

Consultation Paper

Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Bailiwick of Guernsey) Ordinance, 2013

Date: 22 May 2013

Purpose and type of consultation

This paper puts forward a draft Ordinance and asks for your views.

Closing date : 20 June 2013

The Commerce and Employment Board would like your views about the draft *Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Bailiwick of Guernsey) Ordinance, 2013*, the purpose of which is to provide legislative effect, in the Bailiwick, to Regulation 1.4 of the Maritime Labour Convention (attached at Appendix II).

Information received from the consultation will assist the Board in finalising the Ordinance before laying it before the States for approval with an intended commencement date of 1 November 2013.

Contacts

Further information: www.gov.gg/MLC.Consultation

Please send your comments to:

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Circulation

This consultation paper has been sent to the following individuals / organisations:

- Unions which represent Seafarers
- Employment Businesses recruiting and placing Seafarers
- Trust Companies who may recruit and place Seafarers
- States of Alderney and Chief Pleas of Sark
- States Members
- Employment Agencies who do not recruit and place Seafarers for information only.

Supporting documents attached:

- Draft *Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Bailiwick of Guernsey) Ordinance, 2013*
- Text of Maritime Labour Convention 2006, Regulation 1.4

Introduction

1. Background

1. The Maritime Labour Convention ("the Convention") will come into force on 20th August 2013. All maritime administrations with significant tonnages of shipping on their Registers are signatories to it or are expected to have it extended to them, including the United Kingdom. Guernsey has a comparatively small shipping Register. The Public Services Department and the Law Officers are currently considering, in consultation with the UK's Maritime and Coastguard Agency, whether to seek the extension of the Convention to the Bailiwick in due course, or whether our shipping and other commercial interests, the rights of our seafarers, and our reputation, can properly be protected by taking effective, practical steps without formal extension.
2. While it is hoped that most of the Convention's provisions can be addressed without the need for further legislation the Law Officers have advised that legislation will be required to implement Regulation 1.4. This provision requires contracting states to regulate seafarer recruitment and placement services - commonly known as manning agencies - in their territory.
3. In view of this, the States (and the legislatures in Alderney and Sark) approved a Bailiwick-wide Projet de Loi in the form of an enabling Law to give the States the power to make Ordinances to regulate employment agencies in the Bailiwick generally and in particular to give domestic effect to Regulation 1.4. The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012 was registered in the records of the Island on 22 April 2013, and will shortly be brought into force. Meanwhile an Ordinance has been drafted to be made under the enabling Law to give domestic effect to the requirements of Regulation 1.4, and is the subject of this consultation.
4. Regulation 1.4 of the Convention provides, amongst other things, that contracting states must ensure, in respect of seafarers who work on ships that fly their flag, that shipowners who use the services of manning agencies, based in other, non-contracting, states, have a responsibility to ensure that those services conform to the Regulation's requirements. The importance of this for the Island is that there are several maritime manning agencies based in Guernsey, employing sizeable numbers of people, which place seafarers on other states' ships. The Department believes that Guernsey should be supportive of this sector by enacting appropriate legislative provision to enable Recruitment and Placement businesses to continue to offer services.
5. Policy regarding the Convention is, generally, within the mandate of the Public Services Department and Guernsey Harbours; however, policy in relation to employment agencies is within the Commerce & Employment Department's mandate, which is why it is sponsoring this legislation, in consultation and co-operation with the Public Services Department.

2. The Convention

1. The Convention is intended to provide comprehensive rights and protection at work for the world's more than 1.2 million seafarers. It sets out seafarers' rights to acceptable conditions of employment and aims to be globally applicable, easily understandable, readily updatable and uniformly enforced. It has been designed to become a global instrument known as the "fourth pillar" of the international regulatory regime for quality shipping, complementing the key Conventions of the International Maritime Organization (IMO).
2. Many of the Convention's provisions are relevant only to ships that are larger than those allowed on the Guernsey Register. However, it does apply to all commercial vessels engaged in International voyages. The Department is advised by Guernsey Harbours and the Law Officers that, in their view, the majority of the Convention provisions relevant to a Category 2 shipping administration such as Guernsey may be given effect by adoption, in Bailiwick legislation, of relevant provisions within a new small ships code currently being developed by the UK's Maritime and Coastguard Agency (MCA). The only exception to this approach, identified at present, is in respect of Regulation 1.4, which deals with recruitment and placement of Seafarers.
3. Regulation 1.4 states that its purpose is "*To ensure that seafarers have access to an efficient and well-regulated seafarer recruitment and placement system*". It goes on to provide that such a system "*shall be operated only in conformity with a standardized system of licensing or certification or other form of regulation.*" Red Ensign Group administrations, including Guernsey, are considering how best to give legislative effect to the Regulation's provisions, the economic importance of which to the Bailiwick is explained in paragraph 1.4 above.

