in paragraph (10) shall not be taken to have been fulfilled unless –
 - (a) copies of all relevant certificates or other documentary evidence of qualifications or competences are provided by the applicant; and
 - (b) the agent has in place procedures to ensure, as far as practicable, that –
 - (i) such certificates or evidence are up to date and have not been fraudulently obtained, and
 - (ii) where such evidence consists of or in part comprises any references from an applicant's previous employers, the references are verified.”.

5 Code of Conduct Order: Article 6 amended

In Article 6 of the Code of Conduct Order –

- (a) in paragraphs (1) and (2), the words “any female person or” shall be omitted at each place in which they occur;
- (b) in paragraph (1), for the words “such female person or such person” there shall be substituted the words “such a person”;
- (c) in paragraph (2), the words “any female or” shall be omitted;
- (d) in paragraph (3) –
 - (i) for the word “Committee” there shall be substituted the word “Minister”,
 - (ii) the words “a female person or” shall be omitted, and
 - (iii) in sub-paragraph (a), the words “female person or” shall be omitted;

- (e) in paragraph (7), for the words “a language understood by such person” there shall be substituted the words “English or (by consent freely given by the person) in a language other than English understood by the person”;
- (f) at the end there shall be added the following paragraph –
 - “(10) Nothing in this Article shall be taken as abrogating the prohibitions against, and restrictions on, employment of young people as workers on ships imposed by the Shipping (Employment of Young People) (Jersey) Order 2007.”.

6 Code of Conduct Order: Article 7 amended

- (1) In Article 7 of the Code of Conduct Order, at the end of paragraph (1)(d) the semi-colon shall be deleted and there shall be added the words “, including in particular and in accordance with paragraph (1A), employment as a seafarer.”.
- (2) After paragraph (1) of Article 7, there shall be inserted the following paragraph –
 - “(1A) An agent engaged in recruitment and placement of seafarers shall also keep applications kept in accordance with paragraph (1) in such a manner as to ensure that applications relating to employment as a seafarer can be readily identified as such.”.

7 Code of Conduct Order: Article 12 amended

After paragraph (3) of Article 12 of the Code of Conduct Order, there shall be inserted the following paragraph –

- “(3A) Without prejudice to the generality of paragraph (3), an agent shall not use any strategy, mechanism or other means whatsoever to prevent or deter seafarers from obtaining employment in such capacity for which they are suitably qualified.”.

8 Code of Conduct Order: Article 15 amended and Article 15A inserted

- (1) For the heading to Article 15 of the Code of Conduct Order there shall be substituted the following heading –

“15 Complaints: information to be given to all applicants”.

- (2) After Article 15 there shall be inserted the following Article –

“15A Complaints: duty where complaint relates to recruitment and placement of seafarers

- (1) An agent engaged in the recruitment and placement of seafarers shall inform applicants who are seafarers that complaints of

unsatisfactory agency service may be put before the Minister or an authorized officer.

- (2) Where such a complaint is made to the agent in the first instance, the agent shall investigate, and respond promptly to, any complaint of unsatisfactory service in that regard, and shall inform the Minister or an authorized officer of any such complaint which remains unresolved.
- (3) For the purposes of this Article, an ‘authorized officer’ includes a person appointed as an inspector pursuant to Article 154 of the Shipping (Jersey) Law 2002.”.

9 Registration Order: Schedule amended

In the Schedule to the Registration Order –

- (a) in note (e) to the form of “APPLICATION BY A PERSON, NOT BEING A BODY CORPORATE, FOR REGISTRATION AS A PERSON CARRYING ON AN EMPLOYMENT AGENCY”; and
- (b) in note (a) to the form of “APPLICATION BY A BODY CORPORATE FOR REGISTRATION AS A PERSON CARRYING ON AN EMPLOYMENT AGENCY”,

at the end in both places there shall be added the following sentence –

“If the nature of the agency, or of a service supplied, relates in whole or in part to the recruitment and placement of seafarers, state ‘Recruitment and placement of seafarers’.”.

10 Citation and commencement

This Order may be cited as the Employment Agencies (Registration and Code of Conduct) (Amendment) (Jersey) Order 2013, and shall come into force 7 days after the day on which it is made.

Signed.....

Date.....

Minister for Social Security