3. Consultation

1. This document invites views and comments on the draft *Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Bailiwick of Guernsey) Ordinance, 2013*, the purpose of which is to provide legislative effect, in the Bailiwick, to Regulation 1.4 of the Convention (attached at Appendix II).
2. **Do you believe that the attached Ordinance provides an appropriate mechanism to satisfy Shipowners that Recruitment and Placement Agencies based in Guernsey, are acting in compliance with Regulation 1.4 of the Convention?**
3. **Do you believe that the attached Ordinance provides an appropriate mechanism to satisfy Seafarers that Recruitment and Placement Agencies based in Guernsey, are acting in compliance with Regulation 1.4 of the Convention?**
4. **Do you believe that the attached Ordinance provides an appropriate mechanism to allow Recruitment and Placement Agencies based in Guernsey, to demonstrate they are acting in compliance with Regulation 1.4 of the Convention?**

4. System of Protection (SOP)

1. Regulation 1.4 (4) (vi) requires the establishment of “ a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them. “

The UK is consulting on the following interpretation of this requirement:

Time requirements:

The System of Protection will apply to Employment Agencies (EA) in the following way:

It will cover any of the relevant liabilities which arise within **two months** of the seafarer being placed with the shipowner; and

If any relevant liability/arrears arises within those **two months** the SoP will cover them from the point at which they arise and accrue over a **two month** period from that date (even if that period extends beyond the two months from placement).

Example

On the 1st March 2013 a seafarer is introduced to a shipowner whom the latter engages on that date. The seafarer is paid monthly and payment is duly made on the 31st March. On the 30th April the seafarer realises that he has not been paid for that month. The 2 month period from placement finishes on the 30th April. The arrears arise from the 1st April (within the first 2 months of placement) and therefore the SoP should cover 2 months pay from the 1st April onwards (even though they were not contractually due until the 30th April). By the 31st May the seafarer has still not been paid. The SoP should cover 2 months from the 1st April to the 31st May.

The SoP will apply to an Employment Business (EB) in the following way:

As an EB will have an on-going contractual relationship with the seafarer then (unlike the case with an EA) it will apply **on an on-going basis** because relevant liabilities could arise at any point during the engagement whether this be near the beginning of employment, within a few months of starting or even several years down the line.

Should a relevant liability arise (for instance wages or any other relevant monetary loss) the SoP would cover those liabilities from the point at which they arise and accruing over an **2 month** period from that date.

Example

An EB engages a seafarer on the 1st March 2013 and supplies the seafarer to a shipowner. Things go well to start with, and the seafarer is paid month after month. However the seafarer is not paid for the month of April or May 2014. The SoP should cover his wages from the 1st April 2014 for a period of 2 months which extends until the 31st May 2014.

Relevant liabilities:

The SoP is to cover the relevant Recruitment and Placement Service's liabilities, and failure of the shipowner to meet their liabilities:

- a) any matters included in a company Seafarer Employment Agreement (SEA) including those in excess of the minimum required by the MLC;
- b) any Collective Bargaining Agreement (CBA) that formed all or part of the SEA, provided it is incorporated expressly or impliedly;
- c) MLC requirements that can be implied into the SEA eg., the right to be provided with food free of charge;
- d) obligations which arise under the MLC Parts A and B which also arise under the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as amended) which are also covered by the MLC.

2. **Do you believe the above is a reasonable interpretation of the requirements?**
3. **Do you believe that Guernsey should follow the UK on this, to provide consistency of approach?**

5. Authorised Organisations

1. The intention in Guernsey is to recognise audits of relevant agencies carried out by authorised organisations ("approved inspectors") as initial proof of compliance with Regulation 1.4, for the purposes of the Ordinance. This policy would enable businesses to engage auditors, who may already be providing services to the business, to carry out such audits, which could then be submitted to the Commerce and Employment Department for checking prior to the issue of a Certificate of Registration under the Ordinance.

2. The Department's intention is to approve the following organisations for this purpose:

Lloyds Register
Det Norske Veritas/ Germanischer Lloyd
Bureau Veritas
American Bureau of Shipping

Others will be considered on an "as appropriate" basis and can be added to the "Approved Organisations" list in the future.

3. **Do you believe the above is a reasonable list of organisations that should be approved under the Ordinance for the purpose of carrying out audits in respect of compliance with Regulation 1.4?**

5.4 It should be noted that there is still considerable work to do before any Ordinance can be brought into force in Guernsey. The earliest date that the provisions could be enacted would be November 2013. This means there will be a short period after the Convention comes into force when the relevant legislation is not in place.

5.5 Accordingly, affected businesses in Guernsey should consider urgently arranging for a voluntary audit to be conducted by one of the Organisations listed above before 20 August. This would ensure that they would have some demonstration of compliance with Regulation 1.4 to provide to Shipowners at the point the Convention comes into force. The audit could then be supplied to the Commerce and Employment Department once the Ordinance comes into force for checking, prior to the issue of a certificate of registration under the legislation – see clauses 3 and 4 (particularly clause 4(2)) of the draft Ordinance.

6. If you have any other comments in respect of Regulation 1.4, please submit those comments along with your responses to the above questions.

7. We intend to hold a meeting in on **Tuesday, 25 June** to discuss the comments provided as part of this consultation. In order to make best use of this meeting we would like to limit numbers but ensure a cross section of respondents is represented at the meeting.

If your organisation would be interested in being a participant at that meeting, please provide full contact details, including an e-mail address and a brief description of the size and nature of your business. A cross section of interested respondents will be selected to attend the meeting.

8. The closing date for responses is **Thursday, 20 June 2013**.

Supporting documents attached:

- Draft *Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Bailiwick of Guernsey) Ordinance, 2013*
- Text of Maritime Labour Convention 2006, Regulation 1.4

Questionnaire

1. Questions Relating to the draft *Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Bailiwick of Guernsey) Ordinance, 2013*,
 - 1.1. Do you believe that the attached Ordinance provides an appropriate mechanism to satisfy Shipowners that Recruitment and Placement Agencies based in Guernsey, are acting in compliance with Regulation 1.4 of the Convention?
 - 1.2. Do you believe that the attached Ordinance provides an appropriate mechanism to satisfy Seafarers that Recruitment and Placement Agencies based in Guernsey, are acting in compliance with Regulation 1.4 of the Convention?
 - 1.3. Do you believe that the attached Ordinance provides an appropriate mechanism to allow Recruitment and Placement Agencies based in Guernsey, to demonstrate they are acting in compliance with Regulation 1.4 of the Convention?
2. Question relating to the UK Interpretation of the requirement for an establishment of “ a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them. “
 - 2.1. Do you believe the above is a reasonable interpretation of the requirements?
 - 2.2. Do you believe that Guernsey should consider following the UK on this, to provide consistency of approach?
3. Question relating to list of Approved Organisations
 - 3.1. Do you believe the above is a reasonable list of organisations that should be approved under the Ordinance for the purpose of carrying out audits in respect of compliance with Regulation 1.4?

How to respond:

PLEASE SEND COMMENTS TO

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Disclaimer

**Please note that consultation responses may be made public.*

(sent to other interested parties on request, quoted in a published report, reported in the media, published on www.gov.gg, listed on a consultation summary etc.)

**Please indicate in your response how the Department should treat your response, the options available include:*

- I agree that my comments may be made public and attributed to me*
- I agree that my comments may be made public but not attributed (i.e. anonymous)*
- I don't want my comments made public*

NAME:	
ADDRESS:	

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